

Official Journal of the European Union

C 212



English edition

Information and Notices

Volume 63

26 June 2020

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⁽¹⁾ Text with EEA relevance.

I

(Resolutions, recommendations and opinions)

RECOMMENDATIONS

EUROPEAN SYSTEMIC RISK BOARD

RECOMMENDATION OF THE EUROPEAN SYSTEMIC RISK BOARD

of 27 May 2020

on restriction of distributions during the COVID-19 pandemic

(ESRB/2020/7)

(2020/C 212/01)

THE GENERAL BOARD OF THE EUROPEAN SYSTEMIC RISK BOARD,

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

Having regard to Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macroprudential oversight of the financial system and establishing a European Systemic Risk Board ⁽¹⁾, and in particular Article 3(2)(b), (d) and (f) and Articles 16 to 18 thereof,

Having regard to Decision ESRB/2011/1 of the European Systemic Risk Board of 20 January 2011 adopting the Rules of Procedure of the European Systemic Risk Board ⁽²⁾, and in particular Article 15(3)(e) and Articles 18 to 20 thereof,

Whereas:

- (1) The coronavirus disease 2019 (COVID-19) crisis has developed rapidly from a dramatic medical emergency into a severe economic shock, which has the potential to evolve into a systemic financial crisis. It is neither certain for how long this crisis will last, nor how severe it may be. It is clear that there is a need for financial institutions to maintain a sufficiently high amount of capital to mitigate systemic risk and contribute to economic recovery.
- (2) A number of European Systemic Risk Board (ESRB) member institutions, namely the European Banking Authority ⁽³⁾ (EBA), the European Insurance and Occupational Pensions Authority ⁽⁴⁾ (EIOPA), the European Central Bank ⁽⁵⁾ (ECB) and many national authorities have encouraged banks, insurers and reinsurers in the Union to refrain from making voluntary pay-outs (e.g. dividends, bonuses, and share buybacks aimed at remunerating shareholders). These measures can enhance the resilience of the financial sector, strengthening its capacity to lend to the real economy in stressed conditions and reducing the risk of failures of financial institutions due to COVID-19 related risks.

⁽¹⁾ OJ L 331, 15.12.2010, p. 1.

⁽²⁾ OJ C 58, 24.2.2011, p. 4.

⁽³⁾ <https://eba.europa.eu/eba-provides-additional-clarity-on-measures-mitigate-impact-covid-19-eu-banking-sector>.

⁽⁴⁾ https://www.eiopa.europa.eu/content/eiopa-statement-dividends-distribution-and-variable-remuneration-policies-context-covid-19_en.

⁽⁵⁾ Recommendation ECB/2020/19 of the European Central Bank of 27 March 2020 on dividend distributions during the COVID-19 pandemic and repealing Recommendation ECB/2020/1 (OJ C 102 I, 30.3.2020, p. 1).

