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## Information and Notices

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### Contents

#### II *Information*

##### INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

###### **European Commission**

2021/C 113/01	Communication from the Commission – Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation to certain categories of cases .....	1
---------------	---	---

#### IV *Notices*

##### NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

###### **European Commission**

2021/C 113/02	Euro exchange rates — 30 March 2021 .....	7
---------------	---	---

###### **Court of Auditors**

2021/C 113/03	Special Report 04/2021 – Customs controls: poor harmonisation hampers EU financial interests .....	8
---------------	--	---

#### V *Announcements*

##### COURT PROCEEDINGS

###### **EFTA Court**

2021/C 113/04	Judgment of the court of 10 December 2020 in Joined Cases E-11/19 and E-12/19 – Adpublisher AG v J and K ( <i>Regulation (EU) 2016/679 – Data protection – Right to lodge a complaint with a supervisory authority – Right to an effective judicial remedy against a supervisory authority – Anonymity – Costs incurred in appeal proceedings</i> ) .....	9
---------------	---	---

EN

2021/C 113/05	Request for an Advisory Opinion from the EFTA Court by Oslo tingrett dated 18 November 2020 in the case of Q and Others v The Norwegian Government (Case E-16/20).....	10
2021/C 113/06	Judgment of the court of 10 December 2020 in Case E-13/19 – Hraðbraut ehf. v The Ministry of Education, Science and Culture, Verzlunarskóli Íslands ses., Tækniskólinn ehf., and Menntaskóli Borgarfjarðar ehf. ( <i>Public procurement – Directive 2014/24/EU – Public service contract – Article 37 EEA – Notion of ‘services’ – Upper secondary education</i> ).....	11

#### PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

##### **European Commission**

2021/C 113/07	Prior notification of a concentration – Case M.10164 – CVC/Stark Group – Candidate case for simplified procedure <sup>(1)</sup> .....	12
2021/C 113/08	Prior notification of a concentration (Case M.10173 — Luminus/Essent Belgium) <sup>(1)</sup> .....	14

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<sup>(1)</sup> Text with EEA relevance.

## II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES  
AND AGENCIES

EUROPEAN COMMISSION

COMMUNICATION FROM THE COMMISSION

**Guidance on the application of the referral mechanism set out in Article 22 of the Merger Regulation  
to certain categories of cases**

(2021/C 113/01)

1. The purpose of this document is to provide practical guidance regarding the Commission's approach to the use of the referral mechanism set out in Article 22 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ('the Merger Regulation')<sup>(1)</sup>. The aim is to facilitate and clarify its application in certain categories of appropriate cases.
2. This document complements, for such cases, the guidance provided in the Commission Notice on Case Referral<sup>(2)</sup>, which provides general guidance on the overall case referral system established in Article 4(4) and (5), Article 9 and Article 22 of the Merger Regulation.
3. The document aims to provide only general guidance on the appropriateness of particular categories of cases for referral under Article 22 of the Merger Regulation: the Member States and the Commission retain a considerable margin of discretion in deciding whether to refer cases or accept referrals, respectively<sup>(3)</sup>. The Commission may revise this Guidance at any time in light of future developments. It may also decide to consolidate the content of this Guidance in the Notice on Case Referral, in the light of experience gathered in applying the revised approach to referrals under Article 22.
4. This Guidance applies, *mutatis mutandis*, to the referral rules contained in the EEA Agreement<sup>(4)</sup>.

1. **Introduction**

5. The Merger Regulation grants the Commission exclusive jurisdiction to review concentrations with an EU dimension, defined by the application of combined turnover-based thresholds. Such thresholds delineate the transactions whose impact on the market is deemed to go beyond the national borders of any one Member State and which, as such, are

<sup>(1)</sup> OJ L 24, 29.1.2004, p. 1.

<sup>(2)</sup> Commission Notice on Case Referral in respect of concentrations. OJ C 56, 5.3.2005, p. 2. This Guidance should thus be read in conjunction with the Notice on Case Referral. Additional guidance can be found in the European Competition Authorities (ECA) *Principles on the application, by National Competition Authorities within the ECA, of Articles 4(5) and 22 of the EC Merger Regulation* (2005).

<sup>(3)</sup> Cf. point 7 of the Notice on Case Referral.

