ISSN 1977-091X

Official Journal of the European Union

C 35

English edition

Volume 55

9 February 2012

Information and Notices

Notice No | Contents | Page

I *Resolutions, recommendations and opinions*

OPINIONS

European Data Protection Supervisor

2012/C 35/01 Opinion of the European Data Protection Supervisor on the legal proposals for the common agricultural policy after 2013 1

2012/C 35/02 Opinion of the European Data Protection Supervisor on the legislative package on the victims of crime, including a proposal for a Directive establishing minimum standards on the rights, support and protection of the victims of crime and a proposal for a Regulation on mutual recognition of protection measures in civil matters 10

2012/C 35/03 Opinion of the European Data Protection Supervisor on the proposal for a Council Decision on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security 16

IV *Notices*

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

European Commission

2012/C 35/04 Euro exchange rates 23

EN

Price:
EUR 3

(Continued overleaf)

Notice No | Contents (continued) | Page

2012/C 35/05 Administrative Commission of the European Communities on social security for migrant workers — Rates for conversion of currencies pursuant to Council Regulation (EEC) No 574/72 24

NOTICES CONCERNING THE EUROPEAN ECONOMIC AREA

EFTA Surveillance Authority

2012/C 35/06 Guidelines on the application of Article 53 of the EEA Agreement to maritime transport services 26

V *Announcements*

ADMINISTRATIVE PROCEDURES

European Commission

2012/C 35/07 Call for proposals — EACEA/5/12 — MEDIA 2007 — Development, distribution, promotion and training — Training 40

2012/C 35/08 Extract from the court decision regarding Akcinė bendrovė bankas SNORAS pursuant to Directive 2001/24/EC of the European Parliament and of the Council on the reorganisation and winding-up of credit institutions (hereinafter 'the Directive') 42

Corrigenda

2012/C 35/09 Corrigendum to the calls for proposals under the annual work programme 2011 for grants in the field of the Trans-European Transport Network (TEN-T) for the period 2007-2013 (Commission Decision C(2011) 1772 as amended by Commission Decision C(2011) 9531) (OJ C 7, 10.1.2012) 43

EN

I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN DATA PROTECTION SUPERVISOR

Opinion of the European Data Protection Supervisor on the legal proposals for the common agricultural policy after 2013

(2012/C 35/01)

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],

Having regard to the request for an Opinion in accordance with Article 28(2) of Regulation (EC) No 45/2001,

HAS ADOPTED THE FOLLOWING OPINION:

1. INTRODUCTION

1.1. Consultation of the EDPS

1. On 12 October 2011, the Commission adopted the following proposals (hereinafter: the proposals) on the common agricultural policy (hereinafter: 'CAP') after 2013, that were sent to the EDPS for consultation on the same day:

— proposal for a Regulation of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (hereinafter: 'the direct payments regulation') [3],

— proposal for a Regulation of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (hereinafter: 'the single CMO regulation') [4],

[1] OJ L 281, 23.11.1995, p. 31.
[2] OJ L 8, 12.1.2001, p. 1.
[3] COM(2011) 625 final.
[4] COM(2011) 626 final.

— proposal for a Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (hereinafter: 'the rural development regulation') ([5]),

— proposal for a Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy (hereinafter: 'the horizontal regulation') ([6]),

— proposal for a Council regulation determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products ([7]),

— proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 73/2009 as regards the application of direct payments to farmers in respect of the year 2013 ([8]),

— proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 as regards the regime of the single payment scheme and support to vine-growers ([9]).

2. The EDPS welcomes the fact that he is formally consulted by the Commission and that a reference to the present Opinion is included in the proposed preambles of the direct payments regulation, the Single CMO regulation, the rural development regulation and the horizontal regulation.

1.2. **Objectives of the proposals and processing of personal data**

3. The Proposals aim at providing a framework for (1) viable food production, (2) sustainable management of natural resources and climate action, and (3) balanced territorial development. To this end, they establish several support schemes for farmers as well as other measures to stimulate agricultural and rural development.

4. In the course of these programmes, personal data — mainly relating to aid beneficiaries but also to third parties — are processed at various stages (processing of aid applications, ensuring the transparency of payments, control and fight against fraud, etc.) While the bulk of the processing is carried out by and under the responsibility of the Member States, the Commission is able to access most of these data. Beneficiaries and in some instances third parties (-e.g. for the purpose of fraud checks — have to provide information to the designated competent authorities.)

1.3. **Aim of the Opinion of the EDPS**

5. The relevance of data protection in the context of the CAP has been brought to light by the Court of Justice in its Schecke ruling, annulling EU legislation on the publication of names of beneficiaries of agricultural funds ([10]). The EDPS is aware that in this case, data protection aspects are not at the core of the proposals. However, insofar as the proposals relate to the processing of personal data, there are pertinent comments to be made.

6. The goal of this Opinion is not to analyse the whole set of proposals, but to offer input and guidance for designing the processing of personal data necessary for the administration of the CAP in a way that respects the fundamental rights to privacy and data protection and, at the same time, ensures an effective administration of aid, the prevention and investigation of fraud and that spending is transparent and accountable.

([5]) COM(2011) 627 final.
([6]) COM(2011) 628 final.
([7]) COM(2011) 629 final.
([8]) COM(2011) 630 final.
([9]) COM(2011) 631 final.
([10]) ECJ, 9 November 2010, Volker und Markus Schecke, C-92/09 and C-93/09.

7. To this end, the present Opinion is structured in two parts: a first, more general part includes analysis and recommendations relevant for most of the proposals. This mostly refers to comments on delegated and implementing powers for the Commission. A second part then discusses specific provisions contained in several of the proposals ([11]) and gives recommendations to address the issues identified therein.

2. ANALYSIS OF THE PROPOSALS

2.1. General comments

8. As mentioned, most processing operations are carried out by the Member States. However, the Commission can have access to personal data in many cases. Therefore, the EDPS welcomes that references to the applicability of Directive 95/46/EC and Regulation (EC) No 45/2001 are included in the preambles of the relevant proposals ([12]).

9. In general, it is observed that many questions central to data protection are not included in the present proposals, but will be regulated by implementing or delegated acts. This applies, for example, to measures to be adopted regarding the monitoring of aid, the establishment of IT systems, transfers of information to third countries and on-the-spot checks ([13]).

10. Article 290 TFEU sets out the conditions for the exercise of delegated powers by the Commission. It may be given the power 'to supplement or amend certain non-essential elements of the legislative act.' Also, the 'objectives, content, scope and duration of the delegation' shall be explicitly defined. Regarding implementing powers, Article 291 TFEU establishes that these may be granted to the Commission when 'uniform conditions for implementing legally binding Union acts are needed'. Appropriate scrutiny by the Member States shall be ensured.

11. The EDPS considers that the central aspects of the processing envisaged in the proposals and the necessary data protection safeguards cannot be regarded as 'non-essential elements'. Therefore, at least the following elements should already be regulated in the main legislative texts in order to increase legal certainty ([14]):

— the specific purpose of every processing operation should be explicitly stated; this is especially relevant as regards publication of personal data and transfers to third countries;

— the categories of data to be processed should be foreseen and specified because, in many cases, the scope of the processing is currently not clear ([15]),

— access rights should be clarified, in particular as regards access to data by the Commission. In this regard, it should be specified that the Commission may only process personal data where necessary, e.g. for control purposes,

— maximum retention periods should be laid down, as in some cases only minimum retention periods are mentioned in the proposals ([16]),

([11]) Many of these provisions are already included in the current legislative framework.
([12]) COM(2011) 625 final: recital 42; COM(2011) 626 final: recital 137; COM(2011) 627 final: recital 67; COM(2011) 628 final: recital 69.
([13]) See, among others, Article 157 of the single CMO regulation; Title VII (Monitoring and evaluation) and Articles 78 and 92 of the rural development regulation; as well as Articles 21-23, 49-52, and Title V, Chapters II and III of the horizontal regulation.
([14]) See also EDPS Opinion on the proposal for a Directive of the European Parliament and of the Council amending Directives 89/666/EEC, 2005/56/EC and 2009/101/EC as regards the interconnection of central, commercial and companies registers (OJ C 220, 26.7.2011, p. 1), Section 3.2; EDPS Opinion of on the proposal for a Regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ C 216, 22.7.2011, p. 9), pts. 13, 28 and 30; EDPS Opinion on the proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property, pts. 7, 12 and 13; all available on http://www.edps.europa.eu
([15]) See, among other, Articles 77 and 92 of the rural development regulation.
([16]) See Articles 70(1) and 72(2) of the horizontal regulation.

— the rights of data subjects should be specified, especially as regards the right of information; while beneficiaries might be aware of their data being processed, third parties should also be adequately informed that their data could be used for control purposes,

— the scope and the purpose of transfers to third countries should also be specified and respect the requirements laid down by Article 25 of Directive 95/46/EC and Article 9(1) of Regulation (EC) No 45/2001.

12. Once these elements are specified in the main legislative proposals, delegated or implementing acts might be used to implement in more detail these specific safeguards. The EDPS expects to be consulted on the implementing and delegated acts addressing matters of data protection relevance.

13. In some cases, data relating to (suspected) offences may be processed (e.g. related to fraud). As the applicable legislation on data protection provides for special protection of such data ([17]), a prior check by the competent national DPAs or the EDPS may be needed ([18]).

14. Finally, security measures should be foreseen, especially as regards computerised databases and systems. The principles of accountability and Privacy by Design should also be taken into account.

2.2. **Specific comments**

Purpose limitation and scope of the processing

15. Article 157 of the single CMO regulation empowers the Commission to establish implementing acts regarding communication requirements for different purposes (such as ensuring market transparency, control of CAP measures or implementation of international agreements) ([19]) 'taking into account data needs and potential synergies between data sources' ([20]). The EDPS recommends specifying in this provision which data sources are to be used for which specific purposes. In this regard, the EDPS would like to remind the risk that the interconnection between databases can contradict the principle of purpose limitation ([21]), according to which personal data must not be further processed in a way incompatible with the original purpose of their collection ([22]).

([17]) Article 10(5) of Regulation (EC) No 45/2001 and Article 8(5) of Directive 95/46/EC.
([18]) Article 27(2) of Regulation (EC) No 45/2001 and Article 20 of Directive 95/46/EC.
([19]) The purposes of these communication requirements are: 'implementing this Regulation, monitoring, analysing and managing the market in agricultural products, ensuring market transparency, the proper functioning of CAP measures, of checking, controlling, monitoring, evaluating and auditing CAP measures, implementing international agreements, including notification requirements under those agreements' (see Article 157(1), first subparagraph).
([20]) The exchange of information for similar purposes is already foreseen in the current legislation (see, for example, Article 36 of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (hereinafter: 'the regulation on the financing of the CAP') (OJ L 209, 11.8.2005, p. 1); and Article 192 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ L 299, 16.11.2007, p. 1)).
([21]) See also EDPS Opinion on the proposal for a Council Decision on the establishment, operation and use of the Parliament and of the Council on the establishment, operation and use of the Second Generation Schengen Information System (SIS II) (COM(2005) 236 final), and the proposal for a Regulation of the European Parliament and of the Council regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates (COM(2005) 237 final) (OJ C 91, 19.4.2006, p. 38), especially point 10; EDPS Opinion on the communication from the Commission to the European Parliament and the Council — 'Overview of information management in the area of freedom, security and justice', especially paragraphs 47-48; and EDPS comments on the communication of the Commission on interoperability of European databases of 10 March 2006; all available on http://www.edps.europa.eu
([22]) See Article 4(1)(b) of Regulation (EC) No 45/2001 as well as the national provisions implementing Article 6(1)(a) of Directive 95/46/EC.

16. Article 77 of the rural development regulation establishes a new Electronic Information System to be 'drawn up in cooperation between the Commission and the Member States' for monitoring and evaluation purposes. The system will imply the processing of data on the 'key characteristics of the beneficiary and the project' provided by the beneficiaries themselves (Article 78). Insofar as this 'key information' includes personal data, this should be specified in the provision. Furthermore, the categories of data to be processed should be defined and the EDPS should be consulted on the implementing acts foreseen in Article 74.

17. Additionally, Article 92 of the same proposal provides for the establishment of a new information system 'by the Commission, in collaboration with the Member States' for the secure exchange of 'data of common interest'. The definition of the categories of data to be exchanged is too broad and should be narrowed in case personal data are to be transferred using this system. In addition, the relation between Article 77 and Article 92 should also be clarified, as it is not clear whether they have the same purpose and scope.

18. Recital 40 of the horizontal regulation states that Member States should operate an integrated administration and control system ([23]) for certain payments and 'be authorised to make use of it also for other Union support schemes' in order to 'improve the effectiveness and monitoring of Union support'. This provision should be clarified, especially if it does not only relate to exploiting synergies in terms of infrastructure, but also to making use of the information stored therein for the purpose of monitoring other support schemes.

19. According to Article 73(1)(c) of the horizontal regulation, applications for aid shall, besides the parcels and payment entitlements, also include 'any other information provided for in this Regulation or required with a view to the implementation of the relevant sectoral agricultural legislation or by the Member State concerned' ([24]). In case it is expected that this information contains personal data, the categories of data required should be specified.

Access rights

20. The horizontal regulation sets up a number of bodies for practical implementation of the CAP and allocates their tasks (Articles 7 to 15). For the Commission, the following competences are foreseen (Titles IV-VII):

— it shall be able to access data processed by these bodies for control purposes (of specific payments and beneficiaries) ([25]),

— it shall also be able to access most of these data for the general evaluation of the measures ([26]).

21. The first task mentioned in the preceding paragraph will involve the processing of personal data, while for the second task, there is prima facie no need for personal data to be processed: a general evaluation of the measures can be carried out on the basis of aggregated or anonymised data as well. Unless the Commission provides adequate justification for the need to process personal data in this context, it should be clarified that no personal data should be supplied to the Commission for the purpose of the general evaluation of the measures.

([23]) Already established by Article 14 of the Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ L 30, 31.1.2009, p. 16) (hereinafter: 'the direct payments regulation').
([24]) Article 19(1)(c) of the direct payments regulation contains similar wording.
([25]) Article 36 of the regulation on the financing of the CAP, already foresees the exchange of data for similar purposes.
([26]) See Article 110.

22. Articles 49 to 52 and 61 to 63 of the horizontal regulation establish the rules for on-the-spot-checks ([27]). The proposal states that these shall mainly be carried out by the competent authorities in the Member States, especially as regards home visits or formal questioning of persons, but that the Commission shall have access to information thus obtained. Here, the legislator should specify that the Commission shall only access these data where necessary for control purposes. The categories of personal data to be accessed by the Commission should also be specified.

23. For the purpose of monitoring the aid, the horizontal regulation sets up an Administration and Control System ([28]) (Articles 68-78) consisting of a number of databases:

— computerised database (Article 70),

— identification system of agricultural parcels (Article 71),

— system for the identification and registration of payment entitlements (Article 72),

— Aid applications (Article 73).

