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II

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EUROPEAN COMMISSION

Non-opposition to a notified concentration

(Case COMP/M.7111 — Mitsui/ArcelorMittal Gonvarri Brasil Produtos Siderúrgicos/M Steel Comércio de Produtos Siderúrgicos)

(Text with EEA relevance)

(2014/C 32/01)

On 29 January 2014, 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 32014M7111. EUR-Lex is the online access to the European law.

Non-opposition to a notified concentration

(Case COMP/M.7112 — Sigma Alimentos/Campofrio)

(Text with EEA relevance)

(2014/C 32/02)

On 29 January 2014, 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 32014M7112. EUR-Lex is the online access to the European law.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COUNCIL

Council conclusions on the contribution of sport to the EU economy, and in particular to addressing youth unemployment and social inclusion

(2014/C 32/03)

THE COUNCIL AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL,

I. AWARE OF THE SERIOUSNESS OF THE PROBLEM OF YOUTH UNEMPLOYMENT IN EUROPE AND ITS CONSEQUENCES:

1. Youth unemployment continues to present a major challenge for the EU and its Member States. In August 2013, the youth unemployment rate was 23,3 % in the EU 28 ([1]) with wide disparities between Member States and regions within Member States ([2]).

2. Young people have been hit disproportionately hard by the economic crisis. Across all EU Member States youth unemployment rates are generally much higher than the unemployment rates for other age groups. At the end of 2012 the youth unemployment rate was 2,6 times higher than the total unemployment rate ([3]).

3. These developments have serious consequences not only for the individuals concerned but also for society and the wider economy. Long-term unemployment may intensify marginalization, leading to poverty and greater risk of social exclusion. There are also serious risks to communities since non-involvement in the labour market may lead some young people to opt out of participation in civil society, potentially leading to further social fragmentation.

4. One of the most significant issues facing young people in Europe as a result of the crisis is the challenge posed by the lack of jobs and work experience. There is also a widening gap between skills being sought by certain employers and those held by many prospective employees.

II. RECALLING THAT THE EUROPEAN COUNCIL:

5. Has recognised combatting youth unemployment as 'a particular and immediate objective' and stressed the importance of paying 'due attention to the labour market participation of groups of vulnerable young people facing specific challenges' ([4]).

III. UNDERLINE THE POTENTIAL OF SPORT TO ADDRESS THESE CHALLENGES:

6. Through engagement in sport, young people attain specific personal and professional skills and competences which enhance employability. These include learning to learn, social and civic competences, leadership, communication, teamwork, discipline, creativity, entrepreneurship. Sport also provides professional knowledge and skills in areas such as marketing, management, public safety and security. All these skills and competences actively support young people's participation, development and progression in education, training and employment, in ways that are relevant and applicable to the labour market and valued and sought after by employers.

7. The organisation, administration and implementation of sporting activities in Europe are traditionally based on voluntary engagement. According to a 2011 Eurobarometer survey ([5]), almost a quarter of those engaged in volunteering (24 %) are active in the field of sport.

([1]) The youth unemployment rate is over 50 % in some Member states and over 70 % in some regions, while in a few regions it is even below 5 %.

([2]) http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-30082013-AP/EN/3-30082013-AP-EN.PDF

([3]) See footnote 2.

([4]) Conclusions of the European Council (27-28 June 2013) — EUCO 104/2/13 REV 2.

([5]) Special Eurobarometer on Volunteering and Intergenerational Solidarity, October 2011.

Voluntary work in sport, mainly carried out at grassroots level and through clubs, is of significant value in social, economic and democratic terms.

8. Sport has universal appeal and knows no cultural or socio-economic boundaries. It has an international character and attracts a wide and diverse range of people. Sporting activities are consequently an excellent means for integrating minority and marginalized groups. Sport is emotionally uplifting and can contribute significantly to a sense of togetherness, helping to bring stability, cohesion and peace to communities.

9. The sport sector, including voluntary activities in sport, constitutes a measurable and significant economic and social value in national economies. There is growing evidence that sport makes a significant contribution to Europe's economy and is an important driver of growth and employment, while also ensuring social cohesion and well-being, thus making a distinct contribution to achieving the goals of the Europe 2020 strategy ([6]).

10. According to a recent EU-wide study on economic growth and employment in the EU ([7]), the share of sport-related value added in the EU amounts to 1,76 % ([8]). The share of sport-related employment in the EU is 2,12 %. When multiplier effects are taken into account, the share of sport even adds up to 2,98 % of overall gross value added in the EU. According to that study the share of sport in European value added is thus comparable to the share of agriculture, forestry, and fishing sectors combined, with every sixtieth Euro generated and earned in the EU being sport-related.

11. Sport is a resilient sector of the economy. Participation levels remain quite stable throughout the different phases of the economic cycle. Sport is structured through a system of sporting events and activities, organized by sport organizations, from grassroots to top level events. These events remain popular, particularly among young people, even when economic conditions are difficult. Whilst sporting events may be affected by fluctuating economic conditions, the framework of the sporting events and sport activities remains stable.

12. Sport has the potential to create jobs and support local economic development through the construction and maintenance of sporting facilities, the organisation of sporting events, the market activities of the sporting goods and services industries and related activities in other sectors. Infrastructure related to sporting events and activities (at local level), when planned carefully with a multifunctional purpose and a clear vision of its future functional role, can help to stabilize and boost the economy.

13. Sport has 'spill-over' effects on other sectors. Sporting events and championships generally have positive effects on sectors such as tourism, culture, transport, media, public infrastructure etc. They also have the ability to bring people together and create a sense of belonging and a shared feeling of success. Sport can thus make a substantive contribution to facilitate the EU's efforts to recover from the ongoing economic difficulties.

IV. EMPHASISE THE FOLLOWING KEY POLICY MESSAGES:

14. Because of the importance of the sport sector for the economy and of the possibilities that this sector provides for young people — including for those that are particularly vulnerable and disadvantaged — to attain useful skills and knowledge, sport can play an important role in tackling the urgent problem of youth unemployment and give impetus to economic recovery. A broad range of actions involving the mobilisation of various stakeholders is required to respond to the challenges set out above.

15. Engaging in voluntary activities, whilst not a substitute for paid employment, nevertheless can provide citizens with new skills, thereby contributing positively to their employability and strengthening their sense of belonging to society. Participation, in particular in grassroots sport, by young people — whether as a participant, facilitator, or organiser — develops key personal skills and competences. Voluntary activities in sport as a form of non-formal and informal learning help young people acquire skills and competences that complement formal education.

16. Sport provides an environment within which young people can hone these skills, thus improving employability and future productivity, at a time when labour market conditions are extremely challenging, job opportunities scarce, and the opportunities for on the job skills development limited.

17. Involvement in sport, in particular grassroots sport, allows young people to channel their energies, hopes and innate enthusiasm in a manner which is constructive and contributes to the communities in

([6]) Commission study 'Contribution of Sport to economic growth and employment in the EU' (2012).

([7]) Study on the contribution of sport to economic growth and employment in the EU, commissioned by the European Commission; Consortium led by SportsEconAustria; Final report, November 2012.

([8]) According to the Vilnius Definition of Sport — broad definition: all activities which require sport as an input, plus all activities which are inputs to sport, plus the statistical definition of sport as defined in NACE 92.6 Rev.1.1.

which they live. It can help to counter social problems faced within Member States, such as social fragmentation and prejudice against specific groups, by providing young people, particularly those without paid jobs or opportunities for relevant education and training, with a positive, constructive and community-based focus.

18. Small scale investment of public money in local sports facilities, and support for community-based sports clubs, can generate significant benefits in terms of stronger, safer and more cohesive communities.

19. Participation in organising national and international sporting events and involvement in sporting infrastructure development and maintenance — either local or national — can be one of the key factors for creating new jobs, especially for the young people.

V. IN RESPONSE TO THE KEY POLICY MESSAGES INVITE THE MEMBER STATES WITH DUE REGARD FOR THE PRINCIPLE OF SUBSIDIARITY TO:

20. Exchange good experiences and practices on:

— improving the participation in sport and society of young people at local level, especially as they leave formal education structures;

— how voluntary involvement in sports clubs and organisations can enhance soft skills and comptences;

— how involvement in sporting activities can enhance safer and more cohesive communities;

— organising apprenticeships and internships in sports organisations that motivate young people and facilitate national and transnational access to the labour market.

21. Promote policy actions which are aiming to develop skills for jobs through sport. In this regard, support voluntary organizations and/or sport clubs, as well as sporting activities and/or events — at grassroots and/or professional level.

22. Explore ways to improve education pathways for future professionals and volunteers in sport and promote learning on the job, in order to develop skills which can be recognised within national qualification frameworks. These could be referenced to the European Qualifications Framework so as to improve the international transparency and mobility of the young people concerned. The potential for recognizing skills attained through informal and non-formal learning in sport should also be explored.

