Response to the European Commission's consultation on merger control in the EU - further simplification of procedures

8 June 2022

1. Introduction

1.1. The European Competition Lawyers Forum (the "ECLF")[1] is grateful for the opportunity to respond to the European Commission's (the "Commission") consultation on the draft revised Merger Implementing Regulation and the draft revised Notice on Simplified Procedure, which aims to gather stakeholder feedback on the changes that the Commission proposes.[2]

1.2. On March 26, 2021, the Commission launched a public consultation seeking views on how to improve the EU merger control procedure (the "Initial Consultation").[3] The consultation proposed policy options for a possible revision of the Notice on Simplified Procedure (the "Notice") and the Implementing Regulation, with a view to: (i) better targeting the types of transactions that merit a full review; and (ii) reducing the range of administrative costs and burdens of EU merger review borne by both the Commission and the notifying parties. The ECLF Working Group submitted a response to the consultation on 18 June 2021.[4]

1.3. Following the stakeholders' feedback to the consultation, the Commission published the draft revised Merger Implementing Regulation and the draft revised Notice on Simplified Procedure on May 6, 2021, and launched a public consultation seeking views on the proposed changes. The ECLF welcomes the general approach taken by the Commission in the draft Notice and the attempts made to lessen the burden on notifying parties and to expedite the treatment of merger notifications by the Commission.

1.4. This Paper provides observations on the implementation of the Commission's proposals to (i) expand and clarify the categories of simplified cases; (ii) streamline the review of simplified cases; (iii) streamline the review of non-simplified cases; and (iv) introduce electronic notifications, as reflected in the draft revised Merger Implementing Regulation and the draft revised Notice.

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[1] The European Competition Lawyers Forum is a group of leading practitioners in competition law from firms across the European Union. This response has been compiled by a working group of ECLF members. A list of working group members is set out at Annex 1.

[2] This response has been compiled by the ECLF Working Group and does not purport to reflect the views of all ECLF members or of their law firms (or their clients). Also, while the response has been circulated within the Working Group for comments, its contents do not necessarily reflect the views of all individual members of the Working Group.

[3] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12957-Merger-control-in-the-EU-further-simplification-of-procedures/public-consultation_en

[4] www.europeancompetitionlawyersforum.com/_files/ugd/b7d241_d5929b0f85794e6e9a7ff59fb8387ed7.pdf

2. Expanding and clarifying the categories of simplified cases

New categories of cases that can benefit from simplified treatment

2.1. The ECLF welcomes the extension of the categories of cases that can benefit from the simplified procedure, with the addition of two new categories involving vertical relationships.

2.2. In particular, the ECLF welcomes the move of categories of concentrations with marginal horizontal overlaps, from categories to which the Commission "*may also apply the simplified procedure*" in the current Notice, to categories to which the Commission "*will apply in principle the simplified procedure*" in the draft revised Notice, as proposed by the ECLF in response to the Initial Consultation.[5] As previously submitted, such a change will increase the number of cases that by default could be reviewed in simplified procedure while preserving the Commission's ability to revert to a normal merger procedure as per the safeguards.

2.3. In respect of the new category in relation to purchasing market share,[6] the ECLF would recommend that footnote 25 describing the calculation of an undertaking's purchasing share is further clarified by specifying that the relevant calculation of the undertakings' individual and combined purchasing market shares exclude captive purchases and include purchases in the merchant market only ("merchant market rule"), in line with the Commission's presumption in numerous cases. Given that merchant market shares would be the relevant purchasing shares to the risk of customer foreclosure, the ECLF would propose that the threshold at point 5(d)(ii)(bb) is limited to merchant market purchasing shares.

Flexibility clauses

2.4. The ECLF welcomes the addition of "flexibility clauses", which give the Commission discretion to treat under the simplified procedure certain concentrations which do not fall under any of the simplified treatment categories but where no competition concerns are likely. This provides for flexibility where the thresholds are slightly exceeded for horizontal overlaps, vertical relationships, or joint ventures. However, there is no flexibility in relation to the thresholds being slightly exceeded for transactions with small increment.[7] Given the flexibility clauses primarily relate to transactions where the thresholds of the Notice are exceeded only slightly, the ECLF would propose that an additional flexibility clause is also introduced to account for cases of limited increment to pre-existing vertical integration or horizontal overlaps where the HHI increment is slightly above 150 and therefore exceeds the thresholds under point 5(d)(i)(bb) and 5(d)(ii)(cc).

