

# Notification to the Data Protection Officer under Article 25 of the Rules on Data Protection (Decision 235/16/COL) (“the Rules”)

Changes affecting the information contained in the notification must be notified promptly to the Data Protection Officer, see Article 25(3) of the Rules.

Date of submission: 22.12.2017

## Part 1: Processing

- Unit responsible for the processing operation:  
Competition and State Aid Directorate (“CSA”)
- Name of processing operation:  
Processing of data in the context of the EFTA Surveillance Authority’s **merger control** proceedings and EEA merger cooperation proceedings.
- General description of the processing operation:  
Processing of data in the context of the Authority’s merger control and EEA merger cooperation proceedings pursuant to Article 5 of the Rules, Article 57 of the EEA Agreement, Protocol 24 to the EEA Agreement, Chapter IV and Chapter V of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice on the rules relating to control of concentrations and Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the “EC Merger Regulation”) and the implementing rules on the EU side, in particular, Commission Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004, as amended (the “Implementing Regulation”)<sup>1</sup>.

In spite of the above, and as explained further in Part 2 below, the rules on jurisdiction in the EEA Agreement are such that the European Commission in practice handles all EEA merger cases. The Authority has to date not had jurisdiction over a concentration with an “EFTA dimension”.

See also document no. 865405 for further *description of processing of data in merger proceedings*, which is filed under case no. 80285 in GoPro.

- Sub-contractors:  
Not applicable

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<sup>1</sup> [Consolidated version](#) of the [Commission Regulation \(EC\) No 802/2004](#) of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “Implementing Regulation”) and its annexes (Form CO, Short Form CO, Form RS and Form RM) (Official Journal L 133, 30.04.2004, p. 1-39), as amended by [Commission Regulation \(EC\) No 1033/2008](#) (Official Journal L 279, 22.10.2008, p. 3-12) and by [Commission Implementing Regulation \(EU\) No 1269/2013](#) of 5 December 2013 (Official Journal L 336, 14.12.2013, p. 1-36).

- Automated / Manual operations:

All documents concerning merger cases are stored by case number in the Authority's case management system called "GoPro". Documents are stored in different formats: most often pdf format, word, excel or PowerPoint. Occasionally other technical formats are used. GoPro also contains procedural steps and case information, such as the composition of the case team, relevant legal basis, type of case, name(s) of undertaking(s) concerned etc.

Access to GoPro is restricted to the Authority's personnel and national experts on secondment using the Authority's IT infrastructure. Access may be subject to specific security settings in individual cases and documents may be marked as protected in which case specific users, usually the case team, can only consult them.

Searches can be made in GoPro, e.g., by case number, name of the undertaking, legal basis etc.

For further information on *GoPro procedures*, see a separate document no. 858099. For information on the *email system* see document no. 846314 and for information on *Backup procedures*, see document no. 854436. All of these documents on procedures are filed in GoPro under case no. 80285.

- Storage:

All documents received are stored electronically in the case file in GoPro. For further information see the aforementioned document on *GoPro procedures* no. 858099.

- Security measures:

Access to the electronic files is restricted to personnel using the Authority's IT infrastructure. In addition, entrance to the Authority's premises is restricted. Furthermore, open CSA files are access controlled to specific CSA personnel.

For further information on security measures applicable to GoPro and the email system, see document no. 858099 on *GoPro procedures* and document no. 846314 on the *email system*, filed in GoPro under case no. 80285.

## Part 2: Purpose and legal basis

- The purpose(s) of the processing operation:

The purpose of processing personal data in merger cases is to allow the Authority to assess the impact on the market of a notified concentration in the territory of the EFTA States. Information that is collected and further processed by the Authority is only used in evidence for the purpose of applying the EEA merger control rules.

The processing is carried out within the meaning of Articles 5(a) and (b) of the rules on Data Protection. Data may only be processed where necessary for the Authority's EEA merger control tasks and on a legal basis.

Cooperation between the European Commission and the Authority in merger control is governed by the terms of Protocol 24 to the EEA Agreement on cooperation in the field of concentrations.<sup>2</sup>

Article 57 of the EEA Agreement provides for a division of jurisdiction between the Authority and the Commission.<sup>3</sup> The Authority has to date not had jurisdiction over a concentration with an “EFTA dimension”. The rules on jurisdiction in the EEA Agreement are such that the Commission in practice handles all EEA merger cases.

