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EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 6 April 2016

on a proposal for a Council Decision laying down measures in view of progressively establishing unified representation of the euro area in the International Monetary Fund

(CON/2016/22)

(2016/C 216/01)

Introduction and legal basis

On 30 October 2015 the European Central Bank (ECB) received a request from the Council for an opinion on a proposal for a Council Decision laying down measures in view of progressively establishing a unified representation of the euro area in the International Monetary Fund (the 'IMF' or the 'Fund') (hereinafter the 'proposed decision') ([1]).

The ECB's competence to deliver an opinion is based on Article 138 of the Treaty on the Functioning of the European Union (TFEU) according to which, in order to secure the euro's place in the international monetary system, the Council, on a proposal from the Commission, and after consulting the ECB, may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. General observations

1.1 The proposed decision builds on the Five Presidents' Report ([2]), which called for an increasingly unified external representation of economic and monetary union (EMU), as it evolves towards economic, financial and fiscal Union. The ECB shares the objective of gradually strengthening the external representation of the euro area in the IMF with the ultimate goal of establishing one or several euro area constituencies and ensuring that the euro area expresses a common position.

1.2 The ECB fully supports the strengthening of euro area policy coordination, which is essential to the goal of unified external representation, as provided for in Articles 4 and 9 of the proposed decision. Although coordination has improved in recent years, it still requires further strengthening and improvement so that it is commensurate with the economic governance of the euro area, which has already been strengthened in recent years, and with the anticipated deeper integration as outlined in the Five Presidents' Report.

1.3 The ECB would like to emphasise that for the purposes of achieving a unified and effective representation of the euro area in the IMF it is crucial that all parties involved act in full respect of the principle of sincere cooperation. In this respect, Article 4(3) of the Treaty on European Union (TEU) requires the Union and the Member States to assist each other, in full mutual respect, in carrying out tasks which flow from the TEU and the TFEU (collectively referred to as 'Treaties'). This principle requires that Member States take any appropriate measures to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union and to refrain from any measure which could jeopardise the attainment of the Union's objectives. Article 13(2) TEU requires that Union institutions practice mutual sincere cooperation.

1.4 The ECB notes that the proposed decision seeks to establish a unified representation of the euro area under Union law, without altering the IMF's country-based membership structure under the Articles of Agreement of the International Monetary Fund ([3]) (hereinafter the 'IMF Articles of Agreement'). A fully unified representation of the euro area in the IMF would appear to necessitate an amendment to the IMF Articles of Agreement, in order to open membership to supranational organisations such as the Union/euro area. The ECB notes that such a reform is not envisaged under the proposed decision. Therefore, the unified representation of the euro area in the IMF is restricted to those policy areas that are transferred to the Union.

([1]) COM(2015) 603 final.
([2]) See the Five Presidents' Report on Completing Europe's Economic and Monetary Union, 22 June 2015, available at www.ec.europa.eu
([3]) Articles II and III of the IMF Articles of Agreement.

1.5 The ECB notes that the national central banks (NCBs) in the Eurosystem and the European System of Central Banks (ESCB) play an important role in representing their respective countries in the IMF, within the framework of the country-based membership structure of the IMF. In accordance with Article V(1) of the IMF Articles of Agreement ([1]), each member country must designate the agencies through which it will deal with the IMF. In a majority of the euro area Member States it is the NCBs who are designated as such agencies ([2]). Furthermore, NCBs play an important role in representing their Member States in the decision-making bodies of the IMF. In a majority of euro area Member States ([3]) the Governor of the NCB serves as his or her country's Governor on the IMF's Board of Governors, while in other Member States he or she serves as the Alternate Governor on the IMF's Board of Governors. Moreover, in several cases the Governor of an NCB is the alternate member on the International Monetary and Financial Committee (IMFC). In addition, many NCBs are closely involved in the selection procedure for their countries' (Alternate) Executive Directors, and in some cases the NCBs make the selection.