24. The computerised database shall consist of one database per Member State (and, optionally, decentralised databases within them). It records data obtained from each beneficiary through aid applications and payment claims. Given that not all the data collected through aid applications may be necessary for control purposes, consideration should be given to possibilities of minimising the processing of personal data in this regard.

25. Access to the administration and control system is not explicitly regulated. Similar to what has been stated regarding on-the-spot checks, the EDPS recommends the legislator to establish clearly circumscribed rules for access to this system.

26. As regards checks, the horizontal regulation foresees the scrutiny of commercial documents, including those of third parties (Articles 79-88) ([29]). These documents may include personal data on third parties. The conditions under which third parties are required to disclose their commercial documents should be specified in the instrument ([30]).

27. Article 87 of the same proposal establishes that Commission officials shall have access to all documents 'prepared either with a view to or following the scrutiny' 'in accordance with the relevant national laws'. This applies both to cases in which they may participate in the scrutiny (paragraph 2) and those in which certain acts are reserved to officials designated by law of the Member State in which the scrutiny takes place (paragraph 4). In both cases, it should be ensured that Commission officials only access these data when necessary (i.e. for control purposes), also in cases where the national law might allow access for other purposes. The EDPS encourages the legislator to insert precisions to this effect in the text.

([27]) On-the-spot-checks are already established by the current legislation (see Articles 36 and 37 of the Regulation on the financing of the CAP).

([28]) Similar to the system already established by Article 14 of the direct payments regulation.

([29]) Scrutiny of commercial documents, including those of third parties, and access to them by the Commission is already laid down in the current legislation (see, for example, Article 15 of Council Regulation (EC) No 485/2008 of 26 May 2008 on scrutiny by Member States of transactions forming part of the system of financing by the European Agricultural Guarantee Fund (Codified version) (OJ L 143, 3.6.2008, p. 1)).

([30]) See also Opinion of the European Data Protection Supervisor of 19 April 2011 for a Regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ C 216, 22.7.2011, p. 9), especially paragraph 32, available on http://www.edps.europa.eu

28. According to Article 102 of the horizontal regulation, Member States shall communicate certain categories of information, declarations and documents to the Commission. This shall also include 'a summary of the results of all available audits and checks carried out' (Article 102(1)(c)(v)). For this case, it should either be specified that no personal data will be included in these summaries or, if personal data are necessary, the purpose for which they need to be communicated should be specified.

Retention periods

29. Article 70(1) of the horizontal regulation states that the computerised database shall allow consultation 'through the competent authority of the Member State' of data from 2000 onwards and allow 'direct and immediate consultation' of data relating to 'at least' the previous five consecutive calendar years ([31]).

30. The system for the identification and registration of payment entitlements allows for 'verification of the entitlements and for cross-checks with the aid applications and the identification system for agricultural parcels'. Article 72(2) of the horizontal regulation establishes that data shall be available for a period of 'at least' four years ([32]).

31. In relation to these two systems, the EDPS recalls Article 6(1)(e) of Directive 95/46/EC and Article 4(1)(e) of Regulation (EC) No 45/2001, which establish that data must not be stored in an identifiable way longer than is necessary for the purpose it was collected for. This implies that maximum retention periods have to be defined, not merely minimum retention periods.

International transfers

32. Article 157(1), second subparagraph of the single CMO regulation states that data may be transferred to third countries and international organisations. The EDPS would like to remind that the transfer of personal data to countries which do not provide for adequate protection could only be justified on a case by case basis if any of the exceptions of Article 26 of Directive 95/46/EC or Article 9(6) of Regulation (EC) No 45/2001 apply (for example, if the transfer is necessary or legally required on important public interest grounds).

33. In this case, the specific purpose of the transfer (e.g. related to the implementation of international agreements) should be specified ([33]). The relevant international agreements should include specific safeguards as regards the protection of privacy and personal data and the exercise of these rights by data subjects. In addition, in case data are to be transferred by the Commission, the transfer should be subject to authorisation by the EDPS ([34]).

Publication of information

34. Recital 70 of the horizontal regulation states that new rules on the publication of information on beneficiaries 'taking account of the objections expressed by the Court of Justice' in the Schecke ([35]) case are under preparation.

35. The EDPS would like to remind everyone that the rules on the publication of information related to beneficiaries should respect the principle of proportionality. As confirmed by the Court of Justice ([36]), a proper balance needs to be struck between the beneficiaries' fundamental rights to privacy and data protection and the European Union's interest in guaranteeing transparency and ensuring a sound management of public funds.

([31]) As already stated in Article 16 of the direct payments regulation.
([32]) Article 18 of the direct payments regulation contains a very similar wording.
([33]) Article 157(1), first subparagraph of the single CMO regulation includes a list of purposes for the communication of information to the Commission, but does not specify for which of these purposes data may be transferred to third countries or international organisations.
([34]) Article 9(7) of Regulation (EC) No 45/2001.
([35]) ECJ, 9 November 2010, *Volker und Markus Schecke and Eifert*, joined Cases C-92/09 and C-93/09.
([36]) ECJ, *Schecke*, para. 77-88.

36. This is also relevant as regards Article 157(1), second subparagraph of the single CMO regulation, according to which data may 'be made public subject to the protection of personal data and the legitimate interest of undertakings in the protection of their business secrets'. Articles 157(2)(d) and 157(3)(c) empower the Commission to adopt delegated acts on 'the conditions and means of publication of the information' and implementing acts on the arrangements for making information and documents available to the public.

37. The EDPS welcomes the fact that the publication of information and documents will be subject to the protection of personal data. However, essential elements such as the purpose of the publication as well as the categories of data to be published should be specified in the proposals, rather than by implementing or delegated acts.

Rights of data subjects

38. The rights of data subjects should be specified, especially as regards the right of information and the right of access. This is especially relevant as regards Article 81 of the horizontal regulation, according to which commercial documents of beneficiaries, but also of suppliers, customers, carriers and other third parties can be checked. While beneficiaries might be aware of their data being processed, third parties should also be adequately informed that their data could be used for control purposes (e.g. by a privacy notice to be given at the moment of collection and information provided on all relevant websites and documents). The obligation to inform data subjects, including third parties, should be included in the proposals.

Security measures

39. Security measures should be foreseen, especially as regards computerised databases and systems. The principles of accountability and Privacy by Design should be taken into account. A list of security measures to be adopted regarding these computerised databases and systems could be introduced at least by delegated or implementing acts. This is all the more important as the personal data processed in the context of checks and scrutiny might include data on suspected offences.

40. The EDPS welcomes the requirements laid down by Article 103 of the horizontal regulation regarding confidentiality and professional secrecy for scrutiny in the sense of Articles 79-88 of the same regulation.

3. **CONCLUSIONS**

41. The EDPS considers that the central aspects of the processing operations envisaged in the proposals and the necessary data protection safeguards should be regulated in the main legislative texts rather than in delegated or implementing acts, in order to increase legal certainty:

— the specific purpose of every processing operation should be explicitly stated in the proposals, especially as regards publication of personal data and international transfers;

— the categories of data to be processed should be specified,

— personal data should only be processed if necessary,

— access rights should be clarified; in particular, it should be specified that the Commission should only process personal data where necessary, for example, for control purposes,

— maximum retention periods should be laid down in the proposals,

— the rights of data subjects should be specified, especially as regards the right of information; it should be ensured that not only beneficiaries but also third parties are informed of their data being processed,

— the specific purpose(s) and the scope of international transfers should be limited to the extent that is necessary and should be adequately laid down in the proposals.

42. These elements may be further elaborated in delegated or implementing acts. The EDPS expects to be consulted in this regard.

43. In addition, security measures should be foreseen at least by implementing or delegated acts, especially as regards computerised databases and systems. The principles of accountability and Privacy by Design should also be taken into account.

44. Finally, taking into account that in some cases data relating to (suspected) offences may be processed (e.g. related to fraud), a prior check by the competent national DPAs or the EDPS may be needed.

Done at Brussels, 14 December 2011.

Giovanni BUTTARELLI

Assistant European Data Protection Supervisor

Opinion of the European Data Protection Supervisor on the legislative package on the victims of crime, including a proposal for a Directive establishing minimum standards on the rights, support and protection of the victims of crime and a proposal for a Regulation on mutual recognition of protection measures in civil matters

(2012/C 35/02)

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 41(2) thereof,

HAS ADOPTED THE FOLLOWING OPINION:

1. INTRODUCTION

1.1. Background

1. On 18 May 2011, the Commission adopted a package of legislative instruments on the protection of the victims of crime. The legislative package includes a proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime (the 'proposed Directive') and a proposal for a Regulation on mutual recognition of protection measures in civil matters (the 'proposed Regulation') [3]. Both proposals are accompanied by a Commission communication on strengthening victims' rights in the EU [4].

2. The EDPS was not consulted under Article 28(2) of Regulation (EC) No 45/2001, despite the fact that the legislative initiative was included in the EDPS Inventory of priorities for legislative consultation [5]. The present Opinion is therefore based on Article 41(2) of the same Regulation. The EDPS recommends that a reference to this Opinion is included in the preamble of the instruments adopted.

1.2. Objectives and scope of the legislative package

3. The EDPS welcomes the policy objectives of the legislative package, which, in line with the Stockholm programme and its Action Plan, are to strengthen the rights of victims of crime and to ensure that their need for protection, support and access to justice is met [6].

4. The proposed Directive is intended to replace Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings [7]. It lays down common minimum rules on the rights,

[1] OJ L 281, 23.11.1995, p. 31.
[2] OJ L 8, 12.1.2001, p. 1.
[3] Respectively, COM(2011) 275 and COM(2011) 276.
[4] See Commission's communication Strengthening victims' rights in the EU, COM(2011) 274.
[5] Available on the EDPS website (http://www.edps.europa.eu) in the section: Consultation/Priorities.
[6] See Commission's communication Strengthening victims' rights in the EU, op. cit., p. 2.
[7] OJ L 82, 22.3.2001, p. 1. The Explanatory Memorandum recognises that while improvements have been achieved in this area, the objectives of the Framework Directive have not been fully realised.

support and protection of the victims of crime. In particular, the proposed Directive aims to ensure that victims are treated with respect, that the special needs of vulnerable victims are taken into account, that victims receive adequate support and information, and that they can participate in proceedings ([8]).

5. The proposed Regulation aims to ensure that victims who benefit from a protection measure in a civil matter in one of the Member States are provided with the same level of protection should they move to another Member State, without having to go through a separate procedure ([9]). This measure complements the proposal for a Directive on the European Protection Order (the 'EPO initiative'), dealing with the mutual recognition of protection measures taken in criminal matters. The EPO initiative, on which the EDPS issued an Opinion in October 2010 ([10]), is currently being discussed in the European Parliament and the Council.

1.3. **Aim of the present Opinion**

6. The protection of privacy and personal data plays a central role in the area of freedom, security and justice, as laid out in the Stockholm programme, and in particular in the context of judicial cooperation in criminal matters. In October 2010, the EDPS issued an Opinion on the EPO initiative, highlighting the need for a consistent data protection regime with regard to initiatives in the field of judicial cooperation in criminal matters ([11]). On this occasion, the EDPS stressed that the processing of data in the field of judicial cooperation in criminal matters is characterised by the particular sensitivity of the data involved and by the effects that the related processing may have on data subjects ([12]). It is therefore necessary to pay due attention to data protection aspects connected to initiatives in this area and introduce adequate rules and safeguards where necessary.

7. According to the EDPS, the respect for privacy and personal data constitutes an essential element of the victim protection that the proposed instruments are intended to ensure. The present Opinion will therefore focus on the privacy-related aspects of the proposals and put forward ideas to improve or strengthen victim protection.

2. **ANALYSIS OF THE PROPOSALS**

2.1. **Directive on the rights, support and protection of victims of crime**

8. Various provisions of the proposed Directive deal directly or indirectly with privacy and data protection ([13]). Generally speaking, the EDPS welcomes these provisions, as they are aimed at preserving victims' privacy. Nevertheless, he finds that the standards of protection could be in some instances strengthened and clarified, without prejudicing their nature as minimum standards.

9. The EDPS' comments will focus mainly on the following aspects: (i) Article 23 of the proposed Directive dealing with the right to protection of privacy and relations with media; (ii) victims' rights of information and access to their own personal data; and (iii) the protection of the confidentiality of communications between the victim and victim support services. These aspects will be discussed in the following subsections.

2.1.1. *The protection of the victim's privacy*

10. The main substantive provision of the proposed Directive dealing with privacy is Article 23 entitled 'Right to protection of privacy'. Article 23(1) states that 'Member States shall ensure that judicial

([8]) See Commission's communication Strengthening victims' rights in the EU, op. cit., p. 8.
([9]) Ibid.
([10]) EDPS Opinion of 5 October 2010 on the European Protection Order and European Investigation Order in criminal matters (OJ C 355, 29.12.2010, p. 1).
([11]) Ibid., see in particular Section II of the Opinion.
([12]) Ibid., point 1.
([13]) See, in particular, recital 22, recognising that protecting privacy of the victim can be an important means of preventing further victimisation; recital 27 referring to the protection of personal data afforded to individuals under Council Framework Directive 2008/977/JHA and to Council of Europe Convention 108; Article 21 dealing with measures to avoid unnecessary questioning concerning victim's private life and measures allowing a hearing to take place without the presence of the public; Article 23 dealing with the right to protection of privacy and the conduct of the media.

authorities may adopt during the court proceedings, appropriate measures to protect the privacy and photographic images of victims and their family members'. The EDPS has various observations on this provision.

11. Firstly, Article 23(1) does not cover the full right to protection of privacy of the victims of crime. The provision is much more limited in scope as it simply provides for the power of 'judicial authorities' to issue protective measures 'during the court proceedings'. However, the protection of privacy should not only be guaranteed 'during the court proceedings', but also during the investigation and pre-trial phase. More generally, privacy should be ensured where necessary from the first contact with the competent authorities and also after the termination of court proceedings.

12. In this respect, it is worth noting that several international instruments have adopted a more ambitious approach compared to Article 23(1). The Council of Europe Recommendation Rec(2006) 8 on assistance to crime victims, for instance, provides that 'States should take appropriate steps to avoid as far as possible impinging on the private and family life of victims as well as to protect personal data of the victims, in particular during the investigation and prosecution' (emphasis added) ([14]). Other instruments contain similar provisions ([15]).

13. In view of the above, the EDPS recommends adding to Article 23 a first paragraph stating in more general terms that Member States shall guarantee as far as possible the protection of victims' private and family life as well as the protection of victims' personal data from the first contact with the official authorities and after the conclusion of criminal proceedings. Furthermore, the current Article 23(1) should be modified so as to enable judicial authorities to issue protective measures also 'during criminal investigation'.