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[5] Response to the European Commission's consultation on merger control in the EU - further simplification of procedures, 18 June 2021, footnote 15.

[6] Draft revised Notice on Simplified Procedure, point 5(d)(ii)(bb).

[7] Draft revised Notice on Simplified Procedure, point 5(d)(ii)(cc).

2.5. The ECLF would further suggest that the flexibility clause relating to highly asymmetric market positions upstream and downstream[8] is moved to point 5 as a category of eligible concentrations suitable for treatment under the simplified procedure, thereby creating a third category of cases to which the Commission "*will apply in principle the simplified procedure*" as originally envisaged in the Initial Consultation. In line with the responses to the consultation, the ECLF recommends implementing this as originally envisaged by the consultation, i.e. as a new category of concentrations suitable for simplified treatment, as it is estimated to bring a "*moderate to significant*" reduction of burden and costs and such cases are generally regarded as unproblematic. The Commission would still retain the discretion to revert to a full assessment under the normal procedure, in particular as a result of the exclusion under point 18 ("Circumstances mentioned in the Commission's Guidelines on the assessment of horizontal and non-horizontal mergers and other special circumstances"). Nevertheless, this proposed change would provide more certainty to notifying parties.

2.6. In addition, it is important in our view that the invocation of the flexibility clause does not result in protracted discussions to decide whether a case should be treated under the simplified procedure. We would therefore recommend setting an (indicative) timetable in which a decision must be made by the Commission as to whether a case qualifies for simplified treatment and that such decision would not be subject to revision (unless new material facts or omissions emerge). The ECLF would therefore propose that the Commission considers the inclusion in the Notice of (indicative) time-limits (e.g. 10 working days) for the Commission to confirm if a case is suitable for the simplified procedure (subject to any material new facts or omissions).

Safeguards and Exclusions

2.7. The ECLF notes that the safeguards and exclusions should provide transparency and certainty to notifying parties as to when a concentration may lose the benefit of the simplified procedure despite meeting one or more of the conditions set out in point 5. With this in mind, the ECLF proposes that point 15 in relation to non-controlling shareholdings[9] is clarified and guidance is provided as to the type or level of non-controlling shareholdings it would deem "significant", and the threshold at which a company's market shares could be considered "very significant", such that the benefit of the simplified procedure is no longer available. The ECLF suggests that any such threshold for "very significant" market shares in this context should be no lower than the market share thresholds under point 5, which

[8] Draft revised Notice on Simplified Procedure, point 8(b)(ii),

[9] Draft revised Notice on Simplified Procedure, point 15 states: "*One party to the concentration may have significant non-controlling shareholdings in companies active in the market(s) where another party to the concentration is active. For example, an acquirer may have a non-controlling minority shareholding in a company active in the same market(s) as the target company or in a market upstream or downstream to the market(s) where the target is active. If those companies have a very significant market share, under certain circumstances, the concentration may not be suitable for review under the simplified procedure, even if the combined market shares of the parties to the concentration are below the thresholds set out in point 5*".

apply to controlling shareholdings (and given that non-controlling shareholdings are in question should be materially higher). Subject to the Commission also clarifying the level or type of non-controlling shareholdings that would be deemed "significant", this would provide more certainty to parties with minority shareholdings as to (i) the treatment of those non-controlling shareholdings, and (ii) the level at which those shareholdings' market shares could remove the benefit of simplified treatment.

3. Streamlining the review of simplified cases

3.1. In the ECLF's members' experience, whilst some case teams take a pragmatic approach, other case teams may adopt an overly conservative approach in dealing with simplified merger cases. As a result, pre-notification discussions can impose a significant burden on the notifying parties even for non-problematic cases. Pre-notification discussions can often turn a simplified procedure into what is in effect more akin to a standard procedure (even in cases where it is agreed in the end that a Short Form CO can be filed).

3.2. We therefore fully support the Commission's objective of further streamlining the treatment of simplified procedure cases and the proposals to (i) dispense entirely with pre-notification contacts in certain types of simplified cases; and (ii) introduce a "tick-the-box" format for Short Form COs (as well as the introduction of new categories of cases covered by the simplified procedure and flexibility clause as discussed above). While these changes are important steps in the right direction, the draft Notice still leaves significant discretion to the Commission when deciding if a case is eligible for simplified treatment or if a case should be moved from the simplified to the standard procedure. This can potentially complicate simplified procedures cases and cause unnecessary delays.