In accordance with the IMF Articles of Agreement ([4]) each euro area Member State designates its central bank as a depository for all the IMF's holdings of its currency. Furthermore, Eurosystem NCBs hold and manage special drawing rights (SDRs) allocated to their respective countries by virtue of their participation in the SDR Department of the IMF ([5]) and participate in voluntary SDR trading arrangements. Moreover, Eurosystem NCBs participate in the IMF's financial transaction plan, provide obligatory quota subscriptions for their country's IMF membership and – when needed and as appropriate – provide voluntary credit lines bilaterally to the IMF and in the context of both the IMF's General Agreements to Borrow and the New Arrangements to Borrow.

1.6 From a Union law perspective, the Treaties acknowledge the role that the NCBs and the ECB play vis-à-vis the IMF. Under the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') the ECB and the NCBs may establish relations, where appropriate, with international organisations and conduct all types of banking transactions in relations with them, including borrowing and lending operations ([6]). The NCBs are allowed to perform transactions in fulfilment of their obligations towards international organisations ([7]). The ECB may hold and manage IMF reserve positions and SDRs and provide for the pooling of such assets ([8]). In this respect, the ECB has been designated by the IMF Executive Board as a prescribed holder of SDRs pursuant to the IMF Articles of Agreement ([9]).

1.7 The ECB understands that the proposed decision does not intend to alter the arrangements that euro area Member States have put in place to ensure the performance of their respective rights and obligations arising from their membership in the IMF. Within these boundaries, the ECB stands ready to contribute to the efforts made by the Council to ensure a unified representation of the euro area within all organs of the IMF, and to play its role in a unified representation of the euro area as decided upon by the Council. Any measure based on Article 138 TFEU will have to take due account of the fact that the scope of this Article is restricted to those policy areas that have been transferred to the Union and where the ECB and the NCBs independently exercise the specific powers conferred on them under the TFEU and the Statute of the ESCB ([10]).

2. **Specific observations**

2.1 *Independence of the Eurosystem*

2.1.1 As noted above, the objective of achieving a unified representation of the euro area in the IMF will have to be reached while respecting the competences of the Eurosystem, in particular under Article 127 TFEU, and its

([1]) See Section 1 of Article V of the IMF Articles of Agreement, which provides that each member country must deal with the Fund only through its Treasury, central bank, stabilisation fund or other similar agency, and that the Fund must deal only with or through the same agencies.

([2]) See for example, Austria: Sections 1 and 2 of the Federal Law of 23 June 1971 on the increase of Austria's quota in the IMF and the transfer of the entire quota by the Oesterreichische Nationalbank, BGBl No 309/1971; Germany: Article 3(2) of the Law on the IMF Articles of Agreement of 9 January 1978 (BGBl. 1978 II p. 13) as amended by Article 298 of the Regulation of 31 August 2015 (BGBl. I p. 1474); Finland: Section 2 of Act 68/1977 on the approval of certain amendments to the Treaty on the International Monetary Fund; Slovenia: Article 4 of the Law on the membership of the Republic of Slovenia in the International Monetary Fund; Portugal: Article 1(1) of Decree-Law No 245/89, of 5 August 1989.

([3]) This is the case, for example, in Belgium, Estonia, Germany, Latvia, Lithuania, Malta, the Netherlands, Austria, Slovakia, Slovenia, Finland and Portugal.

([4]) See Section 2(a) of Article XIII of the IMF Articles of Agreement.

([5]) See Article XVII of the IMF Articles of Agreement.

([6]) See the first and fourth indents of Article 23 of the Statute of the ESCB.

([7]) See Article 31.1 of the Statute of the ESCB.

([8]) See Article 30.5 of the Statute of the ESCB.

([9]) See Section 3 of Article XVII of the IMF Articles of Agreement.

([10]) For the ECB it should also take into account the tasks conferred on the ECB by Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

independence, in particular under Article 130 TFEU and Article 7 of the Statute of the ESCB. The Union law principle of independence seeks to shield the Eurosystem from all political pressure in order to enable it to effectively pursue the objectives and exercise the tasks attributed to it through the independent exercise of the specific powers conferred on it by Union law ([1]).

2.1.2 Article 138(2) TFEU cannot limit the independence of the Eurosystem. In order to be 'appropriate' within the meaning of Article 138(2) TFEU, the proposed decision should therefore ensure that the independent exercise of the Eurosystem's tasks and powers is protected throughout the process of finding the optimal model for organising the unified external representation of the euro area in the IMF. While the objectives, tasks and specific powers that are protected by the independence of the Eurosystem continue to evolve, the most relevant are described below.

2.1.3 The primary objective of the Eurosystem is to maintain price stability (the first sentences of Articles 127(1) TFEU and Article 2 of the Statute of the ESCB and the second sentence of Article 282(2) TFEU). The assignment of this objective is intrinsically linked to granting the Eurosystem a high level of independence, as the TFEU's requirement of central bank independence reflects the generally held view that the primary objective of price stability is best served by a fully independent central banking system with a precisely defined mandate ([2]). According to the second sentence of Article 282(1) TFEU, the monetary policy of the Union is conducted by the Eurosystem. In the context of Article 3(1)(c) and the second sentence of Article 282(1) TFEU, the term 'monetary policy' is not to be read in a narrow and technical sense as referring only to the basic task of the Eurosystem to which the first indent of Article 127(2) TFEU refers. Such a narrow view is neither warranted nor intended. The ECB understands the term 'monetary policy' as reflecting the title of Chapter 2 of Title VIII of Part Three of the TFEU, and therefore considers it to encompass all specific powers related to the euro as described in the relevant provisions of the TFEU, in particular Articles 127 and 128 TFEU ([3]).

2.1.4 The Eurosystem has also been attributed secondary objectives: without prejudice to the objective of price stability, the Eurosystem supports the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 TEU (see also the second sentence of Article 127(1) TFEU, the third sentence of Article 282(2) TFEU and Article 2 of the Statute of the ESCB). The objectives laid down in Article 3 TEU are further specified in Articles 119 to 127 TFEU.

2.1.5 Finally, in addition to the objectives set out in the TFEU, the Eurosystem contributes to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system according to Article 127(5) TFEU. It pursues the objective of ensuring the safety and soundness of credit institutions with regard to the specific tasks relating to the prudential supervision of credit institutions that have been conferred on the ECB by the Council on the basis of Article 127(6) TFEU. Since November 2014 the ECB carries out these tasks within the Single Supervisory Mechanism (SSM), which is composed of the ECB and the national competent authorities. In this regard the ECB is also bound by professional secrecy obligations ([4]) and is required to act independently in accordance with Article 19 of Regulation (EU) No 1024/2013.

2.2 *ECB's observer status in the IMF*

2.2.1 The ECB is the only Union institution listed in Article 13(1) TEU that has been accorded international legal personality ([5]). In accordance with Articles 6.1 and 6.2 of the Statute of the ESCB, in the field of international cooperation, concerning the tasks entrusted to the ESCB, the ECB decides how the ESCB will be represented and whether the ECB and, subject to its approval, the NCBs may participate in international monetary institutions. Article 6.3 of the Statute of the ESCB, states that these provisions are without prejudice to the appropriate measures adopted by the Council under Article 138(2) TFEU to ensure unified representation of the euro area within the international financial institutions and conferences.

([1]) See paragraph 134 of the judgment in *Commission of the European Communities* v *European Central Bank*, C-11/00, ECLI:EU:C:2003:395.

([2]) See the first paragraph of the 'Functional Independence' section of Chapter 2.2.3 of the ECB's 2014 Convergence Report.

([3]) See paragraph 9 of Opinion CON/2003/20 regarding the term 'monetary policy' in Article 3(1)(c) TFEU. Since the Statute of the ESCB is an integral part of the Treaties (Article 51 TEU), the term 'monetary policy' also refers to the provisions on monetary policy laid down in the Statute of the ESCB.

([4]) See Article 27 of Regulation (EU) No 1024/2013.

([5]) See Article 282(3) of the TFEU, Article 9.1 of the Statute of the ESCB and Article 8 of Regulation (EU) No 1024/2013. The ECB's international legal personality is limited to its functions and the applicable provisions of the Treaties. Hence, in accordance with Articles 6.1 and 6.2 of the Statute of the ESCB, in the field of international cooperation, involving the tasks entrusted to the ESCB, the ECB must decide how the ESCB will be represented and the ECB and, subject to its approval, the national central banks may participate in international monetary institutions. Article 6.3 of the Statute of the ESCB, states that these provisions are without prejudice to the appropriate measures adopted by the Council under Article 138(2) TFEU to ensure unified representation of the euro area within the international financial institutions and conferences.

The ECB should continue to be given a prominent role in the representation of the euro area in the IMF, i.e. a role that takes full account of the fact that the Eurosystem independently exercises the specific powers conferred on it by the TFEU and the Statute of the ESCB, as does the ECB for those powers conferred on it by Regulation (EU) No 1024/2013. Therefore, this role must at least include the rights that the ECB, as the representative of the Eurosystem, currently has as an observer in the IMF, i.e. the right to address and submit written statements to the IMF bodies. This role might need to be further extended, if the organisation of unified external representation leads to an increase in the rights of the euro area in the IMF. Against this background, the ECB considers that the objective of achieving unified representation of the euro area in the IMF can only be attained by fully respecting the impact of the independent exercise of the ECB's specific powers in the field of external representation. The views and resulting positions of the euro area should be carefully coordinated and expressed as a single voice. This, however, implies that the organisation of unified representation must fully take into account the internal allocation of competences and the respective mandates of various Union institutions, as well as the Treaty-based guarantees of independence that aim to shield the Eurosystem from all political pressure in order to enable it to effectively pursue the objectives attributed to its tasks.

2.2.2 Furthermore, as previously noted, unified representation would have to be organised in full respect of the principle of mutual sincere cooperation between Union institutions (Article 13(2) TEU). Therefore, the ECB anticipates that the Commission and the Council will contribute to achieving the objective of unified representation of the euro area in line with the Eurosystem's mandate and powers. It is assumed that such unified representation will honour the long-standing practice of closely associating central banks to the preparation of common euro area positions for IMF decision-making processes and the participation of Eurosystem NCBs in these processes in view of their expertise in the areas in which the IMF is active.

2.2.3 The ECB is currently represented in two IMF organs on a permanent basis. The ECB's President is an observer at the IMFC. Furthermore, the ECB has observer status at the IMF Executive Board when matters related to its mandate are discussed ([1]). In particular, the ECB is invited to send a representative to IMF Executive Board meetings when the following matters are discussed: (a) euro area policies in the context of Article IV consultations with member countries; (b) Fund surveillance under Article IV of the policies of individual euro area members; (c) role of the euro area in the international monetary system; (d) world economic outlook; (e) global financial stability reports; (f) world economic and market developments. In addition, the ECB is invited to send a representative to meetings of the IMF Executive Board on agenda items recognised by the ECB and the Fund to be of mutual interest for the performance of their respective mandates. The ECB's observer status implies that, with the permission of the Chairman, the ECB representative is able to address, orally or in writing, the IMF Executive Board regarding matters for which the ECB has been invited, while the right to address and take decisions on the full spectrum of items in IMF fora is reserved for the Member States.

2.3 *Technical observations and drafting proposals*

Where the ECB recommends that the proposed decision is amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text. The technical working document is available in English on the ECB's website.

Done at Frankfurt am Main, 6 April 2016.

The President of the ECB

Mario DRAGHI

([1]) Decision No 12925-(03/1), December 27, 2002, as amended by Decision Nos 13414-(05/01), December 23, 2004, 13612-(05/108), December 22, 2005, and 14517-(10/1), January 5, 2010.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates [1]

15 June 2016

(2016/C 216/02)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,1230	CAD	Canadian dollar	1,4438
JPY	Japanese yen	119,29	HKD	Hong Kong dollar	8,7162
DKK	Danish krone	7,4356	NZD	New Zealand dollar	1,5974
GBP	Pound sterling	0,79158	SGD	Singapore dollar	1,5215
SEK	Swedish krona	9,3540	KRW	South Korean won	1 316,08
CHF	Swiss franc	1,0817	ZAR	South African rand	17,1016
ISK	Iceland króna		CNY	Chinese yuan renminbi	7,3905
NOK	Norwegian krone	9,3415	HRK	Croatian kuna	7,5278
BGN	Bulgarian lev	1,9558	IDR	Indonesian rupiah	15 010,63
CZK	Czech koruna	27,073	MYR	Malaysian ringgit	4,6054
HUF	Hungarian forint	313,86	PHP	Philippine peso	52,032
PLN	Polish zloty	4,4119	RUB	Russian rouble	73,7390
RON	Romanian leu	4,5358	THB	Thai baht	39,602
TRY	Turkish lira	3,2905	BRL	Brazilian real	3,8945
AUD	Australian dollar	1,5188	MXN	Mexican peso	21,1993
			INR	Indian rupee	75,3670

