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(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN DATA PROTECTION SUPERVISOR

Opinion of the European Data Protection Supervisor on the proposal for a Directive of the European Parliament and of the Council amending Directive 2006/126/EC of the European Parliament and of the Council as regards driving licences which include the functionalities of a driver card

(2012/C 139/01)

THE EUROPEAN DATA PROTECTION SUPERVISOR,

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

Having regard to the Charter of Fundamental Rights of the European Union, and in particular Articles 7 and 8 thereof,

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1],

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

HAS ADOPTED THE FOLLOWING OPINION

I. INTRODUCTION

1. On 11 November 2011, the Commission adopted a proposal for a Directive of the European Parliament and of the Council amending Directive 2006/126/EC of the European Parliament and of the Council as regards driving licences which include the functionalities of a driver card ('the Proposal') [3].

2. The Proposal is part of the measures put forward by the Commission to strengthen the deployment of digital tachographs in the European Union, as announced in the Communication on 'Digital Tachograph: Roadmap for future activities' [4]. The Proposal complements the proposal for a Regulation on recording equipment in road transport amending Regulation (EEC) No 3821/85 adopted by the Commission on 19 July 2011 (the 'Proposal for a regulation on recording equipment in road transport') [5], on which the EDPS issued an Opinion on 5 October 2011 [6].

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[1] OJ L 281, 23.11.1995, p. 31.
[2] OJ L 8, 12.1.2001, p. 1.
[3] COM(2011) 710 final.
[4] COM(2011) 454 final.
[5] Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and the Council, COM(2011) 451 final.
[6] Available on the EDPS website at the following address: http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2011/11-10-05_Tachographs_EN.pdf

I.1. **Consultation of the EDPS**

3. The Proposal was sent by the Commission to the EDPS for consultation on 11 November 2011, pursuant to Article 28(2) of Regulation (EC) No 45/2001.

4. The EDPS regrets that he was not given the possibility to provide informal comments to the Commission before the adoption of the Proposal. The EDPS recommends that reference to the present consultation be made in the preamble of the Proposal.

I.2. **General background**

5. The Proposal sets forth the legal basis and modalities for merging professional drivers' card with their driving licence, thereby giving effect to Article 27 of the Proposal for a regulation on recording equipment in road transport in which the principle of such merger was laid down. Article 27 of that Proposal provides that, with effect from 19 January 2018, driver cards shall be incorporated into driving licences and issued, renewed, exchanged and replaced in accordance with the provisions of Directive 2006/126/EC.

6. The driver card ([7]) is a component of the tachograph system set up under Regulation (EEC) No 3821/85. The driver card is allocated to the professional driver and enables the cardholder to be identified by the recording equipment. It also enables data related to driver activities to be stored into the card, for possible control afterwards. It contains a certain amount of data, which have been specified in Annex IB to Regulation (EEC) No 3821/85, including information about the driving licence; this annex, however, will be revised in order to be updated to technological progress after the Proposal for a regulation on recording equipment in road transport is adopted.

7. The merger of professional drivers' card with their driving licence was identified by the Commission, as a result of a stakeholders' consultation and an impact assessment ([8]), as a solution for reducing frauds as well as simplifying administrative burden and costs for the issuance of these documents. The aim of the Proposal is to allow the 'co-existence of two functions merged into a sole document, i.e. the driving licence having the functionalities of a driver card' ([9]).

I.3. **Data protection issues raised by the proposal**

8. As was already underlined by the EDPS in his Opinion on the Proposal for a regulation on recording equipment in road transport ([10]), the envisaged merger of the driver card with the driving licence might affect the current protection afforded to drivers' data.

9. Considering the potential amount of information recorded about driver activities and their whereabouts (such as date, time, distance, geolocalisation, speed, etc), the driver card is more than a simple identity card certifying that the person is a professional driver. It is therefore more intrusive from a data protection viewpoint since it is aimed at monitoring a person's compliance with social rules in the field of road transport.

10. It is therefore essential that the processing of data in the context of driving licences incorporating driver cards is done in accordance with the EU data protection framework, as set out in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, Article 16 of the Treaty on the Functioning of the European Union as well as Directive 95/46/EC ([11]).

11. In this Opinion, the EDPS will focus his analysis on two main issues: (i) whether it is sufficiently demonstrated that the merger of the driving licence with the driver card is necessary in order to achieve the purposes pursued in view of the privacy implications of such merger, and (ii) whether it is sufficiently ensured that the processing of drivers' data in one single card respects the proportionality principle.

([7]) According to Article 1(t) of Annex IB of Regulation (EEC) No 3821/85, a driver card is 'a tachograph card issued by the authorities of a Member State to a particular driver. The driver card identifies the driver and allows for storage of driver activity data'.
([8]) Although no privacy assessment was done.
([9]) See Explanatory memorandum, COM(2011) 710 final, page 3.
([10]) See footnote 6.
([11]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

II. ANALYSIS OF THE PROPOSAL

II.1. Necessity of integrating driver cards with driving licences?

12. The integration of professional driver cards with their driving licences raises a number of concerns from a privacy and data protection perspective. First and foremost, the EDPS notes that the necessity of integrating the driver card into the driving licence has not been sufficiently demonstrated. The Commission indicates in its explanatory memorandum of the Proposal that this is 'a solution' to help fight against fraud and misuse of driver cards; under a data protection viewpoint, it does not however demonstrate that such merging would be the best way to do so, and whether other means, less intrusive, could be considered.

13. It must also be taken into account that the merger of these two cards, which pursue two totally different purposes, would go against the purpose limitation principle set forth in Article 6(1)(b) of Directive 95/46/EC. The driver card is more than a simple identity card certifying that the person is a professional driver, as it serves for the purpose of monitoring compliance of the professional driver with social rules in road transport. The Commission itself identifies that there will be 'two functions merged into a sole document, i.e. the driving licence having the functionalities of a driver card' ([12]).

14. The modalities of the merger also present specific risks in terms of privacy and data protection, which have not yet been addressed. The obligation pursuant to Article 1 of the Proposal for Member States to embed a microchip in all the new integrated driving licences that will be delivered to drivers raises concerns as to whether such measure is necessary and proportionate in view of the purposes of the processing. The impact on the processing of the merging of the two cards and of the use of a microchip in the new integrated driving licence must be assessed thoroughly. The EDPS therefore recommends that the integration of the driver card into the driving licence should only be envisaged after a privacy and security impact assessment has been carried out. This should be clearly mentioned in Article 1 of the Proposal.

15. It is yet unclear how the merger of all the driving documents in relation to professional drivers will take place, and whether the new integrated driving licence would also contain their data about their capacity to drive other types of vehicles for private use. If so, clear mechanisms should be put in place to ensure that each portion of the card is only accessed by those persons who are authorised to do so. The EDPS is also concerned that such possibility may lead Member States to expand the use of the microchip to all driving licences, including those for private use. The choice for the use of such a technology in identity documents relating to driving capacity has an impact on the privacy and data protection of individuals in particular in relation to the type and amount of information that it may contain and any choice on this should not be driven by technical facilities. The decision should remain subject to a transparent public debate as well as the definition in the law of appropriate safeguards to ensure the privacy and data protection of individuals.