<sup>(4)</sup> According to Article 6(3) of Protocol 24 of the EEA Agreement, one or more EFTA countries may join a request for referral made by a Member State under Article 22 of the Merger Regulation if the concentration affects trade between one or more Member countries and one or more EFTA countries and threatens to significantly affect competition within the territory of the EFTA country or countries joining the request.

in principle best dealt with at the EU level <sup>(5)</sup>. The Merger Regulation contains a corrective mechanism to the application of these quantitative jurisdictional thresholds, allowing, under specific circumstances, a referral of individual cases between the Commission and one or several Member States <sup>(6)</sup>. This system of referrals aims to ensure that the more appropriate authority or authorities for carrying out a particular merger investigation review(s) the case despite not being initially competent.

6. Article 22 of the Merger Regulation allows for one or more Member States to request the Commission to examine, for those Member States, any concentration that does not have an EU dimension but affects trade between Member States and threatens to significantly affect competition within the territory of the Member State or States making the request. It is clear from the wording, the legislative history and the purpose of Article 22 of the Merger Regulation, as well as from the Commission's enforcement practice, that Article 22 is applicable to all concentrations <sup>(7)</sup>, not only those that meet the respective jurisdictional criteria of the referring Member States <sup>(8)</sup>.
7. The mechanism set out in Article 22 of the Merger Regulation has allowed the Commission to review a significant number of transactions in a wide array of economic sectors, such as industrial, manufacturing, pharmaceutical and digital. These have included cases eventually subject to an in-depth investigation and/or authorised only following modification by the remedies offered by the parties <sup>(9)</sup>.
8. With the progressive implementation of national regimes for merger control in almost all Member States, the Commission, in exercising the discretion granted to it by the Merger Regulation <sup>(10)</sup>, developed a practice of discouraging referral requests under Article 22 from Member States that did not have original jurisdiction over the transaction at stake. This practice was notably based on the experience that such transactions were not generally likely to have a significant impact on the internal market.
9. In recent years, however, market developments have resulted in a gradual increase of concentrations involving firms that play or may develop into playing a significant competitive role on the market(s) at stake despite generating little or no turnover at the moment of the concentration. These developments appear particularly significant in the digital economy, where services regularly launch with the aim of building up a significant user base and/or commercially valuable data inventories, before seeking to monetise the business. Similarly, in sectors such as pharmaceuticals and others where innovation is an important parameter of competition, there have been transactions involving innovative companies conducting research & development projects and with strong competitive potential, even if these companies have not yet finalised, let alone exploited commercially, the results of their innovation activities. Similar considerations apply to companies with access to or impact on competitively valuable assets, such as raw materials, intellectual property rights, data or infrastructure.
10. Against this background, the Commission has examined the effectiveness of the turnover-based jurisdictional thresholds of the EU Merger Regulation in its Evaluation of procedural and jurisdictional aspects of the EU Merger control <sup>(11)</sup>. It has concluded that, while these thresholds, complemented by the referral mechanisms set out in the Merger Regulation, have generally been effective in capturing transactions with a significant impact on competition in the EU internal market, a number of cross-border transactions which could potentially also have such an impact have escaped review by both the Commission and the Member States. This includes in particular transactions in the digital and pharma sectors.

<sup>(5)</sup> Cf. Article 1 of the Merger Regulation. Concentrations with an EU dimension, i.e. those above these turnover thresholds, fall within the exclusive jurisdiction of the Commission. Concentrations falling below these thresholds may fall within the competence of the Member States, according to the jurisdictional rules of their respective national regimes.

<sup>(6)</sup> Cf. Article 4(4) and (5), Article 9 and Article 22 of the Merger Regulation.

<sup>(7)</sup> As defined in Article 3 of the Merger Regulation.

<sup>(8)</sup> Article 22 of the Merger Regulation is also applicable when the referring Member State has not established a dedicated national merger control regime.

<sup>(9)</sup> Under, respectively, Article 6(1)(c) and Articles 6(1)(b) with 6(2) and Article 8(2) of the Merger Regulation.

<sup>(10)</sup> Cf. Article 22(3) of the Merger Regulation. See also point 7 of the Notice on Case Referral.