The notification forms contain the facts and circumstances that are relevant for taking a decision on the notified concentration. The information required by the notification forms include, inter alia, contact details of the notifying parties, names and functions of the members of the boards or representatives, contact persons of main competitors, suppliers, customers and relevant trade associations, and, as the case may be, contact details and shareholdings of individuals who control more than one undertaking, or contact details and CVs of trustees for monitoring commitments.

Information that is collected and further processed by the Authority relates to undertakings that are subject to EEA merger control rules. Such information is only used by the Authority for the purpose of effectively assessing a proposed concentration in terms of its effect on the structure of competition in the territory of the EFTA States.

- The legal basis of the processing operation:
  1. Articles 57 and 58 of the EEA Agreement
  2. Annex XIV to the EEA Agreement
  3. Chapter IV and Chapter V of Protocol 4 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice on the rules relating to control of concentrations
  4. Protocol 24 to the EEA Agreement on cooperation in the field of control of concentrations (OJ L 1, 3.1.1994, p. 188–191)
  5. Council Regulation (EC) No 139/2004 (OJ L 24, 29.01.2004, p.1-22)
  6. Commission Regulation (EC) No 802/2004 (OJ L 133, 30.04.2004, p. 1-39)
  7. Commission Regulation (EC) No 1033/2008 of 20 October 2008 amending Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 279, 22/10/2008, p. 3–12)
  8. Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 amending Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 336, 14/12/2013, p. 1–36)

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<sup>2</sup> If the annual turnover of the combined merging firms exceeds specified thresholds in terms of world-wide and Community-wide turnover, a proposed merger or concentration must be notified to the Commission or to the Authority prior to its implementation. The turnover thresholds are set out in the EC Merger Regulation and in Annex XIV to the EEA Agreement.

<sup>3</sup> Concentrations, which fall under the scope of the EC Merger Regulation, shall be notified to the Commission in order to obtain the Commission’s authorisation to implement the concentration. Concentrations with an “EFTA dimension”, i.e. which do not fall under the scope of the EC Merger Regulation but where the relevant turnover thresholds set out in Annex XIV to the EEA Agreement are fulfilled in the territory of the EFTA States, shall be notified to the Authority.

9. Communication pursuant to Articles 3(2), 6(2), 13(3), 20(1), 20(1a) and 23(4) of Commission Regulation (EC) No 802/2004 (OJ C25, 28.01.2014, p.4)

Information covered by the obligation of professional secrecy may not be disclosed (Article 17 of Chapter VI in Protocol 4).

For further information on access to documents, see document no. 866126 on *Handling access to documents requests* and document no. 863894 on *Procedures for data subject requests (DSR)*, both filed under case no. 80285 in GoPro.

Article 17 of Chapter VI in Protocol 4 also guarantees that any data is collected for specified, explicit and legitimate purposes. The data may only be collected and further processed as a result of the application of the merger rules for the purpose of the relevant request, investigation or hearing, and data received in a case may not, therefore, be used for another procedure.

The merger control rules ensure that data are accurate and where necessary kept up to date, since they provide the Commission and the Authority with various instruments (e.g., written requests for information pursuant to Article 11 of Regulation 139/2004 and Article 11 of Chapter IV in Protocol 4) to check with the relevant sources whether the data are indeed accurate.

### Part 3: Data subjects/fields

- Categories of data subjects :
  1. Natural persons that are involved in an economic activity and qualify as an undertaking within the meaning of the rules on Data Protection.
  2. Complainants that are natural persons.
  3. Owners, representatives and employees of the undertakings that are subject to an investigation insofar as personal data relating to them (e.g. name, position in the company, contact details) would be processed in the context of EEA merger control.
  4. Third parties being natural persons (e.g. final customers (private household), contact persons of competitors of the undertakings concerned), insofar as personal data relating to them (e.g. name, contact details) would be processed in the context of EEA merger control.
  5. Individuals holding shares in the undertakings concerned.
  6. Employees or key personnel of the companies, in the context of examining remedies offered by the parties.
  7. Individuals that apply to act as trustee for monitoring/divesting any remedies proposed.
  
- Categories of data / Data fields:
  1. Name and contact details (e-mail address, postal address, telephone number, and title or position of the natural person in an undertaking (e.g. CEO, marketing manager, etc.)).

2. Ownership of (shares in) a company.
3. Turnover of an undertaking which is a natural person.
4. Role in a (potentially) to be divested company in view of a viability assessment of the latter (mainly organigrams).
5. Data typically inserted in a CV in the context of a candidacy for trustee (mainly professional experience relevant to the application).