14. Secondly, Article 23(1) does not contain any indication about the content of the specific measures that may be adopted by judicial authorities to preserve the victim's right to privacy. The EDPS understands the intention to leave Member States the maximum degree of flexibility in this area. However, greater precision may be helpful. In particular, the proposal could provide a list of minimum measures which judicial authorities may adopt, in accordance with national law, in order to protect the privacy of the victim ([16]). This may include for example the following categories of measures:

— non-disclosure or limitation of the disclosure of information concerning the identity and whereabouts of the victims or family members in appropriate cases and under particular conditions (as indicated in recital 22),

— order to remove certain confidential data from the file or prohibit the disclosure of specific information,

— limiting the publication of sensitive information in the judgments and other decisions that are normally made public.

15. Thirdly, Article 23 does not contain any provision guaranteeing the confidentiality of the information held by public authorities. In this regard, the Council of Europe Recommendation Rec(2006) 8 cited above again provides useful examples. At point 11, the Recommendation provides that States should require all agencies in contact with victims to adopt clear standards by which they may only disclose to a third party information received from or relating to a victim, under the condition that the victim has explicitly consented to such disclosure, or that there is a legal requirement or authorisation to do so. The EDPS urges the legislator to include a similar provision in the proposed Directive.

([14]) Point 10.8 of Council of Europe Recommendation Rec(2006) 8.

([15]) See, for example, draft UN Convention on Justice and Support for Victims of Crime and Abuse of Power, Articles 5(2)(g), 6, 8(6)(g); Guidelines of the Committee of Ministers on the Protection of Victims of Terrorist Acts, adopted on 2 March 2005, point VIII; Guidelines on Justice for Child Victims and Witnesses of Crime, ECOSOC Res 2005/20, 2005, points 8(a), 26 to 28.

([16]) This is in line with approach taken in Article 21 concerning the right to protection of vulnerable victims during criminal proceedings.

2.1.2. *Privacy and the media*

16. The second paragraph of Article 23 provides that 'Member States shall encourage the media to pursue self-regulatory measures in order to protect victims' privacy, personal integrity and personal data.' Here, also, the proposal has adopted a minimalistic approach, by simply referring to the instrument of self-regulation.

17. The EDPS understands the reasons for adopting a cautious attitude with regard to this subject and generally agrees with the Commission's approach. The relationship between media and privacy is extremely delicate and complex. It is also an area where, within the boundaries set out by the EU Charter of Fundamental Rights and the European Convention on Human Rights, different traditions and cultural differences across Member States may play an important role. This approach would also appear consistent with the present data protection framework (Article 9 of Directive 95/46/EC), which leaves quite some leeway to Member States in relation to the processing of data carried out for journalistic purposes or for the purpose of artistic or literary expression ([17]).

18. As to self-regulation, the EDPS is convinced that this instrument can play an important role in reconciling privacy and freedom of expression. Furthermore, Article 23(2) mirrors the approach taken by Recommendation Rec(2006) 8 which also provides that states should encourage the media to adopt and respect self-regulation measures in order to protect privacy and personal data of the victims ([18]). Self-regulatory instruments may also act in combination with national framework provisions, but these provisions should be compatible with ECHR case law on Article 10 of the European Convention on Human Rights ([19]).

2.1.3. *Specific information and access rights*

19. The EDPS notes that Article 3 of the proposed Directive, dealing with the right to receive information from the first contact with a competent authority, does not mention information relating to data protection. In order to ensure adequate protection of their personal data, victims should receive at appropriate times all the information necessary to enable them to fully understand how their personal data will be processed.

20. The EDPS therefore recommends adding to Article 3 an additional provision specifying that victims should be provided with the information concerning the further processing of his/her personal data in conformity with Article 10 of Directive 95/46/EC. In addition, the legislator could consider including rules on victims' access to their personal data, while preserving the legitimate interests relating to criminal investigation and prosecution.

2.1.4. *Confidentiality of communications between victims and support services*

21. The proposed Directive recognises the right of crime victims to receive support from the moment the crime takes place, throughout criminal proceedings and after such proceedings depending on victims' needs ([20]). Certain categories of victims, such as victims of sexual violence, gender, racial hatred or other bias crimes, or victims of terrorism, may require specialist support services ([21]), including psychological support. In these cases, the communications between the victim and the professionals providing

([17]) Article 9 of Directive 95/46/EC provides that Member States shall provide for exemptions and derogations in relation to the processing of data carried out solely for journalistic purposes or for the purpose of artistic or literary expression, which are necessary to reconcile the right to privacy with the rules governing freedom of expression.

([18]) Point 10.9 of Council of Europe Recommendation Rec(2006) 8.

([19]) Article 10, paragraph 2, of the ECHR permits only limitations to the right of freedom of expressions that are 'prescribed by law', and 'necessary in a democratic society' in pursuit of specific and important public interests (such as national security, territorial integrity, freedom from crime and disorder, health and morality) or for the protection of the reputation or the rights of others. In her Opinion in the Satakunnan case (Case C-73/07, *Tietosuojavaltuutettu* v *Satakunnan Markkinapörssi* and *Satamedia*, [2008] ECR I-9831), the Advocate General Kokott, rightly noted that '[s]trict application of the data protection rules could substantially limit freedom of expression. Investigative journalism would to a large extent be ruled out if the media could process and publish personal data only with the consent of, or in conformity with information provided by, the person concerned. On the other hand, it is obvious that the media may violate the right of individuals to respect for their private life. (17) Consequently a balance must be found.' (paragraph 43).

([20]) See recital 13 and Article 7 of the proposed Directive.

([21]) Ibid.

support services should be adequately protected from disclosure. If this is not done, the victim may be discouraged from communicating freely with his/her counsellor. Thus the EDPS welcomes the requirement in Article 7 that victim support services must be 'confidential'. However, the scope and the consequences of such confidentiality do need to be clarified.

22. In particular, the proposed Directive does not specify whether the communications of the victims with providers of support services should be deemed 'privileged', in the sense that their disclosure in the course of court proceedings is excluded or otherwise restricted. This would normally be the case where the provider of support services is a healthcare professional subject to the obligation of professional secrecy. However, one could imagine cases where support is not provided by such professionals. In these situations, it is doubtful whether the victim would be protected from disclosure.

23. The EDPS therefore recommends specifying that the victim of these particular crimes should have the right to refuse disclosure in any judicial or administrative proceedings of confidential communications with a support service provider and that such communications may be disclosed by a third party only with his/her consent. This should normally be the case also in any criminal proceedings, without prejudice to legitimate and well-founded interests relating to investigation or prosecution (i.e. collection by judicial authorities of indispensable evidence).

2.2. **Regulation on mutual recognition of protection measures in civil matters**

2.2.1. *Applicability of data protection legislation*

24. As already mentioned, the proposed Regulation complements the EPO initiative concerning mutual recognition of protection measures in criminal matters. Since the proposed Regulation concerns judicial cooperation in civil matters having cross-border implications ([22]), its application falls within the scope of the former first pillar and therefore also within the scope of Directive 95/46/EC ([23]). This was not the case for the EPO initiative.

25. The EDPS therefore recommends that a reference to Directive 95/46/EC is included at least in the recitals of the proposal, stating that personal data processed under the regulation should be protected in accordance with the national laws implementing Directive 95/46/EC.

2.2.2. *Information to be provided to the person causing the risk*

26. According to Article 5 of the proposed Regulation, a party who wishes to invoke a protection order in another Member State shall provide the competent authorities with a certificate. The certificate shall be issued in accordance with the standard form set out in the Annex to the proposed Regulation. The Annex contains personal data of both the protected person and the person causing the risk, such as their identity and whereabouts, and a description of the protection measure. The EDPS recognises that the personal data included in the certificate as required in the Annex are in principle adequate, relevant and not excessive for the purposes for which they have been collected.

27. However, it is not sufficiently clear from the proposal which personal data of the protected person will be communicated to the person causing the risk, in particular pursuant to Article 13 ([24]). In this respect, the EDPS considers that the person causing the risk should receive only those personal data that are strictly necessary for the execution of the measure. In addition, the communication in question should, as far as possible, avoid disclosing the address or other contact details concerning the protected person ([25]). Such a limitation should be specified in the text of Article 13.

([22]) See Article 81 TFEU, i.e. former Article 65 of the EC Treaty.
([23]) Directive 95/46/EC shall not apply to the processing of personal data in the course of an activity which falls outside the scope of Community law, such as those provided for by Titles V and VI of the Treaty on European Union and in any case to processing operations concerning public security, defence, State security and the activities of the State in areas of criminal law (see Article 3 of the Directive).
([24]) Article 13 concerns the information obligations vis-à-vis the person causing the risk.
([25]) See in this respect, the EDPS Opinion of 5 October 2010 on the European Protection Order and European Investigation Order in criminal matters, op. cit., paragraphs 45-49.

3. CONCLUSIONS

28. The EDPS welcomes the policy objectives of the two proposals under consideration and generally shares the approach of the Commission. Nevertheless, he finds that the protection of privacy and personal data of the victims in the proposed Directive could be in some instances strengthened and clarified.

29. With regard to the proposed Directive on the rights, support and protection of victims of crime, the EDPS advises the legislator to:

— include in Article 23 a general provision on the protection of privacy and personal data stating that Member States shall guarantee as far as possible the protection of the private and family life of victims and protect personal data of the victims from the first contact with the official authorities, throughout any court proceedings and after such proceedings; furthermore, the current Article 23(1) should be modified so as to enable judicial authorities to issue protective measures also 'during criminal investigation',

— specify under Article 23(1) a list of minimum measures (as discussed in paragraph 14), which judicial authorities may adopt in order to protect the privacy and photographic images of the victims and their family members,

— provide that Member States shall require all authorities in contact with victims to adopt clear standards by which they may only disclose to a third party information received from or relating to a victim under the condition that the victim has explicitly consented to such disclosure or that there is a legal requirement or authorisation to do so,

— include in Article 3 a requirement to provide victims with information concerning further processing of his/her personal data in conformity with Article 10 of Directive 95/46/EC and consider whether to include specific provisions on the right to access his/her personal data,

— clarify the scope of the confidentiality requirement of victim support services under Article 7, by specifying that the victim shall have the right to refuse disclosure in any judicial or administrative proceedings of confidential communications with a support service provider and that in principle such communications may be disclosed by a third party only with his/her consent (see in particular paragraphs 22-23).

30. With regard to the proposed Regulation on mutual recognition of protection measures in civil matters, the EDPS advises the legislator to:

— insert, at least in the recitals of the proposal, a reference to Directive 95/46/EC stating that personal data processed under the regulation should be protected in accordance with the national laws implementing Directive 95/46/EC,

— state clearly in Article 13 that the person causing the risk should be provided only with those personal data of the protected person that are strictly necessary for the execution of the measure. The communication in question should, as far as possible, avoid disclosing the address or other contact details concerning the protected person.

Done at Brussels, 17 October 2011.

Giovanni BUTTARELLI

Assistant European Data Protection Supervisor

Opinion of the European Data Protection Supervisor on the proposal for a Council Decision on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security

(2012/C 35/03)

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, and in particular Article 41 thereof ([2]),

HAS ADOPTED THE FOLLOWING OPINION:

1. INTRODUCTION

1.1. Consultation of the EDPS and aim of the Opinion

1. On 28 November 2011, the Commission adopted a proposal for a Council Decision on the conclusion of the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records (PNR) to the United States Department of Homeland Security ([3]) (hereinafter: 'the agreement').

2. On 9 November 2011, the EDPS was consulted informally on the draft proposal, in the context of a fast track procedure. On 11 November 2011, he issued a number of restricted comments. The aim of the present Opinion is to complement these comments in light of the present proposal and to make his views publicly available. This Opinion also builds on a number of earlier interventions by the EDPS and the Article 29 Working Party in relation to PNR.

1.2. Context of the proposals

3. The agreement aims at providing a solid legal basis for the transfer of PNR data from the EU to the US. The transfer is currently based on the 2007 agreement ([4]) because the Parliament decided to postpone its vote on the consent until its data protection concerns were met. In particular, in its resolution of 5 May 2010 ([5]), the Parliament referred to the following requirements:

([1]) OJ L 281, 23.11.1995, p. 31.
([2]) OJ L 8, 12.1.2001, p. 1.
([3]) COM(2011) 807 final.
([4]) Agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security (DHS) (OJ L 204, 4.8.2007, p. 18).
([5]) European Parliament resolution of 5 May 2010 on the launch of negotiations for Passenger Name Record (PNR) agreements with the United States, Australia and Canada (OJ C 81E, 15.3.2011, p. 70). See also European Parliament resolutions of 13 March 2003 on transfer of personal data by airlines in the case of transatlantic flights (OJ C 61 E, 10.3.2004, p. 381), of 9 October 2003 on transfer of data by airlines in the case of transatlantic flights: state of negotiations with the USA (OJ C 81 E, 31.3.2004, p. 105), of 31 March 2004 on the draft Commission decision noting the adequate level of protection provided for personal data contained in the Passenger Name Records (PNRs) transferred to the US Bureau of Customs and Border Protection (OJ C 103 E, 29.4.2004, p. 665), recommendation to the Council of 7 September 2006 on the negotiations for an agreement with the United States of America on the use of passenger name records (PNR) data to prevent and combat terrorism and transnational crime, including organised crime (OJ C 305 E, 14.12.2006, p. 250), resolution of 14 February 2007 on SWIFT, the PNR agreement and the transatlantic dialogue on these issues (OJ C 287 E, 29.11.2007, p. 349), and resolution of 12 July 2007 on the PNR Agreement with the United States of America (Texts adopted, P6_TA(2007)0347). All available on http://www.europarl.europa.eu

— compliance with data protection legislation at national and European level,

— a privacy impact assessment prior to the adoption of any legislative instrument,

— a proportionality test demonstrating that existing legal instruments are not sufficient,

— strict purpose limitation ([6]) and limitation of the use of PNR data to specific crimes or threats, on a case-by-case basis,

— limitation of the amount of data to be collected,

— limited retention periods,

— prohibition of data mining or profiling,

— prohibition of automated decisions significantly affecting citizens ([7]),

— appropriate mechanisms for independent review, judicial oversight and democratic control,

— all international transfers should comply with EU data protection standards and be subject to an adequacy finding.

4. The present agreement must be considered in the context of the global approach to PNR, which includes negotiations with other third countries (namely Australia ([8]) and Canada ([9])), and a proposal for a PNR scheme at the EU level ([10]). It also falls within the scope of the current negotiations for an agreement between the EU and the US on the exchange of personal data in the framework of police and judicial cooperation in criminal matters ([11]). In a wider context, the agreement has been initialled a few weeks before the expected adoption of the proposals for the review of the general data protection framework ([12]).

5. The EDPS welcomes this global approach aiming at providing a coherent legal framework for PNR agreements in line with EU legal requirements. However, he regrets that this timing does not allow in practice to ensure the consistency of these agreements with the new EU rules on data protection. He would also like to recall that the general agreement between the EU and the US on data exchanges should be applicable to the EU-US PNR Agreement.

([6]) Limited to law enforcement and security purposes in cases of organised and transnational serious crime or terrorism of a cross-border nature, on the basis of the legal definitions laid down in Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3) and in Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant (OJ L 190, 18.7.2002, p. 1).