23. Encourage strategic investment in sport using, where appropriate, the possibilities provided by EU funding instruments, including EU structural funds (notably the European Social Fund and the European Regional Development Fund) and EU financial tools such as European Investment Bank financing.

24. Promote effective internal cooperation within public authorities across sectors dealing with social affairs, youth, employment and economic issues in order to ensure greater awareness of the social and economic role of sport.

VI. INVITE THE MEMBER STATES AND THE COMMISSION, WITHIN THEIR RESPECTIVE SPHERES OF COMPETENCE AND WITH DUE REGARD FOR THE PRINCIPLE OF SUBSIDIARITY TO:

25. Promote cross-sectoral involvement with education, training, youth and employment experts with a view to exploring the development of skills and competences.

26. Take full advantage of the Erasmus+ Programme as an opportunity for developing personal and professional skills and competences.

27. Identify the ways in which sport can be funded to promote social inclusion and youth employment through the structural funds (notably the European Social Fund or the European Regional Development Fund) or other EU financing mechanisms, such as European Investment Bank financing, especially the development and, where appropriate, the maintenance of small scale sporting infrastructure in towns and cities for use by the public, paying special attention to socially deprived areas. Such small scale infrastructure can help to achieve numerous social goals, such as job creation, social inclusion, and health improvement.

28. Enhance dialogue and common initiatives with key stakeholders, in particular sporting organizations, sporting goods industries and youth organisations to further develop a favorable environment for attracting young people into the sport sector.

29. Reflect on how the contribution of sport to the skills development of young people and the maintaining of socially-inclusive communities in times of high youth unemployment can most effectively be addressed in the context of future work on sport at EU level.

VII. IN RESPONSE TO THE KEY POLICY MESSAGES INVITE THE COMMISSION TO:

30. Organise a high-level cross-sectoral seminar on the contribution of sport to the creation of jobs and to tackling unemployment in the EU, in particular youth unemployment.

31. Based on on-going EU cooperation at the expert level, prepare a study on the contribution of sport to the employability of young people in the context of the Europe 2020 strategy.

Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on media freedom and pluralism in the digital environment

(2014/C 32/04)

THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL,

NOTING THAT:

1. media freedom and pluralism are fundamental values enshrined in the Charter of Fundamental Rights of the European Union. They are an essential pillar of democracy as the media play an important role in ensuring transparency and accountability and have an impact on the public opinion and on the participation of citizens in and the contribution of citizens to the decision-making processes;

2. a number of challenges to media freedom and pluralism have been noted over the last years in the European Union. These include issues highlighted by court cases, official enquiries, reports by the European Parliament and non-governmental organisations, as well as national and European parliamentary debates;

3. transparency of media ownership and of funding sources are essential with a view to guaranteeing media freedom and pluralism;

4. ensuring protection of journalists from undue influence is of key importance to guarantee media freedom, which becomes more relevant in times of economic crisis and the transformation of the media sector;

5. ensuring adequate protection of journalistic sources is a key element of media freedom;

6. the Audiovisual Media Services Directive, the regulatory framework within the EU for audiovisual media services, contributes to the fostering of media freedom and pluralism. A crucial role in the enforcement of this framework lies with competent audiovisual regulatory authorities in Member States;

7. the Commission has funded a number of studies, reports, projects and coordinated actions in the field of media freedom and pluralism;

8. the Council of Europe carries out very important work in the field of media freedom and pluralism. In this regard, the 2007 Memorandum of Understanding between the Council of Europe and the European Union lists freedom of expression and information among the shared priorities and focal areas for cooperation between these organisations;

9. the Internet facilitates access to information and offers citizens new opportunities for participation, discussion and shaping opinions. While this contributes to the freedom of expression and enhances pluralism of opinions, new challenges arise as to the way people access and assess information. Particular attention should be paid to the possible negative effects of both excessive concentration in the sector and the strengthening of gate-keepers' positions;

10. with the global character of the Internet it is not possible to contain these issues within geographically defined boundaries,

AGREE THAT:

11. a high level of media independence and pluralism is essential not only to democracy, but also contributes to the strengthening of economic growth and to its sustainability;

12. the Council of Europe plays an important role in setting standards for media freedom and pluralism and the cooperation with that body should be further continued and strengthened;

13. information about the ownership of a given media outlet and about other entities or persons benefiting from this ownership must be easily accessible to citizens so they can make an informed judgment about the information provided. In this context, media literacy plays an important role;

14. cooperation and sharing of best practice among audiovisual regulatory authorities and other relevant competent authorities contributes to the functioning of the EU single market and to an open and pluralistic media landscape;

15. ensuring high levels of media freedom and pluralism is essential for the EU to be credible in negotiations with acceding countries and in international fora,

WELCOME:

16. the Commission's Green Paper *Preparing for a Fully Converged Audiovisual World* [1],

TAKE NOTE OF:

17. the independent reports of the High Level Group on Media Freedom and Pluralism [2] and of the Media Futures Forum [3],

[1] Doc. 8934/13 — COM(2013) 231 final.
[2] http://ec.europa.eu/digital-agenda/sites/digital-agenda/files/HLG%20Final%20Report.pdf
[3] http://ec.europa.eu/information_society/media_taskforce/doc/pluralism/forum/report.pdf

INVITE THE MEMBER STATES TO:

18. ensure the independence of their audiovisual regulatory authorities;

19. take appropriate measures to achieve genuine transparency of media ownership;

20. take appropriate measures to safeguard the right of journalists to protect their sources and to protect journalists from undue influence;

21. take appropriate measures, depending on their national context, to prevent possible negative effects of excessive concentration of media ownership,

INVITE THE COMMISSION, WITHIN ITS COMPETENCE, TO:

22. continue to support projects that aim at enhancing the protection of journalists and media practitioners;

23. continue to support the independent monitoring tool for assessing risks to media pluralism in the EU (Media Pluralism Monitor), which is implemented by the European University Institute of Florence, and encourage its further use by Member States and all relevant stakeholders;

24. strengthen, through non-legislative actions [1], cooperation between Member States' audiovisual regulatory authorities and promote best practice as regards the transparency of media ownership;

25. assess the effectiveness of these measures in order to consider any further steps,

INVITE THE MEMBER STATES AND THE COMMISSION, WITHIN THEIR RESPECTIVE COMPETENCES, TO:

26. safeguard, promote and apply the values enshrined in the Charter of Fundamental Rights of the EU and in this context address challenges to media freedom and pluralism across the EU in full compliance with the principle of subsidiarity.

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[1] The Commission disagrees with the reference to 'non-legislative actions' and would prefer a more open wording.

EUROPEAN COMMISSION

Interest rate applied by the European Central Bank to its main refinancing operations [1]**:**

0,25 % on 1 February 2014

Euro exchange rates [2]

3 February 2014

(2014/C 32/05)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,3498	CAD	Canadian dollar	1,4950
JPY	Japanese yen	137,82	HKD	Hong Kong dollar	10,5609
DKK	Danish krone	7,4621	NZD	New Zealand dollar	1,6643
GBP	Pound sterling	0,82590	SGD	Singapore dollar	1,7341
SEK	Swedish krona	8,8318	KRW	South Korean won	1 463,63
CHF	Swiss franc	1,2226	ZAR	South African rand	15,0135
ISK	Iceland króna		CNY	Chinese yuan renminbi	8,1798
NOK	Norwegian krone	8,4525	HRK	Croatian kuna	7,6525
BGN	Bulgarian lev	1,9558	IDR	Indonesian rupiah	16 521,49
CZK	Czech koruna	27,527	MYR	Malaysian ringgit	4,5519
HUF	Hungarian forint	311,76	PHP	Philippine peso	61,267
LTL	Lithuanian litas	3,4528	RUB	Russian rouble	47,4730
PLN	Polish zloty	4,2242	THB	Thai baht	44,806
RON	Romanian leu	4,4938	BRL	Brazilian real	3,2478
TRY	Turkish lira	3,0533	MXN	Mexican peso	17,9892
AUD	Australian dollar	1,5346	INR	Indian rupee	84,3710

(1) Rate applied to the most recent operation carried out before the indicated day. In the case of a variable rate tender, the interest rate is the marginal rate.

(2) *Source:* reference exchange rate published by the ECB.

EUROPEAN DATA PROTECTION SUPERVISOR

Executive summary of the Opinion of the European Data Protection Supervisor on a proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, and a proposal for a Regulation of the European Parliament and of the Council on information on the payer accompanying transfers of funds

(The full text of this Opinion can be found in English, French and German on the EDPS website (http://www.edps.europa.eu))

(2014/C 32/06)

1. **Introduction**

1.1. *Consultation of the EDPS*

1. On 5 February 2013, the Commission adopted two proposals: one for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing ([1]) (the proposed Directive), and one for a Regulation of the European Parliament and of the Council on information on the payer accompanying transfers of funds ([2]) (the proposed Regulation), hereinafter jointly referred to as 'the Proposals'. The Proposals were sent to the EDPS for consultation on 12 February 2013.

