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### Information and Notices

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## I

*(Resolutions, recommendations and opinions)*

## RECOMMENDATIONS

## COUNCIL

## COUNCIL RECOMMENDATION

of 12 July 2011

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

(2011/C 217/01)

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 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, the Council 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.

<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).

- (6) On 18 and 19 April 2011, Slovenia submitted its 2011 Stability Programme update covering the period 2010-2014 and its 2011 National Reform Programme. In order to take the interlinkages into account, the two programmes have been assessed at the same time.
- (7) In the years preceding the crisis, Slovenia enjoyed fast economic growth, driven by buoyant exports and investment. However, Slovenia was heavily impacted by the crisis, losing 8,1 % of its GDP in 2009 in real terms, which reversed a portion of the previous catch-up process. The interaction of automatic stabilisers, recovery measures and strong in-built expenditure dynamics combined to push the general government deficit from 1,8 % of GDP in 2008 up to 6,0 % of GDP in 2009 (with gross debt levels of 21,9 % of GDP and 35,2 % respectively). The labour market reacted with a considerable lag and employment continues its downwards trend. While the unemployment rate remains below the EU average, it increased sharply from its pre-crisis levels of 4,4 % to 7,3 % in 2010. Economic recovery so far has been rather slow and is expected to rally only in 2012 with an estimated growth of 2,5 % of GDP.
- (8) Based on an assessment of the updated Stability Programme pursuant to Regulation (EC) No 1466/97, the Council is of the opinion that the macroeconomic scenario underpinning the budgetary projections of the programme is plausible in the near term, and favourable towards the end of the programme period. Starting from 5,6 % of GDP in 2010, the programme plans to bring the general government deficit below the 3 % of GDP reference value by 2013, through a broad-based containment of primary expenditure. After correcting the excessive deficit, the programme envisages some progress towards, but not achievement of, the medium-term objective (MTO) of a balanced budgetary position in structural terms within the programme period. Although the MTO is set at a more ambitious level than in the previous programme, it does not appear to ensure sufficiently rapid progress towards long-term sustainability of public finances. The average annual change in structural balance over the period 2010-2013, as calculated by the Commission services based on the information in the programme following the commonly agreed methodology, is planned to be around 0,5 percentage points of GDP, below the level recommended by the Council. Moreover, deficit and debt outcomes could fall short of the targets. Additional measures are expected to be adopted as part of a supplementary budget to achieve the 2011 deficit target. After 2011, the programme does not specify measures to contain expenditure and the possibility of additional financial rescue operations affecting deficit and debt cannot be excluded.
- (9) While the general government deficit has narrowed since its peak in 2009, further consolidation to correct the excessive deficit by 2013 and achieve the MTO thereafter is a key challenge for Slovenia. In line with the consolidation strategy pursued in recent years, the further expenditure savings envisaged in the Stability Programme for the period 2011-2014 mainly affect the public sector wage bill, social transfers (including pensions) and public investment. However, the Stability Programme offers no detailed information on the planned measures beyond 2011. Further corrective action is being taken in the context of a supplementary budget to achieve the 2011 deficit. The credibility of the medium-term consolidation strategy would be enhanced by adopting more structural expenditure-containing measures — as opposed to the temporary interventions that have characterised recent consolidation efforts — and by a more binding medium-term budgetary framework. The Stability Programme confirms the introduction of an expenditure rule but key provisions, for instance on the definition of non-compliance, remain to be worked out. Finally, comparatively low spending efficiency, for example in healthcare and education, implies that Slovenia may have additional scope for expenditure-based consolidation without compromising the quality of public services. The Stability Programme announces initiatives to rationalise public services and transfers and introduce a unified public procurement system, but the detail of some of these is lacking.
- (10) The long-term budgetary impact of ageing in Slovenia is significantly higher than the EU average. Moreover, the participation and employment rates for older workers are very low (36,5 % and 35 % compared to the EU averages of 49,7 % and 46,3 % respectively), mainly due to the low retirement age and insufficient incentives for active ageing. The parliament recently adopted a pension reform, with the aim of increasing the retirement age, while preserving the adequacy of pensions. According to the Stability Programme, this would stabilise age-related spending until 2030 and would therefore be an important first step in tackling the sustainability of the pension system. It was submitted to a referendum on 5 June 2011 and rejected. The problem of sustainability of the pension system remains and other ways of resolving it will need to be found. According to the Commission's latest assessment, the risks with regards to long-term sustainability of public finances appear to be high.
- (11) The labour market is relatively segmented between forms of contract: employment protection for workers on permanent contracts is strict compared to that accorded to workers with fixed-term contracts. The share of young workers aged 15-24 years on temporary contracts including 'student work' is the highest in the EU (67 % in 2009) and transition from temporary to permanent contracts appears to be relatively difficult. Previous attempts to address this issue proved insufficient. The government plans to negotiate with the social partners a revision of the Employment Relationship Act, with a view to aligning rights and obligations under different types of

employment contracts. Furthermore, 'student work' constitutes a sizeable, largely unregulated, tax-advantageous, parallel labour market. This important issue is absent from the National Reform Programme due to time coincidence of a referendum and the submission of the Programme.

- (12) Apart from segmentation, the structural problems on the Slovenian labour market are also caused by the mismatch between labour market needs and skills, which is recognised in the National Reform Programme. The National Reform Programme envisages intensive investment in training to improve skills and employability. It outlines plans to further improve the transition from education to the labour market, with a focus on providing career guidance services throughout the education system. It plans to modernise the employment service with the objective of better matching the supply of skills to labour market needs. Successful implementation of these reforms would, however, require improving the system to identify in a timely way current and projected labour market needs.
- (13) The downturn is impacting on loan portfolios with a lag and the growing share of non-performing loans has been raising banks' impairment and provisioning costs. The two main State-owned banks have been recapitalised, which was crucial. The government has also proposed measures to accelerate recovery of claims and incentivise lending for productive activities, to restore the flow of credit to the real economy, although further action may be needed.
- (14) Certain segments of the services sector are sheltered from competitive pressures and are characterised by high mark-ups and high concentration, raising costs throughout the economy. This, together with the high degree of State involvement in the economy, and other impediments to doing business keep potentially beneficial foreign direct investment (FDI) relatively low. Slovenia plans are speeding up the implementation of the Services Directive, where considerable delays were accumulated. It also plans to give the Competition Protection Office full independence and identify State capital investments suitable for sale. These plans are not specified in detail and there are risks related to implementation.
- (15) Slovenia has signed up to the Euro Plus Pact. While the Slovenian National Reform Programme indicates potential commitments and targets in the four areas of the Euro Plus Pact of fostering competitiveness and employment, contributing to the sustainability of the

public finances and reinforcing financial stability, no firm commitments had been notified to the Commission by 7 June 2011.

- (16) The Commission has assessed the Stability Programme and National Reform Programme. It has taken into account their relevance for sustainable fiscal and socio-economic policy in Slovenia and compliance 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. In this light, the Commission considers that achieving the 2011 deficit target set in the Stability Programme requires the adoption of additional measures in the context of a supplementary budget. Beyond 2011, there are risks to the deficit and debt targets as the Stability Programme does not specify sustainable measures to contain expenditure. The National Reform Programme contains measures to repair the financial sector, but they may not be sufficiently ambitious. The assessment also indicates that domestic sources of growth need to be boosted, in particular by increasing labour market participation of young and older workers through reducing labour market segmentation and removing skill mismatches. Finally, there is a need to strengthen competition and open up opportunities for investment and growth in the service sector and network industries.
- (17) In light of this assessment, also taking into account the Council Recommendation of 2 December 2009 under Article 126(7) of the Treaty on the Functioning of the European Union, the Council has examined the 2011 update of the Stability Programme of Slovenia 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 Slovenia,

HEREBY RECOMMENDS that Slovenia take action within the period 2011-2012 to:

1. Achieve the 2011 deficit target, underpin the 2012 deficit target with concrete measures and implement the necessary consolidation rigorously, standing ready to adopt additional measures to prevent possible slippages. Underpin this required adjustment process over the programme period with additional measures to ensure the average annual fiscal effort in line with the Council recommendations under the EDP and adequate progress towards an appropriate medium-term objective. To this purpose, use structural

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

measures to contain expenditure and address identified inefficiencies and implement a more binding medium-term budgetary framework. Accelerate the reduction of the deficit if economic or budgetary conditions turn out better than currently expected.

2. Take the required steps to ensure the long-term sustainability of the pension system, while preserving the adequacy of pensions. Increase the employment rate of older workers through later retirement, and by further developing active labour market policies and lifelong learning measures.
3. Take further measures in the banking sector, where appropriate, to strengthen the balance sheets and the loan portfolio, with a view of enhancing the flow of credit to the real economy.
4. Take steps, in consultation with the social partners and in accordance with national practices, to reduce asymmetries in rights and obligations guaranteed under permanent and

temporary contracts. Renew efforts to tackle the parallel labour market resulting from 'student work'.

5. Set up a system to forecast skills and competencies needed to achieve a responsive labour market. Evaluate the effectiveness of the public employment service, notably on career guidance and counselling services, to improve the matching of skills with labour market needs.
6. Streamline regulated professions and improve the administrative capacity of the Competition Protection Office, in order to enhance the business environment and attract investment.

Done at Brussels, 12 July 2011.

*For the Council*

*The President*

J. VINCENT-ROSTOWSKI

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## COUNCIL RECOMMENDATION

of 12 July 2011

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

(2011/C 217/02)

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 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 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 27 April 2011, Poland submitted its 2011 Convergence Programme update covering the period 2011-2014 and on 29 April 2011 its 2011 National Reform Programme. In order to take account of the interlinkages, the two programmes have been assessed at the same time.
- (7) The global financial crisis led to a slowdown in economic activity in Poland, with the rate of real GDP growth dropping to 1,6 % in 2009, but stopping short of a recession. In 2010, real GDP growth bounced back to 3,8 % as strong external demand fuelled manufacturing and turned the inventory cycle, while a resilient labour market supported private consumption. The unemployment rate rose to 9,6 % in 2010, up from 7,1 % in 2008, despite increasing employment. The crisis has taken a heavy toll on public finances. The general government deficit rose from 3,7 % of GDP in 2008 to 7,3 % in 2009. In 2010, despite a modest consolidation package and in the face of strong growth, it reached 7,9 % of GDP. The debt-to-GDP ratio rose from 50,9 % in 2009 to 55,1 % <sup>(3)</sup> in 2010, still below the 60 % Treaty threshold and the Polish Constitutional debt limit.
- (8) 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 scenario underpinning the budgetary projections is plausible, while based on slightly too favourable growth assumptions for 2012. The Convergence Programme

<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).

<sup>(3)</sup> Figure according to the Commission services' AMECO database. According to the Ministry of Finance's communication of 30 May 2011, debt-to-GDP ratio on 31 December 2010 amounted to 54,9 %.

plans to bring the deficit below the 3 % of GDP reference value by 2012, the deadline set by the Council. The average annual fiscal effort over the period 2010-2012 is fully in line with the 1,25 % of GDP recommended by the Council under the excessive deficit procedure (EDP) on 7 July 2009. Achievement of the medium-term objective (MTO) is not envisaged during the Convergence Programme period. The amendment to the pension reform reducing the structural budget deficit by 0,7 % in 2011 and by a further 0,5 % of GDP in 2012 does not substantially improve the underlying budgetary situation as an improvement in the initial budgetary position is accompanied by an increase in long-term liabilities. Risks to budgetary targets are tilted to the downside. In particular direct tax revenues might turn out lower than projected because of optimistic assumptions on elasticities with respect to the tax base, programme projections on social contributions rely on favourable scenarios for employment and wage growth; and potential implementation delays and changes to the deficit-reducing measures, also beyond the direct control of the government, could result in a slippage in the consolidation path.