## Part 4: Rights of the data subjects

- Information to be provided to the data subjects:

In order to comply with the obligations imposed by Article 12 of the Rules, CSA has drafted a Privacy Statement, explaining how it deals with data protection issues in the context of its proceedings. See document no. 868961 filed under case no. 80285 in GoPro. This Privacy Statement is made available on the Authority's website.

See also document no. 863894 on *Procedures for data subject requests (DSR)* and document no. 866128 on *Handling DP access requests*, both filed under case no. 80285 in GoPro.

In addition, the Authority will add, to the extent possible, privacy clauses in other documents, such as requests for information sent to undertakings.

- Procedure to grant rights:

Regulation 139/2004 and Protocol 4 provide guarantees that undertakings (which may include natural persons) that are the addressees of a statement of objections, or other involved parties who have been informed of the objections, have access to the merger case file.

Natural persons who are not the addressees of a statement of objections, or other involved parties who have been informed of the Authority's objections, have no such rights. Granting them right of access, blocking and erasing of data would hinder the monitoring and inspection tasks of the Authority when enforcing competition law, which is necessary to safeguard important economic or financial interests in the EEA (i.e., the proper functioning of competitive markets). The exceptions of Article 20(1) sub b) and sub e) of the rules on Data Protection (and Regulation 45/2001) therefore apply in these cases.

For further information see document no. 863894 on *Procedures for data subject access requests (DSAR)*, filed under case no. 80285 in GoPro.

- Retention policy and time limit:

The Authority conserves its EEA merger files until closure of the case, which is necessary for sound procedure. A case is considered to be pending until the Commission's or the Authority's decision becomes final, either (i) because it has been confirmed by the relevant Court or (ii) because the deadline for an appeal has expired.

After closure of the case on the Authority's side, the electronic file is closed in the case management system (GoPro) and remains in principle accessible to the Authority's staff. Furthermore, all personal data, as defined by the rules, is to be deleted from the file once a case has been closed and the data is no longer needed for any administrative purpose or for any relevant statutory or legal obligations.

All handling and resolution of data subject requests (DSRs) within the Authority shall be done in accordance with the procedures set out in document no. 863894 on *Procedures for data subject requests (DSR)*, filed under case no. 80285 in GoPro.

## Part 5: Recipients

- Categories of recipients of the data:
  1. EU Member States/EFTA States: transfer of information with competition authorities within the EEA is possible when the conditions required by Regulation 139/2004 and Article 6 of Protocol 24 to the EEA Agreement to ask for a partial or entire referral are fulfilled (Articles 4(4) and 9 of Regulation 139/2004). In these cases, National Competition Authorities are subject to national data protection laws that contain similar obligations as Regulation 45/2001 and the transfer is authorised under Article 8(a) of Regulation 45/2001.
    - a. Moreover, the Commission, and the Authority when applicable, shall transmit to the competent authorities of the EU Member States/EFTA States copies of notifications and copies of the most important documents lodged with or issued by the Commission, and the Authority when applicable, pursuant to Regulation 139/2004 / Protocol 4 (e.g., commitments offered by the parties, draft decision) (Article 19 of Regulation 139/2004 and Article 19 of Chapter IV in Protocol 4)). The transfer is done via secure platforms.
  2. Other involved undertakings, which are generally the addresses of a statement of objections: in the context of the rights of defence, parties and their representatives may have access to the file, in accordance with the procedure and safeguards provided in the specific competition legislation. Documents obtained through the 'access to file' procedure may only be used for the purpose of the relevant merger proceeding (Art. 17 of Commission Regulation No 802/2004 and Article 15 in Chapter III in Protocol 4).
    - a. Furthermore, Article 17 of Regulation 139/2004/Article 11 of Chapter VI in Protocol 4 specifies that the Commission/The Authority and the competent authorities of the EEA Member States, their officials, other servants and other persons working under the supervision of these authorities should not disclose the information they have acquired through the application of Regulation 139/2004.
  3. In case authorisations from national judicial authorities in the EFTA States are necessary, such as for conducting inspections, the Authority may have to provide to the respective judicial authority detailed explanations regarding the subject matter of inspections. However, the national judicial authority may not demand to be provided with information in the Authority's file (Article 13 Chapter VI in Protocol 4).

- Transfer of the data:

The Commission or the Authority may reveal to the parties to the procedure (which might sometimes be located outside the EU/EEA) certain documents which might contain personal data, to the extent that these are necessary for exercising the rights of defence in the context of the “access to file” procedure, as regulated in competition legislation.