Official Journal of the European Union

C 252

English edition

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Volume 59

12 July 2016

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EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 20 April 2016

on a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 806/2014 in order to establish a European Deposit Insurance Scheme

(CON/2016/26)

(2016/C 252/01)

Introduction and legal basis

On 20 January 2016 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 806/2014 in order to establish a European Deposit Insurance Scheme ([1]) (hereinafter the 'proposed regulation'). On 1 February 2016, the ECB received a request from the European Parliament for an opinion on the proposed regulation.

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 (TFEU) since the proposed regulation contains provisions affecting the European System of Central Banks' contribution to the smooth conduct of policies relating to the stability of the financial system, as referred to in Article 127(5) TFEU, and the ECB's tasks concerning policies relating to the prudential supervision of credit institutions, as referred to in Article 127(6) TFEU. 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. A European Deposit Insurance Scheme (EDIS) is the necessary third pillar to complete the Banking Union, following the establishment of the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM). Since liability and control need to be aligned, establishing a common safety net for depositors at the European level is the logical complement to elevating responsibility for banking supervision and resolution to the European level. With the SSM and the SRM fully operational, national authorities, to a large extent, no longer have control over the key elements determining whether a national deposit guarantee scheme (DGS) has to make pay-outs to insured depositors or contribute to resolution financing. Thus, the liability for ensuring that there are sufficient financial means to underpin the confidence of all depositors and thereby safeguard financial stability should be assumed at the same level and be elevated to the EDIS. The proposed regulation follows up on the recommendations from the Five Presidents' Report ([2]), which called for the launching of an EDIS. As pointed out in the report, a banking system can only be truly uniform if the level of confidence in the safety of bank deposits is equally high in all Member States. An EDIS would also bring benefits resulting from risk diversification and is more likely to be able to withstand shocks, since risks would be spread more widely across a larger pool of financial institutions, and individual pay-out events would therefore be less likely to overwhelm the capacity of the system.

1.2. The ECB fully shares the Commission's view that a single system of deposit protection is the necessary third pillar of the Banking Union and that it is needed to further enhance depositor protection and to underpin financial stability, thus contributing to the deepening of Economic and Monetary Union (EMU) ([3]).

([1]) COM(2015) 586 final.

([2]) The Five Presidents' Report of 22 June 2015 on 'Completing Europe's Economic and Monetary Union', available on the Commission's website at www.ec.europa.eu

([3]) See the ECB Report Financial Integration in Europe 2016, 'The Five Presidents' Report of 22 June 2015 on 'Completing Europe's Economic and Monetary Union', available on the Commission's website at www.ec.europa.eu; the Marjolin lecture delivered by Mario Draghi, President of the ECB, at the European Money and Finance Forum (SUERF) conference organised by the Deutsche Bundesbank, Frankfurt, 4 February 2016 and the speech by Mario Draghi, President of the ECB, at the ECB Forum on Banking Supervision, 4 November 2015, Frankfurt, both available on the ECB's website at www.ecb.europa.eu

1.3. The ECB further welcomes the fact that the proposed regulation puts in place a gradual process of increasing the mutual insurance of participating DGSs in order to finally achieve a uniform system of deposit insurance that limits the link between a bank and its home sovereign.

1.4. Overall, the ECB welcomes the fact that the proposed regulation sets a clear roadmap and timeline with clearly defined and limited transitional steps towards a fully-fledged EDIS. The stages of re-insurance and co-insurance should therefore be seen as transitions towards full insurance, which is scheduled to start in 2024. This staggered approach takes into account the need to make further progress in other areas of the Banking Union and the EMU as a whole. Furthermore, this approach aims to ensure that there is sufficient time to accumulate *ex-ante* contributions across the Banking Union prior to the start of the full insurance stage. Finally, equal treatment of credit institutions affiliated to the participating DGSs will be ensured by taking into account the institution-specific risks relative to all other credit institutions in the Banking Union when determining their respective contributions. In order to further underpin the credibility of the EDIS and to effectively sever the bank/sovereign link at the national level, a fiscally neutral common public backstop for the EDIS should be established at the latest at the start of the full insurance stage

1.5. However, a well-performing Banking Union requires further steps beyond the establishment of the EDIS. To this end, the Commission Communication 'Towards the completion of the Banking Union' ([1]) sets out a number of measures to further reduce risks in the banking sector and to level the playing field. In this context, the ECB emphasises the importance of the full and timely implementation of Directive 2014/49/EU of the European Parliament and of the Council ([2]) as a necessary precondition to the EDIS and therefore calls on the Member States concerned to comply with this obligation as quickly as possible ([3]). The ECB welcomes and fully supports all other risk reduction measures set out in the Commission Communication. Progress on these other measures needs to be achieved in parallel with the establishment of the EDIS, not only in order to ensure a level playing field, but also to promote financial integration. However, a solution that makes the transition from one phase of EDIS to the next dependent on the progress with regard to risk reduction could cause delays. If such a conditional phasing-in of EDIS is supported, any milestones on risk-reduction would have to be precisely defined *ex-ante*, objectively verifiable, realistically achievable and legally linked to the transitions between the phases in the EDIS proposal. In order to ensure that EDIS is not postponed indefinitely, the list of milestones should include the most important elements that are needed to further strengthen the Banking Union. This list should primarily be limited to matters with a clear material link to EDIS and should not refer to ongoing discussions for which the timeline is unclear.