3.3. This in turn means that whether the changes which are being proposed will translate into tangible and significant improvements will also depend on how the Commission will exercise its discretion in practice. We would accordingly encourage the Commission to consider whether further clarity and certainty could be provided for notifying parties to ensure that the Commission's proposals deliver concrete efficiency gains and achieve their intended objectives.[10]

Dispensing with pre-notification discussions

3.4. The ECLF welcomes the fact that notifying parties are no longer expected under the Commission's proposals to engage in pre-notification discussions in relation to all simplified procedure cases. As noted in the previous submission of the ECLF at the time of the

[10] A possible relevant yardstick which could be used to evaluate if the objectives behind the simplification proposals are being met is the number of voluntary referrals to the Commission under Article 4(5) of the Regulation 139/2004. If the simplified procedure really is effective (both in its rules and practices adopted by the Commission) then the opportunity to benefit from one-stop-shop proceedings should convince a wider number of undertakings to voluntarily refer a case to the Commission instead of going through three or more national merger control processes with associated costs and delays (specifically for cases that fall under the simplified process and the Short Form CO), in circumstances where merger control proceedings, even for non-problematic cases, are becoming increasingly complex and time consuming in different EU jurisdictions.

Commission's initial consultation, this is consistent with the merger control regimes in several Member States which do not require or expect pre-notification discussions to be held for non-problematic cases.

3.5. In particular, we welcome the fact that the Commission is proposing to introduce a "super simplified procedure" by inviting notifying parties to notify directly without any pre-notification contacts transactions which fall within paragraphs 5(a) and 5(c) of the draft Notice, namely mergers where there is no horizontal overlaps or vertical relationship between the parties, or acquisitions of joint control over a joint venture that has no activity and assets in the EEA. We agree that prenotification discussions are superfluous for these types of cases.

3.6. The draft Notice currently stipulates that the notifying parties are, even for the so called "super simplified procedure", still expected to submit a Case Team Allocation Request ("CTAR") at least one week before the expected date of notification. However, we consider that it should be possible in practice to proceed immediately with a formal notification in the vast majority of the cases falling within paragraph 5(a) and 5(c) of the draft Notice, without any undue additional complications caused by having to file a separate CTAR.[11] Alternatively, if a Short From CO cannot be submitted concurrently with a CTAR, the period of time between submission of the CTAR and Short Form CO should be further shortened. For cases fulfilling the conditions in paragraphs 5(a) and 5(c) of the draft Notice typically the merger control process is a mere formality prior to closing of the transaction and as these cases by their very nature do not raise competition concerns, the process should be as short as feasible.

3.7. For similar reasons, the ECLF believes there is no need for pre-notification contacts to be initiated at least two weeks prior to the expected date of notification in simplified cases involving horizontal overlaps or vertical relationships between the activities of the merging parties. Based on our experience, the Commission should also be able to dispense with or at least significantly shorten pre-notification discussions in many of these cases. Notably, this is likely to be the case where a merger or joint venture concerns market(s) which have been the subject of previous EU merger control notifications and for which the Commission should therefore already have accumulated significant information and experience.

3.8. Furthermore, the draft Notice does not indicate what type of information the Commission would generally expect to receive as part of any pre-notification contacts in such simplified proceedings. If the Commission considers that a relatively long pre-notification phase is indeed needed, then it would be helpful if the Commission could specify which type of information is most relevant at this stage to permit the parties to submit a final Short Form CO as quickly as possible. It would be our preference if the pre-notification contacts could be based on either a short overview of the planned transaction and/or some specific parts of

[11] Point 5(a) of the draft Notice provides that acquisitions of a joint venture where the joint venture has no current or expected turnover in the EEA (and the parties have not planned to transfer any assets within the EEA to the joint venture) are eligible for the simplified procedure. Point 5(c) of the draft Notice provides that mergers or joint ventures where the parties do not have any horizontal or vertical overlaps are eligible for the simplified procedure.

the Short Form CO. in order to avoid a situation where a full draft of the Short Form CO has already been submitted by the time pre-notification discussions begin.