([7]) 'No "no-fly" decision or decision to investigate or prosecute may ever be taken on the sole results of such automated searches or browsing of databases'.

([8]) Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service, signed on 29 September 2011.

([9]) Agreement between the European Community and the Government of Canada on the processing of Advance Passenger Information and Passenger Name Record data (OJ L 82, 21.3.2006, p. 15).

([10]) Proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (COM/2011/0032 final).

([11]) On 3 December 2010, the Council authorised the opening of the negotiations for an agreement between the EU and the US on the protection of personal data when transferred and processed for the purpose of preventing, investigating, detecting or prosecuting criminal offences, including terrorism, in the framework of police and judicial cooperation in criminal matters. See Commission press release on http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1661

([12]) See Commission communication on a comprehensive approach on personal data protection in the European Union, 4 November 2010, COM(2010) 609 final, and its follow-up.

2. GENERAL REMARKS

6. According to the EU Charter of Fundamental Rights, any limitation to fundamental rights and freedoms must be necessary, proportional and laid down by law. As repeatedly stated by the EDPS ([13]) and the Article 29 Working Party ([14]), the necessity and proportionality of the PNR schemes and of the bulk transfers of PNR data to third countries have so far not been demonstrated. The European Economic and Social Committee and the Fundamental Rights Agency also share this view ([15]). The specific comments below are without prejudice to this preliminary and fundamental observation.

7. While this agreement includes some improvements in comparison with the 2007 agreement, and includes adequate safeguards on data security and oversight, none of the main concerns expressed in the above mentioned opinions nor the conditions required by the European Parliament to provide its consent appear to have been met ([16]).

3. SPECIFIC REMARKS

3.1. The purpose should be clarified

8. Article 4(1) of the agreement states that the US processes PNR data for the purposes of preventing, detecting, investigating and prosecuting (a) terrorist offences and related crimes and (b) crimes that are punishable by a sentence of imprisonment of three years of more and that are transnational in nature. Some of these concepts are further defined.

9. Although these definitions are more precise than in the 2007 agreement, there are still some vague concepts and exceptions that could override the purpose limitation and undermine legal certainty. In particular:

— in Article 4(1)(a)(i), the wording 'conduct that (…) appears to be intended to intimidate or coerce' [or] 'influence the policy of a government' could also refer to activities which cannot be considered terrorist offences according to Council Framework Decision 2002/475/JHA ([17]); the notions 'appear to', 'intimidate' and 'influence' should be clarified to exclude this possibility,

— article 4(b) should contain a specific list of crimes; the reference to 'other crimes that are punishable by a sentence of imprisonment of three years of more' is not sufficient, as this threshold includes different crimes in the EU and the US and in the different EU Member States and US States.

([13]) EDPS Opinion of 25 March 2011 on the proposal for a Directive of the European Parliament and of the Council on the use of PNR data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime; EDPS Opinion of 15 July 2011 on the proposal for a Council Decision on the conclusion of an Agreement between the EU and Australia on the processing and transfer of PNR data by air carriers to the Australian Customs and Border Protection Service; EDPS Opinion of 19 October 2010 on the global approach to transfers of PNR data to third countries; and EDPS Opinion of 20 December 2007 on the proposal for a Council Framework Decision on the use of PNR data for law enforcement purposes. All available on http://www.edps.europa.eu

([14]) WP29 Opinion 10/2011 on the proposal for a Directive of the European Parliament and of the Council on the use of passenger name record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime; Opinion 7/2010 on European Commission's communication on the global approach to transfers of Passenger Name Record (PNR) data to third countries; Opinion 5/2007 on the follow-up agreement between the European Union and the United States of America on the processing and transfer of passenger name record (PNR) data by air carriers to the United States Department of Homeland Security concluded in July 2007 and Opinion 4/2003 on the Level of Protection ensured in the US for the Transfer of Passengers' Data. All available on http://ec.europa.eu/justice/policies/privacy/workinggroup/wpdocs/2011_en.htm

([15]) FRA Opinion of 14 June 2011 on the proposal for a Directive on the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (available on http://fra.europa.eu/fraWebsite/attachments/FRA-PNR-Opinion-June2011.pdf) and EESC Opinion of 5 May 2011 on the proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (available on http://www.eesc.europa.eu/?i=portal.en.soc-opinions.15579).

([16]) See footnote 5.

([17]) Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).

— minor offences should be explicitly excluded from the purpose of the agreement,

— in Article 4(2), the concept of 'serious threat' should be defined and the use of PNR data where 'ordered by a court' should be limited to cases referred to in Article 4(1),

— similarly, in order to avoid the application of Article 4(3) to purposes such as border control, it should be specified that only the persons who are suspected of having taken part in any of the offences listed in Article 4(1) may be 'subject to closer questioning or examination.'

3.2. **The list of PNR data to be transferred should be narrowed**

10. Annex I of the agreement contains 19 types of data that will be sent to the US. Most of them also comprise different categories of data and are identical to the data fields in the 2007 agreement, which were already considered disproportionate by the EDPS and the Article 29 Working Party ([18]).

11. This refers in particular to the field 'General remarks including OSI ([19]), SSI ([20]) and SSR ([21]) information', which can reveal data related to religious beliefs (e.g. meal preferences) or to health (e.g. request for a wheelchair). Such sensitive data should be explicitly excluded from the list.

12. While assessing the proportionality of the list, it should also be taken into account that due to advanced transmission (Article 15(3) of the agreement), these categories will refer not only to actual passengers but also to those individuals who do not finally fly (e.g. due to cancellations).

13. In addition, the presence of open data fields could undermine legal certainty. Categories such as 'all available contact information', 'all baggage information' and 'general remarks' should be better defined.

14. Therefore, the list should be narrowed. In line with the Article 29 Working Party's opinion ([22]), we consider that data should be limited to the following information: PNR record locator code, date of reservation, date(s) of intended travel, passenger name, other names on PNR, all travel itinerary, identifiers for free tickets, one-way tickets, ticketing field information, ATFQ (Automatic Ticket Fare Quote) data, ticket number, date of ticket issuance, no show history, number of bags, bag tag numbers, go show information, number of bags on each segment, voluntary/involuntary upgrades, historical changes to PNR data with regard to the aforementioned items.

3.3. **The DHS should not process sensitive data**

15. Article 6 of the agreement states that the DHS shall automatically filter and 'mask out' sensitive data. However, sensitive data will be stored at least 30 days and might be used in specific cases (Article 6(4)). The EDPS would stress that even after being 'masked out', these data will still be 'sensitive' and relate to identifiable natural persons.

16. As already stated by the EDPS, the DHS should not process sensitive data related to EU citizens, even if they are 'masked out' upon reception. The EDPS recommends specifying in the text of the agreement that air carriers should not transfer sensitive data to the DHS.

([18]) See EDPS and WP29 opinions cited above.
([19]) Other Service related Information.
([20]) Special Services Information.
([21]) Special Service Requests.
([22]) See WP29 Opinion 4/2003, cited above.

3.4. **The retention period is excessive**

17. Article 8 states that PNR data will be retained for up to five years in an active database and then transferred to a dormant database and stored for up to 10 years. This maximum retention period of 15 years is clearly disproportionate, irrespective of whether the data are kept in 'active' or 'dormant' databases, as already underlined by the EDPS and the Article 29 Working Party.

18. Article 8(1) specifies that the data will be 'depersonalised and masked' six months after their reception by the DHS. However, both 'masked out' data and data stored in a 'dormant database' are personal data as long as they are not anonymised. The data should therefore be anonymised (irreversibly) or deleted immediately after analysis or after a maximum of six months.

3.5. **Use of the 'push' method and frequency of the transfers**

19. The EDPS welcomes Article 15(1), which states that data will be transferred using the 'push' method. However, Article 15(5) requires carriers to 'provide access' to PNR data in exceptional circumstances. In order to definitively preclude the use of the 'pull' system, and in view of the concerns recently once again underlined by the Article 29 Working Party ([23]), we strongly advise that the agreement expressly prohibits the possibility for US officials to separately access the data via a 'pull' system.

20. The number and periodicity of the transfers from air carriers to the DHS should be defined in the agreement. To enhance legal certainty, the conditions in which additional transfers would be allowed should also be more detailed.

3.6. **Data security**

21. The EDPS welcomes Article 5 of the agreement on data security and integrity and, in particular, the obligation to notify the affected individuals of a privacy incident. However, the following elements of the data breach notification should be clarified:

— the recipients of the notification: it should be specified which 'relevant European authorities' should be notified, and in any case, these should include national Data Protection Authorities — a competent US authority should also be notified,

— the threshold of the notification to these authorities: it should be defined what constitutes a 'significant privacy incident',

— the content of the notification to individuals and to authorities should be specified.

22. The EDPS supports the obligation to log or document all access and processing to PNR, as this will allow a verification of whether the DHS has made appropriate use of the PNR data and whether there has been any unauthorised access to the system.

3.7. **Supervision and enforcement**

23. The EDPS welcomes the fact that compliance with the privacy safeguards in the agreement will be subject to independent supervision and oversight by Department Privacy Officers such as the DHS Chief Privacy Officer, as stated in Article 14(1). However, in order to ensure an effective exercise of

([23]) See Letter of 19 January 2011 from the Article 29 Working Party to Commissioner Malmström regarding the EU PNR Agreements with the US, Canada and Australia.

data subjects' rights, the EDPS and the national Data Protection Authorities should work with the DHS on the procedures and modalities of exercise of these rights ([24]). The EDPS would welcome a reference to this cooperation in the agreement.

24. The EDPS strongly supports the right to redress 'regardless of nationality, country of origin, or place of residence' laid down in Article 14(1), second subparagraph. However, he regrets that Article 21 explicitly states that the agreement 'shall not create or confer, under US law, any right or benefit on any person'. Even if a right to 'judicial review' is granted in the US under the agreement, such right may not be equivalent to the right to effective judicial redress in the EU, in particular in the light of the restriction stated in Article 21.

3.8. **Onward national and international transfers**

25. Article 16 of the agreement prohibits the transfer of the data to domestic authorities that do not afford to PNR 'equivalent or comparable' safeguards to those set forth in this agreement. The EDPS welcomes this provision. The list of authorities that might receive PNR data should however be further specified. As regards international transfers, the agreement provides that they should only take place if the recipient's intended use is consistent with this agreement and adduces privacy safeguards 'comparable' to the ones provided in the agreement, except in emergency circumstances.

26. With regard to the wording 'comparable' or 'equivalent' used in the agreement, the EDPS would like to emphasise that no domestic or international onward transfers by the DHS should take place unless the recipient adduces safeguards that are not less stringent than the ones established in this agreement. It should also be clarified in the agreement that the transfer of PNR data shall be done on a case-by-case basis, ensuring that only the necessary data will be transferred to the relevant recipients, and no exceptions should be allowed. In addition, the EDPS recommends that data transfers to third countries should be subject to prior judicial authorisation.

27. Article 17(4) states that when data of a resident of an EU Member State are transferred to a third country, the competent authorities of the Member State concerned should be informed in cases where the DHS is aware of this situation. This condition should be deleted, as the DHS should always be aware of onward transfers to third countries.

3.9. **Form and review of the agreement**

28. It is not clear what is the legal form chosen by the US for entering into this agreement and how this agreement will become legally binding in the US. This should be clarified.

29. Article 20(2) addresses coherence with the possible EU PNR scheme. The EDPS notes that consultations on the adjustment of this agreement shall in particular examine 'whether any future EU PNR system would apply less stringent data protection safeguards than those provided for in the present agreement'. In order to ensure consistency, any adjustment should also (and particularly) take account of stronger safeguards in any future PNR scheme.

30. The agreement should also be reviewed in view of the new data protection framework and of the possible conclusion of a general agreement between the EU and the US on the exchange of personal data in the framework of police and judicial cooperation in criminal matters. A new provision similar to Article 20(2) could be added stating that 'if and when a new data protection legal framework is adopted in the EU or a new agreement on the exchange of data between the EU and the US is concluded, the Parties shall consult each other to determine whether the present Agreement would

([24]) The Article 29 Working Party has for example already provided guidance on the provision of information to passengers (see WP29 Opinion 2/2007 of 15 February 2007 (revised and updated on 24 June 2008) on information to passengers about the transfer of PNR data to US authorities, available on http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2008/wp151_en.pdf).

need to be adjusted accordingly. Such consultations shall in particular examine whether any future modification of the EU data protection legal framework or any future EU-US data protection agreement would apply more stringent data protection safeguards than those provided for in the present agreement'.

31. As regards the review of the agreement (Article 23), the EDPS considers that national Data Protection Authorities should be explicitly included in the review team. The review should also concentrate on assessment of the necessity and proportionality of the measures, on the effective exercise of data subjects' rights, and include the verification of the way in which data subjects' requests are being processed in practice, especially where no direct access is allowed. The frequency of the reviews should be specified.

4. **CONCLUSION**

32. The EDPS welcomes the safeguards on data security and oversight foreseen in the agreement and the improvements in comparison with the 2007 agreement. However, many concerns remain especially as regards coherence of the global approach to PNR, purpose limitation, the categories of data to be transferred to the DHS, the processing of sensitive data, the retention period, the exceptions to the 'push' method, the rights of data subjects and onward transfers.

33. These observations are without prejudice to the necessity and proportionality requirements for any legitimate PNR scheme and agreement providing for the bulk transfer of PNR data from the EU to third countries. As the European Parliament reaffirmed in its resolution of 5 May, 'necessity and proportionality are key principles without which the fight against terrorism will never be effective'.

Done at Brussels, 9 December 2011.