16. Furthermore, the EDPS underlines that the use of drivers' data must also be carefully assessed in the broader context of intelligent transport systems and the extent to which drivers' data might be further used and combined with other data collected from other systems embedded in the vehicle (such as eCall, eToll, etc). The EDPS calls on the legislator to take due account of the principles of purpose limitation, necessity and proportionality when developing future legislative proposals concerning the use and further processing of drivers' data in the context of intelligent transport systems.

II.2. Proportionality of the processing of professional drivers' data

17. Even if the merger of the two cards were proven to be necessary, the processing of personal data in that single card would nonetheless have to comply with all the data protection principles and rules set forth in Directive 95/46/EC, and in particular the proportionality principle.

([12]) See Explanatory memorandum, COM(2011) 710 final, page 3.

18. The EDPS notes that Directive 2006/126/EC only includes a mere reference to 'data protection rules' in its Article 1(2) without spelling them out clearly. He recommends clarifying in a substantive article of the Proposal that the processing of data carried out in respect of driving licences shall be done in accordance with national rules which implement Directive 95/46/EC. It must be underlined that the processing carried out in respect of driving licences includes not only the data processed in the microchip but also all other types of data processing made around the card, such as the issuance of the driving licence, the monitoring of their validity and controls performed by competent authorities monitoring the respect of social rules in road transport.

19. As concerns the details of the processing, recital (2) of the Proposal provides that 'driving licences and driver cards share an almost identical design and set of data fields'. This statement is misleading for two reasons: first, the exact data fields that will be processed in the driver card are still unknown; second, it can be assumed that they will necessarily go beyond those that have been defined for the driving licence, since the purpose of the driver card is to monitor a driver's behaviour to ensure compliance with social rules in road transport.

20. While the categories of data contained in the driving licence are clearly laid out in detail in Annex I to Directive 2006/126/EC ([13]), the specifications for the data to be stored in the microchip of the driving licence have not yet been defined by the Commission. For instance, it is still unclear whether the microchip might contain biometric data (such as fingerprints, or iris scan). Furthermore, as the EDPS underlined in his Opinion on the Proposal for a regulation on recording equipment in road transport ([14]), the details of the processing in the driver's card are also not yet been defined with certainty and depend on the revision of the Annexes of the Regulation (EEC) No 3821/85 on tachographs, which process will only be started after the proposal for amending the regulation on tachographs is adopted. It is therefore difficult at this stage to evaluate with sufficient certainty whether the envisaged data processing will comply with the proportionality principle.

21. As to the foreseeable extent of data that will be processed in the microchip concerning drivers' data, Article 1 of the Proposal only mentions the driver card identification data, as referred to in Section IV, point 5.2 of Annex IB of Regulation (EEC) No 3821/85, while on the other hand Article 7(a) of the Proposal provides that the driving licence must incorporate 'all the necessary functionalities so that the driving licence can also be used as a driver card'. In order for the driving licence to be used as a driver card, it will have to incorporate all the data fields defined for the driver card, and not only the card identification data. Such data will contain a lot more information than in the driving licence, e.g. data about activities of the driver (such as date, start and end of trip, distance, geolocalisation data, time, speed, etc).

22. The EDPS emphasizes the need to follow a consistent approach when developing measures in two separate legal instruments on driving licences incorporating driver cards -on the one hand the proposal for a Regulation on recording equipment in road transport and on the other hand the proposal for amending the Directive on driving licence- to ensure that the overall design of the processing is privacy friendly, that it respects all the principles of data protection and in particular proportionality, and that it provides sufficient guarantees in terms of data protection as well as appropriate consideration of data subjects' rights.

23. The EDPS in particular recommends that a clear list of data to be processed in the integrated card is defined on the basis of a necessity test. It should be clarified in the Proposal how data subjects' rights to information about the processing, to access their data and to object, as set forth in Articles 10, 11, 12 and 14 of Directive 95/46/EC, can be effectively exercised in the context of such processing. He also stresses that the processing shall be subject to appropriate review by the relevant data protection authorities, in accordance with national law.

([13]) They mainly relate to the driver's identity, date of birth, place and authority of issuance, type of vehicle for which the licence is granted, and whether certain restrictions apply.

([14]) See footnote 6, page 1.

24. The EDPS also underlines that the purposes and circumstances under which data can be accessed, and by whom, must be clarified. It should be made clear that access to the data contained in the microchip shall only be permitted for official and clearly defined purposes, but not for other (commercial or non commercial) purposes. Furthermore, it should be specified clearly in the Proposal who is authorised to have access to which data contained in the microchip (i.e. professional driving licence, driver data, private driving licence) and under which circumstances (e.g. what type of access to data of a driver who is not working due to holidays or sickness?), as the mix of the two legal instruments creates uncertainty in this respect.

25. Finally, as concerns records of stolen, lost or defective driving licences incorporating a driver card (Article 7c of the Proposal), the data or categories of data to be retained should be clarified. When defining such data, the principles of proportionality and data minimisation should be applied. It should furthermore be clarified who is/are the competent authority(ies) who should keep record of such data.

III. **CONCLUSION**

26. The EDPS expresses doubts as to the necessity and the proportionality of the merger of driving licences with driving cards envisaged in the Proposal, which are to be demonstrated. Therefore, it should be explored whether other means, less intrusive, could be pursued to achieve the same aim of combating fraud and reducing costs in respect of professional drivers in road transport.

27. The EDPS recommends in particular to:

— add a reference to data protection legislation, and in particular Directive 95/46/EC, in a substantive article of the Proposal;

— provide in Article 1 of the Proposal that the merging of the driver cards with driving licences and the use of the microchip should only be envisaged after a privacy and security impact assessment has been carried out;

— follow a consistent approach when developing measures about driving licences incorporating driver cards in two separate legal instruments, i.e. the Regulation on recording equipment in road transport and the Directive on driving licences, to ensure that the overall design of the processing is privacy friendly, that it respects all the principles of data protection and in particular proportionality, and that it provides sufficient guarantees in terms of data protection, including the effective exercise of data subjects' rights;

— specify with more clarity and in more details, on the basis of a necessity test, the data or categories of data to be contained in the microchip, which would include all data defined in the updated Annex IB of Regulation (EEC) No 3821/85 as well as the data that will be specified by the Commission concerning the microchip in driving licences. The definition of the data processed and stored in the microchip should particularly comply with the principles of proportionality and data minimisation;

— clarify the circumstances under which certain categories of data can be accessed, and by whom;

— state clearly in Article 7c who shall keep records of stolen, lost or defective driving licences incorporating a driver card, and that only the data strictly necessary for such purpose should be retained, in accordance with the principles of proportionality and data minimisation.

Done at Brussels, 17 February 2012.