- (9) The Polish government committed itself to bringing the general government deficit below 3 % of GDP by 2012, as recommended by the Council, and to ensuring the stability of public finances in the long term. To this end, in 2011 it has embarked on a plan to substantially consolidate public finances, with measures affecting both revenue and expenditure including a substantial reduction in public investment expenditure. The draft 2012 budget was adopted by the government on 5 May 2011. It is expected to contribute to a further significant reduction in the deficit. Measures may still need to be implemented in addition to the ones presented in the draft 2012 budget to meet the 2012 deadline for correction of the excessive deficit. However, a further decline in growth-enhancing expenditure would risk adversely affecting potential growth in the future.
- (10) Poland has strengthened its fiscal framework over the years. However, in order to assure sustainability of public finances in the medium to long term the existing fiscal rules and medium-term programming procedures do not appear to provide for sufficient transparency of the budgetary process, incentives for coordination between various tiers of government and flexibility to address macroeconomic shocks and imbalances. The fiscal rules should also be based on sufficiently broad budgetary aggregates and should be consistent with the European System of National and Regional Accounts (ESA95). According to the Commission's latest assessment, the risks with regard to long-term sustainability of public finances appear to be medium.
- (11) Although the government has abolished special early pensions for a majority of beneficiaries, special early

retirement arrangements for uniformed services and miners remain in place, and the statutory retirement age for women is lower than for men. The effective retirement age is therefore still low. Moreover, the heavily subsidised farmers' social security fund (KRUS) provides little incentives for farmers to move to more productive sectors, which is also affected by education, infrastructure and mobility challenges, slowing economic restructuring and hampering productivity growth.

- (12) The education and training system is not fully tailored to labour market needs. Despite a sharp increase in tertiary education attainment, employability is affected by a skills and jobs mismatch. The higher education system is not adequately linked to the business and employment environment. The proportion of adults (especially older and low-skilled workers) participating in education and vocational training remains very low.
- (13) Despite some recent increase, public spending on research and development (R&D) is low in Poland, also private spending on R&D is among the lowest in the EU and has been declining in recent years. This is likely to become a major obstruction to medium- and long-term economic growth. The R&D system is not fully integrated as universities, research institutes and industry are only weakly interlinked.
- (14) Low female labour market participation is partly due to insufficient provision of care facilities for children and dependents. The number of children under three years for whom formal care arrangements are made in Poland is far below the EU average. The enrolment rate of older children, although it has risen over the last few years, is similarly low. In many cases young parents can only participate in the labour market if childcare is provided by their relatives. In addition, insufficient provision of care services reduces the labour force potential of older women in particular since they leave their jobs or retire early in order to take care of their grandchildren or other dependents.
- (15) The underdeveloped network infrastructure is an obstacle to business and foreign investment and the underdeveloped transport infrastructure amplifies regional disparities. The energy infrastructure is ageing rapidly and has reached its capacity limits. Moreover, it needs significant adjustments to meet the requirements associated with climate change mitigation policies. Although Poland's rail system is the third largest in Europe, it cannot properly support the expansion of economic activity because of outdated infrastructure and rolling stock.



(16) The quality of the business environment and the efficiency of public administration are low in Poland. In cross-country comparisons, Poland has particular problems in the areas of paying taxes, starting and closing businesses, enforcing contracts and registering property. Companies are hindered by lengthy licensing and permit procedures. As regards legal actions, such as contract enforcement and obtaining construction permits, the number of procedures involved is rather high and the overall process is too long.

(17) Poland has made a number of commitments under the Euro Plus Pact. On the fiscal side, Poland commits itself to the existing debt and the temporary expenditure rule, the introduction of new regulations limiting deficit ratios of local governments and the introduction of a permanent expenditure rule. To reinforce financial stability, measures aim at more efficient regulation and supervision of the banking sector. Employment measures focus on labour market participation of women as well as of older workers and reforms to strengthen business-education links. The competitiveness measures focus on education and the science sector, transport and broadband infrastructure development and measures to improve the business environment. These commitments refer to the four areas of the Pact and largely reflect the agenda presented in the Convergence and National Reform Programmes. Several important policy challenges need to be further addressed (e.g. the low participation rate of older workers) or are only touched upon (e.g. the improvement of the business administration). The Euro Plus Pact commitments have been assessed and taken into account in the recommendations.

(18) 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 for sustainable fiscal and socio-economic policy in Poland 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. It considers that the programmes set out an ambitious public finance consolidation plan and encourages the government to proceed with implementation, and to take additional measures, if necessary, to reduce the general government deficit to below 3 % of GDP by 2012. Building on the achievements of the past decade, steps should be taken to further increase employment, mainly by implementing reforms in the pension and education systems, and by improving child- and dependent-care services. Moreover, non-price competitiveness should be further increased by improving the R&D framework and the business environment and by promoting infrastructure investment.

(19) In the light of this assessment, also taking into account the Council Recommendation of 7 July 2009 under

Article 126(7) of the Treaty on the Functioning of the European Union, the Council has examined the 2011 update of the Convergence Programme of Poland 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 Poland,

HEREBY RECOMMENDS that Poland take action within the period 2011-2012 to:

1. Implement the measures announced in the draft 2012 Budget Law and take additional measures of a permanent nature if needed to reduce the general government deficit to below 3 % of GDP in 2012, in line with the Council recommendations under the EDP. While ensuring adequate progress towards the medium-term objective, minimise cuts in growth-enhancing expenditure in the future.
2. Enact legislation with a view to introducing a permanent expenditure rule by 2013. This rule should be based on sufficiently broad budgetary aggregates and should be consistent with the European system of accounts. Moreover, take measures to strengthen the mechanisms of coordination among the different levels of government in the medium-term and annual budgetary processes.
3. Raise as planned the statutory retirement age for uniformed services, continue steps to increase the effective retirement age, such as linking it to life expectancy. Establish a timetable to further improve the rules for farmers' contributions to the social security fund (KRUS) to better reflect individual incomes.
4. Implement the proposed lifelong learning strategy, enhance apprenticeships and dedicated vocational training and education programmes for older workers and low-skilled workers. Strengthen links between science and industry by implementing the 'We build on Knowledge' programme ('Budujemy na Wiedzy'). Implement the higher education reform programme 'Partnership for Knowledge' ('Partnerstwo dla Wiedzy') so as to better align educational provision with labour market needs.
5. Increase female labour market participation by taking measures to ensure stable funding for pre-school child-care arrangements, to increase enrolment rates of children under three years.

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

6. Take measures to improve incentives for investment in energy generation capacity with a view to encouraging low-carbon emitting technologies, and to further develop cross-border electricity grid inter-connections; develop a multiannual plan for investment in railway infrastructure and implement the rail transport master plan.
7. Take steps to simplify legal procedures involved in enforcing contracts; revise construction and zoning legislation, with a view to streamlining appeal procedures and speeding up administrative procedures.

Done at Brussels, 12 July 2011.

*For the Council*

*The President*

J. VINCENT-ROSTOWSKI

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

(2011/C 217/03)

THE COUNCIL OF THE EUROPEAN UNION,

Member States were invited to take the integrated guidelines into account in their national economic and employment policies.

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:

(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 29 April 2011, Sweden 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.

(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'.

(6) Before the economic crisis of 2008-2009, the Swedish economy enjoyed more than a decade of strong growth driven by both domestic demand and net exports. Being an export-oriented economy with a sizeable financial sector, it was strongly affected by the slump in external demand and the freezing of financial markets in 2008, causing GDP to contract by 5,1 % in 2009 and the unemployment rate to increase from around 6 % to above 9 %. Thanks to a sound starting position without large adjustment needs in the household, banking and public sectors, as well as an adequate monetary and fiscal policy response, the recession was rather short-lived and affected mainly the export-oriented manufacturing sector. As world trade revived, the Swedish economy experienced a very strong and broad-based recovery, with real GDP rebounding by 5,7 % in 2010. Due to the combined effect of automatic stabilisers and discretionary measures, the fiscal balance went from a surplus of 3,7 % of GDP in 2007 to a deficit of 0,9 % in 2009, before returning to balance in 2010.

<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).

- (7) 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 scenario underpinning the budgetary projections is plausible, except for 2012 when it appears favourable compared with the Commission services' spring forecast. The budgetary strategy, as outlined in the updated Convergence Programme, is appropriate, as it would contribute to meeting Sweden's medium-term objective (MTO) of 1 % GDP surplus over a cycle. This would provide some margin against breaches of the 3 % of GDP reference value in any future downturn. The programme projects the general government surplus to widen from 0,6 % of GDP in 2011 to 3,7 % of GDP in 2014, the last year of the programme. This improvement would result from assumed strong economic growth, as the programme does not envisage any consolidation efforts in these years. Risks to the budgetary targets are broadly balanced. As the revenue forecast presented in the programme is somewhat cautious for 2011, budgetary outcomes could turn out slightly better this year, whereas certain downside risks to budgetary projections from 2012 onwards are linked to favourable macroeconomic assumptions. As the government has indicated that further expansionary fiscal measures envisaged in the 2011 Budget Bill (including a fifth step in the in-work tax credit for wage-earners, a further rise in the threshold for paying state income tax, lower VAT on restaurant services, and lower taxes on pensions) could be implemented as from 2012, if there is sufficient fiscal space, there is a risk of a procyclical fiscal policy stance. Considering also the demographic outlook, it is therefore important that fiscal policy is kept on a path that ensures that the MTO continue to be met. According to the Commission's latest assessment, the risks with regard to long-term sustainability of public finances appear to be low.
- (8) The current situation in the housing and mortgage markets is a source of potential instability. After a short-lived and mild correction at the height of the financial crisis, house prices in Sweden — in contrast to other countries — resumed the strong upward trend observed since the second half of the 1990s and are now at a record high. The strong increase in house prices has gone hand in hand with rising household indebtedness which represented around 170 % of disposable income by mid-2010, a historical high. Moreover, a large share of mortgage debt is at variable rates with little amortisation. This makes Swedish households particularly vulnerable to interest rate hikes or set-backs in employment. A marked correction in the housing market could have negative repercussions for macroeconomic stability by making households rein in consumption to balance their budgets and by increasing financing costs for Swedish banks.
- (9) As regards the Swedish labour market, young people and non-EU nationals have a relatively weak position compared with the EU average. Further improvement of their position on the labour market is essential to raise the overall employment rate and to improve the labour supply in the long term so as to meet the demographic challenge of an ageing population. The Swedish government is currently implementing several reforms in order to improve the employment situation of both groups such as increased funds for coaching, work-experience positions, vocational adult education, apprenticeship training coaching, targeted wage subsidies and streamlined Swedish language courses. The latest statistics show clear signs that the Swedish labour market is improving across the board, except for foreign-born women.
- (10) The Commission has assessed the Convergence Programme and National Reform Programme. It has taken into account not only their relevance for sustainable fiscal and socio-economic policy in Sweden 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. It considers that the programmes are adequately addressing the main challenges for Sweden. However, while the government's fiscal strategy to continue meeting the MTO is appropriate, care needs to be taken from 2012 onwards to avoid an excessively loose fiscal policy in times of favourable growth. The risks of macroeconomic imbalances should be assessed, notably those stemming from rising house prices and household indebtedness. In addition, the labour market participation of vulnerable groups needs to be monitored and improved, notably for young people and foreign-born women.
- (11) In light of this assessment, the Council has examined the 2011 update of the Convergence Programme of Sweden and its opinion <sup>(1)</sup> is reflected in particular in its recommendation 1 below. Taking into account the European Council conclusions of 25 March 2011, the Council has examined the National Reform Programme of Sweden,
- HEREBY RECOMMENDS that Sweden take action within the period 2011-2012 to:
1. Keep fiscal policy on a path that ensures that the medium-term objective continues to be met.
- <sup>(1)</sup> Foreseen in Article 9(3) of Regulation (EC) No 1466/97.

2. Take preventive action to deal with the macroeconomic risks associated with rising house prices and household indebtedness. A broad set of measures could be considered, such as reviews of the mortgage system, including the capital requirements of banks, rent regulation, property taxation and construction permits.
3. Monitor and improve the labour market participation of young people and other vulnerable groups.

Done at Brussels, 12 July 2011.

