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Information and Notices

Notice No | Contents | Page

I *Resolutions, recommendations and opinions*

OPINIONS

European Data Protection Supervisor

2012/C 175/01 Opinion of the European Data Protection Supervisor on the Commission proposals for a Directive on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, and for a Regulation on prudential requirements for credit institutions and investment firms 1

II *Information*

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

European Commission

2012/C 175/02 Communication in accordance with Article 12(5)(a) of Council Regulation (EEC) No 2913/92 on the information provided by the customs authorities of the Member States concerning the classification of goods in the customs nomenclature 9

EN

Price:
EUR 3

(Continued overleaf)

Notice No | Contents (continued) | Page

2012/C 175/03 Non-opposition to a notified concentration (Case COMP/M.6555 — Posco/MC/MCHC/JV) [1] 10

2012/C 175/04 Non-opposition to a notified concentration (Case COMP/M.6604 — CPPIB/Atlantia/Grupo Costanera) [1] 10

III *Preparatory acts*

European Central Bank

2012/C 175/05 Opinion of the European Central Bank of 25 April 2012 on a proposal for a regulation of the European Parliament and of the Council on European venture capital funds and on a proposal for a regulation of the European Parliament and of the Council on European social entrepreneurship funds (CON/2012/32) 11

IV *Notices*

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

European Commission

2012/C 175/06 Euro exchange rates 17

NOTICES FROM MEMBER STATES

2012/C 175/07 Commission information notice pursuant to the procedure laid down in Article 17(5) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council on common rules for the operation of air services in the Community — New invitation to tender in respect of the operation of scheduled air services in accordance with public service obligations [1] 18

EN

[1] Text with EEA relevance

(Continued on inside back cover)

I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN DATA PROTECTION SUPERVISOR

Opinion of the European Data Protection Supervisor on the Commission proposals for a Directive on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, and for a Regulation on prudential requirements for credit institutions and investment firms

(2012/C 175/01)

THE EUROPEAN DATA PROTECTION SUPERVISOR,

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

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 [1],

Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [2], and in particular Article 28(2) thereof,

HAS ADOPTED THE FOLLOWING OPINION:

1. INTRODUCTION

1.1. Consultation of the EDPS

1. This Opinion is part of a package of 4 EDPS' Opinions relating to the financial sector, all adopted on the same day [3].

2. On 20 July 2011, the Commission adopted two proposals concerning the revision of the banking legislation. The first proposal concerns a Directive on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (the 'proposed Directive') [4]. The second proposal concerns a Regulation on prudential requirements for credit institutions and investment firms (the proposed 'Regulation') [5]. These proposals were sent to the EDPS for consultation on the same day. On 18 November 2011, the Council of the European Union consulted the EDPS on the proposed Directive.

3. The EDPS was informally consulted prior to the adoption of the proposed Regulation. The EDPS notes that several of his comments have been taken into account in the proposal.

4. The EDPS welcomes the fact that he is consulted by the Commission and the Council and recommends that a reference to the present Opinion is included in the preamble of the instruments adopted.

[1] OJ L 281, 23.11.1995, p. 31.
[2] OJ L 8, 12.1.2001, p. 1.
[3] EDPS Opinions of 10 February 2012 on the legislative package on the revision of the banking legislation, credit rating agencies, markets in financial instruments (MIFID/MIFIR) and market abuse.
[4] COM(2011) 453.
[5] COM(2011) 452.

1.2. **Objectives and scope of the proposals**

5. The proposed legislation comprises two legal instruments: a Directive on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and a Regulation on prudential requirements for credit institutions and investment firms. The policy objectives of the proposed revision are in short to ensure the smooth operation of the banking sector and restore confidence by the operators and the public. The proposed instruments will replace Directive 2006/48/EC and Directive 2006/49/EC, which will be consequently repealed.

6. The main new elements of the proposed Directive are provisions on sanctions, effective corporate governance and provisions preventing overreliance on external credit ratings. In particular, the proposed Directive aims to introduce an effective, proportionate sanctioning regime, appropriate personal scope of administrative sanctions, publication of sanctions and mechanisms encouraging the reporting of violations. Moreover, it aims at strengthening the legislative framework regarding corporate governance and to reduce over-reliance on external ratings ([6]).

7. The proposed Regulation complements the proposed Directive by establishing uniform and directly applicable prudential requirements for credit institutions and investment firms. As stated in the explanatory memorandum, the overarching goal of the initiative is to ensure that the effectiveness of the institutional capital regulation in the EU is strengthened and its adverse impact on the financial system is contained ([7]).

1.3. **Aim of the Opinion of the EDPS**

8. While most of the provisions of the proposed instruments relate to the pursuit of the activities of credit institutions, the implementation and application of the legal framework may in certain cases affect the rights of individuals relating to the processing of their personal data.

9. Several provisions of the proposed Directive allow for the exchange of information between the authorities of the Member States and, possibly, third countries ([8]). This information may well relate to individuals, such as the members of the management of the credit institutions, their employees and shareholders. Furthermore, under the proposed Directive competent authorities may impose sanctions directly on individuals and are obliged to publish the sanctions inflicted, including the identity of the individuals responsible ([9]). In order to facilitate the detection of violations, the proposal introduces the obligation for the competent authorities to put in place mechanisms encouraging the reporting of breaches ([10]). Moreover, the proposed Regulation obliges credit institutions and investment firms to disclose information relating to their remuneration policies, including the amounts paid segregated per categories of staff and per pay-bands ([11]). All these provisions may have data protection implications for the individuals concerned.

10. In light of the above, the present Opinion will focus on the following aspects of the package relating to privacy and data protection: 1. applicability of data protection legislation; 2. data transfers to third countries; 3. professional secrecy and use of confidential information; 4. mandatory publication of sanctions; 5. mechanisms for the reporting of breaches; 6. disclosure requirements concerning remuneration policies.

2. **ANALYSIS OF THE PROPOSALS**

2.1. **Applicability of data protection legislation**

11. Recital 74 of the proposed Directive contains a reference to the full applicability of data protection legislation. However, a reference to the applicable data protection legislation should be inserted in a substantive article of the proposals. A good example of such a substantive provision can be found in Article 22 of the proposal for a Regulation of the European Parliament and of the Council on insider

([6]) Explanatory memorandum of the proposed Directive, pp. 2-3.
([7]) Explanatory memorandum of the proposed Regulation, pp. 2-3.
([8]) See, in particular, Articles 24, 48 and 51 of the proposed Directive.
([9]) Articles 65(2) and 68 of the proposed Directive.
([10]) Article 70 of the proposed Directive.
([11]) Article 435 of the proposed Regulation.

dealing and market manipulation ([12]), which explicitly provides as a general rule that Directive 95/46/EC and Regulation (EC) No 45/2001 apply to the processing of personal data within the framework of the proposal.

12. This is particularly relevant, for example, in relation to the various provisions concerning exchanges of personal information. These provisions are perfectly legitimate but need to be applied in a way which is consistent with data protection legislation. The risk is to be avoided in particular that they could be construed as a blanket authorisation to exchange all kind of personal data. A reference to data protection legislation, also in the substantive provisions, would significantly reduce such risk.

13. The EDPS therefore suggests inserting a similar substantive provision as in Article 22 of the proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation ([13]), subject to the suggestions he made on this proposal ([14]), i.e. emphasising the applicability of existing data protection legislation and clarifying the reference to Directive 95/46/EC by specifying that the provisions will apply in accordance with the national rules which implement Directive 95/46/EC.

2.2. **Transfers to third countries**

14. Article 48 of the proposed Directive provides that the Commission may submit proposals to the Council for the negotiation of agreements with third countries seeking to ensure, among others, that the competent authorities of third countries are able to obtain the information necessary for the supervision of parent undertakings situated in their territories and having a subsidiary in one or more Member States.

15. To the extent that this information contains personal data, Directive 95/46/EC and Regulation (EC) No 45/2001 are fully applicable with regard to transfers of data to third countries. The EDPS suggests clarifying in Article 48 that in these cases such agreements must comply with the conditions for transfers of personal data to third countries laid down in Chapter IV of Directive 95/46/EC and in Regulation (EC) No 45/2001. The same should be foreseen with regard to Article 56 concerning cooperation with competent authorities of third countries agreements entered into by Member States and EBA.

16. In addition to this, in view of the risks concerned in such transfers, the EDPS recommends adding specific safeguards as has been done in Article 23 of the proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation. In the EDPS Opinion on this proposal he welcomes the use of such a provision containing appropriate safeguards, such as case-by-case assessment, ensuring the necessity of the transfer and the existence of an adequate level of protection of personal data in the third country receiving the personal data.

2.3. **Professional secrecy and use of confidential information**

17. Article 54 of the proposed Directive states that staff members of the competent authorities must respect the obligation of professional secrecy. The second subparagraph of Article 54 prohibits the disclosure of confidential information, 'except in summary or collective form, such that individual credit institutions cannot be identified […].' As it is formulated, it is not clear whether the prohibition also covers disclosure of personal information.

18. The EDPS recommends extending the prohibition of disclosing confidential information contained in the second-subparagraph of Article 54(1) to cases where individuals are identifiable (i.e. not only 'individual credit institutions'). In other words, the provision should be reformulated so as to prohibit the disclosure of confidential information, 'except in summary or collective form, such that individual credit institutions and individuals cannot be identified' (emphasis added).

([12]) Commission proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation, COM(2011) 651.
([13]) See footnote 12.
([14]) See Opinion 10 February 2012 on the Commission's proposals for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation and for a Directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation, COM(2011) 651.

2.4. **Provisions concerning publication of sanctions**

2.4.1. *Mandatory publication of sanctions*

19. One of the main objectives of the proposed package is to reinforce and approximate Member States' legal framework concerning administrative sanctions and measures. The proposed Directive provides for the power of the competent authorities to impose sanctions, not only on credit institutions, but also on the individuals materially responsible for the breach ([15]). Article 68 obliges Member States to ensure that the competent authorities publish any sanction or measure imposed for breach of the proposed Regulation or of the national provisions adopted in the implementation of the proposed Directive without undue delay, including information on the type and nature of the breach and the identity of persons responsible for it.