Giovanni BUTTARELLI

Assistant European Data Protection Supervisor

Opinion of the European Data Protection Supervisor on the Commission proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1060/2009 on credit rating agencies

(2012/C 139/02)

THE EUROPEAN DATA PROTECTION SUPERVISOR,

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

Having regard to the Charter of Fundamental Rights of the European Union, and in particular Articles 7 and 8 thereof,

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1],

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

HAS ADOPTED THE FOLLOWING OPINION:

1. INTRODUCTION

1.1. Consultation of the EDPS

1. This Opinion is part of a package of four EDPS' opinions relating to the financial sector, all adopted on the same day.

2. On 15 November 2011, the Commission adopted a proposal concerning amendments to the Regulation (EC) No 1060/2009 on credit rating agencies (hereinafter 'CRA Regulation') [3]. This proposal was sent to the EDPS for consultation on 18 November 2011.

3. The EDPS welcomes the fact that he is consulted by the Commission and recommends that a reference to this Opinion is included in the preamble of the instrument adopted.

4. The EDPS regrets, however, that he was neither formally consulted by the Commission during the preparation of the original CRA Regulation that entered into force on 7 December 2010, nor regarding the recent amendments to the said Regulation [4].

5. In this Opinion, the EDPS therefore finds it appropriate and useful to address issues regarding the CRA Regulation already in place. Firstly, he emphasises the potential data protection implications of the CRA Regulation itself. Secondly, the analysis presented in this Opinion is directly relevant for the application of the existing legislation and for other pending and possible future proposals containing similar provisions, such as discussed in the EDPS Opinions on the legislative package on the revision of the banking legislation, markets in financial instruments (MIFID/MIFIR) and market abuse.

1.2. Objectives and scope of the proposal and the current Regulation

6. The Commission considers credit rating agencies (CRAs) to be important financial market participants, which need to be subject to an appropriate legal framework. The first CRA Regulation entered into force on 7 December 2010. It requires CRAs to comply with rigorous rules of conduct in order to mitigate possible conflicts of interest, ensure high quality and sufficient transparency of ratings and the rating process. Existing CRAs had to apply for registration and to comply with the requirements of the Regulation by 7 September 2010.

7. Amendments to the CRA Regulation (Regulation (EU) No 513/2011) entered into force on 1 June 2011, entrusting ESMA with exclusive supervisory powers over CRAs registered in the EU in order to centralise and simplify their registration and supervision at European level.

[1] OJ L 281, 23.11.1995, p. 31.
[2] OJ L 8, 12.1.2001, p. 1.
[3] COM(2011) 747.
[4] Regulation (EU) No 513/2011, which entered into force on 1 June 2011.

8. The current proposed legislation constitutes amendments to the CRA Regulation but does not replace it. The main policy objective of the proposed revision is to address a number of issues related to CRAs and the use of ratings that have not been sufficiently addressed in the existing CRA Regulation.

1.3. **Aim of the EDPS Opinion**

9. While most of the provisions of the CRA Regulation relate to the pursuit of the activities of CRAs and the supervision of their activities, the implementation and application of the legal framework may in certain cases affect the rights of individuals relating to the processing of their personal data.

10. The CRA Regulation allows for the exchange of information between ESMA, competent authorities, sectoral competent authorities and, possibly, third countries ([5]). This information may well relate to individuals, such as persons involved in credit rating activities and persons otherwise closely and substantially related and connected to CRAs or credit rating activities. These provisions may have data protection implications for the individuals concerned.

11. In light of the above, this Opinion will focus on the following aspects of the CRA Regulation relating to privacy and data protection: 1. applicability of data protection legislation; 2. transfers of data to third countries; 3. access to records of telephone and data traffic; and 4. disclosure requirements regarding structured finance instruments and periodic penalty payments.

2. **ANALYSIS OF THE PROPOSAL**

2.1. **Applicability of data protection legislation** ([6])

12. Several recitals ([7]) of the CRA Regulation mention the Charter of Fundamental Rights, Directive 95/46/EC and Regulation (EC) No 45/2001. However, a reference to the applicable data protection legislation should be inserted in a substantive article of the CRA Regulation.

13. A good example of such a substantive provision can be found in Article 22 of the proposal for a regulation of the European Parliament and of the Council on insider dealing and market manipulation ([8]), which explicitly provides as a general rule that Directive 95/46/EC and Regulation (EC) No 45/2001 apply to the processing of personal data within the framework of the proposal. The EDPS today issued an Opinion on this proposal where he very much welcomes this type of overarching provision. However, the EDPS suggests that the reference to Directive 95/46/EC be clarified by specifying that the provisions will apply in accordance with the national rules which implement Directive 95/46/EC.

14. This is relevant, for example, in relation to the various provisions concerning exchanges of personal information. These provisions are perfectly legitimate but need to be applied in a way which is consistent with data protection legislation. The risk is to be avoided in particular that they could be construed as a blanket authorisation to exchange all kind of personal data. A reference to data protection legislation, also in the substantive provisions, would significantly reduce such risk ([9]).

([5]) See, in particular, Articles 23 and 27 of the CRA Regulation.
([6]) See also recent EDPS Opinions on the legislative package on the revision of the banking legislation (Section 2.1), markets in financial instruments (MIFID/MIFIR) (Section 2.1) and market abuse (Section 2.1).
([7]) See recitals 8, 33 and 34 of the CRA Regulation.
([8]) COM(2011) 651.
([9]) The CRA Regulation contains provisions allowing or requiring competent authorities and sectoral competent authorities to exchange information between them or with ESMA. In particular, Article 27 of the Regulation requires ESMA, sectoral competent authorities and competent authorities to provide each other with the information required for the purposes of carrying out their duties under the Regulation. Also, Article 23c empowers ESMA to conduct investigations of persons involved in credit rating activities and persons otherwise closely and substantially related and connected to CRAs or credit rating activities. According to Article 23b, these natural persons may also be requested to provide ESMA with all information deemed necessary. These provisions clearly imply that exchanges of personal data will take place under the CRA Regulation.

15. The EDPS therefore suggests inserting a similar substantive provision as in Article 22 of the proposal for a regulation of the European Parliament and of the Council on insider dealing and market manipulation ([10]), subject to the suggestions he made on this proposal ([11]), i.e. emphasising the applicability of existing data protection legislation and clarifying the reference to Directive 95/46/EC by specifying that the provisions will apply in accordance with the national rules which implement Directive 95/46/EC.

2.2. **Exchanges of information with third countries** ([12])

16. The EPDS notes the reference to Regulation (EC) No 45/2001 in Article 34.3 of the CRA Regulation regarding the transfer of personal data to third countries.

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

2.3. **Power of ESMA to request records of telephone and data traffic** ([13])

2.3.1. *Judicial authorisation*

18. Article 23c(1)(e) provides that in order to carry out its duties under this Regulation, ESMA may conduct all necessary investigations. To that end, its officials and other persons authorised by ESMA shall be empowered to request records of telephone and data traffic. Because of its broad wording, the provision raises several doubts concerning its material and personal scope. The CRA Regulation furthermore requires prior judicial authorisation in order for ESMA to request access to records of telephone and data traffic in case it is required according to national rules ([14]).