Peter HUSTINX

European Data Protection Supervisor

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates [1]

8 February 2012

(2012/C 35/04)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,3274	AUD	Australian dollar	1,2251
JPY	Japanese yen	102,11	CAD	Canadian dollar	1,3199
DKK	Danish krone	7,4328	HKD	Hong Kong dollar	10,2927
GBP	Pound sterling	0,83495	NZD	New Zealand dollar	1,5814
SEK	Swedish krona	8,8285	SGD	Singapore dollar	1,6519
CHF	Swiss franc	1,2114	KRW	South Korean won	1 480,91
ISK	Iceland króna		ZAR	South African rand	10,0158
NOK	Norwegian krone	7,6290	CNY	Chinese yuan renminbi	8,3614
BGN	Bulgarian lev	1,9558	HRK	Croatian kuna	7,5823
CZK	Czech koruna	24,812	IDR	Indonesian rupiah	11 791,74
HUF	Hungarian forint	289,65	MYR	Malaysian ringgit	3,9878
LTL	Lithuanian litas	3,4528	PHP	Philippine peso	56,109
LVL	Latvian lats	0,6990	RUB	Russian rouble	39,5590
PLN	Polish zloty	4,1773	THB	Thai baht	40,791
RON	Romanian leu	4,3505	BRL	Brazilian real	2,2853
TRY	Turkish lira	2,3191	MXN	Mexican peso	16,8232
			INR	Indian rupee	65,2350

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

ADMINISTRATIVE COMMISSION OF THE EUROPEAN COMMUNITIES ON SOCIAL SECURITY FOR MIGRANT WORKERS

Rates for conversion of currencies pursuant to Council Regulation (EEC) No 574/72

(2012/C 35/05)

Article 107(1), (2) and (4) of Regulation (EEC) No 574/72

Reference period: January 2012

Application period: April, May and June 2012

01-2012	EUR	BGN	CZK	DKK	LVL	LTL	HUF	PLN
1 EUR =	1	1,95580	25,5308	7,43531	0,698968	3,45280	307,329	4,37601
1 BGN =	0,511300	1	13,0539	3,80167	0,357382	1,76542	157,137	2,23745
1 CZK =	0,0391684	0,0766056	1	0,291229	0,0273775	0,135241	12,0376	0,171402
1 DKK =	0,134493	0,263042	3,43372	1	0,0940066	0,464379	41,3337	0,588545
1 LVL =	1,43068	2,79812	36,5264	10,6376	1	4,93985	439,690	6,26068
1 LTL =	0,289620	0,566439	7,39422	2,15341	0,202435	1	89,0087	1,26738
1 HUF =	0,00325384	0,00636386	0,0830731	0,0241933	0,00227433	0,0112349	1	0,0142389
1 PLN =	0,228518	0,446936	5,83425	1,69911	0,159727	0,789029	70,2304	1
1 RON =	0,230327	0,450474	5,88043	1,71255	0,160991	0,795274	70,7862	1,00791
1 SEK =	0,112991	0,220988	2,88475	0,840122	0,0789771	0,390135	34,7254	0,494450
1 GBP =	1,20178	2,35043	30,6823	8,93558	0,840003	4,14949	369,341	5,25899
1 NOK =	0,130290	0,254821	3,32640	0,968744	0,0910683	0,449864	40,0418	0,570149
1 ISK =	0,00626073	0,0122447	0,159841	0,0465504	0,00437605	0,021617	1,92410	0,0273970
1 CHF =	0,825910	1,61531	21,0861	6,14089	0,577284	2,85170	253,826	3,61419

01-2012	RON	SEK	GBP	NOK	ISK	CHF
1 EUR =	4,34165	8,85027	0,832102	7,67520	159,726	1,21079
1 BGN =	2,21988	4,52514	0,425453	3,92433	81,6678	0,619075
1 CZK =	0,170056	0,346651	0,0325921	0,300626	6,25621	0,0474246
1 DKK =	0,583923	1,19030	0,111912	1,03226	21,4821	0,162843
1 LVL =	6,21151	12,6619	1,19047	10,9808	228,517	1,73225
1 LTL =	1,25743	2,56321	0,240993	2,22289	46,2598	0,350668
1 HUF =	0,0141270	0,0287974	0,00270753	0,0249739	0,519723	0,00393971
1 PLN =	0,992147	2,02245	0,190151	1,75393	36,5003	0,276687
1 RON =	1	2,03846	0,191656	1,76781	36,7892	0,278877
1 SEK =	0,490567	1	0,0940200	0,867228	18,0476	0,136808
1 GBP =	5,21769	10,6360	1	9,22388	191,955	1,45509
1 NOK =	0,565672	1,15310	0,108414	1	20,8106	0,157753
1 ISK =	0,0271819	0,0554091	0,00520956	0,0480523	1	0,0075804
1 CHF =	3,58581	7,30952	0,687241	6,33902	131,919	1

Note: all cross rates involving ISK are calculated using ISK/EUR rate data from the Central Bank of Iceland

reference: Jan-12	1 EUR in national currency	1 unit of N.C. in EUR
BGN	1,95580	0,511300
CZK	25,5308	0,0391684
DKK	7,43531	0,134493
LVL	0,698968	1,43068
LTL	3,45280	0,289620
HUF	307,329	0,00325384
PLN	4,37601	0,228518
RON	4,34165	0,230327
SEK	8,85027	0,112991
GBP	0,832102	1,20178
NOK	7,67520	0,130290
ISK	159,726	0,00626073
CHF	1,21079	0,825910

Note: ISK/EUR rates based on data from the Central Bank of Iceland

1. Regulation (EEC) No 574/72 determines that the rate for the conversion into a currency of amounts denominated in another currency shall be the rate calculated by the Commission and based on the monthly average, during the reference period specified in paragraph 2, of reference rates of exchange of currencies published by the European Central Bank.

2. The reference period shall be:

   — the month of January for rates of conversion applicable from 1 April following,

   — the month of April for rates of conversion applicable from 1 July following,

   — the month of July for rates of conversion applicable from 1 October following,

   — the month of October for rates of conversion applicable from 1 January following.

   The rates for the conversion of currencies shall be published in the second *Official Journal of the European Union* (C series) of the months of February, May, August and November.

NOTICES CONCERNING THE EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

Guidelines on the application of Article 53 of the EEA Agreement to maritime transport services

(2012/C 35/06)

A. The present notice is issued pursuant to the rules of the Agreement on the European Economic Area (hereafter the 'EEA Agreement') and the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice (hereafter the 'Surveillance and Court Agreement').

B. The European Commission (hereafter the 'Commission') has issued 'Guidelines on the application of Article 81 of the EC Treaty to maritime transport services' ([1]). That non-binding act sets out the principles that the Commission will follow when defining markets and assessing cooperation agreements in those maritime transport services directly affected by the changes brought about by Council Regulation (EC) No 1419/2006 of 25 September 2006, i.e. liner shipping services, cabotage and international tramp services ([2]).

C. The EFTA Surveillance Authority considers the abovementioned act to be EEA relevant. In order to maintain equal conditions of competition and to ensure a uniform application of the EEA competition rules throughout the European Economic Area, the EFTA Surveillance Authority adopts the present notice under the power conferred upon it by Article 5(2)(b) of the Surveillance and Court Agreement. The Authority intends to follow the principles and rules laid down in this notice when applying the relevant EEA rules to a particular case ([3]).

D. In particular, the purpose of this notice is to provide guidance on how the EFTA Surveillance Authority will apply Article 53 when defining markets and assessing cooperation agreements in liner shipping services, cabotage and international tramp services.

E. The present notice applies to cases where the Authority is the competent surveillance authority under Article 56 of the EEA Agreement.

1. INTRODUCTION

1. These Guidelines set out the principles that the EFTA Surveillance Authority will follow when defining markets and assessing cooperation agreements in those maritime transport services directly affected by the changes brought about by the incorporation into the EEA Agreement of Council Regulation (EC) No 1419/2006, i.e. liner shipping services, cabotage and international tramp services ([4]).

([1]) OJ C 245, 26.9.2008, p. 2.

([2]) Council Regulation (EC) No 1419/2006 of 25 September 2006 repealing Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 (now 81 and 82) of the EC Treaty to maritime transport, and amending Regulation (EC) No 1/2003 as regards the extension of its scope to include cabotage and international tramp services (OJ L 269, 28.9.2006, p. 1). Council Regulation (EC) No 1419/2006 was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 153/2006 amending Annex XIII (Transport), Annex XIV (Competition) and Protocol 21 (OJ L 89, 29.3.2007, p. 25 and EEA Supplement No 15, 29.3.2007, p. 20).

([3]) The competence to handle individual cases falling under Articles 53 and 54 of the EEA Agreement is divided between the EFTA Surveillance Authority and the Commission according to the rules laid down in Article 56 of the EEA Agreement. Only one of the surveillance authorities is competent to handle any given case.

([4]) See footnote 2 above as regards Council Regulation (EC) No 1419/2006 of 25 September 2006 and its incorporation into the EEA Agreement.

2. These Guidelines are intended to help undertakings and associations of undertakings operating those services, mainly if operated to and/or from a port or ports in the European Economic Area, to assess whether their agreements ([5]) are compatible with Article 53 of the EEA Agreement. The Guidelines do not apply to other sectors.

3. Council Regulation (EC) No 1419/2006 extended the scope of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the EC Treaty ([6]) and Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty ([7]) to include cabotage and tramp vessel services. The incorporation into the EEA Agreement of Council Regulation (EC) No 1419/2006 thus amended the relevant EEA rules accordingly. Consequently, as of 9 December 2006, all maritime transport services sectors are subject to the generally applicable procedural framework.

4. Council Regulation (EC) No 1419/2006 also repealed Council Regulation (EEC) No 4056/86 of 22 December 1986 on the application of Articles 85 and 86 (now 81 and 82) of the EC Treaty to maritime transport ([8]) containing the liner conference block exemption which allowed shipping lines meeting in liner conferences to fix rates and other conditions of carriage, as the conference system no longer fulfils the criteria of Article 81(3) of the EC Treaty (now Article 101(3) of the TFEU). The incorporation into the EEA Agreement of Council Regulation (EC) No 1419/2006 thus results in the conference system no longer being block exempted from the prohibition set out in Article 53(1) of the EEA Agreement as of 18 October 2008. Thereafter, liner carriers operating services to and/or from one or more ports in the European Economic Area must cease all liner conference activity contrary to Article 53 of the EEA Agreement. This is the case regardless of whether other jurisdictions allow, explicitly or tacitly, rate fixing by liner conferences or discussion agreements. Moreover, conference members should ensure that any agreement taken under the conference system complies with Article 53 of the EEA Agreement as of 18 October 2008.

5. These Guidelines complement the guidance already issued by the Authority in other notices. As maritime transport services are characterised by extensive cooperation agreements between competing carriers, the Guidelines on the applicability of Article 53 of the EEA Agreement to horizontal cooperation agreements ([9]) and the Guidelines on the application of Article 53(3) of the EEA Agreement ([10]) are particularly relevant.

6. Horizontal cooperation agreements in liner shipping regarding the provision of joint services are covered by Commission Regulation (EC) No 823/2000 of 19 April 2000 on the application of Article 81(3) of the EC Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) as implemented into the EEA Agreement ([11]). Commission Regulation (EC) No 823/2000 will be replaced by Commission Regulation (EC) No 906/2009 of 28 September 2009 on 26 April 2010 ([12]). These Regulations, as implemented into

([5]) The term 'agreement' is used for agreements, decisions by associations of undertakings and concerted practices.

([6]) Council Regulation (EC) No 1/2003 (OJ L 1, 4.1.2003, p. 1) was incorporated into Annex XIV and Protocols 21 and 23 to the EEA Agreement by Decision of the EEA Joint Committee No 130/2004 of 24 September 2004 (OJ L 64, 10.3.2005, p. 57 and EEA Supplement No 12, 10.3.2005, p. 42) and into Chapter II of Protocol 4 to the Surveillance and Court Agreement by the Agreement between the EFTA States of 24 September 2004.

([7]) Commission Regulation (EC) No 773/2004 (OJ L 123, 27.4.2004, p. 18) was incorporated into Protocols 21 and 23 to the EEA Agreement by Decision of the EEA Joint Committee No 178/2004 of 3 December 2004 (OJ L 133, 26.5.2005, p. 35 and EEA Supplement No 26, 26.5.2005, p. 25) and into Chapter III of Protocol 4 to the Surveillance and Court Agreement by the Agreement between the EFTA States of 3 December 2004.

([8]) Council Regulation (EEC) No 4056/86 (OJ L 378, 31.12.1986, p. 4) was incorporated into Chapter G point 11 of Annex XIV to the EEA Agreement.

([9]) Guidelines on the applicability of Article 53 of the EEA Agreement to horizontal cooperation agreements (OJ C 266, 31.10.2002, p. 1 and EEA Supplement No 55, 31.10.2002, p. 1).

([10]) Guidelines on the application of Article 53(3) of the EEA Agreement (OJ C 208, 6.9.2007, p. 1 and EEA Supplement No 42, 6.9.2007, p. 1).

([11]) Commission Regulation (EC) No 823/2000 (OJ L 100, 20.4.2000, p. 24) was incorporated into Chapter G point 11c of Annex XIV to the EEA Agreement by EEA Joint Committee Decision No 49/2000 (OJ L 237, 21.9.2000, p. 60 and EEA Supplement No 42, 21.9.2000, p. 3).

([12]) Commission Regulation (EC) No 906/2009 (OJ L 256, 29.9.2009, p. 31), not yet incorporated into the EEA Agreement.

the EEA Agreement, set out the conditions, pursuant to Article 53(3) of the EEA Agreement, under which the prohibition in Article 53(1) of the EEA Agreement does not apply to agreements between two or more vessel operating carriers (consortia).

7. These Guidelines are without prejudice to the interpretation of Article 53 of the EEA Agreement which may be given by the EFTA Court, the Court of Justice or the General Court of the European Communities. The principles in the Guidelines are to be applied in the light of the circumstances specific to each case.

8. The Authority will apply these Guidelines for a period of five years.

2. MARITIME TRANSPORT SERVICES

2.1. Scope

9. Liner shipping services, cabotage and tramp services are the maritime transport sectors directly affected by the changes brought about by the incorporation into the EEA Agreement of Council Regulation (EC) No 1419/2006.

10. Liner shipping involves the transport of cargo, chiefly by container, on a regular basis to ports of a particular geographic route, generally known as a trade. Other general characteristics of liner shipping are that timetables and sailing dates are advertised in advance and services are available to any transport user.

11. Article 1(3)(a) of Council Regulation (EEC) No 4056/86, as incorporated into Chapter G point 11 of Annex XIV to the EEA Agreement ([13]), defined tramp vessel services as the transport of goods in bulk or in break bulk in a vessel chartered wholly or partly to one or more shippers on the basis of a voyage or time charter or any other form of contract for non-regularly scheduled or non-advertised sailings where the freight rates are freely negotiated case by case in accordance with the conditions of supply and demand. It is mostly the unscheduled transport of one single commodity which fills a vessel ([14]).

12. Cabotage involves the provision of maritime transport services including tramp and liner shipping, linking two or more ports in the same EEA State ([15]). Although these Guidelines do not specifically address cabotage services they nevertheless apply to these services, insofar as they are provided either as liner or tramp shipping services.

2.2. Effect on trade between EEA States

13. Article 53 of the EEA Agreement applies to all agreements which may appreciably affect trade between EEA States. In order for there to be an effect on trade it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that the agreement or conduct may have an influence, direct or indirect, actual or potential, on the pattern of trade between EEA States ([16]). The Authority has issued guidance on how it will apply the concept of affectation of trade in its Guidelines on the effect of trade concept contained in Articles 53 and 54 of the EEA Agreement ([17]).

([13]) See above, footnote 8.

([14]) The Commission has identified a series of characteristics specific to specialised transport which render it distinct from liner services and tramp vessel services. They involve the provision of regular services for a particular cargo type. The service is usually provided on the basis of contracts of affreightment using specialised vessels technically adapted and/or built to transport specific cargo. Commission Decision 94/980/EC of 19 October 1994 in Case IV/34.446 — *Trans-Atlantic Agreement* (OJ L 376, 31.12.1994, p. 1) (hereinafter the 'TAA Decision'), paragraphs 47-49.