20. The publication of sanctions would contribute to increase deterrence, as actual and potential perpetrators would be discouraged from committing offences to avoid significant reputational damage. Likewise it would increase transparency, as market operators would be made aware that a breach has been committed by a particular person ([16]). This obligation is mitigated only where the publication would cause a disproportionate damage to the parties involved, in which instance the competent authorities shall publish the sanctions on an anonymous basis.

21. The EDPS is not convinced that the mandatory publication of sanctions, as it is currently formulated, meet the requirements of data protection law as clarified by the Court of Justice in the the *Schecke* judgment ([17]). He takes the view that the purpose, necessity and proportionality of the measure are not sufficiently established and that, in any event, adequate safeguards for the rights of the individuals should have been foreseen.

2.4.2. *Necessity and proportionality of the publication*

22. In the *Schecke* judgment, the Court of Justice annulled the provisions of a Council Regulation and a Commission Regulation providing for the mandatory publication of information concerning beneficiaries of agricultural funds, including the identity of the beneficiaries and the amounts received. The Court held that the said publication constituted the processing of personal data falling under Article 8(2) of the European Charter of Fundamental Rights (the 'Charter') and therefore an interference with the rights recognised by Articles 7 and 8 of the Charter.

23. After analysing that 'derogations and limitations in relation to the protection of personal data must apply only in so far as is strictly necessary', the Court went on to analyse the purpose of the publication and the proportionality thereof. It concluded that in that case there was nothing to show that, when adopting the legislation concerned, the Council and the Commission took into consideration methods of publishing the information which would be consistent with the objective of such publication while at the same time causing less interference with those beneficiaries.

24. Article 68 of the proposed Directive seems to be affected by the same shortcomings highlighted by the ECJ in the *Schecke* judgment. It should be borne in mind that when assessing the compliance with data protection requirements of a provision requiring public disclosure of personal information, it is of crucial importance to have a clear and well-defined purpose which the envisaged publication intends to serve. Only with a clear and well-defined purpose can it be assessed whether the publication of personal data involved is actually necessary and proportionate ([18]).

25. After reading the proposal and the accompanying documents (i.e., the impact assessment report), the EDPS is under the impression that the purpose, and consequently the necessity, of this measure is not clearly established. While the recitals of the proposal are silent on these issues, the impact assessment report merely states that the 'publication of sanctions is an important element in ensuring that sanctions have a dissuasive effect on the addressees and is necessary to ensure that sanctions have a dissuasive effect on the general public'. However, the report does not consider whether less intrusive

([15]) The personal scope of the sanctions is clarified in Article 65 of the proposed Directive establishing that Member States shall ensure that where obligations apply to institutions, financial holding companies and mixed-activity holding company, in case of a breach sanctions can be applied to the member of the management body, and to any other individuals who under national law are responsible for the breach.

([16]) See the impact assessment report, p. 42 *et seq*.

([17]) Joined Cases C-92/09 and C-93/09, *Schecke*, paragraphs 56-64.

([18]) See also in this regard EDPS Opinion of 15 April 2011 on the Financial rules applicable to the annual budget of the Union (OJ C 215, 21.7.2011, p. 13).

methods might have guaranteed the same result in terms of deterrence without interfering with the privacy rights of the individuals concerned. It does not explain, in particular why financial penalties or other types of sanctions not affecting privacy would not be sufficient.

26. Furthermore, the impact assessment report does not seem to sufficiently take into account less intrusive methods of publishing the information, such as limiting the publication to the identity of credit institutions or even considering the need for publication on a case by case basis. In particular the latter option would seem to be *prima facie* a more proportionate solution, especially if one considers that publication is itself a sanction under Article 67(2)(a) and that Article 69 provides that when determining the application of sanctions the competent authorities should take account of the relevant circumstances (i.e. case by case assessment), such as the gravity of the breach, the degree of personal responsibility, recidivism, losses for third parties, etc. The obligatory publication of sanctions in all cases under Article 68 is inconsistent with the sanctioning regime set out in Articles 67 and 69.

27. The impact assessment report dedicates only a few paragraphs to explain why the publication on a case by case basis is not a sufficient option. It states that leaving to competent authorities to decide 'if the publication is appropriate' would reduce the deterrent effect of the publication ([19]). However, in the EDPS view, it is exactly this aspect -i.e. the possibility to assess the case in light of the specific circumstances- which makes this solution a more proportionate and therefore a preferred option compared to mandatory publication in all cases. This discretion would, for example, enable the competent authority to avoid publication in cases of less serious violations, where the violation caused no significant harm, where the party has shown a cooperative attitude, etc.

2.4.3. *The need for adequate safeguards*

28. The proposed Directive should have foreseen adequate safeguards in order to ensure a fair balance between the different interests at stake. Firstly, safeguards are necessary in relation to the right of the accused persons to challenge the decision before a court and the presumption of innocence. Specific language ought to have been included in the text of Article 68 in this respect, so as to oblige competent authorities to take appropriate measures with regard to both the situations where the decision is subject to an appeal and where it is eventually annulled by a court ([20]).

29. Secondly, the proposed Directive should ensure that the rights of the data subjects are respected in a proactive manner. The EDPS appreciates the fact that the final version of the proposal foresees the possibility to exclude the publication in cases where it would cause disproportionate damage. However, a proactive approach should imply that data subjects are informed beforehand of the fact that the decision sanctioning them will be published, and that they are granted the right to object under Article 14 of Directive 95/46/EC on compelling legitimate grounds ([21]).

30. Thirdly, while the proposed Directive does not specify the medium on which the information should be published, in practice, it is imaginable that in most of the Member States the publication will take place in the Internet. Internet publications raise specific issues and risks concerning in particular the need to ensure that the information is kept online for no longer than is necessary and that the data cannot be manipulated or altered. The use of external search engines also entail the risk that the information could be taken out of context and channelled through and outside the web in ways which cannot be easily controlled ([22]).

([19]) See pp. 44-45.

([20]) For example, the following measures could be considered by national authorities: to delay the publication until the appeal is rejected or, as suggested in the impact assessment report, to clearly indicate that the decision is still subject to appeal and that the individual is to be presumed innocent until the decision becomes final, to publish a rectification in cases where the decision is annulled by a court.

([21]) See EDPS Opinion of 10 April 2007 on the financing of the Common Agricultural Policy, (OJ C 134, 16.6.2007, p. 1).

([22]) See in this regard the document published by the Italian DPA Personal Data As Also Contained in Records and Documents by Public Administrative Bodies: Guidelines for Their Processing by Public Bodies in Connection with Web-Based Communication and Dissemination, available on the website of the Italian DPA, http://www.garanteprivacy.it/garante/doc.jsp?ID=1803707

31. In view of the above, it is necessary to oblige Member States to ensure that personal data of the persons concerned are kept online only for a reasonable period of time, after which they are systematically deleted ([23]). Moreover, Member States should be required to ensure that adequate security measures and safeguards are put in place, especially to protect from the risks related to the use of external search engines ([24]).

2.4.4. *Conclusions on publication*

32. The EDPS is of the view that the provision on the mandatory publication of sanctions — as it is currently formulated — does not comply with the fundamental right to privacy and data protection. The legislator should carefully assess the necessity of the proposed system and verify whether the publication obligation goes beyond what is necessary to achieve the public interest objective pursued and whether there are less restrictive measures to attain the same objective. Subject to the outcome of this proportionality test, the publication obligation should in any event be supported by adequate safeguards to ensure respect of the presumption of innocence, the right of the persons concerned to object, the security/accuracy of the data and their deletion after an appropriate period of time.

2.5. **Reporting of breaches**

33. Article 70 of the proposed Directive deals with mechanisms for reporting violations, also known as whistle-blowing schemes. While they may serve as an effective compliance tool, these systems raise significant issues from a data protection perspective ([25]). The EDPS welcomes the fact that the Proposal contains specific safeguards, to be further developed at national level, concerning the protection of the persons reporting on the suspected violation and more in general the protection of personal data. The EDPS is conscious of the fact that the proposed Directive only sets out the main elements of the scheme to be implemented by Member States. Nonetheless, he would like to draw the attention to the following additional points.

34. The EDPS highlights, as in the case of other Opinions ([26]), the need to introduce a specific reference to the need to respect the confidentiality of whistleblowers' and informants' identity. The EDPS underlines that the position of whistleblowers is a sensitive one. Persons that provide such information should be guaranteed that their identity is processed under conditions of confidentiality, in particular vis-à-vis the person about whom an alleged wrongdoing is being reported ([27]). The confidentiality of the identity of whistleblowers should be guaranteed at all stages of the procedure, so long as this does not contravene national rules regulating judicial procedures. In particular, the identity may need to be disclosed in the context of further investigation or subsequent judicial proceedings instigated as a result of the enquiry (including if it has been established that they maliciously made false statements about him/her) ([28]). In view of the above, the EDPS recommends to add in letter b of Article 70 the following provision:

([23]) These concerns are also linked to the more general right to be forgotten, the inclusion of which in the new legislative framework for the protection of personal data is under discussion.

([24]) These measures and safeguards may consist for instance of the exclusion of the data indexation by means of external search engines.

([25]) The Article 29 WP published an Opinion on such schemes in 2006 dealing with the data protection related aspects of this phenomenon: Opinion 1/2006 on the application of EU data protection rules to internal whistleblowing schemes in the fields of accounting, internal accounting controls, auditing matters, fight against bribery, banking and financial crime (WP Opinion on whistleblowing). The Opinion can be found on the Article 29 WP webpage: http://ec.europa.eu/justice/policies/privacy/workinggroup/index_en.htm

([26]) See for instance, the EDPS Opinion on financial rules applicable to the annual budget of the Union of 15 April 2011 (OJ C 215, 21.7.2011, p. 13) and the Opinion on investigations conducted by OLAF of 1 June 2011 (OJ C 279, 23.9.2011, p. 11).