1.6. Finally, the ECB considers that an impact assessment may be warranted on the most important elements of the proposal in view of the proposed regulation and its interaction with Union legislation, in particular Directive 2014/49/EU and Directive 2014/59/EU of the European Parliament and of the Council ([4]), and the role of the Single Resolution Board (hereinafter the 'Board'), as compared to the current role of the decision-making bodies responsible for national DGSs.

2. **Specific observations**

2.1. *Objective of the proposed regulation*

The ECB welcomes the fact that the proposed regulation aims to be consistent with Directive 2014/49/EU by complementing its principles and rules ([5]). The key task of a DGS under Directive 2014/49/EU is 'to protect depositors against the consequences of the insolvency of a credit institution' ([6]). The proposed regulation governs the relationship between the EDIS, the Deposit Insurance Fund (DIF) and the DGSs, whereby the national schemes remain fully liable for the compensation of depositors. Against this background the ECB considers it necessary to expressly clarify, within the text of the proposed regulation, that the EDIS also has the objective of ensuring the highest possible level of depositor protection across the Member States of the Banking Union.

([1]) COM(2015) 587 final.

([2]) Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

([3]) Euro area Member States where transposition was still outstanding were expected to complete this task by the end of the first quarter of 2016.

([4]) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

([5]) See recital 15 of the proposed regulation.

([6]) See recital 14 of Directive 2014/49/EU.

2.2. *Scope of the EDIS*

The ECB further welcomes the fact that the proposed regulation should apply to all DGSs that are officially recognised in the Member States participating in the Banking Union under Directive 2014/49/EU ([1]), i.e. statutory DGSs, contractual DGSs and institutional protection schemes as well as all credit institutions affiliated with such schemes. However, all credit institutions with access to EDIS resources must be regulated and supervised on the basis of Regulation (EU) No 575/2013 of the European Parliament and of the Council ([2]) and Directive 2013/36/EU of the European Parliament and of the Council ([3]). This is fully in line with the recommendation of the Five Presidents' Report that the EDIS's scope should coincide with that of the SSM and that the risk-based fees should be paid by all the participating banks in the Member States. In fact, only an all-encompassing uniform deposit protection regime will achieve an equal level of depositor confidence across the Banking Union, thus preventing market fragmentation and competitive distortion.

2.3. *Governance of the EDIS*

The ECB welcomes the fact that the EDIS will be administered by the Board. It is important that the EDIS is administered by an independent Union body that is shielded from political influence and will ensure access to the DIF on equal terms for all DGSs. The Board should expect to benefit from synergy effects by simultaneously administrating the resolution and deposit insurance funds, notably by being able to draw on the expertise it has accumulated in the exercise of its resolution tasks when administering the Single Resolution Fund (SRF). Efficiency gains might be achieved since the administration and investment of both funds require similar know-how and expertise. However, performing these new tasks in an effective manner may require the allocation of additional resources to the Board (see paragraph 2.9). Resources for both the SRF and the DIF should be clearly earmarked for their respective purposes, specifically avoiding the risk that resources for deposit protection might be commingled and potentially 'consumed' for resolution purposes.

The ECB welcomes the proposed arrangements whereby the ECB is entitled to designate a permanent representative who may participate in the meetings of all sessions of the Board, including the EDIS plenary session and the joint plenary session.

Finally, the ECB welcomes the fact that only national resolution authorities or designated authorities are members of the EDIS decision-making bodies. No private entities that administer a national DGS would be directly involved in an EDIS plenary session. The ECB welcomes this restriction and recalls that according to the definition provided in Article 2(1)(18) of Directive 2014/49/EU, only (public) designated authorities are allowed to participate in resolution colleges. In fact, since private entities that administer DGSs are owned by banking associations in some Member States, granting them access to confidential information on banks that are their competitors may raise serious commercial confidentiality issues.

2.4. *Minimising costs for liquidation and control over the use of the EDIS*

Looking at the resolution procedure, where Directive 2014/59/EU expressly states that resolution authorities should try to minimise resolution costs and avoid destruction of value, the authorities in charge of liquidation should also have the general objective of minimising liquidation costs, thereby also ensuring that losses for covered deposits, and consequently, the DGSs, are minimised. In order to achieve this goal, the authorities in charge of liquidation should be permitted to carve out the covered deposit book together with certain other assets of the failing credit institution and transfer them to a private sector purchaser. This purchase and assumption type of transaction may, in many cases, be less expensive for a DGS than just paying out the guaranteed deposits in

([1]) See Article 1(3) of the proposed regulation amending Article 2 of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1), see also Article 1(2)(a), (b) and (c) and Article 2(1) of Directive 2014/49/EU.

([2]) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

([3]) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

liquidation. Similarly, it is necessary to clarify, within the text of the proposed regulation, whether the financial resources of the EDIS can be used for implementing the alternative measures currently provided for in Article 11(6) of Directive 2014/49/EU. Since the manner in which the liquidation process is conducted will be key for safeguarding the DGS's funds and therefore also those of the EDIS, it is important that the Board has the possibility to exercise some control over the national liquidation process. Thus, similarly to Regulation (EU) No 806/2014, which provides for the Board taking over resolution from national resolution authorities if SRF funds are to be used, the Board should be able to have a say in the liquidation proceeding if it is likely that EDIS resources will be needed. This would ensure that the control over the liquidation proceeding is directly aligned with the liability coming from the deposit protection.