([15]) Article 1 of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12.12.1992, p. 7), incorporated into Chapter V point 53a of Annex XIII to the EEA Agreement by EEA Joint Committee Decision No 70/97 (OJ L 30, 5.2.1998, p. 42 and EEA Supplement to the OJ No 5, 5.2.1998, p. 175).

([16]) Judgments of the European Court of Justice in Case 42/84 *Remia BV and Others* v *Commission* [1985] ECR 2545, paragraph 22 and Case 319/82 *Ciments et Bétons de l'Est* v *Kerpen & Kerpen* [1983] ECR 4173, paragraph 9.

([17]) OJ C 291, 30.11.2006, p. 46 and EEA Supplement No 59, 30.11.2006, p. 18.

14. Transport services offered by liner shipping and tramp operators are often international in nature linking EEA ports with third countries and/or involving exports and imports between two or more EEA States (i.e. intra-EEA trade) ([18]). In most cases they are likely to affect trade between EEA States inter alia on account of the impact they have on the markets for the provision of transport and intermediary services ([19]).

15. Effect on trade between EEA States is of particular relevance to maritime cabotage services since it determines the scope of application of Article 53 of the EEA Agreement and its interaction with national competition law under Article 3 of Chapter II of Protocol 4 to the Surveillance and Court Agreement on the implementation of the rules on competition laid down in Articles 53 and 54 of the EEA Agreement. The extent to which such services may affect trade between EEA States must be evaluated on a case-by-case basis ([20]).

2.3. **The relevant market**

16. In order to assess the effects on competition of an agreement for the purposes of Article 53 of the EEA Agreement, it is necessary to define the relevant product and geographic market(s). The main purpose of market definition is to identify in a systematic way the competitive constraints faced by an undertaking. Guidance on this issue can be found in the Authority Notice on the definition of the relevant market for the purposes of competition law within the EEA ([21]). This guidance is also relevant to market definition as regards maritime transport services.

17. The relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use. The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas ([22]). A carrier (or carriers) cannot have a significant impact on the prevailing conditions of the market if customers are in a position to switch easily to other service providers ([23]).

2.3.1. *Liner shipping*

18. Containerised liner shipping services have been identified as the relevant product market for liner shipping in several Commission decisions and judgments of the European Court of Justice ([24]). Those decisions and judgments related to maritime transport in deep sea trades. Other modes of transport have not been included in the same service market even though in some cases these services may be, to a marginal extent, interchangeable. This was because only an insufficient proportion of the goods carried by container can easily be switched to other modes of transport, such as air transport services ([25]).

([18]) The fact that the service is to/from a non-EEA port does not in itself preclude that trade between EEA States is affected. A careful analysis of the effects on customers and other operators within the EEA that rely on the services needs to be carried out to determine whether they fall under EEA jurisdiction. See Guidelines on the effect on trade concept contained in Articles 53 and 54 of the EEA Agreement, cited above in footnote 17.

([19]) Commission Decision 93/82/EEC of 23 December 1992 (Cases IV/32.448 and IV/32.450 — *CEWAL*) (OJ L 34, 10.2.1993, p. 1), paragraph 90, confirmed by the Judgment of the European Court of First Instance in Joined Cases T-24/93 to T-26/93 and T-28/93 *Compagnie Maritime Belge and Others* v *Commission* [1996] ECR II-1201, paragraph 205. TAA Decision, cited above in footnote 14, paragraphs 288-296, confirmed by the Judgment of the European Court of First Instance in Case T-395/94 *Atlantic Container Line and Others* v *Commission* (hereinafter the 'TAA Judgment'), paragraphs 72-74; Commission Decision 1999/243/EC of 16 September 1998 (Case IV/35.134 — *Trans-Atlantic Conference Agreement*) (hereinafter the 'TACA Decision') (OJ L 95, 9.4.1999, p. 1), paragraphs 386-396, Commission Decision 2003/68/EC of 14 November 2002 (Case COMP/37.396 — *Revised TACA*) (hereinafter the 'Revised TACA Decision') (OJ L 26, 31.1.2003, p. 53), paragraph 73.

([20]) For guidance on the application of the effect on trade, see the Authority Guidelines on the effect of trade concept contained in Articles 53 and 54 of the EEA Agreement, cited above in footnote 17.

([21]) OJ L 200, 16.7.1998, p. 48 and EEA Supplement No 28, 16.7.1998, p. 3.

([22]) Notice on market definition, cited above in footnote 21, paragraph 8.

([23]) Notice on market definition, cited above in footnote 21, paragraph 13.

([24]) TAA Decision, cited above in footnote 14, and TACA Decision, cited above in footnote 19, paragraphs 60-84. The market definition in the TACA Decision was confirmed by the European Court of First Instance in its judgment in Joined Cases T-191/98, T-212/98 to 214/98 *Atlantic Container Line AB and Others* v *Commission* [2003] ECR II-3275 (hereinafter the 'TACA judgment'), paragraphs 781-883.

([25]) Paragraph 62 of the TACA Decision, cited above in footnote 19, and paragraphs 783-789 of the TACA Judgment, cited above in footnote 24.

19. It may be appropriate under certain circumstances to define a narrower product market limited to a particular type of product transported by sea. For example, the transport of perishable goods could be limited to reefer containers or include transport in conventional reefer vessels. While it is possible in exceptional circumstances for some substitution to take place between break bulk and container transport ([26]), there appears to be no lasting change over from container towards bulk. For the vast majority of categories of goods and users of containerised goods, break bulk does not offer a reasonable alternative to containerised liner shipping ([27]). Once cargo becomes regularly containerised, it is unlikely ever to be transported again as non-containerised cargo ([28]). To date containerised liner shipping is therefore mainly subject to one way substitutability ([29]).

20. The relevant geographic market consists of the area where the services are marketed, generally a range of ports at each end of the service, determined by ports' overlapping catchment areas. As far as the European end of the service is concerned, to date the geographical market in liner cases has been identified as a range of ports in northern Europe or in the Mediterranean. As liner shipping services from the Mediterranean are only marginally substitutable for those from northern European ports, these have been identified as separate markets ([30]).

2.3.2. *Tramp services*

21. The Authority has not yet applied Article 53 of the EEA Agreement to tramp shipping. Undertakings may consider the following elements in their assessment inasmuch as they are relevant to the tramp shipping services they provide.

Elements to take into account when determining the relevant product market from the demand-side (demand substitution)

22. The 'main terms' of an individual transport request are a starting point for defining relevant service markets in tramp shipping since they generally identify the essential elements ([31]) of the transport requirement at issue. Depending on the transport users' specific needs, they will be made up of negotiable and non-negotiable elements. Once identified, a negotiable element of the main terms, for example the vessel type or size, may indicate, for instance, that the relevant market with respect to this specific element is wider than laid down in the initial transport requirement.

23. The nature of the service in tramp shipping may differ and there is a variety of transport contracts. It may be necessary, therefore, to ascertain whether the demand side considers the services provided under time charter contracts, voyage charter contracts and contracts of affreightment to be substitutable. Should this be the case they may belong to the same relevant market.

24. Vessel types are usually subdivided into a number of standard industrial sizes ([32]). Due to considerable economies of scale, a service with a significant mismatch between cargo volume and vessel size may not be able to offer a competitive freight rate. Therefore, the substitutability of different vessel sizes needs to be assessed case by case so as to ascertain whether each vessel size constitutes a separate relevant market.

([26]) TACA Decision, cited above in footnote 19, paragraph 71.
([27]) TAA Judgement, cited above in footnote 18, paragraph 273 and TACA Judgment, cited above in footnote 24, paragraph 809.
([28]) TAA Judgment, cited above in footnote 19, paragraph 281, Commission Decision of July 2005 in Case COMP/M.3829 — *MAERSK/PONL* (OJ C 147, 17.6.2005, p. 18), paragraph 13.
([29]) TACA Decision, cited above in footnote 19, paragraphs 62-75, TACA Judgment, cited above in footnote 24, paragraph 795 and Commission Decision in *MAERSK/PONL*, cited above in footnote 28, paragraphs 13 and 112-117.
([30]) TACA Decision, cited above in footnote 19, paragraphs 76-83 and Revised TACA Decision, cited above in footnote 19, paragraph 39.
([31]) For voyage charter, for instance, the essential elements of a transport requirement are the cargo to be carried, the cargo volume, the loading and discharging ports, the laydays or the ultimate date by which the cargo has to arrive and technical details regarding the vessel required.
([32]) It appears to be the industry's perception that vessel sizes constitute separate markets. The trade press and the Baltic Exchange publish price indexes for each standard vessel size. Consultants' reports divide the market on the basis of vessel sizes.

Elements to take into account when determining the relevant product market from the supply-side (supply substitution)

25. The physical and technical conditions of the cargo to be carried and the vessel type provide the first indications as to the relevant market from the supply side ([33]). If vessels can be adjusted to transport a particular cargo at negligible cost and in a short time-frame ([34]), different tramp shipping service providers are able to compete for the transport of this cargo. In such circumstances, the relevant market from the supply side will comprise more than one type of vessel.

26. However, there are a number of vessel types that are technically adapted and/or specially built to provide specialised transport services. Although specialised vessels may also carry other types of cargo, they may be at a competitive disadvantage. The ability of specialised service providers to compete for the transport of other cargo may, therefore, be limited.

27. In tramp shipping, port calls are made in response to individual demand. Mobility of vessels may however be limited by terminal and draught restrictions or environmental standards for particular vessel types in certain ports or regions.

Additional considerations to take into account when determining the relevant product market

28. The existence of chains of substitution between vessel sizes in tramp shipping should also be considered. In certain tramp shipping markets, vessel sizes at the extreme of the market are not directly substitutable. Chain substitution effects may nevertheless constrain pricing at the extremes and lead to their inclusion in a broader market definition.

29. In certain tramp shipping markets, consideration must be given to whether vessels can be considered as captive capacity and should not be taken into account when assessing the relevant market on a case-by-case basis.

30. Additional factors such as the reliability of the service provider, security, safety and regulatory requirements may influence supply and demand-side substitutability, for example the double hull requirement for tankers in EEA waters ([35]).

Geographic dimension

31. Transport requirements usually contain geographic elements such as the loading and discharging ports or regions. These ports provide the first orientation for the definition of the relevant geographic market from the demand-side, without prejudice to the final definition of the relevant geographic market.

32. Certain geographic markets may be defined on a directional basis or may occur only temporarily for instance when climatic conditions or harvest periods periodically affect the demand for transport of particular cargos. In this context, repositioning of vessels, ballast voyages and trade imbalances should be considered for the delineation of relevant geographic markets.

2.4. **Calculation of market shares**

33. Market shares provide useful first indications of the market structure and of the competitive importance of the parties and their competitors. The Authority and the Commission interprets market shares in the

([33]) For example, liquid bulk cargo cannot be carried on dry bulk vessels or reefer cargo cannot be transported on car carriers. Many oil tankers are able to carry dirty and clean petroleum products. However, a tanker cannot immediately carry clean products after having transported dirty products.

([34]) Switching a dry bulk vessel from the transport of coal to grain might require only a one-day cleaning process that might be done during a ballast voyage. In other tramp shipping markets, this cleaning period may be longer.

([35]) Regulation (EC) No 417/2002 of the European Parliament and of the Council of 18 February 2002 on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) No 2978/94 (OJ L 64, 7.3.2002, p. 1) was incorporated into Chapter V point 56m of Annex XIII to the EEA Agreement by EEA Joint Committee Decision No 132/2002 (OJ L 336, 12.12.2002, p. 32 and EEA Supplement No 61, 12.12.2002, p. 26).

light of the market conditions on a case-by-case basis. In liner shipping, volume and/or capacity data have been identified as the basis for calculating market shares in several Commission decisions and judgments of the European Court of Justice ([36]).

34. In tramp shipping markets, service providers compete for the award of transport contracts, that is to say, they sell voyages or transport capacity. Depending on the specific services in question, various data may allow operators to calculate their annual market shares ([37]), for instance:

(a) the number of voyages;

(b) the parties' volume or value share in the overall transport of a specific cargo (between port pairs or port ranges);

(c) the parties' share in the market for time charter contracts;

(d) the parties' capacity shares in the relevant fleet (by vessel type and size).

3. HORIZONTAL AGREEMENTS IN THE MARITIME TRANSPORT SECTOR

35. Cooperation agreements are a common feature of maritime transport markets. Considering that these agreements may be entered into by actual or potential competitors and may adversely affect the parameters of competition, undertakings must take special care to ensure that they comply with the competition rules. In service markets, such as maritime transport, the following elements are particularly relevant for the assessment of the effect an agreement may have in the relevant market: prices, costs, quality, frequency and differentiation of the service provided, innovation, marketing and commercialisation of the service.

36. Three issues are of particular relevance to the services covered by these Guidelines: technical agreements, exchanges of information and pools.

3.1. **Technical agreements**

37. Certain types of technical agreements may not fall under the prohibition set out in Article 53 of the EEA Agreement on the ground that they do not restrict competition. This is the case, for instance, of horizontal agreements the sole object and effect of which is to implement technical improvements or to achieve technical cooperation. Agreements relating to the implementation of environmental standards can also be considered to fall into this category. Agreements between competitors relating to price, capacity or other parameters of competition will, in principle, not fall into this category ([38]).

3.2. **Information exchanges between competitors in liner shipping**

38. An information exchange system entails an arrangement on the basis of which undertakings exchange information amongst themselves or supply it to a common agency responsible for centralising, compiling and processing it before returning it to the participants in the form and at the frequency agreed.

39. It is common practice in many industries for aggregate statistics and general market information to be gathered, exchanged and published. This published market information is a good means to increase market transparency and customer knowledge, and thus may produce efficiencies. However, the

([36]) TACA Decision, cited above in footnote 19, paragraph 85, the Revised TACA Decision, cited above in footnote 19, paragraphs 85 and 86 and the TACA Judgment, cited above in footnote 24, paragraphs 924, 925 and 927.

([37]) Depending on the specificities of the relevant tramp shipping market shorter periods may be envisaged, e.g. in markets where contracts of affreightment are tendered for periods of less than one year.

([38]) Commission Decision 2000/627/EC of 16 May 2000 (Case IV/34.018 — *Far East Trade Tariff Charges and Surcharges Agreement (FETTCSA)*) (OJ L 268, 20.10.2000, p. 1), paragraph 153. Judgment of the European Court of First Instance in Case T-229/94 *Deutsche Bahn AG* v *Commission* [1997] ECR II-1689, paragraph 37.

exchange of commercially sensitive and individualised market data can, under certain circumstances, breach Article 53 of the EEA Agreement. These Guidelines are intended to assist providers of liner shipping services in assessing when such exchanges breach the competition rules.

40. In the liner shipping sector, exchanges of information between shipping lines taking part in liner consortia which otherwise would fall under Article 53(1) of the EEA Agreement are permitted to the extent that they are ancillary to and necessary for the joint operation of liner transport services and the other forms of cooperation covered by the block exemption in Regulation (EC) No 823/2000 as incorporated into the EEA Agreement ([39]). The present Guidelines do not deal with these information exchanges.