([27]) The importance of keeping the identity of the whistleblower confidential has already been underlined by the EDPS in a letter to the European Ombudsman of 30 July 2010 in case 2010-0458, to be found on the EDPS website (http://www.edps.europa.eu). See also EDPS prior check Opinions of 23 June 2006, on OLAF internal investigations (Case 2005-0418), and of 4 October 2007 regarding OLAF external investigations (Cases 2007-47, 2007-48, 2007-49, 2007-50, 2007-72).

([28]) See Opinion on financial rules applicable to the annual budget of the Union 15 April 2011, available at http://www.edps.europa.eu

'the identity of these persons should be guaranteed at all stages of the procedure, unless its disclosure is required by national law in the context of further investigation or subsequent judicial proceedings'.

35. The EDPS further highlights the importance of providing appropriate rules in order to safeguard the access rights of the accused persons, which are closely related to the rights of defence ([29]). The procedures for the receipt of the report and their follow-up referred to in Article 70(2)(a) should ensure that the rights of defence of the accused persons, such as the right to be informed, right of access to the investigation file and presumption of innocence, are adequately respected and limited only to the extent necessary ([30]). The EDPS suggests in this regard to add also in the proposed Directive the provision of Article 29 letter (d) of the Commission proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation, which requires Member State to put in place 'appropriate procedures to ensure the right of the accused person of defence and to be heard before the adoption of a decision concerning him and the right to seek effective judicial remedy against any decision or measure concerning him'.

36. Finally, as regards letter (c) of paragraph 2, the EDPS is pleased to see that this provision requires Member States to ensure the protection of personal data of both the accused and the accusing person, in compliance with the principles laid down in Directive 95/46/EC. He suggests however removing 'the principles laid down in', to make the reference to the Directive more comprehensive and binding. As to the need to respect data protection legislation in the practical implementation of the schemes, the EDPS would like to underline in particular the recommendations made by the Article 29 Working Party in its 2006 Opinion on whistleblowing. Among others, in implementing national schemes the entities concerned should bear in mind the need to respect proportionality by limiting, as far as possible, the categories of persons entitled to report, the categories of persons who may be incriminated and the breaches for which they may be incriminated; the need to promote identified and confidential reports against anonymous reports; the need to provide for disclosure of the identity of whistleblowers where the whistleblower made malicious statements; and the need to comply with strict data retention periods.

3. **CONCLUSIONS**

37. The EDPS makes the following recommendations:

— insert a substantive provision in the proposals with the following wording: 'With regards to the processing of personal data carried out by Member States within the framework of this Regulation, competent authorities shall apply the provisions of national rules implementing Directive 95/46/EC. With regards to the processing of personal data carried out by EBA within the framework of this Regulation, EBA shall comply with the provisions of Regulation (EC) No 45/2001';

— amend the second subparagraph of Article 54(1) so as to permit disclosure of confidential information only in summary or collective form, 'such that individual credit institutions and individuals cannot be identified' (emphasis added);

— clarify in Article 48 and Article 56 that agreements with third countries or third country authorities providing for the transfer of personal data must comply with the conditions for transfers of personal data to third countries laid down in Chapter IV of Directive 95/46/EC and in Regulation (EC) No 45/2001 and introduce also in the proposed Directive provision similar to Article 23 of the proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation ([31]);

([29]) See in this regard EDPS Guidelines concerning the processing of personal data in administrative inquiries and disciplinary proceedings by European institutions and bodies, pointing out the close relationship between the right of access of the data subjects and the right of defence of the persons being accused (see pp. 8 and 9) http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/10-04-23_Guidelines_inquiries_EN.pdf

([30]) See Working Party 29 Opinion on whistle-blowing, pp. 13-14.

([31]) See footnote 12.

— in light of the doubts expressed in the present Opinion, assess the necessity and proportionality of the proposed system of mandatory publication of sanctions. Subject to the outcome of the necessity and proportionality test, in any event provide for adequate safeguards to ensure respect of the presumption of innocence, the right of the persons concerned to object, the security/accuracy of the data and their deletion after an adequate period of time;

— with regard to Article 70 1. add in letter (b) of Article 70 a provision saying that: 'the identity of these persons should be guaranteed at all stages of the procedure, unless its disclosure is required by national law in the context of further investigation or subsequent judicial proceedings'; 2. add a letter (d) requiring Member States to put in place 'appropriate procedures to ensure the right of the accused person of defence and to be heard before the adoption of a decision concerning him and the right to seek effective judicial remedy against any decision or measure concerning him'; 3. remove 'the principles laid down' from letter (c) of the provision.

Done at Brussels, 10 February 2012.

Giovanni BUTTARELLI

Assistant European Data Protection Supervisor

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Communication in accordance with Article 12(5)(a) of Council Regulation (EEC) No 2913/92 on the information provided by the customs authorities of the Member States concerning the classification of goods in the customs nomenclature

(2012/C 175/02)

Binding Tariff Information ceases to be valid from this day if it becomes incompatible with the interpretation of the customs nomenclature as a result of the following international tariff measures:

Amendments to the Compendium of Classification Opinions, approved by the Customs Cooperation Council (CCC doc. NC1705 — report of the 48th Session of the HS Committee):

AMENDMENTS TO THE CLASSIFICATION OPINIONS EDITED BY THE HS COMMITTEE OF THE WORLD CUSTOMS ORGANISATION

(48th SESSION OF THE HSC IN SEPTEMBER 2011)

DOC. NC1705

Classification Opinions approved by the HS Committee

2106.90/28	O/3
3824.90/18-19	O/4
8537.10/1	O/5

Information regarding the contents of these measures can be obtained from the Directorate-General for Taxation and Customs Union of the European Commission (rue de la Loi/Wetstraat 200, 1049 Brussels, Belgium) or can be downloaded from the Internet site of this Directorate-General:

http://ec.europa.eu/comm/taxation_customs/customs/customs_duties/tariff_aspects/harmonised_system/index_en.htm

Non-opposition to a notified concentration

(Case COMP/M.6555 — Posco/MC/MCHC/JV)

(Text with EEA relevance)

(2012/C 175/03)

On 11 June 2012, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— in the merger section of the Competition website of the Commission (http://ec.europa.eu/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,

— in electronic form on the EUR-Lex website (http://eur-lex.europa.eu/en/index.htm) under document number 32012M6555. EUR-Lex is the on-line access to the European law.

Non-opposition to a notified concentration

(Case COMP/M.6604 — CPPIB/Atlantia/Grupo Costanera)

(Text with EEA relevance)

(2012/C 175/04)

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— in the merger section of the Competition website of the Commission (http://ec.europa.eu/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,

— in electronic form on the EUR-Lex website (http://eur-lex.europa.eu/en/index.htm) under document number 32012M6604. EUR-Lex is the on-line access to the European law.

III

(Preparatory acts)

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 25 April 2012

on a proposal for a regulation of the European Parliament and of the Council on European venture capital funds and on a proposal for a regulation of the European Parliament and of the Council on European social entrepreneurship funds

(CON/2012/32)

(2012/C 175/05)

Introduction and legal basis

On 20 January 2012, the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a regulation of the European Parliament and of the Council on European venture capital funds ([1]) (hereinafter the 'proposed European venture capital funds regulation') and on a proposal for a regulation of the European Parliament and of the Council on European social entrepreneurship funds ([2]) (hereinafter the 'proposed EuSEF regulation') (hereinafter referred collectively as the 'proposed regulations').

The ECB's competence to deliver an opinion on the proposed regulations is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union, since the proposed regulations contain provisions with a bearing on the integration of European financial markets and affecting the European System of Central Banks' contribution to the smooth conduct of policies by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system under Article 127(5) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

General observations

1. The proposed European venture capital funds regulation aims at overcoming the funding shortfalls that European small and medium-sized enterprises (SMEs) encounter in their start-up phases. As a large part of the funding of these companies originates from small funds, with an average size of EUR 60 million in assets under management, the regulation aims at improving the ability to raise capital across the EU. It establishes specific European venture capital funds with common characteristics under a single regulatory framework. This would provide certainty and transparency towards all stakeholders, including investors, regulators and the companies eligible for investments. The introduction of a single market passport, by which a fund registered in one Member State could market units and shares in other Member States, would reduce the administrative burden and limit regulatory barriers.

2. This framework is complemented by the proposed EuSEF regulation, which aims to stimulate funding for social business through the establishment of a new category of European social entrepreneurship funds (hereinafter 'EuSEFs'). This would help investors identify and compare funds investing in social business and broaden the possibilities of marketing these funds to international investors.

([1]) COM(2011) 860 final.
([2]) COM(2011) 862 final.

3. The Europe 2020 strategy ([1]) restated the need to engage in targeted regulatory action to improve SMEs' access to financing, in particular by addressing barriers that hinder the flow of venture capital financing by means of dedicated investment funds. The European Council endorsed this approach calling for the removal of remaining regulatory obstacles to cross-border flows of venture capital ([2]). As a result, the Commission announced in April 2011 an initiative to ensure that venture capital funds established in any Member State can raise capital throughout the EU ([3]).

4. The ECB has already noted the difficulties recently encountered by many SMEs in accessing finance, more than for large firms, especially at times of market stress ([4]). In facilitating access to funding for rapidly expanding SMEs and streamlining the applicable regulatory requirements, the ECB trusts that the proposed new regimes would contribute significantly to the development of an innovative and sustainable economy. Overcoming the fragmentation of the funding for innovative and socially-focused SMEs and fostering the emergence of an integrated and fluid, EU-wide financial market which would encourage and facilitate cross-border investment in these sectors is crucial for the successful and timely delivery of the Europe 2020 strategy.

5. Therefore, the ECB welcomes the proposed regulations which will introduce uniform requirements for funds operating under a single, European designation and an identical substantive regulatory framework, while ensuring adequate supervision. In this regard, the ECB notes several features that would contribute to achieving an appropriate and balanced regulatory framework: the voluntary nature of the regime ([5]), the cross-border notification process between the competent authorities ([6]), the rules governing the behaviour of a qualifying manager and disclosure requirements ([7]), as well as the provisions designed to ensure the effective supervision of the use of the passport ([8]).

