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

## I

(Resolutions, recommendations and opinions)

## RECOMMENDATIONS

## COUNCIL

## COUNCIL RECOMMENDATION

of 12 July 2011

on the National Reform Programme 2011 of Portugal

(2011/C 216/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 121(2) and 148(4) thereof,

Having regard to the recommendation of the European Commission,

Having regard to the conclusions of the European Council,

Having regard to the opinion of the Employment Committee,

Whereas:

(1) On 26 March 2010, the European Council agreed to the Commission's proposal to launch a new strategy for jobs and growth, Europe 2020, based on enhanced coordination of economic policies, which will focus on the key areas where action is needed to boost Europe's potential for sustainable growth and competitiveness.

(2) On 13 July 2010, the Council adopted a recommendation on the broad guidelines for the economic policies of the Member States and the Union (2010 to 2014) and, on 21 October 2010, adopted a decision on

guidelines for the employment policies of the Member States<sup>(1)</sup>, which together form the 'integrated guidelines'. Member States were invited to take the integrated guidelines into account in their national economic and employment policies.

(3) On 12 January 2011, the Commission adopted the first Annual Growth Survey, marking the start of a new cycle of economic governance in the EU and the first European semester of ex-ante and integrated policy coordination, which is anchored in the Europe 2020 strategy.

(4) On 25 March 2011, the European Council endorsed the priorities for fiscal consolidation and structural reform (in line with the Council's conclusions of 15 February and 7 March 2011 and further to the Commission's Annual Growth Survey). It underscored the need to give priority to restoring sound budgets and fiscal sustainability, reducing unemployment through labour market reforms and making new efforts to enhance growth. It requested Member States to translate these priorities into concrete measures to be included in their Stability or Convergence Programmes and National Reform Programmes.

(5) On 25 March 2011, the European Council also invited the Member States participating in the Euro Plus Pact to present their commitments in time to be included in their Stability or Convergence Programmes and their National Reform Programmes. Specific commitments and actions for 2011 are not explicitly communicated in the Portuguese National Reform Programme, but are expected to be submitted to the European Council.

<sup>(1)</sup> Maintained for 2011 by Council Decision 2011/308/EU of 19 May 2011 on guidelines for the employment policies of the Member States (OJ L 138, 26.5.2011, p. 56).

- (6) On 23 March 2011, the Portuguese government submitted a Stability Programme for 2011-2014 to the national parliament, which rejected it. On 19 April 2011, the Portuguese government submitted a National Reform Programme. The proposed macroeconomic and fiscal scenarios and the policy recommendations have been overtaken by the Memorandum of Understanding signed on 17 May 2011.
- (7) On 17 May 2011, the Council adopted Implementing Decision 2011/344/EU to make available to Portugal medium-term financial assistance for a period of three years 2011-2014 in accordance with Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism<sup>(1)</sup>. The accompanying Memorandum of Understanding signed on the same day and its successive supplements lay down the economic policy conditions on the basis of which the financial assistance is disbursed.
- (8) In 2010, Portugal's GDP grew at a rate of 1,3 %. Along with strong export growth, this positive growth performance was also due to exceptional factors that boosted private consumption. Price and cost developments were clearly not sufficient to boost competitiveness at a sufficiently fast rate to redress its current account deficit, which was high at 10 % of GDP in 2010. The weak overall economy and the steep increase in unemployment (11,2 % at the end of 2010) spilled into large government deficits, which exceeded 10 % of GDP in 2009 and 9 % in 2010, up from 3,5 % in 2008. The unfavourable developments in public finances associated with a bleak outlook for economic growth led, recently, to a deterioration of confidence and rising pressures in sovereign bond markets, raising concerns about the sustainability of its public finances. Following consecutive downgradings of Portuguese bonds by credit rating agencies, the country became unable to refinance itself at rates compatible with long-term fiscal sustainability. In parallel, the banking sector, which is heavily dependent on external financing, particularly within the euro area, was increasingly cut off from market funding.
- (9) Portugal committed itself to implementing the economic and financial adjustment programme with the aim of restoring confidence in its sovereign debt and in the banking sector and supporting growth and employment. It provides for comprehensive action on three fronts: (i) a credible and balanced fiscal consolidation strategy, supported by structural fiscal measures and better fiscal control; (ii) deep and frontloaded structural reforms, including in the labour and product markets; and (iii) efforts to safeguard the financial sector against disorderly deleveraging through market-based mechanisms supported by back-up facilities.
- (10) The Commission has assessed the National Reform Programme. It has taken into account not only its relevance for sustainable fiscal and socio-economic policy in Portugal but also its conformity with EU rules and guidance, given the need to strengthen the overall economic governance of the EU by providing EU-level input into future national decisions. In this context, the Commission stresses the urgency of implementing the planned measures to comply with Implementing Decision 2011/344/EU,
- HEREBY RECOMMENDS that Portugal:
- Implement the measures as laid down in Implementing Decision 2011/344/EU and further specified in the Memorandum of Understanding of 17 May 2011 and its subsequent supplements.
- Done at Brussels, 12 July 2011.
- For the Council*  
*The President*  
J. VINCENT-ROSTOWSKI

<sup>(1)</sup> OJ L 118, 12.5.2010, p. 1.

**COUNCIL RECOMMENDATION****of 12 July 2011****on the National Reform Programme 2011 of Finland and delivering a Council opinion on the updated Stability Programme of Finland, 2011-2014**

(2011/C 216/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 121(2) and 148(4) thereof,

Having regard to Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies <sup>(1)</sup>, and in particular Article 5(3) thereof,

Having regard to the recommendation of the European Commission,

Having regard to the conclusions of the European Council,

Having regard to the opinion of the Employment Committee,

After consulting the Economic and Financial Committee,

Whereas:

(1) On 26 March 2010, the European Council agreed to the Commission's proposal to launch a new strategy for jobs and growth, Europe 2020, based on enhanced coordination of economic policies, which will focus on the key areas where action is needed to boost Europe's potential for sustainable growth and competitiveness.

(2) On 13 July 2010, the Council adopted a recommendation on the broad guidelines for the economic policies of the Member States and the Union (2010 to 2014) and, on 21 October 2010, adopted a decision on guidelines for the employment policies of the Member States <sup>(2)</sup>, which together form the 'integrated guidelines'. Member States were invited to take the integrated guidelines into account in their national economic and employment policies.

(3) On 12 January 2011, the Commission adopted the first Annual Growth Survey, marking the start of a new cycle of economic governance in the EU and the first European semester of ex-ante and integrated policy coordination, which is anchored in the Europe 2020 strategy.

(4) On 25 March 2011, the European Council endorsed the priorities for fiscal consolidation and structural reform (in line with the Council's conclusions of 15 February and 7 March 2011 and further to the Commission's Annual Growth Survey). It underscored the need to give priority to restoring sound budgets and fiscal sustainability, reducing unemployment through labour market reforms and making new efforts to enhance growth. It requested Member States to translate these priorities into concrete measures to be included in their Stability or Convergence Programmes and National Reform Programmes.

(5) On 25 March 2011, the European Council also invited the Member States participating in the Euro Plus Pact to present their commitments in time to be included in their Stability or Convergence Programmes and their National Reform Programmes.

(6) On 6 April 2011, Finland submitted its 2011 Stability Programme update covering the period 2011-2014 and its 2011 National Reform Programme. In order to take account of the interlinkages, the two programmes have been assessed at the same time.

(7) At the trough of the global economic crisis, Finland experienced a very steep fall in GDP, given that the Finnish economy has traditionally been reliant on the export performance of its main industries. In 2009, GDP contracted by 8,2 %, driven by an exceptionally steep fall in exports (20 % fall in volume) and related adverse confidence effects on investment. The unemployment rate increased by about 2 percentage points, rising from 6,4 % of the labour force in 2008 to 8,3 % in 2010. The economic recovery has been strong, with GDP expanding by 3,1 % in 2010, sustained by both domestic demand and a rebound in exports. After a brief dip in 2009, real-estate prices and housing construction volumes rebounded rapidly to above the pre-crisis levels, raising some concern about excessive expansion of the real-estate market. Finland emerged from the economic crisis with a general government deficit at 2,5 % of GDP in 2010 and debt at 48,5 % of GDP.

<sup>(1)</sup> OJ L 209, 2.8.1997, p. 1.

<sup>(2)</sup> Maintained for 2011 by Council Decision 2011/308/EU of 19 May 2011 on guidelines for the employment policies of the Member States (OJ L 138, 26.5.2011, p. 56).

- (8) Based on the assessment of the updated Stability Programme pursuant to Regulation (EC) No 1466/97, the Council is of the opinion that the macroeconomic scenario underlying the Stability Programme is plausible for 2011-2012, but slightly too favourable thereafter. For 2011-2012, the macroeconomic scenario is in line with the Commission services spring forecast. For 2013-2015, the Stability Programme projects growth of about 2 % of GDP, which is slightly above the potential growth estimate of 1,5 % and could therefore be subject to some downside risks. The objective of the budgetary strategy is to bring the deficit down to 0,9 % of GDP in 2011 and 0,7 % in 2012, reflecting the cyclical improvement in the economy and some consolidation measures already decided by the previous government. However, the Stability Programme update does not plan any further fiscal consolidation over 2013-2015. Risks to the budgetary targets appear to be balanced. The most notable risk factor stems from the global macroeconomic environment, which has traditionally had a strong impact on the export-reliant Finnish economy.
- (9) The latest Stability Programme update does not envisage making use of the forecast improvement in economic conditions for budgetary consolidation in the medium-term. While the medium-term objective (MTO), set by the Finnish authorities of a structural surplus of 0,5 % of GDP, is projected to be achieved in 2011, in the following years, the structural balance is set to fall below the target.
- (10) According to the Commission's latest assessment, the risks with regard to long-term sustainability of public finances appear to be medium. While actions to counter the effects of population ageing has been one of the priorities of successive Finnish governments, the country faces a strong and immediate demographic shift and a notable sustainability gap still exists in public finances. This challenge has implications for many policy areas. Population ageing will lead to a significant rise in demand for ageing-related services, which are mostly provided by local governments in Finland. Various studies have found that productivity improvement in public services has been poor over the past few years. The Finnish authorities have already implemented several reforms to restructure public services and boost productivity at both central and local government level. The relatively large investments in information technology in the public sector have not yet shown up in productivity improvements, implying that structural and administrative changes are needed to accompany investments. Overall, there is still room for additional measures to achieve productivity gains and cost savings in public service provision.
- (11) The current increase in long-term unemployment is a cause for concern. Between 2005 and 2008, long-term unemployment fell substantially, but it began to rise again in 2009. At the end of March 2011, the number of long-term unemployed stood at 57 400, up 12 400 on the previous year. Many of the long-term unemployed are currently in the 55-64 age group. Due to retirement patterns, the greatest increase in unemployment will be among 45-54 year-olds. Although the long-term unemployment rate in Finland is below the EU average, the issue should be looked at in the context of securing labour supply in the future and social inclusion. Experience shows that long-term unemployment, in particular, increases the risk of poverty and social exclusion. Although the Finnish authorities recognise the increase in long-term unemployment as a pressing issue, so far no comprehensive strategy has been designed to combat it. Finland expanded its active labour market policy (ALMP) measures efficiently during the crisis to fight youth unemployment. While this helped to reduce youth unemployment over 2010-2011, it still remains above the EU average, and may warrant new measures. In the same way, reinforcement and better targeting of ALMP measures would help to reverse the negative trend in long-term unemployment.
- (12) In view of demographic changes, raising the employment rate of older workers is important for public finances and crucial to meet the demand for labour in the future. The Finnish pension system was reformed in 2005 and pension benefits were linked to a life-expectancy coefficient in 2009. However, the statutory pension age is currently not linked to life expectancy. Given the continuing increase in life expectancy, such a link would not only contribute to labour supply but also help to ensure adequate pensions. Early retirement schemes have been reduced over the last few years, but there is still some room for further measures to enhance employment incentives among the elderly. For example, the extended unemployment benefit for the elderly functions broadly in the same way as the abolished unemployment pension. Despite improvements over the last decade, employment rates of older workers and the effective exit age are too low. Disability is very often the cause of early retirement. Increasing the effective retirement age requires measures that also take into account the quality of working life, including the well-being and health of employees. This is important in particular in view of the high number of people on disability pensions. Since 2009, Finland has spent about EUR 21 million on projects to improve the working environment. The impact of these initiatives merits assessment. Participation in lifelong learning has traditionally been very high in Finland and will continue to be important given emerging new skills requirements and demographic changes.