- (3) The ESRB is responsible for the macroprudential oversight of the financial system within the Union and should contribute to the smooth functioning of the internal market thereby ensuring a sustainable contribution of the financial sector to economic growth. Whilst the ESRB welcomes and fully supports the initiatives of its member institutions, it also considers it necessary to issue a recommendation to ensure that financial institutions across the financial sector that may pose a risk to financial stability maintain high levels of capital.
- (4) This Recommendation acknowledges the procyclical behaviour of banks, as well as the fact that they play a critical function in the economy. It aims at limiting banks' profit and capital distribution in order to increase their resilience during the crisis and promote necessary lending to the real economy. It also aims at reducing the risk that in instances where governments support banks during the crisis, shareholders and senior management shift capital allocation for their own benefit. In addition, if banks use dividend payments as a signal of strength to the market, such actions could undermine the relative position of more prudent financial institutions that may become stigmatised. The latter argument speaks in favour of broad-based, coordinated and mandatory action. Investment firms are included in the list of financial institutions under this Recommendation, as they play an important role in market functioning and may present similar risks to banks.
- (5) This Recommendation recognises the risk imposed by this crisis on the solvency of insurers and reinsurers. It is probable that there will be a reduction in cash flows from new business, combined with higher liabilities due to an extended period of very low interest rates and lower asset returns in the future. Given that insurers and reinsurers play a critical role in the financial sector there is also the risk of a common de-risking strategy, such as the sale of higher-yield corporate bonds, which would be amplified by large scale downgrades. In addition, the same argument raised for banks concerning dividend payments being a signal of strength to the market and the associated stigma of restrictions also pertains to insurers and reinsurers.
- (6) This Recommendation is designed to cover central counterparties (CCPs) given their systemically important role in clearing financial market transactions. By maintaining additional own resources, CCPs would be able to meet non-default losses, which is particularly relevant with regard to operational risk, which CCPs cover with their own resources rather than contributions from clearing members. This Recommendation will ensure consistency across financial institutions at a time where CCPs revenues might benefit from higher market transactions volumes, and where relevant, will allow CCPs to increase their skin-in-the-game in the default waterfall on a voluntary basis, in light of generally increased risks due to higher market volatility. Finally, it is envisaged that the maintenance of own funds in CCPs would reduce the likelihood of recourse to tax-payers money in case of losses (related or not to defaults) in a time where fiscal spending is already particularly under pressure. Overall, it is important for CCPs to maintain adequate prefunded own resources in addition to initial margins and default funds.
- (7) This Recommendation intends to cover those actions by financial institutions that result in a reduction in the amount and quality of their own funds or in a reduction of their loss absorbing capacity for the duration of the COVID-19 related crisis. This includes payment of dividends, buy-backs of ordinary shares and paying variable remuneration. If a financial institution wanted to replace ordinary shares, this would be in compliance with this Recommendation.
- (8) This Recommendation acknowledges the principles governing the Single Market and the growth-enhancing role of free capital movement and risk sharing within the Union. It aims to account for risks of potential negative externalities arising from cross-border financial institution decisions during distressed times. A flight to safety or a home-bias as often realised during times of financial distress can have negative effects on local economies. This Recommendation advocates that the relevant authorities enter a dialogue when considering imposing pay-out restrictions on subsidiaries of Union financial institutions.
- (9) Regulatory regimes vary across sectors and Member States and relevant authorities should consider using any supervisory tool available to them, both under Union and national law, such as recommendations or guidelines, to achieve the objectives of this Recommendation, to the extent permitted by law.

- (10) This Recommendation provides for a list of financial institutions which should, as a minimum, be subject to the restrictions. Authorities are free to impose the restrictions on other financial institutions that provide lending to the real economy, such as financial leasing companies.
- (11) This Recommendation is designed to support the previous initiatives of the ECB, EBA, EIOPA and national authorities and to strengthen the case for a uniform approach across the Union and across different segments of the financial sector, whilst taking into account the critical role of these segments for the real economy during crisis times. The ultimate aim is to have sufficient levels of capital and loss absorbing capacity remaining in the financial institutions to mitigate the impact of the current crisis and thereby contribute to a smoother recovery for the pan-European economy as a whole.
- (12) This Recommendation is without prejudice to the monetary policy mandates of the central banks in the Union.
- (13) Recommendations of the ESRB are published after the addressees have been informed, and after the General Board has informed the Council of the European Union of its intention to do so and provided the Council with an opportunity to react,

HAS ADOPTED THIS RECOMMENDATION:

SECTION 1

RECOMMENDATION

Recommendation A – Restriction on distributions

It is recommended that at least until 1 January 2021 relevant authorities request financial institutions under their supervisory remit ⁽⁶⁾ to refrain from undertaking any of the following actions:

- (a) make a dividend distribution or give an irrevocable commitment to make a dividend distribution;
- (b) buy-back ordinary shares;
- (c) create an obligation to pay variable remuneration to a material risk taker,

which has the effect of reducing the quantity or quality of own funds at the EU group level (or at the individual level where the financial institution is not part of an EU group), and, where appropriate, at the sub-consolidated or individual level.