2.5. *Risk-based contributions*

The ECB strongly supports the fact that the proposed regulation introduces a methodology throughout the Banking Union for calculating risk-based contributions from the co-insurance stage and that it designates the Board to set each credit institution's contribution level relative to all other participating credit institutions. This is crucial to ensuring that contributions are allocated fairly and the EDIS is robustly funded. The degree of risk is determined in accordance with a methodology based on the criteria ([1]) envisaged in the proposed Article 74c. Such a determination has to take into account the institution-specific risk relative to all other credit institutions in the Banking Union. Comparing such risks across the Banking Union and adjusting the respective contributions on this basis helps to establish the right incentives for business decisions and limits the risks of free-riding and moral hazard. This is important in order to alleviate concerns that some banking sectors could potentially be 'subsidised' by other banking sectors.

An important issue to consider will be whether, and if so to what extent, the risk-based approach to determine the level of contributions should also reflect the likelihood to trigger deposit insurance for a credit institution, and especially the likelihood that it should be put into liquidation as opposed to resolution.

Furthermore, for reasons of legal certainty, the proposed regulation needs to address how contributions, which in some Member States are collected above the level of the minimum requirement of 0,8 % of covered deposits, will be used.

2.6. *The ECB's role in determining the total amount of ex-ante contributions for each participating DGS*

The ECB welcomes the fact that the proposed regulation stipulates that each year, for the duration of the re-insurance and co-insurance period, the Board will consult the ECB and the national competent authority prior to determining for each DGS the total amount of *ex-ante* contributions that it may claim from credit institutions affiliated to the respective DGS. Such regular consultations reflect the expertise of supervisors with respect to the assessment of the riskiness of institutions and enable the ECB and the national competent authorities to ensure that the procedure for the calculation and collection of the contributions does not undermine the soundness of the contributing credit institutions.

2.7. *Use of resources*

The ECB welcomes the fact that the proposed regulation requires the use of resources, not only for pay-outs, but also in the event of resolution occurring in any of the three stages of the EDIS. This is important in order to facilitate resolution, which for many failing or likely to fail banks may be in the public interest and thus the preferred solution to insolvency. It is also in line with Directive 2014/49/EU and Regulation (EU) No 806/2014, which require the DGSs to be liable up to the level of covered deposits, provided that depositors continue to have access to their deposits and that participation in the financing of resolution does not exceed the losses the DGSs would have incurred in the event of insolvency.

However, the proposed regulation needs to expressly address whether deposit balances above EUR 100 000, which are temporarily protected from 3 to 12 months according to the legislation of the Member State concerned as permitted by Article 6 of Directive 2014/49/EU, should be covered by EDIS.

([1]) These are: (a) the level of loss-absorbing capacity of the institution; (b) the institution's ability to meet its short- and long-term obligations; (c) the stability and variety of the institution's sources of funding and its unencumbered highly liquid assets; (d) the quality of the institution's assets; (e) the institution's business model and management; (f) the degree to which the institution's assets are encumbered.

2.8. *Duty of the EDIS towards DGSs in both the partial and full insurance stages*

The establishment of the EDIS will facilitate access to additional financial resources by DGSs, initially by means of re-insurance and co-insurance, and resources will be built up gradually in the DIF for this purpose. By 2024 at the latest, all contributions collected from the credit institutions affiliated to DGSs should be channelled directly into the DIF in the EDIS. According to Directive 2014/49/EU, however, the national schemes, rather than the EDIS or the DIF, remain fully liable in respect of depositors' compensation claims. Therefore, at the full insurance stage, the proposed regulation should clearly stipulate a legal obligation for the EDIS or the DIF to meet all resource needs related to depositors' claims following an event notified by a national DGS in accordance with Article 41h(2). The ECB understands that such an obligation for the EDIS is intended by Article 41h(1), which states that 'the participating DGS shall be fully insured by the EDIS'. However, a clear legal obligation would need clarification in Article 41m(2) to ensure that the envisaged pro-rata pay-out in the event of multiple simultaneous pay-out events only concerns the distribution of the immediately available financial means, i.e. the EDIS is not discharged from its obligation in relation to the DGSs to fully cover all expenses of the DGSs, following the collection of *ex post* contributions and/or recourse to alternative funding means. More importantly, the same legal obligation, albeit limited to the specific share that is co-insured, must also apply to the obligations of the EDIS towards the DGSs during the co-insurance phase. This also confirms the need for a fiscally neutral public backstop for the EDIS. Finally, the length of time for the Board to take a decision on the available financial means pursuant to Article 41m(2) should be reduced, since DGSs are expected to compensate depositors within seven working days ([1]).

2.9. *Disqualification from coverage by the EDIS*

Article 41i establishes a procedure for disqualifying a DGS from EDIS coverage. Under this procedure the Commission, acting on its own initiative or upon a request of the Board or a participating Member State, may decide that: (a) a DGS has failed to comply with the obligations under the proposed regulation or with Articles 4, 6, 7 or 10 of Directive 2014/49/EU; or (b) a DGS, the relevant administrative authority within the meaning of Article 3 of Directive 2014/49/EU or any other relevant authority of the Member State, in relation to a particular request for coverage by the EDIS, acted in a way that runs counter to the principle of sincere cooperation as laid down in Article 4(3) of the Treaty on European Union (TEU).