- (13) Greater competition, particularly in the services sector, has become increasingly relevant for boosting productivity and enhancing potential economic growth. Finland's remote location and sparse population density weakens business competition, resulting in relatively low productivity growth in non-tradable sectors. Existing business structures are occasionally highly concentrated, particularly in the food industry or wholesale and retail trade. This might contribute to the relatively high consumer price level, although long transport distances could also play a role. Retail prices are among the highest in the EU. Competition in the retail trade continues to be partly hindered by regulations, despite some recent loosening, and by barriers to foreign and domestic enterprises entering and exiting the market.
- (14) Specific commitments under the Euro Plus Pact are not explicitly set out in Finland's Stability and National Reform Programmes but are expected to be submitted once the new government has been formed.
- (15) The Commission has assessed the Stability Programme and National Reform Programme, taking into account not only their relevance for sustainable fiscal and socio-economic policy in Finland but also their conformity with EU rules and guidance, given the need to reinforce the overall economic governance of the EU. It considers that consolidation measures should be specified for the medium-term and that further action is needed to improve the sustainability of public finances, including by boosting public sector productivity. Further action is also needed to increase incentives to work and to raise the effective exit age from the labour market, as well as to enhance productivity and competition in the service sector markets.
- (16) In light of this assessment, also taking into account the Council Recommendation under Article 126(7) Treaty on the Functioning of the European Union of 2 June 2010, the Council has examined the 2011 update of the Stability Programme of Finland and its opinion<sup>(1)</sup> is reflected in particular in its recommendations (1) and (2) below. Taking into account the European Council conclusions of 25 March 2011, the Council has examined the National Reform Programme of Finland,
- HEREBY RECOMMENDS that Finland take action within the period 2011-2012 to:
1. Continue the fiscal consolidation using any windfall revenue to reduce the deficit, while taking additional measures to maintain the fiscal position above the medium-term objective, in particular through compliance with the medium-term expenditure benchmark.
  2. Take further measures to achieve productivity gains and cost savings in public service provision, including structural changes, in order to respond to the challenges arising from population ageing.
  3. Target active labour market measures better on the long-term unemployed and young people.
  4. Take measures to improve the employability of older workers and their participation in lifelong learning. Take further steps, in consultation with social partners and in accordance with national practices, to encourage older workers to stay in the labour market, by measures to reduce early exit and increase the effective retirement age. In view of the already existing system of linking pension benefits to life expectancy, consider a link between the statutory retirement age and life expectancy.
  5. Take further measures to open up further the service sector, by redesigning the regulatory framework and removing restrictions in order to facilitate new entry into service sector markets, especially in the retail sector.
- Done at Brussels, 12 July 2011.
- For the Council*  
*The President*  
J. VINCENT-ROSTOWSKI

<sup>(1)</sup> Foreseen in Article 5(3) of Regulation (EC) No 1466/97.

## COUNCIL RECOMMENDATION

of 12 July 2011

**on the National Reform Programme 2011 of Romania and delivering a Council opinion on the updated Convergence Programme of Romania, 2011-2014**

(2011/C 216/03)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 121(2) and 148(4) thereof,

Having regard to Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies <sup>(1)</sup>, and in particular Article 9(3) thereof,

Having regard to the recommendation of the European Commission,

Having regard to the conclusions of the European Council,

Having regard to the opinion of the Employment Committee,

After consulting the Economic and Financial Committee,

Whereas:

- (1) On 6 May 2009, the Council adopted Decision 2009/459/EC <sup>(2)</sup> to make available to Romania medium-term financial assistance for a period of three years under the provisions of Article 143 of the Treaty. The accompanying Memorandum of Understanding signed on 23 June 2009 and its successive supplements lay down the economic policy conditions on the basis of which the financial assistance was disbursed. Decision 2009/459/EC was amended on 16 March 2010 by Decision 2010/183/EU <sup>(3)</sup>. Following Romania's successful implementation of the programme, and given a partial adjustment of the current account because of remaining structural weaknesses in Romania's product and labour markets which make the country sensitive to international price shocks, on 12 May 2011 the Council adopted Decision 2011/288/EU <sup>(4)</sup> to make precautionary medium-term financial assistance available to Romania for a period of three years under Article 143 of the Treaty. The accompanying Memorandum of Understanding was signed on 29 June 2011.
- (2) On 26 March 2010, the European Council agreed to the Commission's proposal to launch a new strategy for jobs

and growth, Europe 2020, based on enhanced coordination of economic policies, which will focus on the key areas where action is needed to boost Europe's potential for sustainable growth and competitiveness.

- (3) On 13 July 2010, the Council adopted a recommendation on the broad guidelines for the economic policies of the Member States and the Union (2010 to 2014) and, on 21 October 2010, adopted a decision on guidelines for the employment policies of the Member States <sup>(5)</sup>, which together form the 'integrated guidelines'. Member States were invited to take the integrated guidelines into account in their national economic and employment policies.
- (4) On 12 January 2011, the Commission adopted the first Annual Growth Survey, marking the start of a new cycle of economic governance in the EU and the first European semester of ex-ante and integrated policy coordination, which is anchored in the Europe 2020 strategy.
- (5) On 25 March 2011, the European Council endorsed the priorities for fiscal consolidation and structural reform (in line with the Council's conclusions of 15 February and 7 March 2011 and further to the Commission's Annual Growth Survey). It underscored the need to give priority to restoring sound budgets and fiscal sustainability, reducing unemployment through labour market reforms and making new efforts to enhance growth. It requested Member States to translate these priorities into concrete measures to be included in their Stability or Convergence Programmes and National Reform Programmes.
- (6) On 25 March 2011, the European Council also invited the Member States participating in the Euro Plus Pact to present their commitments in time to be included in their Stability or Convergence Programmes and their National Reform Programmes.
- (7) On 2 May 2011, Romania submitted its 2011 Convergence Programme update covering the period 2011-2014 and its 2011 National Reform Programme. The two programmes have been assessed at the same time.

<sup>(1)</sup> OJ L 209, 2.8.1997, p. 1.

<sup>(2)</sup> OJ L 150, 13.6.2009, p. 8.

<sup>(3)</sup> OJ L 83, 30.3.2010, p. 19.

<sup>(4)</sup> OJ L 132, 19.5.2011, p. 15.

<sup>(5)</sup> Maintained for 2011 by Council Decision 2011/308/EU of 19 May 2011 on guidelines for the employment policies of the Member States (OJ L 138, 26.5.2011, p. 56).



- (8) Between 2002 and 2008 the Romanian economy grew strongly, with real GDP growth averaging 6,3 %, above its level of potential growth. Economic growth was primarily driven by domestic demand, as strong credit and wage developments boosted private consumption and investment. This boom was also fuelled by foreign capital inflows, which led to overheating and unsustainable external and fiscal imbalances. The current account deficit peaked at 13,4 % of GDP in 2007 and decreased only marginally to 11,6 % of GDP in 2008. According to the Commission's latest long-term sustainability assessment, the risks with regard to long-term sustainability of public finances appear to be high. However, this assessment does not yet take into account the comprehensive pension reform measures undertaken in 2010, which have substantially improved the long-run sustainability of the Romanian pension system. The high external borrowing was driven by a pro-cyclical fiscal policy, with headline deficits increasing from 1,2 % of GDP in 2005 to 5,7 % of GDP in 2008 as a result of recurrent budgetary slippages, notably with respect to current spending. The financial crisis and the ensuing global economic downturn increased risk-aversion amongst investors, leading to a significant tightening of capital flows to Romania. Labour market participation did not rise despite the favourable economic conditions and the employment rate changed very little during the boom years. The employment rate then fell to 63,3 % by 2010 while the unemployment rate increased from 5,8 % in 2008 to 7,3 % in 2010 as a result of the economic downturn. Unemployment remains particularly high among vulnerable groups, e.g. the Roma population. Against this background and facing acute private financing needs, the Romanian authorities requested international and EU financial assistance in May 2009.
- (9) Following the successful implementation of the EU-IMF adjustment programme, and in order to consolidate these positive achievements, a precautionary EU-IMF programme for 2011-2013 was negotiated with the authorities. That new programme continues the fiscal consolidation, fiscal governance reforms and preservation of financial stability started under the 2009-2011 programme. In addition, it puts a strong emphasis on the structural reforms in product (in the energy and transport sectors) and labour markets necessary to unleash Romania's growth potential, foster job creation and increase the absorption of EU funds. Romania remains on track to achieve the cash deficit target of 4,4 % of GDP in 2011 (below 5 % of GDP in ESA terms). This would also provide an adequate basis for achieving the deficit target of below 3 % of GDP for 2012, although additional measures may be needed according to the Commission services' spring 2011 forecast. The authorities have also taken steps to achieve the structural reform objectives of the new programme and continue to maintain financial stability.
- (10) Based on the assessment of the updated Convergence Programme pursuant to Regulation (EC) No 1466/97, the Council is of the opinion that the macroeconomic assumptions underpinning the projections in the programme are plausible. The Convergence Programme aims to correct the excessive deficit by the 2012 deadline set by the Council in its recommendation of 16 February 2010. The programme targets headline deficits of 2,6 % of GDP in 2013 and of 2,1 % of GDP in 2014, with the envisaged consolidation being mostly expenditure-based. According to the structural balance recalculated by Commission services, the medium-term objective (MTO) will not be achieved within the programme period. The consolidation strategy appears to be frontloaded with the structural improvement being concentrated in 2011 and 2012. By contrast, there is no improvement in the structural balance in 2013 and 2014. The deficit path foreseen is appropriate in 2011 and 2012, but not in 2013 and 2014. The main risks to the budgetary targets are implementation risks, the arrears of State-owned enterprises which represent a serious contingent liability for the budget, and the reservations expressed by the Commission (Eurostat) about Romania's excessive deficit procedure notification<sup>(1)</sup>. In view of the latter, Romania has committed to give priority to improving the compilation of government finance statistics in ESA 95 within the National Statistical Institute.
- (11) Romania has made its commitments under the Euro Plus Pact in its National Reform Programme and Convergence Programme, which were submitted on 2 May 2011. Most of these commitments have been or are being met as part of the medium-term financial assistance programme and are broadly appropriate to address existing challenges under the Pact.
- (12) The Commission has assessed the Convergence Programme and National Reform Programme, including the Euro Plus Pact commitments. It has taken into account not only their relevance to sustainable fiscal and socio-economic policy in Romania but also their conformity with EU rules and guidance, given the need to reinforce the overall economic governance of the EU by providing EU-level input into future national decisions.

