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Price:  
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## I

*(Resolutions, recommendations and opinions)*

## OPINIONS

## EUROPEAN CENTRAL BANK

## OPINION OF THE EUROPEAN CENTRAL BANK

of 18 March 2010

**on a proposal for a Directive of the European Parliament and of the Council amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority**

**(CON/2010/23)**

(2010/C 87/01)

**Introduction and legal basis**

On 25 November 2009 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a directive of the European Parliament and of the Council amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority <sup>(1)</sup> (hereinafter the proposed directive).

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed directive contains provisions affecting the European System of Central Bank's (ESCB) contribution to the smooth conduct of policies relating to the prudential supervision of credit institutions and the stability of the financial system, as referred to in Article 127(5) of the Treaty.

The observations in this opinion must be read in conjunction with ECB Opinions CON/2009/88 <sup>(2)</sup> and CON/2010/5 <sup>(3)</sup>, which have been adopted in the context of the on-going reform of European financial supervision <sup>(4)</sup>.

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 ECB supports the objective of the proposed directive, which introduces in 11 financial sector directives amendments that are necessary to ensure the proper functioning of the European Supervisory Authorities (ESAs) and of the European Systemic Risk Board (ESRB).

- 1.2. The observations contained in this opinion and the drafting proposals focus mainly on issues that are of direct relevance to the ECB/ESCB and the ESRB and to their cooperation with the ESAs and national competent authorities. In this respect, it is of particular importance for the fulfilment of their respective tasks to remove any legal obstacles to information sharing that may exist between the ECB/ESCB, the ESRB, the three ESAs and the national supervisory authorities.

- 1.3. *Adoption of technical standards*

- 1.3.1. The proposed regulations establishing the ESAs (hereinafter the proposed ESAs regulation) provide for a uniform procedure for the adoption of technical standards <sup>(5)</sup>. The draft technical standards will be developed by each of the ESAs in the form of regulations or decisions <sup>(6)</sup>, and endorsed by the Commission. In this context, the proposed directive provides for several amendments to sectoral legislation, identifying the areas in which technical standards should be developed <sup>(7)</sup>. As stressed in ECB Opinion CON/2010/5, the ECB fully supports the establishment of a European single rulebook applicable to all financial institutions in the single market and therefore the need for an effective instrument to establish harmonised binding technical standards in financial services <sup>(8)</sup>.

- 1.3.2. As regards the implementing powers conferred on the Commission, the Treaty establishes a distinction between delegated acts (Article 290 of the Treaty) and implementing acts (Article 291 of the Treaty). As a result, regulations and decisions adopted by the Commission to endorse draft technical standards will fall under one of these two categories. In the context of EU financial services legislation, a common understanding should be reached among the Union institutions involved in the legislative process on an appropriate methodology to be adopted to incorporate the Commission legal acts endorsing such draft technical standards within the more general framework within which delegated and implementing powers operate under the Treaty.

- 1.3.3. To the extent that draft technical standards qualify as 'proposed Union acts' within the meaning of the first indent of Article 127(4) and Article 282(5) of the Treaty and fall within the ECB's fields of competence, the ECB should be consulted on the proposed delegated or implementing acts endorsing the draft technical standards. In the OLAF judgment <sup>(9)</sup>, the Court of Justice clarified that the obligation to consult the ECB on proposed Union acts is intended 'essentially to ensure that the legislature adopts the act only when the body has been heard, which, by virtue of the specific functions that it exercises in the Community framework in the area concerned and by virtue of the high degree of expertise that it enjoys, is particularly well placed to play a useful role in the legislative process envisaged'. Having regard to the importance of the function to be played by technical standards as a substantial component of the Union financial services legislation in the future, the ECB will exercise its advisory role in line with the above principles.

2. **Specific observations**

- 2.1. *Directive 2003/71/EC* <sup>(10)</sup>

The publication of all prospectuses in electronic form and their availability either directly on the future European Securities and Markets Authority (ESMA) website or through a hyperlink to the relevant websites will enhance transparency <sup>(11)</sup>. In this respect, the ECB strongly supports the idea of improving the availability and comparability of certain key information in the prospectuses, through the creation of a standard for reference data on securities and issuers, with the aim of making such data available to policymakers, regulators and the financial markets through an international public infrastructure <sup>(12)</sup>. Prospectuses contain key information that may be of relevance for the purposes of systemic risk analysis, the risk management of companies and the compilation of securities statistics; therefore it should be ensured that such information is readily available. In this context, the ECB stands ready to cooperate with the ESMA in contributing to the design and set-up of an electronic repository and related processes.

2.2. *Directive 2006/48/EC* <sup>(13)</sup>

2.2.1. A number of amendments to sectoral directives under the proposed directive aim at further improving information gateways between relevant authorities at the Union and national level <sup>(14)</sup>. The ECB welcomes these proposed amendments and more particularly those introduced to take account of the establishment of the ESRB <sup>(15)</sup>. In addition, the ECB would suggest the two following amendments.

2.2.2. First, the proposed directive clarifies that competent authorities are entitled to share information with the European Banking Authority (EBA). The ECB recommends introducing an amendment to one provision of Directive 2006/48/EC with a view to removing any possible legal obstacle to the exchange of information between the EBA and the ESRB. The introduction of such an amendment would clarify that the EBA, in accordance with Directive 2006/48/EC and the relevant provisions of the proposed EBA regulation, is entitled to transmit to the ESRB all the information received from national authorities necessary for the fulfilment of the ESRB's tasks without prejudice to other applicable European rules, especially Article 15(4) of the proposed ESRB regulation.

2.2.3. Second, Directive 2006/48/EC entrusts colleges of supervisors with the exercise of certain tasks <sup>(16)</sup> (including in terms of exchange of information <sup>(17)</sup>) and, in this context, the applicable confidentiality requirements <sup>(18)</sup> must not prevent competent authorities from exchanging confidential information within colleges of supervisors <sup>(19)</sup>. In view of the potential importance of the information accessible within supervisory colleges, the ECB would recommend explicitly specifying that the ESAs may share confidential information related to the activities of the colleges of supervisors with the ESRB <sup>(20)</sup>, when this information is relevant for the fulfilment of its tasks <sup>(21)</sup> and based on reasoned requests from the ESRB. This clarification could be introduced either in Article 12 of the proposed ESAs regulations on colleges of supervisors or in the context of the relevant provisions on exchange of information in the sectoral directives dealing with colleges of supervisors.