<sup>(11)</sup> See Commission Staff Working Document of 26 March 2021.

11. The Commission considers that a reappraisal of the application of Article 22 of the Merger Regulation can contribute to addressing this issue. In the light of the above considerations, the Commission intends, in certain circumstances, to encourage and accept referrals in cases where the referring Member State does not have initial jurisdiction over the case (but where the criteria of Article 22 are met). This change in approach will permit Member States and the Commission to ensure that additional transactions that merit review under the Merger Regulation are examined by the Commission <sup>(12)</sup>, without imposing a notification obligation on transactions that would not warrant such review. This change in the current practice does not require a modification of the relevant provisions of the Merger Regulation.
  12. This Guidance provides indications about the categories of cases that may constitute suitable candidates for a referral in situations where the transaction is not notifiable under the laws of the referring Member State(s), and thus on the criteria that the Commission may take into account in such situations when encouraging or accepting such a referral. It also provides guidance on certain procedural aspects. Therefore, the Guidance aims to increase transparency, predictability and legal certainty as regards a wider application of Article 22 of the Merger Regulation.
- 2. Guiding principles for the referral of cases which are not notifiable under the laws of the referring Member State(s)**
- 2.1. *Legal requirements*
13. Article 22 of the Merger Regulation states that, in order for a referral to be made by one or more Member States to the Commission, two legal requirements must be fulfilled. The concentration must:
    - (i) affect trade between Member States; and
    - (ii) threaten to significantly affect competition within the territory of the Member State or States making the request.
  14. For the first criterion, the Notice on Case Referral explains that a concentration fulfils the requirement if it is liable to have some discernible influence on the pattern of trade between Member States <sup>(13)</sup>. The concept of 'trade' covers all cross-border economic activity and encompasses cases where the transaction affects the competitive structure of the market. The Commission will in particular assess whether the transaction may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States. Specific factors which could be relevant may include the location of (potential) customers, the availability and offering of the products or services at stake, the collection of data in several Member States, or the development and implementation of R&D projects whose results, including intellectual property rights, if successful, may be commercialised in more than one Member State.
  15. For the second criterion, the Notice on Case Referral states that a referring Member State is required, in essence, to demonstrate that, based on a preliminary analysis, there is a real risk that the transaction may have a significant adverse impact on competition, and thus it deserves close scrutiny. Such preliminary analysis may be based on *prima facie* evidence of a possible significant adverse impact on competition, but would be without prejudice to the outcome of a full investigation <sup>(14)</sup>. The Commission Horizontal <sup>(15)</sup> and Non-Horizontal Merger Guidelines <sup>(16)</sup> contain guidance as to how the Commission assesses concentrations when the undertakings concerned are actual or potential competitors on the same relevant market and when the undertakings concerned are active on different relevant markets, respectively. For the purposes of assessing cases covered by this Guidance, relevant considerations for deciding whether the transaction threatens to significantly affect competition may include the creation or

<sup>(12)</sup> As explained in the Notice on Case Referral (cf. footnote 45), the Commission examines the concentration upon the request of and on behalf of the requesting Member States. Article 22 of the Merger Regulation should therefore be interpreted as requiring the Commission to examine the impact of the concentration within the territory of those Member States. The Commission will not examine the effects of the concentration in the territory of Member States which have not joined the request unless this examination is necessary for the assessment of the effects of the concentration within the territory of the requesting Member States (for example, where the geographic market extends beyond the territory/or territories of the requesting Member State(s)).

<sup>(13)</sup> Notice on Case Referral, point 43.

<sup>(14)</sup> Cf. point 44.

<sup>(15)</sup> Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2004, p. 5) ('Horizontal Merger Guidelines').

<sup>(16)</sup> Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 265, 18.10.2008, p. 6).

strengthening of a dominant position of one of the undertakings concerned; the elimination of an important competitive force, including the elimination of a recent or future entrant or the merger between two important innovators; the reduction of competitors' ability and/or incentive to compete, including by making their entry or expansion more difficult or by hampering their access to supplies or markets; or the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices.

16. When examining both criteria, the Commission will particularly take into account the prospective nature of the merger control assessment.
17. The application of these two criteria ensures that the transaction has a sufficient nexus with the EU and the referring Member State(s).