Specific observations

6. The ECB supports the Commission's objective of ensuring the consistency of the proposed regulations with the existing regime for alternative investment funds managers under Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 ([9]). In this respect, the ECB welcomes the reference in the proposed regulations to the threshold in Directive 2011/61/EU ([10]), which introduces a limit of EUR 500 million of capital funds that would delineate the European venture capital funds and EuSEF regimes from the framework established by Directive 2011/61/EU.

7. The ECB notes that the above threshold aims to distinguish alternative investment funds managers with activities which could have 'significant consequences for financial stability' from those which are unlikely to do so and that the proposed regimes will apply to systemically non-important funds ([11]).

([1]) Communication from the Commission on 'Europe 2020 — A strategy for smart, sustainable and inclusive growth', COM(2010) 2020 final.
([2]) Conclusions of the European Council of 4 February 2011, paragraph 22.
([3]) Communication from the Commission on the 'Single Market Act — Twelve levers to boost growth and strengthen confidence — Working together to create new growth', COM(2011) 206 final, in particular point 2.1.
([4]) ECB Opinion CON/2012/21 of 22 March 2012 on: (i) a proposal for a directive on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council; (ii) a proposal for a regulation on markets in financial instruments and amending Regulation (EMIR) on OTC derivatives, central counterparties and trade repositories; (iii) a proposal for a directive on criminal sanctions for insider dealing and market manipulation: and (iv) a proposal for a regulation on insider dealing and market manipulation; (market abuse), paragraph 8. Not yet published in the Official Journal. The English version is available on the ECB's website at: http://www.ecb.europa.eu
([5]) Article 4 of the proposed European venture capital funds regulation and Article 4 of the proposed EuSEF regulation.
([6]) Articles 15 and 20(3) of the proposed European venture capital funds regulation and Articles 16 and 21(3) of the proposed EuSEF regulation.
([7]) Articles 7 to 12 of the proposed European venture capital funds regulation and Articles 7 to 13 of the proposed EuSEF regulation.
([8]) Articles 13 to 22 of the proposed European venture capital funds regulation/Articles 14 to 23 of the proposed EuSEF regulation.
([9]) OJ L 174, 1.7.2011, p. 1. Commission staff working paper — Impact assessment accompanying the proposal for a regulation of the European Parliament and of the Council on European venture capital funds, SEC(2011) 1515, p. 37.
([10]) Article 3(2)(b) of Directive 2011/61/EU.
([11]) Recital 17 of Directive 2011/61/EU.

8. The scope of the proposed regulations is also conditioned by the requirement for all qualifying venture capital and social entrepreneurship funds to be unleveraged, to ensure that qualifying funds do not contribute to the development of systemic risks and that they concentrate on supporting qualifying portfolio companies ([1]). Therefore, whilst the concept of leverage is fundamental to the business model implemented by many alternative investment fund managers ([2]), the ECB considers it appropriate to make explicit the exclusion of any possible leverage in the case of the proposed European venture capital funds and EuSEF regimes ([3]).

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in the Annex accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 25 April 2012.

The President of the ECB

Mario DRAGHI

([1]) Recital 13 of the proposed European venture capital funds regulation and recital 13 of the proposed EuSEF regulation.

([2]) Paragraph 11 of ECB Opinion CON/2009/81 of 16 October 2009 on a proposal for a directive of the European Parliament and of the Council on alternative investment fund managers and amending Directives 2004/39/EC and 2009/…/EC (OJ C 272, 13.11.2009, p. 1).

([3]) Article 5(2) of the proposed European venture capital funds regulation and Article 5(2) of the proposed EuSEF regulation.

ANNEX

Drafting proposals [1]

Text proposed by the Commission	Amendments proposed by the ECB [1]
Amendment 1	
Article 5(2) of the proposed European Venture Capital Funds regulation	
'2. The venture capital fund manager shall not borrow, issue debt obligations, provide guarantees, at the level of the qualifying venture capital fund, nor employ at the level of the qualifying venture capital fund any method by which the exposure of the fund will be increased, whether through borrowing of cash or securities, the engagement into derivative positions or by any other means.'	'2. The venture capital fund manager shall not borrow, issue debt obligations, provide guarantees, at the level of the qualifying venture capital fund, nor employ at the level of the qualifying venture capital fund any method by which the exposure of the fund will be increased, whether through borrowing of cash or securities, the engagement into derivative ~~positions~~ **contracts** or by any other means.'
Explanation	
Engagement into derivative positions may also serve hedging purposes, in which case it would reduce risk exposure rather than increase it. Thus, while the ECB notes that the proposed wording is derived from the corresponding definition of Article 4(1)(v) of Directive 2011/61/EU, it suggests replacing the term 'derivative positions' with 'derivative contracts', in line with the wording in other current or proposed financial EU legislation, e.g. Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps [2]*, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC* [3] *and the proposals for regulations of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories* [4] *and on prudential requirements for credit institutions and investment firms* [5]*.*	
Amendment 2	
Article 6 of the proposed European Venture Capital Funds regulation	
'Venture capital fund managers shall market the units and shares of qualifying venture capital funds exclusively to investors which are considered to be professional clients in accordance with Section I of Annex II of Directive 2004/39/EC or may, on request, be treated as professional clients in accordance with Section II of Annex II of Directive 2004/39/EC, or to other investors where:'	'Venture capital fund managers shall market the units and shares of qualifying venture capital funds exclusively to investors which are considered to be professional clients in accordance with Section I of Annex II of Directive 2004/39/EC, **unless they are treated on request as non-professional clients**, or may, on request, be treated as professional clients in accordance with Section II of Annex II of Directive 2004/39/EC, or to other investors where **all the following conditions are met**:'
Explanation	
Article 6 of the proposed European Venture Capital Funds regulation refers to 'professional clients in accordance with Section I of Annex II of Directive 2004/39/EC'. It is not clear what regime would be applicable to professional clients that are treated, on request, as non-professional clients under the same provision. To avoid confusion, the proposed amendment would align the concept of 'professional clients' in the proposed regulation with the definition in Annex II of Directive 2004/39/EC. *Furthermore, the regulation permits the marketing of European Venture Capital Funds to other investors, who must 'have the knowledge, experience and capacity to take on the risks these funds carry'* [6]*. While the ECB considers that these criteria offer the necessary investor protection, it suggests ensuring that they are all made mandatory.*	

[1] The amendments to the proposed European Venture Capital Funds regulation apply, with the necessary changes, to the equivalent provisions in the proposed EuSEF regulation.

Text proposed by the Commission	Amendments proposed by the ECB [1]

Amendment 3

Article 10a of the proposed European Venture Capital Funds regulation (new)

No current text	**'Article 10a** **Depositary** **1. For each European venture capital fund it manages, the venture capital fund manager shall ensure that a single depositary is appointed in accordance with this Article.** **2. The depositary shall be an institution as defined in Article 21 of Directive 2011/61/EU.** **3. In order to ensure consistent application of paragraph 1, ESMA shall develop draft regulatory technical standards to specify the conditions for performing the European venture capital fund depositary function. ESMA shall submit the draft regulatory technical standards to the Commission within six months following entry into force of this Regulation. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.'**

Explanation

In order to strengthen investor protection, the ECB suggests providing specifically for the appointment of a depositary, in line with the framework adopted in Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings of collective investment in transferable securities (UCITS) [7] and Directive 2011/61/EU [8]. However, the simplified scheme proposed here aims to ensure that any resulting obligations are proportionate to the nature and the size of the funds.

Amendment 4

Article 21(1) of the proposed European Venture Capital Funds regulation

'1. Competent authorities and ESMA shall cooperate with each other whenever necessary for the purpose of carrying out their respective duties under this Regulation.'	'1. Competent authorities, and ESMA shall cooperate with each other whenever necessary for the purpose of carrying out their respective duties under this Regulation **and, as appropriate, with the European Systemic Risk Board**.'

Explanation

The ECB suggests, to be consistent with Article 50 of Directive 2011/61/EU, that cooperation between ESMA and competent authorities should also involve the ESRB, as appropriate.

Amendment 5

Article 22(2) of the proposed European venture capital funds regulation

'2. The competent authorities of the Member States or ESMA shall not be prevented from exchanging information in accordance with this Regulation or other Union law applicable to venture capital fund managers and qualifying venture capital funds.'	'2. The competent authorities of the Member States or ESMA shall not be prevented from exchanging information in accordance with this Regulation or other Union law applicable to venture capital fund managers and qualifying venture capital funds, **whenever necessary, for the purpose of carrying out their duties under this Regulation or of exercising their powers under this Regulation or under national law. The competent authorities shall communicate information to the central banks, including the European Central Bank, and to the European Systemic Risk Board, where this information is relevant to the exercise of their tasks.**'

Text proposed by the Commission	Amendments proposed by the ECB [1]

Explanation

This would ensure that central banks, including the ECB, as well as the ESRB, appropriately receive information relevant to the exercise of their tasks.