<sup>(1)</sup> Eurostat expressed reservations as to the quality of the Romanian EDP figures due to:

- (i) uncertainties about the impact of some public corporations on the government deficit;
- (ii) the reporting of ESA95 categories 'other accounts receivable and payable';
- (iii) the nature and impact of some financial transactions; and
- (iv) the consolidation of intra-governmental flows.

- (13) In light of this assessment, also taking into account the Council Recommendation under Article 126(7) of the Treaty on the Functioning of the European Union of 16 February 2010, the Council has examined the 2011 update of the Convergence Programme of Romania and its opinion <sup>(1)</sup> is reflected in the recommendation below. Taking into account the European Council conclusions of 25 March 2011, the Council has examined the National Reform Programme of Romania,

HEREBY RECOMMENDS that Romania:

Implement the measures laid down in Decision 2009/459/EC as amended by Decision 2010/183/EU, together with the measures laid down in Decision 2011/288/EU and further specified in the Memorandum of Understanding of 23 June 2009 and its subsequent supplements, and in the Memorandum of Understanding of 29 June 2011 and its subsequent supplements.

Done at Brussels, 12 July 2011.

*For the Council*  
*The President*  
J. VINCENT-ROSTOWSKI

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<sup>(1)</sup> Foreseen in Article 9(3) of Regulation (EC) No 1466/97.

## OPINIONS

## EUROPEAN DATA PROTECTION SUPERVISOR

**Opinion of the European Data Protection Supervisor on the proposal for a Regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories**

(2011/C 216/04)

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union, and in particular its Article 16,

Having regard to the Charter of Fundamental Rights of the European Union, and in particular its Articles 7 and 8,

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(1)</sup>,

Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>(2)</sup>, and in particular its Article 41,

HAS ADOPTED THE FOLLOWING OPINION:

**1. INTRODUCTION**

1. On 15 September 2010, the Commission adopted a Proposal for a Regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories ('the Proposal') <sup>(3)</sup>. The main aim of the Proposal is to establish common rules to increase security and efficiency of the over-the-counter derivatives market.

2. The EDPS has not been consulted by the Commission, although this is required by Article 28(2) of Regulation

(EC) No 45/2001 ('Regulation (EC) No 45/2001'). Acting on his own initiative, the EDPS has therefore adopted the present Opinion based on Article 41(2) of Regulation (EC) No 45/2001.

3. The EDPS is aware that this advice comes at a relatively late stage in the legislative process. Nevertheless, he finds it appropriate and useful to issue this Opinion. In the first place, he emphasises the potential data protection implications of the Proposal. In the second place, the analysis presented in the present Opinion is directly relevant for the application of existing legislation and for other pending and possible future proposals containing similar provisions, as will be explained in Section 3.4 of this Opinion.

**2. BACKGROUND AND MAIN ELEMENTS OF THE PROPOSAL**

4. In the wake of the financial crisis, the Commission has initiated and brought forward a review of the existing legal framework for financial supervision in order to cope with the important failures identified in this area both in particular cases and in relation to the financial system as a whole. A number of legislative proposals have been recently adopted in this field with a view to strengthening the existing supervisory arrangements and improving coordination and cooperation at EU level.

5. The reform introduced in particular an enhanced European financial supervisory framework composed of a European Systemic Risk Board <sup>(4)</sup> and a European System of Financial Supervisors (ESFS). The ESFS consists of a network of national financial supervisors working in tandem with three new European Supervisory Authorities, i.e. the European Banking Authority <sup>(5)</sup> (EBA), the European

<sup>(1)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(2)</sup> OJ L 8, 12.1.2001, p. 1.

<sup>(3)</sup> COM(2010) 484 final.

<sup>(4)</sup> Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

<sup>(5)</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

Insurance and Occupational Pensions Authority <sup>(6)</sup> (EIOPA) and the European Securities and Markets Authority (ESMA) <sup>(7)</sup>. In addition, the Commission adopted a series of specific initiatives to implement the regulatory reform in respect of specific areas or financial products.

6. One of those is the present proposal which deals with 'over-the-counter derivatives', i.e. those derivative products <sup>(8)</sup> that are not traded on exchanges, but instead privately negotiated between two counterparts. It introduces the obligation for all financial counterparties and non-financial counterparties fulfilling certain threshold conditions to clear all standardised OTC derivatives through Central Counterparties (CCPs). In addition, the proposed regulation shall oblige those financial and non-financial counterparties to report the details of any derivative contract and any modification thereof to a registered trade repository. The Proposal also provides for harmonised organisational and prudential requirements for CCPs and organisational and operational requirements for trade repositories. While national competent authorities retain the responsibility for authorising and supervising CCPs, registration and surveillance of trade repositories is entirely entrusted to ESMA according to the proposed regulation.

### 3. ANALYSIS OF THE PROVISIONS CONCERNING ACCESS TO RECORDS OF TELEPHONE AND DATA TRAFFIC

#### 3.1. General observations

7. Article 61(2)(d) of the Proposal empowers ESMA to 'require records of telephone and data traffic' (emphasis added). As will be further explained below, the scope of the provision and in particular the exact meaning of 'records of telephone and data traffic' is not clear. Nevertheless, it seems likely — or at least it cannot be excluded — that the records of telephone and data traffic concerned include personal data within the meaning of Directive 95/46/EC and Regulation (EC) No 45/2001 and, to the relevant

extent, Directive 2002/58/EC (now called, as amended by Directive 2009/136/EC, 'the e-Privacy Directive'), i.e. data relating to the telephone and data traffic of identified or identifiable natural persons <sup>(9)</sup>. As long as this is the case, it should be assured that the conditions for fair and lawful processing of personal data, as laid down in the Directives and the Regulation, are fully respected.

8. Data relating to use of electronic communication means may convey a wide range of personal information, such as the identity of the persons making and receiving the call, the time and duration of the call, the network used, the geographic location of the user in case of portable devices, etc. Some traffic data relating to internet and e-mail use (for example the list of websites visited) may in addition reveal important details of the content of the communication. Furthermore, processing of traffic data conflicts with the secrecy of correspondence. In view of this, Directive 2002/58/EC has established the principle that traffic data must be erased or made anonymous when it is no longer needed for the purpose of the transmission of a communication <sup>(10)</sup>. Member States may include derogations in national legislation for specific legitimate purposes, but they must be necessary, appropriate and proportionate within a democratic society to achieve these purposes <sup>(11)</sup>.

9. The EDPS acknowledges that the aims pursued by the Commission in the present case are legitimate. He understands the need for initiatives aiming at strengthening supervision of financial markets in order to preserve their soundness and better protect investors and economy at large. However, investigatory powers directly relating to traffic data, given their potentially intrusive nature, have to comply with the requirements of necessity and proportionality, i.e. they have to be limited to what is appropriate to achieve the objective pursued and not go beyond what is necessary to achieve it <sup>(12)</sup>. It is therefore essential in this

<sup>(6)</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

<sup>(7)</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

<sup>(8)</sup> A derivative is a financial contract linked to the future value or status of the underlying to which it refers (e.g. the development of interest rates or of a currency value).

<sup>(9)</sup> Normally the employees to whom the telephone and data traffic can be imputed as well as recipients and other users concerned.

<sup>(10)</sup> See Article 6(1) of Directive 2002/58/EC, (OJ L 201, 31.7.2002, p. 45).

<sup>(11)</sup> See Article 15(1) of Directive 2002/58/EC, providing that such restrictions must constitute a necessary, appropriate and proportionate measure within a democratic society to safeguard national security (i.e. State security), defence, public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system, as referred to in Article 13(1) of Directive 95/46/EC. To this end, Member States may, inter alia, adopt legislative measures providing for the retention of data for a limited period justified on the grounds laid down in this paragraph.

<sup>(12)</sup> See, e.g., Joined Cases C-92/09 and C-93/09, *Volker und Markus Schecke GbR (C-92/09), Hartmut Eifert (C-92/09) v. Land Hessen*, not yet published in ECR, point 74.

perspective that they are clearly formulated regarding their personal and material scope as well as the circumstances in which and the conditions on which they can be used. Furthermore, adequate safeguards should be provided for against the risk of abuse.

### 3.2. The scope of ESMA's power is unclear

10. Article 61(2)(d) provides that 'in order to carry out the duties set out in Articles 51 to 60, 62 and 63 (i.e. duties relating to the surveillance of trade repositories), ESMA shall have [...] (the power) to require records of telephone and data traffic'. Because of its broad formulation, the provision raises several doubts concerning its material and personal scope.

11. In the first place, the meaning of 'records of telephone and data traffic' is not entirely clear and thus needs to be clarified. The provision might refer to records of telephone and data traffic, which trade repositories are obliged to retain in the course of their activities. Several provisions of the proposed regulation concern record keeping requirements of trade repositories<sup>(13)</sup>. However, none of these provisions specifies if and what records of telephone and data traffic must be retained by trade repositories<sup>(14)</sup>. Therefore, should the provision refer to records held by trade repositories, it is essential to define precisely the categories of telephone and data traffic that have to be retained and can be required by ESMA. In line with the principle of proportionality, such data must be adequate, relevant and not excessive in relation to the supervisory purposes for which they are processed<sup>(15)</sup>.

12. More precision is needed particularly in the present case, in consideration of the heavy fines and periodic penalty

<sup>(13)</sup> For example, Recital 44 states that trade repositories shall be subject to strict record-keeping and data management requirements. Article 66 specifies that a trade repository 'shall promptly record the information received under Article 6 and shall maintain it for at least 10 years following the termination of the relevant contracts. It shall employ timely and efficient record keeping procedures to document changes to recorded information [sic]'. Article 67 further provides that 'a trade repository must make the necessary information available' to ESMA and various other competent authorities.