## 2.2. *Other factors which may be considered*

18. As indicated in the Notice on Case Referral, when considering whether or not to exercise their discretion to make or accede to a referral request, the Member States and the Commission should above all bear in mind the need to ensure effective protection of competition in all markets affected by the transaction <sup>(17)</sup>.
19. Besides the principles set out in the Notice on Case Referral <sup>(18)</sup>, the categories of cases that will normally be appropriate for a referral under Article 22 of the Merger Regulation where the merger is not notifiable in the referring Member State(s) consist of transactions where the turnover of at least one of the undertakings concerned does not reflect its actual or future competitive potential. This would include, for example, cases where the undertaking: (1) is a start-up or recent entrant with significant competitive potential that has yet to develop or implement a business model generating significant revenues (or is still in the initial phase of implementing such business model); (2) is an important innovator or is conducting potentially important research; (3) is an actual or potential important competitive force <sup>(19)</sup>; (4) has access to competitively significant assets (such as for instance raw materials, infrastructure, data or intellectual property rights); and/or (5) provides products or services that are key inputs/components for other industries. In its assessment, the Commission may also take into account whether the value of the consideration received by the seller is particularly high compared to the current turnover of the target.
20. The list above is provided for purely illustrative purposes. It is not limited to any specific economic sector or sectors and cannot be deemed in any way comprehensive.
21. While the referral is subject to the deadlines set out in Article 22, the fact that a transaction has already been closed does not preclude a Member State from requesting a referral <sup>(20)</sup>. However, the time elapsed since the closing is a factor that the Commission may consider when exercising its discretion to accept or reject a referral request. Although assessments are carried out on a case-by-case basis, the Commission would generally not consider a referral appropriate where more than six months has passed after the implementation of the concentration. If the implementation of the concentration was not in the public domain, this period of six months would run from the moment when material facts about the concentration have been made public in the EU. In exceptional situations, however, a later referral may also be appropriate, based on, for example, the magnitude of the potential competition concerns and of the potential detrimental effect on consumers.
22. Finally, a circumstance where the transaction has already been notified in one or several Member States that did not request a referral or join such a referral request may constitute a factor against accepting the referral. However, the Commission will make its decision based on all relevant circumstances, including, as mentioned in the paragraph above, the extent of the potential harm, and also the geographic scope of the relevant markets.

<sup>(17)</sup> Notice on Case Referral, point 8.

<sup>(18)</sup> Cf. point 45.

<sup>(19)</sup> In the sense of paragraphs 37 and 38 of the Horizontal Merger Guidelines.

<sup>(20)</sup> The Merger Regulation acknowledges this possibility in Article 22(4).

### 3. Procedural aspects

23. The Commission will cooperate closely with the competent authorities of the Member States to identify concentrations that may constitute potential candidates for a referral under Article 22 of the Merger Regulation but do not meet the jurisdictional criteria relevant under the respective national laws. It may exchange information to that effect with national competition authorities <sup>(21)</sup>. In such exchanges, confidential information will be protected in accordance with the applicable laws <sup>(22)</sup>.
24. Merging parties may voluntarily come forward with information about their intended transactions. Where appropriate, the Commission may in such cases give them an early indication that it does not consider that their concentration would constitute a good candidate for a referral under Article 22 of the Merger Regulation, if sufficient information to make such a preliminary assessment has been submitted.
25. Third parties may contact the Commission or the competent authorities of the Member States and inform them of a concentration that, in their opinion, could be a candidate for a referral under Article 22 of the Merger Regulation. To enable the Commission and the competent authorities of the Member States to assess whether or not the transaction may be a candidate for referral, such contact should include sufficient information to make a preliminary assessment as to whether the criteria for referral are met, to the extent such information is available to the third party. Article 22 of the Merger Regulation does not impose any obligation on the competent authorities of the Member States or on the Commission to take any action following a contact by a third party.
26. Where the Commission becomes aware of a concentration that it considers as meeting the relevant criteria for a referral, it may inform the Member State(s) potentially concerned and invite that Member State or those Member States to make a referral request <sup>(23)</sup>. It is up to the competent authorities of a Member State to decide whether they wish to make the request.
27. If a referral request is being considered, the Commission will inform the parties to the transaction as soon as possible <sup>(24)</sup>. While being made aware of such consideration does not oblige the undertakings concerned to take or refrain from taking any action in relation to the implementation of the transaction <sup>(25)</sup>, they may decide to take measures they consider appropriate, such as delaying the transaction's implementation until it has been decided whether a referral request will be made.
28. If no notification is required, a referral request must be made at most within 15 working days of the date on which the concentration is otherwise made known to the Member State concerned <sup>(26)</sup>. The notion of 'made known' should be interpreted as implying sufficient information to make a preliminary assessment as to the existence of the criteria relevant for the assessment of the referral <sup>(27)</sup>.
29. Once a referral request has been made, the Commission will inform the competent authorities of the Member States and the undertakings concerned without delay. Other Member States may join the initial request within a period of 15 working days of being informed by the Commission of the initial request <sup>(28)</sup>. The Commission encourages the Member States to inform each other and the Commission as soon as possible whether or not they intend to join the referral request <sup>(29)</sup>.