[1] Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.
[2] Article 1(b) and (c) and Article 2(1)(b)(iii) (OJ L 86, 24.3.2012, p. 24).
[3] OJ L 145, 30.4.2004, p. 1. Article 2(1)(i) and Article 4(1).
[4] COM(2010) 484 final. Article 1(1).
[5] COM(2011) 452 final. Articles 211(1), 240(3), 250(1)(d), 256(1), 273(4), 321(1) and (2) and 335(4).
[6] Recital 14 of the proposed European Venture Capital Funds regulation.
[7] OJ L 302, 17.11.2009, p. 32. Articles 22 to 26 and 32 to 36.
[8] Article 21.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates [1]

18 June 2012

(2012/C 175/06)

1 euro =

Currency		Exchange rate	Currency		Exchange rate
USD	US dollar	1,2618	AUD	Australian dollar	1,2519
JPY	Japanese yen	99,75	CAD	Canadian dollar	1,2944
DKK	Danish krone	7,4324	HKD	Hong Kong dollar	9,7914
GBP	Pound sterling	0,80600	NZD	New Zealand dollar	1,5947
SEK	Swedish krona	8,8412	SGD	Singapore dollar	1,6045
CHF	Swiss franc	1,2010	KRW	South Korean won	1 462,30
ISK	Iceland króna		ZAR	South African rand	10,5249
NOK	Norwegian krone	7,5260	CNY	Chinese yuan renminbi	8,0232
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,5433
CZK	Czech koruna	25,493	IDR	Indonesian rupiah	11 874,30
HUF	Hungarian forint	292,60	MYR	Malaysian ringgit	3,9829
LTL	Lithuanian litas	3,4528	PHP	Philippine peso	53,412
LVL	Latvian lats	0,6967	RUB	Russian rouble	40,8300
PLN	Polish zloty	4,2807	THB	Thai baht	39,709
RON	Romanian leu	4,4670	BRL	Brazilian real	2,5868
TRY	Turkish lira	2,2883	MXN	Mexican peso	17,5660
			INR	Indian rupee	70,6540

[1] *Source*: reference exchange rate published by the ECB.

NOTICES FROM MEMBER STATES

Commission information notice pursuant to the procedure laid down in Article 17(5) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council on common rules for the operation of air services in the Community

New invitation to tender in respect of the operation of scheduled air services in accordance with public service obligations

(Text with EEA relevance)

(2012/C 175/07)

Member State	Spain
Route	El Hierro–Gran Canaria, La Gomera–Gran Canaria, La Gomera–Tenerife North and Tenerife South–Gran Canaria
Period of validity of the contract	2 years from the start of the operation
Deadline for the submission of tenders	2 months after the date of publication of this notice
Address from which the text of the invitation to tender and any relevant information and/or documentation relating to the public tender and the public service obligation can be obtained	Dirección General de Aviación Civil Subdirección General de Transporte Aéreo Tel. +34 915977505 Fax +34 915978643 E-mail: mmederos@fomento.es

V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

EUROPEAN COMMISSION

Notice concerning the anti-dumping measures on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China and a partial reopening of the anti-dumping investigation concerning imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China

(2012/C 175/08)

By its judgment of 22 March 2012 in Case C-338/10, the European Court of Justice ('ECJ') declared Council Regulation (EC) No 1355/2008 of 18 December 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China [1] ('definitive anti-dumping Regulation' or 'the contested Regulation') invalid.

As a consequence of the judgment of 22 March 2012, imports into the European Union of certain prepared or preserved citrus fruits (namely mandarins, etc.) are no longer subject to the anti-dumping measures imposed by Regulation (EC) No 1355/2008.

1. **Information to customs authorities**

Consequently, the definitive anti-dumping duties paid pursuant to Regulation (EC) No 1355/2008 on imports into the European Union of certain prepared or preserved citrus fruits (namely mandarins, etc.) currently falling within CN codes 2008 30 55, 2008 30 75 and ex 2008 30 90 (TARIC codes 2008 30 90 61, 2008 30 90 63, 2008 30 90 65, 2008 30 90 67, 2008 30 90 69) originating in the People's Republic of China, and the provisional duties definitively collected in accordance with Article 3 of Regulation (EC) No 1355/2008, should be repaid or remitted. The repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation.

Moreover, imports into the European Union of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China are no longer subject to the anti-dumping measures imposed by Regulation (EC) No 1355/2008.

2. **Partial reopening of the anti-dumping investigation**

The ECJ, through its judgment of 22 March 2012, declared Regulation (EC) No 1355/2008 invalid. The ECJ found that the European Commission ('the Commission') did not take all due care to determine the normal value on the basis of the price or constructed value in a market economy third country as prescribed by Article 2(7)(a) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community [2] ('the basic Regulation').

It is recognised by the Courts [3] that, in cases where a proceeding consists of several administrative steps, the annulment of one of those steps does not annul the complete proceeding. The anti-dumping proceeding is an example of such a multi-step proceeding. Consequently, the annulment of parts of the definitive anti-dumping Regulation does not imply the annulment of the entire procedure prior to the adoption of the Regulation in question. On the other hand, according to Article 266 of the Treaty on the Functioning of the European Union, the institutions of the European Union are obliged to comply with the judgment of 22 March 2012 of the ECJ. Accordingly, the Union's institutions, in so complying with the judgment, have the possibility to remedy the aspects of the contested Regulation which led to its annulment, while leaving unchanged the uncontested parts which are not affected by the judgment [4]. It must be noted that all other findings made in the contested Regulation, which were not contested within the time limits for a challenge and thus were not considered by the Courts and did not lead to the annulment

[1] OJ L 350, 30.12.2008, p. 35.

[2] OJ L 343, 22.12.2009, p. 51.

[3] Case T-2/95 *Industrie des poudres sphériques (IPS)* v *Council* (1998) ECR II-3939.

[4] Case C-458/98 P *Industrie des poudres sphériques (IPS)* v *Council* (2000) ECR I-08147.

of the contested Regulation, remain valid. The same conclusion applies by analogy where a Regulation is declared invalid.

The Commission has thus decided to reopen the anti-dumping investigation concerning imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China initiated pursuant to the basic Regulation. The reopening is limited in scope to the implementation of the finding of the ECJ as recalled above.

3. **Procedure**

Having determined, after consulting the Advisory Committee, that a partial reopening of the anti-dumping investigation is justified, the Commission hereby partially reopens the anti-dumping investigation concerning imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China initiated pursuant to Article 5 of the basic Regulation by a notice published in the *Official Journal of the European Union* [1].

The reopening is limited in scope to the selection of an analogue country, if any, and the determination of the normal value pursuant to Article 2(7)(a) of the basic Regulation to be used for the calculation of any margin of dumping.

All interested parties are hereby invited to make their views known, submit information and provide supporting evidence regarding the availability of market economy third countries which could be selected to determine normal value pursuant to Article 2(7)(a) of the basic Regulation, including with regard to Israel, Swaziland, Turkey and Thailand. This information and supporting evidence must reach the Commission within the time limit set in point 4(a).

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 4(b).

4. **Time limits**

(a) *For parties to make themselves known and to submit 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 any information within 20 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.

(b) *Hearings*

All interested parties may also apply to be heard by the Commission within the same 20-day time limit.

5. **Written submissions and correspondence**

All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified) and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. All written submissions, including the information requested in this notice and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited' [2] and, in accordance with Article 19(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'For inspection by interested parties'.

Commission address for correspondence:

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

Fax +32 22956505

6. **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 favorable to that party than if it had cooperated.

7. **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 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [3].

[1] OJ C 246, 20.10.2007, p. 15.

[2] This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of the basic Regulation and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).

[3] OJ L 8, 12.1.2001, p. 1.

8. **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 the 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/tackling-unfair-trade/hearing-officer/index_en.htm).

Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain prepared or preserved sweetcorn in kernels originating in Thailand

(2012/C 175/09)

Following the publication of a notice of impending expiry ([1]) of the anti-dumping measures in force on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand ('the 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 ([2]) ('the basic Regulation').

1. **Request for review**

The request was lodged on 19 March 2012 by the Association Européenne des Transformateurs de Maïs Doux (AETMD) ('the applicant') on behalf of Union producers representing a major proportion, in this case more than 50 %, of the Union production of certain prepared or preserved sweetcorn in kernels.

2. **Product under review**

The product under review is sweetcorn (*Zea mays var. saccharata*) in kernels, prepared or preserved by vinegar or acetic acid, not frozen, currently falling within CN code ex 2001 90 30 and sweetcorn (*Zea mays var. saccharata*) in kernels, prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006, currently falling within CN code ex 2005 80 00 and originating in Thailand ('the product under review').

3. **Existing measures**

The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 682/2007 ([3]).

4. **Grounds for the expiry review**

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

4.1. ***Allegation of likelihood of continuation of dumping***

The allegation of likelihood of continuation of dumping is based on a comparison of a constructed normal value (manufacturing costs, selling, general and administrative costs and profit) in Thailand with the export prices (at ex-works level) of the product under review when sold for export to the Union.

On this basis, the dumping margin calculated is significant.

4.2. ***Allegation of likelihood of recurrence of injury***

The applicant further alleges the likelihood of recurrence of injurious dumping. In this respect, the applicant has provided evidence that, should the measures be allowed to lapse, the current import level of the product under review is likely to increase due to the ease of increasing production in the country concerned and the attractiveness of the Union market, in view of the higher prices that can be obtained in this market in comparison to certain third country markets. Both of these factors can lead to a redirection of exports from other third countries to the Union.

The applicant finally alleges that the removal of injury has been mainly due to the existence of the measures and that any recurrence of substantial imports at dumped prices from the country concerned would likely lead to 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.

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

5.1. ***Procedure for the determination of likelihood of continuation of dumping***

5.1.1. *Investigating exporting producers*

Exporting producers ([4]) of the product under review from the country concerned are invited to participate in this review investigation.

In view of the potentially large number of exporting producers in Thailand involved in this proceeding and in order to complete the investigation within the statutory time limits, the Commission may limit the exporting producers to be investigated to a reasonable number by selecting a sample (this process is also referred to as 'sampling'). The sampling will be carried out in accordance with Article 17 of the basic Regulation.

([1]) OJ C 258, 2.9.2011, p. 11.
([2]) OJ L 343, 22.12.2009, p. 51.
([3]) OJ L 159, 20.6.2007, p. 14.

([4]) An exporting producer is any company in the country concerned which produces and exports the product under review to the Union market, either directly or via a third party, including any of its related companies involved in the production, domestic sales or exports of the product under review.

In order to enable the Commission to decide whether sampling is necessary, and if so, to select a sample, all exporting producers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission. These parties have to do so within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified, by providing the Commission with information on their company(ies) requested in Annex A to this notice.

In order to obtain the information it deems necessary for the selection of the sample of exporting producers, the Commission will also contact the authorities of Thailand and may contact any known associations of exporting producers.

All interested parties wishing to submit any other relevant information regarding the selection of the sample, excluding the information requested above, must do so within 21 days of the publication of this notice in the *Official Journal of the European Union*, unless otherwise specified.

If a sample is necessary, the exporting producers may be selected based on the largest representative volume of exports of the product under review to the Union which can reasonably be investigated within the time available. All known exporting producers, the authorities of the country concerned and associations of exporting producers will be notified by the Commission, via the authorities of the country concerned if appropriate, of the companies selected to be in the sample.

In order to obtain the information it deems necessary for its investigation with regard to exporting producers, the Commission will send questionnaires to the exporting producers selected to be in the sample, to any known association of exporting producers, and to the authorities of the country concerned.

All exporting producers selected to be in the sample will have to submit a completed questionnaire within 37 days from the date of notification of the sample selection, unless otherwise specified.

The questionnaire will request information on, inter alia, the structure of the exporting producer's company(ies), the activities of the company(ies) in relation to the product under review, the cost of production, the sales of the product under review on the domestic market of the country concerned and the sales of the product under review to the Union.

Companies that have agreed to their possible inclusion in the sample but are not selected to be in the sample will be considered to be cooperating ('non-sampled cooperating exporting producers').

5.1.2. *Investigating unrelated importers* [1] [2]

Unrelated importers of the product under review from Thailand to the Union are invited to participate in this investigation.

In view of the potentially large number of unrelated importers involved in this proceeding and in order to complete the investigation within the statutory time limits, the Commission may limit to a reasonable number the unrelated importers that will be investigated by selecting a sample (this process is also referred to as 'sampling'). The sampling will be carried out in accordance with Article 17 of the basic Regulation.

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all unrelated importers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission. These parties must do so within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified, by providing the Commission with the information on their company(ies) requested in Annex B to this notice.

In order to obtain the information it deems necessary for the selection of the sample of unrelated importers, the Commission may also contact any known associations of importers.

All interested parties wishing to submit any other relevant information regarding the selection of the sample, excluding the information requested above, must do so within 21 days of the publication of this notice in the *Official Journal of the European Union*, unless otherwise specified.

If a sample is necessary, the importers may be selected based on the largest representative volume of sales of the product under review in the Union which can reasonably be investigated

[1] Only importers not related to exporting producers can be sampled. Importers that are related to exporting producers have to fill in Annex I to the questionnaire for these exporting producers. In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code, persons shall be deemed to be related only if: (a) they are officers or directors of one another's businesses; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife; (ii) parent and child; (iii) brother and sister (whether by whole or half blood); (iv) grandparent and grandchild; (v) uncle or aunt and nephew or niece; (vi) parent-in-law and son-in-law or daughter-in-law; (vii) brother-in-law and sister-in-law (OJ L 253, 11.10.1993, p. 1). In this context, 'person' means any natural or legal person.

[2] The data provided by unrelated importers may also be used in relation to aspects of this investigation other than the determination of dumping.

within the time available. All known unrelated importers and associations of importers will be notified by the Commission of the companies selected to be in the sample.

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled unrelated importers and to any known association of importers. These parties must submit a completed questionnaire within 37 days from the date of the notification of the sample selection, unless otherwise specified.

The questionnaire will request information on, inter alia, the structure of their company(ies), the activities of the company(ies) in relation to the product under review and the sales of the product under review.

5.2. ***Procedure for the determination of likelihood of recurrence of injury and investigating Union producers***

In order to establish whether there is a likelihood of recurrence of injury to the Union industry, Union producers of the product under review are invited to participate in the Commission investigation.

In view of the large number of Union producers involved in this proceeding and in order to complete the investigation within the statutory time limits, the Commission has decided to limit to a reasonable number the Union producers that will be investigated by selecting a sample (this process is also referred to as 'sampling'). The sampling is carried out in accordance with Article 17 of the basic Regulation.

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 5.6 below). Other Union producers, or representatives acting on their behalf, that consider that there are reasons why they should be included in the sample must contact the Commission within 15 days of the date of publication of this notice in the *Official Journal of the European Union*.

All interested parties wishing to submit any other relevant information regarding the selection of the sample must do so within 21 days of the publication of this notice in the *Official Journal of the European Union*, unless otherwise specified.

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

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 Union producers. These parties must submit a completed questionnaire within 37 days from the date of the notification of the sample selection, unless otherwise specified.

The questionnaire will request information on, inter alia, the structure of their company(ies), the financial situation of the company(ies), the activities of the company(ies) in relation to the product under review, the cost of production and the sales of the product under review.

5.3. ***Procedure for the assessment of Union interest***

Should the likelihood of continuation of dumping and recurrence of injury be confirmed, a decision will be reached, pursuant to Article 21 of the basic Regulation, as to whether maintaining the anti-dumping measures would not be against the Union interest. Union producers, importers and their representative associations, users and their representative associations, and representative consumer organisations are invited to make themselves known within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. In order to participate in the investigation, the representative consumer organisations have to demonstrate, within the same deadline, that there is an objective link between their activities and the product under review.

Parties that make themselves known within the above deadline may provide the Commission with information on the Union interest within 37 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. This information may be provided either in a free format or by completing a questionnaire prepared by the Commission. In any case, information submitted pursuant to Article 21 will only be taken into account if supported by factual evidence at the time of submission.

5.4. ***Other written submissions***

Subject to the provisions of this notice, all interested parties are hereby invited to make their views known, submit information and provide supporting evidence. Unless otherwise specified, this information and supporting evidence must reach the Commission within 37 days of the date of publication of this notice in the *Official Journal of the European Union*.

5.5. ***Possibility to be heard by the Commission investigation services***

All interested parties may request to be heard by the Commission investigation services. Any request to be heard should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this notice in the *Official Journal of the European Union*. Thereafter, a request to be heard should be submitted within the specific deadlines set by the Commission in its communication with the parties.

5.6. ***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' ([1]).

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.

Interested parties are required to make all submissions and requests in electronic format (non-confidential submissions via e-mail, 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, signed certifications, and any updates thereof, accompanying questionnaire replies must be submitted on paper, i.e. by post or by hand, at the address below. If an interested party cannot provide its submissions and requests in electronic format, it must immediately contact the Commission pursuant to Article 18(2) of the basic Regulation. For further information concerning correspondence with the Commission, interested parties may consult the relevant web page on the website of the 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 22969307
E-mail: Trade-R552-sweetcorn-dumping@ec.europa.eu
(to be used by exporting producers, related importers, associations and representatives of Thailand), and

Trade-R552-sweetcorn-injury@ec.europa.eu
(to be used by Union producers, unrelated importers, users, consumers, associations in the Union)

6. **Non-cooperation**

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

Where it is found that any interested party has supplied false or misleading information, the information may be disregarded and use may be made of facts available.

If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

7. **Hearing Officer**

Interested parties may request the intervention of the Hearing Officer of Directorate-General for Trade. The Hearing Officer acts as an interface between the interested parties and the Commission investigation services. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and requests by third parties to be heard. The Hearing Officer may organise a hearing with an individual interested party and mediate to ensure that the interested parties' rights of defence are being fully exercised.

A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this notice in the *Official Journal of the European Union*. Thereafter, a request to be heard must be submitted within specific deadlines set by the Commission in its communication with the parties.

The Hearing Officer will also provide opportunities for a hearing involving parties to take place which would allow different views to be presented and rebuttal arguments offered on issues pertaining, among other things, to the likelihood of continuation or recurrence of dumping and recurrence of injury, and Union interest.

For further information and contact details interested parties may consult the Hearing Officer's web pages on Trade DG's website: http://ec.europa.eu/trade/tackling-unfair-trade/hearing-officer/index_en.htm

8. **Schedule of the investigation**

The investigation will be concluded, pursuant 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*.

([1]) 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).

9. **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 interested party 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 pursuant to 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.

10. **Processing of personal data**

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 [1].

[1] OJ L 8, 12.1.2001, p. 1.

ANNEX A

☐	Limited version (1)
☐	Version for inspection by interested parties
	(complete both versions and tick the appropriate box on each version)

EXPIRY REVIEW INVESTIGATION OF THE ANTI-DUMPING MEASURES CONCERNING IMPORTS OF CERTAIN PREPARED OR PRESERVED SWEETCORN IN KERNELS ORIGINATING IN THAILAND

INFORMATION FOR THE SELECTION OF THE SAMPLE OF EXPORTING PRODUCERS IN THAILAND

This form is designed to assist exporting producers in Thailand in responding to the request for sampling information made in point 5.1.1 of the notice of initiation.

Both the 'Limited' version and the 'Version for inspection by interested parties' should be returned to the Commission as set out in the notice of initiation.

1. IDENTITY AND CONTACT DETAILS

Supply the following details about your company:

Company name	
Address	
Contact person	
E-mail address	
Telephone	
Fax	

2. TURNOVER AND SALES VOLUME

Indicate the turnover in the accounting currency of the company during the period from 1 April 2011 to 31 March 2012 for sales (export sales to the Union in total and separately for each of the 27 Member States (2), and domestic sales) of certain prepared or preserved sweetcorn in kernels as defined in the notice of initiation, together with the corresponding weight or volume.

	Volume report the net weight (sweetcorn plus liquid) in tonnes		Value in accounting currency (state the currency used)	
Export sales to the Union, in total and separately for each of the 27 Member States, of the product under review, manufactured by your company	Total		Total	
	Insert the names of Member States (3)		Insert the names of Member States (4)	
Domestic sales of the product under review, manufactured by your company				

(1) This document is for internal use only. It is 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). It is a confidential document 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).

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

(3) Add additional rows where necessary.

(4) See footnote 3.

3. ACTIVITIES OF YOUR COMPANY AND RELATED COMPANIES ([5])

Please provide details of the precise activities of the company and all related companies (please list them and state the relationship to your company) involved in the production and/or selling (export and/or domestic) of the product under review. Such activities could include, but are not limited to, purchasing the product under review or producing it under subcontracting arrangements, or processing or trading the product under review.

Company name and location	Activities	Relationship

4. OTHER INFORMATION

Please provide any other relevant information which the company considers useful to assist the Commission in the selection of the sample.

5. CERTIFICATION

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is selected to be part of the sample, this will involve completing a questionnaire and accepting a visit at its premises in order to verify its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed to have not cooperated in the investigation. The Commission's findings for non-cooperating exporting producers are based on facts available and the result may be less favourable to that company than if it had cooperated.

Signature of authorised official:

Name and title of authorised official:

Date:

([5]) In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code, persons shall be deemed to be related only if: (a) they are officers or directors of one another's businesses; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife; (ii) parent and child; (iii) brother and sister (whether by whole or half blood); (iv) grandparent and grandchild; (v) uncle or aunt and nephew or niece; (vi) parent-in-law and son-in-law or daughter-in-law; (vii) brother-in-law and sister-in-law (OJ L 253, 11.10.1993, p. 1). In this context, 'person' means any natural or legal person.

ANNEX B

☐	Limited version ([1])
☐	Version for inspection by interested parties
	(complete both versions and tick the appropriate box on each version)

EXPIRY REVIEW INVESTIGATION OF THE ANTI-DUMPING MEASURES CONCERNING IMPORTS OF CERTAIN PREPARED OR PRESERVED SWEETCORN IN KERNELS ORIGINATING IN THAILAND

INFORMATION FOR THE SELECTION OF THE SAMPLE OF UNRELATED IMPORTERS

This form is designed to assist unrelated importers in responding to the request for sampling information made in point 5.1.2 of the notice of initiation.

Both the 'Limited' version and the 'Version for inspection by interested parties' should be returned to the Commission as set out in the notice of initiation.

1. IDENTITY AND CONTACT DETAILS

Supply the following details about your company:

Company name	
Address	
Contact person	
E-mail address	
Telephone	
Fax	

2. TURNOVER AND SALES VOLUME

Indicate the total turnover in euros (EUR) of the company, and the turnover and weight or volume for imports into the Union ([2]) and resales on the Union market after importation from Thailand during the period from 1 April 2011 to 31 March 2012, of certain prepared or preserved sweetcorn in kernels as defined in the notice of initiation and the corresponding weight or volume.

	Volume report the net weight (sweetcorn plus liquid) in tonnes	Value in euros (EUR)
Total turnover of your company in euros (EUR)		
Imports of the product under review into the Union		
Resales on the Union market after importation from Thailand of the product under review		

([1]) This document is for internal use only. It is 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). It is a confidential document 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).

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

3. ACTIVITIES OF YOUR COMPANY AND RELATED COMPANIES ([1])

Please provide details of the precise activities of the company and all related companies (please list them and state the relationship to your company) involved in the production and/or selling (export and/or domestic) of the product under review. Such activities could include, but are not limited to, purchasing the product under review or producing it under subcontracting arrangements, or processing or trading the product under review.

Company name and location	Activities	Relationship

4. OTHER INFORMATION

Please provide any other relevant information which the company considers useful to assist the Commission in the selection of the sample.

5. CERTIFICATION

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is selected to be part of the sample, this will involve completing a questionnaire and accepting a visit at its premises in order to verify 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 Commission's findings for non-cooperating importers are based on the facts available and the result may be less favourable to that company than if it had cooperated.

Signature of authorised official:

Name and title of authorised official:

Date:

([1]) In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code, persons shall be deemed to be related only if: (a) they are officers or directors of one another's businesses; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife; (ii) parent and child; (iii) brother and sister (whether by whole or half blood); (iv) grandparent and grandchild; (v) uncle or aunt and nephew or niece; (vi) parent-in-law and son-in-law or daughter-in-law; (vii) brother-in-law and sister-in-law (OJ L 253, 11.10.1993, p. 1). In this context, 'person' means any natural or legal person.

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

Prior notification of a concentration

(Case COMP/M.6631 — Permira Europe III/Telepizza)

Candidate case for simplified procedure

(Text with EEA relevance)

(2012/C 175/10)

1. On 11 June 2012, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 [1] by which the undertaking Permira Europe III Fund ('PE III', UK) ultimately controlled by Permira Holdings Limited acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Telepizza, SA ('Telepizza', Spain) by way of a purchase of shares.

2. The business activities of the undertakings concerned are:

— for PE III: private equity investment fund,

— for Telepizza: active in the restaurant sector in Spain, Portugal and Poland, currently jointly controlled by PE III and Carbal, SA.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the EC Merger Regulation. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under the EC Merger Regulation [2] it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

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

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by email to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.6631 — Permira Europe III/Telepizza, to the following address:

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

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[1] OJ L 24, 29.1.2004, p. 1 (the 'EC Merger Regulation').
[2] OJ C 56, 5.3.2005, p. 32 ('Notice on a simplified procedure').

Prior notification of a concentration

(Case COMP/M.6561 — Cytec Industries/Umeco)

(Text with EEA relevance)

(2012/C 175/11)

1. On 11 June 2012, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral request pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 ([1]) by which the undertaking Cytec Industries Inc., ('Cytec', United States) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Umeco plc ('Umeco', United Kingdom) by way of public bid announced on 12 April 2012.

2. The business activities of the undertakings concerned are:

— for Cytec: the manufacture and supply of specialty chemicals and materials, including advanced composite materials, for a diverse range of industries,

— for Umeco: the manufacture and supply of advanced composite materials and process materials, primarily to the aerospace and defence, industrial, automotive and recreational industries.

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

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

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by e-mail to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.6561 — Cytec Industries/Umeco, to the following address:

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

([1]) OJ L 24, 29.1.2004, p. 1 (the 'EC Merger Regulation').

Prior notification of a concentration

(Case COMP/M.6616 — Lion Capital/Alain Afflelou Group)

Candidate case for simplified procedure

(Text with EEA relevance)

(2012/C 175/12)

1. On 11 June 2012 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 [1] by which the undertaking Lion/Seneca France 2 ('LF2', France), ultimately controlled by Lion Capital LLP ('Lion Capital', UK), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of 3 AB Optique Developpement ('3ABOD', France) by way of purchase of securities.

2. The business activities of the undertakings concerned are:

— for Lion Capital: private equity investment manager focused on investments in companies engaged in the production and/or sale of consumer-branded goods,

— for 3ABOD: ultimate parent of Alain Afflelou Group which is active in distribution of optical products through a national and international network of both franchised and fully-owned retail outlets.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the EC Merger Regulation. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under the EC Merger Regulation [2] it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

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

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by email to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.6616 — Lion Capital/Alain Afflelou Group, to the following address:

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

[1] OJ L 24, 29.1.2004, p. 1 (the 'EC Merger Regulation').
[2] OJ C 56, 5.3.2005, p. 32 ('Notice on a simplified procedure').

Prior notification of a concentration

(Case COMP/M.6490 — EADS/Israel Aerospace Industries/JV)

(Text with EEA relevance)

(2012/C 175/13)

1. On 11 June 2012, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ([1]) by which the undertakings European Advanced Technology SA ('EAT', Belgium) controlled by Israel Aerospace Industries Ltd. ('IAI', Israel), and Airbus Invest S.A.S. (France) controlled by the European Aeronautic Defence and Space Company N.V. ('EADS', Netherlands) acquire within the meaning of Article 3(1)(b) of the Merger Regulation, joint control of a newly created company constituting a joint venture ('JV', Belgium) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for EADS: research, design, development, manufacture, modification, sale and supply servicing of civil and military aircraft, guided weapons, satellites, drones, space vehicles, electronics and telecommunications equipment,

— for Airbus: development, manufacture and sale of civil and military aircraft,

— for IAI: research and development, design, manufacture, marketing and other related services primarily in missile and space systems, military and civil aircraft, military electronics and airplane maintenance,

— for EAT: holdings in aerospace, aviation, defence and related sectors,

— for the JV: development, manufacture, and marketing of pilot-controlled semi-robotic towing tractors for commercial aircraft.

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

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

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by e-mail to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.6490 — EADS/Israel Aerospace Industries/JV, to the following address:

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

([1]) OJ L 24, 29.1.2004, p. 1 (the 'EC Merger Regulation').

OTHER ACTS

EUROPEAN COMMISSION

Publication of an application pursuant to Article 6(2) of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs

(2012/C 175/14)

This publication confers the right to object to the application pursuant to Article 7 of Council Regulation (EC) No 510/2006 ([1]). Statements of objection must reach the Commission within six months of the date of this publication.

SINGLE DOCUMENT

COUNCIL REGULATION (EC) No 510/2006

'PASAS DE MÁLAGA'

EC No: ES-PDO-0005-0849-24.01.2011

PGI ( ) PDO (X)

1. **Name:**

'Pasas de Málaga'

2. **Member State or Third Country:**

Spain

3. **Description of the agricultural product or foodstuff:**

3.1. *Type of product:*

Class 1.6.: Fruit, vegetables, cereals, fresh or processed

3.2. *Description of the product to which the name in (1) applies:*

Definition

Traditional 'Pasas de Málaga' are obtained by sun-drying the ripe fruit of the Muscat of Alexandria variety of *Vitis vinifera* L., also known as Moscatel Gordo or Moscatel de Málaga.

Physical characteristics

— Size: in the International Organisation for Vine and Wine's Descriptor List for Grape Varieties and *Vitis* Species, berry size is graded as follows: 1 very small, 3 small, 5 medium, 7 large, 9 very large. Muscat of Alexandria is classed as 7 ('large') so it is a large berry.

— Colour: uniform purple black

— Shape: rounded

([1]) OJ L 93, 31.3.2006, p. 12.

— The peduncle may still be attached if the grapes are removed from the bunch manually.

— Skin: in the OIV Descriptor List 'thickness of skin' is graded as follows: 1 very thin, 3 thin, 5 medium, 7 thick and 9 very thick. Muscat of Alexandria is classed as 5 ('medium'). As the berries do not undergo any treatment that impairs the skin, the raisins therefore have a skin of medium thickness.