SECTION 2

IMPLEMENTATION

1. Definitions

1. For the purposes of this Recommendation the following definitions apply:

- (a) ‘relevant authority’ means:
 - (i) a competent authority;
 - (ii) an authority entrusted with the adoption and/or activation of macroprudential policy measures, including but not limited to:
 - 1. a designated authority pursuant to Chapter 4 of Title VII of Directive 2013/36/EU of the European Parliament and of the Council ⁽⁷⁾ or Article 458(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽⁸⁾;
 - 2. a macroprudential authority with the objectives, arrangements, tasks, powers, instruments, accountability requirements and other characteristics set out in Recommendation ESRB/2011/3 ⁽⁹⁾;

⁽⁶⁾ This does not include branches of financial institutions.

⁽⁷⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

⁽⁸⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁽⁹⁾ Recommendation ESRB/2011/3 of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities (OJ C 41, 14.2.2012, p. 1).

- (b) 'competent authority' means the competent or supervisory authority as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013, in Article 13(10) of Directive 2009/138/EC of the European Parliament and of the Council ⁽¹⁰⁾, or referred to in Article 22 of Regulation (EU) No 648/2012 of the European Parliament and of the Council ⁽¹¹⁾, as applicable;
- (c) 'financial institution' means any of the following undertakings that have their head office or registered office in the Union:
 - (i) an institution as defined in point (3) of Article 4(1) of Regulation (EU) No 575/2013;
 - (ii) an insurance undertaking as defined in of Article 13(1) of Directive 2009/138/EC;
 - (iii) a reinsurance undertaking as defined in Article 13(4) of Directive 2009/138/EC;
 - (iv) a central counterparty as defined in Article 2(1) of Regulation (EU) No 648/2012;
- (d) 'material risk taker' means a member of a category of staff whose professional activities have a material impact on the financial institution's risk profile, including a member of a category of staff referred to in Article 92(2) of Directive 2013/36/EU or point (c) of Article 275(1) of Commission Delegated Regulation (EU) 2015/35 ⁽¹²⁾ or the senior management of a central counterparty as defined in Article 2(29) of Regulation (EU) No 648/2012, as applicable;
- (e) 'resolution authority' means the authority as defined in point (18) of Article 2(1) of Directive 2014/59/EU ⁽¹³⁾.

2. Exemptions

Relevant authorities may exempt a financial institution from the restriction to undertake any of the actions in points (a) to (c) of Recommendation A if that financial institution is legally obliged to undertake that action.

3. Criteria for implementation

1. The following criteria apply to the implementation of this Recommendation by the relevant authorities:
 - (a) due regard should be paid to the principle of proportionality, taking into account, in particular, the nature of financial institutions and their ability to contribute to the mitigation of systemic risk to financial stability that arises from the COVID-19 crisis and to the economic recovery;
 - (b) regulatory arbitrage should be avoided;
 - (c) relevant authorities should regularly assess the impact of restrictions on distributions they have imposed in light of the objectives of this Recommendation.
2. The following specific criteria apply to the implementation of Recommendation A(a) and (b): In assessing whether it is appropriate to apply the restrictions at sub-consolidated or at individual level, relevant authorities are recommended to adhere to the following principles:
 - (a) **Principle 1:** Whilst taking into account the need to prevent or mitigate systemic risk to financial stability in their Member State and in the Union, relevant authorities should support the smooth functioning of the internal market and recognise the need for the financial sector to provide a sustainable contribution to economic growth in Member States and the Union as a whole.
 - (b) **Principle 2:** Relevant authorities should ensure that any restriction does not entail disproportionate adverse effects on the whole or parts of the financial system in other Member States or in the Union as a whole.
 - (c) **Principle 3:** Relevant authorities should closely cooperate with each other and with the relevant resolution authorities, including in colleges, where applicable.

⁽¹⁰⁾ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

⁽¹¹⁾ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

⁽¹²⁾ Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

⁽¹³⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

4. Timeline for the follow-up

In accordance with Article 17(1) of Regulation (EU) No 1092/2010 addressees must communicate to the European Parliament, the Council, the Commission and to the ESRB the actions undertaken in response to this Recommendation or substantiate any inaction. Communications must be sent by submitting the form in the Annex by 31 July 2020.

5. Amendments to this Recommendation

The General Board will decide if and when this Recommendation needs to be amended. Such amendments could include, in particular, extending the period during which Recommendation A applies.

6. Monitoring and assessment

1. The General Board will assess the actions and justifications communicated by the addressees and, where appropriate, may decide that this Recommendation has not been followed and that an addressee has failed to provide adequate justification for its inaction.
2. The methodology set out in the Handbook on the assessment of compliance with ESRB recommendations, which describes the procedure for assessing compliance with ESRB recommendations will not apply.

Done at Frankfurt am Main, 27 May 2020.

*The Head of the ESRB Secretariat,
on behalf of the General Board of the ESRB*
Francesco MAZZAFERRO

ANNEX

Communication of the actions undertaken in response to this Recommendation**1. Details of addressee**

Recommendation	
Country of the Addressee	
Institution	
Capacity (*)	
Name and contact details of the respondent	
Date of communication	

(*) Please indicate in what capacity you respond, i.e. the competent or supervisory authority under point (40) of Article 4(1) of Regulation (EU) No 575/2013, Article 13(10) of Directive 2009/138/EC, the competent authority referred to in Article 22 of Regulation (EU) No 648/2012, or the macroprudential authority.

2. Communication of actions

Recommendation	Do you comply? (yes/no/not applicable)	Please describe the actions taken to comply	If you do not comply, or comply partially, provide adequate justification	Please provide the details (e.g. link, Government Gazette, publication number) of the measure adopted in response to this Recommendation
Recommendation A(a)				
Recommendation A(b)				
Recommendation A(c)				

3. Notes

1. This form is used for the communication required by Article 17(1) of Regulation (EU) No 1092/2010.
2. Each addressee should submit the completed form to the ESRB via the ESRB Secretariat electronically via DARWIN in the dedicated folder or by email to notifications@esrb.europa.eu. (The ESRB Secretariat will arrange for the transmission of the communications to the European Parliament, the Council and the Commission, on an aggregated basis).
3. Addressees are expected to provide all relevant information and documentation related to the implementation of this Recommendation and the criteria for implementation, including information on the substance (such as on the legal form of the measure and on the type of financial institutions covered) and timing of the actions taken.
4. If an addressee only partially complies, it should provide a full explanation of the extent of non-compliance, as well as other details of partial compliance. The explanation should specify clearly the relevant parts of the recommendation which the addressees do not comply with.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates ⁽¹⁾

25 June 2020

(2020/C 212/02)

1 euro =

Currency			Exchange rate		
Currency			Exchange rate		
USD	US dollar	1,1200	CAD	Canadian dollar	1,5282
JPY	Japanese yen	120,25	HKD	Hong Kong dollar	8,6805
DKK	Danish krone	7,4534	NZD	New Zealand dollar	1,7465
GBP	Pound sterling	0,90133	SGD	Singapore dollar	1,5600
SEK	Swedish krona	10,4865	KRW	South Korean won	1 347,73
CHF	Swiss franc	1,0637	ZAR	South African rand	19,4883
ISK	Iceland króna	155,60	CNY	Chinese yuan renminbi	7,9206
NOK	Norwegian krone	10,8748	HRK	Croatian kuna	7,5670
BGN	Bulgarian lev	1,9558	IDR	Indonesian rupiah	15 988,00
CZK	Czech koruna	26,796	MYR	Malaysian ringgit	4,7914
HUF	Hungarian forint	354,35	PHP	Philippine peso	56,075
PLN	Polish zloty	4,4653	RUB	Russian rouble	77,7516
RON	Romanian leu	4,8420	THB	Thai baht	34,647
TRY	Turkish lira	7,6776	BRL	Brazilian real	6,0012
AUD	Australian dollar	1,6321	MXN	Mexican peso	25,6315
			INR	Indian rupee	84,7120

⁽¹⁾ Source: reference exchange rate published by the ECB.

Commission Statement following the presentation of Commission Directive (EU) 2020/739 to the European Parliament and the Council in respect of the prevention and protection of the health and safety of workers that are or can be occupationally exposed to SARS-CoV-2

(2020/C 212/03)

1. The Commission is committed to achieving the best possible level of protection of the health and safety of workers in the Union. Since the pandemic started, the EU and its Member States have taken unprecedented measures to protect lives and livelihoods. The EU supported national efforts to tackle the health crisis and cushion the impact of the economic hit. It freed-up every available euro in its budget to fight the virus and used the full flexibility in the budgetary and State aid rules. It took several initiatives to ensure availability of personal protective equipment to help protect citizens and workers.
2. The Commission stresses that the proposal for REACT-EU will provide additional resources for the Structural Funds for the period 2020 to 2022 at the amount of EUR 58,3 billion. This will amongst other support workers, including their protection in the face of the SARS-COV-2, support SMEs, health systems and the green and digital transitions, and will be available across sectors.
3. The Commission considers that Commission Directive (EU) 2020/739 ⁽¹⁾ brings a significant improvement of the existing level of protection by including SARS-CoV-2, the virus that causes COVID-19, in Annex III of the Biological Agents Directive 2000/54/EC of the European Parliament and of the Council ⁽²⁾, in particular as regards the protection of frontline workers.
4. The Commission recalls that as regards health and safety at work, the Framework Council Directive 89/391/EEC ⁽³⁾ lays down a non-negotiable obligation for all employers to carry out and hold a full and up-to-date **risk assessment** according to its Articles 6 and 9. This implies that all risks – including the exposure to SARS-CoV-2 – at the workplace need to be considered and assessed together, including with its interaction of psychosocial, biological, chemical and other risks.
5. The Commission stresses that as a result, relevant **preventive and protective measures** shall be put in place, including in the specific case of possible exposure to SARS-CoV-2 and that the employer shall provide all the necessary **information** concerning the complete safety and health risks and the full protective and preventive measures and activities in respect of both the undertaking and/or establishment in general and each type of workstation and/or job.
6. The Commission also recalls that adequate **training** to workers who may be exposed to SARS-CoV-2 is also of the utmost importance as well as the right for every worker to receive such training, in particular in the form of information and instructions specific to his workstation or job.
7. The Commission further draws the attention to the following specific and stringent health and safety obligations laid down in the Biological Agents Directive 2000/54/EC:
 - Article 6, which includes **detailed measures for the reduction of risks**, including collective and individual protective measures, hygiene measures, work processes to avoid or minimise exposure, and use of relevant warning signs;
 - Article 8 on **hygiene and individual protection**, which establishes, amongst other, the right for workers to be provided with appropriate protective clothing or other appropriate special clothing;
 - Article 9 on **information and training**, which provides workers with the right to receive clear information concerning for instance potential risks to health, precautions to be taken to prevent exposure, hygiene, and wearing and using personal protective equipment;

⁽¹⁾ OJ L 175, 4.6.2020, p. 11.

⁽²⁾ OJ L 262, 17.10.2000, p. 21.

⁽³⁾ OJ L 183, 29.6.1989, p. 1.

— Article 10, which requires employers to provide **written instructions and to display notices** including the procedure to be followed for the cases of a serious accident or incident involving the handling of a biological agent independent of its group classification.