*For the Council*

*The President*

J. VINCENT-ROSTOWSKI

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

(2011/C 217/04)

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:

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 28 April 2011, the United Kingdom submitted its 2011 Convergence Programme update covering the period 2011-2014 and its 2011 National Reform Programme. In order to take account of interlinkages, the two programmes have been assessed at the same time. For the first time the UK's Convergence Programme contained economic and fiscal forecasts produced by the new, independent Office for Budget Responsibility (OBR), which is a welcome improvement to the UK's fiscal framework.

(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

(6) The UK was particularly exposed to the international financial crisis because of its large, globally-integrated financial sector and high levels of household debt. GDP fell by 0,1 % in 2008 and 4,9 % in 2009. The UK government intervened massively to support the banking sector, and provided extraordinary additional liquidity to the whole sector. The government deficit rose by 8,5 percentage points in two years to 11,2 % of GDP in 2009. Unemployment rose from 5,3 % in 2007 to 7,6 % in 2009. Quarterly growth returned in the fourth quarter of 2009 although output remains below its pre-crisis peak. The short-term outlook is for moderate growth driven by strong corporate investment and an exchange-rate driven rebound in net exports. However, growth will be held back by weak or negative growth in household and government consumption. Inflation is expected to remain well above the 2 % official target during 2011, reflecting increases in value added tax and higher import and energy prices, before falling in 2012. High inflation is likely to erode real incomes as wage growth remains low. The main downside risks to the forecast are that the rebounds in corporate investment or net exports may not materialise and that persistent high inflation may prevent the use of monetary policy to offset lower government spending.

<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).



- (7) 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 scenario underpinning the budgetary projections is plausible except for 2012 when it may be slightly too favourable. The Convergence Programme does not include a medium-term objective (MTO) as foreseen by the code of conduct although it can be derived from targets therein. The objective of the budgetary strategy is to bring down the deficit from 9,9 % in 2010-2011 to 1,7 % in 2015-2016, mainly based on expenditure restraint, a strategy consistent with evidence on fiscal consolidations that have supported growth. The Convergence Programme plans to bring the deficit below the 3 % reference value by 2014-2015, the deadline set by the Council. Starting from a debt ratio of 78,7 % in 2010-2011, the budgetary projections in the Convergence Programme foresee the debt ratio increasing to 87,2 % by 2013-2014 before beginning to fall slowly. The average annual fiscal effort over the period of 2010-2011 to 2014-2015 is 1,6 %. This is slightly below that recommended by the Council in December 2009 (1,75 % of GDP) but is nevertheless appropriate given that the effort is being pursued from a significantly lower-than-expected budget deficit in 2009-2010 and is therefore consistent with reducing the headline deficit to below the reference value by 2014-2015. According to the Commission's latest assessment, the risks with regard to the long-term sustainability of public finances appear to be high.

The long-term cost of ageing is above the EU average and the current budgetary position compounds the cost of ageing. Based on the current fiscal position, debt would increase to 128 % of GDP by 2020. However, the full implementation of the Convergence Programme would be enough to put debt on a downward path but would still be above 80 % by 2020. Beyond its consolidation plans, the UK Government has announced measures which will support long-run sustainability; these include bringing forward the date of the planned rise in the State Pension Age from 65 to 66 and changes to the method of up-rating certain benefits and tax thresholds.

- (8) Implementing the proposed fiscal consolidation remains a major challenge. Ensuring no slippage from published spending plans will be vital to re-establishing a sustainable fiscal position. Subject to this, the historically low rates of public infrastructure investments, particularly as regards transport, mean that growth-enhancing expenditure should be prioritised. Ensuring sufficient primary surpluses over the medium-term, as already envisaged in the Convergence Programme, will improve the sustainability of public finances.
- (9) The UK's flexible labour market allowed it to cope reasonably well with the large contraction in GDP during the crisis. However, increases in unemployment

were heavily concentrated on young people: between 2008 and 2010 youth unemployment increased from 15 % to almost 20 %. Poor labour market outcomes for young people are linked to more general and structural shortcomings in skills provision. The proportion of UK 18 to 24-year-olds who are early leavers from education and training, at 15,7 %, is higher than the EU average of 14,4 %. While the share of people aged 25-64 having attained high skill levels is particularly high in the UK, there are weaknesses at intermediate skills level, with the share of people in this group currently below the EU average. A further key challenge for the UK labour market is the significant proportion of children living in jobless households: at 17,5 % this is the highest level in the EU, where the overall average is 10,2 %. The problem is specifically acute for single-parent households, reflecting poor financial incentives and lack of viable childcare options: over 32 % of people with care responsibilities are inactive or work part-time due to lack of care services (this is 4 percentage points higher than the EU average).

- (10) The UK experienced a house price boom in the decade before the crisis. Prices fell sharply after the crisis hit but have since recovered partially and remain at historically high levels. Transaction levels collapsed and have remained very low. The house price boom contributed to the large increases in household indebtedness and unsustainable growth in household consumption in the pre-crisis decade. The collapse in housing transactions drove corresponding falls in receipts on housing transaction taxes, contributing to the worsening of the UK fiscal position. Weaknesses in the housing market also help explain the UK's high expenditure on housing benefits and high share of the population in state-subsidised housing. The UK has announced initial reforms to its planning system and to mortgage regulation. Reflecting the importance of this challenge to all sectors of the UK economy, there is a case to build on these measures to develop a more comprehensive package of reforms including in the mortgage market and property taxation to address these issues.
- (11) A recovery in private investment would be an essential component of the necessary rebalancing of the economy away from domestic consumption and help drive productivity gains. Surveys suggest that credit availability and cost is a significant constraint on investment and expansion plans in the private sector, notably for smaller firms reliant on bank financing. The annual rate of growth in lending to small and medium-sized enterprises (SMEs) has been negative since late 2009, with lending to small businesses contracting even more steeply. Moreover, whilst spreads over reference rates seem to have stabilised for medium-sized businesses, they have increased somewhat for small businesses. The UK has recently put in place a number of measures to improve SME access to finance including state sponsored investment vehicles and reaching an agreement with UK banks requiring them to increase their gross lending to SMEs. It is important to also recognise challenges on the

demand side, and that businesses will also need to play their part in taking up the schemes made available to them. To develop a solution which can continue to work without regular government intervention, there is a case for further reform with the aim of improving competition in the banking sector and facilitating the further development of markets for non-bank finance accessible to small and medium-sized firms.

- (12) The Commission has assessed the Convergence Programme and National Reform Programme. It has taken into account not only their relevance for sustainable fiscal and socio-economic policy in the UK 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. It considers that the Programmes set out ambitious measures to reduce the deficit and encourages the government to proceed as planned. Further steps should also be taken to reform the housing market, reduce youth unemployment, early school leaving, address the situation of children living in workless households and improve credit availability to the private sector.
- (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 2 June 2010, the Council has examined the 2011 update of the Convergence Programme of the United Kingdom and its opinion<sup>(1)</sup> is reflected in particular in 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 the United Kingdom,

HEREBY RECOMMENDS that the United Kingdom take action within the period 2011-2012 to:

1. Implement the planned fiscal consolidation aiming at a deficit of 6,2 % of GDP in 2012-2013, in line with Council recommendations on correcting the excessive deficit, and setting the high public debt ratio on a downward path when the excessive deficit is corrected by

the end of the programme period. Ensure no slippage from the ambitious spending reduction targets, thereby strengthening long-term sustainability; and, subject to this, prioritise growth-enhancing expenditure.

2. Develop a programme of reform which addresses the destabilising impact of the house price cycle on public finances, the financial sector and the economy, with a view to alleviating problems of affordability and the need for state subsidy for housing. A broad set of measures and policy instruments could be considered including reforms to the mortgage market, financial regulation, property tax and the planning system in order to prevent excessive volatility.
3. Take steps by 2012 to ensure that a higher share of young people enter the labour market with adequate skills and to improve the employability of 18 to 24-year-olds who left education or training without qualifications. Address skill shortages by increasing the numbers attaining intermediate skills, in line with labour market needs.
4. Take measures, within current budgetary plans, to reduce the number of workless households by targeting those who are inactive because of caring responsibilities, including lone parents.
5. Implement measures already announced and continue to work to improve the availability of bank and non-bank financing to the private sector and in particular to SMEs while recognising potential challenges on the demand side. Encourage competition within the banking sector and explore with the market ways to improve access to non-bank financing such as venture and risk capital and debt issued on public markets.

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.

**COUNCIL RECOMMENDATION****of 12 July 2011****on the implementation of the broad guidelines for the economic policies of the Member States  
whose currency is the euro**

(2011/C 217/05)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 136 in conjunction with Article 121(2) thereof,

Having regard to the recommendation of the European Commission,

Having regard to the conclusions of the European Council,

After consulting the Economic and Financial Committee,

Whereas:

- (1) On 20 June 2011, the Euro Group held a discussion on the implementation of the broad guidelines for the economic policies of the Member States whose currency is the euro ('euro area Member States'), recognising the need further to strengthen within the Euro Group the policy coordination and the monitoring of the implementation of the recommendations addressed to those Member States whose currency is the euro.
- (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). Member States and, where relevant, the EU were invited to take the guidelines into account in their economic 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) In April and May 2011, the euro area Member States submitted their 2011 Stability Programmes covering the period 2011-2014 and their 2011 National Reform Programmes. These programmes have been assessed at the same time.
- (8) The experience of the first decade of the euro generally underlined the many benefits of the single currency. However, the global crisis resulted in a deep contraction in 2009, which sent euro area GDP below its 2006 level. While 2010 saw that GDP grow again, output still remains below that of 2007. As a consequence, euro area unemployment rose from 7,6 % in 2007 to 10,1 % in 2010. Public finances in the euro area deteriorated, triggering a significant reassessment of sovereign debt risks in some euro area Member States and bringing about risks to macro-financial stability. Growth is now recovering, with divergences between Member States reflecting both structural and cyclical differences. The crisis triggered reduction in macro-economic imbalances which had developed before the crisis. However, it remains to be seen whether this is sufficient and sustainable.
- (9) General government balances in the euro area have, on average, begun to improve in 2010. Based on the Commission services' spring forecast, assuming unchanged policies, they are expected to continue improving in 2011. However, public debt will continue to grow until 2012. If not corrected in the years to come, it may jeopardise long-term fiscal sustainability given the combination of low potential growth and unfavourable demographic developments. In 2010, the euro area deficit decreased to 6 % of GDP, while the debt ratio increased to 85,1 % of GDP. According to the 2011

Stability Programme targets, the euro area deficit would fall to 1,3 % of GDP in 2014 and the debt ratio would begin to decline again to below 85 % of GDP in 2014, after peaking in 2012. Such a path of fiscal consolidation for the euro area as a whole would be compatible with the agreed exit strategy and the need to return to sound public finances in the context of a strengthening recovery. The planned emphasis of consolidation on expenditure reduction relative to tax increases enhances the likelihood of its success. Still, the effective implementation of some measures remains to be confirmed. Moreover, several euro area Member States have recently implemented new fiscal rules or announced the strengthening of existing ones, but these could in some euro area Member States require additional measures to be fully effective. In view of ageing populations, reforms of pensions and social security systems are not yet sufficient to ensure overall long-term fiscal sustainability.

- (10) The EU policy response has brought improvements to the functioning and stability of the financial system. Challenges in the financial sector in several euro area Member States include banks' exposure to further losses on their asset holdings or a tightening of conditions on refinancing markets, the continuation of banking sector restructuring and recapitalisation. As conditions in the financial sector stabilise, public sector support to the banking sector will need to be phased out, while having due regard to the particular circumstances within the banking sectors of Member States. Addressing these challenges will help reduce uncertainties about contingent public liabilities.
- (11) Improvements in productivity and competitiveness and removing structural impediments to private domestic demand are needed to increase the growth potential of the euro area and to address the macroeconomic imbalances within the euro area. In this respect, euro area Member States announced a number of structural reforms in their National Reform Programmes. However, there are still shortcomings on measures needed to improve the functioning of their product and labour markets, notably regarding service sectors, growth-friendly fiscal consolidation, and the wage setting systems.
- (12) In order to ensure the proper functioning of EMU, euro area Member States are under a particular obligation to regard their economic policies as a matter of common concern due to the potential for spillover effects among countries sharing a common currency. Therefore, a more comprehensive and permanent overhaul of economic policy coordination at the EU and euro area level have proved necessary in light of the crisis and the current challenges. The integrated annual surveillance cycle enshrined in the 'European Semester', the strengthened economic governance framework, the creation of the

European Systemic Risk Board and the European supervisory agencies, and the European Stability Mechanism are essential elements some of which remain to be fully adopted and/or implemented. The 'Euro Plus Pact' further reinforces this framework.

- (13) The Commission has assessed the Stability Programmes and the National Reform Programmes of the euro area Member States, taking into account the need to reinforce the overall economic governance of the euro area. It considers that strict adherence to budgetary targets, with a reinforcement in some euro area Member States, and further measures to strengthen fiscal rules and sustainability are required. Additional steps should also be taken to improve financial stability, growth-friendly tax reforms and consolidation measures, wage setting mechanisms, competition in service sectors, and the implementation of the Euro Plus Pact,

HEREBY RECOMMENDS that the Member States whose currency is the euro take action within the period 2011-2012 to:

1. Strictly adhere to the budgetary targets set out in their 2011 Stability Programmes as well as the Memoranda of Understanding in Member States receiving EU/IMF financial assistance and, where applicable, reinforce consolidation efforts in line with the opinion delivered by the Council. In particular, ensure adequate fiscal efforts with a view to correcting excessive deficits and approaching medium-term budgetary objectives. Use any fiscal windfalls to accelerate adjustment. This should also help to improve public debt dynamics.
2. Ensure fiscal discipline at both national and subnational levels, notably by introducing or reinforcing sufficiently strong and binding fiscal frameworks.
3. Continue to implement reforms to social security systems that ensure fiscal sustainability with due regard to the adequacy of pensions and social benefits, notably by aligning pension systems with the national demographic situation.
4. Improve the functioning and stability of the financial system, following up immediately on the forthcoming EU-wide stress tests to ensure that the banking sector continues to strengthen its resilience to possible further losses or funding constraints and that non-viable financial institutions are able to restructure or exit the market without creating undue tensions on financial markets.

5. Pursue further tax reforms which give priority to growth-friendly sources of taxation while preserving overall tax revenues, in particular by lowering taxes on labour to make work pay; when reducing public expenditure, protect growth-enhancing items such as spending on research and development, education and energy efficiency; where necessary adjust wage setting arrangements and indexation mechanisms, in consultation with social partners and in accordance with national practices, so as to ensure that wages are evolving in line with productivity, competitiveness and the employment situation.
6. Introduce further reforms to enhance competition in service sectors, in particular by removing unjustified restrictions on professional services, retailing and network industries.
7. Fully implement the commitments made in the Euro Plus Pact so as to enhance growth, competitiveness and employment within the area.

Done at Brussels, 12 July 2011.

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



## OPINIONS

## EUROPEAN DATA PROTECTION SUPERVISOR

**Opinion of the European Data Protection Supervisor on Commission Decision 2011/141/EU amending Commission Decision 2007/76/EC on the Consumer Protection Cooperation System ('CPCS') and on Commission Recommendation 2011/136/EU on guidelines for the implementation of data protection rules in the CPCS**

(2011/C 217/06)

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 Articles 7 and 8 thereof,

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 the request for an opinion in accordance with Article 28(2) of Regulation (EC) No 45/2001 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>,

HAS ADOPTED THE FOLLOWING OPINION:

**I. INTRODUCTION**

1. On 1 March 2011, the European Commission adopted a Commission Decision amending Commission Decision 2007/76/EC on the CPCS ('Second CPC Amendment') <sup>(3)</sup>. On the same date, the Commission also adopted a Commission Recommendation on guidelines for the

implementation of data protection rules in the CPCS ('CPC Data Protection Guidelines') <sup>(4)</sup>. Both documents were sent to the EDPS for consultation in accordance with Article 28(2) of Regulation (EC) No 45/2001.

2. CPCS is an information technology system designed and operated by the Commission pursuant to Regulation (EC) No 2006/2004 on consumer protection cooperation ('CPC Regulation'). CPCS facilitates cooperation among 'competent authorities' in EU Member States and the Commission in the area of consumer protection, with regard to infringements of a pre-defined set of EU directives and regulations. To come under the scope of the CPC Regulation infringements must be of cross-border nature and must harm the 'collective interests of consumers'.
3. In the framework of their cooperation, CPCS users exchange information, including personal data. These personal data may relate to directors or employees of a seller or supplier suspected of an infringement, the seller or supplier itself (if an individual), as well as to third parties such as consumers or complainants.
4. The system is designed to be a secure communication tool among competent authorities as well as a database. CPCS is used by the competent authorities to request information to help investigate a case <sup>(5)</sup> or to request assistance with enforcement <sup>(6)</sup> ('mutual assistance requests'). In addition, competent authorities can also send a warning message ('alert') to inform other competent authorities and the Commission about an infringement or a suspected infringement <sup>(7)</sup>. CPCS also contains further functionalities

<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> Commission Decision of 1 March 2011 amending Decision 2007/76/EC implementing Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance (2011/141/EU) (OJ L 59, 4.3.2011, p. 63).

<sup>(4)</sup> Commission Recommendation of 1 March 2011; Guidelines for the implementation of data protection rules in the Consumer Protection Cooperation System (CPCS) (2011/136/EU) (OJ L 57, 2.3.2011, p. 44).

<sup>(5)</sup> See Article 6 of the CPC Regulation on 'exchange of information on request'.

<sup>(6)</sup> See Article 8 of the CPC Regulation on 'request for enforcement measures'.

<sup>(7)</sup> See Article 7 of the CPC Regulation on 'exchange of information without request' (or 'alert' for short).



including a notification system <sup>(8)</sup> and a forum to exchange non-case-related data.

5. In this Opinion, the EDPS addresses a number of data protection issues concerning the legal framework for the CPCS, focusing primarily on the newly adopted Second CPC Amendment. In addition, the EDPS also takes stock of the progress made thus far and selectively highlights some remaining concerns and considerations for the future. He also comments on some provisions of the CPC Data Protection Guidelines.
6. In parallel with this Opinion (which is adopted pursuant to Article 28(2) of Regulation (EC) No 45/2001), the EDPS is also issuing a prior checking Opinion in his supervisory capacity (pursuant to Article 27 of the same Regulation) ('Prior Checking Opinion'). The Prior Checking Opinion contains a more detailed description of CPCS as well as the processing of personal data in it. In the Prior Checking Opinion, the EDPS focuses on recommendations for specific measures to be taken at the practical, technical, and organisational level to improve data protection compliance in CPCS. Considering that the CPC Data Protection Guidelines are also closely related to these specific measures, the Prior Checking Opinion also comments on selected provisions of the Guidelines.

## II. LEGAL FRAMEWORK FOR THE CPCS

7. The EDPS is pleased that the CPCS is based on a solid legal basis, in particular, a regulation adopted by the Council and the Parliament. In addition, the EDPS is satisfied that the legal basis has been complemented over time to provide further details and address data protection concerns. In particular, the EDPS is pleased that Commission Decision 2007/76/EC of 22 December 2006 implementing the CPC Regulation ('CPC Implementing Decision') was adopted and subsequently further amended on 17 March 2008 and recently, on 1 March 2011 via the Second CPC Amendment. He also is pleased that the Commission adopted the CPC Data Protection Guidelines, specifically addressing data protection issues.
8. Although the EDPS regrets that he was not consulted at the time the CPC Regulation and the CPC Implementing Decision were initially adopted, he is pleased that the Commission consulted him on the occasion of the adoption of each of the two amendments to the CPC Implementing Decision as well as with regard to the CPC Data Protection Guidelines. The EDPS also is pleased that

the Commission, previously, also consulted the Article 29 Data Protection Working Party ('WP 29'), which issued, on 21 September 2007, its Opinion No 6/2007 (WP 139). Finally, the EDPS welcomes the fact that reference to these consultations is made in the recitals of the CPC Data Protection Guidelines.

9. The EDPS notes that (i) the Commission has carefully considered the EDPS recommendations given in previous informal exchanges as well as those of the WP 29 expressed in Opinion No 6/2007 and that (ii) many of these recommendations were followed when further developing the legislative framework for the CPCS and/or at the practical, technical, and organisational level. His comments in this Opinion as well as in his Prior Checking Opinion should be considered against this positive background.

## III. DATA PROTECTION ISSUES WITH RESPECT TO THE SECOND CPC AMENDMENT

### 3.1. Retention of personal data in CPCS

#### 3.1.1. Introduction

10. As a preliminary remark, the EDPS points out that the issue of case closures and retention periods has not been adequately and comprehensively addressed in the CPC Regulation <sup>(9)</sup>.
11. Indeed, the CPC Regulation only lays down two specific rules regarding deletion of data and provides none with respect to case closures <sup>(10)</sup>. First, it requires that if an alert 'proves to be unfounded', the competent authority should withdraw it, and the Commission should without delay remove the information from the database. Second, it requires that when a competent authority notifies, under Article 8(6) of the CPC Regulation, that an infringement has ceased, the stored data should be deleted five years after the notification.
12. The CPC Regulation does not establish the purpose of the five-year retention period. Neither does it provide any further specifications on how and when it should be assessed whether an alert is 'unfounded'. In addition, the CPC Regulation is also silent on how long information should remain in the database in cases not covered by the two specific rules just mentioned (e.g. the Regulation does not specify how long mutual assistance requests are

<sup>(8)</sup> See Articles 7(2) and 8(6) of the CPC Regulation.

<sup>(9)</sup> See also Opinion No 6/2007 of the Article 29 Data Protection Working Party (referred to in Part II above).

<sup>(10)</sup> See Article 10(2) of the CPC Regulation.

retained in the database if they have not led to successful enforcement action which would have stopped the infringement).

13. The EDPS is pleased that the CPC Implementing Decision, as amended, and the CPC Data Protection Guidelines attempt to provide further clarifications. That being said, the EDPS remains concerned about several aspects of the rules for case closures and data retention in the CPCS, as discussed below in Sections 3.1.2 to 3.1.4.

14. The EDPS recommends that these concerns be addressed at the next revision of the legal framework for the CPCS, via a further amendment of the CPC Implementing Decision, or, preferably, via an amendment to the CPC Regulation itself.

15. Until such time as such legislative action will be possible, the EDPS recommends that the concerns regarding retention periods be addressed at the practical, technical, and organisation level and also be clearly set forth in the 'Consumer Protection Cooperation Network: Operating Guidelines' referred to in Section 3.1.2 below.

#### 3.1.2. *Timely case closures*

16. The Second CPC Amendment fails to set a final date by which a case involving a mutual assistance request (information request or enforcement request) must be closed.

17. In the Prior Checking Opinion, the EDPS takes note of a number of pragmatic measures that the Commission is currently taking to help ensure that dormant cases are closed in a timely manner.

18. In this Opinion, the EDPS recommends that maximum timeframes should be established for requests for information and requests for enforcement. These should be specified in the legislative framework when it will be reviewed next. The timeframes should be linked to the type of case as well as to actual activity. At the same time, the rules should also provide flexibility to the competent authorities to extend the case for good reason, to ensure that cases are not closed prematurely even if a complex case takes longer than average to close.

19. To do this, the EDPS recommends using as point of departure the document entitled the 'Consumer Protection Cooperation Network: Operating Guidelines' endorsed by

the CPC Committee on 6 December 2010. The Operating Guidelines, in point 2.7 under the title 'phases and timelines in a CPC case', discuss typical case flows and provide that information requests, on average, should be handled within a period of one to three months. Handling enforcement requests, according to the Operating Guidelines, should be feasible within a period of six to nine months on average (except in case of injunctions or in case of an appeal against an administrative decision where a year or more is more realistic).

#### 3.1.3. *Alerts*

20. The Second CPC Amendment introduced a new paragraph to point 2.2.2 of the Annex to the CPC Implementing Decision to require that 'founded' alerts should be removed from the database five years after they are issued (as for 'unfounded' alerts, the existing provisions already required deletion once 'an alert proves to be unfounded').

21. To put this new provision into context, the EDPS emphasises that one of his key concerns is to ensure that personal data do not remain in the CPCS database longer than necessary. This is a sensitive issue in particular with respect to alerts (which have a larger number of recipients than bilateral exchanges), and among alerts, in particular with respect to those regarding suspected infringements. In practice, the lack of a clear time limit for keeping the alert open would mean that some alerts could remain outstanding for an unduly long period of time (so long as they are not clearly proved to be unfounded). Such actions based on unconfirmed suspicions would pose significant risks to the fundamental right of data protection, as well as to other fundamental rights such as the presumption of innocence.

22. Against this background, the EDPS is pleased that a retention period has been established for alerts. However, the EDPS considers that the Commission has not provided adequate justification to show that a five-year retention period would be proportionate. The EDPS recommends that the Commission carries out a proportionality assessment and reassesses the length of the retention period for alerts. In principle, all reported alerts should be deleted from the database much earlier, unless an alert on an infringement or a suspected infringement has led to a mutual assistance request and the cross-border investigation or enforcement action is still ongoing. The retention period should be long enough to allow each authority who receives the message to establish whether it wishes to take further investigative steps or enforcement action, and whether it wishes to send a mutual assistance request via CPCS; however, it should be sufficiently short to minimise the risks that alerts could be misused for black-listing or data mining.

23. In this perspective, the EDPS recommends that the Commission should revise the legal framework to ensure that alerts should be deleted at the latest six months following their upload, unless another, more appropriate retention period can be justified.

24. This should help ensure, in particular, that in cases where the suspicion has not been confirmed (or even investigated further), innocent individuals linked to the suspicion would not be kept on a 'black-list' and 'under suspicion' for an unduly long period of time, which would not be in conformity with Article 6(e) of Directive 95/46/EC.

25. This limitation is also necessary to ensure the principle of data quality (see Article 6(d) of Directive 95/46/EC) as well as other important legal principles. This may not only result in a more adequate level of protection for the individuals, but at the same time, should also allow enforcement officials to more effectively focus on relevant cases.

#### 3.1.4. Retention period for closed mutual assistance requests

26. The Second CPC Amendment added a new paragraph to point 2.15 of the Annex to the CPC Implementing Decision to require that '[a]ll other information relating to requests for mutual assistance pursuant to Article 6 of [the CPC Regulation] shall be removed from the database five years after the closure of the case'.

27. Read together with the existing text, the revised point 2.15 requires retention for five years after case closure of all information exchanges under Article 6 except:

— where erroneous data were deleted,

— where the information exchange did not generate an alert or an enforcement request, or

— where it was established that no infringement has taken place in the meaning of the CPC Regulation.

28. Indeed, as explained in the Prior Checking Opinion, the 'standard' retention time applied in CPCS following case

closure (subject to specific exceptions) appears to be five years both for information requests and enforcement requests.

29. The text of the CPC Implementing Decision as amended by the Second CPC Amendment, does not appear to be fully consistent with the CPC Regulation. In particular, Article 10(2) of the CPC Regulation makes a distinction between, on one hand, information exchanged that leads to successful enforcement (i.e. cases where the infringement has ceased as a result of the enforcement actions taken), and, on the other hand, information that has not lead to successful enforcement. For the former, a five-year retention period is foreseen once the case has been closed. For the latter, no specific provisions are set forth (except that unfounded alerts should be withdrawn and deleted).

30. In other words, the CPC Regulation requires a five-year retention period after case closure only on condition that enforcement actions were taken and they have been successful to make infringement cease.

31. Although the EDPS has doubts regarding the purpose and proportionality of retention of any data for five years until after the case is closed (see his comments further in this Section 3.1.4), the distinction between cases that ended with successful enforcement and cases that did not has some logic from the data protection point of view. In particular, retention of data regarding mere suspicions for a long period of time has a higher potential to be inaccurate, and also risks violating other important legal principles. Therefore, it can be said, in general, that retention of such data for a long period of time is more likely to raise data protection issues than retention of data regarding actual wrongdoings, which have been adequately proven and resulted in enforcement action.

32. Contrary to the CPC Regulation, the CPC Implementing Decision, as amended, appears to allow, at least in some cases, the five-year retention period to apply also to information that did not lead to successful enforcement actions.

33. For instance, according to the CPC Implementing Decision, an information request that led to an alert but did not lead to enforcement action appears to stay in the system for five years as of the 'closure of the case'.

34. The CPC Regulation and the CPC Implementing Decision, thus, each appears to follow a somewhat different approach. The CPC Implementing Decision, whilst mirroring, to some extent, the provisions of the CPC Regulation, also introduces important additional rules for retention. While clarification of the rules, in itself, is welcome, the EDPS questions the lawfulness of establishing longer retention periods where this was not already required in the CPC Regulation. This would impose further restrictions on the fundamental right to data protection, and would do so in implementing legislation, contrary to the CPC Regulation and applicable data protection laws.
35. In accordance with the foregoing, the EDPS recommends that the Commission should review the legal framework and reconsider whether the five-year retention period should apply to any other cases beyond those where a successful enforcement has taken place as it is specified in the CPC Regulation.
36. Further, the EDPS is pleased that the CPC Data Protection Guidelines aim to specify the purpose of the retention after case closure, an important issue that both the CPC Regulation and the Second CPC Amendment failed to address. In particular, the CPC Data Protection Guidelines provide that ‘during the retention period authorised enforcement officials working for the competent authority that originally dealt with a case may consult the file in order to establish links with possibly repeated infringements which contributes to a better and more efficient enforcement’ <sup>(11)</sup>.
37. However, whilst this clarification is welcome, in the absence of further justification of the necessity of this access, the EDPS is not convinced of the proportionality and sufficiency of this purpose to justify the five-year retention period. Therefore, the EDPS recommends that the Commission should:
- clarify further what is the purpose of the five-year data retention;
  - evaluate whether a shorter retention period would allow achieving the same objectives; and
- evaluate whether all information currently foreseen needs to be retained or a subset of the information would suffice (e.g. it should be considered whether retaining Article 8.6 notifications only would be sufficient; it should also be specifically evaluated whether retaining the directors’ names or attachments that may contain additional personal data are necessary; a distinction should also be made between data relating to suspected infringements and ‘proven’ infringements).

### 3.2. The Commission’s access to data in CPCS

38. The EDPS is pleased that (by introducing a new point 4.3 to the Annex to the CPC Implementing Decision) the Second CPC Amendment clarifies the Commission’s access to data in CPCS and that such an access is clearly and specifically limited to what is required under the CPC Regulation. In particular, the EDPS is pleased that the Commission has not been given access to confidential communications among competent authorities in Member States, such as mutual assistance requests.
39. This clarification and limitation is particularly important, considering that lack of clarity might have led to a situation where the Commission would have been able to access information, including personal data, which are destined solely for competent authorities in Member States.
40. As described in Section 5 of the CPC Data Protection Guidelines, ‘the purpose of the Commission’s access is to monitor the application of the CPC Regulation as well as the consumer protection legislation listed in the Annex to the CPC Regulation and to compile statistical information in connection with carrying out these duties’.
41. This does not mean that the Commission should have access to any and all data exchanged among Member States within CPCS.
42. Indeed, the EDPS emphasises that access to databases such as CPCS falls within the definition of processing personal data. Under Article 5(a) of Regulation (EC) No 45/2001, which is relevant to the Commission’s access rights in the CPCS, institutions may only process personal data if this is necessary for the performance of a task in the public interest, and further provided that the processing is based on the Treaties or secondary legislation.

<sup>(11)</sup> See Section 8 of the Guidelines, ‘Some additional guidance; Why is the data retention period set at 5 years?’ The CPC Data Protection Guidelines also add that ‘the purpose of the retention period is to facilitate cooperation between public authorities responsible for the enforcement of the laws that protect consumers’ interests in dealing with intra-Community infringements, to contribute to the smooth functioning of the internal market, the quality and consistency of enforcement of the laws that protect the consumers’ interest, the monitoring of the protection of consumers economic interests and to contribute to raising the standard and consistency of enforcement’.



43. The EDPS understands these requirements — which follow directly from the right to data protection as enshrined in Article 8 of the European Convention of Human Rights and Articles 7 and 8 of the Charter of Fundamental Rights of the European Union — to mean that the Commission can only have power to access the information systems of Member States if this is laid down in specific legal provisions, founded on a fully adequate legal basis (normally the ordinary legislative procedure). Legal certainty and transparency are the two underlying values which explain why a specific and secure legal basis for the Commission's access is a particularly important guarantee of ensuring the fundamental rights of individuals with respect to data protection.

44. Neither the Commission's general monitoring power as 'guardian of the Treaty' nor the obligation of Member States to ensure loyal cooperation is sufficiently precise to give the Commission access to databases containing personal data. Loyal cooperation entails that Member States should — under certain conditions — provide the Commission with information when asked to do so or when they are required to provide information under a specific rule. However, it does not entail that the Commission should have access to their databases.

45. In this context, the EDPS also emphasises that the CPC Regulation excludes the possibility for the Commission's access to the information contained in mutual assistance and enforcement requests. Article 6 and Article 8 of the CPC Regulation designate only the requested authority, and not the Commission, as recipients of these data.

### 3.3. Special categories of data in CPCS

46. The EDPS is pleased that the Second CPC Amendment introduced, in point 4.4 of the Annex to the CPC Implementing Decision, a provision to address the processing of special categories of data in CPCS. The EDPS particularly is pleased that the provision limits such processing to cases where the fulfilment of the obligations under the CPC Regulation would be 'otherwise impossible' and that processing of such data is subject to the further condition that the processing should be 'permitted under Directive 95/46/EC'.

## IV. PRIVACY BY DESIGN AND ACCOUNTABILITY

47. After discussing, in Part III, the specific issues raised by the Second CPC Amendment, the EDPS, in Parts IV to VI, wishes to call the Commission's attention to a few other points that should be considered for the further development of the legal framework for the CPCS.

### 4.1. Privacy by design

48. The EDPS has been encouraging the Commission and other EU institutions for some time to adopt technological and organisational measures integrating data protection and security as a fundamental part of the design and implementation of their information systems ('privacy by design') <sup>(12)</sup>.

49. Although he welcomes and recognises that some measures have been taken in this direction, the EDPS recommends that the Commission should make a comprehensive assessment what further privacy by design safeguards could be incorporated into the CPCS system architecture. Among others, the following should be considered and implemented as necessary:

- privacy by design solutions to guide system users to take 'adequate' data protection decisions (see Section 3.2 of the Prior Checking Opinion),
- measures to facilitate timely closure and deletion of cases (idem, Section 3.3),
- procedures to facilitate information and access rights of data subjects (idem, Section 3.5),
- clear procedures for any modification carried out directly at database level, logging access, the rationale of the action and the approval at adequate level (idem, Section 3.6), and
- 'encrypted' storage of information in the database so that IT operators cannot access it (at least for some of the data such as confidential attachments) (idem, Section 3.6).

### 4.2. Accountability

50. Further, in accordance with the principle of 'accountability' <sup>(13)</sup>, the EDPS also recommends the establishment of a clear framework for accountability that ensures data protection compliance and provides evidence thereof, such as:

<sup>(12)</sup> See Section 7 of the EDPS Opinion on the Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions — 'A comprehensive approach on personal data protection in the European Union' issued on 14 January 2011 ([http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2011/11-01-14\\_Personal\\_Data\\_Protection\\_EN.pdf](http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2011/11-01-14_Personal_Data_Protection_EN.pdf)).

<sup>(13)</sup> Idem.

- adopting and updating, as necessary, a data protection policy to be approved at the highest level of management within DG SANCO. This data protection policy should also include a security plan (see Section 3.6 of the Prior Checking Opinion) <sup>(14)</sup>,
- carrying out periodic audits to assess continued adequacy of and compliance with the data protection policy (including auditing the security plan, *idem*, Section 3.6),
- making public (at least partially) the results of these audits to reassure stakeholders with respect to data protection compliance, and
- notifying data breaches and other security incidents to the Commission DPO, affected data subjects (and other stakeholders and authorities when relevant) <sup>(15)</sup>.