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

NOTICES FROM MEMBER STATES

Notification on behalf of the Irish Government pursuant to Article 10(2) of Directive 2009/73/EC of the European Parliament and the Council ('Gas Directive') concerning common rules for the internal market in natural gas regarding the designation of Gas Networks Ireland as a Transmission System Operator — Gas TSO

(2016/C 216/03)

Following the certification of Gas Networks Ireland as Ownership Unbundled Transmission System Operator (Article 9 of the Gas Directive), the Commission for Energy Regulation (CER), as Ireland's National Regulatory Authority, has notified to the Commission the official approval and designation of this company as a Transmission System Operator operating in accordance with Article 10 of the Gas Directive.

Any additional information can be obtained at the following address:

http://www.cer.ie/ (Ref: CER/16/113)

V

(Announcements)

COURT PROCEEDINGS

EFTA COURT

Action brought on 23 October 2015 by the EFTA Surveillance Authority against Iceland

(Case E-25/15)

(2016/C 216/04)

An action against Iceland was brought before the EFTA Court on 23 October 2015 by the EFTA Surveillance Authority, represented by Carsten Zatschler, Markus Schneider and Clémence Perrin, acting as Agents of the EFTA Surveillance Authority, 35 Rue Belliard, 1040 Brussels, Belgium.

The EFTA Surveillance Authority requests the EFTA Court to:

1. Declare that by failing to take within the prescribed time all the necessary measures to recover from the recipients the State aid declared incompatible with the functioning of the Agreement on the European Economic Area by Articles 2, 3, 4 and 5 of EFTA Surveillance Authority Decision No 404/14/COL of 8 October 2014 on the Investment Incentive Scheme in Iceland; by failing to cancel, within the prescribed time any outstanding payment referred to in Article 7 third sentence of that decision; and by failing to provide the EFTA Surveillance Authority, within the prescribed time, with all the information outlined in Article 8 of that Decision, Iceland has failed to fulfil its obligations under Article 14(3) of Part II of Protocol 3 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice and Articles 6, 7 and 8 of Decision No 404/14/COL.

2. Order Iceland to bear the costs.

Legal and factual background and pleas in law adduced in support:

— The EFTA Surveillance Authority claims that Iceland has failed to comply with its obligations set out in the Authority's Decision 404/14/COL of 8 October 2014 *on the Investment Incentive Scheme of Iceland* ('Recovery Decision' or 'Decision').

— The EFTA Surveillance Authority submits that in the Recovery Decision, the Authority found, inter alia, five investment agreements that Iceland had concluded with companies involved new State aid incompatible with the functioning of the EEA Agreement.

— The EFTA Surveillance Authority submits that Article 6 of the Recovery Decision obliges Iceland to take all necessary measures to recover from the beneficiaries the unlawful State aid referred to in Articles 2, 3, 4 and 5 of the Decision.

— The EFTA Surveillance Authority submits that the third sentence of Article 7 of the Recovery Decision imposes an obligation on Iceland to cancel all outstanding payments of the aid from the date of notification of the Decision, i.e. as of 8 October 2014.

— The EFTA Surveillance Authority further submits that according to Article 8 of the Recovery Decision, Iceland was under the obligation to provide the Authority with the information listed under the aforementioned Article by 9 December 2014.

Action brought on 16 December 2015 by the EFTA Surveillance Authority against Iceland

(Case E-30/15)

(2016/C 216/05)

An action against Iceland was brought before the EFTA Court on 16 December 2015 by the EFTA Surveillance Authority, represented by Carsten Zatschler, Clémence Perrin and Marlene Lie Hakkebo, acting as Agents of the EFTA Surveillance Authority, 35 Rue Belliard, 1040 Brussels, Belgium.

The EFTA Surveillance Authority requests the EFTA Court to:

1. Declare that Iceland has failed to fulfil its obligations under the Act referred to at point 15q of Chapter XIII of Annex II to the Agreement on the European Economic Area (Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011 amending Directive 2001/83/EC on the Community Code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products), as adapted to the Agreement by way of Protocol 1 thereto, and under Article 7 of the Agreement, by failing to adopt the measures necessary to implement the Act within the time prescribed, or in any event by failing to inform the EFTA Surveillance Authority thereof.