8. The Commission stresses that all the above-mentioned provisions **apply to all workers and all workplaces**. The only exception is paragraph 1(b) in Article 10. This provision refers to instructions for workers handling a group 4 agent, which is mentioned as a minimum requirement and does not therefore exclude that this would apply to other workers and which refers to workers who are actually handling the virus and not to those who are unintentionally exposed to it. The Commission strongly encourages Member States to ensure that written instructions are provided to all workers exposed to SARS-CoV-2, as also recommended in the EU guidance on protecting workers ⁽⁴⁾.
9. The Commission confirms its determination to ensure strict implementation by the Member States, including the obligation to provide written instruction at the workplace and, if appropriate, display notices, which shall as a minimum include the procedure to be followed in the case of workers exposed to this biological agent. It will invite the Senior Labour Inspectors Committee to carry out supporting enforcement actions in this regard. In close cooperation with the tripartite Advisory Committee for Safety and Health at Work, the Commission will promote at the workplace level the inclusion in all cases of the procedures to be followed as good practice in this area and will also task EU-OSHA to include this good practice in the related **on-line risk assessment tool and guidance**.
10. The Commission highlights that, as the SARS-CoV-2 virus has been classified in risk group 3 in line with SARS-CoV-1 and MERS this implies that in material terms the specific and stringent rights and obligations set out in articles 7, 11, 13, 14(4), 15 and 16 will be covered. These include the right and related obligation to an **emergency plan**, to a **list of workers exposed** (indicating the type of work done as well as records of exposures, accidents and incidents), to a **prior notification** to the competent authority of the use for the first time, to **medical records** being kept for a defined number of years or to the containment measures indicated in Annexes V and VI.
11. The Commission further stresses that there is **no difference in workers' protection** according to the group 3 or 4 classification outside laboratories or industrial process that handle and manipulate samples of the virus, for example to develop or produce a vaccine, or isolation facilities where there are patients who are, or who are suspected of being, infected with the virus.
12. These facilities follow the provisions of Annex V and VI specific to these processes. These provisions apply **without any room for flexibility for group 4 agents**. Most of them also apply to group 3, with the most stringent ones being 'recommended', meaning that they apply in principle unless the results of the risk assessment indicate otherwise.
13. The Commission notes that in line with Annex III point 6 of the Biological Agents Directive, the list of classified biological agents reflects the state of knowledge at the time that it was devised and that it will be **updated** as soon as it no longer reflects the latest state of knowledge. The Commission recognizes that science is in constant evolution and therefore commits to keeping this categorisation under constant review in the light of scientific developments. This is also in line with Article 19 of the Biological Agents Directive as well as Article 16 of the Framework Directive 89/391/EEC. The Commission commits to **keep European Parliament and Council regularly informed** of the results of such reviews.
14. The Commission stresses that the new measures are already in place and that Member States must transpose them into national law within 5 months at the latest. The Commission will support Member States **transpose the measures with the shortest possible delay**. The Commission notes in this context that several Member States are already applying the group 3 classification as set out in Directive (EU) 2020/739.

⁽⁴⁾ COVID-19: BACK TO THE WORKPLACE — Adapting workplaces and protecting workers.

15. The Commission will address in the **new Strategic Framework on Health and Safety at Work** the need for further actions to improve the functioning of the regulatory existing EU Health and Safety framework, inter alia, in pandemic situations. The Commission will ensure the close involvement of the European Parliament, the Advisory Committee for Safety and Health at work and the Senior Labour Inspectors Committee to this effect.
 16. The Commission will without delay assess the need to amend the Biological Agents Directive following the lessons learnt from the unprecedented crisis in view of better preparedness and response planning in all workplaces and inform the European Parliament by the end of 2020.
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V

*(Announcements)*PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION
POLICY

EUROPEAN COMMISSION

Prior notification of a concentration**(Case M.9830 – Avacon Natur/NEW AG/Stadtentfalter JV)****Candidate case for simplified procedure****(Text with EEA relevance)**

(2020/C 212/04)

1. On 18 June 2020, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ⁽¹⁾.

This notification concerns the following undertakings:

- NEW Smart City GmbH ('NEW Smart City', Germany), belonging to the group NEW AG ('NEW', Germany),
- Avacon Natur GmbH ('Avacon Natur', Germany), ultimately controlled by E.ON SE ('E.ON'),
- Stadtentfalter GmbH ('Stadtentfalter', Germany).

NEW Smart City and Avacon Natur acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of Stadtentfalter.

The concentration is accomplished by way of purchase of shares in a newly created company constituting a joint venture.

2. The business activities of the undertakings concerned are:

- Avacon Natur operates several thermal power stations and sells electricity, gas and district heating and cooling,
- NEW Smart City is active in smart city solutions and e-mobility,
- Stadtentfalter will be active in the construction and operation of district heating and cooling networks, including construction of plants for cooling and heat generation and supply, generation of electricity for sale within these networks and district heating/cooling related consultancy, engineering and management services.

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

Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under the Council Regulation (EC) No 139/2004 ⁽²⁾ it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

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

⁽²⁾ OJ C 366, 14.12.2013, p. 5.

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

Observations must reach the Commission not later than 10 days following the date of this publication. The following reference should always be specified:

M.9830 – Avacon Natur/NEW AG/Stadtentfalter JV

Observations can be sent to the Commission by email, by fax, or by post. Please use the contact details below:

E-mail: COMP-MERGER-REGISTRY@ec.europa.eu

Fax +32 22964301

Postal address:

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



Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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