19. There is no definition of the notions of 'records of telephone and data traffic' in the proposed regulation. Directive 2002/58/EC (now called, as amended by Directive 2009/136/EC, 'the e-Privacy Directive') only refers to 'traffic data' but not to 'records of telephone and data traffic'. It goes without saying that the exact meaning of these notions determines the impact the investigative power may have on the privacy and data protection of the persons concerned. The EDPS suggests to use the terminology already in place in the definition of 'traffic data' in Directive 2002/58/EC.

20. Data relating to use of electronic communication means may convey a wide range of personal information, such as the identity of the persons making and receiving the call, the time and duration of the call, the network used, the geographic location of the user in case of portable devices, etc. Some traffic data relating to Internet and e-mail use (for example, the list of websites visited) may in addition reveal important details of the content of the communication. Furthermore, processing of traffic data conflicts with the secrecy of correspondence. In view of this, Directive 2002/58/EC has established the principle that traffic data must be erased or made anonymous when it is no longer needed for the purpose of the transmission of a communication ([15]). According to

([10]) Commission proposal for a regulation of the European Parliament and of the Council on insider dealing and market manipulation, COM(2011) 651.
([11]) See the EDPS Opinion of 10 February 2012 on the proposal for a regulation of the European Parliament and of the Council on insider dealing and market manipulation, COM(2011) 651.
([12]) See also recent EDPS Opinions on the legislative package on the revision of the banking legislation (Section 2.2), markets in financial instruments (MIFID/MIFIR) (Section 2.8) and market abuse (Section 2.5).
([13]) See also recent EDPS Opinions on markets in financial instruments (MIFID/MIFIR) (Section 2.3) and market abuse (Section 2.3.2).
([14]) Article 23c(5).
([15]) See Article 6(1) of Directive 2002/58/EC (OJ L 201, 31.7.2002, p. 37).

Article 15.1 of this Directive, Member States may include derogations in national legislation for specific legitimate purposes, but they must be necessary, appropriate and proportionate within a democratic society to achieve these purposes ([16]).

21. The EDPS acknowledges that the aims pursued by the Commission in the CRA Regulation are legitimate. He understands the need for initiatives aiming at strengthening supervision of financial markets in order to preserve their soundness and better protect investors and economy at large. However, investigatory powers directly relating to traffic data, given their potentially intrusive nature, have to comply with the requirements of necessity and proportionality, i.e. they have to be limited to what is appropriate to achieve the objective pursued and not go beyond what is necessary to achieve it ([17]). It is therefore essential in this perspective that the provisions are clearly drafted regarding their personal and material scope as well as the circumstances in which and the conditions on which they can be used. Furthermore, adequate safeguards should be provided for against the risk of abuse.

22. Article 23c empowers ESMA to conduct investigations of persons involved in credit rating activities and persons otherwise closely and substantially related and connected to CRAs or credit rating activities. According to Article 23b, these natural persons may also be requested to provide ESMA with all information deemed necessary.

23. These provisions clearly imply that exchanges of personal data will take place under the CRA Regulation. It seems likely — or at least it cannot be excluded — that the records of telephone and data traffic concerned include personal data within the meaning of Directive 95/46/EC and Regulation (EC) No 45/2001 and, to the relevant extent, Directive 2002/58/EC, *i.e.* data relating to the telephone and data traffic of identified or identifiable natural persons ([18]). As long as this is the case, it should be assured that the conditions for fair and lawful processing of personal data, as laid down in the Directives and the Regulation, are fully respected.

24. The EDPS notes that Article 23c(5) makes judicial authorisation obligatory whenever such authorisation is required by national law. However, the EDPS considers that a general requirement for prior judicial authorisation in all cases — regardless of whether national law requires so — would be justified in view of the potential intrusiveness of the power at stake and the choice of a regulation as the appropriate legal instrument. It should also be considered that various laws of the Member States provide for special guarantees on home inviolability against disproportionate and not carefully regulated inspections, searches or seizures especially when made by institutions of an administrative nature.

25. As stated above under Section 2.1, the power for supervisory authorities to require access to records of telephone and data traffic is not new in European legislation as it is already foreseen in various existing directives and regulations concerning the financial sector. In particular, the Market Abuse Directive ([19]), the MiFID Directive ([20]), and the UCITS Directive ([21]) all contain similarly drafted provisions. The same

([16]) Article 15.1 of Directive 2002/58/EC provides that such restrictions must 'constitute a necessary, appropriate and proportionate measure within a democratic society to safeguard national security (i.e. State security), defence, public security and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system, as referred to in Article 13.1 of Directive 95/46/EC. To this end, Member States may, inter alia, adopt legislative measures providing for the retention of data for a limited period justified on the grounds laid down in this paragraph (…)'.

([17]) See, e.g., Joined Cases C-92/09 and C-93/09, *Volker und Markus Schecke GbR* (C-92/09), *Hartmut Eifert* (C-92/09) v *Land Hessen*, not yet published in ECR, point 74.

([18]) Normally, the employees to whom the telephone and data traffic can be imputed as well as recipients and other users concerned.

([19]) Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ L 96, 12.4.2003, p. 16).

([20]) 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).

([21]) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

is true for a number of recent proposals adopted by the Commission, namely the proposals for a directive on alternative investment fund managers ([22]), a regulation on short selling and certain aspects of credit default swaps ([23]) and a regulation on integrity and transparency of energy markets ([24]).

26. As regards these existing and proposed legislative instruments, a distinction should be made between investigatory powers granted to national authorities and the granting of such powers to EU authorities. Several instruments oblige Member States to grant the power to require telephone and data traffic records to national authorities in conformity with national law ([25]). As a consequence, the actual execution of this obligation is necessarily subject to the national law including the one implementing Directives 95/46/EC and 2002/58/EC and other national laws which contain further procedural safeguards for national supervisory and investigatory authorities.

27. No such condition is contained in the CRA Regulation or the other legislative instruments which grant the power to require telephone and data traffic records directly to EU authorities. As a consequence, in these cases there is an even stronger requirement to clarify in the legislative instrument itself, the personal and material scope of this power and the circumstances in which and the conditions under which it can be used and to ensure that adequate safeguards against abuse are in place.

28. Article 23c(1)(e) of the Regulation empowers ESMA to request records of telephone and data traffic. As will be further explained below, the scope of the provision and in particular the exact meaning of 'records of telephone and data traffic' is not clear.

2.3.2. *The definition of 'records of telephone and data traffic'*

29. The definition of 'records of telephone and data traffic' is not entirely clear and thus needs to be clarified. The provision might refer to records of telephone and data traffic, which CRAs are obliged to retain in the course of their activities. However, the Regulation does not specify if and what records of telephone and data traffic must be collected by CRAs ([26]). Therefore, should the provision refer to records held by CRAs, it is essential to define precisely the categories of telephone and data traffic that have to be retained and can be required by ESMA. In line with the principle of proportionality, such data must be adequate, relevant and not excessive in relation to the supervisory purposes for which they are processed ([27]).

30. More precision is needed particularly in this case, in consideration of the heavy fines and periodic penalty payments that CRAs and other persons (including natural persons as regards periodic penalty payments) concerned might incur for a breach of the Regulation (cf. Article 36a and Article 36b).