2. Order Iceland to bear the costs of these proceedings.

Legal and factual background and pleas in law adduced in support:

— The application addresses Iceland's failure to comply, no later than 14 March 2015, with a reasoned opinion delivered by the EFTA Surveillance Authority on 14 January 2015 regarding that State's failure to implement into its national legal order Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011 amending Directive 2001/83/EC on the Community Code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products, as referred to at point 15q of Chapter XIII of Annex II to the Agreement on the European Economic Area, and as adapted to that Agreement by way of Protocol 1 thereto ('the Act').

— The EFTA Surveillance Authority submits that Iceland has failed to fulfil its obligations under the Act and under Article 7 of the EEA Agreement by failing to adopt the measures necessary to implement the Act within the time prescribed.

Action brought on 17 December 2015 by the EFTA Surveillance Authority against Iceland

(Case E-31/15)

(2016/C 216/06)

An action against Iceland was brought before the EFTA Court on 17 December 2015 by the EFTA Surveillance Authority, represented by Carsten Zatschler, Øyvind Bø and Íris Ísberg, acting as Agents of the EFTA Surveillance Authority, 35 Rue Belliard, 1040 Brussels, Belgium.

The EFTA Surveillance Authority requests the EFTA Court to:

1. Declare that Iceland has failed to fulfil its obligations under the Act referred to at point 9f of Annex XVII to the Agreement on the European Economic Area, *(Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights)*, as adapted to the Agreement by way of Protocol 1 thereto, and under Article 7 of the Agreement, by failing to adopt the measures necessary to implement the Act within the time prescribed, or in any event by failing to inform the EFTA Surveillance Authority thereof.

2. Order Iceland to bear the costs of these proceedings.

Legal and factual background and pleas in law adduced in support:

— The application addresses Iceland's failure to comply, no later than 8 June 2015, with a reasoned opinion delivered by the EFTA Surveillance Authority on 8 April 2015 regarding that State's failure to implement into its national legal order *Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights*, as referred to at point 9f of Annex XVII to the Agreement on the European Economic Area, and as adapted to that Agreement by way of Protocol 1 thereto ('the Act').

— The EFTA Surveillance Authority submits that Iceland has failed to fulfil its obligations under the Act and under Article 7 of the EEA Agreement by failing to adopt the measures necessary to implement the Act within the time prescribed.

Action brought on 17 December 2015 by the EFTA Surveillance Authority against the Principality of Liechtenstein

(Case E-32/15)

(2016/C 216/07)

An action against the Principality of Liechtenstein was brought before the EFTA Court on 17 December 2015 by the EFTA Surveillance Authority, represented by Carsten Zatschler, Øyvind Bø and Marlene Lie Hakkebo, acting as Agents of the EFTA Surveillance Authority, 35 Rue Belliard, 1040 Brussels, Belgium.

The EFTA Surveillance Authority requests the EFTA Court to:

1. Declare that the Principality of Liechtenstein has failed to fulfil its obligations under the Acts referred to at point 24f of Annex VIII to the Agreement on the European Economic Area:

   — Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences, and

   — Commission Directive 2011/94/EU of 28 November 2011 amending Directive 2006/126/EC of the European Parliament and of the Council on driving licences,

   — Commission Directive 2012/36/EU of 19 November 2012 amending Directive 2006/126/EC of the European Parliament and of the Council on driving licences,

   as adapted to the Agreement by way of Protocol 1 thereto, under Article 7 of the EEA Agreement, by failing to adopt the measures necessary to implement the Acts within the time prescribed, or in any event by failing to inform the EFTA Surveillance Authority thereof.

2. Order Liechtenstein to bear the costs of these proceedings.

Legal and factual background and pleas in law adduced in support:

— The application addresses the failure by the Principality of Liechtenstein to comply, no later than on 24 August 2015, with a reasoned opinion delivered by the EFTA Surveillance Authority on 24 June 2015 regarding that State's failure to implement into its national legal order Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences, as well as

  Commission Directive 2011/94/EU of 28 November 2011 amending Directive 2006/126/EC of the European Parliament and of the Council on driving licences, and

  Commission Directive 2012/36/EU of 19 November 2012 amending Directive 2006/126/EC of the European Parliament and of the Council on driving licences, as referred to at point 24f of Annex VIII to the Agreement on the European Economic Area, and as adapted to that Agreement by way of Protocol 1 thereto ('the Act').