<sup>(14)</sup> The expression 'records of telephone and data traffic' may potentially include a wide variety of information, including the duration, time or volume of a communication, the protocol used, the location of the terminal equipment of the sender or recipient, the network on which the communication originates or terminates, the beginning, end or duration of a connection or even the list of websites visited and the content of the communications themselves in case they are recorded. To the extent that they relate to identified or identifiable natural persons, all this information constitutes personal data.

<sup>(15)</sup> See Article 6(1)(c) of Directive 95/46/EC and Article 4(1)(c) of Regulation (EC) No 45/2001. It should also be considered whether specific safeguards can be devised to avoid that data concerning genuinely private use are captured and processed.

payments that trade repositories and other persons (including natural persons as regards periodic penalty payments) concerned might incur for a breach of the proposed regulation (cf Articles 55 and 56). Such fines may reach 20 percent of the annual income or turnover of the trade repository in the preceding business year, i.e. a threshold which is twice as high as the maximum threshold provided for infringements of European competition law.

13. It should also be noted that the above cited Article 67, paragraph 4, delegates to the Commission the power to adopt regulatory standards specifying the details of the information that trade repositories shall make obligatorily available to ESMA and other authorities. This provision might therefore be used to further specify record-keeping requirements of trade repositories and thus, indirectly, the power granted by ESMA to access records of telephone and data traffic. Article 290 TFEU provides that a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend *non-essential elements* of the legislative act. According to the EDPS, the exact perimeter of the power to access traffic data cannot be considered a non-essential element of the regulation. The material scope thereof should therefore be specified directly in the text of the regulation and not deferred to future delegated acts.

14. Similar doubts surround the personal scope of the provision concerned. In particular, the potential addressees of a request to provide records of telephone and data traffic are not specified in Article 61(2)(d). It is not clear in particular whether the powers to require records of telephone and data traffic would only be limited to trade repositories<sup>(16)</sup>. As the purpose of the provision is to allow ESMA to carry out supervision of trade repositories, the EDPS is of the opinion that this power should be strictly limited to trade repositories only.

15. Finally, the EDPS understands that the aim of Article 61(2)(d) is not to allow ESMA to gain access to traffic data directly from telecom providers. This seems to be the logical conclusion particularly in consideration of the fact that the Proposal does not refer at all to data held by telecom providers or to the requirements set out by the

<sup>(16)</sup> Article 56(1)(c) allowing the Commission, at the request of ESMA, to impose periodic penalty payments on employees of a trade repository or other persons related to a trade repository in order to compel them to submit to an investigation launched by ESMA pursuant to Article 61(2) might suggest (unintentionally) otherwise.

e-Privacy Directive as mentioned in point 8 above<sup>(17)</sup>. However, for the sake of clarity, he recommends making such conclusion more explicit in Article 61(2) or at least in a recital of the proposed regulation.

### 3.3. The Proposal does not indicate the circumstances in which and the conditions under which access can be required

16. Article 61(2)(d) does not indicate the circumstances in which and the conditions under which access can be required. Neither does it provide for important procedural guarantees or safeguards against the risk of abuses. In the following paragraphs, the EDPS will make some concrete suggestions in this direction.

(a) According to Article 61(2) ESMA may require access to records of telephone and data traffic 'in order to carry out the duties set out in Articles 51 to 60, 62 and 63'. These Articles cover the whole Title of the proposed regulation on registration and surveillance of trade repositories. According to the EDPS, the circumstances and the conditions for using such power should be more clearly defined. The EDPS recommends limiting access to records of telephone and data traffic to specifically identified and serious violations of the proposed regulation and in cases where a reasonable suspicion (which should be supported by concrete initial evidence) exists that a breach has been committed. Such limitation is also particularly important with a view to avoiding that the access power could be used for the purpose of fishing operations or data mining or for different purposes.

(b) The Proposal does not require prior judicial authorisation in order for ESMA to require access to records of telephone and data traffic. The EDPS considers that this general requirement would be justified in view of the potential intrusiveness of the power at stake. It should also be considered that the laws of some Member States impose prior judicial authorisation for any kind of interference with the secrecy of correspondence and therefore preclude other law enforcement bodies (i.e. police forces) and institutions

<sup>(17)</sup> As said, the e-Privacy Directive establishes the general principle that traffic data must be erased or made anonymous when it is no longer needed for the purpose of the transmission of a communication. Such data can be further processed only for the purpose of billing and interconnection payments and up to the end of the period during which the bill may lawfully be challenged or payment pursued. Any derogation to this principle must be necessary, appropriate and proportionate within a democratic society for specific public order purposes (i.e. to safeguard national security (i.e. State security), defence, public security or the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communications systems).

of an administrative nature from such interference without this strict supervision<sup>(18)</sup>. At the very least, the EDPS considers unavoidable making a judicial authorisation obligatory whenever such authorisation is required by national law<sup>(19)</sup>.

(c) The EDPS recommends introducing the requirement for ESMA to request records of telephone and data traffic by formal decision specifying the legal basis and the purpose of the request and what information is required, the time-limit within which the information is to be provided as well as the right of the addressee to have the decision reviewed by the Court of Justice. Any request made in the absence of a formal decision shall not be binding on the addressee.

(d) Adequate procedural safeguards against possible abuses should be afforded. In this respect, the Proposal could require the Commission to adopt implementing measures setting-out in detail the procedures to be followed by trade repositories and ESMA in processing such data. These acts should specify in particular adequate security measures as well as appropriate guarantees against the risk of abuses, including, but not limited to, the professional standards that the competent persons handling these data shall observe as well as the internal procedures that ensure proper observance of the confidentiality and professional secrecy provisions. The EDPS should be consulted during the procedure relating to the adoption of such measures.

### 3.4. Relevance of the present Opinion for other legal instruments containing similar provisions

17. The power for supervisory authorities to require access to records of telephone and data traffic is not new in the European legislation as it is already foreseen in various existing directives and regulations concerning the financial sector. In particular, the market abuse Directive<sup>(20)</sup>, the MIFID Directive<sup>(21)</sup>, the UCITS Directive<sup>(22)</sup>, the current Regulation on credit rating

<sup>(18)</sup> The Italian Constitution, for example, requires that any interference with the secrecy of correspondence, including access to traffic data not revealing the content of the communications, be ordered or authorised by a member of the judicial.

<sup>(19)</sup> A similar requirement has been introduced in the amended version of the CRA Proposal voted by the EP in December 2010.

<sup>(20)</sup> Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ L 96, 12.4.2003, p. 16).

<sup>(21)</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

<sup>(22)</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

agencies<sup>(23)</sup>, all contain similarly drafted provisions. The same is true for a number of recent proposals adopted by the Commission, namely the proposals for a Directive on alternative investment fund managers<sup>(24)</sup>, a Regulation amending the existing Regulation on credit rating agencies<sup>(25)</sup>, a Regulation on short selling and certain aspects of credit default swaps<sup>(26)</sup> and a Regulation on integrity and transparency of energy markets<sup>(27)</sup>.

18. As regards these existing and proposed legislative instruments, a distinction should be made between investigatory powers granted to national authorities and the granting of such powers to EU authorities. Several instruments oblige Member States to grant the power to require telephone and data traffic records to national authorities 'in conformity with national law'<sup>(28)</sup>. As a consequence, the actual execution of this obligation is necessarily subject to the national law including the one implementing Directives 95/46/EC and 2002/58/EC and other national laws which contain further procedural safeguards for national supervisory and investigatory authorities.

19. No such condition is contained in the instruments which grant the power to require telephone and data traffic records directly to EU authorities, such as in the present proposal on OTC derivatives and the above-mentioned proposal for a Regulation amending Regulation 1060/2009 on credit rating agencies (the 'CRA Proposal'). As a consequence, in these cases there is an even stronger requirement to clarify in the legislative instrument itself, the personal and material scope of this power and the circumstances in which and the conditions under which it can be used and to ensure that adequate safeguards against abuse are in place.

20. In this respect, the observations made in the present Opinion, although aimed at the proposal on OTC derivatives, have a more general relevance. The EDPS is aware that with regard to legislation already adopted or close to adoption, these comments may come too late.

<sup>(23)</sup> Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).

<sup>(24)</sup> Proposal of 30 April 2009 for a Directive of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC, COM(2009) 207.

<sup>(25)</sup> Proposal of 2 June 2010 for a Regulation of the European Parliament and of the Council on amending Regulation (EC) No 1060/2009 on credit rating agencies, COM(2010) 289.

<sup>(26)</sup> Proposal of 15 September 2010 for a Regulation of the European Parliament and of the Council on Short Selling and certain aspects of Credit Default Swaps, COM(2010) 482.

<sup>(27)</sup> Regulation of the European Parliament and of the Council on energy market integrity and transparency, COM(2010) 726.

<sup>(28)</sup> See for instance Article 12(2) of the Market Abuse Directive mentioned in footnote 20. See also Article 50 of the MIFID Directive, mentioned in footnote 21.

Nevertheless, he invites the institutions to reflect upon the need to amend the pending proposals in order to take into account the concerns expressed in the present Opinion. As to the already adopted texts, the EDPS invites the institutions to seek for possibilities to clarify matters, for instance where the scope of the provision concerned is liable to be directly or indirectly specified in delegated or implementing acts, for instance acts defining the details of record keeping requirements, interpretative notices or other comparable documents<sup>(29)</sup>. The EDPS expects the Commission to consult him in good time in the context of these related procedures.

#### 4. DATA PROTECTION CONCERNS RELATING TO OTHER PARTS OF THE PROPOSAL

21. The EDPS considers it appropriate to make additional comments on some other points of the Proposal which relate to the rights to privacy and data protection of individuals.

##### 4.1. Applicability of Directive 95/46/EC and Regulation (EC) No 45/2001

22. Recital 48 correctly states that it is essential that Member States and ESMA protect the right to privacy of natural persons when processing personal data, in accordance with Directive 95/46/EC. The EDPS welcomes the reference to the Directive in the recital. However, the meaning of the recital could be made clearer by further specifying that the provisions of the Regulation are without prejudice to the national rules which implement Directive 95/46/EC. Preferably, such a reference should also be included in a substantive provision.

23. Moreover, The EDPS notes that ESMA is a European body subject to Regulation (EC) No 45/2001 and to EDPS supervision. It is therefore recommended to introduce an explicit reference to this Regulation, specifying as well that the provisions of the Proposal are without prejudice to such Regulation.

##### 4.2. Purpose limitation, necessity and data quality

24. One of the principal aims of the proposed regulation is to enhance the transparency of OTC derivatives market and improve regulatory oversight of such market. In view of this objective, the Proposal obliges financial counterparties and non-financial counterparties meeting certain threshold

<sup>(29)</sup> For instance Article 37 of the CRA Proposal allows the Commission to amend Annexes to the Regulation, which contain the details of record-keeping requirements imposed on credit rating agencies; see also Recital 10 of the CRA Proposal referring to ESMA power to issue and update non-binding guidelines on issues related to application of the CRA Regulation.

conditions to report the details of any OTC derivative contract they have entered into and any modification or termination thereof to a registered trade repository (Article 6)<sup>(30)</sup>. Such information is meant to be held by trade repositories and made available by the latter to various authorities for regulatory purposes (Article 67)<sup>(31)</sup>.