The ECB supports the fact that the proposed regulation provides safeguards aimed to ensure that all DGSs comply with their respective obligations under the new framework in line with the national implementation of Directive 2014/49/EU. This is important to avoid any risk of free-riding and to mitigate moral hazard. However, given the magnitude of this sanction and the eventual consequences for depositors, disqualification of a national DGS should only be considered where proportionate to the breach committed and imposed after the DGS in question has failed to comply with interim enforcement actions within pre-set deadlines under the procedures to be established under the proposed regulation. Infringements triggering a disqualification should be established in a more precise way in order to enhance legal certainty. Other sanctions, including penalty payments, could be considered for lesser breaches. Furthermore, where a disqualification is decided, a proper mechanism needs to be in place to ensure that the overarching aim of ensuring the adequate protection of all guaranteed deposits is fully respected at any given time. This is particularly important from the full insurance stage, when all contributions collected from the participating credit institutions will be transferred directly into the EDIS, in order to ensure that depositors are not worse off in terms of deposit protection compared to what the situation would be if their DGS was not part of the EDIS and all contributions were accumulated at national level.

In this context, several solutions may be considered. For example, the contributions of the disqualified DGS could be kept in the DIF and the deposits held at the date on which a DGS is disqualified could continue to be covered by the EDIS, by ensuring that depositors have a direct legal claim against the EDIS. Alternatively, the proposed regulation could provide for a methodology and procedure whereby resources collected from credit institutions affiliated to the disqualified DGS would be reimbursed to that DGS upon its disqualification. In any of these scenarios, the amounts to be refunded or available in order to satisfy the direct claims should be capped in order to be consistent with the objective of the disqualification clause. The proposed regulation should provide clear guidance regarding the reimbursement procedure, including the timeline and methodology for the calculation of the amounts to be reimbursed. This methodology could build, for example, on the methodology applied for the

([1]) Subject to transitional provisions, which, however, expire at the beginning of the full insurance stage.

repatriation of contributions to DGSs under the proposed regulation in the event of the termination of the close cooperation arrangements between the ECB and the competent authorities of non-euro area Member States in the framework of the SSM ([1]). By the same token, the relevant authority should – if the reimbursement option is not chosen – be entitled to claim resources from the DIF to contribute to a resolution action, in accordance with Directive 2014/59/EU ([2]), when a decision establishing that a credit institution is failing or likely to fail has been taken.

The recitals ([3]) of the proposed regulation imply that the principle of sincere cooperation, as laid down in Article 4(3) TEU, extends to all relevant entities, bodies and authorities involved in the application of the proposed regulation. However, for reasons of legal certainty, it may be worth expressly mentioning in Article 41i that this principle also applies to the Commission and the Board. Furthermore, the proposed Regulation should be framed in such a manner as to indicate when the conditions under which this principle operates would be deemed to have not been respected, in order to ensure adequate procedural safeguards, predictability of consequences and to avoid unnecessary risks for financial stability.

Finally, Article 41i would also benefit from the introduction of a procedure and timeframe to follow when disqualification decisions are being taken. In this respect, inspiration could be drawn from the procedure under Article 258 TFEU ([4]). In addition, clarification with regard to the relationship between the disqualification procedure provided for in Article 41i and the infringement procedure under Article 258 TFEU may be necessary. In this regard, it is noted that disqualification of a DGS without any repatriation of the contributions provided by the institutions affiliated to this DGS would amount to an automatic violation of Article 10(2) ([5]) of Directive 2014/49/EU by the DGS concerned. This is because according to the proposed Article 74c(4), the contributions that credit institutions affiliated to a particular DGS pay within the EDIS count towards the minimum target level that the participating DGS must reach in accordance with Directive 2014/49/EU. Furthermore, it is not the DGSs themselves that must comply with certain requirements contained in Articles 4, 6, 7 and 10 of Directive 2014/49/EU, but rather the Member States or other entities, e.g. affiliated credit institutions.

2.10. *Recovery of the DIF's resources*

The procedures for the DIF to recover the resources provided to a DGS in the event of a pay-out event are mainly linked to progress with collection efforts in national insolvency proceedings. The length of such proceedings varies significantly between Member States, and on occasion can be quite drawn out. Further precision is advisable in Article 41q to enable the Board to exercise certain rights in relation to national insolvency proceedings, thus ensuring that the Board's legal position is recognised by the courts. The effective exercise of such rights may also require the allocation of significant resources to the Board for the performance of this task.

2.11. *Backstop arrangements*

The proposed regulation does not provide for a fiscally neutral public European backstop to the EDIS in the event of one or several pay-out events exceeding the EDIS's available financial resources, and *ex post* contributions or alternative financing are not able to be tapped quickly enough to ensure a timely depositor pay-out or the timely involvement of the EDIS in a resolution case. This implies that any payment obligation in relation to depositors in excess of the resources provided by the EDIS reverts in principle to the relevant DGS by virtue of Article 10(9) of Directive 2014/49/EU, which requires that Member States must ensure that DGS have in place adequate alternative funding arrangements to enable them to obtain short-term funding to meet claims against those DGSs. Therefore, the efficiency of the whole system ultimately rests on the credibility of national backstops.

The ECB is of the view that a fiscally neutral common public backstop for the EDIS at the latest as of the full insurance stage is necessary to ensure a uniformly high level of confidence in deposit protection under all circumstances and to effectively weaken the bank/sovereign link at the national level. Ultimately, relying on national

([1]) See Article 1(5) of the proposed regulation amending, inter alia, Article 4(3) of Regulation (EU) No 806/2014.
([2]) Article 109 of Directive 2014/59/EU.
([3]) See in particular recital 40 of the proposed regulation.
([4]) Article 258 of the Treaty establishes a procedure that the Commission must follow if it considers that a Member State has failed to fulfil an obligation under the Treaties: it must deliver a reasoned opinion on the matter after giving the Member State concerned the opportunity to submit its observations. If the Member State concerned does not comply with the opinion within the period laid down by the Commission, the Commission may bring the matter before the Court of Justice of the European Union.
([5]) Article 10(2) of Directive 2014/49/EU states that the available financial means of a DGS shall reach a target level of at least 0,8 % of the amount of covered deposits of its members by 3 July 2024.

backstops defeats the purpose of the proposed regulation of reinforcing the Banking Union by reducing the bank/sovereign links in individual Member States ([1]). The establishment of the EDIS significantly strengthens the Banking Union by offering a considerably higher degree of protection against large local shocks due to DGSs having access to pooled EDIS resources. However, in the absence of a common backstop, the EDIS would fail to eliminate a factor that could have a negative impact on depositor confidence as a result of doubts regarding the credibility of purely national backstops. Thus, a fiscally neutral common public backstop is an important element in ensuring the credibility of the EDIS, and should be phased in according to the progressive mutualisation of deposit protection. A solid common backstop would not only give reassurance to depositors in Member States with a less favourable fiscal position, but would lead to a stronger overall EDIS. Any such backstop for the DIF must respect the principle of fiscal neutrality, ensuring that any public funds are recouped from the financial sector via *ex post* contributions. The use of the European Stability Mechanism appears to be a possible option for the establishment of a fiscally neutral common public backstop.

2.12. *Automatic access for Member States joining the SSM*

Recital 14 of the proposed regulation seems to envisage automatic access to the EDIS by all DGSs officially recognised in a Member State joining the SSM. While there should definitely be an obligation to join all pillars of the Banking Union simultaneously, transitional measures should be put in place to ensure a smooth phasing-in of any DGSs that join at a later date. This will ensure that any such accession does not unduly burden the EDIS's financing arrangements. For example, if a Member State joined during the late stage of the co-insurance or during the full insurance stage, it might be warranted to provide for a transfer of funds accumulated by the DGS from the moment of entry into force of the proposed regulation (or a predefined part of such funds) in line with the funding path envisaged in Article 41j from the DGSs to the EDIS.

2.13. *Exchange of information*

The proposed regulation recognises the importance of the efficient exchange of information between the authorities involved in ensuring the smooth functioning of the EDIS, i.e., the Board, the designated authorities, the competent authorities, including the ECB, and the resolution authorities by advocating the conclusion, where necessary, of memoranda of understanding ([2]). Given the importance of this matter, and in order to avoid any potential obstacles to such an exchange of information, it appears necessary to amend Article 34 of Regulation (EU) No 806/2014 in order to expressly include the DGSs and the designated authorities among the bodies and authorities that are entitled to exchange information and to conclude memoranda of understanding in accordance with that Article. This could be achieved by inserting a new provision in the proposed regulation.

2.14. *Technical observations and drafting proposals*

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. This also includes the ECB's proposed wording for an amendment to Directive 2014/49/EU. The technical working document is available in English on the ECB's website.

Done at Frankfurt am Main, 20 April 2016.

The President of the ECB

Mario DRAGHI

([1]) See recital 17 of the proposed regulation.
([2]) See recital 39 of the proposed regulation.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates [1]

11 July 2016

(2016/C 252/02)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,1049	CAD	Canadian dollar	1,4437
JPY	Japanese yen	113,23	HKD	Hong Kong dollar	8,5731
DKK	Danish krone	7,4372	NZD	New Zealand dollar	1,5250
GBP	Pound sterling	0,85097	SGD	Singapore dollar	1,4910
SEK	Swedish krona	9,4760	KRW	South Korean won	1 268,78
CHF	Swiss franc	1,0867	ZAR	South African rand	15,9573
ISK	Iceland króna		CNY	Chinese yuan renminbi	7,3926
NOK	Norwegian krone	9,4061	HRK	Croatian kuna	7,4765
BGN	Bulgarian lev	1,9558	IDR	Indonesian rupiah	14 476,95
CZK	Czech koruna	27,037	MYR	Malaysian ringgit	4,4110
HUF	Hungarian forint	313,07	PHP	Philippine peso	52,309
PLN	Polish zloty	4,4210	RUB	Russian rouble	70,9862
RON	Romanian leu	4,4938	THB	Thai baht	38,817
TRY	Turkish lira	3,2027	BRL	Brazilian real	3,6651
AUD	Australian dollar	1,4617	MXN	Mexican peso	20,3780
			INR	Indian rupee	74,1865

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

COMMISSION DECISION

of 6 July 2016

regarding the open source licensing of DG Maritime Affairs and Fisheries Integrated Fisheries Data Management software

(2016/C 252/03)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on European Union, the Treaty Establishing the European Atomic Energy Community and to the Treaty on the Functioning of the European Union,

Having regard to the Decision of the Commission of 19 September 2001 (PV1536) conferring to the Directors-General and Heads of Services the power to decide on the need to file an application for protection of intellectual property rights resulting from the activities or programmes for which they are responsible, the granting of licences related thereto, the acquisition, transfer or surrender or abandoning of rights, and to the Directors-General the power of administrative execution related thereto,

Whereas:

(1) The Directorate-General for Maritime Affairs and Fisheries (DG Maritime Affairs and Fisheries) has developed several information systems belonging to the Integrated Fisheries Data Management (IFDM) software suite for electronic exchanges of fishing activities data based on the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) FLUX standard.

(2) The current IFDM suite (hereinafter referred to as the software) contains the following information systems: FLUX Transportation Layer for the exchange of electronic messages according to the UN/CEFACT standard, the Union Vessel Monitoring System (VMS) tool for the monitoring of vessel positions and for which DG Maritime Affairs and Fisheries has developed three modules (Spatial, reporting and USM) as well as the VMS ERS Viewer which extends Union VMS with functionality for the visualisation of electronic fishing logbooks in the UN/CEFACT format.

(3) The open source licensing of the software could benefit the worldwide harmonisation of fisheries data exchanges and allow cost savings. Therefore, the distribution of the software tools should be made available to Member States, third countries, Regional Fisheries Monitoring Organisations as well as the Food and Agriculture Organisation of the United Nations.

(4) DG Maritime Affairs and Fisheries, as DG responsible for the development and maintenance of the software and — at the same time — entrusted service for the administrative execution of decisions in the field of Intellectual Property, considers the open source licensing of the software appropriate and opportune.

(5) In order to distribute and to promote the use of the software and to avoid its exclusive appropriation, the software will be released under an open source license,

HAS DECIDED AS FOLLOWS:

Article 1

Non-exclusive open source licence terms may be applied for the distribution of the software with a view to enable its use, reproduction, development, and further distribution.

Article 2

This Decision will apply to any future releases or new versions of this software.

Done at Brussels, 6 July 2016.

For the Commission

João AGUIAR MACHADO

Director-General

V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

Prior notification of a concentration

(Case M.8115 — Partners Group/Foncia Holding and its subsidiaries)

Candidate case for simplified procedure

(Text with EEA relevance)

(2016/C 252/04)

1. On 4 July 2016, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ([1]) by which the undertaking Partners Group AG and its affiliates via certain investment funds belonging to the Partners Group (together 'Partners Group', Switzerland), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Foncia Holding SAS and its subsidiaries (together with its subsidiaries 'Foncia', France) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— Partners Group: private markets investment management company,

— Foncia: provision of real estate services.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 ([2]) it should be noted that this case is a candidate for treatment under the procedure set out in this Notice.

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

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by email to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number M.8115 — Partners Group/Foncia Holding and its subsidiaries, to the following address:

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

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

Prior notification of a concentration

(Case M.7984 — Bridgestone/Pneuhage/JV)

(Text with EEA relevance)

(2016/C 252/05)

1. On 4 July 2016, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 [1] by which the undertakings Bridgestone Deutschland GmbH ('BS Deutschland', Germany) belonging to Bridgestone Corporation (Japan) and Pneuhage Management GmbH & Co. KG ('Pneuhage', Germany) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of Pneuhage Partners Group GmbH & Co. KG ('PGG', Germany), by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— BS Deutschland is active in the wholesale and retail trade of new tyres of various types, such as car, truck, motorcycle, agricultural and earthmoving tyres and in the retreading of truck tyres in Germany,

— Pneuhage is active in the wholesale and retail supply and distribution of replacement tyres and rims for a variety of vehicles such as cars, trucks, motorcycles, agricultural and earthmoving vehicles and the retreading of bus and truck tyres in Germany, France, and Poland,

— PGG will be active in the retail distribution of tyres and car related services in Germany.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved.

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

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by email to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number M.7984 — Bridgestone/Pneuhage/JV, to the following address:

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

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

Prior notification of a concentration

(Case M.8020 — Sherwin-Williams/Valspar)

(Text with EEA relevance)

(2016/C 252/06)

1. On 5 July 2016, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ([1]) by which the undertaking Sherwin-Williams Company ('Sherwin-Williams', the USA), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over the Valspar Corporation ('Valspar', the USA) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for Sherwin-Williams: manufactures and sells paints and coatings. It is active mainly in North, Central and South America. In the EEA, Sherwin-Williams sells primarily industrial coatings for wood and protective applications. It also sells decorative coatings but almost exclusively in the UK, Poland and Ireland,

— for Valspar: manufactures and sells paints and coatings, with a geographical focus on North America, Europe, Asia and Australia/New Zealand. In the EEA, Valspar sells primarily industrial coatings for packaging, automotive refinish, coil and other metal applications. It also sells decorative coatings, almost exclusively in the UK.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved.

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

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by email to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number M.8020 — Sherwin-Williams/Valspar, to the following address:

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

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

CORRIGENDA

Corrigendum to publication of an application for approval of minor amendment in accordance with the second subparagraph of Article 53(2) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council

(Official Journal of the European Union C 408 of 9 December 2015)

(2016/C 252/07)

The text of publication number 2015/C 408/09 is replaced by the following:

'**Publication of an application for approval of minor amendment in accordance with the second subparagraph of Article 53(2) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council**

The European Commission has approved this minor amendment in accordance with the third subparagraph of Article 6(2) of Commission Delegated Regulation (EU) No 664/2014 [1].

APPLICATION FOR APPROVAL OF A MINOR AMENDMENT

Publication of an application for approval of minor amendment in accordance with the second subparagraph of Article 53(2) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council [2]

"ABENSBERGER SPARGEL"/"ABENSBERGER QUALITÄTSSPARGEL"

EU No: DE-PGI-0105-01322 — 20.3.2015

PDO ( ) PGI (X)

1. **Applicant group and legitimate interest**

   Name Erzeugergemeinschaft Abensberger Qualitätsspargel e.V. (Abensberger Qualitätsspargel Producers' Association)

   Address: Richtstättstr. 5
   93326 Abensberg
   DEUTSCHLAND

   Tel. +49 94431281
   Fax +49 94431282
   Email: info@neumeyer-martin.de

   Legitimate interest:

   The applicant association is a group of producers of the product in question. The Abensberger Qualitätsspargel Producers' Association (Erzeugergemeinschaft Abensberger Qualitätsspargel e.V.) also submitted the original application for protection and thus has a legitimate interest in this amendment application.