3.9. Notifying parties are also under a duty to provide information which is accurate and not misleading. It would therefore be reasonable to assume that if the parties have opted to make a formal filing, their Short Form CO is likely to be complete or that insofar as any additional information is required, it can be procured within a moderately short deadline (subject to any material errors or bad faith from the notifying parties). Indeed, the Commission always has the possibility of requesting additional information during the 25 statutory working days of the Phase I review – and in a worst-case scenario to stop the clock or declare a notification incomplete later on.

3.10. Against that background. it would in our view be unwarranted to expect as a general rule for pre-notification discussions to be initiated at least two weeks before a formal filing is made to the Commission.

3.11. Instead, we would encourage the Commission to work on the assumption that pre-notification discussions should be unnecessary in the vast majority of cases falling under the simplified procedure unless so requested by the notifying parties – and that in those (rare) instances where pre-notification discussions are nevertheless deemed necessary, their length should be kept to a strict minimum.

The introduction of a "tick-the-box" format for the Short From CO

3.12. The ECLF welcomes the introduction of a "tick-the-box" format to simplify the Short Form CO and we agree with the Commission that such a format could potentially significantly reduce the cost, administrative burden, and time spent dealing with simplified procedure cases. Such format could also enable the Commission to utilise digital solutions and tools to speed up the review process, thus further accelerating the timeframes within which merger clearances can be delivered.

3.13. The notifying parties must confirm under the revised Short Form CO that under all plausible market definitions their combined market shares remain below the relevant eligibility threshold for treatment under the simplified procedure and they are asked for these purposes to identify all plausible product and geographic markets on which such a confirmation is based.[12]

3.14. Based on the practical experience of the ECLF's members, it is not uncommon for case teams to request analysis and information in relation to many different potential market segment permutations, even though those segmentations frequently do not rest on any established precedents and/or do not reflect the relevant competitive dynamics. These requests can unnecessarily prolong pre-notification discussions and result in significant delays, especially because the parties often do not have readily available data in relation to every conceivable market segment permutation.

[12] Draft Short Form CO, Sections 8, 9 and 10.

3.15. In order not to defeat the purpose of the "tick-the-box format", it will therefore be important to ensure that a reasonable and realistic approach is adopted by the Commission to the identification of plausible markets. Otherwise, there is a risk that the simplification of the Short Form CO, however well intentioned, may not materially reduce the length of the review process for cases falling within the scope of the simplified procedure. Market definition can be a key element in determining whether the criteria for a short form filing are met, and we would therefore invite the Commission to consider the possibility of issuing further guidance on best practices in identifying plausible markets for simplified cases (e.g. specifying that in case of established practice of the Commission analysis on markets can be limited to this).

3.16. In addition, under the proposed "Safeguards and Exclusions" section of the Short Form CO, the notifying parties will be asked to confirm whether or not they fall within any one or more of the circumstances in which a case may not be suitable for simplified treatment.[13] We can foresee situations in which the notifying parties, who are under an obligation not to provide inaccurate or misleading information, may not be altogether certain on how to answer some of the questions in this section of the Short Form CO and may accordingly approach the Commission for guidance. For example, the notifying parties may seek guidance from the Commission on how to interpret the notion of "competitively valuable assets" or "significant user base" in the context of a particular transaction.

3.17. It would be helpful if the Commission could confirm in the Notice that the mere fact of seeking guidance on matters which fall within section 12 of the Short Form CO will not in and of itself be treated as an indication that a case may not be eligible for simplified treatment. In addition, the notifying parties should also be permitted, if they so wish, to submit an annex to explain or justify how they have completed Section 12 or parts thereof – and the mere submission of such an annex should also not be treated as an indication that the simplified procedure is likely to be inappropriate. Alternatively there could be an option to insert a short explanation within the body of the Short Form CO to justify why a specific type of a reply is given.

3.18. In addition, the ECLF would also invite the Commission to consider the following modifications to the Short Form CO:

3.18.1. include within the Short Form CO voluntary open fields which the parties could use to explain any replies given (if considered relevant);

3.18.2. simplify the information currently required in Section 6.2 of the Short Form CO (e.g. the means by which control is obtained and the various types of acquisition of control) which is likely to be superfluous for the purpose of analysing most mergers subject to the simplified procedure; and

[13] Draft Short Form CO, Section 11.

3.18.3. dispense with the obligation to provide copies of presentations prepared/ received by board members etc. unless specifically requested by the Commission.