25. In case one of the parties to a derivative contract subject to the above clearing and reporting obligations is a natural person, information about this natural person constitutes personal data in the sense of Article 2(a) of Directive 95/46/EC. The fulfilment of the above obligations therefore constitutes processing of personal data in the sense of Article 2(b) of Directive 95/46/EC. Even in case where the parties to the transaction are not natural persons, personal data may still be processed in the framework of Articles 6 and 67, such as for instance the names and contact details of the directors of the companies. The provisions of Directive 95/46/EC (or Regulation (EC) No 45/2001 as relevant) would therefore be applicable to the present operations.
26. A basic requirement of data protection law is that information must be processed for specified, explicit and legitimate purposes and that it may not be further processed in a way incompatible with those purposes<sup>(32)</sup>. The data used to achieve the purposes should furthermore be adequate, relevant and not excessive in relation to that purpose. After an analysis of the proposed regulation, the EDPS draws the conclusion that the system put in place by the Proposal does not meet these requirements.
27. As regards purpose limitation, it must be stressed that the Proposal fails to specify the purposes of the reporting system and, most importantly, the purposes for which the information held by trade repositories can be accessed by the competent authorities under Article 67 of the Proposal. A general reference to the need for enhancing the transparency of the OTC derivatives market is clearly not sufficient to comply with the purpose limitation principle. Such principle is further put under pressure in Article 20(3) of the proposed regulation concerning 'Professional secrecy', which, as it is currently formulated, would seem to allow use of confidential information received pursuant to the proposed regulation for a number of additional and not clearly specified purposes<sup>(33)</sup>.
28. The Proposal furthermore fails to specify the kind of data that will be recorded, reported and accessed, including any personal data of identified or identifiable persons. The above-mentioned Articles 6 and 67 empower the Commission to further specify the content of reporting and record-keeping obligations in delegated acts. Although the EDPS understands the practical need for using such a procedure, he wishes to emphasise that, as long as the information being processed under the above Articles concerns natural persons, the main data protection rules and guarantees should be laid down in the basic law.
29. Finally, Articles 6 of Directive 95/46/EC and 4 of Regulation (EC) No 45/2001 require that personal data must be kept in a form which permits the identification of data subjects for no longer than is necessary for the purposes for which the data were collected. The EDPS notes that the Proposal does not lay down any concrete limitation period for the retention of the personal data potentially processed under Articles 6, 27 and 67 of the proposed regulation. Articles 27 and 67 only provide that the relevant records shall be retained for *at least* 10 years. However, this is only a minimum retention period, which is clearly in contradiction with the requirements set out by data protection legislation.
30. On the basis of the foregoing, the EDPS urges the legislator to specify the kind of personal information that can be processed under the Proposal, to define the purposes for which personal data can be processed by the various entities concerned and fix a precise, necessary and proportionate data retention period for the above processing.

<sup>(30)</sup> Article 6(4) of the Proposal delegates to the Commission the power to determine the details and type of the reports for the different classes of derivatives, specifying that such reports shall contain at least: (a) the parties to the contract and, where different, the beneficiary of the rights and obligations arising from it are appropriately identified; and (b) the main characteristics of the contract, including the type, underlying, maturity and notional value are reported.

<sup>(31)</sup> See Explanatory Memorandum, p. 11. Article 67 concretizes this by providing that a trade repository shall make the necessary information available to a number of entities, namely ESMA, the competent authorities supervising undertakings subject to the reporting obligations, the competent authorities supervising CCPs and the relevant central banks of the ESCB.

<sup>(32)</sup> See e.g. EDPS Opinion of 6 January 2010 on the proposal for a Council Directive on administrative cooperation in the field of taxation (OJ C 101, 20.4.2010, p. 1).

<sup>(33)</sup> Article 20(3) reads as follows: 'Without prejudice to cases covered by criminal law, the competent authorities, ESMA, bodies or natural or legal persons other than competent authorities which receive confidential information pursuant to this Regulation may use it only in the performance of their duties and for the exercise of their functions, in the case of the competent authorities, within the scope of this Regulation or, in the case of other authorities, bodies or natural or legal persons, for the purpose for which such information was provided to them or in the context of administrative or judicial proceedings specifically related to the exercise of those functions, or both. Where ESMA, the competent authority or other authority, body or person communicating information consents thereto, the authority receiving the information may use it for other purposes.'



### 4.3. On-site inspections

31. Article 61(2)(c) empowers ESMA to carry out on-site inspections with or without announcement. It is not clear whether these inspections would be limited to business premises of a trade repository or also apply to private premises or holdings of natural persons. Article 56(1)(c) allowing the Commission, at the request of ESMA, to impose periodic penalty payments on employees of a trade repository or other persons related to a trade repository in order to compel them to submit to an onsite inspection ordered by ESMA pursuant to Article 61(2) might suggest (unintentionally) otherwise.
32. Without elaborating further on this point, the EDPS recommends limiting the power to carry out on-site inspections (and the related power to impose periodic penalty payments under Article 56) only to business premises of trade-repositories and other *legal* persons *substantially and clearly* related to them<sup>(34)</sup>. Should the Commission indeed envisage allowing inspections of non-business premises of natural persons, this should be made clear and more stringent requirements should be foreseen in order to ensure compliance with necessity and proportionality principles (particularly with regards to the indication of the circumstances in which and the conditions on which such inspections can be carried out).

### 4.4. Exchanges of data and purpose limitation principle

33. Several provisions of the proposed regulation allow for broad exchanges of data and information between ESMA, competent authorities of Member States and competent authorities of third countries (see in particular Articles 21, 23 and 62). Transfers of data to third countries may also occur when a recognised CCP or trade repository from a third country provides services to entities recognised in the Union. Insofar as the information and data exchanged concerns identified or identifiable natural persons, Articles 7-9 of Regulation (EC) No 45/2001 and 25-26 of Directive 95/46/EC, as relevant, apply. In particular, transfers to third countries may only occur where an adequate level of protection is ensured in those countries or one of the relevant derogations provided by the data protection legislation applies. For the sake of clarity, an explicit reference to Regulation (EC) No 45/2001 and Directive 95/46/EC should be included in the text, stating that such transfers should be in conformity with the applicable rules foreseen, respectively, in the Regulation or the Directive.
34. In accordance with the purpose limitation principle<sup>(35)</sup>, the EDPS also recommends introducing clear limits as to the

kind of personal information that can be exchanged and define the purposes for which personal data can be exchanged.

### 4.5. Accountability and reporting

35. Article 68 of the Proposal contains a number of reporting obligations of the Commission concerning the implementation of various elements of the proposed regulation. The EDPS recommends introducing also the obligation for ESMA to report periodically on the use of its investigatory powers and particularly the power to require records of telephone and data traffic. In light of the findings of the report, the Commission should also be able to make recommendations, including if appropriate proposals for the revision of the Regulation.

## 5. CONCLUSIONS

36. The present proposal empowers ESMA to 'require records of telephone and data traffic' in order to carry out duties related to the supervision of trade repositories. In order to be considered necessary and proportionate, the power to require records of telephone and data traffic should be limited to what is appropriate to achieve the objective pursued and not go beyond what is necessary to achieve it. As it is currently framed, the provision at stake does not meet these requirements as it is too broadly formulated. In particular, the personal and material scope of the power, the circumstances and the conditions under which it can be used are not sufficiently specified.
37. The comments made in the present Opinion, although aiming at the OTC derivatives Proposal, are also relevant for the application of existing legislation and for other pending and possible future proposals containing equivalent provisions. This is particularly the case where the power in question is entrusted, as in the present proposal, to an EU authority without referring to the specific conditions and procedures laid down in national laws (e.g. the CRA Proposal).
38. Having regard to the above, the EDPS advises the legislator to:
- clearly specify the categories of telephone and data traffic records which trade repositories are required to retain and/or to provide to the competent authorities. Such data must be adequate relevant and not excessive in relation to the purpose for which they are processed,

<sup>(34)</sup> A similar specification has been introduced in the amended version of the CRA Proposal voted by the EP in December 2010.

<sup>(35)</sup> See Article 6(1)(b) of Directive 95/46/EC and Article 4(1)(b) of Regulation (EC) No 45/2001.

- limit the power to require access to records of telephone and data traffic to trade repositories,

- make explicit that access to telephone and data traffic directly from telecom companies is excluded,
  - limit access to records of telephone and data traffic to identified and serious violations of the proposed regulation and in cases where a reasonable suspicion (which should be supported by concrete initial evidence) exists that a breach has been committed,
  - clarify that trade repositories shall provide records of telephone and data traffic only where they are requested by formal decision specifying, among others, the right to have the decision reviewed by the Court of Justice,
  - require that the decision shall not be executed without prior judicial authorisation from the national judicial authority of the Member State concerned (at least where such authorisation is required under national law),
  - require the Commission to adopt implementing measures setting out in detail the procedures to be followed, including adequate security measures and safeguards.
39. As regards other aspects of the Proposal, the EDPS would like to refer to his comments made under Section 4 of the present Opinion. In particular, the EDPS advises the legislator to:
- include a reference to Directive 95/46/EC and Regulation (EC) No 45/2001 at least in the recitals of the proposed Directive and preferably in a substantive provision as well, stating that the provisions of the proposed regulation are without prejudice to, respectively, the Directive and the Regulation,
  - specify the kind of personal information that can be processed under the Proposal in compliance with the necessity principle (particularly in relation to Articles 6 and 67), define the purposes for which personal data can be processed by the various authorities/entities concerned and fix precise, necessary and proportionate data retention periods for the above processing,
  - limit the power to carry out on-site inspections under Article 61(2)(c) and to impose periodic penalty payments under Article 56 only to trade-repositories and other legal persons clearly and substantially related to them,
  - make explicit that international transfers of personal data should be in conformity with the relevant rules of Regulation (EC) No 45/2001 and Directive 95/46/EC, introduce clear limits as to the kind of personal information that can be exchanged and define the purposes for which personal data can be exchanged.

Done at Brussels, 19 April 2011.

Giovanni BUTTARELLI  
*Assistant European Data Protection Supervisor*

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## II

*(Information)*INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES  
AND AGENCIES

## EUROPEAN COMMISSION

**Commission communication on the body authorised to issue certificates of authenticity under  
Regulation (EC) No 620/2009**

(2011/C 216/05)

Council Regulation (EC) No 617/2009 of 13 July 2009, published in *Official Journal of the European Union* L 182 of 15 July 2009, opened an import tariff quota for high-quality beef.