3. **Drafting proposals**

Where the ECB recommends amendments to the proposed directive, specific drafting proposals are set out in the Annex accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 18 March 2010.

*The President of the ECB*

Jean-Claude TRICHET

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- (<sup>1</sup>) COM(2009) 576 final.
- (<sup>2</sup>) ECB Opinion CON/2009/88 of 26 October 2009 on a proposal for a regulation of the European Parliament and of the Council on Community macro-prudential oversight of the financial system and establishing a European Systemic Risk Board and a proposal for a Council decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board (OJ C 270, 11.11.2009, p. 1). All ECB opinions are published on the ECB's website at <http://www.ecb.europa.eu>
- (<sup>3</sup>) ECB Opinion CON/2010/5 of 8 January 2010 on three proposals for regulations of the European Parliament and of the Council establishing a European Banking Authority, a European Insurance and Occupational Pensions Authority and a European Securities and Markets Authority (OJ C 13, 20.1.2010, p. 1).
- (<sup>4</sup>) On 23 September 2009, the European Commission adopted a package of legislative proposals comprising (i) a proposal for a regulation of the European Parliament and of the Council on Community macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (COM(2009) 499 final) (hereinafter the proposed ESRB regulation); (ii) a proposal for a Council decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board (COM(2009) 500 final); (iii) a proposal for a regulation of the European Parliament and of the Council establishing a European Banking Authority (COM(2009) 501 final) (hereinafter the proposed EBA regulation); (iv) a proposal for a regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority (COM(2009) 502 final); and (v) a proposal for a regulation of the European Parliament and of the Council establishing a European Securities and Markets Authority (COM(2009) 503 final). Following the entry into force of the Treaty on 1 December 2009, the new legal basis for the proposed ESRB decision is Article 127(6) of the Treaty (ex Article 105(6) of the Treaty establishing the European Community), which results in the proposed ESRB decision now being converted into a proposed regulation.
- (<sup>5</sup>) See Article 7 of the proposed ESAs regulations.
- (<sup>6</sup>) Article 7(2) of the proposed ESAs regulations.
- (<sup>7</sup>) Recital 9 of the proposed directive.
- (<sup>8</sup>) See, for instance, recital 14 of the proposed EBA regulation.
- (<sup>9</sup>) Case C-11/00 Commission of the European Communities v European Central Bank [2003] ECR I-7147, in particular paragraphs 110 and 111.
- (<sup>10</sup>) Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).
- (<sup>11</sup>) Under the proposed directive, ESMA must publish on its website the list of approved prospectuses, including, if applicable, a hyperlink to the prospectus published on the website of the competent authority of the home Member State, of the issuer or of the regulated market (Article 5(3) of the proposed directive introducing a new Article 14(4a) to Directive 2003/71/EC). The general approach agreed in the Council on other amendments to Directive 2003/71/EC also requires the publication of prospectuses in electronic form (see Article 1(13)(b) of the general approach on the Commission's proposal for a directive of the European Parliament and of the Council amending Directive 2003/71/EC and Directive 2004/109/EC (2009/0132 (COD), 17451/09)). Article 14(2), second subparagraph of Directive 2003/71/EC currently leaves the decision to require issuers to publish these prospectuses in an electronic form to the Member States.
- (<sup>12</sup>) ECB Opinion CON/2010/6 of 11 January 2010 on a proposal for a directive of the European Parliament and of the Council amending Directives 2003/71/EC and 2004/109/EC, paragraph 1.2.
- (<sup>13</sup>) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (OJ L 177, 30.6.2006, p. 1).
- (<sup>14</sup>) See, as regards Directive 2006/48/EC, Articles 9(10), 9(11), 9(12), 9(25) and 9(27) of the proposed directive.
- (<sup>15</sup>) See, for instance, Article 9(12) of the proposed directive amending Article 49 of Directive 2006/48/EC.
- (<sup>16</sup>) Referred to in Article 129, Article 130(1) and Article 131a of Directive 2006/48/EC.
- (<sup>17</sup>) Article 131a(1)(a) of Directive 2006/48/EC.
- (<sup>18</sup>) Under Chapter 1, Section 2 of Directive 2006/48/EC.
- (<sup>19</sup>) Article 131a(1), third subparagraph of Directive 2006/48/EC.
- (<sup>20</sup>) Including the colleges established under Article 42a(3) of Directive 2006/48/EC.
- (<sup>21</sup>) Access of the ESRB to information shared within colleges of supervisors would be in line with the views taken by the High-Level Group on Financial Supervision in the Union chaired by Jacques de Larosière in its report of 25 February 2009, paragraphs 180 and 186, pages 45 and 47, the Commission in its communication of 27 May 2009 on European financial supervision (COM(2009) 252 final, p. 15) and the ECOFIN Council in its conclusions of 9 June 2009, p. 13 which support ESRB access to this information.
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## ANNEX

Drafting proposals <sup>(1)</sup>

Text proposed by the Commission	Amendments proposed by the ECB <sup>(1)</sup>
<b>Amendment 1</b>	
Recital 15 of the proposed directive	
'(15) The new supervisory architecture established by the ESFS will require national supervisory authorities to cooperate closely with the European Supervisory Authorities. Amendments to the relevant legislation should ensure that there are no legal obstacles to the information sharing obligations included in the Regulations proposed by the Commission establishing the European Supervisory Authorities.'	'(15) The new supervisory architecture <b>set up with the</b> <del>establishment</del> <b>by of the ESFS and the ESRB</b> will require national supervisory authorities <b>and the European Supervisory Authorities</b> to cooperate closely with <b>each other and with the ESRB</b> <del>the European Supervisory Authorities</del> . Amendments to the relevant legislation should ensure that there are no legal obstacles to the information sharing obligations included in the Regulations proposed by the Commission establishing the European Supervisory Authorities <b>and the ESRB</b> .'