2. **Member State or Third Country**

   Germany

3. **Heading in the product specification affected by the amendment(s)**

   — ☐ Description of product

   — ☐ Proof of origin

   — ☐ Method of production

   — ☐ Link with the geographical area

   — ☒ Labelling

   — ☐ Other [to be specified]

4. **Type of amendment(s)**

   — ☐ Amendment to product specification of registered PDO or PGI to be qualified as minor in accordance with the third subparagraph of Article 53(2) of Regulation (EU) No 1151/2012, that requires no amendment to the published single document

[1] OJ L 179, 19.6.2014, p. 17.
[2] OJ L 343, 14.12.2012, p. 1.

— ☒ Amendment to product specification of registered PDO or PGI to be qualified as minor in accordance with the third subparagraph of Article 53(2) of Regulation (EU) No 1151/2012, that requires an amendment to the published single document

— ☐ Amendment to product specification of registered PDO or PGI to be qualified as minor in accordance with the third subparagraph of Article 53(2) of Regulation (EU) No 1151/2012, for which a single document (or equivalent) has not been published

— ☐ Amendment to product specification of registered TSG to be qualified as minor in accordance with the fourth subparagraph of Article 53(2) of Regulation (EU) No 1151/2012

5. **Amendment(s)**

The following rules on labelling in the original product specification and under point 3.7 of the Single Document, namely:

(h) *Labelling*

Following registration: "Abensberger Spargel PGI", "Abensberger Qualitätsspargel PGI". "Abensberger Qualitätsspargel" must, when put up for sale, also be marked with the following logo:

should be removed altogether.

Justification:

The Abensberger Qualitätsspargel Producers' Association has the rights to the logo, which it has been mandatory to include on the label up to now. However, according to the legal opinion of the DPMA (German Patent and Trademark Office), these labelling rules — set out in the Single Document — preclude a corresponding collective trademark from being registered.

As labelling the product with the protected geographical indication "Abensberger Spargel" or "Abensberger Qualitätsspargel" serves to reliably inform consumers about the origin of the asparagus and its compliance with the quality requirements, it is not necessary for the logo to be used to that end. Therefore, it is in the legitimate interest of the producers' association that only its members use this logo — as they have up to now — and that the product specification/Single Document no longer stipulates that all suppliers of "Abensberger Qualitätsspargel" (i.e. non-members too) must use the logo on the label.

Minor nature of the amendment:

The proposed amendment should be regarded as minor in accordance with Article 53(2) of Regulation (EU) No 1151/2012.

The relevant requirements — set out in points (a) to (d) of the third subparagraph of Article 53(2) — are met, and, in particular, the amendment does not represent an increase in restrictions on trade in the product (point (e)). Rather, leaving the previous labelling rules in the product specification (and in the Single Document) created or could have created trade obstacles for non-members.

6. **Updated product specification (only for PDO and PGI)**

https://register.dpma.de/DPMAregister/geo/detail.pdfdownload/41017

SINGLE DOCUMENT

"ABENSBERGER SPARGEL"/"ABENSBERGER QUALITÄTSSPARGEL"

EU No: DE-PGI-0105-01322 — 20.3.2015

PDO ( ) PGI (X)

1. **Name(s)**

"Abensberger Spargel"/"Abensberger Qualitätsspargel"

2. **Member State or Third Country**

Germany

3. **Description of the agricultural product or foodstuff**

3.1. *Type of product*

Class 1.6. Fruit, vegetables and cereals, fresh or processed

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

Asparagus (*Asparagus officinalis*) is a member of the Asparagaceae family. The edible stalks of asparagus are the shoots of a perennial shrub which are put up for sale peeled or unpeeled. "Abensberger Spargel" is produced according to the rules of good farming practice.

White Abensberg asparagus may vary in colour from white to violet and may not exceed 22 cm in length, while green Abensberg asparagus may not exceed 27 cm in length.

With the exception of what is sold by the producer directly to the consumer, Abensberg asparagus is prepared in accordance with UNECE Standard FFV04 (asparagus). However, this standard also applies to white and violet asparagus up to a minimum diameter of 5 mm. In addition, broken asparagus shoots may also be marketed under the "broken asparagus" category.

The taste of "Abensberger Spargel" is characterised by the typically strong, spicy aroma of the asparagus. Harvesting once or twice a day and careful and appropriate handling after harvesting guarantee that "Abensberger Spargel" will reach consumers fresh regardless of the marketing channel.

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

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

Production of "Abensberger Spargel", from growing to picking, must take place in the defined geographical area.

The asparagus produced in the Abensberg area is mainly the cultivated form of white asparagus, which is grown underground in large ridges. Due to the lack of sunlight the shoots growing upwards in the ridges fail to turn green, and therefore white or reddish-white shoots with white to violet tips are produced, normally to a length of 22 cm.

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

Freshly-harvested asparagus must first be washed off and then cleaned with fresh water (from the tap).

After harvesting and cleaning, the cut asparagus must be rapidly chilled to preserve its quality. "Rapid chilling" means cooling the asparagus with ice-cold water, as quickly as possible after harvesting, to a temperature of 1-2 °C, to preserve its freshness, tenderness and ivory-like colour. This also minimises the growth of bacteria and fungi which reduce the quality of the asparagus.