Chemical characteristics

The degree of moisture must be less than 35 %. The sugar content must be greater than 50 % by weight.

— Acidity: from 1,2 to 1,7 % expressed as tartaric acid

— pH: from 3,5 to 4,5

— Water soluble solids, greater than 65 °Brix

Organoleptic characteristics

— The raisins retain the characteristic muscat flavour of the grapes from which they are produced: In the OIV Descriptor List the characteristic 'particular flavour' is graded as follows: 1 none, 2 muscat, 3 foxy, 4 herbaceous, 5 other flavour. Muscat of Alexandria is classed as 2, and it is this variety of Muscat that is the OIV reference for this grade.

— The muscat flavour is enhanced by an intense retronasal aroma dominated by the following terpenols: a-terpineol (aromatic herbs), linalol (rose), geraniol (geranium) and b-citronelol (citrus).

— The degree of acidity, indicated above, helps to create a specific sweet-sour balance.

— The medium size, degree of moisture and Brix value give the raisins an elastic, flexible quality, the pulp feels fleshy and juicy in the mouth, tactile sensations which are not at all like the dry, inelastic feel dried fruit often has.

3.3. *Raw materials (for processed products only):*

Ripe fruit of the Muscat of Alexandria variety of *Vitis vinifera* L., also known as Moscatel Gordo or Moscatel de Málaga.

3.4. *Feed (for products of animal origin only):*

Not applicable.

3.5. *Specific steps in production that must take place in the defined geographical area:*

Production and packaging must take place in the geographical area defined in point 4.

Production begins with the harvesting of healthy grapes, which never takes place before the phenological stage of 'ripening' (Baggiolini, 1952), avoiding fruit that are not intact or have been damaged by disease or fallen to the ground before harvesting.

The next step is drying the grapes by directly exposing the bunches to the sun. They must not be dried artificially. The work is done manually: every day the farmer turns the bunches of grapes that are spread out to dry so that they dry evenly on both sides.

Once the bunches of grapes are dry, the berries are removed by work known as *picado*, performed by hand using scissors whose size and shape is specially adapted so as not to impair the quality of the fruit removed from the dried bunches, or by machine in factories.

Once the raisins are ready, off or on the bunch, the production process continues in the raisin factories, where the following tasks must be performed before the packaged raisins can be placed on the market:

— Receipt and collection of the raisins delivered by the raisin farmers.

— The raisins are removed from the bunch, if this has not already been done by the farmer.

— They are classed by average size of fruit, measured as the number of raisins per 100 grams.

— Preparation for packaging: i.e. the separation into units of fruit that has already been classed and stored. There must always be fewer than 80 fruits per 100 grams net.

— Packaging: by hand or by machine. This is the final stage of production and it plays a crucial role in protecting the quality characteristics of the raisins over time, as the fruit inevitably continues to dry, so only by isolating it from the environment in clean, well-sealed packaging is it possible to preserve the delicate moisture balance that is such an important characteristic of the product.

3.6. *Specific rules concerning slicing, grating, packaging, etc.:*

Not applicable.

3.7. *Specific rules concerning labelling:*

The packaging must bear the following information:

— The name under which the product is sold: the name 'Pasas de Málaga' must be prominently displayed, with the words 'Denominación de Origen' immediately below.

— The net quantity, in kilograms (kg) or grams (g).

— Date of minimum durability.

— The name, business name or designation of the producer or the packager and, in any event, their registered office address.

— The batch.

The name under which the product is sold, the net quantity and the use-by date must appear in the same field of view.

In all cases, the compulsory indications must be easy to understand, prominently displayed and easily visible, clearly legible and indelible. They must not in any way be hidden, obscured or interrupted by other written or pictorial matter.

All packaging must include a label bearing the PDO logo and the words 'Denominación de Origen Protegida' and 'Pasas de Málaga', plus a unique code for each unit.

4. **Concise definition of the geographical area:**

Location:

Country: SPAIN

Autonomous community: ANDALUCÍA

Province: MALAGA

There are areas of vineyard all over the Province of Malaga, north, south, east and west. In two of these areas most of the grapes have traditionally been grown for raisin production. The largest of these is the district of Axarquia in the eastern part of the province, to the east of the capital. The other area is at the far western end of the Malaga coast. The defined geographical area comprises the following municipalities:

Municipalities:

AXARQUIA			
Alcaucín	Alfarnate	Alfarnatejo	Algarrobo
Almáchar	Árchez	Arenas	Benamargosa
Benamocarra	El Borge	Canillas de Acietuno	Canillas de Albaida
Colmenar	Comares	Cómpeta	Cútar
Frigiliana	Iznate	Macharaviaya	Málaga
Moclinejo	Nerja	Periana	Rincón de la Victoria
Riogordo	Salares	Sayalonga	Sedella
Torrox	Totalán	Vélez Málaga	Viñuela

MANILVA AREA		
Casares	Manilva	Estepona

5. **Link with the geographical area:**

5.1. *Specificity of the geographical area:*

There have been references to the link between vine growing and the defined geographical area since ancient times, right down till the present day. Pliny the Elder (1st century AD) mentioned the fact that there were vineyards in Malaga in his work the 'Natural History'. During the Nasrid dynasty era (13th-15th centuries) agricultural production was encouraged, in particular grape growing for raisin production. Vine growing flourished until the end of the 19th century, when an unfortunate combination of commercial factors and plant health problems, mainly phylloxera (*Viteus vitifoliae*, Fitch) caused the sector to collapse. As a result, today's vineyards are scattered all over the province. In two of these areas most of the grapes have traditionally been grown for raisin production. These two raisin production areas are in the southern part of the province, bordering on the Mediterranean sea, so they have a subtropical Mediterranean climate. The sharp orography is a general feature of the Province of Malaga. Although grapes grown for raisin production no longer occupy as much land as they did before phylloxera, they are still an important factor in the economy and the socio-cultural environment in a large section of the province. They are grown in more than 35 municipalities by over 1 800 farmers on 2 200 ha of land.

The qualities of Pasas de Málaga are to a large extent determined by the natural environment. One of the characteristic features of the geographical area is its sharp orography: the landscape is a succession of hills and stream beds with gradients of over 30 %. The territory, with the high mountain range to the north and the Mediterranean sea in the south, is a succession of canyons and stream beds which form a very particular landscape with steep slopes, so that the whole of Axarquia is like a hillside going down to the sea. In the Manilva area, where the vines are close to the sea, the relief is gentler than in Axarquia.

The soil is essentially slatey, poor, shallow and with poor water holding capacity. The climate is subtropical Mediterranean, with mild winter temperatures, dry summers, little rain and long hours of sunshine (average 2 974 hours over the past decade).

5.2. *Specificity of the product:*

The size of Pasas de Málaga is one of their most appreciated and distinguishing characteristics, they are considered large, and clearly superior to other products of their kind, such as sultanas, currants and California Thompson seedless.

The raisins retain the characteristic muscat flavour of the grapes from which they are produced, and it is this variety of Muscat that is the OIV reference for one of the grades of 'particular flavour'.

5.3. *Causal link between the geographical area and the quality or characteristics of the product (for PDO) or a specific quality, the reputation or other characteristic of the product (for PGI):*

The link between the geographical area and the specific quality of the product derives directly from the conditions in which the raisins are produced. The orography facilitates the natural exposure of the bunches to the sun for drying: This method of drying preserves the quality of the skin and enhances the muscat flavour by concentrating the aromas. The hot, dry weather at harvest time is good for ripening and the accumulation in the berries of the dry matter and sugars that are important for successful drying, in turn enabling the pulp to retain its characteristic juiciness and elasticity. The hours of sunshine mean that the bunches can be exposed to the sun for short periods, so that the raisin retains the berry's acidity.

It is because the growing conditions are difficult that over time Muscat of Alexandria has become the main variety cultivated, as it is the best adapted to this particular environment. The variety has the genetic potential for differentiating characteristics such as size of the fruit, quality of the skin, properties of the pulp, muscat aromas and high fraction of insoluble solids (fibre) that are mostly in the pips.

The difficult terrain has made raisin production an artisanal activity, where tasks such as harvesting, putting the bunches of grapes out to dry in the sun and turning them as they dry, and selecting the fruit are done manually, and great attention is paid to quality. The task of removing the grapes from the bunch (*picado*) is also done manually, which is why Pasas de Málaga often have the peduncle attached.

Drying is an ancient, natural way of preserving food, whereby deterioration is prevented by the removal of excess water. Only with experience and knowledge acquired over the years is it possible to achieve the delicate moisture balance that gives this product some of its best-known organoleptic characteristics, as described in this specification.

Publication reference of the specification:

(Article 5(7) of Regulation (EC) No 510/2006)

http://www.juntadeandalucia.es/agriculturaypesca/portal/export/sites/default/comun/galerias/galeriaDescargas/cap/industrias-agroalimentarias/denominacion-de-origen/Pliegos/PliegoPasas.pdf

V *Announcements*

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

European Commission

2012/C 175/08 Notice concerning the anti-dumping measures on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China and a partial reopening of the anti-dumping investigation concerning imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China 19

2012/C 175/09 Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain prepared or preserved sweetcorn in kernels originating in Thailand 22

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

European Commission

2012/C 175/10 Prior notification of a concentration (Case COMP/M.6631 — Permira Europe III/Telepizza) — Candidate case for simplified procedure [1] 31

2012/C 175/11 Prior notification of a concentration (Case COMP/M.6561 — Cytec Industries/Umeco) [1] 32

2012/C 175/12 Prior notification of a concentration (Case COMP/M.6616 — Lion Capital/Alain Afflelou Group) — Candidate case for simplified procedure [1] 33

2012/C 175/13 Prior notification of a concentration (Case COMP/M.6490 — EADS/Israel Aerospace Industries/JV) [1] 34

OTHER ACTS

European Commission

2012/C 175/14 Publication of an application pursuant to Article 6(2) of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs 35

EN

[1] Text with EEA relevance

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