3.19. Finally, the Commission is likely to receive requests for guidance and clarification(s) arising out of the new Short Form CO once it is used in practice, and it would clearly be helpful if any clarification or guidance issued by the Commission were to be publicly disseminated for example via the publication of regular updates to the Notice or via a dedicated questions and answers section on DG COMP's website (similar to what has been done e.g. in relation to financial sector regulation by the European Central Bank).

4. Streamlining the review of non-simplified cases

4.1. The ECLF is supportive of the Commission's ambition to streamline the review process and associated administrative workload for non-simplified cases. We make one general observation on improving the non-simplified procedure and provide comments on the four key proposed changes outlined in Commission's explanatory note.

General observation: reliance on market shares

4.2. Market shares, especially in narrow segments or under '*all plausible alternative product and geographic market definitions*', are an inexact science, and information may not be available.[14] We suggest that the Commission does not strictly insist on market shares under 'all plausible market definitions' (i.e. including narrow/hypothetical segments). Particularly at the beginning of engagement with notifying parties, where market shares on all plausible definitions are not readily available, we would encourage the Commission to take a more practical approach that relies less on market shares and gives more importance to internal documents, absence of third parties' complaints, closeness of competition and how many competing firms provide similar products as well as their relative size. Not having to provide detailed market share analyses (and the new requirement to provide a detailed data description)[15] for *all* plausible markets upfront, but only if internal documents or third parties raise concerns, would significantly ease the burden on the notifying parties and the Commission. To avoid creating further delays and burdens on the notifying parties the above approach would need to be restricted to limited readily available internal documents proposed by the parties in addition to the ordinary documents produced under section 5.4 of the Form CO and a determination made by the Commission early in pre-notification that further information is not required.

Proposal 1: Waivers

4.3. We are in favour of identifying parts of the Form CO that are particularly suitable for waiver requests and introducing time limits for the Commission to assess these waivers.[16] We share

[14] Draft Form CO, Section 6.

[15] Draft Form CO, Section G.

[16] Draft Form CO, Sections B.2.6 and B.4.10.

the Commission's view that waivers are particularly appropriate for the sections relating to the notifying parties' participations in other undertakings and past acquisitions of undertakings. In the ECLF's experience, notifying parties often request waivers from these information requirements, especially in relatively simple cases, but typically do not submit waiver requests for the sections on public financial support or jurisdictions outside the EEA where a concentration must be notified.[17] The first is not often applicable (or at least it was not appliable prior to Covid support packages) and the second is not a particularly burdensome section to fill in.

4.4. We would appreciate the Commission's view on waivers for internal documents, information on affected markets, total market size estimations, and capacity figures, as waivers for these Sections are often requested in relatively simple normal procedure cases. Capacity figures in particular are often not provided, except for industries where capacity is relevant for the competitive assessment. In addition, in many Form CO waiver requests for market share estimates in value and volume, competitors' market shares are requested. The ECLF would have liked to see a position on this from the Commission as well. These sections are among the most burdensome and any added flexibility would significantly add to streamlining the normal notification procedure.

4.5. Further, the ECLF would welcome more clarity on the information that the Commission could be expected to waive as "*not reasonably available*".[18] It often happens that certain information requested in the Form CO or in an RFI is not available to notifying parties or not available for the market in question generally. The draft indicates that specific pieces of information may not be reasonably available to the notifying parties in "exceptional circumstances" and provides the example of a hostile takeover – but it would be useful to understand what other examples, if any, the Commission has in mind.

Proposal 2: Limitation of information requirements for markets that benefit from flexibility clauses

4.6. We welcome the Commission's initiative to limit the information requirements for markets that benefit from the flexibility clauses of the draft Notice. Still, the information to be provided can be particularly burdensome depending on the extent to which the Commission will require the notifying parties to provide market shares under 'all plausible market definitions' (we refer to our comments above). In addition, several of the "tick the box" questions would still require burdensome clarifications. This is for example the case for non-controlling shareholdings, but also for the concept of "valuable assets", and any other grounds for exclusion where notifying parties cannot answer with an unequivocal 'no'.

Proposal 3: Pipeline products – standard tables

[17] Draft Form CO, Sections 3.4-3.5.

[18] Draft Form CO, Section B.2.

4.7. Standardised tables for overlaps in pipeline products could improve the predictability of the notification procedure.[19] However, the Commission asks for market share information on horizontal overlaps and vertical relationships involving pipeline products for 'each plausible relevant product and geographic market definition'. Our comments under 'Reliance on market shares' above apply equally here. Especially at the beginning of engagement with the notifying parties, we encourage the Commission to take a more practical approach that would rely less on market shares under all plausible definitions and give more importance to internal documents, third parties' complaints, closeness of competition and how many competing firms provide similar products as well as their relative size.