31. It should also be noted that the abovementioned Article 37 delegates to the Commission the power to adopt amendments allowing the Commission to amend annexes to the Regulation, which contain the details of record-keeping requirements imposed on Credit rating agencies, and thus, indirectly, the

([22]) Proposal of 30 April 2009 for a directive of the European Parliament and of the Council on alternative investment fund managers and amending Directives 2004/39/EC and 2009/65/EC, COM(2009) 207.

([23]) Proposal of 15 September 2010 for a regulation of the European Parliament and of the Council on short selling and certain aspects of credit default swaps, COM(2010) 482.

([24]) Regulation of the European Parliament and of the Council on energy market integrity and transparency, COM(2010) 726.

([25]) See for instance Article 12(2) of the Market Abuse Directive mentioned in footnote 20. See also Article 50 of the MiFID Directive, mentioned in footnote 21.

([26]) The expression 'records of telephone and data traffic' may potentially include a wide variety of information, including the duration, time or volume of a communication, the protocol used, the location of the terminal equipment of the sender or recipient, the network on which the communication originates or terminates, the beginning, end or duration of a connection or even the list of websites visited and the content of the communications themselves in case they are recorded. To the extent that they relate to identified or identifiable natural persons, all this information constitutes personal data.

([27]) See Article 6(1)(c) of Directive 95/46/EC and Article 4(1)(c) of Regulation (EC) No 45/2001. It should also be considered whether specific safeguards can be devised to avoid that data concerning genuinely private use are captured and processed.

power granted by ESMA to access records of telephone and data traffic. Article 290 of the TFEU provides that a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend *non-essential elements* of the legislative act. According to the EDPS, the exact perimeter of the power to access traffic data cannot be considered a non-essential element of the Regulation. The material scope thereof should therefore be specified directly in the text of the Regulation and not deferred to future delegated acts.

32. The EDPS understands that the aim of Article 23c(1)(e) is not to allow ESMA to gain access to traffic data directly from telecom providers. This seems to be the logical conclusion particularly in consideration of the fact that the Regulation does not refer at all to data held by telecom providers or to the requirements set out by the e-Privacy Directive as mentioned in paragraph 36 above ([28]). Therefore, for the sake of clarity, he recommends making such conclusion more explicit in Article 23c of the CRA Regulation by specifically excluding traffic data held by telecom providers.

33. Should, however, a right to access to traffic data directly from telecom providers be envisaged, the EDPS has serious doubts about the necessity and proportionality of such a right and therefore recommends that such a right be explicitly excluded.

2.3.3. *Access to personal data*

34. Article 23c(1)(e) does not indicate the circumstances in which and the conditions under which access can be required. Neither does it provide for important procedural guarantees or safeguards against the risk of abuses. In the following paragraphs, the EDPS will make some concrete suggestions in this direction.

35. Article 23c(1) states that ESMA may require access to records of telephone and data traffic in order to carry out the duties under the CRA Regulation. According to the EDPS, the circumstances and the conditions for using such power should be more clearly defined. The EDPS recommends limiting access to records of telephone and data traffic to specifically identified and serious violations of the proposed regulation and in cases where a reasonable suspicion (which should be supported by concrete initial evidence) exists that a breach has been committed. Such limitation is also particularly important with a view to avoiding the access power being used for the purpose of phishing operations or data mining or for different purposes.

36. Moreover, the EDPS recommends introducing the requirement for ESMA to request records of telephone and data traffic by formal decision, specifying the legal basis and the purpose of the request and what information is required, the time limit within which the information is to be provided as well as the right of the addressee to have the decision reviewed by the Court of Justice.

2.4. **Provisions concerning disclosure of information**

2.4.1. *Information concerning structured finance instruments*

37. In the current proposal for amendments to the CRA Regulation ([29]), the proposed Article 8a regarding information on structured finance instruments states that the issuer, the originator and the sponsor of a structured finance instrument shall disclose to the public information on the credit quality and performance of the individual underlying assets of the structured finance instrument, the structure of the securitisation transaction, the cash flows and any collateral supporting a securitisation exposure as well as any information that is necessary to conduct comprehensive and well informed stress tests on

([28]) As said, the e-Privacy Directive establishes the general principle that traffic data must be erased or made anonymous when it is no longer needed for the purpose of the transmission of a communication. Such data can be further processed only for the purpose of billing and interconnection payments and up to the end of the period during which the bill may lawfully be challenged or payment pursued. Any derogation to this principle must be necessary, appropriate and proportionate within a democratic society for specific public order purposes (i.e. to safeguard national security (i.e. State security), defence, public security or the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communications systems).

([29]) COM(2011) 747.

the cash flows and collateral values supporting the underlying exposures. The obligation to disclose information shall not extend to the provision of such information that would breach statutory provisions governing the protection of confidentiality of information sources or the processing of personal data.

38. This Article is aimed at the issuer, the originator and the sponsor of a structured finance instrument. The EDPS welcomes that, in the current proposal for amendments to the CRA Regulation, the proposed Article 8a introduces that the obligation to disclose information to the public shall not extend to the provision of such information that would breach statutory provisions governing the protection of confidentiality of information sources or the processing of personal data.

39. This way of emphasising the safeguards offered by laws governing the processing of personal data is in the opinion of the EDPS a step in the right direction, but in line with recommendations made above, a clear and explicit reference in a substantive Article of the CRA Regulation to the national rules implementing Directive 95/46/EC should be made.

2.4.2. *Information concerning periodic penalty payments* ([30])

40. Article 36d of the CRA Regulation states that ESMA shall disclose to the public every periodic penalty payment that has been imposed unless such disclosure to the public would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

41. According to Article 36b and Article 23b(1), persons involved in credit rating activities and persons otherwise closely and substantially related or connected to CRAs or credit rating activities can be subject to periodic penalty payments.

42. The CRA Regulation thus empowers ESMA to impose sanctions, not only on credit institutions, but also on the individuals materially responsible for the breach. In the same vein, Article 36d obliges ESMA to publish every periodic penalty payment imposed for a breach of the proposed regulation.

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

44. The EDPS is not convinced that the mandatory publication of sanctions, as it is currently drafted, meets the requirements of data protection law as clarified by the Court of Justice in the *Schecke* judgment ([31]). He takes the view that the purpose, necessity and proportionality of the measure are not sufficiently established and that, in any event, adequate safeguards should be provided for against the risks for the rights of the individuals.

2.4.3. *Necessity and proportionality of the mandatory publication of sanctions*

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

([30]) See also recent EDPS Opinions on the legislative package on the revision of the banking legislation (Section 2.4), markets in financial instruments (MIFID/MIFIR) (Section 2.5) and market abuse (Section 2.6).

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

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

47. Article 36d of the CRA Regulation seems to be affected by the same shortcomings highlighted by the ECJ in the *Schecke* judgment. It should be borne in mind that for assessing the compliance with data protection requirements of a provision requiring public disclosure of personal information, it is of crucial importance to have a clear and well-defined purpose which the envisaged publication intends to serve. Only with a clear and well-defined purpose can it be assessed whether the publication of personal data involved is actually necessary and proportionate ([32]).

48. The EDPS is therefore under the impression that the purpose, and consequently the necessity, of this measure is not clearly established. The recitals of the CRA Regulation are silent on these issues. If the general purpose is increasing deterrence, it seems that the Commission should have explained, for instance, why heavier financial penalties (or other sanctions not amounting to naming and shaming) would not have been sufficient.

49. Furthermore, less intrusive methods should have been considered, such as publication limited to CRA's or publication to be decided on a case-by-case basis. In particular the latter option would seem to be *prima facie* a more proportionate solution.

50. However, in the EDPS view, the possibility to assess the case in light of the specific circumstances makes this solution more proportionate and therefore a preferred option compared to mandatory publication in all cases. This discretion would, for example, enable ESMA to avoid publication in cases of less serious violations, where the violation caused no significant harm, where the party has shown a cooperative attitude, etc.

2.4.4. *The question of adequate safeguards*

51. The CRA Regulation should have foreseen adequate safeguards in order to ensure a fair balance between the different interests at stake. Firstly, safeguards are necessary in relation to the right of the persons concerned to appeal and the presumption of innocence. Specific language ought to have been included in the text of Article 36d in this respect, so as to oblige ESMA to take appropriate measures with regard to both the situations where the decision is subject to an appeal and where it is eventually annulled by a court ([33]).

52. Secondly, the CRA Regulation should ensure that the rights of the data subjects are respected in a proactive manner. The EDPS appreciates the fact that the CRA Regulation foresees the possibility to exclude the publication in cases where it would cause disproportionate damage. However, a proactive approach should imply that data subjects are informed beforehand of the fact that the decision imposing a periodic penalty payment on them will be published, and that they are granted the right to object under Article 14 of Directive 95/46/EC on compelling legitimate grounds ([34]).

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

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

([34]) See EDPS Opinion of 10 April 2007 on the financing of the common agricultural policy (OJ C 134, 16.6.2007, p. 1).

53. Thirdly, while the CRA Regulation does not specify the medium on which the information should be published, in practice, it is imaginable that the publication will take place on the Internet. Internet publications raise specific issues and risks concerning in particular the need to ensure that the information is kept online for no longer than is necessary and that the data cannot be manipulated or altered. The use of external search engines also entail the risk that the information could be taken out of context and channelled through and outside the web in ways which cannot be easily controlled ([35]).

54. In view of the above, it is necessary to oblige ESMA to ensure that personal data of the persons concerned are kept online only for a reasonable period of time, after which they are systematically deleted ([36]). Moreover, Member States should be required to ensure that adequate security measures and safeguards are put in place, especially to protect from the risks related to the use of external search engines ([37]).

2.4.5. *Conclusion regarding disclosure of information regarding periodic penalty payments*

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

3. **CONCLUSIONS**

56. The EDPS makes the following recommendations:

— inserting a substantial provision in the CRA Regulation with the following wording: 'With regard to the processing of personal data carried out by Member States within the framework of this Regulation, competent authorities and sectoral competences authorities shall apply the provisions of national rules implementing Directive 95/46/EC. With regard to the processing of personal data carried out by ESMA within the framework of this Regulation, ESMA shall comply with the provisions of Regulation (EC) No 45/2001',

— adding specific safeguards to Article 34 of the CRA Regulation, as has been done in Article 23 of the proposal for a regulation of the European Parliament and of the Council on insider dealing and market manipulation. In the EDPS Opinion on this proposal he welcomes the use of such a provision containing appropriate safeguards, such as case-by-case assessment, the assurance of the necessity of the transfer and the existence of an adequate level of protection of personal data in the third country receiving the personal data,

— clearly specify the categories of telephone and data traffic records which CRAs are required to retain and/or to provide to ESMA. Such data must be adequate relevant and not excessive in relation to the purpose for which they are processed,

— make explicit that access to telephone and data traffic directly from telecom providers is excluded,

([35]) See in this regard the document published by the Italian DPA, Personal data as also contained in records and documents by public administrative bodies: Guidelines for their processing by public bodies in connection with web-based communication and dissemination, available on the website of the Italian DPA, http://www.garanteprivacy.it/garante/doc.jsp?ID=1803707

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

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

— limit access to records of telephone and data traffic to identified and serious violations of the proposed regulation and in cases where a reasonable suspicion (which should be supported by concrete initial evidence) exists that a breach has been committed,

— assess the necessity of the proposed system for the mandatory publication of periodic penalty payments and verify whether the publication obligation does not go beyond what is necessary to achieve the public interest objective pursued and whether there are not less restrictive measures to attain the same objective. Subject to the outcome of this proportionality test, the publication obligation should in any event be supported by adequate safeguards to ensure respect of the presumption of innocence, the right of the persons concerned to object, the security/accuracy of the data and their deletion after an adequate period of time.

Done at Brussels, 10 February 2012.

Giovanni BUTTARELLI

Assistant European Data Protection Supervisor

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Non-opposition to a notified concentration

(Case COMP/M.6551 — Kellogg Company/Pringles Snack Business)

(Text with EEA relevance)

(2012/C 139/03)

On 2 May 2012, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

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

— in electronic form on the EUR-Lex website (http://eur-lex.europa.eu/en/index.htm) under document number 32012M6551. EUR-Lex is the on-line access to the European law.

Non-opposition to a notified concentration

(Case COMP/M.6516 — Sumitomo Mitsui Financial Group/RBS Aviation Capital Group)

(Text with EEA relevance)

(2012/C 139/04)

On 4 May 2012, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

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

— in electronic form on the EUR-Lex website (http://eur-lex.europa.eu/en/index.htm) under document number 32012M6516. EUR-Lex is the on-line access to the European law.

Non-opposition to a notified concentration

(Case COMP/M.6534 — Wienerberger/Pipelife International)

(Text with EEA relevance)

(2012/C 139/05)

On 2 May 2012, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in German 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 32012M6534. EUR-Lex is the on-line access to the European law.

Non-opposition to a notified concentration

(Case COMP/M.6527 — Rio Tinto/Richards Bay Minerals)

(Text with EEA relevance)

(2012/C 139/06)

On 4 May 2012, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

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

— in electronic form on the EUR-Lex website (http://eur-lex.europa.eu/en/index.htm) under document number 32012M6527. EUR-Lex is the on-line access to the European law.

Non-opposition to a notified concentration

(Case COMP/M.6518 — ESB NM/BPAEL/Heliex Power Limited)

(Text with EEA relevance)

(2012/C 139/07)

On 3 May 2012, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

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

— in electronic form on the EUR-Lex website (http://eur-lex.europa.eu/en/index.htm) under document number 32012M6518. EUR-Lex is the on-line access to the European law.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COUNCIL

Notice for the attention of the persons and entities to which restrictive measures provided for in Council Decision 2011/782/CFSP, as implemented by Council Implementing Decision 2012/256/CFSP, and Council Regulation (EU) No 36/2012, as implemented by Council Implementing Regulation (EU) No 410/2012 concerning restrictive measures in view of the situation in Syria apply

(2012/C 139/08)

The following information is brought to the attention of the persons and entities that appear in Annex I to Council Decision 2011/782/CFSP, as implemented by Council Implementing Decision 2012/256/CFSP [1], and in Annex II to Council Regulation (EU) No 36/2012, as implemented by Council Implementing Regulation (EU) No 410/2012 [2] concerning restrictive measures in view of the situation in Syria.