2. The EDPS welcomes the fact that he is consulted by the Commission and that a reference to the consultation is included in the preambles of the Proposals.

3. Before the adoption of the Proposals, the EDPS was given the possibility to provide informal comments to the Commission. Some of these comments have been taken into account.

1.2. *Objectives and scope of the Proposals*

4. Money laundering means, broadly speaking the conversion of the proceeds of criminal activity into apparently clean funds, usually via the financial system ([3]). This is done by disguising the sources of the money, changing its form, or moving the funds to a place where they are less likely to attract attention. Terrorist financing is the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used in order to carry out terrorist offences ([4]).

5. At EU level, legislation has been introduced with the aim to prevent money laundering and terrorist financing as from 1991. These offences are considered as a threat to the integrity and stability of the financial sector and, more in general, as a threat to the internal market. The legal basis for the Proposals is Article 114 of TFEU.

6. The EU rules designed to prevent money laundering are to a large extent based on standards adopted by the Financial Action Task Force (FATF) ([5]). The Proposals aim at implementing in the EU the revised anti-money laundering international standards introduced by the FATF in February 2012. The current directive, the so-called Third Anti-Money Laundering (AML) Directive ([6]), has been in force since 2005. It provides a European framework around the international FATF standards.

([1]) COM(2013) 45 final.
([2]) COM(2013) 44 final.
([3]) See Article 1(2) of the proposed Directive.
([4]) See Article 1(4) of the proposed Directive.
([5]) FATF is the global standard-setter for measures to combat money laundering, terrorist financing, and (most recently) the financing of proliferation. It is an intergovernmental body with 36 members, and with the participation of over 180 countries. The European Commission is one of the founding members of the FATF. Fifteen EU Member States are FATF members in their own right.
([6]) Directive 2005/60/EC of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

7. The Third AML Directive applies to the financial sector (credit institutions, financial institutions) as well as to professionals such as lawyers, notaries, accountants, real estate agents, casinos and company service providers. Its scope also encompasses all providers of goods, when payments are made in cash in excess of EUR 15 000. All these addressees are considered 'obliged entities'. The Directive requires these obliged entities to identify and verify the identity of customers (so-called customer due diligence, hereinafter 'CDD') and beneficial owners, and to monitor the financial transactions of the customers. It then includes obligations to report suspicions of money laundering or terrorist financing to the relevant Financial Intelligence Units (FIUs), as well as other accompanying obligations. The Directive also introduces additional requirements and safeguards (such as the requirement to conduct enhanced customer due diligence) for situations of higher risk.

8. The proposed Directive extends the scope of the current framework and aims at strengthening these obligations, for instance by including providers of gambling services and dealers in goods in the obliged entities, with a threshold of EUR 7 500, requires extended beneficial ownership information, tightens the requirements on 'politically exposed persons' and introduces requirements for scrutiny of family and close associates of all politically exposed persons. The list of predicate [1] offences for money laundering has been expanded to include tax crimes related to direct taxes and indirect taxes.

9. The proposed Regulation replaces Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds (hereinafter also referred to as the 'Funds Transfers Regulation') which has the aim to improve traceability of payments. The Funds Transfers Regulation complements the other AML measures by ensuring that basic information on the payer of transfers of funds is immediately available to law enforcement and/or prosecutorial authorities to assist them in detecting, investigating, prosecuting terrorists or other criminals and tracing the assets of terrorists.

4. **Conclusions**

98. The EDPS recognises the importance of anti-money laundering policies for the economic and financial reputation of Member States. However, he underlines that the legitimate aim of achieving transparency of payments sources, funds deposits and transfers for purpose of countering terrorism and money laundering has to be pursued while ensuring compliance with data protection requirements.

99. The following issues should be addressed in both Proposals:

— an explicit reference to applicable EU data protection law should be inserted in both Proposals in a substantive and dedicated provision, mentioning in particular Directive 95/46/EC and the national laws implementing Directive 95/46/EC, and Regulation (EC) No 45/2001 as concerns the processing of personal data by EU institutions and bodies; this provision should also clearly state that the Proposals are without prejudice to the applicable data protection laws; the reference in recital 33 to Council Framework Decision 2008/977/JHA of 27 November 2008 should be deleted;

— a definition of 'competent authorities' and 'FIUs' should be added in the proposed Directive; this definition should guarantee that 'competent authorities' are not to be considered as 'competent authorities' within the meaning of Article 2(h) of the Framework Decision 2008/977/JHA.

— it should be clarified in recital 32 that the legal ground for the processing would be the necessity to comply with a legal obligation by the obliged entities, competent authorities and FIUs (Article 7(c) of Directive 95/46/EC);

— it should be recalled that the sole purpose of the processing must be the prevention of money laundering and terrorist financing, and that data must not be further processed for incompatible purposes;

[1] A predicate offence is any criminal offence whose proceeds are used to commit another offence: in this context, for instance, criminal activity predicate to money laundering can be fraud, corruption, drug dealing and other serious crimes.

— the specific prohibition to process data for commercial purposes, which is currently mentioned in recital 31 of the proposed Directive and recital 7 of the proposed Regulation, should be laid down in a substantive provision;

— a dedicated recital should be added to clarify that the fight against tax evasion is only inserted as predicate offences;

— as to international transfers, dedicated substantive provisions on the transfers of personal data should be added, which provides for an appropriate legal basis for the intra-group/PSP to PSP transfers that would respect the text and interpretation of Article 26 of Directive 95/46/EC, as supported by the Article 29 Working Party of European data protection authorities. The EDPS recommends that the proportionality of requiring the mass transfer of personal and sensitive information to foreign countries for the purpose of fighting AML/TF is re-assessed and that a more proportionate approach is favoured;

— regarding the publication of sanctions, the EDPS recommends evaluating alternative and less intrusive options to the general publication obligation and, in any case, specifying in the proposed Directive:

  — the purpose of such a publication if it was to be maintained;

  — the personal data that should be published;

  — that data subjects are to be informed before the publication of the decision and are guaranteed rights to appeal this decision before the publication is carried out;

  — that data subjects have the right to object under Article 14 of Directive 95/46/EC on compelling legitimate grounds;

  — additional limitations relating to the publication online;

— as to data retention, a substantive provision should be added that sets forth a maximum retention period that must be respected by Member States, with additional specifications.

100. In respect of the proposed Directive, the EDPS further recommends to:

— add a specific provision to recall the principle of providing data subjects with information about the processing of their personal data (in accordance with Articles 10 and 11 of Directive 95/46/EC) and to specify who will be responsible for such data subjects' information;

— respect the proportionality principle when limiting data subjects' rights and, as a consequence, add a specific provision to specify the conditions under which the data subjects' rights may be limited;

— clearly state whether or not risk assessments carried out by the designated authority and by obliged entities may involve the processing of personal data; if so, the proposed Directive should require the introduction of the necessary data protection safeguards;

— add a precise list of the information that should and should not be taken into account in carrying out the Customer Due Diligence; clarify whether or not sensitive data within the meaning of Article 8(1) of Directive 95/46/EC should be collected for this purpose; if such a processing were to be necessary, Member States should ensure that it is carried out under the control of an official authority and that suitable specific safeguards are provided under national law;

— amend Article 21 to limit more clearly the situations in which the risks are so substantial that they justify enhanced due diligence and to provide for procedural safeguards against abuse;

— amend Article 42 to include a reference to confidentiality, which should be respected by all employees involved in the CDD procedures;

— list in a substantive provision the types of identification data to be collected on the beneficial owner, also when no trust is involved.

101. In respect of the proposed Regulation, the EDPS further recommends to:

— refrain from using the national identity number as a reference without specific restrictions and/or safeguards, but to use the transaction number instead;

— recall the importance of respecting the principle of data accuracy, set forth in Article 6(d) of Directive 95/46/EC, in the context of AML procedures;

— add a provision stating that 'the information should only be accessible to designated persons or classes of persons';

— add a provision regarding the respect of confidentiality and data protection obligations by employees dealing with personal information on the payer and the payee;

— clarify in Article 15 that no other external authorities or parties that have no interest in combating money laundering or terrorist financing should access the data stored;

— complete Article 21 by specifying to which authority the breaches of the Regulation will be reported and by requiring that appropriate technical and organisational measures are implemented to protect data against accidental or unlawful destruction, accidental loss, alteration, or unlawful disclosure.

Done at Brussels, 4 July 2013.