<sup>(21)</sup> Notice on Case Referral, points 53 et seq. See also ECA Principles, paragraphs 3, 20 and 23 and 26–9.

<sup>(22)</sup> Notice on Case Referral, points 57 and 58. See also ECA Principles, paragraph 34.

<sup>(23)</sup> Article 22(5) of the Merger Regulation. See also ECA Principles, paragraph 22.

<sup>(24)</sup> According to the ECA Principles, if a joint referral request is being considered, the national competition authorities should inform the parties to the transaction as soon as possible (cf. paragraph 25).

<sup>(25)</sup> The suspension obligation set out in Article 7 of the Merger Regulation only applies as of the date on which the Commission informs the undertakings concerned that a request has been made, to the extent that the concentration has not been implemented on that date. See Article 22(4) of the Merger Regulation, first sub-paragraph.

<sup>(26)</sup> Article 22(1) of the Merger Regulation, second sub-paragraph. See also Notice on Case Referral, point 50.

<sup>(27)</sup> Cf. Notice on Case Referral, footnote 43. See also ECA Principles, paragraph 31.

<sup>(28)</sup> Article 22(2) of the Merger Regulation. See also Notice on Case Referral, point 50 and ECA Principles, paragraph 24.

<sup>(29)</sup> ECA Principles, paragraph 24.

30. At the latest 10 working days after the expiry of the 15-working-day period for Member States to join the referral request, the Commission may decide to examine the concentration if it considers that it affects trade between Member States and threatens to significantly affect competition within the territory of the Member State or States making the request. If the Commission does not take a decision within this period, it will be deemed to have adopted a decision to examine the concentration in accordance with the request <sup>(30)</sup>.
  31. The suspension obligation set out in Article 7 of the Merger Regulation applies to the extent the concentration has not been implemented on the date on which the Commission informs the undertakings concerned that a referral request has been made <sup>(31)</sup>. The suspension obligation ceases if the Commission subsequently decides not to examine the concentration.
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<sup>(30)</sup> Article 22(3) of the Merger Regulation, first sub-paragraph.

<sup>(31)</sup> Article 22(4) of the Merger Regulation, first sub-paragraph.



## IV

(Notices)

## NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

## EUROPEAN COMMISSION

Euro exchange rates <sup>(1)</sup>

30 March 2021

(2021/C 113/02)

1 euro =

Currency	Exchange rate	Currency	Exchange rate		
USD	US dollar	1,1741	CAD	Canadian dollar	1,4814
JPY	Japanese yen	129,48	HKD	Hong Kong dollar	9,1283
DKK	Danish krone	7,4369	NZD	New Zealand dollar	1,6794
GBP	Pound sterling	0,85378	SGD	Singapore dollar	1,5815
SEK	Swedish krona	10,2473	KRW	South Korean won	1 331,35
CHF	Swiss franc	1,1057	ZAR	South African rand	17,5396
ISK	Iceland króna	148,50	CNY	Chinese yuan renminbi	7,7154
NOK	Norwegian krone	10,0613	HRK	Croatian kuna	7,5698
BGN	Bulgarian lev	1,9558	IDR	Indonesian rupiah	17 063,20
CZK	Czech koruna	26,122	MYR	Malaysian ringgit	4,8737
HUF	Hungarian forint	363,30	PHP	Philippine peso	57,015
PLN	Polish zloty	4,6582	RUB	Russian rouble	89,1591
RON	Romanian leu	4,9210	THB	Thai baht	36,714
TRY	Turkish lira	9,7800	BRL	Brazilian real	6,7685
AUD	Australian dollar	1,5419	MXN	Mexican peso	24,2262
			INR	Indian rupee	86,2540

<sup>(1)</sup> Source: reference exchange rate published by the ECB.