## V. TRANSFER OF PERSONAL DATA BEYOND THE EUROPEAN UNION

### 5.1. Bilateral arrangements

51. Article 14(2) of the CPC Regulation provides that information communicated under the CPC Regulation may also be communicated to an authority of a third country by a competent authority under a bilateral assistance agreement with the third country provided that (i) the competent authority that originally communicated the information has given its consent and that (ii) the transfer is in accordance with applicable EU data protection law.
52. Articles 25 and 26 of Directive 95/46/EC subject transfers to third countries to certain additional conditions. These conditions are aimed at ensuring that the data will be adequately protected abroad. In addition, they also provide for a number of exceptions. Implementation and interpretation of these provisions of Directive 95/46/EC may differ from one Member State to another.
53. In light of the above, the EDPS can accept the safeguards included in the CPC Regulation, namely, that any third country transfer is subject to both (i) the consent of the competent authority that originally communicated the information and (ii) applicable EU data protection law.

<sup>(14)</sup> The Commission should also consider, as necessary, carrying out at least a partial data protection and privacy impact assessment focusing on the purpose, length and modalities of the retention period and possibly, discuss other outstanding issues that have not yet been comprehensively addressed.

<sup>(15)</sup> See Section 6.3 of the EDPS Opinion of 14 January 2011 referred above.

54. The EDPS also is pleased that the CPC Data Protection Guidelines recommend that — unless the third country ensures an adequate level of protection — any bilateral assistance agreement should provide for adequate data protection safeguards and — where this is required — the agreement should also be notified to the relevant data protection supervisory authorities.
55. That being said, the arrangements laid down in the CPC Regulation are not ideal. Their application is complex: a competent authority deciding whether to transfer information to a third country would need to take into account not only its own country's bilateral arrangement with the third country, its own country's data protection laws, and its own assessment of the adequacy of the data transfer to the third country in question based on its own country's data protection laws, but would also need to take into account whether or not the other competent authorities involved that contributed to the file (and there may be several of them) have given their consent, based on their own data protection laws.

56. From the data protection point of view, this complexity leads to uncertainties as to the rights of the data subject, and in particular, uncertainties whether and on what conditions his or her data are transferred abroad. Data subjects are also not benefitting, to the fullest extent possible, from a solid and harmonised European data protection law. In addition, from the point of view of the competent authorities, this complexity is also likely to hinder cooperation among competent authorities, and poses an administrative burden.

57. In light of the above, the EDPS encourages the conclusion of EU-wide agreements that provide for adequate data protection safeguards while at the same time also help avoid the application of heterogeneous criteria and the resulting increased administrative burden on competent authorities.

### 5.2. EU-wide agreements

58. In addition to the possibility foreseen in Article 14 for bilateral cooperation, Article 18 of the CPC Regulation on international agreements also provides that the 'Community shall cooperate with third countries and with the competent international organisations' and that 'the arrangements for cooperation, including the establishment of mutual assistance arrangements, may be the subject of agreements between the Community and the third countries concerned'.



59. For the reasons set forth in Section 5.1 above, the EDPS supports the Commission in its initiative to negotiate and conclude EU-wide agreements, with adequate data protection safeguards, harmonised at the EU level, to replace the existing bilateral arrangements.

60. His support for such EU-wide agreements, however, is conditional upon the commitment of the Commission and EU legislators to ensure the highest level of protection for the personal data exchanges with third countries. The implications of international cooperation agreements with third countries must be carefully considered from the data protection point of view, clear rules must be established to govern these exchanges and adequate data protection safeguards must be provided, on a basis of a consultation of the EDPS and, where appropriate, of national data protection authorities.

61. Although Article 18 of the CPC Regulation does not specifically address the issue of direct access to the CPCS by third country authorities, this may be technically possible. The EDPS does not wish to discourage that new functionalities would be included in the CPCS to allow competent authorities in third countries strictly limited and selective access via a specifically designed mechanism (communication channel and interface). This could indeed increase the efficiency of the cooperation.

62. With that said, such a direct access has its own risks and therefore, its data protection implications and the necessary technical/organisational arrangements and safeguards must be specifically addressed. Any such technical functionality should be built using 'privacy by design' principles. Security should also be a clear priority. Finally, the EDPS should be consulted, as well as, where appropriate, national data protection authorities.

#### **VI. 'CONSUMER DATA PROTECTION RIGHTS' AND REINFORCED COOPERATION, VIA THE CPCS, OF DATA PROTECTION AUTHORITIES**

63. Provided that the EDPS recommendations (including also those in his Prior Checking Opinion) are followed, the EDPS is confident that CPCS can be an effective and data-protection-friendly tool for cross-border enforcement against infringements of rights of the consumers in the internal market.

64. With the development of electronic commerce and the growing use of electronic communications networks by consumers of various products and services, more and

more individuals' data will be processed when they are acting as consumers. Consumers may, thus, also increasingly face infringements of their rights with respect to data protection. Consequently, there is also a need for data protection authorities to effectively cooperate to stop such infringements.

65. Among the most common cases of a breach of 'consumer data protection rights' are unsolicited commercial communications (spam), identity theft, illegal profiling, unlawful behavioural advertising and data breaches (security breaches).

66. Given that the number of cases of a cross-border nature is likely to increase in the information society, the EDPS encourages the Commission to consider possible legislative measures to protect 'consumer data protection rights', and to reinforce trans-border cooperation among competent authorities: data protection as well as consumer protection authorities.

67. In particular, and while also considering other possible options, it should be carefully considered whether to allow data protection authorities tailor-made access to CPCS, in order to cooperate among themselves as well as with other competent authorities which already have access to CPCS.

68. Access by data protection authorities should be clearly limited to what is necessary to carry out their tasks within their areas of competence and according to the synergies identified. Of course, it should also be ensured that the framework for the participation of data protection authorities should be designed to take due account of their independence.

#### **VII. CONCLUSIONS**

69. The EDPS is pleased that CPCS is founded on a legal basis, which also provides specific data protection safeguards. To address any remaining data protection concerns, the EDPS notes that the recommendations summarised below should be considered when the legal framework for the CPCS will be next reviewed.

70. In the interim, additional measures taken at the practical, technical and organisational level (as recommended in the Prior Checking Opinion) may provide a partial interim solution to address these concerns. Awaiting legislative changes, some changes may also be introduced via the CPCS Operating Guidelines.

71. With regard to the retention period, the EDPS recommends that (i) mutual assistance requests should be closed within specifically designated time limits; (ii) unless investigation or enforcement is ongoing, alerts should be withdrawn and deleted within six months of issuance (unless another, more appropriate retention period can be justified); and (iii) the Commission should clarify and reconsider the purpose and proportionality of keeping all data relating to closed cases for five additional years.
72. Further, the EDPS is pleased that the Second CPC Amendment clarifies the Commission's access to data in CPCS. In particular, the EDPS is pleased that the Commission has no access to confidential communications among competent authorities in Member States, such as mutual assistance requests.
73. The EDPS also is pleased that the Second CPC Amendment introduced a provision to address the processing of special categories of data in CPCS.
74. As additional points, the EDPS recommends that the Commission should re-assess what additional technical and organisational measures to take to ensure that privacy and data protection are 'designed' into the CPCS system architecture ('privacy by design') and that adequate controls are in place to ensure data protection compliance and provide evidence thereof ('accountability').
75. Further, if an EU-wide agreement between the European Union and any third country is to be concluded to govern consumer protection cooperation, the implications of these arrangements must be carefully considered, clear rules must be established to govern these exchanges and adequate data protection safeguards must be provided.
76. Finally, the EDPS recommends that the Commission should explore the possible synergies that might arise if data protection authorities were enabled to join the user community of CPCS to cooperate to help enforce 'consumer data protection rights'.

Done at Brussels, 5 May 2011.

Giovanni BUTTARELLI  
*Assistant European Data Protection Supervisor*

## IV

(Notices)

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

## COUNCIL

## COUNCIL DECISION

of 18 July 2011

**appointing the members and alternate members of the Governing Board of the European Agency for Safety and Health at Work for Germany, Hungary and Portugal**

(2011/C 217/07)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 2062/94 of 18 July 1994 establishing a European Agency for Safety and Health at Work <sup>(1)</sup>, and in particular Article 8 thereof,

Having regard to the list of proposed candidates for appointment submitted to the Council by the Government of Hungary and by the employees' organisations,

Having regard to the lists of members and alternate members of the Advisory Committee on Safety and Health at Work,

Whereas:

- (1) By Decisions of 22 November 2010 <sup>(2)</sup>, 7 March 2011 <sup>(3)</sup> and 21 March 2011 <sup>(4)</sup> the Council appointed some members and alternate members of the Governing Board of the European Agency for Safety and Health at Work for the period from 8 November 2010 to 7 November 2013.

<sup>(1)</sup> OJ L 216, 20.8.1994, p. 1.  
<sup>(2)</sup> OJ C 322, 27.11.2010, p. 3.  
<sup>(3)</sup> OJ C 83, 17.3.2011, p. 2.  
<sup>(4)</sup> OJ C 92, 24.3.2011, p. 8.

- (2) The Government of Hungary has submitted nominations for two posts to be filled for Hungary and the employees' organisations have submitted nominations for a number of posts to be filled for Germany and Portugal,

HAS ADOPTED THIS DECISION:

*Article 1*

The following shall be appointed members and alternate members of the Governing Board of the European Agency for Safety and Health at Work for the period ending on 7 November 2013:

## I. GOVERNMENT REPRESENTATIVES

Country	Members	Alternate members
Hungary	Mr János GÁDOR	Ms Éva GRÓNAI

## II. REPRESENTATIVES OF EMPLOYEES' ORGANISATIONS

Country	Members	Alternate members
Germany	Ms Marina SCHRÖDER	Mr Thomas VEIT
Portugal	Mr Fernando José GOMES	

*Article 2*

The Council will appoint the members and alternate members not yet nominated at a later date.

*Article 3*

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 18 July 2011.

*For the Council*  
*The President*  
M. DOWGIELEWICZ

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**COUNCIL DECISION**  
**of 18 July 2011**  
**appointing members and alternate members of the European Social Fund Committee**  
(2011/C 217/08)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 163 thereof,

Having regard to Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund <sup>(1)</sup>, and in particular Article 104(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 22 February 2010, the Council appointed the membership of the European Social Fund Committee (the 'Committee') for the period up to 31 December 2012 <sup>(2)</sup>.
- (2) In the meantime, the seats of various members have become vacant as a result of resignations.
- (3) Pending the nomination of a representative or an alternate member for one of the categories referred to in Article 104(1) of Regulation (EC) No 1083/2006 by

Ireland and Spain, the representatives and alternate members already nominated should nevertheless be appointed to the Committee for the remainder of the current term of office,

HAS ADOPTED THIS DECISION:

*Article 1*

The persons listed in the Annex are hereby appointed members or alternate members of the European Social Fund Committee until 31 December 2012.

*Article 2*

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 18 July 2011.

*For the Council*  
*The President*  
M. DOWGIELEWICZ

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<sup>(1)</sup> OJ L 210, 31.7.2006, p. 25.

<sup>(2)</sup> OJ C 53, 3.3.2010, p. 2.

## ANNEX

## List of members and alternate members

Member State	Representing	Member	Name
Belgium	Government	Member	Mr Louis VERVLOET
	Government	Alternate	Ms Viviane DE BEULE
	Employers	Member	Ms Michèle CLAUS
	Employers	Alternate	Mr Werner ABELSHAUSEN
	Trade Union	Member	Mr Hervé DECUYPER
	Trade Union	Alternate	Ms Vera DOS SANTOS COSTA
Bulgaria	Government	Member	Ms Zornitza RUSSINOVA
	Government	Alternate	Ms Monika DIMITROVA
	Employers	Member	Mr Boyko NEDYALKOV
	Employers	Alternate	Mr Dimitar BRANKOV
	Trade Union	Member	Mr Plamen DIMITROV
	Trade Union	Alternate	Mr Dimitar MANOLOV
Czech Republic	Government	Member	Ms Iva ŠOLCOVÁ
	Government	Alternate	Mr Michal ZAORÁLEK
	Employers	Member	Ms Soňa VAN DEELENOVÁ
	Employers	Alternate	Mr Miloslav ŠOLC
	Trade Union	Member	Mr Pavel JANÍČKO
	Trade Union	Alternate	Ms Hana MÁLKOVÁ
Denmark	Government	Member	Ms Pernille VON LILLIENSKJOLD
	Government	Alternate	Mr Steen FREDERIKSEN
	Employers	Member	Mr Henning GADE
	Employers	Alternate	Ms Berit TOFT FIHL
	Trade Union	Member	Mr Preben FOLDBERG
	Trade Union	Alternate	Mr Jens KROGSTRUP
Germany	Government	Member	Mr Arnold HEMMANN
	Government	Alternate	Ms Inken KLASSEN
	Employers	Member	Ms Julia KAUTE
	Employers	Alternate	Mr Jürgen WUTTKE
	Trade Union	Member	Ms Inge KAUFMANN
	Trade Union	Alternate	Mr Hermann NEHLS
Estonia	Government	Member	Mr Margus HAIDAK
	Government	Alternate	Ms Merlin TATRIK
	Employers	Member	Ms Kristina TÄHT
	Employers	Alternate	Ms Eve PÄÄRENDSON
	Trade Union	Member	Ms Kaja TOOMSALU
	Trade Union	Alternate	Ms Mare VIIES
Ireland	Government	Member	Mr Vincent LANDERS
	Government	Alternate	Mr. Tom WHELAN
	Employers	Member	Ms Kara McGANN
	Employers	Alternate	Ms Heidi LOUGHEED
	Trade Union	Member	Ms Sheila NUNAN
	Trade Union	Alternate	—



Member State	Representing	Member	Name
Greece	Government	Member	Mr Christos DIKOS
	Government	Alternate	Ms Konstantina MICHPOYLOY
	Employers	Member	Mr Lambros PAPAIOANNOU
	Employers	Alternate	Ms Ekaterini DASKALAKI
	Trade Union	Member	Mr Dimitros TSOUKALAS
	Trade Union	Alternate	Mr Vasilios PAPADOGAMVROS
Spain	Government	Member	Mr Carlos TORTUERO MARTÍN
	Government	Alternate	Mr David GARCÍA LÓPEZ
	Employers	Member	—
	Employers	Alternate	Ms Cristina REGALADO MARTÍN
	Trade Union	Member	Ms Ana MICÓ MAESTRE
	Trade Union	Alternate	Ms Ana HERMOSO CANOURA
France	Government	Member	Ms Corinne VAILLANT
	Government	Alternate	Mr Laurent SENN
	Employers	Member	Mr Christophe CORIOU
	Employers	Alternate	Ms Natacha MARQUET
	Trade Union	Member	Ms Cécile COTTEREAU
	Trade Union	Alternate	Mr Alain ALPHON-LAYRE
Italy	Government	Member	Ms Paola PADUANO
	Government	Alternate	Ms Alessandra TOMAI
	Employers	Member	Mr Claudio GENTILI
	Employers	Alternate	Ms Silvia CIUFFINI
	Trade Union	Member	Mr Luigi VELTRO
	Trade Union	Alternate	Ms Giulia TAVERNESE
Cyprus	Government	Member	Mr Alexandros ALEXANDROU
	Government	Alternate	Ms Antzela DROUSSIOU
	Employers	Member	Mr Emilios MICHAEL
	Employers	Alternate	Ms Maria STYLIANOU
	Trade Union	Member	Mr Nicos GREGORIOU
	Trade Union	Alternate	Mr Andreas MATSAS
Latvia	Government	Member	Ms Kristīne ANCĀNES
	Government	Alternate	Ms Elīna DRĀZNIECE
	Employers	Member	Ms Inese STEPĪNAS
	Employers	Alternate	Ms Ilona KIUKUCĀNE
	Trade Union	Member	Ms Linda ROMELE
	Trade Union	Alternate	Ms Liene LIEKNA
Lithuania	Government	Member	Mr Ramūnas DILBA
	Government	Alternate	Ms Nijolė MACKEVIČIENĖ
	Employers	Member	Mr Vaidotas LEVICKIS
	Employers	Alternate	Mr Mykolas ALELIŪNAS
	Trade Union	Member	Ms Irena PETRAITIENĖ
	Trade Union	Alternate	Ms Janina ŠVEDIENĖ

Member State	Representing	Member	Name
Luxembourg	Government	Member	Ms Patrice FURLANI
	Government	Alternate	Mr Daniel CODELLO
	Employers	Member	Mr Romain LANNERS
	Employers	Alternate	Mr François ENGELS
	Trade Union	Member	Ms Carole BIVER
	Trade Union	Alternate	Mr Nico CLEMENT
Hungary	Government	Member	Ms Renáta TÓTH
	Government	Alternate	Ms Katalin SZATMÁRI
	Employers	Member	Ms Terézia BOROSNÉ BARTHA
	Employers	Alternate	Mr László KRIZSÁN
	Trade Union	Member	Ms Erzsébet HANTI
	Trade Union	Alternate	Mr László KOZÁK
Malta	Government	Member	Ms Jeanette BUSUTTIL
	Government	Alternate	Ms Loredana D'ARRIGO
	Employers	Member	Mr Paul ABELA
	Employers	Alternate	Mr Pierre FAVA
	Trade Union	Member	Mr Robert BORG
	Trade Union	Alternate	Mr William PORTELLI
Netherlands	Government	Member	Ms Alieke KOOPMAN
	Government	Alternate	Ms Paula LOEKEMEIJER
	Employers	Member	Mr André VAN DER LEEST
	Employers	Alternate	Mr C. SCHOENMAKERS
	Trade Union	Member	Ms I.D.C.M. COENEN
	Trade Union	Alternate	Mr W.J.F. MUIS
Austria	Government	Member	Ms Petra DRAXL
	Government	Alternate	Ms Ulrike REBHANDL
	Employers	Member	Ms Anna Katharina HUBER
	Employers	Alternate	Mr Wolfgang TRITREMEL
	Trade Union	Member	Mr Franz FRIEHS
	Trade Union	Alternate	Ms Silvia HOFBAUER
Poland	Government	Member	Mr Paweł CHORAŹY
	Government	Alternate	Ms Dorota BORTNOWSKA
	Employers	Member	Mr Norbert PRUSZANOWSKI
	Employers	Alternate	Mr Marek RADECKI
	Trade Union	Member	Ms Agata BARANOWSKA-GRYCUK
	Trade Union	Alternate	Ms Grażyna RÓŻANEK
Portugal	Government	Member	Ms Rosa Maria SIMÕES DA SILVA
	Government	Alternate	Ms Maria DO CARMO ABREU
	Employers	Member	Ms Clara GUERREIRO
	Employers	Alternate	Ms Adília LISBOA
	Trade Union	Member	Mr António Luís FERREIRA CORREIA
	Trade Union	Alternate	Mr Tiago M.P. SIMÕES DA CUNHA

Member State	Representing	Member	Name
Romania	Government	Member	Ms Liliana-Carmen IONEL
	Government	Alternate	Ms Elena Carmen DOBROTA
	Employers	Member	Mr Ovidiu NICOLESCU
	Employers	Alternate	Mr Dragoş MIHALACHE
	Trade Union	Member	Ms Mariana KNIESNER
	Trade Union	Alternate	Ms Carmen IONESCU
Slovenia	Government	Member	Ms Jasminka DEDIĆ
	Government	Alternate	Mr Gorazd JENKO
	Employers	Member	Ms Grit ACKERMANN
	Employers	Alternate	Ms Janja MEGLIČ
	Trade Union	Member	Ms Staša PERNAT LESJAK
	Trade Union	Alternate	Ms Andreja POJE
Slovakia	Government	Member	Ms Zuzana POLÁČKOVÁ
	Government	Alternate	Mr Roderik KLINDA
	Employers	Member	Mr Daniel HRDINA
	Employers	Alternate	Mr Martin HOŠTÁK
	Trade Union	Member	Ms Naile PROKEŠOVÁ
	Trade Union	Alternate	Mr Milan BUŠO
Finland	Government	Member	Ms Lippe KOIVUNEN
	Government	Alternate	Ms Sirpa LILJESTRÖM
	Employers	Member	Ms Riitta WÄRN
	Employers	Alternate	Mr Mikko RÄSÄNEN
	Trade Union	Member	Ms Auli KORHONEN
	Trade Union	Alternate	Mr Lauri KORKEAOJA
Sweden	Government	Member	Ms Ann-Christine GULLESJÖ
	Government	Alternate	Mr Håkan FORSBERG
	Employers	Member	Mr Gunnar ANDERZON
	Employers	Alternate	Mr Farbod REZANIA
	Trade Union	Member	Ms Filis SIGALA
	Trade Union	Alternate	Ms Charlotta KRAFFT
United Kingdom	Government	Member	Ms Wendy VIOLENTANO
	Government	Alternate	Mr Ian CHAPMAN
	Employers	Member	Mr Martin MORTON
	Employers	Alternate	Mr Guy BAILEY
	Trade Union	Member	Mr Alan MANNING
	Trade Union	Alternate	Mr Joe FEARNEHOUGH

# EUROPEAN COMMISSION

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

22 July 2011

(2011/C 217/09)

1 euro =

Currency			Exchange rate		
Currency			Exchange rate		
USD	US dollar	1,4391	AUD	Australian dollar	1,3234
JPY	Japanese yen	112,83	CAD	Canadian dollar	1,3658
DKK	Danish krone	7,4536	HKD	Hong Kong dollar	11,2132
GBP	Pound sterling	0,88270	NZD	New Zealand dollar	1,6625
SEK	Swedish krona	9,0787	SGD	Singapore dollar	1,7386
CHF	Swiss franc	1,1789	KRW	South Korean won	1 513,63
ISK	Iceland króna		ZAR	South African rand	9,7345
NOK	Norwegian krone	7,7675	CNY	Chinese yuan renminbi	9,2777
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,4620
CZK	Czech koruna	24,408	IDR	Indonesian rupiah	12 271,33
HUF	Hungarian forint	266,65	MYR	Malaysian ringgit	4,2756
LTL	Lithuanian litas	3,4528	PHP	Philippine peso	60,920
LVL	Latvian lats	0,7093	RUB	Russian rouble	39,8970
PLN	Polish zloty	3,9815	THB	Thai baht	42,900
RON	Romanian leu	4,2305	BRL	Brazilian real	2,2357
TRY	Turkish lira	2,4180	MXN	Mexican peso	16,7058
			INR	Indian rupee	63,8240

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

## V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON  
COMMERCIAL POLICY

## EUROPEAN COMMISSION

**Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of lever  
arch mechanisms originating in the People's Republic of China**

(2011/C 217/10)

Following the publication of a notice of impending expiry <sup>(1)</sup> of the anti-dumping measures in force on imports of lever arch mechanisms originating in the People's Republic of China ('country concerned'), the European Commission ('the Commission') has received a request for review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community <sup>(2)</sup> ('the basic Regulation').

**1. Request for review**

The request was lodged on 26 April 2011 by the following Union producers ('the applicants'): Interkov spol.s.r.o., IML Industria Meccanica Lombardia S.r.l. and Niko Metallurgical company d.d. Zelezniki representing a major proportion, in this case more than 50 % of the total Union production of lever arch mechanisms.

**2. Product**

The product under review is lever arch mechanisms for archiving sheets and other documents in binders and files, originating in the People's Republic of China ('the product concerned'), currently falling within CN code ex 8305 10 00 (TARIC code 8305 10 00 50).

**3. Existing measures**

The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 1136/2006 <sup>(3)</sup>.

**4. Grounds for the review**

The request is based on the grounds that the expiry of the measures would be likely to result in a continuation of dumping and recurrence of injury to the Union industry.

In view of the provisions of Article 2(7) of the basic Regulation, the applicants established normal value for the exporting producers from the People's Republic of China on the basis of the prices actually paid or payable in the European Union for the like product. The allegation of likelihood of continuation of dumping is based on a comparison of normal value, as set out in the preceding sentences, with the export prices of the product concerned when sold for export to the Union.

On this basis, the dumping margin calculated is significant.

The applicants have provided evidence that imports of the product concerned from the People's Republic of China have remained significant in absolute terms and in terms of market share.

The applicants further allege the likelihood of a recurrence of injurious dumping. In this respect the applicants present evidence that, should measures be allowed to lapse, the current import level of the product concerned is likely to increase due to the existence of unused capacity in the country concerned.

In addition, it is alleged that the situation of the Union industry is such that any further substantial increase of imports at dumped prices from the country concerned would be likely to result in a recurrence of injury to the Union industry should measures be allowed to lapse.

**5. Procedure**

Having determined, after consulting the Advisory Committee, that sufficient evidence exists to justify the initiation of an expiry review, the Commission hereby initiates a review in accordance with Article 11(2) of the basic Regulation.

<sup>(1)</sup> OJ C 5, 8.1.2011, p. 11.

<sup>(2)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(3)</sup> OJ L 205, 27.7.2006, p. 1.

### 5.1. *Procedure for the determination of likelihood of dumping and injury*

The investigation will determine whether the expiry of the measures would be likely, or unlikely, to lead to a continuation of dumping and a recurrence of injury.

#### (a) *Sampling*

In view of the apparent large number of parties involved in this proceeding, the Commission may decide to apply sampling, in accordance with Article 17 of the basic Regulation.

#### (i) *Sampling for exporters/producers in the People's Republic of China*

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all exporters/producers, or representatives acting on their behalf, are hereby requested to make themselves known by contacting the Commission and providing the following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone and fax numbers, and contact person,
- the turnover in local currency and the volume in units of the product concerned sold for export to the Union during the period 1 July 2010 to 30 June 2011 for each of the 27 Member States<sup>(4)</sup> separately and in total,
- the turnover in local currency and the volume in units of the product concerned sold on the domestic market during the period 1 July 2010 to 30 June 2011,
- the turnover in local currency and the volume in units for the product concerned sold to other third countries during the period 1 July 2010 to 30 June 2011,
- the precise activities of the company worldwide with regard to the product concerned,

- the names and the precise activities of all related companies<sup>(5)</sup> involved in the production and/or sales (export and/or domestic) of the product concerned,

- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have cooperated in the investigation. The consequences of non-cooperation are set out in point 8 below.

In order to obtain the information it deems necessary for the selection of the sample of exporters/producers, the Commission will, in addition, contact the authorities of the People's Republic of China, and any known associations of exporters/producers.

#### (ii) *Sampling for importers*

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all importers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission and to provide the following information on their company or companies within the time limit set in point 6(b)(i) and in the formats indicated in point 7:

- name, address, e-mail address, telephone and fax numbers, and contact person,
- the precise activities of the company with regard to the product concerned,
- the volume in units and value in euro of imports into and resales made on the Union market during the period 1 July 2010 to 30 June 2011 of the imported product concerned originating in the People's Republic of China,

<sup>(4)</sup> The 27 Member States of the European Union are: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

<sup>(5)</sup> For guidance on the meaning of related companies, please refer to Article 143 of Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).



— the names and the precise activities of all related companies <sup>(6)</sup> involved in the production and/or sales of the product concerned,

— any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is chosen to be part of the sample, this will imply replying to a questionnaire and accepting an on-the-spot investigation of its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have cooperated in the investigation. The consequences of non-cooperation are set out in point 8 below.

In order to obtain the information it deems necessary for the selection of the sample of importers, the Commission will, in addition, contact any known associations of importers.

#### (iii) Sampling for Union producers

The Commission has provisionally selected a sample of Union producers. Details can be found in the file for inspection by interested parties. Interested parties are hereby invited to consult the file (for this they should contact the Commission using the contact details provided in Section 7 below) and to comment on the appropriateness of this choice within 15 days of the date of publication of this notice in the *Official Journal of the European Union*.

All known Union producers and associations of Union producers will be notified by the Commission of the companies finally selected to be in the sample.

#### (iv) Final selection of the samples

All interested parties wishing to submit any relevant information regarding the selection of the samples must do so within the time limit set in point 6(b)(ii).

The Commission intends to make the final selection of the samples after having consulted the parties concerned that have expressed their willingness to be included in the sample.

Companies included in the samples must reply to a questionnaire within the time limit set in point 6(b)(iii) and must cooperate within the framework of the investigation.

If sufficient cooperation is not forthcoming, the Commission may base its findings, in accordance with Articles 17(4) and 18 of the basic Regulation, on the facts available. A finding based on facts available may be less advantageous to the party concerned, as explained in point 8.

#### (b) Questionnaires

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled Union producers and to any known association of producers in the Union, to the sampled exporters/producers in the People's Republic of China and to any known association of exporters/producers, to the sampled importers, to any known association of importers, and to the authorities of the country concerned.

#### (c) Collection of information and holding of hearings

All interested parties are hereby invited to make their views known, submit information other than questionnaire replies and to provide supporting evidence. This information and supporting evidence must reach the Commission within the time limit set in point 6(a)(ii).

Furthermore, the Commission may hear interested parties, provided that they make a request showing that there are particular reasons why they should be heard. This request must be made within the time limit set in point 6(a)(iii).

#### (d) Basis for determining normal value

In the previous investigation the prices actually paid or payable in the Union were used for the purpose of establishing normal value in respect of the People's Republic of China. The Commission intends to contact producers in other market economy third countries such as India, Iran and Thailand for the purpose of establishing normal value in respect of the People's Republic of China. Should cooperation not be forthcoming, the Commission envisages using the prices actually paid or payable in the Union again for this purpose. Interested parties are hereby invited to comment on the appropriateness of this basis for establishing normal value within the specific time limit set in point 6(c).

<sup>(6)</sup> See footnote 5.

## 5.2. Procedure for the assessment of Union interest

In accordance with Article 21 of the basic Regulation and in the event that the likelihood of a continuation of dumping and injury is confirmed, a determination will be made as to whether maintaining the anti-dumping measures would not be against the Union interest. For this reason, the Commission may send questionnaires to the known Union industry, importers, their representative associations, representative users and representative consumer organisations. Such parties, including those not known to the Commission, provided that they prove that there is an objective link between their activity and the product concerned, may, within the general time limits set in point 6(a)(ii), make themselves known and provide the Commission with information. The parties which have acted in conformity with the preceding sentence may request a hearing, setting out the particular reasons why they should be heard, within the time limit set in point 6(a)(iii). It should be noted that any information submitted pursuant to Article 21 of the basic Regulation will only be taken into account if supported by factual evidence at the time of submission.

## 6. Time limits

### (a) General time limits

#### (i) For parties to request a questionnaire

All interested parties who did not cooperate in the investigation leading to the measures subject to the present review should request a questionnaire or other claim forms as soon as possible, but not later than 15 days after the publication of this notice in the *Official Journal of the European Union*.

#### (ii) For parties to make themselves known, to submit questionnaire replies and any other information

All interested parties, if their representations are to be taken into account during the investigation, must make themselves known by contacting the Commission, present their views and submit questionnaire replies or any other information within 37 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. Attention is drawn to the fact that the exercise of most procedural rights set out in the basic Regulation depends on the party's making itself known within the aforementioned period.

Companies selected in a sample must submit questionnaire replies within the time limit specified in point 6(b)(iii).

#### (iii) Hearings

All interested parties may also apply to be heard by the Commission within the same 37-day time limit.

### (b) Specific time limit in respect of sampling

#### (i) The information specified in points 5.1(a)(i) and 5.1(a)(ii) should reach the Commission within 15 days

of the date of publication of this notice in the *Official Journal of the European Union*, given that the Commission intends to consult parties concerned that have expressed their willingness to be included in the sample on its final selection within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

#### (ii) All other information relevant for the selection of the samples as referred to in 5.1(a)(iv) must reach the Commission within a period of 21 days of the publication of this notice in the *Official Journal of the European Union*.

#### (iii) The questionnaire replies from sampled parties must reach the Commission within 37 days from the date of the notification of their inclusion in the sample, unless otherwise specified.

### (c) Specific time limit for the basis for determining normal value

Parties to the investigation may wish to comment upon the appropriateness of India, Iran or Thailand or other market economy country which could be envisaged as a market economy country for the purpose of establishing normal value in respect of the People's Republic of China or, if cooperation from these third countries is not forthcoming, the prices actually paid or payable in the Union which is envisaged in the alternative for establishing normal value in respect of the People's Republic of China. These comments must reach the Commission within 10 days of the date of publication of this notice in the *Official Journal of the European Union*.

## 7. Instructions for making written submissions and sending completed questionnaires and correspondence

All written submissions, including the information requested in this notice, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Limited' (7).

Interested parties providing 'Limited' information are required to furnish non-confidential summaries of it pursuant to Article 19(2) of the basic Regulation, which will be labelled 'For inspection by interested parties'. These summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If an interested party providing confidential information does not furnish a non-confidential summary of it in the requested format and quality, such confidential information may be disregarded.

(7) A 'Limited' document is a document which is considered confidential pursuant to Article 19 of Council Regulation (EC) No 1225/2009 (OJ L 343, 22.12.2009, p. 51) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement). It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

For this investigation, the Commission will use an electronic document management system. Interested parties are requested to make all submissions and requests in electronic format (the non-confidential submissions via e-mail, the confidential ones on CD-R/DVD), and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. However, any powers of attorney and signed certifications accompanying questionnaire replies or any updates thereof, shall be submitted on paper, i.e. by post or by hand, at the address below. Pursuant to Article 18(2) of the basic Regulation if an interested party cannot provide its submissions and requests in electronic format, it must immediately inform the Commission. For further information concerning correspondence with the Commission, interested parties may consult the relevant web page on the website of Directorate-General for Trade: <http://ec.europa.eu/trade/tackling-unfair-trade/trade-defence/>

Commission address for correspondence:

European Commission  
Directorate-General for Trade  
Directorate H  
Office: N105 04/092  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË

Fax +32 22963307  
E-mail: [trade-lever-arch-dumping@ec.europa.eu](mailto:trade-lever-arch-dumping@ec.europa.eu); [trade-lever-arch-injury@ec.europa.eu](mailto:trade-lever-arch-injury@ec.europa.eu)

#### 8. Non-cooperation

In cases in which any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made, in accordance with Article 18 of the basic Regulation, of the facts available. If an interested party does not cooperate or cooperates only partially, and use of facts available is made, the result may be less favourable to that party than if it had cooperated.

#### 9. Schedule of the investigation

The investigation will be concluded, according to Article 11(5) of the basic Regulation, within 15 months of the date of the publication of this notice in the *Official Journal of the European Union*.

#### 10. Possibility to request a review under Article 11(3) of the basic Regulation

As this expiry review is initiated in accordance with the provisions of Article 11(2) of the basic Regulation, the findings thereof will not lead to the level of the existing measures being amended but will lead to those measures being repealed or maintained in accordance with Article 11(6) of the basic Regulation.

If any party to the proceeding considers that a review of the level of the measures is warranted so as to allow for the possibility to amend (i.e. increase or decrease) the level of the measures, that party may request a review in accordance with Article 11(3) of the basic Regulation.

Parties wishing to request such a review, which would be carried out independently of the expiry review mentioned in this notice, may contact the Commission at the address given above.

#### 11. Processing of personal data

It is noted that any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council 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>(8)</sup>.

#### 12. Hearing Officer

It is also noted that if interested parties consider that they are encountering difficulties in the exercise of their rights of defence, they may request the intervention of the Hearing Officer of Directorate-General for Trade. He acts as an interface between the interested parties and the Commission services, offering, where necessary, mediation on procedural matters affecting the protection of their interests in this proceeding, in particular with regard to issues concerning access to file, confidentiality, extension of time limits and the treatment of written and/or oral submission of views. For further information and contact details interested parties may consult the Hearing Officer's web pages of the website of the Directorate-General for Trade (<http://ec.europa.eu/trade>).

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



V *Announcements*

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

**European Commission**

2011/C 217/10	Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of lever arch mechanisms originating in the People's Republic of China .....	35
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