Proposal 4: Elimination of certain information requirements

4.8. We welcome the removal of the information requirements concerning cooperative agreements, trade between Member States and imports and trade association contacts entirely. We note however that this change is likely to have little practical effect, because in most cases notifying parties would be able to obtain a waiver for these information requirements or would be able to answer these questions in a high level manner.

5. Introducing electronic notifications

5.1. The ECLF welcomes the proposal to introduce the electronic notification via eTrustEx (with valid digital signature) as a default option. This measure, which was previously exceptionally taken by the Commission in the context of Covid-19 crisis, is aligned with the practice of national competition authorities of the Member States. Fully digital notifications will undoubtedly ease the notification process and save the notifying parties costs and time.

5.2. Further to this default option, the Commission foresees two alternative fall-back solutions: first, notification by means of external storage device (with valid digital signature); and, second, normally in case of total technology failure and as a last resort, notification by paper copy sent by post or handed in. These options are foreseen only upon exceptional approval of the Commission, which in our view may be too restrictive. We would propose granting that possibility without need of prior authorization. It may also be helpful to foresee the possibility within a notification of certain documents which may be confidential for certain parties to the transaction being submitted separately.

5.3. Furthermore, we would recommend that the Commission additionally considers the possibility of validly proving a technical failure impeding electronic notification (e.g. by means of a screenshot evidencing the failure plus the submission of the notification via e-mail).

5.4. Additionally, we would suggest eliminating the time limitation foreseen in Article 22(4) of the draft regulation, which foresees the acceptance of the notification only during opening hours. We would rather advocate for the possibility to submit notifications at any time

[19] Draft Form CO, Section 8.2. Pipeline products are defined as '*Pipeline products are products (or services) that undertakings intend to bring to the market in the short or medium term.*'

during a given working day, regardless of the specific working times, as is also done by national competition authorities.

6. Conclusion

6.1. The ECLF welcomes and supports the Commission's proposals to streamline and simplify the process in respect of simple transactions, and believes that the proposed updates to the Notice are a significant step towards achieving this.

6.2. As set out in more detail above, the ECLF proposes certain adjustments to the proposals in the draft Notice that would further reduce burden and costs for businesses and facilitate effective implementation of the Commission's proposals, including:

6.2.1. *Categories of simplified cases:* retaining as a category of simplified cases transactions involving asymmetric shares in vertical relationships as well as expanding the flexibility clause to include transactions with small increments. Further guidance on the application of the proposed exclusion from the simplified procedure of transactions where the parties having certain non-controlling minority shareholdings is also welcome;

6.2.2. *Simplified procedure:* dispensing with entirely or shortening the requirements for a CTAR and pre-notification discussions in certain simplified cases that are very unlikely to raise concerns and providing guidance on best practice in identifying 'plausible markets' in simplified cases, given this is key to process. In addition, the provision of guidance to notifying parties on the correct approach to responding to certain "tick-the-box" options (and regular publication of such guidance) and certain modification to streamline to the draft Short Form and allow additional information to be provided where necessary would be welcome;

6.2.3. *Non-simplified procedure:* streamlining the treatment of non-simplified cases by relying less on provision of market shares for all plausible market definitions and taking a more practical approach that gives more importance to internal documents, third party complaints, closeness of competition and number of competitors. In addition, providing further guidance on availability of waivers for additional sections of the Form CO (and introducing a time limit to consider such waivers) and further guidance on circumstance where information may not be considered 'reasonably available' would be welcome.

6.2.4. *Electronic notification:* further removing restrictions on alternatives to electronic notification and make provision for providing evidence of technical failure, as well as remove the current restrictions on submitting during working hours only.

Annex 1: Members of the ECLF working group

- **British Institute of International and Comparative Law**: Dr Liza Lovdahl Gormsen
- **Cleary, Gottlieb, Steen & Hamilton**: Antoine Winckler
- **Ellex**: Martin Mäesalu
- **Linklaters:** Nicole Kar
- **Macfarlanes:** Christophe Humpe
- **Skadden, Arps, Slate, Meagher & Flom:** Aurora Luoma (chair) and Iacovos Antoniou
- **Uría Menéndez:** Edurne Navarro