Giovanni BUTTARELLI

Assistant European Data Protection Supervisor

Executive summary of the Opinion of the European Data Protection Supervisor on the proposal for a Council decision on the conclusion of the Agreement between the European Union and the Russian Federation on drug precursors

(The full text of this Opinion can be found in English, French and German on the EDPS website (http://www.edps.europa.eu))

(2014/C 32/07)

I. **Introduction**

I.1. *Context of the consultation of the EDPS*

1. On 21 January 2013, the Commission adopted a proposal for a Council decision on the conclusion of the Agreement between the European Union and the Russian Federation on drug precursors (hereinafter: 'the Proposal') ([1]). The Proposal was sent to the EDPS for consultation on the same day.

2. The Proposal includes the text of the agreement between the European Union and the Russian Federation on drug precursors (hereinafter: 'the agreement') ([2]). Annex II to the agreement contains a list of data protection definitions and principles (hereinafter: 'data protection principles') ([3]).

3. The EDPS had been previously consulted by the Commission. The present Opinion builds on the advice provided at that occasion and on the EDPS Opinion on the amendments to the Regulations on EU internal and external trade in drug precursors ([4]).

I.2. *Aim of the agreement*

4. The agreement aims at further strengthening cooperation between the European Union and the Russian Federation on the prevention of diversion from legitimate trade of the substances used to illicitly manufacture narcotic drugs and psychotropic substances (hereinafter: 'drug precursors').

5. On the basis of the UN Convention of 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (hereinafter: 'the 1988 Convention') ([5]), the agreement will allow the coordination of trade monitoring procedures and mutual assistance between the competent authorities of the Parties (the European Union and the Russian Federation), together with technical and scientific cooperation and the setting up of a joint follow-up expert group.

IV. **Conclusions**

35. The EDPS welcomes the provisions on the protection of personal data in the text of the agreement and the inclusion in the Annex of data protection principles to be respected by the Parties.

36. The EDPS suggests including an explicit reference to the applicability of EU national laws implementing Directive 95/46/EC to the transfers of personal data by the EU to Russian authorities and to the processing of personal data by EU authorities. He also suggests including references to Articles 7 and 8 of the EU Charter of Fundamental Rights.

37. He also recommends specifying in Articles 3(2) and 4(1) and 5(3) all the categories of personal data that might be exchanged. Furthermore, additional safeguards, such as shorter retention periods and stricter security measures should be included in the agreement or in Annex II for data relating to suspect transactions. The other purposes for which the data could be processed according to Article 5(3) should be explicitly stated in the agreement and should be compatible with the original purpose for which the data were transferred.

([1]) COM(2013) 4 final.
([2]) Annex to the Proposal.
([3]) Annex II to the agreement.
([4]) EDPS Opinion of 18 January 2013 on the Proposal for a Regulation amending Regulation (EC) No 273/2004 on drug precursors and the Proposal for a Regulation amending Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors, in particular pp. 9–10, available online (http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2013/13-01-18_Drug_precursors_EN.pdf).
([5]) United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 19 December 1988, available online (http://www.unodc.org/pdf/convention_1988_en.pdf).

38. The EDPS also welcomes the prohibition of keeping the data for longer than necessary in Article 5(2) of the agreement, but he recommends specifying at least maximum retention periods.

39. The EDPS welcomes the inclusion of mandatory data protection principles. However, he would recommend completing them as follows:

— adding the provisions on 'data security' and the specific requirements for processing 'sensitive data';

— specifying the procedures for making effective the principles of 'transparency' and 'rights of access, rectification, erasure and blocking of data' in the text of the agreement or in the Annex;

— as regards 'onward transfers', it should be added that the competent authorities of the Parties should not transfer personal data to other national recipients unless the recipient provides adequate protection and for the purposes for which the data have been transmitted;

— as regards the principle of 'redress', it should be specified that the term 'competent authorities', used in the rest of the agreement in a different context, refers here to authorities competent for the protection of personal data and the supervision of their processing;

— the relevant authorities and the practical information on existing remedies should be mentioned in the agreement or at least in letters exchanged between the parties or in documents accompanying the agreement;

— as regards the principle on 'exceptions to the rights of transparency and direct access': it should be specified that, in cases where the right of access cannot be granted to data subjects, indirect access through EU national data protection authorities should be provided.

41. It should also be specified that the data protection supervisory authorities of the Parties should jointly review the implementation of the agreement, either in the framework of the joint follow-up expert group, or as a separate process. In addition, if the independence of the relevant Russian supervisory authority is not sufficiently established, it should be specified that EU national data protection authorities should be involved in the supervision of the implementation of the agreement by Russian authorities. The results of the review should be reported to the European Parliament and to the Council, where needed with full respect of confidentiality.

42. The EDPS also recommends completing Article 12 of the agreement with a clause allowing any Party to suspend or terminate the agreement in the event of a breach of the other Party's obligations under the agreement, including as regards compliance with the data protection principles.

Done at Brussels, 23 April 2013.

Giovanni BUTTARELLI

Assistant European Data Protection Supervisor

Executive summary of the Opinion of the European Data Protection Supervisor on the Communication from the Commission to the European Parliament and the Council entitled 'Strengthening law enforcement cooperation in the EU: the European Information Exchange Model (EIXM)'

(The full text of this Opinion can be found in English, French and German on the EDPS website: http://www.edps.europa.eu)

(2014/C 32/08)

1. **Introduction**

1.1. *Consultation of the EDPS*

1. On 7 December 2012, the Commission adopted a Communication entitled 'Strengthening law enforcement cooperation in the EU: the European Information Exchange Model (EIXM)' (hereinafter: 'the Communication') ([1]). On the same day, the Commission adopted a report on the implementation of Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (the 'Prüm Decision') ([2]). This report will not be separately commented in this Opinion, but is mentioned here in order to better understand the context.

2. Before the adoption of the Communication, the EDPS was given the opportunity to provide informal comments. The EDPS welcomes that some of his comments have been taken into account in the Communication.

1.2. *Background and objectives of the Communication*

3. The Stockholm Programme ([3]) aims at meeting future challenges and further strengthening the area of freedom, security and justice with actions focusing on the interests and needs of citizens. It establishes the EU's priorities in the field of justice and home affairs for the period of 2010-2014 and defines strategic guidelines for legislative and operational planning within the area of freedom, security and justice in accordance with Article 68 of the Treaty on the Functioning of the European Union ('TFEU') ([4]).

4. In particular, the Stockholm Programme acknowledges the need for coherence and consolidation in developing information management and exchange in the field of EU internal security and invites the Council and the Commission to implement the Information Management Strategy for EU internal security, including a strong data protection regime. In this context, the Stockholm Programme also invites the Commission to assess the need for a European Information Exchange Model (EIXM) based on evaluation of existing instruments in the field of EU information exchange. This assessment should help to determine whether these instruments function as originally intended and meet the goals of the Information Management Strategy ([5]).

5. Following-up the Stockholm Programme, the Commission published a Communication in July 2010 (hereafter the 'Communication of 2010') ([6]) which provides a full overview of the EU-level measures in place, under implementation or consideration, that regulate the collection, storage or cross-border exchange of personal information for the purpose of law enforcement and migration management.

6. Answering the invitation of the Stockholm Programme and building on the Communication of 2010, the present Communication aims to take stock of how the cross-border information exchange in the EU works in practice and to recommend possible improvements.

3. **Conclusions**

37. The EDPS appreciates the general attention devoted to data protection in the Communication which emphasises the need to ensure high data quality, data security and data protection and recalls that whatever the combination or sequence used for exchanging information, the rules on data protection, data security and data quality as well as the purpose for which the instruments may be used must be respected.

([1]) COM(2012) 735 final.
([2]) COM(2012) 732 final.
([3]) The Stockholm Programme — An open and secure Europe serving and protecting citizens, Council Document 5731/10, 3.3.2010.
([4]) Treaty on the Functioning of the European Union (OJ C 83, 30.3.2010, p. 47).
([5]) The Stockholm Programme — An open and secure Europe serving and protecting citizens, Council Document 5731/10, 3.3.2010, Section 4.2.2.
([6]) Communication of 20 July 2010 from the Commission to the European Parliament and the Council entitled 'Overview of information management in the area of freedom, security and justice', COM(2010) 385 final.

38. The EDPS also:

— welcomes that the Communication concludes that neither new EU-level law enforcement databases nor new EU information exchange instruments are needed,

— emphasises the need for a full evaluation process of the instruments and initiatives in the justice and home affairs area, the outcome of which should lead to a comprehensive, integrated and well-structured EU policy on information and exchange management and encourages the Commission to pursue the assessment of other existing instruments,

— encourages the Commission to carry out reflections on (i) the effectiveness of data protection principles in light of technological changes, the developments relating to IT large-scale systems and the growing use of data initially collected for purposes not related to the combat of crime, as well as on (ii) the effectiveness for public security of the current tendency to a widespread, systematic and proactive monitoring of non-suspected individuals and its real usefulness in the fights against crimes; the outcome of these reflections should lead to a comprehensive, integrated and well-structured EU policy on information and exchange management in this area,

— underlines that the ongoing discussions on the proposal for a directive should not prevent the Commission from making an inventory of data protection problems and risks, and of possible improvements within the current legal context, and recommends using these discussions in particular on the distinction on processing of data of suspects and non-suspects for further development of the European Information Exchange Model,

— fully subscribes to the need for reviewing existing instruments to align them with the proposed directive and encourages the Commission to take further action,

— encourages the Commission to pursue the assessment of existing instruments along and after their full implementation,

— recommends that the guidance which the Council is invited to give as regards the choice of channel takes into account the consequences in terms of purpose limitation and responsibilities,

— encourages the Commission to justify more clearly the choice of the Europol channel using the SIENA tools as default channel and to assess whether this choice is in compliance with the principle of privacy by design,

— notes with satisfaction that the Communication recalls that information may only be actually exchanged and used where legally permitted, which includes compliance with data protection rules, and invites the Commission to start working on harmonised conditions for SPOCs, to ensure that the requirements are similar in all Member States and effectively protect individuals,

— recommends including trainings on information security and data protection in the scheme envisaged by the Commission as well as in the trainings Member States are invited to ensure.

Done at Brussels, 29 April 2013.

Peter HUSTINX

European Data Protection Supervisor

Executive summary of the Opinion of the European Data Protection Supervisor on the amended Commission proposal for a directive on the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of public health insurance systems

(The full text of this Opinion can be found in English, French and German on the EDPS website: http://www.edps.europa.eu)

(2014/C 32/09)

1. **Introduction**

1.1. *Consultation of the EDPS*

1. On 18 March 2013, the Commission adopted an amended proposal concerning a directive on the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of public health insurance systems ('the proposed directive') ([1]). This proposal was sent to the EDPS for consultation on 19 March 2013.

2. The EDPS welcomes the fact that he is consulted by the Commission and welcomes that a reference to this Opinion has been included in the preamble of the instrument. The EDPS regrets, however, that he was not consulted by the Commission during the preparation of or at least after the adoption of the original proposal from 1 March 2012 ([2]).

1.2. *Objectives and scope of the proposal*

3. In the explanatory memorandum to the proposed directive, the Commission states that Member States are responsible for the organisation of their healthcare system and for the delivery of health services and medical care, including the allocation of resources assigned to them. In this framework, each Member State can take measures to manage the consumption of medicines, regulate their prices or establish the conditions of their public funding. A medicinal product authorised in accordance with EU legislation on the basis of its quality, safety and efficacy profile may therefore be subject to additional regulatory requirements at Member State level before it can be placed on the market or dispensed to patients under the public health insurance scheme.

4. Furthermore, the Commission explains that directive 89/105/EEC ([3]) was adopted to enable market operators to verify that national measures regulating the pricing and reimbursement of medicines do not contravene the principle of free movement of goods. To this end, Directive 89/105/EEC lays down a series of procedural requirements to ensure the transparency of pricing and reimbursement measures adopted by the Member States. Since the adoption of this Directive, market conditions have fundamentally changed, for instance with the emergence of generic medicines providing cheaper versions of existing products or the development of increasingly innovative (yet often expensive) research-based medicinal products. In parallel, the constant rise in public expenditure on pharmaceuticals in the last decades has encouraged Member States to devise more complex and innovative pricing and reimbursement systems over time.

5. The proposal for a directive repealing Directive 89/105/EEC was adopted by the Commission on 1 March 2012. The Commission states that negotiations in the Council Working Party on Pharmaceuticals and Medical Devices proved to be difficult, given the politically sensitive nature of the file.

6. The European Parliament adopted its position in first reading on 6 February 2013. As the result of the vote in plenary and taking into consideration the position of the Member States in the Council, the Commission decided to amend its proposal by adopting the proposed directive, and to consult the EDPS.

([1]) COM(2013) 168 final/2.
([2]) COM(2012) 84 final.
([3]) Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance system (OJ L 40, 11.2.1989, p. 8).

1.3. *Aim of the EDPS Opinion*

7. This Opinion will focus on the following aspects of the proposed directive relating to personal data protection: the applicability of data protection legislation, the publication of personal data of experts and members of certain bodies, the potential processing of patient health data through the access to market authorisation data and the proposed opportunity for the creation of databases at EU/Member State level.

3. **Conclusions**

The EDPS makes the following recommendations:

— insert references to the applicable data protection legislation in a substantive Article of the proposed directive. Such a reference should provide 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 proposed directive. Furthermore, the EDPS suggests that the reference to Directive 95/46/EC should specify that the provisions will apply in accordance with the national rules which implement Directive 95/46/EC,

— assess the necessity of the proposed system in Article 16 of the proposed directive for the mandatory publication of names and declarations of interest of experts, members of decision-making bodies and members of bodies responsible for remedy procedures and verify whether the publication obligation does not go beyond what is necessary to achieve the public interest objective pursued, and whether there are any 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 rights of the persons concerned to object, the security/accuracy of the data and their deletion after an adequate period of time,

— insert a reference to Article 8 of directive 95/46/EC in Article 13 of the proposed directive concerning access to market authorisation data, if personal data concerning health is intended to be processed, and insert a provision in the proposed directive that clearly defines in which situations and subject to what safeguards information containing patient health data will be processed,

— include in Article 13 of the proposed directive a requirement to fully anonymise any patient data included in the market authorisation data before this data is transferred to the competent authority for any further processing for purposes of pricing and reimbursement decisions,

— carry out a data protection impact assessment in advance, before any further action is undertaken with a view to launching any new database.

Done at Brussels, 30 May 2013.

Giovanni BUTTARELLI

Assistant European Data Protection Supervisor

Executive summary of the Opinion of the European Data Protection Supervisor on the Joint Communication of the Commission and of the High Representative of the European Union for Foreign Affairs and Security Policy on a 'Cyber Security Strategy of the European Union: An open, safe and secure cyberspace', and on the Commission proposal for a directive concerning measures to ensure a high common level of network and information security across the Union

(The full text of this Opinion can be found in English, French and German on the EDPS website: http://www.edps.europa.eu)

(2014/C 32/10)

1. **Introduction**

1.1. *Consultation of the EDPS*

1. On 7 February 2013, the Commission and the High Representative of the European Union for Foreign Affairs and Security Policy adopted a Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a 'Cyber Security Strategy of the European Union: An open, safe and secure cyberspace' ([1]) (hereafter 'the Joint Communication', 'the Cyber Security Strategy' or 'the Strategy').

2. On the same date, the Commission adopted a proposal for a directive of the European Parliament and of the Council concerning measures to ensure a high common level of network and information security across the Union ([2]) (hereafter 'the proposed directive' or 'the proposal'). This proposal was sent to the EDPS for consultation on 7 February 2013.

3. Before the adoption of the Joint Communication and of the proposal, the EDPS was given the possibility to provide informal comments to the Commission. He welcomes that some of his comments have been taken into account in the Joint Communication and in the proposal.

4. **Conclusions**

74. The EDPS welcomes that the Commission and the High Representative of the EU for Foreign Affairs and Security Policy have put forward a comprehensive Cyber Security Strategy complemented by a proposal for a directive on measures to ensure a high common level of network and information security (NIS) across the EU. The Strategy complements the policy actions already developed by the EU in the area of network and information security.

75. The EDPS welcomes that the Strategy goes beyond the traditional approach of opposing security to privacy by providing for the explicit recognition of privacy and data protection as core values which should guide cyber security policy in the EU and internationally. The EDPS notes that the Cyber Security Strategy and the proposed directive on NIS can play a fundamental role in contributing to ensure the protection of individuals' rights to privacy and data protection in the online environment. At the same time, it must be ensured that they do not lead to measures that would constitute unlawful interferences with individuals' rights to privacy and data protection.

76. The EDPS also welcomes that data protection is mentioned in several parts of the Strategy and is taken into account in the proposed directive on NIS. However, he regrets that the Strategy and the proposed directive do not underline better the contribution of existing and forthcoming data protection law to security and fail to fully ensure that any obligations resulting from the proposed directive or other elements of the Strategy are complementary with data protection obligations and do not overlap or contradict each other.

77. Furthermore, the EDPS notes that due to the lack of consideration and taking full account of other parallel Commission initiatives and ongoing legislative procedures, such as the data protection reform and the proposed regulation on electronic identification and trust services, the Cyber Security Strategy fails to provide a really comprehensive and holistic view of cyber security in the EU and risks to perpetuate a

([1]) JOIN(2013) 1 final.
([2]) COM(2013) 48 final.

fragmented and compartmentalised approach. The EDPS also notes that the proposed directive on NIS does not yet permit a comprehensive approach of security in the EU either and that the obligation set forth in data protection law is probably the most comprehensive network and security obligation under EU law.

78. The EDPS also regrets that the important role of data protection authorities in the implementation and enforcement of security obligations and in enhancing cyber security is not properly considered either.

79. As to the Cyber Security Strategy, the EDPS underlines that:

— a clear definition of the terms 'cyber-resilience', 'cybercrime' and 'cyber-defence' is particularly important since these terms are used as a justification for certain special measures which could cause interference with fundamental rights, including the rights to privacy and data protection. However, the definitions of 'cybercrime' provided in the Strategy and in the Cybercrime Convention remain very broad. It would be advisable to have a clear and *restrictive* definition of 'cybercrime' rather than an overreaching one;

— data protection law should apply to all actions of the Strategy whenever they concern measures that entail the processing of personal data. Although data protection law is not mentioned specifically in the sections relating to cybercrime and cyber-defence, the EDPS underlines that many of the actions planned in those areas would involve the processing of personal data and would therefore fall within the scope of applicable data protection law. He also notes that many actions consist in the setting up of coordination mechanisms, which will require the implementation of appropriate data protection safeguards as to the modalities for exchanging personal data;

— data protection authorities (DPAs) play an important role in the context of cyber security. As guardians of the privacy and data protection rights of individuals, DPAs are actively engaged in the protection of their personal data, both offline and online. They should therefore be appropriately involved in their capacity of supervisory bodies with respect to implementing measures that involve the processing of personal data (such as the launch of the EU pilot project on fighting botnets and malware). Other players in the field of cyber security should also cooperate with them in the performance of their tasks, for instance in the exchange of best practices and awareness-raising actions. The EDPS and national DPAs should also be appropriately involved in the high-level conference that will be convened in 2014 to assess progress on the implementation of the Strategy.

80. As to the proposed directive on NIS, the EDPS advises the legislators to:

— provide more clarity and certainty in Article 3(8) on the definition of the market operators that fall within the scope of the proposal, and to set up an exhaustive list that includes all relevant stakeholders, with a view to ensuring a fully harmonised and integrated approach to security within the EU,

— clarify in Article 1(2)(c) that the proposed directive applies to EU institutions and bodies, and to include a reference to Regulation (EC) No 45/2001 in Article 1(5) of the proposal,

— recognise a more horizontal role for this proposal in respect of security, by explicitly providing in Article 1 that it should apply without prejudice to existing or future more detailed rules in specific areas (such as those to be set forth upon trust service providers in the proposed regulation on electronic identification),

— add a recital to explain the need to embed data protection by design and by default from the early stage of the design of the mechanisms established in the proposal and through the whole lifecycle of processes, procedures, organisations, techniques and infrastructures involved, taking into account the proposed data protection regulation,

— clarify the definitions of 'network and information system' in Article 3(1) and of 'incident' in Article 3(4), and replace in Article 5(2) the obligation to establish a 'risk assessment plan' by 'setting up and maintaining a risk management framework',

— specify in Article 1(6) that the processing of personal data would be justified under Article 7(e) of Directive 95/46/EC insofar as it is necessary to meet the objectives of public interest pursued by the proposed directive. However, due respect of the principles of necessity and proportionality must be ensured, so that only the data strictly necessary for the purpose to be achieved are processed,

— lay down in Article 14 the circumstances when a notification is required as well as the content and format of the notification, including the types of personal data that should be notified and whether or not, and to which extent, the notification and its supporting documents will include details of personal data affected by a specific security incident (such as IP addresses). Account must be taken of the fact that NIS competent authorities should be allowed to collect and process personal data in the framework of a security incident only where this is strictly necessary. Appropriate safeguards should also be set forth in the proposal to ensure the adequate protection of the data processed by NIS competent authorities,

— clarify in Article 14 that incident notifications pursuant to Article 14(2) should apply without prejudice to personal data breach notification obligations pursuant to applicable data protection law. The main aspects of the procedure for the cooperation of NIS competent authorities with DPAs in cases where the security incident involves a personal data breach should be set forth in the proposal,

— amend Article 14(8) so that the exclusion of microenterprises from the scope of the notification does not apply to those operators that play a crucial role in the provision of information society services, for instance in view of the nature of the information they process (e.g. biometric data or sensitive data),

— add provisions in the proposal governing the further exchange of personal data by NIS competent authorities with other recipients, to ensure that (i) personal data are only disclosed to recipients whose processing is necessary for the performance of their tasks in accordance with an appropriate legal basis and (ii) such information is limited to what is necessary for the performance of their tasks. Consideration should also be given as to how entities providing data to the information-sharing network ensure compliance with the purpose limitation principle,

— specify the time limit for the retention of personal data for the purposes set forth in the proposed directive, in particular as concerns the retention by NIS competent authorities and within the secure infrastructure of the cooperation network,

— remind NIS competent authorities of their duty to provide appropriate information to data subjects on the processing of personal data, for example by posting a privacy policy on their website,

— add a provision regarding the level of security to be complied with by NIS competent authorities as regards the information collected, processed, and exchanged. A reference to the security requirements of Article 17 of Directive 95/46/EC should be specifically included as regards the protection of personal data by NIS competent authorities,

— clarify in Article 9(2) that the criteria for the participation of Member States in the secure information-sharing system should ensure that a high level of security and resilience is guaranteed by all the participants in the information-sharing systems at all steps of the processing. These criteria should include appropriate confidentiality and security measures in accordance with Articles 16 and 17 of Directive 95/46/EC and Articles 21 and 22 of Regulation (EC) No 45/2001. The Commission should be expressly bound by these criteria for its participation as a controller in the secure information-sharing system,

— add in Article 9 a description of the roles and responsibilities of the Commission and of the Member States in the setup, operation and maintenance of the secure information-sharing system, and provide that the design of the system should be done in accordance with the principles of data protection by-design and by-default and of security-by-design, and

— add in Article 13 that any transfer of personal data to recipients located in countries outside the EU should take place in accordance with Articles 25 and 26 of Directive 95/46/EC and Article 9 of Regulation (EC) No 45/2001.

Done at Brussels, 14 June 2013.

Peter HUSTINX

European Data Protection Supervisor

Executive summary of the Opinion of the European Data Protection Supervisor on the proposal for a directive of the European Parliament and of the Council to approximate the laws of the Member States relating to trade marks (recast) and the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 207/2009 on the Community trade mark

(The full text of this Opinion can be found in English, French and German on the EDPS website http://www.edps.europa.eu)

(2014/C 32/11)

1. **Introduction**

1.1. *Consultation of the EDPS*

1. On 27 March 2013, the Commission adopted two legislative proposals in the field of trade marks: a proposal for a directive of the European Parliament and of the Council to approximate the laws of the Member States relating to trade marks (recast) ([1]) and a proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 207/2009 on the Community trade mark ([2]) (hereafter jointly referred to as 'the proposals'). These proposals were transmitted to the EDPS on that same day.

2. The EDPS takes note that the main aim of these proposals is to harmonise further all aspects of substantive trade mark law as well as procedural rules within the EU. Although at first sight it may seem that these proposals do not carry any substantial consequences for data protection, he however notes that both instruments establish a few processing operations, which may have an impact on individuals' right to privacy and data protection. The EDPS therefore regrets that he was not consulted informally prior to the adoption of these proposals.

3. Pursuant to Article 28(2) of Regulation (EC) No 45/2001, the EDPS wishes to highlight below a few specific issues that the proposals raise from a data protection perspective. The EDPS recommends that a reference be made in the preamble of the proposals to the consultation of the EDPS.

1.2. *General background*

4. The proposed directive aims at harmonising further within the EU substantive rules relating to trade marks — including clarifications on the rights conferred by a trade mark and the rules applicable to collective marks — as well as procedural aspects such as registration, fees, and procedures regarding opposition, revocation or declaration of invalidity of a trade mark. It also sets forth provisions enhancing the administrative cooperation of national central industrial property offices between themselves and with the European Union Trade Mark and Design Agency (Articles 52 and 53).

5. The proposed regulation amends the current legal framework applicable to the Community trade mark set forth in Regulation (EC) No 207/2009. The Office for Harmonization in the Internal Market ('OHIM') is renamed 'European Trade Marks and Design Agency' ('the Agency'). The proposed regulation clarifies substantive and procedural rules that apply to the European trade mark. It provides for the establishment by the Agency of a register and of an electronic database (Article 87). It also clarifies the role and tasks of the Agency, in particular in relation to its cooperation with the national central industrial property offices in the EU (Article 123).

3. **Conclusions**

27. Although these proposals deal with the harmonisation of substantive trade mark law as well as procedural rules within the EU and, at first sight, do not seem to have substantial consequences for data protection, they however establish a few processing operations which may have an impact on individuals' rights to privacy and data protection.

28. The EDPS underlines that the collection and processing of personal data by the Member States' central industrial property offices and the Agency in the performance of their tasks must be carried out in compliance with applicable data protection law, in particular the national laws implementing Directive 95/46/EC and Regulation (EC) No 45/2001.

([1]) COM(2013) 162 final.
([2]) COM(2013) 161 final.

29. As to the proposed directive, the EDPS recommends to:

— insert a substantive provision underlining the need for any processing of personal data carried out by national industrial property offices to respect applicable data protection law, in particular national laws implementing Directive 95/46/EC, and add a reference to the proposed general data protection regulation in a recital,

— underline in a substantive provision that any processing of personal data by the Agency in the context of the cooperation between national offices and the Agency is subject to compliance with the rules set forth in Regulation (EC) No 45/2001,

— clarify in a substantive provision whether the common or connected databases and portals planned under Article 52 and recital 37 involve the processing of personal data as well as their scope and purpose(s), in particular whether they bring additional purposes to the original ones of each database and portal, and if so, what is the legal basis for these additional purposes,

— clearly establish in a substantive provision the modalities for the exchanges of information through the common or connected databases and portals, in particular by determining the authorised recipients of personal data, the types of data, the purpose of such exchanges, and the length of the retention of the data in those IT systems.

30. As to the proposed regulation, the EDPS recommends to:

— set forth the modalities for the processing of personal data in the register and the electronic database in a substantive provision of the proposal and not in delegated acts,

— insert a substantive provision specifying the types of personal data to be processed in the register and the electronic database, the purpose of their processing, the categories of recipients who are authorised access to the data (with the specification of which data), the data retention time limit(s), and the modalities for the information and the exercise of data subjects' rights,

— clarify in Article 123c whether or not the exchanges of information between the Agency and national offices would include personal data, and if so, which ones. It should also specify: (i) that exchanges of personal data between the Agency and national offices must be carried out in compliance with applicable data protection law, in particular Regulation (EC) No 45/2001 as regards the processing by the Agency and Directive 95/46/EC as regards the processing by national offices; (ii) the purpose of such exchanges, in particular whether they bring additional purposes to the original ones of each database and portal, and if so, what is the legal basis for these additional purposes; and (iii) the types of data exchanged, the authorised recipients of the data, and the length of the retention of data in these IT systems,

— assess the necessity and proportionality of disclosing personal data in the context of the publication of information contained in the electronic database. If it is the intention of the legislators to provide for the publication of personal data for carefully assessed purposes, the EDPS recommends including explicit provisions to that effect in the proposed regulation. As a minimum, a substantive provision should clarify what kind of personal data may be made public and for what purpose(s),

— clarify in a substantive provision whether or not the means of cooperation would include the publication of court decisions relating to trade marks. If so, this substantive provision should define the conditions under which the publication of court decisions may take place. In this respect, the EDPS recommends that the publication of judgements on the Internet by the Agency and/or national central industrial property offices should take place under the condition that the indexing of judgments (and personal data contained therein) on external Internet search engines is technically prohibited or otherwise that it is considered whether the publication should be done on a no-name basis.

Done at Brussels, 11 July 2013.

Giovanni BUTTARELLI

Assistant European Data Protection Supervisor

Executive summary of the Opinion of the European Data Protection Supervisor on the proposals for a Regulation establishing an Entry/Exit System (EES) and a Regulation establishing a Registered Traveller Programme (RTP)

(The full text of this Opinion can be found in English, French and German on the EDPS website (http://www.edps.europa.eu))

(2014/C 32/12)

I. **Introduction**

I.1. *Consultation of the EDPS*

1. On 28 February 2013 the Commission adopted the following proposals (hereinafter: 'the proposals'):

— proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data of third-country nationals crossing the external borders of the Member States of the European Union (hereinafter: 'the EES proposal') ([1]);

— proposal for a Regulation of the European Parliament and of the Council establishing a Registered Traveller Programme (RTP) (hereinafter: 'the RTP proposal') ([2]);

— proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 as regards the use of the Entry/Exit System (EES) and the Registered Traveller Programme (RTP) (hereinafter: 'the amending proposal') ([3]).

2. On the same day, the proposals were sent to the EDPS for consultation. The EDPS had been given the opportunity to provide informal comments to the Commission before the adoption of the proposals.

3. The EDPS welcomes the reference to the consultation of the EDPS which has been included in the Preamble of both the EES proposal and the RTP proposal.

I.2. *Background*

4. The 2008 Commission's Communication 'Preparing the next steps in border management in the European Union' suggested new tools for the future management of European borders, including an Entry/Exit System (hereinafter: 'EES') for the electronic recording of the dates of entry and exit of third-country nationals and a registered traveller programme to facilitate border crossing for bona fide travellers (hereinafter: 'RTP'). It also considered the introduction of an Electronic System of Travel Authorisation (ESTA) for visa-exempted third-country nationals.

5. These proposals were endorsed by the European Council of December 2009 in the Stockholm programme ([4]). However, in its 2011 Communication on smart borders, the Commission ([5]) considered that the establishment of an ESTA should be discarded for the moment as 'the potential contribution to enhancing the security of the Member States would neither justify the collection of personal data at such a scale nor the financial cost and the impact on international relations' ([6]). It further announced that it intended to present proposals for an EES and an RTP in the first half of 2012.

6. Subsequently, the European Council of June 2011 requested that the work on 'smart borders' be pushed forward rapidly and asked for the introduction of the EES and the RTP ([7]).

([1]) COM(2013) 95 final.
([2]) COM(2013) 97 final.
([3]) COM(2013) 96 final.
([4]) 'An open and secure Europe serving and protecting the citizens' (OJ C 115, 4.5.2010, p. 1).
([5]) Communication of 25 October 2011 from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on 'Smart borders — options and the way ahead' (COM(2011) 680 final).
([6]) Communication from the Commission on smart borders, cited above, p. 7.
([7]) EUCO 23/11.

7. The Article 29 Working Party commented on the Communication from the Commission on smart borders, which preceded the proposals, in a letter to Commissioner Malmström of 12 June 2012 ([1]). More recently, on 6 June 2013, the Working Party adopted an opinion questioning the necessity of the Smart Borders package ([2]).

8. The present Opinion builds on these positions, as well as on a previous EDPS Opinion ([3]) on the 2011 Commission's Communication on migration ([4]) and on the EDPS Preliminary comments ([5]) on three Communications on border management (2008) ([6]). It also uses input given in the EDPS Round Table on the Smart Borders package and data protection implications ([7]).

I.3. *Aim of the proposals*

9. Article 4 of the EES proposal specifies its purpose. The proposal aims at improving the management of the EU external borders and the fight against irregular migration, the implementation of the integrated border management policy and the cooperation and consultation between border and immigration authorities. It provides for a system that would:

(a) enhance checks at external border crossing points and combat irregular immigration;

(b) calculate and monitor the calculation of the duration of the authorised stay of third-country nationals admitted for a short stay;

(c) assist in the identification of any person who may not, or may no longer, fulfil the conditions for entry to, or stay on the territory of the Member States;

(d) enable national authorities of the Member States to identify overstayers and take appropriate measures;

(e) gather statistics on the entries and exits of third-country nationals for the purpose of analysis.

10. The system should help monitoring the authorised stay by providing quick and precise information to border guards and to travellers. It would replace the current system of manual stamping of passports, which is considered slow and unreliable and improve the efficiency of border management ([8]).

11. It should also assist, through the storing of biometrics, in the identification of persons who do not fulfil the conditions for entry to, or stay in the EU, especially in the absence of identification documents. In addition, the EES would provide a precise picture of travel flows and of the number of overstayers, allowing evidence-based policymaking, for example on visa obligations. The statistics mentioned in Article 4 are used for this last aim.

([1]) The Article 29 Working Party, set up under Directive 95/46/EC, is composed of a representative of every national data protection authority, the EDPS and a representative of the European Commission. It has advisory status and acts independently. The letter of 12 June 2012 of the Working Party to Ms Cecilia Malmström on smart borders is available online (http://ec.europa.eu/justice/data-protection/article-29/documentation/other-document/files/2012/20120612_letter_to_malmstrom_smart-borders_en.pdf).

([2]) Article 29 Working Party, Opinion 05/2013 on Smart Border (http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2013/wp206_en.pdf).

([3]) EDPS Opinion of 7 July 2011, available online (http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2011/11-07-07_Migration_EN.pdf).

([4]) Communication of 4 May 2011 from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on migration (COM(2011) 248/3).

([5]) EDPS Preliminary comments of 3 March 2008, available online (http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Comments/2008/08-03-03_Comments_border_package_EN.pdf).

([6]) Communications from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on 'Preparing the next steps in border management in the European Union' (COM(2008) 69 final); 'Examining the creation of a European Border Surveillance System (EUROSUR)' (COM(2008) 68 final); and 'Report on the evaluation and future development of the FRONTEX Agency', COM(2008) 67 final.

([7]) EDPS Round Table on the Smart Borders package and data protection implications, Brussels, 10 April 2013, Venue: EDPS Building, Rue Montoyer 30, Brussels. See summary (http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/EDPS/PressNews/Events/2013/13-04-10_Summary_smart_borders_final_EN.pdf).

([8]) See the Explanatory Memorandum of the EES proposal.

12. The EES would be the basis for the RTP, aimed at facilitating border crossings to pre-vetted, frequent third-country travellers. Registered travellers would have a token with a unique identifier to be swiped on arrival and departure at the border through an automated gate. The data of the token, the fingerprints and, if applicable, the visa sticker number would be compared to the ones stored in the Central Repository and other databases. If all checks are successful, the traveller would be able to cross the automated gate. Otherwise, a border guard would assist the traveller.

13. Finally, the amending proposal has the objective of accommodating Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (hereinafter: 'the Schengen Borders Code') to the new EES and RTP proposals.

I.4. *Context and structure of the present Opinion*

14. The project to develop an electronic system to control entries and exits to the EU territory is not new, and several Communications of the Commission mentioned above have paved the way for the proposals now under analysis. It is therefore in the perspective of these developments that the smart border package should be assessed. In particular, the following elements need to be taken into account.

15. In the Stockholm programme, the Commission has taken the strategic approach of assessing the need for developing a European Information Exchange Model based on the evaluation of current instruments. This shall be based, amongst others, on a strong data protection regime, a well targeted data collection scheme, and a rationalisation of the different tools, including the adoption of a business plan for large IT systems. The Stockholm programme recalls the need to ensure consistency of the implementation and management of the different information tools with the strategy for the protection of personal data and the business plan for setting up large-scale IT systems ([1]).

16. A comprehensive analysis is all the more needed considering the existence and further development and implementation of large-scale IT systems, such as Eurodac ([2]), VIS ([3]) and SIS II ([4]). A smart borders scheme is an additional tool to collect massive amounts of personal data in a border control perspective. This global approach has been confirmed recently by the JHA Council which emphasised the need to learn from the experience of SIS by reference in particular to the escalation of costs ([5]). The EDPS has also commented that 'a European information model may not be construed on the basis of technical considerations', in view of the almost limitless opportunities offered by new technologies. Information should be processed only on the basis of concrete security needs ([6]).

17. The analysis of the EES and the RTP from a privacy and data protection angle must be done in the perspective of the Charter of Fundamental Rights of the European Union ([7]) (hereinafter: 'the Charter'), and in particular its Articles 7 and 8. Article 7, which is similar to Article 8 of the European Convention on Human Rights ([8]) (ECHR), provides for a general right to respect for private and family life, and protects the

([1]) The Stockholm programme — an open and secure Europe serving and protecting citizens (OJ C 115, 4.5.2010, p. 1).
([2]) See Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).
([3]) See Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).
([4]) See Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4).
([5]) See Council doc. No 8018/13, Note of the Presidency to the Strategic Committee on Immigration, Frontiers and Asylum/Mixed Committee (UE-Iceland/Liechtenstein/Norway/Switzerland), 28 March 2013 on Smart Border Package (http://www.statewatch.org/news/2013/apr/eu-council-smart-borders-8018-13.pdf).
([6]) EDPS Opinion of 10 July 2009 on the Communication from the Commission to the European Parliament and the Council on an area of freedom, security and justice serving the citizen (OJ C 276, 17.11.2009, p. 8).
([7]) OJ C 83, 30.3.2010, p. 389.
([8]) Council of Europe, ETS No 5, 4.11.1950.

individual against interference by public authorities, while Article 8 of the Charter gives the individual the right that his or her personal can only be processed under certain specified conditions. The two approaches are different and complementary. The Smart Borders package will be assessed against these two perspectives.

18. The present Opinion has a strong focus on the EES proposal — which is most relevant from the perspectives of privacy and data protection — and is structured as follows:

— Section II contains a general assessment of the Entry/Exit System, focusing on compliance with both Articles 7 and 8 of the Charter;

— Section III contains comments on more specific provisions of the EES concerning the processing of biometric data and access by law enforcement authorities;

— Section IV includes comments on other issues raised by the EES;

— Section V focuses on the RTP;

— Section VI refers to the need for additional data security safeguards;

— Section VII lists the conclusions.

VII. **Conclusions**

102. The Smart Borders package aims at creating a new large-scale IT system in order to supplement the existing border control mechanisms. The lawful character of this system needs to be evaluated against the principles of the Charter, in particular Article 7 on the right to respect for private and family life and Article 8 on the protection of personal data, with the objective to assess not only the interference with fundamental rights of the new scheme but also the data protection safeguards provided in the proposals.

103. In that perspective, the EDPS confirms that the proposed EES scheme constitutes an interference with the right to respect for private and family life. While he welcomes the safeguards in the proposals and recognises the efforts made by the Commission in that sense, he concludes that necessity remains the essential issue: the cost/efficiency of the system is at stake, not only in financial terms, but also in relation to fundamental rights, seen in the global context of existing schemes and border policies.

104. The EDPS makes the following recommendations as to the EES:

— The necessity and proportionality of the system could only be positively demonstrated in accordance with Article 7 of the Charter after a clear European policy on management of overstayers has been established, and the system is assessed against the more global context of existing large-scale IT systems.

— Data protection principles should be improved in accordance with Article 8 as follows.

  — Purposes should be limited and the design of the system should not pre-empt on the future assessment of any possible law enforcement access to EES data.

  — Data subjects' rights should be reinforced, especially with regard to the right to information and redress possibilities, taking into account the need for specific safeguards concerning automated decisions taken in relation to the calculation of the duration of stay.

  — Oversight should be complemented with a clear picture of the allocation of competences at national level, to ensure that data subjects exercise their rights with the relevant authority.

  — The use of biometrics should be subject to a targeted impact assessment, and if considered necessary, the processing of such data should be subject to specific safeguards regarding the enrolment process, the level of accuracy and the need for a fallback procedure. Besides, the EDPS strongly questions the collection of 10 fingerprints instead of two or four which would in any case be sufficient for verification purposes.

— The reasons for which the transfer of EES data to third-countries is necessary for the return of third-country nationals should be substantiated.

105. While the RTP does not raise the same substantial questions with regard to interference with fundamental rights as the EES, the EDPS still calls the attention of the legislator on the following aspects.

— The voluntary basis of the system is acknowledged, but consent should only be considered as a valid legal ground for processing the data if it is freely given, which means that RTP should not become the only valid alternative to long queues and administrative burdens.

— Risks of discrimination should be prevented: the vast number of travellers who do not travel frequently enough to undergo registration or whose fingerprints are unreadable should not be de facto in the 'higher-risk' category of travellers.

— The verification process leading to registration should be based on selective access to clearly identified databases.

106. With regard to security aspects, the EDPS considers that for EES and RTP a Business Continuity Plan and Information Security Risk Management practices should be developed to assess and prioritise risks. Moreover, strong collaboration should be foreseen between the Agency and the Member States.

Done at Brussels, 18 July 2013.

Peter HUSTINX

European Data Protection Supervisor

V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

Prior notification of a concentration

(Case COMP/M.7144 — Apollo/Fondo de Garantía de Depósitos de Entidades de Crédito/Synergy)

Candidate case for simplified procedure

(Text with EEA relevance)

(2014/C 32/13)

1. On 24 January 2014, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 [1] by which affiliates of Apollo Management L.P. ('Apollo', USA), and Fondo de Garantía de Depósitos de Entidades de Crédito ('FGD', Spain) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking Synergy Industry and Technology, SA ('Synergy', Spain) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for Apollo: management of investment funds which invest in companies involved in various businesses throughout the world. Examples of current investments include, inter alia, companies in the chemical, cruise line, logistics, paper, packaging, and metals businesses,

— for FGD: FGD is a fund financed by retail, cooperative and savings banks as well as the Spanish central bank covering deposits in Spanish banks,

— for Synergy: as the holding company of the Aernnova Group and shareholder of Aeroblade SA and Orisol Corporación Energética SA, it is active in the manufacture of air and space craft related machinery.

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.

[1] OJ L 24, 29.1.2004, p. 1 (the 'EC Merger Regulation').
[2] OJ C 366, 14.12.2013, p. 5 ('Notice on a simplified procedure').

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.7144 — Apollo/Fondo de Garantía de Depósitos de Entidades de Crédito/Synergy, to the following address:

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

EN

[1] Text with EEA relevance

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