## Explanation:

Sectoral legislation needs to be amended in order to reflect the establishment of the ESAs and the ESRB. Reference could also be made in recital 5 of the proposed directive to the two proposals adopted by the Commission relating to the ESRB as part of the legislative package on European financial supervision.

**Amendment 2**

Article 1(1) of the proposed directive  
(Amendment to Directive 98/26/EC <sup>(2)</sup> — Article 6(3))

'3. The Member State referred to in paragraph 2 shall immediately notify other Member States and the European Securities and Markets Authority established by Regulation .../... of the European Parliament and of the Council and shall communicate to the latter all information essential to achieve its tasks.'	'3. The Member State referred to in paragraph 2 shall immediately notify <b>decisions taken in accordance with paragraph 1</b> to other Member States, <b>the Commission, the European Central Bank, central banks of the Member States</b> and the European Securities and Markets Authority established by Regulation .../... of the European Parliament and of the Council <del>and shall communicate to the latter all information essential to achieve its tasks. The Commission shall, upon receipt of such information, immediately notify all designated systems and system operators of decisions taken in accordance with paragraph 1.</del>
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## Explanation:

The proposed amendment of Article 6(3) of Directive 98/26/EC is a very significant improvement in terms of the consequences resulting from the commencement of insolvency proceedings in respect of irrevocability and the finality of execution for transfer orders. However, such consequences are important for all overseers of payment, clearing and settlement systems and other critical infrastructure. Therefore, the distribution list for notifications of such proceedings must be enlarged to include not only the Commission and the ESMA but also the national central banks (NCBs) and the ECB, together the ESCB, as they have exclusive statutory tasks in the area of oversight of payment, clearing and settlement systems.

In addition, it is important that the Commission, with immediate effect, forwards notifications on the commencement of insolvency procedures to the relevant entities covered by the scope of Directive 98/26/EC, thereby ensuring that no transfer orders are executed by such entities where they are or should have been aware of the commencement of insolvency proceedings.

Finally, the reference in the proposed directive to the obligation for the Member State to provide all necessary information to the ESMA should be deleted since it is suggested that the Commission should be entrusted with the notification tasks. Moreover, Member States can only provide information relating to the decisions referred to in Article 6 of Directive 98/26/EC and not all information necessary for ESMA tasks. There is also a minor editorial amendment to the first sentence of Article 6(3) clarifying the exact scope of the notification obligation.

<sup>(1)</sup> The proposed directive was adopted before the entry into force of the Treaty. Treaty citations in the texts proposed by the Commission will need to be adapted.



Text proposed by the Commission	Amendments proposed by the ECB <sup>(1)</sup>
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**Amendment 3**

Article 1(2) of the proposed directive  
(Amendment to Directive 98/26/EC — the first subparagraph of Article 10(1))

'Member States shall specify the systems, and the respective system operators, which are to be included in the scope of this Directive and shall notify them to the European Securities and Markets Authority and inform it of the authorities chosen in accordance with Article 6(2). The European Securities and Markets Authority shall publish that information on its website.'	'Member States shall specify the systems, and the respective system operators, which are to be included in the scope of this Directive and shall notify them to the <del>European Securities and Markets Authority</del> <b>Commission</b> and inform it of the authorities chosen in accordance with Article 6(2). The <del>Commission</del> <b>European Securities and Markets Authority</b> shall publish that information on its website.'
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*Explanation:*

*The Commission has established the list of notified systems since the adoption of Directive 98/26/EC and this practice is well established. Therefore, taking into account the basic ESCB task to promote the smooth operation of payment systems and oversight functions of the ECB/NCBs concerning payment, clearing and settlement systems, the ECB considers that the Commission should continue to perform this task.*

**Amendment 4**

(Amendment to Directive 2002/87/EC <sup>(3)</sup> — last subparagraph of Article 12(1) (new))

'The competent authorities may also exchange with the following authorities such information as may be needed for the performance of their respective tasks, regarding regulated entities in a financial conglomerate, in line with the provisions laid down in the sectoral rules: central banks, the European System of Central Banks and the European Central Bank.'	'The competent authorities may also exchange with <b>central banks (including the ECB and the national central banks of the European System of Central Banks), the European Supervisory Authorities and the European Systemic Risk Board</b> <del>the following authorities</del> such information as may be needed for the performance of their respective tasks, regarding regulated entities in a financial conglomerate, in line with the provisions laid down in the sectoral rules: <del>central banks, the European System of Central Banks and the European Central Bank.</del>
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(No amendment in the proposed directive)

*Explanation:*

*Obstacles to the sharing of information between competent authorities and central banks, ESAs and the ESRB in the context of Directive 2002/87/EC should be removed.*

**Amendment 5**

(Amendment to Directive 2003/41/EC <sup>(4)</sup> — Article 20a (new))

No text.	<p><b>'Article 20a</b> <b>Professional secrecy and cooperation between authorities</b></p> <p>1. The obligation of professional secrecy shall apply to all persons who work or have worked for a competent authority. Information covered by professional secrecy may not be disclosed to any other person or authority except in accordance with provisions laid down by law.</p> <p>2. Competent authorities of Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties and making use of their powers. Competent authorities shall render assistance to competent authorities of other Member States.</p> <p>3. Paragraph 1 shall not prevent the competent authorities from exchanging confidential information or from transmitting confidential information to the European Insurance and Occupational Pensions Authority (EIOPA) or the European Systemic Risk</p>
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Text proposed by the Commission	Amendments proposed by the ECB <sup>(1)</sup>
	<b>Board (ESRB). Information exchanged between competent authorities and the EIOPA or the ESRB shall be covered by the obligation of professional secrecy.'</b>

Explanation:

The provision on professional secrecy and cooperation between competent authorities is usually provided for in the financial sector directives and should also be included in Directive 2003/41/EC. Sharing of confidential information by competent authorities with EIOPA and the ESRB might be necessary for the performance of their respective tasks and any legal obstacles to the transmission of such information should be removed.