Under Article 7 of Commission Regulation (EC) No 620/2009 of 13 July 2009, the release into free circulation of the products imported under that quota is conditional upon presentation of a certificate of authenticity.

The following authority is authorised to issue certificates of authenticity under the Regulation.

Ministry of Agriculture and Forestry  
Pastoral House  
25 The Terrace  
Wellington  
NEW ZEALAND

Postal address

Ministry of Agriculture and Forestry  
PO Box 2526  
Wellington 6140  
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**Non-opposition to a notified concentration**  
**(Case COMP/M.6151 — PetroChina/INEOS/JV)**

(Text with EEA relevance)

(2011/C 216/06)

On 13 May 2011, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- in the merger section of the Competition website of the Commission (<http://ec.europa.eu/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
  - in electronic form on the EUR-Lex website (<http://eur-lex.europa.eu/en/index.htm>) under document number 32011M6151. EUR-Lex is the on-line access to the European law.
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## IV

(Notices)

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

## EUROPEAN PARLIAMENT

## RULES GOVERNING PUBLIC ACCESS TO EUROPEAN PARLIAMENT DOCUMENTS

**Bureau decision of 28 November 2001** <sup>(1)</sup> <sup>(2)</sup> <sup>(3)</sup> <sup>(4)</sup>

(2011/C 216/07)

THE BUREAU,

register of references of documents, to lay down arrangements for access to and to determine the bodies responsible for the handling of applications for access,

Having regard to Article 15(3) of the Treaty on the Functioning of the European Union (TFEU),

Whereas the measures relating to the system of fees for the issue of documents must be brought into line with the provisions of Article 10 of Regulation (EC) No 1049/2001 in order to specify the additional costs to be paid by the applicant for the issue of very large documents,

Having regard to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents and, in particular, to Articles 11, 12 and 18 thereof,

Whereas the measures relating to the operation of the register of European Parliament documents need to be combined in a single decision in order to facilitate transparency for citizens,

Having regard to Rules 23(2) and (12), 103(1) and 104 of the Rules of Procedure,

Whereas the general principles governing access to documents were established, in accordance with Article 15(3) of the TFEU, by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001,

Whereas Regulation (EC) No 1049/2001 does not allow any distinction to be made between different types of applicant and whereas decisions taken pursuant thereto apply erga omnes; whereas Members and staff of the institutions have special access rights, as recognised by Parliament's Rules of Procedure, the Financial Regulation, Regulation (EC) No 45/2001 and the Staff Regulations, which they may exercise without reference to Regulation (EC) No 1049/2001,

Whereas, pursuant to former Article 255(3) of the EC Treaty and to Article 18(1) of Regulation (EC) No 1049/2001, the European Parliament adapted its Rules of Procedure by Decision of 13 November 2001,

Whereas Regulation (EC) No 1049/2001 and this Decision do not govern interinstitutional access to and forwarding of documents, which are dealt with in interinstitutional agreements,

Whereas, pursuant to Rule 104(2), (3) and (4) of the Rules of Procedure, the Bureau is required to adopt rules establishing a

<sup>(1)</sup> OJ C 374, 29.12.2001, p. 1.

<sup>(2)</sup> Consolidated by the Bureau on 3 May 2004.

<sup>(3)</sup> As amended by the Bureau on 26 September 2005 and published in OJ C 289, 22.11.2005, p. 6.

<sup>(4)</sup> As amended by the Bureau on 22 June 2011 and published in OJ C 216, 22.7.2011, p. 19.

Whereas Regulation (EC) No 1049/2001 covers access to existing documents, and whereas requests for information are to be dealt with on the basis of other provisions,

Whereas by its decision of 8 March 2010 the Bureau adopted a new list of categories of European Parliament documents that are directly accessible,

Whereas technical adjustments need to be made in the light of the experience gained over recent years within the institution and during the development of Parliament's intranet site,

HEREBY DECIDES:

#### TITLE I

### ELECTRONIC REGISTER OF REFERENCES (ERR)

#### Article 1

##### Creation

1. An electronic register of references (ERR) shall be established for European Parliament documents.

2. The register of references thus created shall include references to documents drawn up or received (subject to the following paragraph) by the European Parliament after the date on which Regulation (EC) No 1049/2001 became applicable<sup>(1)</sup>.

3. On the basis of Article 10(2) of Regulation (EC) No 1049/2001, it shall not be necessary for documents of other institutions that have been received by the European Parliament and are already easily accessible in the electronic registers of the institutions concerned to be made available in the ERR. In such cases, the ERR shall provide a link to the register of the originating institution.

4. These references shall constitute the 'document's identity papers' which include not only the data required by Article 11(2) of Regulation (EC) No 1049/2001 but also, as far as possible, references which enable the originating authority of each document, the available languages, the status of the document, the category of the document and the place of storage of the document to be identified.

#### Article 2

##### Objectives

The ERR shall be structured so as to allow:

- documents to be identified on the basis of a uniform reference system,
- direct access to documents, in particular legislative documents, in electronic form,

<sup>(1)</sup> I.e. 3 December 2001.

- the provision of information in cases where documents cannot be directly accessed electronically pursuant to Articles 4 and 9 of Regulation (EC) No 1049/2001.

#### Article 3

##### Operation

The Unit for Transparency — Public Access to Documents and Relations with Lobbyists (hereinafter 'the unit responsible') shall:

- monitor the recording in the ERR of documents drawn up or received by the European Parliament,
- receive and process applications for access in written or electronic form within a time limit of 15 working days, which may be extended,
- send out acknowledgements of receipt,
- assist applicants with clarifying the substance of their applications and negotiate with applicants where applications relate to very long or complex documents,
- assist applicants with access to documents already published,
- coordinate the reply with the service which originated or holds the document or the authorised person when the application relates to a document not recorded in the register or a document subject to the restrictions laid down in Articles 4 and 9 of Regulation (EC) No 1049/2001,
- consult third parties pursuant to Article 4(4) of Regulation (EC) No 1049/2001.

#### Article 4

##### Entry of documents in the ERR

1. Document references shall be entered in the ERR in accordance with instructions adopted by the Secretary-General which shall ensure maximum traceability of the documents. The range of documents covered by the ERR shall gradually be broadened and shall be displayed on the ERR home page on the Europarl site.

2. European Parliament documents as defined by Rule 104(2) of the European Parliament's Rules of Procedure shall be recorded in the ERR under the responsibility of the body or service which is the originator of the document.

3. Documents drawn up under the legislative procedure or for the purposes of parliamentary business shall be entered in the ERR as soon as they have been tabled or made public.

4. Other documents which fall within the remit of the administrative services of the European Parliament's Secretariat shall, as far as possible, be entered in the ERR in accordance with the Secretary-General's instructions.

5. References for third-party documents within the meaning of Article 3 of Regulation (EC) No 1049/2001 shall be entered in the ERR by the service to which the documents were sent.

#### *Article 5*

##### **Directly accessible documents**

1. All documents drawn up or received by the European Parliament under the legislative procedure must be accessible to citizens in electronic form, subject to the restrictions laid down in Articles 4 and 9 of Regulation (EC) No 1049/2001.

2. The European Parliament shall make all legislative documents within the meaning of Article 12(2) of Regulation (EC) No 1049/2001 electronically accessible through the ERR or the Europarl internet site.

3. The categories of documents that are directly accessible shall be set out in a list adopted by the Bureau and posted on the Europarl internet site. That list shall not have the effect of circumscribing the right of access to documents not included in the listed categories, which may be made accessible on written request.

#### *Article 6*

##### **Documents accessible on request**

1. Documents drawn up or received by the European Parliament outside the legislative procedure shall, as far as possible, be directly accessible to citizens through the ERR, subject to the restrictions laid down in Articles 4 and 9 of Regulation (EC) No 1049/2001.

2. Where entry of a document in the ERR does not permit direct access to the full text, either because the document is not available in electronic form or because the exceptions provided for in Articles 4 and 9 of Regulation (EC) No 1049/2001 are applicable, the applicant may apply for access to the document in writing or using the electronic form available on the ERR site on Europarl.

3. Documents drawn up or received by the European Parliament before the entry into force of Regulation (EC) No 1049/2001 and therefore not listed in the ERR shall be accessible on written or electronic request, subject to the restrictions laid down in Articles 4 and 9 of the Regulation referred to above.

4. The European Parliament shall provide on-line assistance to citizens concerning arrangements for the submission of applications for access to documents.

#### TITLE II

##### INITIAL APPLICATIONS

#### *Article 7*

##### **Applications covered by these rules**

These rules shall apply to all applications for access to European Parliament documents that are submitted using the form available on the ERR site or refer explicitly to the right of access to documents as established by Regulation (EC) No 1409/2001. They shall not cover applications based on a special right of access such as that established by, inter alia, Parliament's Rules of Procedure, the Financial Regulation, Regulation (EC) No 45/2001 on the protection of personal data and the Staff Regulations.

#### *Article 8*

##### **Submission of the application for access**

1. Applications for access to a European Parliament document may be made in writing, by fax or in electronic form in one of the languages listed in Article 342 of the TFEU.

2. Electronic applications shall, wherever possible, be submitted using the electronic form available on the ERR site and the on-line help system intended to facilitate the submission of applications of this kind.

3. Applications must be made in a sufficiently precise manner and include the name and address of the applicant and information enabling the document or documents requested to be identified.

4. If an application is not sufficiently precise, the European Parliament shall, pursuant to Article 6(2) of Regulation (EC) No 1049/2001, ask the applicant to clarify it and shall assist him or her to do so.

*Article 9***Processing of the initial application**

1. Applications for access to a document held by the European Parliament shall be sent, on the same day as it is registered, by the unit responsible, which must acknowledge receipt of the application, draft a reply and deliver the document within the prescribed time limit.

2. Where the application relates to a document drawn up by the European Parliament to which one of the exceptions laid down in Article 4 of Regulation (EC) No 1049/2001 is applicable, or where the document in question needs to be identified and found, the unit responsible shall contact the service or body that is the originator of the document, which shall suggest the course of action to be taken within five working days.

*Article 10***Third party consultation**

1. Where an application concerns documents from third parties, the unit responsible, where appropriate in coordination with the service holding the documents requested, shall check whether one of the exceptions laid down in Articles 4 or 9 of Regulation (EC) No 1049/2001 is applicable.

2. If, once that check has been made, it is established that access to the documents requested must be denied on the basis of one of the exceptions laid down in Article 4 of Regulation (EC) No 1049/2001, a negative response shall be sent to the applicant without consulting the originating third party.

3. The unit responsible shall grant the application without consulting the originating third party where:

— the document requested has already been released by its originator pursuant to Regulation (EC) No 1409/2001 or similar provisions,

— it is clear that the disclosure of all or part of its content will not harm any of the interests referred to in Articles 4 to 9 of Regulation (EC) No 1049/2001.

4. In all other cases, the third party shall be consulted and shall be given five working days in which to make its position known, with a view to assessing whether one of the exceptions laid down in Articles 4 or 9 of Regulation (EC) No 1049/2001 is applicable.

