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II

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

EUROPEAN COMMISSION

Non-opposition to a notified concentration**(Case M.7772 — Western Digital/Sandisk)****(Text with EEA relevance)**

(2016/C 186/01)

On 4 February 2016, the Commission decided not to oppose the above notified concentration and to declare it compatible with the internal market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004 ⁽¹⁾. The full text of the decision is available only in the English language 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/homepage.html?locale=en>) under document number 32016M7772. EUR-Lex is the online access to European law.

⁽¹⁾ OJ L 24, 29.1.2004, p. 1.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates ⁽¹⁾

24 May 2016

(2016/C 186/02)

1 euro =

Currency	Exchange rate	Currency	Exchange rate		
USD	US dollar	1,1168	CAD	Canadian dollar	1,4684
JPY	Japanese yen	122,56	HKD	Hong Kong dollar	8,6743
DKK	Danish krone	7,4365	NZD	New Zealand dollar	1,6604
GBP	Pound sterling	0,76513	SGD	Singapore dollar	1,5445
SEK	Swedish krona	9,3060	KRW	South Korean won	1 329,32
CHF	Swiss franc	1,1079	ZAR	South African rand	17,4501
ISK	Iceland króna		CNY	Chinese yuan renminbi	7,3226
NOK	Norwegian krone	9,3355	HRK	Croatian kuna	7,4950
BGN	Bulgarian lev	1,9558	IDR	Indonesian rupiah	15 278,26
CZK	Czech koruna	27,025	MYR	Malaysian ringgit	4,5959
HUF	Hungarian forint	316,00	PHP	Philippine peso	52,267
PLN	Polish zloty	4,4358	RUB	Russian rouble	74,4262
RON	Romanian leu	4,5083	THB	Thai baht	39,914
TRY	Turkish lira	3,3035	BRL	Brazilian real	3,9639
AUD	Australian dollar	1,5597	MXN	Mexican peso	20,5852
			INR	Indian rupee	75,5780

⁽¹⁾ Source: reference exchange rate published by the ECB.

EUROPEAN COURT OF AUDITORS

Special Report No 8/2016

'Rail freight transport in the EU: still not on the right track'

(2016/C 186/03)

The European Court of Auditors hereby informs you that Special Report No 8/2016 'Rail freight transport in the EU: still not on the right track' has just been published.

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

EUROPEAN DATA PROTECTION SUPERVISOR

Executive Summary of the Preliminary Opinion of the of the European Data Protection Supervisor on the agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection and prosecution of criminal offences

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

(2016/C 186/04)

This Opinion builds on the general obligation that international agreements concluded by the EU must comply with the provisions of the Treaty of the Functioning of the European Union (TFEU) and the respect for fundamental rights that stands at the core of EU law. In particular, the assessment is made so as to analyse the compliance of the content of the Umbrella Agreement with Articles 7, 8 and 47 of the Charter of Fundamental Rights of the European Union and Article 16 TFEU ensuring personal data protection.

EXECUTIVE SUMMARY

Investigating and prosecuting crime is a legitimate policy objective, and international cooperation including information exchange has become more important than ever. Until now, the EU has lacked a robust common framework in this area and so there are no consistent safeguards for individuals' fundamental rights and freedoms. As the EDPS has long argued, the EU needs sustainable arrangements for sharing personal data with third countries for law enforcement purposes, fully compatible with the EU Treaties and the Charter of Fundamental Rights.

Therefore, we welcome and actively support the efforts of the European Commission to reach a first 'Umbrella Agreement', with the US. This international law enforcement agreement aims at establishing for the first time data protection as the basis for information sharing. While we recognise that it is not possible to replicate entirely the terminology and definitions of EU law in an agreement with a third country, the safeguards for individuals must be clear and effective in order to fully comply with EU primary law.

The European Court of Justice in recent years has affirmed data protection principles including fairness, accuracy and relevance of information, independent oversight and individual rights of individuals. These principles are as relevant for public bodies as they are for private companies, regardless of any formal EU adequacy finding with respect to third countries data protection safeguards; indeed they become all the more important considering the sensitivity of the data required for criminal investigation.

This Opinion aims to provide constructive and objective advice to the EU institutions as the Commission finalises this delicate task, with broad ramifications, not only for EU-US law enforcement cooperation but also for future international accords. The 'Umbrella Agreement' is separate from but has to be considered in conjunction with the recently announced EU-US 'Privacy Shield' on the transfer of personal information in the commercial environment. Further considerations may be necessary to analyse the interaction between these two instruments and the reform of the EU's data protection framework.

Before the Agreement is submitted for the consent of the Parliament, we encourage the Parties to consider carefully significant developments since last September, when they signalled their intention to conclude the Agreement once the Judicial Redress Act is passed. Many safeguards already envisaged are welcome, but they should be reinforced, also in the light of the *Schrems* judgment in October invalidating the Safe Harbour Decision and the EU political agreement on data protection reform in December, which covers transfers and judicial and police cooperation.

The EDPS has identified three essential improvements which he recommends for the text to ensure compliance with the Charter and Article 16 of the Treaty:

- clarification that all the safeguards apply to all individuals, not only to EU nationals;
- ensuring judicial redress provisions are effective within the meaning of the Charter;

— clarification that transfers of sensitive data in bulk are not authorised.

The Opinion offers additional recommendations for clarification of the envisaged safeguards by way of an accompanying explanatory document. We remain at the disposal of the institutions for further advice and dialogue on this issue.

I. Context of the initialled Agreement

1. On 3 December 2010, the Council adopted a decision authorising the Commission to open negotiations on an Agreement between the European Union (EU) and the United States of America (US) on the protection of personal data when transferred and processed for the purpose of preventing, investigating, detecting or prosecuting criminal offences, including terrorism, in the framework of police cooperation and judicial cooperation in criminal matters (hereinafter: the 'Agreement')⁽¹⁾.
2. The negotiations between the Commission and the US began officially on 29 March 2011⁽²⁾. On 25 June 2014, the United States Attorney General announced that legislative action will be taken in order to provide for judicial redress concerning privacy rights in the US for citizens of the EU⁽³⁾. After several rounds of negotiations, which extended over 4 years, the Agreement was initialled on 8 September 2015. According to the Commission, the objective is to sign and formally conclude the Agreement only after the US Judicial Redress Act is adopted⁽⁴⁾.
3. The European Parliament must consent to the initialled text of the Agreement, while the Council must sign it. As long as this has not taken place and the Agreement is not formally signed, we note that the negotiations can be reopened on specific points. It is in this context that the EDPS issues this Opinion, based on the text of the initialled Agreement published on the website of the Commission⁽⁵⁾. This is a preliminary Opinion based on a first analysis of a complex legal text and it is without prejudice to any additional recommendations to be made on the basis of further available information, including legislative developments in the US, such as the adoption of the Judicial Redress Act. The EDPS has identified three essential points which require improvement and also highlights other aspects where important clarifications are recommended. With these improvements, the Agreement can be considered compliant with EU primary law.

V. Conclusions

53. The EDPS welcomes the intention to provide for a legally binding instrument that aims to ensure a high level of data protection for the personal data transferred between the EU and the US for the purpose of preventing, investigating, detecting or prosecuting criminal offences, including terrorism.
54. Most of the substantive provisions of the Agreement aim to fully or partially correspond with the essential guarantees of the right to personal data protection in the EU (such as the rights of the data subject, independent oversight and the right to judicial review).
55. Although the Agreement does not technically constitute an adequacy finding decision, it creates a general presumption of compliance for transfers grounded on a specific legal basis, in the framework of the Agreement. Therefore, it is crucial to ensure that this 'presumption' is reinforced by all necessary safeguards within the text of the Agreement, to avoid any breach of the Charter, in particular of Articles 7, 8 and 47.
56. There are three essential improvements the EDPS recommends for the text to ensure compliance with the Charter and Article 16 TFEU:
 - 1) clarification that all the safeguards apply to all individuals, not only to EU nationals;
 - 2) ensuring judicial redress provisions are effective within the meaning of the Charter;
 - 3) clarification that transfers of sensitive data in bulk are not authorised.

⁽¹⁾ See MEMO 10/1661 of the European Commission, published on 3 December 2010, available here: http://europa.eu/rapid/press-release_IP-10-1661_en.htm

⁽²⁾ See MEMO 11/203 of the European Commission, published on 29 March 2011, available here: http://europa.eu/rapid/press-release_MEMO-11-203_en.htm

⁽³⁾ See Press release 14-668 of the Office of the Attorney General, published on 25 June 2014, available here: <http://www.justice.gov/opa/pr/attorney-general-holder-pledges-support-legislation-provide-eu-citizens-judicial-redress>

⁽⁴⁾ See MEMO 15/5612 of the European Commission, published on 8 September 2015, available here: http://europa.eu/rapid/press-release_MEMO-15-5612_en.htm

⁽⁵⁾ Text available here: http://ec.europa.eu/justice/data-protection/files/dp-umbrella-agreement_en.pdf

57. Moreover, for the purpose of legal certainty, the EDPS recommends that the following improvements or clarifications be introduced in the text of the Agreement or within explanatory declarations to be attached to the Agreement, or in the implementing phase of the Agreement, as detailed within this Opinion:

- 1) that Article 5(3) must be interpreted as respecting the role of supervisory authorities so as to be compliant with Article 8(3) of the Charter;
- 2) that the specific legal bases for transfers (Article 5(1)) must fully comply with the safeguards provided in the Agreement and that, in the case of conflicting provisions between a specific legal basis and the Agreement, the latter will prevail;
- 3) that in case of ineffective protection for data transferred to authorities at State level, the relevant measures under Article 14(2) will include, where necessary, measures concerning data already shared;
- 4) that the definitions of processing operations and personal information (Article 2) are aligned to be in compliance with their well-established understanding under EU law; in case the Parties will not fully align these definitions, a clarification should be done in the explanatory documents accompanying the Agreement that the application of the two notions will not differ on substance from their understanding in EU law;
- 5) that an indicative list of the 'specific conditions' where data are transferred in bulk (Article 7(3)) could be included in the explanatory declaration;
- 6) that the Parties intend to apply the provisions regarding information breach notifications (Article 10) with a view to limit as much as possible omission of the notifications, on one hand, and to avoid excessive delays of notifications;
- 7) that the data retention provision in Article 12(1) is complemented by the specification 'for the specific purposes for which they were transferred', in the light of the purpose limitation principle invoked by the Parties in the Agreement;
- 8) that the Parties of the Agreement consider increasing their efforts to ensure that restrictions to the exercise of the right of access are limited to what is indispensable to preserve the public interests enumerated and to strengthen the obligation for transparency;
- 9) that a detailed explanatory declaration to the Agreement specifically list (Article 21):
 - the supervisory authorities that have competence in this matter and the mechanism for the Parties to inform each other about future changes;
 - the effective powers they may exercise;
 - the identity and coordinates of the contact point which will assist with the identification of the competent oversight body (see Article 22(2)).

58. Finally, the EDPS would recall the need that any interpretation, application and implementing measure of the Agreement should be done, in the case of lack of clarity and apparent conflict of provisions, in a way compatible with the EU constitutional principles in particular with regard to Article 16 TFEU and Articles 7 and 8 of the Charter, regardless of the welcome improvements to be adduced following the recommendations in this Opinion.

Done at Brussels, 12 February 2016.

Giovanni BUTTARELLI

European Data Protection Supervisor

Executive summary of the opinion of the European Data Protection Supervisor on the exchange of information on third-country nationals as regards the European Criminal Records Information System (ECRIS)

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

(2016/C 186/05)

The extension of the exchange of information regarding criminal records in the EU to third-country nationals (TCNs) in the ECRIS (European Criminal Records Information System) has been envisaged for a long time by the EU legislator. The proposal to extend ECRIS to TCNs was accelerated by the EU Agenda on Security, which acknowledged that ECRIS 'does not work effectively for non-EU nationals convicted in the EU'.

The ECRIS framework currently uses the Member State nationality of convicted persons as a central point in the exchange of information. This is why the creation of a parallel system is justified for third-country nationals. The Commission chose to implement the exchange of information regarding the criminal records of third-country nationals in a decentralised system, through the use of an index-filter for each participating Member State. The index-filter will be updated with specific information every time a third-country national is convicted and will be sent to the other Member States.

The EDPS has carefully analysed the legislative proposal and issues recommendations with a view to assist the legislator and to ensure that the new measures will be compliant with EU data protection law, and in particular Articles 7 and 8 of the EU Charter of Fundamental Rights.

While the EDPS welcomes the proposal of an EU decentralised system to process data related to criminal records of TCNs, based on a 'hit/no hit' search feature and using technical measures intended to limit interference in the rights to respect for private life and for personal data protection, the EDPS raises three main concerns and other additional recommendations, further detailed in the opinion.

Firstly, a corresponding regime for TCNs as the one existing for EU nationals regarding processing of fingerprints should be put in place, which takes into account the specificity of the national criminal systems, meeting thus the requirements of necessity and proportionality of the processing of personal data.

Secondly, the text of the Proposal inaccurately refers to the information in the index-filter as being 'anonymous'. The EDPS recommends the clarification that the information processed for the purposes of ECRIS-TCN is personal data which has undergone a process of pseudonymisation, and not anonymous data.

Thirdly, the EDPS considers that creating a different type of system to process data for EU nationals that have a third-country nationality other than the one in place for EU nationals does not meet the requirements of necessity in EU data protection law and could lead to discrimination. Therefore, the EDPS recommends that the measures in the Proposal only refer to TCNs and not also to EU nationals that also have a third-country nationality.

I. INTRODUCTION AND BACKGROUND

I.1. Consultation of the EDPS

1. On 19 January 2016 the European Commission published a proposal for a Directive of the European Parliament and of the Council amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third-country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA ('the Proposal')⁽¹⁾. The EDPS was consulted informally before the publication of the Proposal. However, the EDPS regrets to have not received a request for an opinion after the publication of the Proposal.

⁽¹⁾ COM(2016) 7 final, 2016/0002 (COD), Strasbourg, 19 January 2016.

I.2. Objective of the Proposal

2. ECRIS is an electronic system for exchanging information on previous convictions handed down against a specific person by criminal courts in the EU for the purposes of criminal proceedings against a person, and, if so permitted by national law, for other purposes. The system is based on Council Framework Decision 2009/315/JHA ⁽¹⁾ (‘the Framework Decision’) and Council Decision 2009/316/JHA ⁽²⁾.
3. According to the Explanatory Memorandum accompanying the Proposal, the underlying principle of ECRIS is that complete information on previous convictions of an EU national can be obtained from the Member State of nationality of that person, which can provide exhaustive up-to-date information on the criminal records of its nationals upon request, regardless of where in the EU convictions were handed down. This architecture makes it presently difficult for authorities to exchange information on convictions concerning third-country nationals and stateless persons (hereinafter: TCNs) through ECRIS, as ‘TCNs have no Member State of nationality’, and ‘in order to obtain a complete overview of the criminal records history of a particular individual requests must be sent to all the convicting Member State(s) ⁽³⁾’.
4. Therefore, the objective of the Proposal is to improve the efficiency of ECRIS with regard to the exchange of information concerning the criminal records of TCNs.
5. The Explanatory Memorandum describes the system that was chosen to achieve this objective. The system will be organised in a decentralised way, meaning that there will not be a single EU database containing the relevant information, but each Member State will maintain a data file. Member States will have to extract identity data from their criminal record and feed it into a separate file — ‘the index-filter’, whenever a TCN is convicted. The data will be converted into ‘locks and keys’. The index-filter will be distributed to all Member States, enabling them to search independently at their own premises. The system will allow the Member States to match their own data against the file and to find out whether further entries in criminal records exist in other Member States (a ‘hit/no hit’ system).

II. CONCLUSION

37. As already stated in the EDPS 2006 opinion on the ECRIS Proposal, ‘for third-country nationals, an alternative system might be needed’, because ‘for obvious reasons, the proposed system cannot work in those cases’ ⁽⁴⁾. We therefore welcome the current Proposal and we acknowledge the importance of efficient exchange of information extracted from criminal records of convicted persons, particularly in the context of the adoption of the EU Agenda on Security ⁽⁵⁾.
38. After carefully analysing the Proposal, the EDPS makes the following recommendations, in order to ensure compliance with EU data protection law:
 - (1) with regard to the compulsory use of fingerprints for TCNs, a corresponding regime for TCNs as the one existing for EU nationals should be created, in line with the existing rules on collecting fingerprints at national level;
 - (2) references to anonymous data should be removed from the Proposal and replaced with accurate references to the process of pseudonymisation;
 - (3) the data to be stored at national level regarding convicted EU nationals and convicted TCNs should not be differently categorised, by extending the same regime currently existing for EU nationals (e.g. ‘optional data’, ‘additional data’) to TCNs as well;
 - (4) the use of the index-filter system should be limited only to personal data of TCNs, a category of persons that should not include EU nationals who also hold the citizenship of a third country.

⁽¹⁾ Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93, 7.4.2009, p. 23).

⁽²⁾ Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA (OJ L 93, 7.4.2009, p. 33).

⁽³⁾ Explanatory Memorandum of the Proposal, p. 3.

⁽⁴⁾ Opinion of the EDPS on the Proposal for a Council Framework Decision on the organisation and content of the exchange of information extracted from criminal records between Member States (COM(2005) 690 final) (OJ C 313, 20.12.2006, p. 26, paras 15 and 18).

⁽⁵⁾ ‘European Agenda on Security’ — Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 28 April 2015, COM(2015) 185 final.

39. In addition, the EDPS makes the following recommendations which would strengthen the protection of personal data processed for the purposes of ECRIS-TCN:
- (1) the Preamble of the Proposal should include a reference to the DPD, clarifying the relationship between the instruments;
 - (2) further safeguards should be provided for the processing of fingerprints in the Implementing Acts to be proposed by the Commission, concerning the enrolment process, highlighting the level of accuracy and putting in place a fall-back procedure;

Done at Brussels, 13 April 2016.

Giovanni BUTTARELLI
European Data Protection Supervisor

Executive Summary of the Recommendations of the European Data Protection Supervisor on the proposed European Border and Coastal Guard Regulation

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

(2016/C 186/06)

Executive Summary

Europe is today faced with a pressing migration crisis and increased terrorist threats. The EU therefore wants to strengthen management of its external borders. In that context, the proposed European Border and Coast Guard Regulation aims to establish general principles of European integrated border management and will reinforce the mandate of the Frontex agency.

The EDPS recognises this need for more effective manage of migration and for reinforcing internal security, which requires processing of personal data. However, the Commission's Proposal could also create a serious intrusion into the rights of migrants and refugees, a vulnerable group of people in particular need of protection.

This Opinion address the five main data protection concerns and calls for further improvements of the proposed text to ensure full compliance with data protection principles. The EDPS considers that such compliance will be a key to the success of the initiative and its ability to withstand legal scrutiny. We specifically recommend:

- on the purposes of the Proposal, separate assessments of the necessity and proportionality of the measures for meeting the two identified aims of migration and security, noting that the aims will trigger the application of different data protection rules;
- on the collection of personal data, clarification of the scale and scope of processing activities by the Agency, since the current Proposal implies that the new Agency will turn into a personal data hub where massive amounts of personal information would be;
- clear delineation of responsibilities between the new Agency and the EU Member States so that there is no blurring of accountability in the data protection obligations of each controller;
- clarifications on transfers of personal data to third countries and international organisations, bearing in mind that such transfers must be based either on an adequacy assessment or on the use of appropriate safeguards;
- on the respect for fundamental rights of migrants and refugees, guarantees on the ground that migrants and refugees are informed of their rights in way that they can reasonably understand and exercise those rights.

Overall, the new Agency must be sufficiently equipped and capable of discharging its responsibilities for complying with data protection rules and safeguarding the interests and rights of individuals to whom the personal data being processed relates.

1. Context of the Proposal

1. On 15 December 2015, the Commission released an important set of measures better known as the 'Borders Package' ⁽¹⁾, with the objective to strengthen the management of the European Union's external borders and better protect the Schengen area. The main initiative of this package is the Proposal for a regulation establishing a European Border and Coast Guard ⁽²⁾ (hereinafter 'the Proposal'), which provides for the general principles of European

⁽¹⁾ The Borders Package includes in total 13 legislative documents: a proposal to establish the European Border and Coast Guard accompanied by a Commission Communication, a proposal to amend the Schengen Borders Code to introduce mandatory systematic checks on EU citizens entering and leaving the EU, a proposal to establish a European travel document for the return of illegally staying third country nationals, a Practical Handbook for implementing and managing the European Border Surveillance System, a Progress Report on the Implementation of the hotspots in Greece, a Progress Report on the Implementation of the hotspots in Italy, a proposal for a temporary suspension of Sweden's obligations under the EU relocation mechanism, a Commission Recommendation for a voluntary humanitarian admission scheme with Turkey, a Report on the follow-up to the Leaders' Meeting on refugee flows along the Western Balkans Route, a proposal to amend the establishing act of the Community Fisheries Control Agency and a proposal to amend the establishing act of the European Maritime Safety Agency. All documents are available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/index_en.htm

⁽²⁾ Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC (COM(2015) 671 final).

integrated border management and is a follow up to the Commission's own Agenda on Migration ⁽¹⁾ and to some extent to its Agenda on Security ⁽²⁾, both tabled earlier in Spring 2015.

2. On 17 December 2015, the European Council called for a swift adoption of the Proposal and asked the Council of the EU to reach a political agreement before the term of the current Presidency ⁽³⁾. The co-legislators have accelerated their deliberations on the Proposal. The Dutch Presidency intends to meet the requested deadline ⁽⁴⁾, while the European Parliament has tentatively scheduled a plenary sitting to scrutinise the Proposal in early June ⁽⁵⁾.
3. The EDPS acknowledges the migration crisis and terrorist threats that the EU is today facing, and the importance of taking swift and meaningful measures to tackle this situation at EU level. He welcomes the efforts of the European Commission to react swiftly to the current turn of events. Nevertheless, it is the EDPS' role to recall the importance of respecting the fundamental right to data protection and to advice on better ways to include data protection safeguards in new legislative measures, in the light of Articles 7 and 8 of the Charter of Fundamental Rights of the EU ⁽⁶⁾ (hereinafter 'the Charter') and Article 16 of the Treaty of the Functioning of the European Union. We regret that the above mentioned agenda has not allowed for the consultation of the EDPS at an earlier stage of the legislative process.
4. In the present Opinion, the EDPS has identified five main areas of concern which require further improvements of the proposed text so as to ensure compliance with the data protection framework. He will focus his comments on the purposes of the Proposal, the collection of personal data, the responsibility for processing personal data, transfers of personal data to third countries and international organisations, and the respect for fundamental rights of migrants and refugees. Finally he will highlight aspects of the Proposal where important clarifications are needed.

8. Conclusion

The EDPS welcomes several aspects of the Proposal, especially the fact that some safeguards have been included in the text, for instance to limit the data retention periods. However, considering the impact of the interference with fundamental rights of migrants and refugees, the EDPS considers more generally that a separate assessment of the necessity and proportionality of the processing activities envisaged for each purpose of the Proposal should be carried out. The compatibility in between the different purposes for processing envisaged in Article 45(1) of the Proposal should be verified as well.

In order to ensure legal certainty and compliance with data protection principles, the EDPS recommends, in particular, that the following improvements and clarifications be introduced in the final text of the initiative:

— Purpose specification and limitation

— detail more explicitly and separately the two purposes pursued by the Proposal throughout the text;

— ensure compatibility in the way data are being processed and refer explicitly to the compatibility of purposes in Article 45(1);

— redraft Article 45(3) to explicitly forbid personal data retained being further processed for other purposes than the ones defined in Article 45(1);

⁽¹⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'A European Agenda on Migration', Brussels, 13 May 2015, COM(2015) 240 final; at that time, the Commission had already identified that: *The scaling up of action in the Mediterranean exposes the reality of the management of external borders increasingly being a shared responsibility. As well as a European System of Border Guards, this would cover a new approach to coastguard functions in the EU, looking at initiatives such as asset sharing, joint exercises and dual use of resources as well as the possibility of moving towards a European Coastguard.*

⁽²⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'The Agenda on Security', Strasbourg, 28 April 2015, COM(2015) 185 final.

⁽³⁾ See Conclusions of the European Council meeting on 17 and 18 December 2015 available at: <http://data.consilium.europa.eu/doc/document/ST-28-2015-INIT/en/pdf>

⁽⁴⁾ See main results of the Justice and Home Affairs Council meeting on 25 February 2016 available on the Council website at: <http://www.consilium.europa.eu/en/meetings/jha/2016/02/25/>

⁽⁵⁾ See the dedicated webpage to the file on the European Parliament Legislative Observatory: [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=&reference=2015/0310\(COD\)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=&reference=2015/0310(COD))

⁽⁶⁾ Charter of Fundamental Rights of the European Union (OJ C 364, 18.12.2000, p. 1).

- Responsibilities of the Agency
 - clarify the extent of processing activities by the Agency upon personal data collected during joint operations and other operational tasks, by exhaustively listing in Article 46 the categories of data that could be used and/or pass through the Agency;
 - avoid ambiguity as to the accountability for processing activities and compliance between the Agency, the host Member State and home Member States in case of joint operations;
 - clarify in Article 46 in which circumstances data collected at the border by Member States will be transmitted to the Agency, thus triggering its responsibility as controller;
- Quality and security of data
 - clarify Article 46(1)(c) so it will not be interpreted as a general authorisation to collect such data irrespective of the categories of persons defined in Article 46(1)(a) and (b);
 - clearly define the responsibility for the security of the equipment used by the EBCG and referred to in Articles 37 and 38 at all steps of the equipment lifecycle;
- Transfers
 - make reference to international organisations in Article 44(4) as regards the prohibition to transfer personal data, and bring Article 51(4) in line;
 - clarify Article 51 by redrafting its paragraph 4 and by dividing it in two provisions in order to address cooperation of entities within the EU and cooperation with international organisations separately;
- Rights of data subjects
 - specify in Article 72 that data protection rights and related complaints will be dealt with separately by the DPO;
 - ensure that information provided to data subjects in this context is conveyed in an age appropriate manner, using clear and simple language and avoiding legal terminology;
 - include national data protection authorities in the list of authorities referred to provide for by Article 15, (3), l);
 - remove the possibility for liaison officers to access national and European information systems from Article 11(4) if evidence of such need is not provided.

Done at Brussels, 18 March 2016.

Giovanni BUTTARELLI
European Data Protection Supervisor

V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION
POLICY

EUROPEAN COMMISSION

Prior notification of a concentration

(Case M.8024 — NTT Data International/IT Services Business of Dell)

Candidate case for simplified procedure

(Text with EEA relevance)

(2016/C 186/07)

1. On 18 May 2016, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ⁽¹⁾ by which the undertaking NTT Data International L.L.C. ('NTT Data', United States) belonging to the NTT group acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Dell Services, which is the information technology services business of Dell Inc. ('Dell', United States) and certain subsidiaries thereof by way of purchase of shares and of assets.
2. The business activities of the undertakings concerned are:
 - for NTT Data: NTT Data is a subsidiary of Nippon Telegraph and Telephone Corporation (Japan), a telecommunications company,
 - for Dell Services: Dell Services provides a broad range of IT and business services, including infrastructure, cloud, applications and business process services to commercial and governmental customers from Dell.
3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 ⁽²⁾ it should be noted that this case is a candidate for treatment under the procedure set out in this Notice.
4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by email to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference M.8024 — NTT Data International/IT Services Business of Dell, to the following address:

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

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

⁽²⁾ OJ C 366, 14.12.2013, p. 5.

Prior notification of a concentration
(Case M.8048 — Ardagh/Ball Rexam Divestment Business)

Candidate case for simplified procedure

(Text with EEA relevance)

(2016/C 186/08)

1. On 18 May 2016, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ⁽¹⁾ by which the undertaking Ardagh SA ('Ardagh', Luxembourg) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of assets divested by Ball Corporation to obtain regulatory approvals for its acquisition of Rexam PLC (the 'Ball/Rexam Divestment Business'), by way of purchase of shares and assets.
2. The business activities of the undertakings concerned are:
 - For Ardagh: production of rigid packaging solutions for the food, beverage, and consumer products industries.
 - For the Ball/Rexam Divestment Business: manufacturing of beverage cans. In the EEA, the Ball/Rexam Divestment Business consists of eight Ball beverage can manufacturing plants, two Ball end plants, two Rexam beverage can manufacturing plants and certain support and innovation facilities in Germany and the United Kingdom. The Ball/Rexam Divestment Business also includes assets outside the EEA, notably in Brazil and the United States.
3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 ⁽²⁾ it should be noted that this case is a candidate for treatment under the procedure set out in this Notice.
4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by email to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference M.8048 — Ardagh/Ball Rexam Divestment Business, to the following address:

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

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

⁽²⁾ OJ C 366, 14.12.2013, p. 5.

OTHER ACTS

EUROPEAN COMMISSION

Publication of an application pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs

(2016/C 186/09)

This publication confers the right to oppose the application pursuant to Article 51 of Regulation (EU) No 1151/2012 of the European Parliament and of the Council ⁽¹⁾.

SINGLE DOCUMENT

'SICILIA'

EU No: IT-PGI-0005-01305 — 29.1.2015

PDO () PGI (X)

1. Name(s)

'Sicilia'

2. Member State or Third Country

Italy

3. Description of the agricultural product or foodstuff

3.1. Type of product

Class 1.5. Oils and fats (butter, margarine, oil, etc.)

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

At the time of packaging, the 'Sicilia' protected geographical indication must have the following characteristics:

Chemical/physical analysis

Acidity (expressed as oleic acid): maximum 0,5 %

Peroxide value: ≤ 12 mEqO₂/kgTotal polyphenols: ≥ 100 mg/kg

Organoleptic assessment (IOC method)

The product is characterised by a unique fruity flavour and by organoleptic attributes of grass, tomato and artichoke, which, although their expression varies in intensity depending on soil, climate, agronomic and technological factors, make 'Sicilia' extra virgin olive oil stand out from other oils.

Median interval	Minimum	Maximum
Fruity (ripe olive)	≥ 2	≤ 8
Fruity (green olive)	≥ 2	≤ 8
Grass and/or tomato and/or artichoke	> 2	≤ 8

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

Median interval	Minimum	Maximum
Bitter	> 2	≤ 7
Pungent	> 2	≤ 8

The oil has a sensory profile made up of direct and indirect olfactory descriptors (smell and taste) associated with sensations of 'tomato' (leaf, green or ripe fruit) and 'artichoke', which can be identified alone or in combination. In addition, the 'fresh grass' descriptor is almost always associated with the oil.

Another typical feature of 'Sicilia' oil relates to the category to which it belongs, namely fruity oils; it can almost always be categorised between medium and intense fruitiness although the positive attribute descriptors such as bitterness and pungency are very harmonious.

3.3. *Feed (for products of animal origin only) and raw materials (for processed products only)*

Due to its central position in the Mediterranean, the island of Sicily has changed hands multiple times over its history and been subject to many different influences (cultural, architectural, religious, culinary etc.). The olive-growing sector, in particular, is symbolic of this long process of enrichment in terms of crops, cultivation techniques and varietal biodiversity. These conditions have made Sicily rich both in terms of the number of varieties grown and the cultivation techniques used, helping to create a unique olive growing and olive oil producing profile that cannot be reproduced elsewhere.

The 'Sicilia' protected geographical indication must be obtained from the following olive cultivars, which are present either on their own or in combination in the olive groves and which are subdivided as follows, in order of importance and representativeness:

The main cultivars represented are:

Biancolilla, Cerasuola, Moresca, Nocellara del Belice, Nocellara Etnea, Ogliarola Messinese and Tonda Iblea.

Minor cultivars:

Aitana, Bottone di Gallo, Brandofino, Calatina, Cavalieri, Crastu, Erbanò, Giarraffa, Lumiaru, Marmorigna, Minuta, Nasitana, Nerba, Nocellara Messinese, Olivo di Mandanici, Pircuddara, Santagatese, Vaddarica, Verdello, Verdesè, Zaituna, and their synonyms. Other cultivars present in the olive groves may also be used, up to a maximum of 10 %. If more than 10 % of the cultivars present on the holding are of other varieties, the olive-growing areas cannot be registered in the 'Sicilia' PGI monitoring system.

The main cultivars cover more than 85 % of the region's olive-growing area.

The oil that can be produced from all of the above cultivars, used alone or in combination, has the organoleptic profile already described in section 3.2, which is easily recognisable by the average consumer due to its characteristics of smell and taste, which are defined in a medium-high range of perception linked to the abovementioned descriptors such as 'green or ripe tomato', 'artichoke' and 'fresh grass'.

3.4. *Specific steps in production that must take place in the identified geographical area*

All the various steps in the production process — cultivation, harvest and oil extraction — must take place in the identified geographical area.

3.5. *Specific rules concerning slicing, grating, packaging, etc. of the product to which the registered name refers*

Both storage and packaging of the 'Sicilia' protected geographical indication extra virgin olive oil must take place in the production area identified in the specification. As well as for the obvious reason that the territory is geographically separate from the rest of the European continent, this is to avoid exposing the product to chemical/physical factors during transportation which would lead to a decline in oxidation stability, and therefore to a deterioration in the qualitative properties, particularly the polyphenols, which are one of the distinguishing features of 'Sicilia' protected geographical indication extra virgin olive oil. Furthermore, there is a network of 251 bottlers/packers in Sicily (AGEA data — 2013), widely spread all over the island, and the know-how they have built up over time means that the preservation of quality indicators is ensured. The 'Sicilia' protected geographical indication must be released for consumption in suitable containers with a capacity of not more than 5 litres.

3.6. Specific rules concerning labelling of the product to which the registered name refers

It is forbidden to add any description to the 'Sicilia' protected geographical indication that is not expressly provided for in this product specification, including the following adjectives: *fine* (fine), *scelto* (selected), *selezionato* (selected) or *superiore* (superior). Truthful and verifiable references describing the methods of individual producers are permitted, such as: *monovarietale* (single variety), followed by the name of the cultivar used, *raccolto a mano* (hand-picked), etc. Names, business names and brand names may be used truthfully, provided they have no laudatory purport and are not such as to mislead the consumer. The names of holdings, estates and farms may be used only if the product is made exclusively from olives harvested from olive groves belonging to the holding in question. Reference to packaging at an olive holding or at an association of olive holdings or at a business located in the production area is permitted only if the oil is packaged on the holding in question. The use of other geographical indications is forbidden. The 'Sicilia' protected geographical indication must appear on the label in distinct and indelible lettering so that it can be distinguished from all the other information provided. The way in which the oil is identified must furthermore comply with the labelling rules laid down in the legislation in force. It is mandatory to indicate the year of production of the oil on the label.

4. Concise definition of the geographical area

The production area of 'Sicilia' PGI extra virgin olive oil comprises the entire administrative territory of the Sicily Region.

5. Link with the geographical area

The particular geographical position of Sicily creates the natural conditions necessary to produce extra virgin olive oil with the distinctive chemical/physical and organoleptic characteristics described in the specification.

In terms of biodiversity, the geographical separation of the territory from the European continent has led to a unique range of varieties of this species which is distinct from other olive-growing areas.

The organoleptic characteristics of 'Sicilia' PGI extra virgin olive oil are determined by soil, climate and human factors which are closely linked to the territory.

The link between the territory, the olive tree and Sicilian culture has created a product whose reputation has been demonstrated by the numerous accolades given to 'Sicilia' extra virgin olive oil by experts in the sector and by consumers.

It should be pointed out that the legislation prohibits oil producers from using geographical references on their labels, and they face heavy fines if they do, and that this has had a strong deterrent effect as regards including references to the name in promotional events, including websites.

In spite of this, the link between the territory, the olive tree and Sicilian culture has created a product whose reputation has been demonstrated by the numerous accolades given to extra virgin olive oil produced in Sicily by experts in the sector and by consumers.

In recent decades, producers of 'Sicilia' extra virgin olive oil have continued to receive numerous accolades in all of the major international olive oil competitions:

It won 1st, 2nd and 3rd prize at the Orciolo d'Oro competition for all or at least one of the delicate, medium and intense categories, mostly for the medium and intense categories, in 1997, 1998, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 and 2012; 1st and 2nd prize in 2009 and 2010; 3rd prize in 2011; and 1st prize in 2013.

It won the Gold Medal (Sol d'Oro) at the Sol d'Oro competition in 2009, 2010 and 2011, the Silver Medal (Sol d'Argento) in 2009, 2012 and 2013, and the Bronze Medal (Sol di Bronzo) in 2010, 2011, 2012 and 2013.

It won 1st, 2nd and 3rd prize at the Sirena d'Oro di Sorrento competition in 2003, 2004, 2005 and 2006, and 2nd and 3rd prize in other years.

Holdings producing 'Sicilia' extra virgin olive oil won 1st, 2nd and 3rd prize at the Leone d'Oro competition in 2007, and 1st prize in 2010 and 2012.

Since 1996, 'Sicilia' olive oil has won 1st prize in the three categories at the Montiferru Prize 15 times, as well as a number of 2nd and 3rd prizes.

This reputation is the result of the product's material value (chemical/physical and organoleptic characteristics) and the perception of its intangible value which has developed during the centuries-long history of olive trees and oil in Sicily.

Evidence of the reputation of 'Sicilia' extra virgin olive oil can also be found in historical records, which show that a number of oil producers insisted on the Sicilian origin of their product being specified on the label.

Prior to 1992, a number of sales invoices were collected showing the 'Sicilia' indication in 1988 and 1989. Several invoices targeted at the foreign market also relate to the years 1996 and 2000.

The reference to the name is also clear in the publication of the catalogue of Sicilian olive oil from 1997 to 2009.

The documentation also includes a series of labels containing the 'Sicilia' wording from bottles of oil packaged and labelled in countries other than Italy (Carluccio's London — Olio extra vergine d'oliva — Sicilia), several labels for Agata & Valentina Extra Virgin Sicilian Olive Oil distributed in the USA and Trader Giotto's, which evoke the 'Sicilia' name, labels from the Barbera oil mill with the 'Sicilia' name indication for foreign markets, as well as labels of the company EFFE1 srl containing the 'Sicilia' indication.

Over time, 'Sicilia' extra virgin olive oil has seen an increase in production quality as well as in its reputation on the various markets. This means that the oil is a target for imitation, causing serious financial losses.

The production area of 'Sicilia' PGI extra virgin olive oil can be defined, according to the Köppen climate classification system, as a humid temperate climate (Type C), where the average temperature of the coldest month is below 18 °C, but higher than - 3 °C, or perhaps more accurately, it is a humid subtropical mesothermal climate with dry summers (Type Csa), i.e. the typical Mediterranean climate, characterised by an average temperature in the hottest month of more than 22 °C, and a rainfall pattern featuring a concentration of precipitation in the cold period (autumn/winter).

The Mediterranean climate (Cs) is the least prevalent of the temperate climates, and, in the case of Sicily, it displays many characteristics that significantly affect the chemical and in particular the organoleptic composition of the extra virgin olive oil; these differentiate it considerably from oil produced in neighbouring geographic areas, especially as regards the ratio of monounsaturated to polyunsaturated fatty acids (MUFAs/PUFAs) and the quality of biophenols and volatile aroma compounds (alcohols, aldehydes and esters).

The characteristics of 'Sicilia' PGI extra virgin olive oil are also the result of solar radiation, temperature, humidity and wind; these greatly influence the physiology of the olive tree and affect the phases of dormancy and regrowth as well as all the other phases of phenological development (anthesis, fruit setting and development, veraison, ripening). The quantity of photosynthetically active radiation (PAR) in this area of the Mediterranean creates the conditions for greater accumulation of biomass in the various organs of the plant, which, together with the limited availability of water and the mild temperatures, causes an increase in the content of total biophenols and, above all, of specific phenols, as well as other precursor compounds forming the oil's aroma. The limited availability of water and all of the superior climatic conditions described, which best define the character of the island, are also responsible for the constant presence of the descriptors of bitterness and pungency, which always have median values greater than 2 in the 'Sicilia' PGI olive oil, and, in any case, values such as to classify the oil predominantly in the intense and medium categories. The soil and climate factors described above affect not only the crop growth rate (CGR) linked to photosynthesis (quantity of solar radiation, area and structure of leaves), but also the respiratory processes of the plant cell, and metabolic pathways which generate a wide range of plant metabolites: amino acids, lipids and their compounds, isoprenoids (e.g. terpenes, including squalene, menthol and limonene, which give plants, flowers and fruits their characteristic scent and the biosynthetic precursors of sterols) and porphyrin (associated with chlorophyll and photosynthesis).

The profile described in section 3.2 defines the unique character of the 'Sicilia' PGI olive oil and it is systematically demonstrated by the constant presence of aromas of green tomato, artichoke and fresh grass, the manifestation of which is favoured by the abovementioned climatic conditions, as well as by the organoleptic characteristics that are always associated with the major cultivars listed in section 3.3.

Reference to publication of the product specification

(second subparagraph of Article 6(1) of this Regulation)

The full text of the product specification is available on the internet: <http://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/3335>

Or alternatively:

by going directly to the homepage of the Ministry of Agricultural, Food and Forestry Policy (www.politicheagricole.it) and clicking on 'Prodotti DOP IGP' (at the top right-hand side of the screen), then on 'Prodotti DOP IGP STG' (on the left-hand side of the screen), and finally by clicking on 'Disciplinari di Produzione all'esame dell'UE'.

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