— The EFTA Surveillance Authority submits that Liechtenstein has failed to fulfil its obligations under Article 7 of the EEA Agreement by failing to adopt the measures necessary to implement the Acts within the time prescribed.

Action brought on 17 December 2015 by the EFTA Surveillance Authority against Iceland

(Case E-33/15)

(2016/C 216/08)

An action against Iceland was brought before the EFTA Court on 17 December 2015 by the EFTA Surveillance Authority, represented by Carsten Zatschler, Clémence Perrin and Íris Ísberg, acting as Agents of the EFTA Surveillance Authority, 35 Rue Belliard, 1040 Brussels, Belgium.

The EFTA Surveillance Authority requests the EFTA Court to:

1. Declare that Iceland has failed to fulfil its obligations under the Act referred to at point 15q of Chapter XIII of Annex II to the Agreement on the European Economic Area *(Directive 2012/26/EU of the European Parliament and of the Council of 25 October 2012 amending Directive 2001/83/EC as regards pharmacovigilance)*, as adapted to the Agreement by way of Protocol 1 thereto, and under Article 7 of the Agreement, by failing to adopt the measures necessary to implement the Act within the time prescribed, or in any event by failing to inform the EFTA Surveillance Authority thereof.

2. Order Iceland to bear the costs of these proceedings.

Legal and factual background and pleas in law adduced in support:

— The application addresses Iceland's failure to comply, no later than 14 March 2015, with a reasoned opinion delivered by the EFTA Surveillance Authority on 14 January 2015 regarding that State's failure to implement into its national legal order *(Directive 2012/26/EU of the European Parliament and of the Council of 25 October 2012 amending Directive 2001/83/EC as regards pharmacovigilance)*, as referred to at point 15q of Chapter XIII of Annex II to the Agreement on the European Economic Area, and as adapted to that Agreement by way of Protocol 1 thereto ('the Act').

— The EFTA Surveillance Authority submits that Iceland has failed to fulfil its obligations under the Act and under Article 7 of the EEA Agreement by failing to adopt the measures necessary to implement the Act within the time prescribed.

Action brought on 17 December 2015 by the EFTA Surveillance Authority against Iceland

(Case E-34/15)

(2016/C 216/09)

An action against Iceland was brought before the EFTA Court on 17 December 2015 by the EFTA Surveillance Authority, represented by Carsten Zatschler, Øyvind Bø and Íris Ísberg, acting as Agents of the EFTA Surveillance Authority, 35 Rue Belliard, 1040 Brussels, Belgium.

The EFTA Surveillance Authority requests the EFTA Court to:

1. Declare that Iceland has failed to fulfil its obligations under the Act referred to at point 1a of Chapter XXIV of Annex II to the Agreement on the European Economic Area, (Commission Directive 2012/46/EU of 6 December 2012 amending Directive 97/68/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery), as adapted to the Agreement by way of Protocol 1 thereto, and under Article 7 of the Agreement, by failing to adopt the measures necessary to implement the Act within the time prescribed, or in any event by failing to inform the EFTA Surveillance Authority thereof.

2. Order Iceland to bear the costs of these proceedings.

Legal and factual background and pleas in law adduced in support:

— The application addresses Iceland's failure to comply, no later than 13 July 2015, with a reasoned opinion delivered by the EFTA Surveillance Authority on 13 May 2015 regarding that State's failure to implement into its national legal order Commission Directive 2012/46/EU of 6 December 2012 amending Directive 97/68/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery, as referred to at point 1a of Chapter XXIV of Annex II to the Agreement on the European Economic Area, and as adapted to that Agreement by way of Protocol 1 thereto ('the Act').

— The EFTA Surveillance Authority submits that Iceland has failed to fulfil its obligations under the Act and under Article 7 of the EEA Agreement by failing to adopt the measures necessary to implement the Act within the time prescribed.