3.2.1. *In general*

41. In assessing information exchange systems under EEA competition law, the following distinctions must be made.

42. The exchange of information may be a facilitating mechanism for the implementation of an anti-competitive practice, such as monitoring compliance with a cartel; where an exchange of information is ancillary to such an anti-competitive practice its assessment must be carried out in combination with an assessment of that practice. An exchange of information may even have in itself the object of restricting competition ([40]). These Guidelines do not address such exchanges of information.

43. However, an exchange of information, in its own right, might constitute an infringement of Article 53 of the EEA Agreement by reason of its effect. This situation arises when the information exchange reduces or removes the degree of uncertainty as to the operation of the market in question with the result that competition between undertakings is restricted ([41]). Every economic operator must determine autonomously the policy which it intends to pursue on the market. The European Court of Justice further considered that undertakings are, therefore, precluded from direct or indirect contacts with other operators which influence the conduct of a competitor or reveal their own (intended) conduct if the object or effect of those contacts is to restrict competition, i.e. to give rise to conditions of competition which do not correspond to the normal conditions of the market in question, taking into account the nature of the products or the services provided, the size and number of the undertakings and the volume of the market ([42]). By contrast, in the wood pulp market, the European Court of Justice has found that unilateral quarterly price announcements made independently by producers to users constitute in themselves market behaviour which does not lessen each undertaking's uncertainty as to the future attitude of its competitors and hence, in the absence of any preliminary concerted practice between producers, do not constitute in themselves an infringement of Article 81(1) of the EC (now Article 102(1) of the TFEU) ([43]).

44. The case law of the European Community courts provides some general guidance in examining the likely effects of an information exchange. The European Court of Justice has found that where there is a truly competitive market, transparency is likely to lead to intensification of competition between suppliers ([44]). However, on a highly concentrated oligopolistic market, on which competition is

([39]) Regulation (EC) No 823/2000, cited above in footnote 11, applies to international liner transport services from or to one or more EEA ports exclusively for the carriage of cargo chiefly by container — see Article 1, Article 2 and Article 3(2)(g) thereof.

([40]) Judgment of the European Court of Justice in Case C-49/92 P *Commission* v *Anic Partecipazioni* [1999] ECR I-4125, paragraphs 121 to 126.

([41]) Judgments of the European Court of Justice in Case C-7/95 P *John Deere* v *Commission* [1998] ECR I-3111, paragraph 90 and in Case C-194/99 P *Thyssen Stahl* v *Commission* [2003] ECR I-10821, paragraph 81.

([42]) Judgment of the European Court of Justice in Case C-238/05 *Asnef-Equifax* v *Asociación de Usuarios de Servicios Bancarios (Ausbanc)* [2006] ECR I-11125, paragraph 52 and in Case C-49/92 P *Commission* v *Anic Partecipazioni* [1999] ECR I-4125, cited above in footnote 40, paragraphs 116 and 117.

([43]) Judgement of the European Court of Justice in Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85 *A. Ahlström Osakeyhtiö and Others* v *Commission* [1993] ECR I-1307, paragraphs 59 to 65.

([44]) Judgment of the European Court of Justice in Case C-7/95 P *John Deere* v *Commission*, cited above in footnote 41, paragraph 88.

already greatly reduced, exchanges of precise information on individual sales at short intervals between the main competitors, to the exclusion of other suppliers and of consumers, are likely to impair substantially the competition that exists between suppliers. In such circumstances, the sharing, on a regular and frequent basis, of information concerning the operation of the market has the effect of periodically revealing to all competitors the market positions and strategies of the various individual competitors ([45]). The European Court of Justice has also found that an information exchange system may constitute a breach of the competition rules even when the market is not highly concentrated, but there is a reduction of the undertakings' decision-making autonomy resulting from pressure during subsequent discussions with competitors ([46]).

45. It follows that the actual or potential effects of an information exchange must be considered on a case-by-case basis as the results of the assessment depend on a combination of factors, each specific to an individual case. The structure of the market where the exchange takes place and the characteristics of the information exchange are two key elements that the Authority examines when assessing an information exchange. The assessment must consider the actual or potential effects of the information exchange compared to the competitive situation that would result in the absence of the information exchange agreement ([47]). To be caught by Article 53(1) of the EEA Agreement, the exchange must have an appreciable adverse impact on the parameters of competition ([48]).

46. The guidance below mainly relates to the analysis of a restriction of competition under Article 53(1) of the EEA Agreement. Guidance on the application of Article 53(3) of the EEA Agreement is to be found in paragraph 58 below and in the general notice on the subject ([49]).

3.2.2. *Market structure*

47. The level of concentration and the structure of supply and demand on a given market are key issues in considering whether an exchange falls within the scope of Article 53(1) of the EEA Agreement ([50]).

48. The level of concentration is particularly relevant since, on highly concentrated oligopolistic markets, restrictive effects are more likely to occur and are more likely to be sustainable than in less concentrated markets. Greater transparency in a concentrated market may strengthen the interdependence of firms and reduce the intensity of competition.

49. The structure of supply and demand is also important, notably the number of competing operators and the symmetry and stability of their market shares and the existence of any structural links between competitors ([51]). The Authority may also analyse other factors such as the homogeneity of services and the overall transparency in the market.

3.2.3. *Characteristics of the information exchanged*

50. The exchange of commercially sensitive data relating to the parameters of competition, such as price, capacity or costs, between competitors, is more likely to be caught by Article 53(1) of the EEA Agreement than other exchanges of information. The commercial sensitivity of information should be assessed taking into account the criteria set out below.

([45]) Judgment of the European Court of First Instance in Case T-35/92 *John Deere Ltd* v *Commission* [1994] ECR II-957, paragraph 51, upheld on appeal by the Judgment of the European Court of Justice in Case C-7/95 P *John Deere Ltd* v *Commission*, cited above in footnote 41.

([46]) Judgment of the European Court of First Instance in Case T-141/94 *Thyssen Stahl AG* v *Commission* [1999] ECR II-347, paragraphs 402 and 403.

([47]) Judgment of the European Court of Justice in Case C-7/95 P *John Deere Ltd* v *Commission*, cited above in footnote 41, paragraphs 75-77.

([48]) Guidelines on the application of Article 53(3) of the EEA Agreement, cited above in footnote 10, paragraph 16.

([49]) Guidelines on the application of Article 53(3) of the EEA Agreement, cited above in footnote 10.

([50]) Guidelines on the application of Article 53(3) of the EEA Agreement, cited above in footnote 10, paragraph 25.

([51]) In liner shipping, there are operational and/or structural links between competitors, for example membership of consortia agreements that allow shipping lines to share information for the purposes of providing a joint service. The existence of any such link will have to be taken into account on a case-by-case basis when assessing the impact an additional exchange of information has in the market in question.

51. The exchange of information already in the public domain does not in principle constitute an infringement of Article 53(1) of the EEA Agreement ([52]). However, it is important to establish the level of transparency of the market and whether the exchange enhances information by making it more accessible and/or combines publicly available information with other information. The resulting information may become commercially sensitive and its exchange potentially restrictive of competition.

52. Information may be individual or aggregated. Individual data relates to a designated or identifiable undertaking. Aggregate data combines the data from a sufficient number of independent undertakings so that the recognition of individual data is impossible. The exchange of individual information between competitors is more likely to be caught by Article 53(1) of the EEA Agreement ([53]) than the exchange of aggregated information which, in principle, does not fall within Article 53(1) of the EEA Agreement. The Authority will pay particular attention to the level of aggregation. It should be such that the information cannot be disaggregated so as to allow undertakings directly or indirectly to identify the competitive strategies of their competitors.

53. However, in liner shipping caution should be used when assessing exchanges of capacity forecasts even in aggregate form, especially when they take place in concentrated markets. In liner markets, capacity data is the key parameter to coordinate competitive conduct and it has a direct effect on prices. Exchanges of aggregated capacity forecasts indicating in which trades capacity will be deployed may be anticompetitive to the extent that they may lead to the adoption of a common policy by several or all carriers and result in the provision of services at above competitive prices. Additionally, there is a risk of disaggregation of the data as it can be combined with individual announcements by liner carriers. This would enable undertakings to identify the market positions and strategies of competitors.

54. The age of the data and the period to which it relates are also important factors. Data can be historic, recent or future. Exchange of historic information is generally not regarded as falling within Article 53(1) of the EEA Agreement because it cannot have any real impact on the undertakings' future behaviour. In past cases, the Commission has considered information which was more than one year old as historic ([54]) whereas information less than one year old has been viewed as recent ([55]). The historic or recent nature of the information should be assessed with some flexibility taking into account the extent to which data becomes obsolete in the relevant market. The time when the data becomes historic is likely to be shorter if the data is aggregated rather than individual. Exchanges of recent data on volume and capacity are similarly unlikely to be restrictive of competition if the data is aggregated to an appropriate level such that individual shippers' or carriers' transactions cannot be identified either directly or indirectly. Future data relates to an undertaking's view of how the market will develop or to the strategy it intends to follow in that market. The exchange of future data is particularly likely to be problematic, especially when it relates to prices or output. It may reveal the commercial strategy an undertaking intends to adopt in the market. In so doing, it may appreciably reduce rivalry between the parties to the exchange and is thus potentially restrictive of competition.

55. The frequency of the exchange should also be considered. The more frequently the data is exchanged, the more swiftly competitors can react. This facilitates retaliation and ultimately lowers the incentives to initiate competitive actions on the market. So-called hidden competition could be restricted.

56. How data is released should also be looked into to assess the effect(s) it may have on the market(s). The more the information is shared with customers, the less likely it is to be problematic. Conversely, if market transparency is improved for the benefit of suppliers only, it may deprive customers of the possibility of getting the advantage of increased 'hidden competition'.

([52]) TACA Judgment, cited above in footnote 24, paragraph 1154.

([53]) Commission Decision 78/252/EEC of 23 December 1977 in Case IV/29.176 — *Vegetable Parchment* (OJ L 70, 13.3.1978, p. 54).

([54]) Commission Decision 92/157/EEC of 17 February 1992 in Case IV/31.370 — *UK Agricultural Tractor Registration Exchange* (OJ L 68, 13.3.1992, p. 19), paragraph 50.

([55]) Commission Decision 98/4/ECSC of 26 November 1997 in Case IV/36.069 — *Wirtschaftsvereinigung Stahl* (OJ L 1, 3.1.1998, p. 10), paragraph 17.

57. In liner shipping, price indexes are used to show average price movements for the transport of a sea container. A price index based on appropriately aggregated price data is unlikely to infringe Article 53(1) of the EEA Agreement, provided that the level of aggregation is such that the information cannot be disaggregated so as to allow undertakings directly or indirectly to identify the competitive strategies of their competitors. If a price index reduces or removes the degree of uncertainty as to the operation of the market with the result that competition between undertakings is restricted, it would violate Article 53(1) of the EEA Agreement. In assessing the likely effect of such a price index on a given relevant market, account should be given to the level of aggregation of the data and its historical or recent nature and the frequency at which the index is published. In general, it is important to assess all individual elements of any information exchange scheme together, in order to take account of potential interactions, for example between exchange of capacity and volume data on the one hand and of a price index on the other.

58. An exchange of information between carriers that restricts competition may nonetheless create efficiencies, such as better planning of investments and more efficient use of capacity. Such efficiencies will have to be substantiated and passed on to customers and weighed against the anti-competitive effects of the information exchange in the framework of Article 53(3) of the EEA Agreement. In this context, it is important to note that one of the conditions of Article 53(3) of the EEA Agreement is that consumers should receive a fair share of the benefits generated by the restrictive agreement. If all four cumulative conditions set out in Article 53(3) of the EEA Agreement are fulfilled, the prohibition of Article 53(1) of the EEA Agreement does not apply ([56]).

3.2.4. *Trade associations*

59. In liner shipping, as in any other sector, discussions and exchanges of information can take place in a trade association provided the association is not used as (a) a forum for cartel meetings ([57]), (b) a structure that issues anti-competitive decisions or recommendations to its members ([58]) or (c) a means of exchanging information that reduces or removes the degree of uncertainty as to the operation of the market with the result that competition between undertakings is restricted while not fulfilling the Article 53(3) conditions ([59]). This should be distinguished from the discussions that are legitimately conducted within trade associations, for example on technical and environmental standards.

3.3. **Pool agreements in tramp shipping**

60. The most recurrent form of horizontal cooperation in the tramp shipping sector is the shipping pool. There is no universal model for a pool. Some features do, however, appear to be common to most pools in the different market segments as set out below.

61. A standard shipping pool brings together a number of similar vessels ([60]) under different ownership and operated under a single administration. A pool manager is normally responsible for the commercial management (for example, joint marketing ([61]), negotiation of freight rates and centralisation of incomes and voyage costs) ([62]) and the commercial operation (planning vessel movements and instructing vessels, nominating agents in ports, keeping customers updated, issuing freight invoices, ordering bunkers, collecting the vessels' earnings and distributing them under a pre-arranged weighting system etc.). The pool manager often acts under the supervision of a general executive committee

([56]) Guidelines on the application of Article 53(3) of the EEA Agreement, cited above in footnote 10.
([57]) Commission Decision 2004/421/EC of 16 December 2003 in Case COMP/38.240 — *Industrial tubes* (OJ L 125, 28.4.2004, p. 50).
([58]) Commission Decision 82/896/EEC of 15 December 1982 in Case IV/29.883 — *AROW/BNIC* (OJ L 379, 31.12.1982, p. 1), Commission Decision 96/438/EC of 5 June 1996 in Case IV/34.983 — *Fenex* (OJ L 181, 20.7.1996, p. 28).
([59]) Commission Decision 92/157/EEC, *UK Agricultural Tractor Registration Exchange*, cited above in footnote 54.
([60]) This results in the pool being able to attract large contracts of affeightment, combine various contracts of affeightment and reduce the number of ballast legs by careful fleet planning.
([61]) For example, the pool's vessels are marketed as one commercial unit offering transport solutions regardless of which ship performs the actual voyage.
([62]) For example, the pool's income is collected by the central administration and revenue is distributed to the participants based on a complex weighting system.

representing the vessel owners. The technical operation of vessels is usually the responsibility of each owner (safety, crew, repairs, maintenance etc.). Although they market their services jointly, the pool members often perform the services individually.

62. It follows from this description that the key feature of standard shipping pools is joint selling, coupled with some features of joint production. The guidance on both joint selling, as a variant of a joint commercialisation agreement, and joint production in the Authority Guidelines on the applicability of Article 53 of the EEA Agreement to horizontal cooperation agreements ([63]) is therefore relevant. Given the variation in pools' characteristics, each pool must be analysed on a case-by-case basis to determine, by reference to its centre of gravity ([64]), whether it is caught by Article 53(1) of the EEA Agreement and, in the affirmative, if it fulfils the four cumulative conditions of Article 53(3) of the EEA Agreement.