The Council of the European Union has decided that the persons and entities that appear in the above mentioned Annexes should be included in the list of persons and entities subject to restrictive measures provided for in Decision 2011/782/CFSP and in Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria. The grounds for designations of those persons and entities appear in the relevant entries in those Annexes.

The attention of the persons and entities concerned is drawn to the possibility of making an application to the competent authorities of the relevant Member State(s) as indicated on the websites in Annex III to Regulation (EU) No 36/2012, in order to obtain an authorisation to use frozen funds for basic needs or specific payments (cf. Article 16 of the Regulation).

The persons and entities concerned may submit a request to the Council, together with supporting documentation, that the decision to include them on the above mentioned list should be reconsidered, to the following address:

Council of the European Union
General Secretariat
DG C Coordination Unit
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË

The attention of the persons and entities concerned is also drawn to the possibility of challenging the Council's decision before the General Court of the European Union, in accordance with the conditions laid down in Article 275, second paragraph, and Article 263, fourth and sixth paragraphs, of the Treaty on the Functioning of the European Union.

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[1] OJ L 126, 15.5.2012, p. 9.
[2] OJ L 126, 15.5.2012, p. 3.

EUROPEAN COMMISSION

Euro exchange rates [1]

14 May 2012

(2012/C 139/09)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,2863	AUD	Australian dollar	1,2881
JPY	Japanese yen	102,64	CAD	Canadian dollar	1,2911
DKK	Danish krone	7,4333	HKD	Hong Kong dollar	9,9890
GBP	Pound sterling	0,80000	NZD	New Zealand dollar	1,6534
SEK	Swedish krona	9,0020	SGD	Singapore dollar	1,6170
CHF	Swiss franc	1,2010	KRW	South Korean won	1 481,90
ISK	Iceland króna		ZAR	South African rand	10,5421
NOK	Norwegian krone	7,5915	CNY	Chinese yuan renminbi	8,1325
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,5163
CZK	Czech koruna	25,395	IDR	Indonesian rupiah	11 895,80
HUF	Hungarian forint	291,77	MYR	Malaysian ringgit	3,9644
LTL	Lithuanian litas	3,4528	PHP	Philippine peso	55,015
LVL	Latvian lats	0,6975	RUB	Russian rouble	39,0441
PLN	Polish zloty	4,3020	THB	Thai baht	40,313
RON	Romanian leu	4,4406	BRL	Brazilian real	2,5417
TRY	Turkish lira	2,3250	MXN	Mexican peso	17,5580
			INR	Indian rupee	69,4150

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

V

(Announcements)

ADMINISTRATIVE PROCEDURES

EUROPEAN COMMISSION

Call for proposals — EACEA/15/12

Youth in Action Programme

Youth Support Systems — Sub-action 4.3

Support to Youth Workers' Mobility

(2012/C 139/10)

1. **Objective**

The purpose of this call for proposals is to support youth workers' mobility and exchanges with a view to promoting the acquisition of new skills and competences in order to enrich their profile as professionals in the youth field. By promoting long-term transnational learning experiences for youth workers, this new action will also aim at strengthening the capacities of the structures involved in the project, which will benefit from the experience and new perspective brought by a youth worker from a different background. In doing so, this call will enhance networking among youth structures in Europe and will contribute to the policy priority to support, recognise and professionalize youth work as a cross-cutting policy tool in Europe.

This call provides grants to projects.

The objectives of the call for proposals are as follows:

— To give youth workers the opportunity to experience a different working reality in another country;

— To gain a better understanding of the European dimension of youth work;

— To improve youth workers' professional, intercultural and language competences;

— To promote the exchange of experiences and approaches to youth work and non-formal education in Europe;

— To contribute to develop stronger and better quality partnerships between youth organisations across Europe;

— To strengthen the quality and the role of youth work in Europe.

Priorities

Preference will be given to those projects which best reflect following priorities:

(i) Permanent priorities of the Youth in Action Programme

— Participation of young people;

— Cultural diversity;

— European citizenship;

— Inclusion of young people with fewer opportunities.

(ii) Annual priorities of the Youth in Action Programme

— Youth unemployment, poverty and marginalisation;

— Spirit of initiative, creativity and entrepreneurship, employability;

— Grassroots sport and outdoor activities;

— Global environmental challenges and climate change.

2. **Eligible applicants**

Proposals must be submitted by non-profit organisations. These organisations can be:

— Non-governmental organisations (NGOs);

— Bodies active at European level in the field of youth (ENGO), which have member organisations in at least eight (8) Programme Countries of the Youth in Action Programme;

— Public bodies based at regional or local level.

This applies to both applicant and partner organisations.

Applicants must — at the specified deadline for submitting their proposals — have been legally registered for at least two (2) years in one of the Programme Countries.

The Programme Countries are as follows:

— the Member States of the European Union: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the United Kingdom ([1]);

— those countries of the European Free Trade Association (EFTA): Iceland, Liechtenstein, Norway and Switzerland;

— candidate countries for which a pre-accession strategy has been established, in accordance with the general principles and general terms and conditions laid down in the framework agreements concluded with these countries with a view to their participation in EU programmes: Croatia and Turkey.

Projects should be based on a solid partnership between two (2) partners from two (2) different Programme Countries of which at least one (1) from an EU Member State, acting respectively as sending and host organisation of the youth worker(s) involved in the project.

One of the two partners assumes the role of coordinating organisation and applies to the Executive Agency for the whole project on behalf of both.

Please note that no more than one project proposal can be submitted by the same applicant under this call for proposals.

3. **Eligible actions and participants**

The project must include activities of a non-profit-making nature that are related to the field of youth and non-formal education.

Projects must start between 1 November 2012 and 1 April 2013.

Projects will have a maximum duration of 12 months. The duration of the mobility will have a minimum duration of 2 months and a maximum duration of 6 months.

([1]) Persons from overseas countries and territories and, if applicable, public or private institutions based there, are eligible under the Youth in Action Programme, depending upon the rules of the programme and those which apply in the Member State with which they are connected. A list of these overseas countries and territories is given in Annex 1A of Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community ('Overseas Association Decision') OJ L 314, 30.11.2001: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2001D0822:20011202:EN:PDF

Participants of the project proposals submitted under this call for proposals must be professional youth workers legally resident in one of the Youth in Action Programme Countries. Both paid employees and experienced volunteers working in non-governmental organisations or local or regional public bodies active in the field of youth are concerned. There is no age limit of the participants.

In order to ensure the maximum benefits from the learning mobility experience both for the individual participant(s) and their sending and host organisations, a minimum of two years of relevant and documented professional experience in the field of youth work is required.

Youth workers must have a clear, regular, structured and stable cooperation with their sending organisation. They must be identified in the application form.

Projects will support individual mobility of up to two (2) youth workers. When 2 youth workers are involved the project must be based on the principle of reciprocity, i.e. there should be a mutual exchange of youth workers between the two partner organisations. This will also allow partners to maintain stability in their human resources.

Youth workers engaged on a voluntary basis should provide proof that they have a solid connection as well as a regular, structured and long-term cooperation with their sending organisation.

This call is not targeted at young volunteers working occasionally in a youth organisation or public body.

4. **Award criteria**

Eligible applications will be assessed on the basis of the following criteria:

— Relevance to the objectives and priorities of the Youth in Action Programme and of the call for proposals (25 %)

In this respect the following aspects will be assessed:

(a) the project meets the general objectives and priorities of the Youth in Action Programme;

(b) the project meets the specific objectives and priorities of this call for proposals.

— Quality of the project and of the working methods that it comprises (60 %)

In this respect the following aspects will be assessed:

(a) the high quality of the work programme in terms of content and methodology, (including the quality of the preparation and evaluation phases), its clearness, consistency, innovative aspects and European dimension. The coherence of the programmes of activities when two youth workers are involved;

(b) the quality of the partnership, and in particular the clarity of the tasks, description of the partners' actual role in the cooperation, as well as the experience and motivation of the partners to set up the project and further develop youth work. The commitment of the partners to provide appropriate support to the participants;

(c) the active involvement of youth workers in the definition of the project;

(d) the impact and relevance of the project on participants' professional competences, as well as on the capacity-building of the partners involved (e.g. stronger involvement in international activities or further development of youth work activities);

(e) the demonstrated added value of the project on the structures involved;

(f) the visibility of the project as the quality of measures aimed at disseminating and exploiting project's results;

(g) the project's multiplier effect as well as its long-term viability and potential to result in continued, sustained cooperation, in complementary activities or in long-lasting benefits for the partners and participants involved;

(h) the consistency of the budget with the activities planned in the work programme.

— Profile of promoters/participants involved in the project (15 %)

In this respect the following aspects will be assessed:

(a) involvement of promoters and/or participants working with young people with fewer opportunities or with unemployed young people;

(b) motivation and commitment of the youth worker(s) to participate in the mobility experience, to contribute to the activities of the host structure and to spread the learning outcomes of the experience in their home context upon their return.

5. **Budget**

The total budget allocated to the cofinancing of projects under this call for proposals is estimated at EUR 1 000 000.

The maximum grant shall not exceed EUR 25 000.

The Agency reserves the right not to distribute all the funds available. In addition, although balanced geographical representation will be sought in the selected projects, the major determining factor as to the number of projects funded per country will be quality.

6. **Deadline for submission of applications**

Grant applications must be drawn up in one of the official EU languages, using the electronic form specifically designed for this purpose.

The forms can be obtained on the Internet at the following address:

http://eacea.ec.europa.eu/youth/index_en.htm

The electronic application form duly completed must be submitted **by 12:00 (mid-day, Brussels Time) on 3 September 2012.**

A paper version of the application must also be sent by **3 September 2012** to the following address:

Education, Audiovisual and Culture Executive Agency
Youth in Action Programme — EACEA/15/12
BOUR 4/029
Avenue du Bourget/Bourgetlaan 1
1140 Bruxelles/Brussel
BELGIQUE/BELGIË

— by post (date of postmark),

— by an express courier company, the date of receipt by the courier company being taken as proof of posting (a copy of the original deposit date receipt must be included in the application form).

Applications sent by fax or e-mail will not be accepted.

7. **Additional information**

Applications must comply with the provisions contained in the Application Guidelines — Call for proposals EACEA/15/12, be submitted on the application form provided for this purpose and contain the relevant Annexes.

The said documents can be found on the Internet at the following address:

http://eacea.ec.europa.eu/youth/index_en.htm

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

Prior notification of a concentration

(Case COMP/M.6579 — Mitsubishi Corporation/Development Bank of Japan INC/DVB Bank SE/TES Holdings LTD)

Candidate case for simplified procedure

(Text with EEA relevance)

(2012/C 139/11)

1. On 3 May 2012, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 [1] by which the undertakings Mitsubishi Corporation ('MC', Japan), the Development Bank of Japan ('DBJ', Japan) and DVB Bank ('DVB', Germany), which is controlled by DZB Group ('DZB', Germany), acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking TES Holdings Ltd. and its subsidiaries ('TES', UK) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for MC: general trading activities in various industries including energy, metals, machinery, chemicals, food and general merchandise,

— for DBJ: financial services, including integrated investment and loan services as well as consulting and advisory services,

— for DVB: financial services, specialising in international transport finance, including integrated financing solutions and advisory services in respect of Shipping Finance, Aviation Finance and Land Transport Finance,

— for DZB: central institution for German cooperative financial network ('Volksbanken Raiffeisenbanken') and corporate banking services,

— for TES: aircraft engine management, short term end of life aircraft engine leasing ('stub leasing') and aircraft part and material sales.

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

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

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

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by email to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.6579 — Mitsubishi Corporation/ Development Bank of Japan INC/DVB Bank SE/TES Holdings LTD, to the following address:

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

Prior notification of a concentration

(Case COMP/M.6565 — Elior Concessions SA/Áreas Iberoamericana SL — Áreas SA)

Candidate case for simplified procedure

(Text with EEA relevance)

(2012/C 139/12)

1. On 4 May 2012, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ([1]) by which the undertaking Elior Concessions SA ('Elior'), France, controlled by Charterhouse Capital Partners LLP ('Charterhouse'), UK, and Robert Zolade, a French citizen, acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Áreas Iberoamericana SL, Spain and ultimately of Áreas SA ('Áreas'), Spain, a 100 % subsidiary of Áreas Iberoamericana SL, previously jointly controlled by Elior and Emesa SL ('Emesa'), Spain, by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— Elior is a subsidiary of Elior SCA, which is a holding company heading the Elior Group. It is mainly active in the food services industry and in particular in contract catering and the provision of contract foodservices in companies, schools, universities, hospitals and retirement homes. To a lesser extent Elior also operates in the area of facility management, travel retail and vending services. Its business activities cover several European countries, as well as Latin America and the United States. Through its sister company Elior Restauration & Services SA it also provides contract catering services in Spain under the brand 'Serunión',

— Charterhouse belongs to a group which provides equity capital and fund management services,

— Robert Zolade is a French investor,

— Emesa is a Spanish company providing various services such as real estate, medical services and consulting,

— Áreas Iberoamericana is the holding company controlling Áreas and has no own market activity,

— Áreas is the parent company of a group that mainly provides concession foodservices. Its facilities are located in airports, railway stations, highways, expressways, shopping centers and fairgrounds.

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

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

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by e-mail to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number COMP/M.6565 — Elior Concessions SA/Áreas Iberoamericana SL — Áreas SA, to the following address:

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

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

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

European Commission

EN

[1] Text with EEA relevance

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