The stalks are then cut to length and sorted expertly. The shoot is cut cleanly at the bottom end, at right angles to the axis. This minimises the cut surface, thus also minimising water loss and the entry of bacteria. Should the shoot be hollow or woody at the bottom end, it is expertly shortened to less than 22 cm, or 27 cm in the case of green asparagus, so as to guarantee its high quality.

They must then be stored at 1-2 °C in a place with a high level of humidity (99 %), but must not be stored in water. The cold chain must not be interrupted by the producer. Packaging, refrigeration and any sales premises must comply with health requirements.

The above measures, which go far beyond the legal minimum requirements, contribute to the product's high level of hygiene and quality.

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

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4. **Concise definition of the geographical area**

The geographical area covers, in particular, the "*Sandgürtel*" ("sand belt") between Siegenburg, Neustadt an der Donau, Abensberg and Langquaid, and is situated exclusively within the Kelheim rural district.

5. **Link with the geographical area**

Specificity of the geographical area:

A description by Maximilian Georg Kroiss of the economic activities of the Carmelite order states that asparagus was probably grown in the Abensberg region as early as 1730. The same article also contends that another historian, Angrüner, is wrong to assume that the first asparagus was not grown in Abensberg until around 1900. Kroiss also underlines the fact that even today Abensberg is famous for its asparagus.

Due to the optimum soil and climate the Abensberg region, i.e. the "*Sandgürtel*" between Siegenburg, Neustadt an der Donau, Abensberg and Langquaid, is an excellent asparagus-growing area. For example, the area's average annual temperature of 9,8 °C and average rainfall of 703 mm represent good climatic conditions for growing asparagus. According to the Bavarian soil atlas, the soils are mainly sandy. At the same time they contain more minerals and silt than other well-known German asparagus-growing areas. This means that "Abensberger Spargel" has a particularly strong, spicy taste.

Cultivation of "Abensberger Spargel" is limited mainly to the following soil types:

— sand (S)

— slightly loamy sand (Sl)

— loamy sand (lS)

— very loamy sand (SL).

To guarantee the special characteristics of "Abensberger Spargel" as regards taste and freshness due to the soils, it is cultivated and processed as described above.

There are around 70 asparagus producers on a cultivated area of 210 hectares. The Abensberg region is one of Bavaria's main asparagus-producing areas. In addition, the local growers have constantly developed and improved their production techniques.

Specificity of the product:

The quality of "Abensberger Spargel" is attributable to the climatic conditions described and the types of soil in the defined geographical area.

"Abensberger Spargel" is very highly regarded by consumers and is renowned for its flavour by connoisseurs. It is a traditional Bavarian speciality and has therefore been included in the internet database maintained by the Bavarian Ministry of Agriculture (http://www.food-from-bavaria.de).

Alongside the name "Abensberger Spargel", this product has also been marketed for the past 10 years under the collective trademark "Abensberger Qualitäts-Spargel". The rules for awarding this collective trade mark specify a high product quality.

That high quality means that consumers are prepared to pay a premium; indeed, the price of "Abensberger Spargel" is even higher than that of the well-known "Schrobenhausener Spargel".

"Abensberger Spargel" is also renowned because there is a cookbook specifically written for it, and because, each year, the "Asparagus Queen" is chosen to represent this region's speciality. 2007 marked the 75th anniversary of asparagus-growing in Abensberg.

The Abensberger Qualitätsspargel Producers' Association (Erzeugergemeinschaft Abensberger Qualitätsspargel e.V.) recommends the varieties which particularly meet the agronomic (field trials) and taste requirements based on sensory testing in relation to the specification.

It lists these varieties on its homepage http://www.qualitaetsspargel.de/ and updates the data annually.

Causal link between the geographical area and the quality or characteristics of the product (for PDO) or a specific quality, the reputation or other characteristic of the product (for PGI):

"Abensberger Spargel" owes its specific qualities not only to the climate and special soils in the region but also to the long tradition of asparagus-growing in the Abensberg production area and the expertise of the farmers who have been growing it for generations. The light, sandy soils, which are at the same time richer in minerals and silt than other growing areas, as well as the daily harvesting, mean that "Abensberger Spargel" has particularly tender shoots with a spicier, stronger taste than asparagus grown elsewhere.

Reputation:

Thanks to the Abensberger Qualitätsspargel Producers' Association's strict rules on how their asparagus must be grown and processed (http://www.qualitaetsspargel.de/index.php/erzeuger/qualitaetsordnung), some of which go far beyond the legal minimum, for decades now only the best-quality "Abensberger Spargel" has been placed on the market. This has led to consumers' high regard for this product, and that high regard is reflected in the official price data. For example, "Abensberger Spargel" can command a higher price on the market than asparagus from other areas.

The asparagus sector today covers some 210 hectares of land and is now one of the principal economic factors in the Abensberg region.

The growers living in the geographical area have been handing down their skills and experience in asparagus-growing from one generation to another for over 70 years. This guarantees the best possible quality, the basis for successful marketing.

The asparagus season in the region is a "fifth season", a time of celebration, attracting day trippers and tourists from far and near. At this time of the year both domestic kitchens and restaurants focus on asparagus. Restaurants seek to attract both locals and the visitors who come to Abensberg in droves for the asparagus season by coming up with ever more creative recipes. During the season markets achieve most of their turnover from asparagus products.

An "Abensberg Asparagus Queen" has been crowned every year since 1996. She conducts many interviews with the press, radio and TV and carries the good name of "Abensberger Spargel" far beyond the region itself.

Reference to publication of the product specification

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

https://register.dpma.de/DPMAregister/geo/detail.pdfdownload/41017'

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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