Action brought on 22 December 2015 by the EFTA Surveillance Authority against the Kingdom of Norway

(Case E-35/15)

(2016/C 216/10)

An action against the Kingdom of Norway was brought before the EFTA Court on 22 December 2015 by the EFTA Surveillance Authority, represented by Carsten Zatschler, Markus Schneider and Øyvind Bø, acting as Agents of the EFTA Surveillance Authority, 35 Rue Belliard, 1040 Brussels, Belgium.

The EFTA Surveillance Authority requests the EFTA Court to:

1. Declare that the Kingdom of Norway has failed to fulfil its obligations arising under the Act referred to at point 56i of Annex XIII to the Agreement on the European Economic Area (*Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues*) within the time limit prescribed by

   a. failing to develop and implement an appropriate waste reception and handling plan for each port in Norway as required by Article 5(1) of Directive 2000/59/EC;

   b. failing to evaluate and approve the waste reception and handling plans for all ports in Norway, monitor their implementation and ensure their re-approval at least every three years as required by Article 5(3) of Directive 2000/59/EC; and

   c. failing to ensure the availability of port reception facilities in all ports in Norway adequate to meet the needs of ships normally using the port without causing undue delay to ships as required by Article 4(1) of Directive 2000/59/EC.

2. Order the defendant to bear the costs of these proceedings.

Legal and factual background and pleas in law adduced in support:

— The EFTA Surveillance Authority ('ESA') claims that the Kingdom of Norway has failed to comply in time with key obligations for the protection of the marine environment under Directive 2000/59/EC (the 'Directive' or the 'Port Reception Facilities Directive').

— In order to reduce the discharge of ship-generated waste and cargo residues into the sea, the Directive obliges the EEA States to ensure that adequate facilities, capable of receiving ship-generated waste and cargo residues, are available in all their ports and to develop and implement waste reception and handling plans for each port.

— On 23 October 2007 the Norwegian authorities notified ESA that the Port Reception Facilities Directive had been implemented into national law.

— At the request of ESA, the European Maritime Safety Agency carried out an inspection, and issued a report on 28 September 2010, presenting, inter alia, the shortcomings of Norway's compliance with the Directive.

— ESA delivered a reasoned opinion on 10 July 2013, which maintained that Norway had failed to fulfil, inter alia, its obligations under Article 4(1), 5(1) and 5(3) of the Directive. Norway was requested to take the necessary measures to comply with the reasoned opinion no later than 10 September 2013.

— ESA submits that, by that date, Norway failed to comply with its obligations (i) to develop and implement an appropriate waste reception and handling plan for each port in Norway as required by Article 5(1) of the Directive; (ii) to evaluate and approve the waste reception and handling plans for all ports in Norway, monitor their implementation and ensure their re-approval at least every three years as required by Article 5(3) of the Directive; and (iii) to ensure the availability of port reception facilities in all ports in its territory as required by Article 4(1) of the Directive.

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

Prior notification of a concentration

(Case M.8070 — Bancopopular-e/Assets of Barclays Bank)

Candidate case for simplified procedure

(Text with EEA relevance)

(2016/C 216/11)

1. On 9 June 2016, the Commission received a notification of a proposed acquisition pursuant to Article 4 of Council Regulation (EC) No 139/2004 [1] by which the undertaking Bancopopular-e SA ('E-Com' or the 'Acquirer') acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control over the Barclays' payment card business in Spain and Portugal (the 'Target') from Barclays Bank PLC ('Barclays' or the 'Seller').

2. The business activities of the undertakings concerned are:

— E-Com provides services related to the issuing of payment cards in Spain. To a lesser extent, it also provides insurance mediation services and insurance distribution within the Spanish market. E-Com is joint venture jointly controlled by Banco Popular and certain private affiliated funds managed by Värde Partners Inc. ('Värde'),

— the Target comprises Barclays' credit cards business in Portugal and Spain consisting of the origination, marketing and servicing of consumer credit accounts, consumer credit cards, consumer credit card products, consumer credit card payment products and consumer credit card lending. Additionally, the Target has a marginal presence in the market for the distribution of insurance services in Spain and Portugal.

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 number M.8070 — Bancopopular-e/Assets of Barclays Bank, to the following address:

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

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[1] OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').
[2] OJ C 366, 14.12.2013, p. 5.

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