# COURT OF AUDITORS

## **Special Report 04/2021**

### **Customs controls: poor harmonisation hampers EU financial interests**

(2021/C 113/03)

The European Court of Auditors hereby informs you that Special Report 04/2021 Customs controls: poor harmonisation hampers EU financial interests has just been published.

The report can be accessed for consultation or downloading on the European Court of Auditors' website: <http://eca.europa.eu>

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## V

(Announcements)

## COURT PROCEEDINGS

## EFTA COURT

## JUDGMENT OF THE COURT

of 10 December 2020

in Joined Cases E-11/19 and E-12/19

Adpublisher AG v J and K

(Regulation (EU) 2016/679 – Data protection – Right to lodge a complaint with a supervisory authority – Right to an effective judicial remedy against a supervisory authority – Anonymity – Costs incurred in appeal proceedings)

(2021/C 113/04)

In Joined Cases E-11/19 and E-12/19, Adpublisher AG v J and K – REQUESTS to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Liechtenstein Board of Appeal for Administrative Matters (*Beschwerdekommision für Verwaltungsangelegenheiten*) concerning the interpretation of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), the Court, composed of Páll Hreinsson, President (Judge-Rapporteur), Per Christiansen, and Bernd Hammermann, Judges, gave judgment on 10 December 2020, the operative part of which is as follows:

1. Disclosure of a complainant's personal data during proceedings based on a complaint lodged under Article 77 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, or proceedings based on Article 78(1) of that regulation, is not precluded by that regulation or any other provision of EEA law. The question of non-disclosure of a complainant's personal data must be examined in the light of the principles for processing personal data under Articles 5 and 6 of Regulation (EU) 2016/679. Non-disclosure should not be granted if it would inhibit the performance of the obligations provided in Regulation (EU) 2016/679, or the exercise of the right to effective judicial remedy and due process as set out in Article 58(4) and under the fundamental right to an effective judicial remedy.
2. It follows from Articles 77(1) and 57(3) of Regulation (EU) 2016/679 that where a data subject becomes a party to proceedings under Article 78(1) as a result of a data controller appealing against a supervisory authority's decision, and where national law imposes this status on a data subject automatically, the data subject may not be made responsible for any costs incurred in relation to those proceedings.

**Request for an Advisory Opinion from the EFTA Court by Oslo tingrett dated 18 November 2020 in the case of Q and Others v The Norwegian Government**

**(Case E-16/20)**

(2021/C 113/05)

A request has been made to the EFTA Court dated 18 November 2020 from Oslo tingrett (Oslo District Court), which was received at the Court Registry on 18 November 2020, for an Advisory Opinion in the case of Q and Others v The Norwegian Government on the following questions:

1. The EU Court of Justice has held that Article 21 TFEU and Directive 2004/38/EC grant a right to reside in a host State to a minor child who is a national of another EU State and who satisfies the conditions laid down in Article 7(1)(b), and that 'the same provisions' allow a parent who is that child's primary carer to reside with the child in the host Member State, see, for example Case C-86/12 Alokpa paragraph 29. At the same time, the EU Court of Justice has also held that such a parent does not come within the personal scope of the Directive as provided for in Article 3(1), see Alokpa paragraphs 24-26.

In a situation as described above, may the parent's right of residence be based on the Directive alone or in the light of the EEA Agreement, or does such a right presuppose that the Directive is to be applied together with Article 21 TFEU, or possibly that the Directive is to be given a broad interpretation in the light of Article 21 TFEU?

2. Article 12(3) of Directive 2004/38/EC confers a right to continued residence on a child of an EEA national who is enrolled at an approved educational establishment and the person who has parental responsibility (custody) of the child should the EEA national depart from the country. May a child who is the descendant of the EEA national's spouse only, who was granted a right of residence using the EEA national as a reference person, also derive such a right under the Directive alone or in the light of the EEA Agreement? Does this also hold true if the EEA national has applied for divorce from the parent of that child before departing from the country?
  3. If question 2 is answered in the affirmative, does this also hold true if the marriage of the child's mother or father was an abuse of rights under Article 35 of Directive 2004/38/EC, but was perceived as being genuine by the EEA national and the child?
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**JUDGMENT OF THE COURT****of 10 December 2020****in Case E-13/19****Hraðbraut ehf. v The Ministry of Education, Science and Culture, Verzlunarskóli Íslands ses.,  
Tækniskólinn ehf., and Menntaskóli Borgarfjarðar ehf.***(Public procurement – Directive 2014/24/EU – Public service contract – Article 37 EEA – Notion of ‘services’ – Upper  
secondary education)*

(2021/C 113/06)

In Case E-13/19, Hraðbraut ehf. v The Ministry of Education, Science and Culture, Verzlunarskóli Íslands ses., Tækniskólinn ehf., and Menntaskóli Borgarfjarðar ehf. – REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Public Procurement Complaints Committee (*Kærunefnd útbodsmála*) concerning the interpretation of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, and in particular point (9) of Article 2(1) and Article 74 thereof, the Court, composed of Páll Hreinsson, President, Per Christiansen (Judge- Rapporteur), and Bernd Hammermann, Judges, gave judgment on 10 December 2020, the operative part of which is as follows:

Contracts with characteristics such as those described in the request, which do not have as their object the provision of services within the meaning of Directive 2014/24/EU, do not constitute public service contracts within the meaning of point (9) of Article 2(1) of that directive.

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PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION  
POLICY

EUROPEAN COMMISSION

**Prior notification of a concentration**  
**Case M.10164 – CVC/Stark Group**  
**Candidate case for simplified procedure**

(Text with EEA relevance)

(2021/C 113/07)

1. On 23 March 2021, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 <sup>(1)</sup>.

This notification concerns the following undertakings:

- CVC Capital Partners SICAV-FIS S.A. ('CVC', Luxembourg)
- STARK Group A/S ('Stark', Denmark)

CVC acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Stark.

The concentration is accomplished by way of purchase of shares.

2. The business activities of the undertakings concerned are:

- for CVC: CVC and its subsidiaries manage investment funds and platforms. In particular, CVC owns Ahlsell AB, which is active in the retail and distribution of installation products for heating, ventilation and air-conditioning, electricals, tools and supplies, as well as building materials.
- for Stark: retail sale and distribution of building materials in Denmark, Finland, Germany, Norway and Sweden.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved.

Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under the Council Regulation (EC) No 139/2004 <sup>(2)</sup> it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. The following reference should always be specified:

M.10164 – CVC/Stark Group

<sup>(1)</sup> OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').

<sup>(2)</sup> OJ C 366, 14.12.2013, p. 5.

Observations can be sent to the Commission by email, by fax, or by post. Please use the contact details below:

Email: [COMP-MERGER-REGISTRY@ec.europa.eu](mailto:COMP-MERGER-REGISTRY@ec.europa.eu)

Fax +32 22964301

Postal address:

European Commission  
Directorate-General for Competition  
Merger Registry  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË

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**Prior notification of a concentration**  
**(Case M.10173 — Luminus/Essent Belgium)**

(Text with EEA relevance)

(2021/C 113/08)

1. On 23 March 2021, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 <sup>(1)</sup>.

This notification concerns the following undertakings:

- Luminus S.A. ('Luminus', Belgium), controlled by EDF S.A. ('EDF', France),
- Essent Belgium NV ('Essent Belgium', Belgium), a subsidiary of E.ON S.E. ('E.ON', Germany).

Luminus acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Essent Belgium.

The concentration is accomplished by way of purchase of shares.

2. The business activities of the undertakings concerned are:

- for Luminus: the generation and supply of electricity as well as the supply of gas in Belgium,
- for Essent Belgium: the retail supply of electricity and gas to small industrial and commercial customers and residential customers in Belgium.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. The following reference should always be specified:

M.10173 — Luminus/Essent Belgium

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<sup>(1)</sup> OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').





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