5. If no reply is received within that deadline, or if the third party cannot be identified or contacted, the European Parliament shall take a decision on the matter in accordance with the exceptions provisions laid down in Article 4 of Regulation (EC) No 1049/2001, taking due account of the legitimate interests of the third party on the basis of the information in its possession.

*Article 11***Deadline for reply**

1. Where access is granted, the unit responsible shall supply the requested documents within a period of 15 working days from the registration of the application.

2. Where the European Parliament is unable to grant access to the requested documents, it shall notify the applicant in writing of the grounds for its total or partial refusal and inform the applicant of his or her right to submit a confirmatory application.

3. In that event, the applicant shall have 15 working days from receipt of the reply in which to submit a confirmatory application.

4. In exceptional cases, where an application relates to a very long document or a large number of documents, the period laid down in paragraph 1 of this Article may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

5. Failure by the European Parliament to reply within the prescribed time limit shall entitle the applicant to submit a confirmatory application.

*Article 12***Competent authority**

1. Initial applications submitted to the European Parliament shall be handled by the Secretary-General under the authority of the Vice-President responsible for supervision of the handling of applications for access to documents, as provided for by Rule 104(4) and (6) of the European Parliament's Rules of Procedure.

2. Favourable replies to initial applications shall be forwarded to the applicant by the Secretary-General or by the unit responsible, acting under the authority of the Secretary-General.



3. Refusal of an initial application, with a statement of the reasons, shall be determined by the Secretary-General on a proposal from the unit responsible and after consultation of the document originator. Any decision to deny access shall be forwarded to the Vice-President responsible, for information.

4. The Secretary-General or the unit responsible may, at any time, refer an application to the Legal Service and/or the officer responsible for data protection for an opinion on the action to be taken thereon.

### TITLE III

#### CONFIRMATORY APPLICATIONS

##### Article 13

##### Submission

1. Confirmatory applications shall be submitted either within 15 working days of receipt of a total or partial refusal of access to the document requested or, in the absence of any reply to the initial application, after the expiry of the deadline for reply.

2. Confirmatory applications must comply with the formal requirements laid down for the initial application in Article 8 of this Decision.

##### Article 14

##### Processing and consultations

1. Confirmatory applications shall be registered and any consultations conducted in accordance with the arrangements laid down in Articles 9 and 10 of this Decision.

2. Within 15 working days of registration of the application, the European Parliament shall either grant access to the document or notify the applicant in writing or electronically of the reasons for its total or partial refusal.

3. In exceptional cases, where an application relates to a very long document or a large number of documents, the period laid down in the previous paragraph may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

##### Article 15

##### Competent authority

1. The reply to confirmatory applications shall be a matter for the Bureau of the European Parliament. The Vice-President responsible for the processing of applications for access to documents shall take a decision on confirmatory applications on behalf of the Bureau and under its authority.

2. The Vice-President concerned shall inform the Bureau of his or her decision at the first meeting of the Bureau which follows the taking of the decision and notification thereof to the applicant. Should he or she deem it necessary, and within the time-limits laid down, the Vice-President may refer his or her draft decision to the Bureau, in particular if the reply might involve matters of principle relating to the European Parliament's policy of transparency. In his or her reply to the applicant, the Vice-President shall be bound by the decision of the Bureau.

3. The Vice-President and the Bureau shall take a decision on the basis of the proposal drawn up by the unit responsible by way of delegation from the Secretary-General. That unit shall be entitled to seek the opinion of the officer responsible for data protection, who shall deliver his or her opinion within three working days.

4. The draft reply may be referred, for prior consideration, to the Legal Service, which shall deliver its opinion within three working days.

##### Article 16

##### Remedies

1. Where the European Parliament totally or partially refuses to grant access to a document, it shall inform the applicant of the remedies open to him or her, namely: instituting court proceedings against the Institution or submitting a complaint to the Ombudsman, under the conditions laid down in Articles 263 and 228 of the TFEU.

2. Failure to reply within the prescribed time limit shall be regarded as a negative response and entitle the applicant to bring an action or submit a complaint under the conditions set out in the previous paragraph.

### TITLE IV

#### ENTRY OF, AND ACCESS TO, SENSITIVE DOCUMENTS IN THE ERR

##### Article 17

##### Entry of sensitive documents in the ERR

1. Sensitive documents within the meaning of Article 9 of Regulation (EC) No 1049/2001 shall be entered in the ERR if the originating authority agrees that they may be. Where such documents are received from third parties, the individuals or bodies within the European Parliament which received them shall determine which references may appear in the register. Those individuals or bodies shall consult the Vice-President responsible for the processing of applications for access to documents, the Secretary-General or, where appropriate, the chairman of the parliamentary committee concerned.

2. Any document drawn up by the European Parliament referring to a sensitive document shall be entered in the ERR only with the authorisation of the Vice-President responsible for the processing of applications for access to documents. The references assigned to such a document shall be determined under the conditions set out in the previous paragraph.

*Article 18*

**Processing of applications for access**

The Secretary-General shall forward applications for access to sensitive documents to the Vice-President responsible for the processing of applications for access to documents, who shall be responsible for the reply to the initial application. The reply to a confirmatory application shall be a matter for the Bureau, which may delegate this task to the President. The Vice-President responsible and the Bureau or the President shall consult the Secretary-General or, where appropriate, the chairman of the parliamentary committee concerned. The registration arrangements and time limits shall be the same as those for other access applications

*Article 19*

**Authorised persons**

While applications for access to sensitive documents are being processed, the persons authorised to read the documents shall be: the President of the European Parliament, the Vice-President responsible for supervision of the processing of applications for access to documents, the chairman of the parliamentary committee directly concerned, the Secretary-General and, subject to due authorisation, the staff of the unit responsible, unless agreements with the other institutions provide for special authorisation.

*Article 20*

**Protection of sensitive documents**

Sensitive documents shall be subject to strict security rules so as to ensure their confidential handling in the European Parliament. Those rules shall take due account of interinstitutional agreements.

TITLE V

**ISSUE OF DOCUMENTS**

*Article 21*

**Cost of the reply**

1. Further to Article 10(1) of Regulation (EC) No 1049/2001, if the documents requested run to more than 20 pages, the applicant may be charged a fee of EUR 0,10 per page, plus delivery costs. The charges for other media shall be determined on a case-by-case basis, but shall not exceed a reasonable amount.

2. Published documents are not covered by this Decision and shall continue to be subject to their own pricing system.

TITLE VI

**APPLICATION**

*Article 22*

**Application**

This Decision shall apply with due regard for and without prejudice to the provisions of Regulation (EC) No 1049/2001 and of the European Parliament's Rules of Procedure.

*Article 23*

**Review**

As a minimum requirement, this Decision shall be reviewed whenever Regulation (EC) No 1049/2001 is revised.

*Article 24*

**Entry into force**

This Decision shall enter into force on the date of its publication in the *Official Journal of the European Union* <sup>(1)</sup>.

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<sup>(1)</sup> I.e. 29 December 2001, 22 November 2005 and 22 July 2011.

# EUROPEAN COMMISSION

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

21 July 2011

(2011/C 216/08)

### 1 euro =

Currency	Exchange rate	Currency	Exchange rate		
USD	US dollar	1,4222	AUD	Australian dollar	1,3246
JPY	Japanese yen	112,09	CAD	Canadian dollar	1,3447
DKK	Danish krone	7,4542	HKD	Hong Kong dollar	11,0832
GBP	Pound sterling	0,87870	NZD	New Zealand dollar	1,6579
SEK	Swedish krona	9,1008	SGD	Singapore dollar	1,7237
CHF	Swiss franc	1,1690	KRW	South Korean won	1 500,67
ISK	Iceland króna		ZAR	South African rand	9,7335
NOK	Norwegian krone	7,7750	CNY	Chinese yuan renminbi	9,1817
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,4552
CZK	Czech koruna	24,411	IDR	Indonesian rupiah	12 154,10
HUF	Hungarian forint	267,93	MYR	Malaysian ringgit	4,2638
LTL	Lithuanian litas	3,4528	PHP	Philippine peso	60,641
LVL	Latvian lats	0,7094	RUB	Russian rouble	39,7000
PLN	Polish zloty	3,9955	THB	Thai baht	42,538
RON	Romanian leu	4,2560	BRL	Brazilian real	2,2188
TRY	Turkish lira	2,3793	MXN	Mexican peso	16,5622
			INR	Indian rupee	63,2950

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

## NOTICES FROM MEMBER STATES

**Update of the list of residence permits referred to in Article 2(15) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ C 247, 13.10.2006, p. 1; OJ C 153, 6.7.2007, p. 5; OJ C 192, 18.8.2007, p. 11; OJ C 271, 14.11.2007, p. 14; OJ C 57, 1.3.2008, p. 31; OJ C 134, 31.5.2008, p. 14; OJ C 207, 14.8.2008, p. 12; OJ C 331, 21.12.2008, p. 13; OJ C 3, 8.1.2009, p. 5; OJ C 64, 19.3.2009, p. 15; OJ C 198, 22.8.2009, p. 9; OJ C 239, 6.10.2009, p. 2; OJ C 298, 8.12.2009, p. 15; OJ C 308, 18.12.2009, p. 20; OJ C 35, 12.2.2010, p. 5; OJ C 82, 30.3.2010, p. 26; OJ C 103, 22.4.2010, p. 8; OJ C 108, 7.4.2011, p. 6; OJ C 157, 27.5.2011, p. 5; OJ C 201, 8.7.2011, p. 1)**

(2011/C 216/09)

The publication of the list of residence permits referred to in Article 2(15) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) is based on the information communicated by the Member States to the Commission in conformity with Article 34 of the Schengen Borders Code.

In addition to publication in the Official Journal, a monthly update is available on the website of the Directorate-General for Home Affairs.

## ITALY

*Replacement of the list published in OJ C 201, 8.7.2011*

## 1. Residence permits issued according to the uniform format

- Residence permit with a temporary validity — valid from three months up to a maximum of three years. They are issued for the following reasons:
  - Affidamento (Issued to a child who is a foreigner and who is temporarily deprived of a suitable family environment)
  - Motivi umanitari (della durata superiore ai tre mesi) (Humanitarian reasons (valid for more than three months))
  - Motivi religiosi (Religious reasons)
  - Studio (Study purpose)
  - Missione (Issued to foreigners who have entered Italy with a visa for 'Mission' for the purposes of a temporary stay)
  - Asilo politico (Political asylum)
  - Apolidia (For stateless persons)
  - Tirocinio formazione professionale (Apprenticeship training)
  - Riacquisto cittadinanza italiana (Issued to a foreigner who is awaiting the granting or recognition of Italian citizenship)
  - Ricerca scientifica (Scientific research)
  - Attesa occupazione (Pending employment)

- Lavoro autonomo (Self-employment)
  - Lavoro subordinato (Employment)
  - Lavoro subordinato stagionale (Seasonal employment)
  - Famiglia (Family)
  - Famiglia minore 14-18 (Residence permit for family child of age 14-18)
  - Volontariato (Volunteering)
  - Protezione sussidiaria (permesso di soggiorno rilasciato ai sensi del D.L. 251 del 19 novembre 2007 in recepimento della Direttiva n. 83/2004/CE) (Subsidiary protection (residence permit issued in accordance with Decree No 251 of 19 November 2007 in transposition of the Directive No 83/2004/EC))
  - Permesso di soggiorno CE per lungo soggiornanti con una validità permanente (Long-term EC residence permit with a permanent validity)
2. All other documents issued to third-country nationals having equivalent value to a residence permit
- Residence permits issued in paper format (based on the national law) and their validity can range from a period of less than three months until the need ceases.
- Carta di soggiorno con validità permanente e rilasciata prima dell'entrata in vigore del decreto legislativo 8 gennaio 2007, n. 3 che attua la direttiva 2003/109/CE per i soggiornanti di lungo periodo, equiparata dal decreto legislativo al permesso di soggiorno CE per i soggiornanti di lungo periodo (Residence card with a permanent validity and issued before the entry into force of Legislative Decree No 3 of 8 January 2007 is in line with Directive 2003/109/EC and is made equal by the Legislative Decree to the residence permit for long-term residents EC)
  - Carta di soggiorno per familiari di cittadini dell'UE che sono i cittadini di paesi terzi con validità fino a cinque anni (Residence card for family members of EU citizens who are the nationals of third countries — validity up to five years)
  - Carta d'identità M.A.E. (Identity Card issued by the Ministry of Foreign Affairs):
    - Mod. 1 (blu) Corpo diplomatico accreditato e consorti titolari di passaporto diplomatico (Model 1 (blue) Accredited member of the diplomatic corps and their spouses who hold a diplomatic passport)
    - Mod. 2 (verde) Corpo consolare titolare di passaporto diplomatico (Model 2 (green) Members of the consular corps who hold a diplomatic passport)
    - Mod. 3 (Orange) Funzionari II FAO titolari di passaporto diplomatico, di servizio o ordinario (Model 3 (orange) Category II FAO officials who hold a diplomatic, service or ordinary passport)
    - Mod. 4 (Orange) Impiegati tecnico-amministrativi presso Rappresentanze diplomatiche titolari di passaporto di servizio (Model 4 (orange) Technical and administrative staff of diplomatic representations who hold a service passport)
    - Mod. 5 (Orange) Impiegati consolari titolari di passaporto di servizio (Model 5 (orange) Consular staff who hold a service passport)

- Mod. 7 (grigio) Personale di servizio presso Rappresentanze diplomatiche titolare di passaporto di servizio (Model 7 (grey) Domestic staff of diplomatic representations who hold a service passport)
- Mod. 8 (grigio) Personale di servizio presso Rappresentanze Consolari titolare di passaporto di servizio (Model 8 (grey) Domestic staff of consular representations that hold a service passport)
- Mod. 11 (beige) Funzionari delle Organizzazioni internazionali, Consoli Onorari, impiegati locali, personale di servizio assunto all'estero e venuto al seguito, familiari Corpo Diplomatico e Organizzazioni Internazionali titolari di passaporto ordinario (Model 11 (beige) Officials of international organisations, honorary consuls, local employees, domestic staff recruited abroad who have followed their employer, families of members of the diplomatic corps and international organisations who hold an ordinary passport)

NB: Models 6 (orange) and 9 (green) for, respectively, staff of international organisations who have no immunity and foreign honorary consuls are no longer issued and have been replaced by model 11. However, these documents remain valid until the expiry date stated on them.

The following is added on the back of ID cards: this ID card exempts the bearer from the permit of stay and together with a valid travel document it entitles the bearer to enter the territory of any Schengen State.

- List of persons participating in a school trip within the European Union.
-

**Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 1857/2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001**

(2011/C 216/10)

**Aid No:** SA.33161 (11/XA)

**Member State:** Netherlands

**Region:** Noord-Brabant

**Title of aid scheme or name of company receiving an individual aid:** Subsidieverlening project „Fosfaat, natuur en landbouw”

**Legal basis:**

— Algemene wet bestuursrecht

— Subsidieverordening inrichting landelijk gebied 2007 (provincie Noord-Brabant)

— Tijdelijke subsidieregeling inrichting landelijk gebied

— Beschikking betreffende de toekenning van een subsidie voor het project „Fosfaat, natuur en landbouw”

**Annual expenditure planned under the scheme or overall amount of individual aid granted to the company:** Overall amount of the ad hoc aid awarded to the undertaking: EUR 0,09 million

**Maximum aid intensity:** 100 %

**Date of implementation:** —

**Duration of scheme or individual aid award:** Until 31 December 2013

**Objective of aid:** Technical support (Article 15 of Regulation (EC) No 1857/2006)

**Sector(s) concerned:** Animal production

**Name and address of the granting authority:**

Provincie Noord-Brabant  
Brabantlaan 1  
Postbus 90151  
5200 MC 's-Hertogenbosch  
NEDERLAND

Waterschap De Dommel  
Bosscheweg 56  
Postbus 10001  
5280 DA Boxtel  
NEDERLAND

**Website:**

<http://www.brabant.nl/politiek-en-bestuur/gedeputeerde-staten/bestuursinformatie/bekendmakingen/water/bekendmaking-subsidieverlening-zlto-de-hilver.aspx>

**Other information:** —

**Aid No:** SA.33263 (11/XA)

**Member State:** Italy

**Region:** Lazio

**Title of aid scheme or name of company receiving an individual aid:** Intervento contributivo regionale riferito a estirpazioni o capitozzature di piante di actinidia colpite da cancro batterico causato da «Pseudomonas syringae pv. actinidiae».

**Legal basis:**

L.R. 16 marzo 2011, n. 2 «Misure di intervento a favore delle piccole e medie imprese agricole per la prevenzione ed eradicazione di fitopatie e infestazioni parassitarie».

DGR del 24 giugno 2011 n. 301, «L.R. 16 marzo 2011, n. 2 “Misure di intervento a favore delle piccole e medie imprese agricole per la prevenzione ed eradicazione di fitopatie e infestazioni parassitarie”. Programma regionale di intervento contributivo riferito a estirpazioni o capitozzature di piante di actinidia ...»

**Annual expenditure planned under the scheme or overall amount of individual aid granted to the company:** Annual overall amount of the budget planned under the scheme: EUR 1 million

**Maximum aid intensity:** 100 %

**Date of implementation:** —

**Duration of scheme or individual aid award:** 21 July 2011-30 June 2013

**Objective of aid:** Plant diseases — pest infestations (Article 10 of Regulation (EC) No 1857/2006)

**Sector(s) concerned:** Crop and animal production, hunting and related service activities

**Name and address of the granting authority:**

Regione Lazio

Dipartimento Istituzionale e Territorio  
Direzione regionale Agricoltura  
Via C. Colombo 212  
00147 Roma RM  
ITALIA

**Website:**

<http://www.agricoltura.regione.lazio.it>

**Other information:** —

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**Commission information notice pursuant to Article 16(4) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council on common rules for the operation of air services in the Community**

**Public service obligations in respect of scheduled air services**

(Text with EEA relevance)

(2011/C 216/11)

Member State	France
Route concerned	Le Havre–Lyon (Saint-Exupéry)
Date of entry into force of the public service obligations	The day after the publication of this notice
Address where the text and any relevant information and/or documentation relating to the public service obligation can be obtained	<p>Arrêté du 14 juin 2011 modifiant l'arrêté du 4 juin 2009 relatif à l'imposition d'obligations de service public sur les services aériens réguliers entre Le Havre et Lyon (Saint-Exupéry) (Order of 14 June 2011 amending the Order of 4 June 2009 imposing public service obligations in respect of the scheduled air services between Le Havre and Lyon (Saint-Exupéry))</p> <p>NOR: DEVA1115672A</p> <p><a href="http://www.legifrance.gouv.fr/initRechTexte.do">http://www.legifrance.gouv.fr/initRechTexte.do</a></p> <p>For further information please contact:</p> <p>Direction générale de l'aviation civile DTA/SDT/T2 50 rue Henry Farman 75720 Paris Cedex 15 FRANCE</p> <p>Tel. +33 158094321 E-mail: <a href="mailto:osp-compagnies.dta@aviation-civile.gouv.fr">osp-compagnies.dta@aviation-civile.gouv.fr</a></p>

## V

*(Announcements)*PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION  
POLICY

## EUROPEAN COMMISSION

**Prior notification of a concentration****(Case COMP/M.6313 — Ashland/International Specialty Products)****(Text with EEA relevance)**

(2011/C 216/12)

1. On 14 July 2011, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 <sup>(1)</sup> by which Ashland Inc ('Ashland', United States) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of International Specialty Products Inc ('ISP', United States) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

- for Ashland: manufacture and supply of composite polymers, adhesives, process and utility water treatments, cellulose ethers, lubricants and automotive chemicals; and,
- for ISP: manufacture and supply of specialty chemicals for consumer and industrial markets including personal care, pharmaceuticals and nutrition, beverage, home care, coatings and adhesives, energy, agriculture, plastics and tyres.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope the EC 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. Observations can be sent to the Commission by fax (+32 22964301), by e-mail to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.6313 — Ashland/International Specialty Products, to the following address:

European Commission  
Directorate-General for Competition  
Merger Registry  
J-70  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË

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

**Prior notification of a concentration**  
**(Case COMP/M.6276 — AIF VII Euro Holdings/Ascometal)**  
**Candidate case for simplified procedure**  
**(Text with EEA relevance)**  
(2011/C 216/13)

1. On 15 July 2011, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 <sup>(1)</sup> by which the undertaking AIF VII Euro Holdings, L.P. ('AIF VII') — an investment fund managed by Apollo Management VII L.P., which is an affiliate of Apollo Management L.P. (collectively, 'Apollo', USA) — acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Ascometal SA (France) from Sideris Steel S.A.S., an indirect subsidiary of Lucchini SpA which is part of OAO Severstal by way of purchase of shares.
2. The business activities of the undertakings concerned are:
  - for undertaking Apollo: investment in companies involved in various businesses throughout the world such as chemical, cruise line, logistics, paper, packaging, and real estate brokerage businesses,
  - for undertaking Ascometal.: manufacture of special long steel products (semi-finished products, hot rolled products and cold finished products) in alloy and non-alloy grades.
3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the EC 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 EC Merger Regulation <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. Observations can be sent to the Commission by fax (+32 22964301), by email to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.6276 — AIF VII Euro Holdings/Ascometal, to the following address:

European Commission  
Directorate-General for Competition  
Merger Registry  
J-70  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË

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

<sup>(2)</sup> OJ C 56, 5.3.2005, p. 32 ('Notice on a simplified procedure').







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V *Announcements*

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

**European Commission**

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

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