**Amendment 6**

Article 6(11)(b) of the proposed directive  
(Amendment to Directive 2004/39/EC <sup>(5)</sup> — Article 58(5))

'5. Articles 54, 58 and 63 shall not prevent a competent authority from transmitting to the European Securities and Markets Authority, the European Systemic Risk Board established by Regulation .../... of the European Parliament and of the Council, to central banks, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their tasks; likewise such authorities or bodies shall not be prevented from communicating to the competent authorities such information as they may need for the purpose of performing their functions provided for in this Directive.'	'5. Articles 54, 58 and 63 shall not prevent a competent authority from transmitting to the European Securities and Markets Authority, the European Systemic Risk Board established by Regulation .../... of the European Parliament and of the Council, <b>and</b> to central banks, <b>including the national central banks of</b> the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, <del>and, where appropriate, to other public authorities responsible for overseeing payment and settlement systems,</del> confidential information <b>when this information is</b> intended for the performance of their tasks, <b>including the conduct of monetary policy and related liquidity provision, the oversight of payment, clearing and settlement systems, and the safeguarding of the stability of the financial system;</b> likewise such authorities or bodies shall not be prevented from communicating to the competent authorities such information as they may need for the purpose of performing their functions provided for in this Directive.'
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Explanation:

The proposed amendment aims at ensuring consistency with corresponding provisions already present in the other sectoral directives and, in particular, Directive 2006/48/EC.

**Amendment 7**

Article 9(10) of the proposed directive  
(Amendment to Directive 2006/48/EC — Article 44(2))

'2. Paragraph 1 shall not prevent the competent authorities of the various Member States from exchanging information or transmitting information to the European Banking Authority in accordance with this Directive and with other Directives applicable to credit institutions. That information shall be subject to the conditions of professional secrecy set out in paragraph 1.'	'2. Paragraph 1 shall not prevent the competent authorities of the various Member States from exchanging information or transmitting information to the European Banking Authority in accordance with this Directive, <del>and with other Directives applicable to credit institutions</del> <b>and Articles [12], 20 and 21 of Regulation .../... [EBA].</b> That information shall be subject to the conditions of professional secrecy set out in paragraph 1.'
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Explanation:

Article 44(2) of Directive 2006/48/EC as amended by the proposed directive already clarifies that competent authorities may share information with the EBA. This clarification correlates to the proposed amendment of Article 49 of Directive 2006/48/EC which authorises competent authorities to transmit information to the ESRB, in particular in cases provided in Article 130(1) of Directive 2006/48/EC.

Text proposed by the Commission

Amendments proposed by the ECB <sup>(1)</sup>

The proposed amendment introduces in Article 44(2) of Directive 2006/48/EC an express reference to Articles 20 and 21 of the proposed EBA regulation. Article 20 of Regulation .../... [EBA] relates to the collection of information from competent authorities by the EBA. Under Article 21 of the same regulation, the EBA must cooperate with the ESRB and provide the ESRB with regular and up-to-date information for the achievement of its tasks, as specified in Article 15 of Regulation .../... [ESRB].

Under a combined reading of the amended Article 44(2) of Directive 2006/48/EC, of these two articles of the proposed EBA regulation and of the proposed ESRB regulation, it is clarified that the EBA is entitled to further transmit to the ESRB all the information received from competent authorities which is necessary for the fulfillment of the ESRB's tasks.

Should Article 12 of Regulation .../... [EBA] relating to the college of supervisors be amended as proposed in paragraph 2.2.3 of this opinion, this article should be also expressly mentioned in Article 44(2) of Directive 2006/48/EC in order to make it clear that the EBA may share information obtained from the colleges of supervisors with the ESRB.

<sup>(1)</sup> Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

<sup>(2)</sup> Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

<sup>(3)</sup> Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

<sup>(4)</sup> Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10).

<sup>(5)</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

## II

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

## EUROPEAN COMMISSION

## UNIFORM APPLICATION OF THE COMBINED NOMENCLATURE (CN)

**(Classification of goods)**

(2010/C 87/02)

Explanatory Notes adopted under Article 9(1)(a) of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff <sup>(1)</sup>

The Explanatory Notes to the Combined Nomenclature of the European Communities <sup>(2)</sup> shall be amended as follows:

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**Chapter 64 General**

*The second paragraph of General, point 1(c), is replaced by the following text:*

‘Accessories generally have an ornamental function and reinforcements have a protective or strengthening function. Since reinforcements are attachments to the upper aiming to give additional strength, they are attached to the external surface of the upper and not merely to the lining. However, a section of lining may appear underneath the reinforcement, provided that its reinforcement function is not thereby reduced. Besides being attached to the upper the reinforcement or accessory may also be attached to, or go into, the sole. A material is not considered an accessory or reinforcement, but is considered a part of the upper provided the method of assembling of the materials underneath is not durable (sewn seams are an example of a durable method of assembling).’

*Consideration 3 of the text below the diagrams of General, point 1(c), is replaced by the following text:*

‘3. Removing the leather section (3) has revealed an area of textile (marked A on the diagram) and an area of lining material lying underneath section 3. As the textile does not extend all the way under section 3, and, as the lining is not considered to be an upper, and, as there is mainly lining material under the leather, the leather section does not reinforce any upper material, and, thus, has to be counted as part of the upper.’

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<sup>(1)</sup> OJ L 256, 7.9.1987, p. 1.

<sup>(2)</sup> OJ C 133, 30.5.2008, p. 1.

**Non-opposition to a notified concentration****(Case COMP/M.5761 — E.ON/MASDAR/JV)****(Text with EEA relevance)**

(2010/C 87/03)

On 24 March 2010, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- in the merger section of the Competition website of the Commission (<http://ec.europa.eu/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
  - in electronic form on the EUR-Lex website (<http://eur-lex.europa.eu/en/index.htm>) under document number 32010M5761. EUR-Lex is the on-line access to the European law.
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## IV

(Notices)

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

## COUNCIL

## COUNCIL DECISION

of 22 March 2010

**appointing the Polish members and alternate members of the Advisory Committee on Safety and Health at Work**

(2010/C 87/04)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Decision 2003/C 218/01 of 22 July 2003 on the setting up of an Advisory Committee on Safety and Health at Work <sup>(1)</sup>, and in particular Article 3 thereof,

Having regard to the list of candidates submitted to the Council by the Governments of the Member States,

Whereas:

(1) in its Decision of 16 February 2010 <sup>(2)</sup>, the Council appointed the members and alternate members of the Advisory Committee on Safety and Health at Work for the period from 1 March 2010 until 28 February 2013, except for certain members and alternate members, including the Polish members and alternate members for the trade union and employers' organisation categories.

(2) the Polish Government has proposed candidates for the vacant seats,

HAS DECIDED AS FOLLOWS:

*Sole Article*

The following are hereby appointed members and alternate members of the Advisory Committee on Safety and Health at Work for the period ending on **28 February 2013**:

**I. Trade Union Representatives**

Members	Alternates
Ms Iwona PAWLACZYK	Mr Mariusz ŁUSZCZYK Mr Andrzej SZCZEPANIAK

**II. Employers' Representatives**

Members	Alternates
Mr Zbigniew ŻUREK	Mr Jacek MĘCINA Mr Marek KOŁODZIEJSKI

Done at Brussels, 22 March 2010.

*For the Council**The President*

M. Á. MORATINOS

<sup>(1)</sup> OJ C 218, 13.9.2003, p. 1.

<sup>(2)</sup> Not yet published in the OJ.

# EUROPEAN COMMISSION

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

**31 March 2010**

(2010/C 87/05)

**1 euro =**

Currency			Exchange rate		
Currency			Exchange rate		
USD	US dollar	1,3479	AUD	Australian dollar	1,4741
JPY	Japanese yen	125,93	CAD	Canadian dollar	1,3687
DKK	Danish krone	7,4447	HKD	Hong Kong dollar	10,4653
GBP	Pound sterling	0,88980	NZD	New Zealand dollar	1,9024
SEK	Swedish krona	9,7135	SGD	Singapore dollar	1,8862
CHF	Swiss franc	1,4276	KRW	South Korean won	1 525,11
ISK	Iceland króna		ZAR	South African rand	9,8922
NOK	Norwegian krone	8,0135	CNY	Chinese yuan renminbi	9,2006
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,2638
CZK	Czech koruna	25,440	IDR	Indonesian rupiah	12 227,26
EEK	Estonian kroon	15,6466	MYR	Malaysian ringgit	4,3968
HUF	Hungarian forint	265,75	PHP	Philippine peso	60,920
LTL	Lithuanian litas	3,4528	RUB	Russian rouble	39,6950
LVL	Latvian lats	0,7085	THB	Thai baht	43,598
PLN	Polish zloty	3,8673	BRL	Brazilian real	2,4043
RON	Romanian leu	4,0970	MXN	Mexican peso	16,6573
TRY	Turkish lira	2,0512	INR	Indian rupee	60,5140

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

## NOTICES FROM MEMBER STATES

**Decision on a reorganisation measure in respect of Commercial Value Insurance A.A.E.**

*(Publication made in accordance with Article 6 of Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings)*

(2010/C 87/06)

Insurance undertaking	Commercial Value A.A.E. Vasilissis Sofias 60 and Papadiamandopoulou 115 28 Athens GREECE
Date, entry into force and nature of the decision	Decision 174/2 of the Board of the Greek Private Insurance Supervisory Committee (EPEIA) of 4 February 2010 on the immediate suspension of all the insurance activities of Commercial Value A.A.E., both in Greece and abroad.  Entry into force: 4.2.2010
Competent authorities	The Private Insurance Supervisory Committee (EPEIA) Ipatias 5 105 57 Athens GREECE
Supervisory authority	The Private Insurance Supervisory Committee (EPEIA) Ipatias 5 105 57 Athens GREECE
Administrator appointed	(name, address and contact details, if legal person, physical person acting in its name)
Applicable law	Greek law in accordance with Article 9 of Legislative Decree 400/1970



**Decision on a reorganisation measure in respect of Progress Assicurazioni S.p.A.**

*(Publication in accordance with Article 6 of Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings)*

(2010/C 87/07)

Insurance undertaking	Progress Assicurazioni S.p.A. Piazza Alberico Gentili 3 90143 Palermo PA ITALIA
Date, entry into force and nature of the decision	ISVAP measure No 2773 of 9 February 2010 — Appointment of a Commissioner for interim management within the meaning of Article 230 of Legislative Decree No 209/2005
Competent authorities	ISVAP Via del Quirinale 21 00187 Roma RM ITALIA
Supervisory authority	ISVAP Via del Quirinale 21 00187 Roma RM ITALIA
Commissioner appointed	Prof. avv. Andrea GEMMA Piazza Alberico Gentili 3 90143 Palermo PA ITALIA
Applicable law	Italy Article 230 of Legislative Decree No 209/2005

Under ISVAP measure No 2773 of 9 February 2010, prof. avv. Andrea GEMMA has been appointed within the meaning of Article 230 of Legislative Decree No 209 of 7 September 2005 as Commissioner for the interim management of Progress Assicurazioni S.p.A., with its head office in Palermo, Piazza Alberico Gentili 3, for a maximum period of 2 months from the adoption of this order. Consequently, the powers of the administrative and controlling bodies of the company are suspended.

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**Update of the list of national services responsible for border controls for the purposes of Article 15(2) of Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ C 247, 13.10.2006, p. 17; OJ C 77, 5.4.2007, p. 11; OJ C 153, 6.7.2007, p. 21; OJ C 331, 31.12.2008, p. 15)**

(2010/C 87/08)

The publication of the list of national services responsible for border controls for the purposes of Article 15(2) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) is based on the information communicated by the Member States to the Commission in conformity with Article 34 of the Schengen Borders Code.

In addition to the publication in the *Official Journal of the European Union*, a monthly update is available on the website of Directorate-General for Justice, Freedom and Security.

ESTONIA

*Amendment of the information published in OJ C 247, 13.10.2006*

The national service responsible for border controls: Politsei- ja Piirivalveamet (the Police and Border Guard Board)

HUNGARY

*Amendment of the information published in OJ C 247, 13.10.2006*

The national service responsible for border controls: Rendőrség (the National Police) and Vám-és Pénzügyőrség (the Customs and Finance Guard). The latter is present at external borders with Ukraine, Serbia and Croatia.

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## V

*(Announcements)*

## ADMINISTRATIVE PROCEDURES

## EUROPEAN COMMISSION

**Call for applications for researcher grants under the work programme of the joint European Metrology Research Programme (EMRP)**

(2010/C 87/09)

Notice is hereby given of the launch of a call for applications for researcher grants under the work programme of the **European Metrology Research Programme**.

Applications are invited for the following call:

**Stage 3 of the EMRP Call 2009 — Energy:**

- Researcher Excellence Grants (REG),
- Researcher Mobility Grants (RMG).

**Open call — first cut-off date:**

- Early-Stage Researcher Mobility Grants (ESRMG).

Closing date and first cut-off date is 7 May 2010.

Information on the modalities of the call and call documentation is published on the following website:

<http://www.emrponline.eu/energycall/adverts>

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## PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

### EUROPEAN COMMISSION

#### **Notice of initiation of an anti-subsidy proceeding concerning imports of certain stainless steel bars originating in India**

(2010/C 87/10)

The Commission has received a complaint pursuant to Article 10 of Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community<sup>(1)</sup> ('the basic Regulation'), alleging that imports of certain stainless steel bars, originating in India, are being subsidised and are thereby causing material injury to the Union industry.

#### **1. Complaint**

The complaint was lodged on 15 February 2010 by the European Federation of Iron and Steel Industries (Eurofer) ('the complainant') on behalf of producers representing a major proportion, in this case more than 25 % of the total Union production of certain stainless steel bars.

#### **2. Product under investigation**

The product subject to this investigation is stainless steel bars and rods, not further worked than cold-formed or cold-finished, other than bars and rods of circular cross-section of a diameter of 80 mm or more ('the product under investigation').

#### **3. Allegation of subsidisation**

The product allegedly being subsidised is the product under investigation, originating in India ('the country concerned'), currently falling within CN codes 7222 20 21, 7222 20 29, 7222 20 31, 7222 20 39, 7222 20 81 and 7222 20 89. These CN codes are given for information only.

It is alleged that the producers of the product under investigation originating in India have benefited from a number of subsidies granted by the Government of India and from regional subsidies. The subsidies consist, inter alia, of schemes conferring benefits to industries located in special economic zones/export oriented units, the duty entitlement passbook scheme, the advance authorisation scheme, the export promotion capital goods scheme, pre-shipment and post-shipment export financing, loan guarantees from the Government of India,

exemption of export credit from interest taxes, duty free replenishment certificate scheme/duty free imports authorisation scheme, duty drawback scheme, income tax incentive for research and development, target plus scheme and regional subsidies by the State of Maharashtra (inter alia sales tax/trade tax incentive, electricity duty exemption, octroi refund, special capital incentive) and by the State of Gujarat (industrial incentive schemes).

It is alleged that the above schemes are subsidies since they involve a financial contribution from the Government of India or other regional Governments and confer a benefit to the recipients, i.e. to the exporting producers of the product under investigation. They are alleged to be contingent upon export performance and/or limited to specific companies and/or products and/or regions and therefore specific and countervailable.

#### **4. Allegation of injury**

The complainant has provided evidence that imports of the product under investigation from the country concerned have increased overall in terms of market share.

The *prima facie* evidence provided by the complainant shows that the volume and the prices of the imported product under investigation have, among other consequences, had a negative impact on the quantities sold, the level of the prices charged and the market share held by the Union industry, resulting in substantial adverse effects on the overall performance and the financial situation of the Union industry.

#### **5. Procedure**

Having determined, after consulting the Advisory Committee, that the complaint has been lodged by or on behalf of the Union industry and that there is sufficient evidence to justify the initiation of a proceeding, the Commission hereby initiates an investigation pursuant to Article 10 of the basic Regulation.

<sup>(1)</sup> OJ L 188, 18.7.2009, p. 93.

The investigation will determine whether the product under investigation originating in the country concerned is being subsidised and whether this subsidisation has caused injury to the Union industry. If the conclusions are affirmative, the investigation will examine whether it is in the Union interest to impose measures.

### 5.1. Procedure for the determination of subsidisation

Exporting producers <sup>(2)</sup> of the product under investigation from the country concerned are invited to participate in the Commission investigation.

#### 5.1.1. Investigating exporting producers

##### (a) Sampling

In view of the potentially large number of exporting producers in the country concerned involved in this proceeding and in order to complete the investigation within the statutory time limits, the Commission may limit the exporting producers to be investigated to a reasonable number by selecting a sample (this process is also referred to as 'sampling'). The sampling will be carried out in accordance with Article 27 of the basic Regulation.

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

- name, address, e-mail address, telephone and fax numbers and contact person,
- the turnover in local currency and the volume in tonnes of the product under investigation sold for export to the Union during the investigation period (IP) 1 April 2009 to 31 March 2010 for each of the 27 Member States <sup>(3)</sup> separately and in total,
- the turnover in local currency and the volume in tonnes of the product under investigation sold on the domestic market during the IP 1 April 2009 to 31 March 2010,

- the precise activities of the company worldwide with regard to the product under investigation,
- the names and the precise activities of all related companies <sup>(4)</sup> involved in the production and/or sales (export and/or domestic) of the product under investigation,
- any other relevant information that would assist the Commission in the selection of the sample.

The exporting producers should also indicate whether, in the event that they are not selected to be in the sample, they would like to receive a questionnaire in order to fill it in and thus claim an individual subsidy margin in accordance with section (b) below.

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

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

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

<sup>(2)</sup> An exporting producer is any company in the country concerned which produces and exports the product under investigation to the Union market, either directly or via third party, including any of its related companies involved in the production, domestic sales or exports of the product concerned. Non-producing exporters are normally not entitled to an individual duty rate.

<sup>(3)</sup> The 27 Member States of the European Union are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

<sup>(4)</sup> In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code, persons shall be deemed to be related only if: (a) they are officers or directors of one another's businesses; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife; (ii) parent and child; (iii) brother and sister (whether by whole or half blood); (iv) grandparent and grandchild; (v) uncle or aunt and nephew or niece; (vi) parent-in-law and son-in-law or daughter-in-law; (vii) brother-in-law and sister-in-law (OJ L 253, 11.10.1993, p. 1). In this context 'person' means any natural or legal person.

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

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

Companies that had agreed to their possible inclusion in the sample but were not selected to be in the sample shall be considered to be cooperating ('non-sampled cooperating exporting producers'). Without prejudice to section (b) below, the countervailing duty that may be applied to imports from the non-sampled cooperating exporting producers will not exceed the weighted average margin of subsidisation established for the exporting producers in the sample.

(b) Individual subsidy margin for companies not included in the sample

Non-sampled cooperating exporting producers may request, pursuant to Article 27(3) of the basic Regulation, that the Commission establish their individual subsidy margins ('individual subsidy margin'). The exporting producers wishing to claim an individual subsidy margin must request a questionnaire in accordance with section (a) above and return it duly completed within the deadlines specified below. The completed questionnaire reply must be submitted within 37 days of the date of the notification of the sample selection, unless otherwise specified.

However, exporting producers claiming an individual subsidy margin should be aware that the Commission may nonetheless decide not to determine their individual subsidy margin if, for instance, the number of exporting producers is so large that such determination would be unduly burdensome and would prevent the timely completion of the investigation.

(c) Cooperation with the authorities of the exporting country

Questionnaires will also be sent to the authorities of the exporting country concerned.

5.1.2. Investigating unrelated importers <sup>(5)</sup> <sup>(6)</sup>

In view of the potentially large number of unrelated importers involved in this proceeding and in order to complete the inves-

tigation within the statutory time limits, the Commission may limit to a reasonable number the unrelated importers that will be investigated by selecting a sample (this process is also referred to as 'sampling'). The sampling will be carried out in accordance with Article 27 of the basic Regulation.

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

- name, address, e-mail address, telephone and fax numbers and contact person,
- the precise activities of the company with regard to the product under investigation,
- the volume in tonnes and value in EUR of imports into and resales made on the Union market during the period 1 April 2009 to 31 March 2010 of the imported product under investigation originating in the country concerned,
- the names and the precise activities of all related companies <sup>(7)</sup> involved in the production and/or sales of the product under investigation,
- any other relevant information that would assist the Commission in the selection of the sample.

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

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

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

<sup>(5)</sup> Only importers not related to exporting producers can be sampled. Importers that are related to exporting producers have to fill in Annex 1 to the questionnaire for these exporting producers. For the definition of a related party see footnote 4.

<sup>(6)</sup> The data provided by unrelated importers may also be used in relation to aspects of this investigation other than the determination of subsidisation.

<sup>(7)</sup> For the definition of a related party see footnote 4.



If a sample is necessary, the importers may be selected based on the largest representative volume of sales in the Union which can reasonably be investigated within the time available. All known unrelated importers and associations of importers will be notified by the Commission of the companies selected to be in the sample.

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled unrelated importers and to any known association of importers. These parties must submit a completed questionnaire within 37 days from the date of the notification of the sample selection, unless otherwise specified. The completed questionnaire will contain information on, inter alia, the structure of their company(ies), the activities of the company(ies) in relation to the product under investigation and on the sales of the product under investigation.

## 5.2. Procedure for the determination of injury

Injury means material injury to the Union industry, or threat of material injury to the industry, or material retardation of the establishment of such an industry. A determination of injury is based on positive evidence and involves an objective determination of the volume of subsidised imports, their effect on prices in the importing country and the consequent impact of those imports on the Union industry. In order to establish whether the Union industry is materially injured, Union producers of the product under investigation are invited to participate in the Commission investigation.

### 5.2.1. Investigating Union producers

In view of the potentially large number of Union producers involved in this proceeding and in order to complete the investigation within the set time limits, the Commission may limit to a reasonable number the Union producers that will be investigated by selecting a sample (this process is also referred to as 'sampling'). The sampling will be carried out in accordance with Article 27 of the basic Regulation.

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

- name, address, e-mail address, telephone and fax numbers and contact person,
- the precise activities of the company worldwide with regard to the product under investigation,

- the value in EUR of sales of the product under investigation made on the Union market during the period 1 April 2009 to 31 March 2010,
- the volume in tonnes of sales of the product under investigation made on the Union market during the period 1 April 2009 to 31 March 2010,
- the volume in tonnes of the production of the product under investigation during the period 1 April 2009 to 31 March 2010,
- the volume in tonnes imported into the Union of the product under investigation produced in the country concerned during the period 1 April 2009 to 31 March 2010, if applicable,
- the names and the precise activities of all related companies<sup>(8)</sup> involved in the production and/or sales of the product under investigation (whether produced in the Union or in the country concerned),
- any other relevant information that would assist the Commission in the selection of the sample.

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

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

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

If a sample is necessary, the Union producers may be selected based on the largest representative volume of sales in the Union which can reasonably be investigated within the time available. All known Union producers and associations of Union producers will be notified by the Commission of the companies selected to be in the sample.

<sup>(8)</sup> For the definition of a related party see footnote 4.



In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled Union producers and to any known association of Union producers. These parties must submit a completed questionnaire within 37 days from the date of the notification of the sample selection, unless otherwise specified. The completed questionnaire will contain information on, inter alia, the structure of their company(ies), the financial situation of the company(ies), the activities of the company(ies) in relation to the product under investigation, the cost of production and the sales of the product under investigation.

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

Should the existence of subsidisation and injury caused thereby be established, a decision will be reached as to whether the adoption of countervailing measures would be against the Union interest pursuant to Article 31 of the basic Regulation. Union producers, importers and their representative associations, representative users and representative consumer organisations are invited to make themselves known within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. In order to participate in the investigation, the representative consumer organisations have to demonstrate, within the same deadline, that there is an objective link between their activities and the product under investigation.

Parties that make themselves known within the above deadline may provide the Commission with information on whether the imposition of measures is in the Union interest within 37 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. This information may be provided either in a free format or by completing a questionnaire prepared by the Commission. In any case, information submitted pursuant to Article 31 will only be taken into account if supported by factual evidence at the time of submission.

### 5.4. *Other written submissions*

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

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

All interested parties may request to be heard by the Commission investigation services. Any request to be heard should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15

days of the date of publication of this notice in the *Official Journal of the European Union*. Thereafter, a request to be heard should be submitted within the specific deadlines set by the Commission in its communication with the parties.

### 5.6. *Procedure for making written submissions and sending completed questionnaires and correspondence*

All submissions, including information submitted for the selection of the samples, completed questionnaires and updates thereof, made by interested parties must be made in writing in both paper and electronic format, and must indicate the name, address, e-mail address, telephone and fax numbers of the interested party. If an interested party cannot provide its submissions and requests in electronic format for technical reasons, it must immediately inform the Commission.

All written submissions, including the information requested in this notice, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Limited' <sup>(9)</sup>.

Interested parties providing 'Limited' information are required to furnish non-confidential summaries of it pursuant to Article 29(2) of the basic Regulation, which will be labelled 'For inspection by interested parties'. These summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If an interested party providing confidential information does not furnish a non-confidential summary of it in the requested format and quality, such confidential information may be disregarded.

Commission address for correspondence:

European Commission  
Directorate-General for Trade  
Directorate H  
Office: N-105 04/092  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË

Fax +32 22956505

### 6. *Non-cooperation*

In cases where any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of facts available, in accordance with Article 28 of the basic Regulation.

<sup>(9)</sup> This document is a confidential document pursuant to Article 29 of Council Regulation (EC) No 597/2009 (OJ L 188, 18.7.2009, p. 93) and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures. It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

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

If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 28 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

## 7. Hearing Officer

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

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

The Hearing Officer will also provide opportunities for a hearing involving parties to take place which would allow different views to be presented and rebuttal arguments offered on issues pertaining, among others, to subsidisation, injury, causal link and Union interest. Such a hearing would, as a rule, take place at the latest at the end of the fourth week following the disclosure of provisional findings.

For further information and contact details interested parties may consult the Hearing Officer's web pages on Trade DG's website ([http://ec.europa.eu/trade/issues/respectrules/ho/index\\_en.htm](http://ec.europa.eu/trade/issues/respectrules/ho/index_en.htm)).

## 8. Schedule of the investigation

The investigation will be concluded, according to Article 11(9) of the basic Regulation within 13 months of the date of the publication of this notice in the *Official Journal of the European Union*. According to Article 12(1) of the basic Regulation, provisional measures may be imposed no later than 9 months from the publication of this notice in the *Official Journal of the European Union*.

## 9. Processing of personal data

Any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>(10)</sup>.

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<sup>(10)</sup> OJ L 8, 12.1.2001, p. 1.

## CORRIGENDA

**Corrigendum to Commission communication in the framework of the implementation of the European Parliament and Council Directive 95/16/EC on the approximation of the laws of the Member States relating to lifts***(Official Journal of the European Union C 52 of 2 March 2010)**(2010/C 87/11)*

On page 5:

*for:*

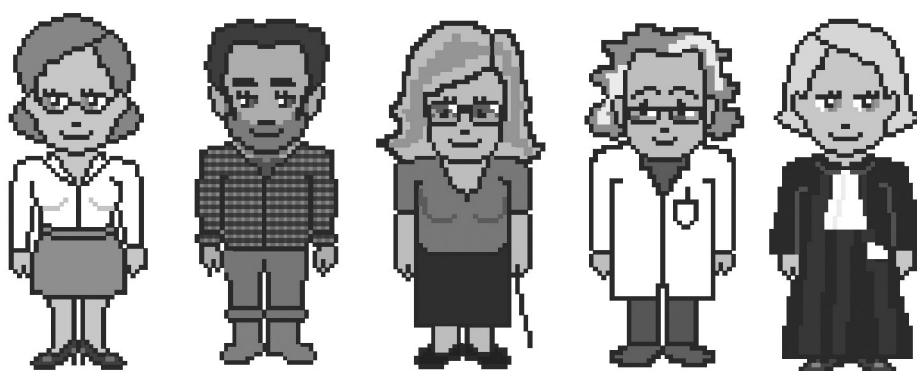
'CEN	EN 81-1:1998+A3:2009 Safety rules for the construction and installation of lifts — Part 1: Electric lifts	This is the first publication	EN 81-1:1998 Note 2.1	30.6.2011
CEN	EN 81-2:1998+A3:2009 Safety rules for the construction and installation of lifts — Part 2: Hydraulic lifts	This is the first publication	EN 81-2:1998 Note 2.1	30.6.2011
CEN	EN 81-28:2003 Safety rules for the construction and installation of lifts — Lifts for the transport of persons and goods — Part 28: Remote alarm on passenger and goods passenger lifts	10.2.2004'		

*read:*

'CEN	EN 81-1:1998+A3:2009 Safety rules for the construction and installation of lifts — Part 1: Electric lifts	This is the first publication	EN 81-1:1998 Note 2.1 Note 4	30.6.2011
CEN	EN 81-2:1998+A3:2009 Safety rules for the construction and installation of lifts — Part 2: Hydraulic lifts	This is the first publication	EN 81-2:1998 Note 2.1 Note 4	30.6.2011
CEN	EN 81-28:2003 Safety rules for the construction and installation of lifts — Lifts for the transport of persons and goods — Part 28: Remote alarm on passenger and goods passenger lifts	10.2.2004	Note 4'	

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