63. Pools that fall within the scope of Council Regulation (EC) No 139/2004 ([65]) because they are created as a joint venture performing on a lasting basis all the functions of an autonomous economic entity (so-called full-function joint ventures, see Article 3(4) of Council Regulation (EC) No 139/2004) are not directly affected by the changes brought about by Council Regulation (EC) No 1419/2006 and are not dealt with in these Guidelines. Guidance on full-functionality can be found, inter alia, in the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings ([66]). Insofar as such pools have as their object or effect the coordination of the competitive behaviour of their parents, the coordination shall be appraised in accordance with the criteria of Article 53(1) and (3) of the EEA Agreement with a view to establishing whether or not the operation is compatible with the functioning of the EEA Agreement ([67]).

3.3.1. *Pools that do not fall under Article 53(1) of the EEA Agreement*

64. Pool agreements do not fall under the prohibition of Article 53(1) of the EEA Agreement if the participants to the pool are not actual or potential competitors. This would be the case, for instance, when two or more ship-owners set up a shipping pool for the purpose of tendering for and performing contracts of affreightment for which as individual operators they could not bid successfully or which they could not carry out on their own. This conclusion is not invalidated in cases where such pools occasionally carry other cargo representing a small part of the overall volume.

65. Pools whose activity does not influence the relevant parameters of competition because they are of minor importance and/or do not appreciably affect trade between EEA States ([68]) are not caught by Article 53(1) of the EEA Agreement. A pool does not however come within the scope of the Authority Notice on agreements of minor importance if it involves price-fixing, including joint selling.

3.3.2. *Pools that generally fall under Article 53(1) of the EEA Agreement*

66. Pool agreements between competitors limited to joint selling have as a rule the object and effect of coordinating the pricing policy of these competitors ([69]).

([63]) Respectively in Section 5 and Section 3 of the Guidelines, cited above in footnote 9.
([64]) Guidelines on horizontal cooperation agreements, cited above in footnote 9, paragraph 12.
([65]) Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the 'EC Merger Regulation') (OJ L 24, 29.1.2004, p. 1), incorporated into Chapter A point 1 of Annex XIV to the EEA Agreement by EEA Joint Committee Decision No 78/2004 (OJ L 219, 19.6.2004, p. 13 and EEA Supplement No 32, 19.6.2004, p. 1).
([66]) OJ C 95, 16.4.2008, p. 1.
([67]) Council Regulation (EC) No 139/2004, cited above in footnote 65, Article 2(4).
([68]) Authority Notice on agreements of minor importance which do not appreciably restrict competition under Article 53(1) of the EEA Agreement (*de minimis*) (OJ C 67, 20.3.2003, p. 20 and EEA Supplement to the OJ No 15, 20.3.2003 p. 11) and Guidelines on the effect on trade concept, cited above in footnote 17.
([69]) Guidelines on the applicability of Article 53 of the EEA Agreement to horizontal cooperation agreements, cited above in footnote 9, Section 5. The activities of an independent ship-broker when 'fixing a vessel' do not fall into this category.

3.3.3. *Pools that may fall under Article 53(1) of the EEA Agreement*

67. If the pool does not have as its object a restriction of competition, an analysis of its effects in the market concerned is necessary. An agreement is caught by Article 53(1) of the EEA Agreement when it is likely to have an appreciable adverse impact on the parameters of competition on the market such as prices, costs, service differentiation, service quality, and innovation. Agreements can have this effect by appreciably reducing rivalry between the parties to the agreement or between them and third parties ([70]).

68. Some tramp shipping pools do not involve joint selling but nevertheless entail some degree of coordination on the parameters of competition (e.g. joint scheduling or joint purchasing). Such cases are only subject to Article 53(1) of the EEA Agreement if the parties to the agreement have some degree of market power ([71]).

69. The pool's ability to cause appreciable negative market effects depends on the economic context, taking into account the parties' combined market power and the nature of the agreement together with other structural factors in the relevant market. It must also be considered whether the pool agreement affects the behaviour of the parties in neighbouring markets closely related to the market directly affected by the cooperation ([72]). This may be the case for example where the pool's market is that for the transport of forest products in specialised box shaped vessels (market A) and the pool's members also operate ships in the dry bulk market (market B).

70. Concerning the structural factors in the relevant market, if the pool has a low market share, it is unlikely to produce restrictive effects. Market concentration, the position and number of competitors, the stability of market shares over time, multi-membership in pools, market entry barriers and the likelihood of entry, market transparency, countervailing buying power of transport users and the nature of the services (for example, homogenous versus differentiated services) should be taken into account as additional factors in assessing the impact of a given pool on the relevant market.

71. With regard to the nature of the agreement, consideration should be given to clauses affecting the pool or its members' competitive behaviour in the market such as clauses prohibiting members from being active in the same market outside the pool (non-compete clauses), lock-in periods and notice periods (exit clauses) and exchanges of commercially sensitive information. Any links between pools, whether in terms of management or members as well as cost and revenue sharing, should also be considered.

3.3.4. *Applicability of Article 53(3) of the EEA Agreement*

72. Where pools are caught by Article 53(1) of the EEA Agreement, the undertakings involved need to ensure that they fulfil the four cumulative conditions of Article 53(3) of the EEA Agreement ([73]). Article 53(3) of the EEA Agreement does not exclude *a priori* certain types of agreements from its scope. As a matter of principle all restrictive agreements that fulfil the four conditions of Article 53(3) of the EEA Agreement are covered by the exception rule. This analysis incorporates a sliding scale. The greater the restriction of competition found under Article 53(1) of the EEA Agreement, the greater the efficiencies and the pass-on to consumers must be.

73. It is up to the undertakings involved to demonstrate that the pool improves the transport services or promotes technical or economic progress in the form of efficiency gains. The efficiencies generated cannot be cost savings that are an inherent part of the reduction of competition but must result from the integration of economic activities.

([70]) Guidelines on the application of Article 53(3), cited above in footnote 10.
([71]) Guidelines on the applicability of Article 53 of the EEA Agreement to horizontal cooperation agreements, cited above in footnote 9, paragraph 149.
([72]) Guidelines on the applicability of Article 53 of the EEA Agreement to horizontal cooperation agreements, cited above in footnote 9, paragraph 142.
([73]) Guidelines on the application of Article 53(3) of the EEA Agreement, cited above in footnote 10.

74. Efficiency gains of pools may for instance result from obtaining better utilisation rates and economies of scale. Tramp shipping pools typically jointly plan vessel movements in order to spread their fleets geographically. Spreading vessels may reduce the number of ballast voyages which may increase the overall capacity utilisation of the pool and eventually lead to economies of scale.

75. Consumers must receive a fair share of the efficiencies generated. Under Article 53(3) of the EEA Agreement, it is the beneficial effects on all consumers in the relevant market that must be taken into consideration, not the effect on each individual consumer ([74]). The pass-on of benefits must at least compensate consumers for any actual or potential negative impact caused to them by the restriction of competition under Article 53(1) of the EEA Agreement ([75]). To assess the likelihood of a pass-on, the structure of tramp shipping markets and the elasticity of demand should also be considered in this context.

76. A pool must not impose restrictions that are not indispensable to the attainment of the efficiencies. In this respect, it is necessary to examine whether the parties could have achieved the efficiencies on their own. In making this assessment it is relevant to consider, inter alia, what is the minimum efficient scale to provide various types of services in tramp shipping. In addition, each restrictive clause contained in a pool agreement must be reasonably necessary to attain the claimed efficiencies. Restrictive clauses may be justified for a longer period or the whole life of the pool or for a transitional period only.

77. Lastly, the pool must not afford the parties the possibility of eliminating competition in respect of a substantial part of the services in question.

([74]) Judgment of the European Court of Justice in Case C-238/05 *Asnef-Equifax* v *Ausbanc*, cited above in footnote 42, paragraph 70.

([75]) Guidelines on the application of Article 53(3) of the EEA Agreement, cited above in footnote 10, paragraph 24.

V

(Announcements)

ADMINISTRATIVE PROCEDURES

EUROPEAN COMMISSION

CALL FOR PROPOSALS — EACEA/5/12

MEDIA 2007 — Development, distribution, promotion and training

Training

(2012/C 35/07)

1. **Objectives and description**

This notice of a call for proposals is based on Decision No 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007) ([1]).

One of the measures to be implemented under this Decision involves improving the continuous vocational training of professionals in the audiovisual sector, so as to give them the know-how and skills needed to create competitive products on the European and other markets.

The call for proposals EACEA/5/12 is the last continuous training call to be launched under MEDIA 2007 and offers a two-year framework partnership agreement.

2. **Eligible candidates**

Applicants must be registered in one of the following countries:

— the 27 countries of the European Union,

— the EEA countries: Iceland, Liechtenstein and Norway,

— Croatia and Switzerland.

This notice is addressed to candidates in one of the categories of establishment below whose activities contribute to the abovementioned measures:

— film and television schools,

— universities,

— specialist vocational training establishments,

— private companies in the audiovisual sector,

— organisations/professional associations specialising in the audiovisual sector.

3. **Eligible actions**

The following actions and their activities, taking place in the MEDIA countries, are eligible:

actions aiming at developing the capacity of audiovisual professionals to understand and integrate a European dimension to their work by improving expertise in the following fields:

([1]) OJ L 327, 24.11.2006, p. 12.

— training in economic, financial and commercial management,

— training in new audiovisual technologies,

— training in script project development.

Projects shall last for a maximum period of 12 months.

4. **Award criteria**

Points will be allocated to eligible applications out of a total of 100 on the basis of the following weighing:

— quality of the content of the activity (20 points),

— project management (20 points),

— quality of the partnership with the AV industry (20 points),

— European dimension (20 points),

— impact (20 points).

5. **Budget**

The maximum amount available under this call for proposals is EUR 7 000 000.

The financial support from the Commission cannot exceed 50 % or 60 % of the total eligible costs.

The Agency reserves the right not to allocate all the available funds.

6. **Deadline for submission**

The deadline for sending in applications is **16 April 2012**.

Applications must be sent to the following address:

Education, Audiovisual and Culture Executive Agency (EACEA)
Call for proposals EACEA/5/12
Mr Constantin DASKALAKIS
BOUR 3/30
Avenue du Bourget/Bourgetlaan 1
1140 Bruxelles/Brussel
BELGIQUE/BELGIË

Only applications presented on the correct form, duly completed, dated and signed by the person empowered legally to bind the applicant organisation will be accepted.

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

7. **Complete information**

The guidelines of the call for proposals, as well as the application forms, are available at the following address:

http://ec.europa.eu/culture/media/programme/training/forms/index_en.htm

Applications must be submitted using the form provided and must contain all of the appendices and information requested.

Extract from the court decision regarding Akcinė bendrovė bankas SNORAS pursuant to Directive 2001/24/EC of the European Parliament and of the Council on the reorganisation and winding-up of credit institutions (hereinafter 'the Directive')

(2012/C 35/08)

INVITATION TO LODGE A CLAIM. TIME LIMITS TO BE OBSERVED

On 7 December 2011, Vilnius Regional Court adopted a decision to initiate bankruptcy proceedings in respect of the public limited liability company bank SNORAS (Akcinė bendrovė bankas SNORAS, legal entity code: 112025973, VAT registration number: LT120259716, registered office: A. Vivulskio g. 7, Vilnius, Lithuania, registered in the Register of Legal Entities (hereinafter 'AB bankas SNORAS')) in civil Case No B2-7791-611/2011, judicial proceedings No 2-55-3-03098-2011-9. The Court appointed Mr Neil Cooper as administrator of AB bankas SNORAS. The part of the decision relating to the initiation of bankruptcy proceedings entered into force on 20 December 2011 and AB bankas SNORAS acquired the status of a company in bankruptcy. The bankruptcy proceedings in respect of AB bankas SNORAS constitute winding-up proceedings within the meaning of the Directive.

Under Vilnius Regional Court's decision of 7 December 2011, creditors are entitled to lodge financial claims that arose prior to the date of initiation of bankruptcy proceedings within one month of the entry into force of the decision to initiate bankruptcy proceedings. By its decision of 13 January 2012, Vilnius Regional Court extended the time limit for creditors of AB bankas SNORAS to lodge claims that arose prior to the date of initiation of bankruptcy proceedings to 10 February 2012 (inclusive). This means that creditors have until 10 February 2012 (inclusive) to submit claims to the bankruptcy administrator. For the submission of claims, it is recommended to use the claim form published on the bank's website at http://www.snoras.com

Claims, together with all attachments, should be sent to the following address:

Bankrutuojanti AB bankas SNORAS
A. Vivulskio g. 7
LT-03221 Vilnius
LIETUVA/LITHUANIA

Any creditor whose domicile or registered office is in Lithuania must lodge his/her claim in Lithuanian. Any creditor of the bank whose domicile or registered office is in another Member State of the European Union may lodge a claim in the official language of that State. However, a Lithuanian translation of the claim must be attached, in which case the claim must bear the heading 'Reikalavimo pateikimas' in Lithuanian. The form must be signed by an authorised person. Creditors must also specify the nature of the claim, the date on which it arose and the amount of the claim and provide information on any securities held.

If creditors fail to lodge a claim and/or their claims are lodged after the expiry of the above mentioned time limit or not all the required information is submitted, those claims may be refused. However, the Court may accept creditors' claims submitted after the expiry of the time limit specified above if it deems the reasons for missing the deadline to be compelling.

Further information on the lodging of claims can be found on the website at http://www.snoras.com

Vilnius, Lithuania, 17 January 2012.

Administrator of Akcinė bendrovė bankas SNORAS (in bankruptcy) (acting as its agent without personal liability)

Neil COOPER

CORRIGENDA

Corrigendum to the calls for proposals under the annual work programme 2011 for grants in the field of the Trans-European Transport Network (TEN-T) for the period 2007-2013 (Commission Decision C(2011) 1772 as amended by Commission Decision C(2011) 9531)

(Official Journal of the European Union C 7 of 10 January 2012)

(2012/C 35/09)

The Directorate-General for Mobility and Transport of the European Commission is hereby announcing a corrigendum to the annual call for proposals for projects under the annual work programme for the Trans-European Transport Network (TEN-T) for the period 2007-2013, as published in OJ C 7, 10.1.2012, p. 6.

The corrected text of the call for proposals is available at:

http://tentea.ec.europa.eu/en/apply_for_funding/follow_the_funding_process/annual_call_2011.htm

2012 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 1 200 per year
EU Official Journal, L + C series, paper + annual DVD	22 official EU languages	EUR 1 310 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 840 per year
EU Official Journal, L + C series, monthly DVD (cumulative)	22 official EU languages	EUR 100 per year
Supplement to the Official Journal (S series), tendering procedures for public contracts, DVD, one edition per week	multilingual: 23 official EU languages	EUR 200 per year
EU Official Journal, C series — recruitment competitions	Language(s) according to competition(s)	EUR 50 per year

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual DVD.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

Sales and subscriptions

Subscriptions to various priced periodicals, such as the subscription to the *Official Journal of the European Union*, are available from our sales agents. The list of sales agents is available at:

http://publications.europa.eu/others/agents/index_en.htm

EUR-Lex (http://eur-lex.europa.eu) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: http://europa.eu

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN