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Legislation

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Contents

II *Non-legislative acts*

INTERNATIONAL AGREEMENTS

2014/204/EU:

- ★ **Council Decision of 11 February 2014 on the signing, on behalf of the Union, and provisional application of the Arrangement between the European Union and the Kingdom of Norway on the modalities of its participation in the European Asylum Support Office** 1

Arrangement between the European Union and the Kingdom of Norway on the modalities of its participation in the European Asylum Support Office 3

REGULATIONS

- ★ **Council Implementing Regulation (EU) No 371/2014 of 10 April 2014 implementing Article 12(1) of Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran** 9

- ★ **Commission Regulation (EU) No 372/2014 of 9 April 2014 amending Regulation (EC) No 794/2004 as regards the calculation of certain time limits, the handling of complaints, and the identification and protection of confidential information ⁽¹⁾** 14

Commission Implementing Regulation (EU) No 373/2014 of 11 April 2014 establishing the standard import values for determining the entry price of certain fruit and vegetables 23

DECISIONS

- ★ **Council Decision 2014/205/CFSP of 10 April 2014 amending Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran** 25

⁽¹⁾ Text with EEA relevance

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

2014/206/EU:

- ★ **Commission Decision of 6 November 2013 on the measures implemented by Germany in favour of HoKaWe Eberswalde GmbH SA.34721 (2012/C) (ex 2012/NN) (notified under document C(2013) 7058) ⁽¹⁾** 30

2014/207/EU:

- ★ **Commission Implementing Decision of 11 April 2014 on the designation of the .eu Top Level Domain Registry ⁽¹⁾** 41

RECOMMENDATIONS

2014/208/EU:

- ★ **Commission Recommendation of 9 April 2014 on the quality of corporate governance reporting ('comply or explain') ⁽¹⁾** 43

⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 11 February 2014

on the signing, on behalf of the Union, and provisional application of the Arrangement between the European Union and the Kingdom of Norway on the modalities of its participation in the European Asylum Support Office

(2014/204/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 74 and Article 78(1) and (2), in conjunction with Article 218(5), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Regulation (EU) No 439/2010 of the European Parliament and of the Council ⁽¹⁾ provides that the European Asylum Support Office shall be open to the participation of Iceland, Liechtenstein, Norway and Switzerland as observers. Furthermore, that Regulation provides that arrangements shall be made, specifying in particular the nature, extent and manner in which those countries are to participate in the European Asylum Support Office's work.
- (2) On 27 January 2012, the Council authorised the Commission to open negotiations for an Arrangement between the European Union and the Kingdom of Norway on the modalities of its participation in the European Asylum Support Office (the 'Arrangement'). The negotiations were successfully concluded by the initialling of the Arrangement on 28 June 2013.
- (3) The Arrangement should be signed and it should be applied on a provisional basis pending the completion of the procedures for its conclusion.
- (4) As specified in recital 21 of Regulation (EU) No 439/2010, the United Kingdom and Ireland are taking part in and are bound by that Regulation. They should therefore give effect to Article 49(1) of Regulation (EU) No 439/2010 by taking part in this Decision. The United Kingdom and Ireland are therefore taking part in this Decision.
- (5) As specified in recital 22 of Regulation (EU) No 439/2010, Denmark is not taking part in and is not bound by that Regulation. Denmark is therefore not taking part in this Decision,

⁽¹⁾ Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (OJ L 132, 29.5.2010, p. 11).

HAS ADOPTED THIS DECISION:

Article 1

The signing, on behalf of the Union, of the Arrangement between the European Union and the Kingdom of Norway on the modalities of its participation in the European Asylum Support Office is hereby authorised, subject to the conclusion of the said Arrangement.

The text of the Arrangement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Arrangement on behalf of the Union.

Article 3

Pending the completion of the procedures for its conclusion the Arrangement shall be applied on a provisional basis in accordance with Article 13(3) thereof ⁽¹⁾.

Article 4

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 11 February 2014.

For the Council
The President
E. VENIZELOS

⁽¹⁾ The date from which the Arrangement will be provisionally applied will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

ARRANGEMENT**between the European Union and the Kingdom of Norway on the modalities of its participation in the European Asylum Support Office**

THE EUROPEAN UNION, hereinafter referred to as the 'EU',

of the one part, and

THE KINGDOM OF NORWAY, hereinafter referred to as 'Norway',

of the other part,

Having regard to Article 49(1) of Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office ⁽¹⁾, hereinafter referred to as the 'Regulation',

WHEREAS

- (1) The Regulation states that, to fulfil its purpose, the European Asylum Support Office, hereinafter referred to as the 'Support Office', should be open to participation by countries which have concluded agreements with the EU by virtue of which they have adopted and apply EU law in the field covered by the Regulation, in particular, Iceland, Liechtenstein, Norway and Switzerland, hereinafter referred to as the 'associate countries',
- (2) Norway has concluded agreements with the EU, by virtue of which it has adopted and applies EU law in the field covered by the Regulation, in particular the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway ⁽²⁾,

HAVE AGREED AS FOLLOWS:

Article 1

Extent of participation

Norway shall participate fully in the work of the Support Office and be entitled to receive support actions from the Support Office as described in the Regulation and in accordance with the terms set out by this Arrangement.

Article 2

Management Board

Norway shall be represented in the Management Board of the Support Office as an observer without the right to vote.

Article 3

Financial contribution

1. Norway shall contribute to the revenue of the Support Office an annual sum calculated in accordance with its Gross Domestic Product (GDP) as a percentage of the GDP of all participating States in accordance with the formula laid down in the Annex.
2. The financial contribution referred to in paragraph 1 shall be incurred as from the day following the entry into force or from the date of provisional application of this Arrangement as referred to in Article 13(3). The first financial contribution shall be reduced proportionally to the remaining time in the year after the entry into force or from the date of the provisional application of this Arrangement.

⁽¹⁾ OJ L 132, 29.5.2010, p. 11.

⁽²⁾ OJ L 93, 3.4.2001, p. 40.

*Article 4***Data Protection**

1. In applying this Arrangement, Norway shall process data in line with 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⁾.
2. For the purpose of this Arrangement, 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⁾ shall apply to the processing of personal data carried out by the Support Office.
3. Norway shall respect the rules on confidentiality of documents held by the Support Office, as set out in the Rules of Procedure of the Management Board.

*Article 5***Legal status**

The Support Office shall have legal personality under the law of Norway and shall enjoy in Norway the most extensive legal capacity accorded to legal persons under the law of Norway. It may, in particular, acquire or dispose of movable and immovable property and may be party to legal proceedings.

*Article 6***Liability**

The liability of the Support Office shall be governed by Article 45(1), (3) and (5) of the Regulation.

*Article 7***Court of Justice of the European Union**

Norway shall recognise the jurisdiction of the Court of Justice of the European Union over the Support Office, as provided for in Article 45(2) and (4) of the Regulation.

*Article 8***Staff of the Support Office**

1. In accordance with Articles 38(1) and 49(1) of the Regulation, the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union, the rules adopted jointly by the EU institutions for the purpose of applying those Staff Regulations and Conditions of Employment and the implementing measures adopted by the Support Office according to Article 38 (2) of the Regulation apply to nationals of Norway recruited as staff members by the Support Office.
2. By way of derogation from Article 12(2)(a) and Article 82(3)(a) of the Conditions of Employment of Other Servants of the European Union, nationals of Norway enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Support Office according to the existing rules for selection and engagement of staff adopted by the Support Office.
3. Article 38(4) of the Regulation shall apply *mutatis mutandis* to the nationals of Norway.
4. Nationals of Norway may not, however, be appointed to the post of Executive Director of the Support Office.

*Article 9***Privileges and immunities**

Norway shall apply to the Support Office and to its staff the Protocol on the Privileges and Immunities of the European Union ⁽³⁾ as well as any rules adopted pursuant to that Protocol relating to staff matters of the Support Office.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

⁽³⁾ OJ C 83, 30.3.2010, p. 266.

*Article 10***Combating fraud**

The provisions set out in Article 44 of the Regulation shall be applied and the European Anti-Fraud Office (OLAF) and the Court of Auditors may exercise the powers conferred on them.

OLAF and the Court of Auditors shall inform *Riksrevisjonen* in good time of any intention to carry out on-the-spot-checks or audits which, if the Norwegian authorities so wish, may be carried out jointly with *Riksrevisjonen*.

*Article 11***Committee**

1. A Committee, composed of representatives of the European Commission and Norway, shall monitor the proper implementation of this Arrangement and ensure a continuous process of information provision and exchange of views in this respect. For practical reasons, the Committee shall meet jointly with the corresponding Committees set up with other associated countries participating on the basis of Article 49(1) of the Regulation. It shall meet upon request by either Norway or the European Commission. The Management Board of the Support Office shall be informed about the work of the Committee.

2. Information about foreseen EU legislation, which either directly affects or amends the Regulation or is expected to have implications relating to the financial contribution laid down in Article 3 of this Arrangement, shall be shared and an exchange of views thereon shall take place in the Committee.

*Article 12***Annex**

The Annex to this Arrangement shall constitute an integral part of this Arrangement.

*Article 13***Entry into force**

1. The Contracting Parties shall approve this Arrangement in accordance with their own internal procedures. They shall notify each other of the completion of those procedures.

2. This Arrangement shall enter into force on the first day of the first month following the day of the last notification referred to in paragraph 1.

3. Upon signature of this Arrangement, the Contracting Parties may by mutual agreement declare that it shall apply provisionally as from the day following that of its signature.

*Article 14***Termination and validity**

1. This Arrangement shall be concluded for an unlimited period.

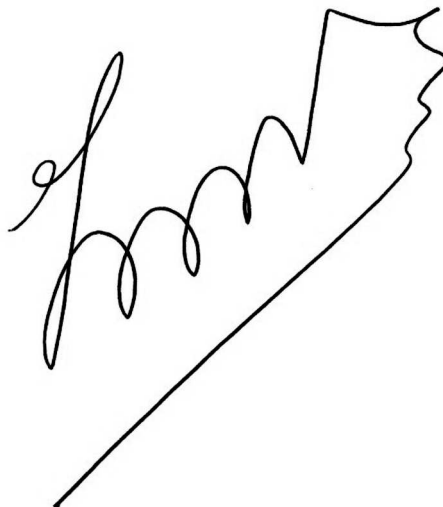
2. Each Contracting Party may, after consultations within the Committee, denounce this Arrangement by notifying the other Contracting Party. This Arrangement shall cease to apply six months after the date of such notification.

3. This Arrangement shall be terminated in case of termination of the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway.

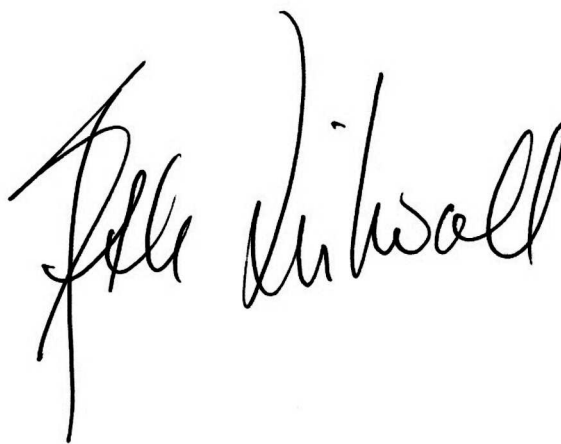
4. This Arrangement shall be drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Norwegian languages, each of those texts being equally authentic.

Съставено в Брюксел на деветнадесети март две хиляди и четиринадесета година.
Hecho en Bruselas, el diecinueve de marzo de dos mil catorce.
V Bruselu dne devatenáctého března dva tisíce čtrnáct.
Udfærdiget i Bruxelles den nittende marts to tusind og fjorten.
Geschehen zu Brüssel am neunzehnten März zweitausendvierzehn.
Kahe tuhande neljateistkümnenda aasta märtsikuu üheksateistkümnendal päeval Brüsselis.
Έγινε στις Βρυξέλλες, στις δέκα εννέα Μαρτίου δύο χιλιάδες δεκατέσσερα.
Done at Brussels on the nineteenth day of March in the year two thousand and fourteen.
Fait à Bruxelles, le dix neuf mars deux mille quatorze.
Sastavljeno u Bruxellesu devetnaestog ožujka dvije tisuće četrnaeste.
Fatto a Bruxelles, addì diciannove marzo duemilaquattordici.
Briselē, divi tūkstoši četrpadsmitā gada deviņpadsmitajā martā.
Priimta du tūkstančiai keturioliktų metų kovo devynioliktą dieną Briuselyje.
Kelt Brüsszelben, a kétezer-tizenegyedik év március havának tizenkilencedik napján.
Magħmul fi Brussell, fid-dsatax-il jum ta' Marzu tas-sena elfejn u erbatax.
Gedaan te Brussel, de negentiende maart tweeduizend veertien.
Sporządzono w Brukseli dnia dziewiętnastego marca roku dwa tysiące czternastego.
Feito em Bruxelas, em dezanove de março de dois mil e catorze.
Întocmit la Bruxelles la nouăsprezece martie două mii paisprezece.
V Bruseli devätnásteho marca dvetisícštrnásť.
V Bruslju, dne devetnajstega marca leta dva tisoč štirinajst.
Tehty Brysselissä yhdeksäntenätoista päivänä maaliskuuta vuonna kaksituhattaneljätoista.
Som skedde i Bryssel den nittonde mars tjugohundrafjorton.
Utferdiget i Brussel den nittende mars to tusen og fjorten.

За Европейския съюз
Por la Unión Europea
Za Evropskou unii
For Den Europæiske Union
Für die Europäische Union
Euroopa Liidu nimel
Για την Ευρωπαϊκή Ένωση
For the European Union
Pour l'Union européenne
Za Europejską uniję
Per l'Unione europea
Eiropas Savienības vārdā –
Europos Sąjungos vardu
Az Európai Unió részéről
Għall-Unjoni Ewropea
Voor de Europese Unie
W imieniu Unii Europejskiej
Pela União Europeia
Pentru Uniunea Europeană
Za Európsku úniu
Za Evropsko unijo
Euroopan unionin puolesta
För Europeiska unionen
For Den europeiske union



За Кралство Норвегия
Por el Reino de Noruega
Za Norské království
For Kongeriget Norge
Für das Königreich Norwegen
Norra Kuningriigi nimel
Για το Βασίλειο της Νορβηγίας
For the Kingdom of Norway
Pour le Royaume de Norvège
Za Kraljevinu Norvešku
Per il Regno di Norvegia
Norvēģijas Karalistes vārdā –
Norvegijos Karalystės vardu
A Norvég Királyság részéről
Għar-Renju tan-Norveġja
Voor het Koninkrijk Noorwegen
W imieniu Królestwa Norwegii
Pelo Reino da Noruega
Pentru Regatul Norvegiei
Za Nórske kráľovstvo
Za Kraljevino Norveško
Norjan kuningaskunnan puolesta
För Konungariket Norge
For Kongeriket Norge



ANNEX

FORMULA TO CALCULATE THE CONTRIBUTION

1. The financial contribution of Norway to the revenue of the Support Office defined in Article 33(3)(d) of the Regulation shall be calculated in the following way:

The most updated final figures of the Gross Domestic Product (GDP) of Norway available on 31 March of each year shall be divided by the sum of the GDP figures of all the States participating in the Support Office available for the same year. The obtained percentage will be applied to the part of the authorised Support Office's revenue as defined in Article 33 (3) (a) of the Regulation in the year under consideration to obtain the amount of the financial contribution of Norway.

2. The financial contribution shall be paid in euro.
3. Norway shall pay its financial contribution no later than 45 days after receiving the debit note. Any delay in payment shall give rise to the payment of default interest by Norway on the outstanding amount from the due date. The interest rate shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first day of the month in which the deadline falls, increased by 3,5 percentage points.
4. Norway's financial contribution shall be adapted in accordance with this Annex when the financial contribution from the EU entered in the general budget of the EU as defined in Article 33 (3) (a) of the Regulation is increased pursuant to Articles 26, 27 or 41 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 ⁽¹⁾. In such a case, the difference shall be due 45 days after receiving the debit note.
5. In the event that payment credits of the Support Office received from the EU according to Article 33 (3) (a) of the Regulation related to a year N are not spent by 31 December of year N or that the Support Office budget of the year N has been lowered according to Articles 26, 27 or 41 of the Regulation (EU, Euratom) No 966/2012, the part of these unspent or lowered payment credits corresponding to the percentage of the contribution made by Norway shall be transferred to the budget of year N+1 of the Support Office. Norway's contribution to the Support Office's budget of year N+1 will be reduced accordingly.

⁽¹⁾ OJ L 298, 26.10.2012, p. 1.

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 371/2014

of 10 April 2014

implementing Article 12(1) of Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Regulation (EU) No 359/2011 of 12 April 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran ⁽¹⁾, and in particular Article 12(1) thereof,

Whereas:

- (1) On 12 April 2011, the Council adopted Regulation (EU) No 359/2011.
- (2) On the basis of a review of Council Decision 2011/235/CFSP ⁽²⁾, the Council has decided that those restrictive measures should be renewed until 13 April 2015.
- (3) Furthermore, the entries concerning certain persons included in Annex I to Regulation (EU) No 359/2011 should be updated in accordance with Council Decision 2014/205/CFSP ⁽³⁾.
- (4) Annex I to Regulation (EU) No 359/2011 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex I to Regulation (EU) No 359/2011 shall be amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 April 2014.

For the Council

The President

D. KOURKOULAS

⁽¹⁾ OJ L 100, 14.4.2011, p. 1.

⁽²⁾ Council Decision 2011/235/CFSP of 12 April 2011 concerning restrictive measures directed against certain persons and entities in view of the situation in Iran (OJ L 100, 14.4.2011, p. 51).

⁽³⁾ Council Decision 2014/205/CFSP of 10 April 2014 amending Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran (see page 25 of this Official Journal).

ANNEX

The entries for the persons listed below shall replace the entries for them set out in Annex I to Council Regulation (EU) No 359/2011:

Persons

	Name	Identifying information	Reasons	Date of listing
1.	RAJABZADEH Azizollah		Head of Tehran Disaster Mitigation Organization (TDMO). Former Head of Tehran Police (until January 2010). As Commander of the Law Enforcement Forces in the Greater Tehran, Azizollah Rajabzadeh is the highest ranking accused in the case of abuses in Kahrizak Detention Center.	
2.	DORRI- NADJAFABADI Ghorban-Ali	POB: Najafabad (Iran) DOB: 1945	Member of the Expediency Council and also representative of the Supreme Leader in Markazi ('Central') Province. Former Prosecutor General of Iran until September 2009 (former Intelligence minister under Khatami presidency). As Prosecutor General of Iran, he ordered and supervised the show trials following the first post-election protests, where the accused were denied their rights, and an attorney. He also carries responsibility for the Kahrizak abuses.	
3.	MORTAZAVI Said	POB: Meybod, Yazd (Iran) DOB: 1967	Former Head of Iran's Anti-smuggling Task Force, former Prosecutor General of Tehran until August 2009. As Tehran Prosecutor General, he issued a blanket order used for the detention of hundreds of activists, journalists and students. He was suspended from office in August 2010 after an investigation by the Iranian judiciary of his role into the deaths of three men detained on his orders following the election.	
4.	ZARGAR Ahmad		Head of the 'Organization for the Preservation of Morality'. Former judge, Tehran Appeals Court, branch 36. He confirmed long-term jail warrants and death warrants against protesters.	
5.	ABBASZADEH- MESHKINI, Mahmoud		Governor of Ilam Province. Former Interior Ministry's political director. As Head of the Article 10 Committee of the Law on Activities of Political Parties and Groups he was in charge of authorising demonstrations and other public events and registering political parties. In 2010, he suspended the activities of two reformist political parties linked to Mousavi — the Islamic Iran Participation Front and the Islamic Revolution Mujahedeen Organization.	10.10.2011

	Name	Identifying information	Reasons	Date of listing
			From 2009 onwards he has consistently and continuously prohibited all non-governmental gatherings, therefore denying a constitutional right to protest and leading to many arrests of peaceful demonstrators in contravention of the right to freedom of assembly. He also denied in 2009 the opposition a permit for a ceremony to mourn people killed in protests over the Presidential elections.	
6.	FIRUZABADI Maj-Gen Dr Seyyed Hasan (Aka: FIRUZABADI Maj-Gen Dr Seyed Hassan; FIROUZABADI Maj-Gen Dr Seyyed Hasan; FIROUZABADI Maj-Gen Dr Seyed Hassan)	POB: Mashad DOB: 3.2.1951	As Chief of Staff of Iran's Armed Forces, he is the highest military commander responsible for directing all military divisions and policies, including the Islamic Revolutionary Guards Corps (IRGC) and police. Forces under his formal chain of command brutally suppressed peaceful protestors and perpetrated mass detentions. Also member of the Supreme National Security Council (SNSC) and the Expediency Council.	10.10.2011
7.	JOKAR Mohammad Saleh		Since 2011 Parliamentary Deputy for Yazd Province. Former Commander of Student Basij Forces. In the capacity of Commander of Student Basij Forces he was actively involved in suppressing protests in schools and universities and extra-judicial detention of activists and journalists.	10.10.2011
8.	SALARKIA Mahmoud	Director of Tehran Football Club 'Persepolis'	Head of the Petrol and Transport commission of the City of Tehran. Deputy to the Prosecutor-General of Tehran for Prison Affairs during the crackdown of 2009. As Deputy to the Prosecutor-General of Tehran for Prison Affairs he was directly responsible for many of the arrest warrants against innocent, peaceful protesters and activists. Many reports from human rights defenders show that virtually all those arrested are, on his instruction, held incommunicado without access to their lawyer or families, and without charge, for varying lengths of time, often in conditions amounting to enforced disappearance. Their families are often not notified of the arrest.	10.10.2011
9.	SOURI Hojatollah		Parliamentary deputy for Lorestan Province. Member of the Parliamentary Commission for Foreign and Security Policy. Former head of Evin prison. As head of Evin prison during 2009, he was responsible for severe human rights abuses in this prison during his time in office, such as beatings and mental and sexual abuse. According to consistent information from different sources, torture is a common practice in Evin prison. In Ward 209, many activists are being held for their peaceful activities in opposition to the ruling government.	10.10.2011

	Name	Identifying information	Reasons	Date of listing
10.	TALA Hossein (Aka: TALA Hosseyn)		Deputy Governor-General ('Farmandar') of Tehran Province until September 2010, in particular responsible for the intervention of police forces and therefore for the repression of demonstrations. He received a prize in December 2010 for his role in the post-election repression.	10.10.2011
11.	TAMADDON Morteza (Aka: TAMADON Morteza)	POB: Shahr Kord-Isfahan DOB: 1959	Former Governor-General of Tehran Province, and head of Tehran provincial Public Security Council, member of the IRGC. In his capacity as governor and head of Tehran provincial Public Security Council, he was bearing overall responsibility for all repressive activities, including cracking down on political protests in June 2009. He is known for being personally involved in the harassment of opposition leaders Karroubi and Moussavi.	10.10.2011
12.	BAKHTEARI Seyyed Morteza	POB: Mashad (Iran) DOB: 1952	Former Minister of Justice (2009-2013), former Isfahan Governor-General and Director of the State Prisons Organisation (until June 2004). As Minister of Justice, he played a key role in threatening and harassing the Iranian diaspora by announcing the establishment of a special court to deal specifically with Iranians who live outside the country. With the Tehran Prosecutor's assistance, two branches of the courts of first instance and appeal courts and several branches of the magistrate courts will be assigned to deal with expatriate affairs.	10.10.2011
13.	HOSSEINI Dr Mohammad (Aka: HOSSEYNI, Dr Seyyed Mohammad; Seyyed, Sayyed and Sayyid)	POB: Rafsanjan, Kerman DOB: 1961	Former Minister of Culture and Islamic Guidance (2009-2013). Ex-IRGC, he was complicit in the repression of journalists.	10.10.2011
14.	MOSLEHI Heydar (Aka: MOSLEHI Heidar; MOSLEHI Haidar)	POB: Isfahan (Iran) DOB: 1956	Former Minister of Intelligence (2009-2013). Under his leadership, the Ministry of Intelligence has continued the practices of widespread arbitrary detention and persecution of protesters and dissidents. The Ministry of Intelligence continues to run Ward 209 of Evin Prison, where many activists are being held on account of their peaceful activities in opposition to the government in power. Interrogators from the Ministry of Intelligence have subjected prisoners in Ward 209 to beatings and mental and sexual abuse. As former Minister of Intelligence, Moslehi bears responsibility for abuse during his time in office.	10.10.2011

	Name	Identifying information	Reasons	Date of listing
15.	TAGHIPOUR Reza	POB: Maragheh (Iran) DOB: 1957	Member of the City Council of Tehran. Former Minister for Information and Communications (2009-2012). As Minister for Information, he was one of the top officials in charge of censorship and control of internet activities and also all types of communications (in particular mobile phones). During interrogations of political detainees, the interrogators make use of the detainees' personal data, mail and communications. On several occasions following the last presidential election and during street demonstrations, mobile lines and text messaging were blocked, satellite TV channels were jammed and the internet locally suspended or at least slowed down.	23.3.2012
16	EMADI, Hamid Reza (aka: Hamidreza Emadi)	Date of Birth: appr. 1973 Place of Birth: Hamedan Place of residence: Tehran Place of work: Press TV HQ, Tehran	Press TV Newsroom Director. Former Press TV Senior Producer. Responsible for producing and broadcasting the forced confessions of detainees, including journalists, political activists, persons belonging to Kurdish and Arab minorities, violating internationally recognised rights to a fair trial and due process. Independent broadcast regulator OFCOM fined Press TV in the UK GBP 100 000 for broadcasting the forced confession of Iranian-Canadian journalist and film-maker Maziar Bahari in 2011, which was filmed in prison whilst Bahari was under duress. NGOs have reported further instances of forced televised confessions by Press TV. Emadi is therefore associated with violating the right to due process and fair trial.	12.3.2013

COMMISSION REGULATION (EU) No 372/2014**of 9 April 2014****amending Regulation (EC) No 794/2004 as regards the calculation of certain time limits, the handling of complaints, and the identification and protection of confidential information****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union ⁽¹⁾, and in particular Article 27 thereof,

After consulting the Advisory Committee on State aid,

Whereas:

- (1) In the context of the modernisation of State aid rules to contribute both to the implementation of the Europe 2020 strategy for growth and to budgetary consolidation ⁽²⁾, Regulation (EC) No 659/1999 was amended by Regulation (EU) No 734/2013 ⁽³⁾ to improve the effectiveness of State aid control. That amendment sought in particular to render more effective the handling of complaints by the Commission and to introduce powers for the Commission to request information directly from market participants and to conduct investigations into sectors of the economy and into aid instruments.
- (2) In light of those amendments, it is necessary to identify the events determining the starting point for the calculation of time-limits in the context of requests for information addressed to third parties pursuant to Regulation (EC) No 659/1999.
- (3) The Commission may, on its own initiative, examine information on unlawful aid from any source, in order to assess compliance with Articles 107 and 108 of the Treaty. In that context, complaints are an essential source of information for detecting violations of State aid rules. It is therefore important to define clear and efficient procedures for handling complaints lodged with the Commission.
- (4) According to Article 20 of Regulation (EC) No 659/1999, only interested parties may submit complaints to inform the Commission of any alleged unlawful aid or misuse of aid. To that end, natural and legal persons submitting complaints should be required to demonstrate that they are interested parties within the meaning of Article 1(h) of Regulation (EC) No 659/1999.
- (5) To streamline the handling of complaints and at the same time increase transparency and legal certainty, it is appropriate to define the information that complainants should provide to the Commission. In order to ensure that the Commission receives all relevant information regarding alleged unlawful or misused aid, Regulation (EC) No 659/1999 requires interested parties to complete a form and submit all the mandatory information requested therein. The form to be used for that purpose should therefore be established.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁾ Communication from the Commission, 'Europe 2020 — A strategy for smart, sustainable and inclusive growth'; COM(2010) 2020 final.

⁽³⁾ Council Regulation (EU) No 734/2013 of 22 July 2013 amending Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 204, 31.7.2013, p. 15).

- (6) The requirements to be fulfilled by interested parties when lodging complaints should not be excessively burdensome, while ensuring that the Commission receives all the information necessary to start an investigation into the alleged unlawful or misused aid.
- (7) To ensure that business secrets and other confidential information provided to the Commission are treated in compliance with Article 339 of the Treaty, any person submitting information should clearly identify which information it considers to be confidential and why it is confidential. The person concerned should be required to provide the Commission with a separate non-confidential version of the information that could be submitted to the relevant Member State for comments.
- (8) Commission Regulation (EC) No 794/2004 ⁽¹⁾ should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 794/2004 is amended as follows:

- (1) Article 8 is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. Time-limits provided for in Regulation (EC) No 659/1999 and in this Regulation or fixed by the Commission pursuant to Article 108 of the Treaty shall be calculated in accordance with Regulation (EEC, Euratom) No 1182/71, and the specific rules set out in paragraphs 2 to 5b of this Article. In case of conflict, the provisions of this Regulation shall prevail.’;

- (b) the following paragraphs are inserted:

‘5a. With regard to the time-limit for the submission of the information requested from third parties pursuant to Article 6a(6) of Regulation (EC) No 659/1999, the receipt of the request for information shall be the relevant event for the purposes of Article 3(1) of Regulation (EEC, Euratom) No 1182/71.

5b. With regard to the time-limit for the submission of the information requested from third parties pursuant to Article 6a(7) of Regulation (EC) No 659/1999, the notification of the decision shall be the relevant event for the purposes of Article 3(1) of Regulation (EEC, Euratom) No 1182/71.’;

- (2) the following Chapters Va and Vb are inserted after Article 11:

‘CHAPTER Va

HANDLING OF COMPLAINTS

Article 11a

Admissibility of complaints

1. Any person submitting a complaint pursuant to Articles 10(1) and 20(2) of Regulation (EC) No 659/1999 shall demonstrate that it is an interested party within the meaning of Article 1(h) of that Regulation.
2. Interested parties shall duly complete the form set out in Annex IV and provide all the mandatory information requested therein. On a reasoned request by an interested party, the Commission may dispense with the obligation to provide some of the information required by the form.
3. Complaints shall be submitted in one of the official languages of the Union.

⁽¹⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

CHAPTER Vb

IDENTIFICATION AND PROTECTION OF CONFIDENTIAL INFORMATION*Article 11b***Protection of business secrets and other confidential information**

Any person submitting information pursuant to Regulation (EC) No 659/1999 shall clearly indicate which information it considers to be confidential, stating the reasons for such confidentiality, and provide the Commission with a separate non-confidential version of the submission. When information must be provided by a certain deadline, the same deadline shall apply for providing the non-confidential version.;

(3) the text in the Annex to this Regulation is added as Annex IV.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 9 April 2014.

For the Commission

The President

José Manuel BARROSO

ANNEX

‘ANNEX IV

**FORM FOR THE SUBMISSION OF COMPLAINTS CONCERNING ALLEGED UNLAWFUL STATE AID
OR MISUSE OF AID**

The mandatory fields are marked with a star “*”.

1. Information regarding the complainant

First name:*

Surname:*

Address line 1:*

Address line 2:

Town/City:*

County/State/Province:

Postcode:*

Country:*

Telephone:

Mobile Telephone:

E-mail address:*

Fax

2. I am submitting the complaint on behalf of somebody (a person or a firm)

Yes* No*

If yes, please also provide the following information

Name of the person/firm you represent*:

Registration nr. of the entity:

Address line 1:*

Address line 2:

Town/City:*

County/State/Province:

Postcode:*

Country:*

Telephone 1:

Telephone 2:

E-mail address:*

Fax

Please attach proof that the representative is authorised to act on behalf of this person/firm.*

3. Please select one of the following options, describing your identity*

- (a) Competitor of the beneficiary or beneficiaries
- (b) Trade association representing the interests of competitors
- (c) Non-governmental organisation
- (d) Trade union
- (e) EU citizen
- (f) Other, please specify

Please explain why and to what extent the alleged State aid affects your competitive position/the competitive position of the person/firm you represent. Provide as much concrete evidence as possible.

Please be aware that, by virtue of Article 20(2) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, only interested parties within the meaning of Article 1(h) of that Regulation may submit formal complaints. Therefore, in the absence of a demonstration that you are an interested party, the present form will not be registered as a complaint, and the information provided therein will be kept as general market information.

4. Please select one of the following two options*

- ☐ Yes, you may reveal my identity
- ☐ No, you may not reveal my identity

If not, please specify the reasons:

Confidentiality: If you do not wish your identity or certain documents or information to be disclosed, please indicate this clearly, identify the confidential parts of any documents and give your reasons. In the absence of any indication about confidentiality of your identity or certain documents or information, those elements will be treated as non-confidential and may be shared with the Member State allegedly granting the State aid. The information contained in points **5** and **6** cannot be designated as confidential.

5. Information regarding the Member State granting the aid*

Please be aware: the information provided under this point is regarded as non-confidential.

- (a) Country:
- (b) If known, specify which institution or body granted the alleged unlawful State aid:
 - Central government:
 - Region (please specify):
 - Other (please specify):

6. Information regarding the alleged aid measure*

Please be aware: the information provided under this point is regarded as non-confidential.

- (a) Please provide a description of the alleged aid, and indicate in what form it was granted (loans, grants, guarantees, tax incentives or exemptions etc.).

- (b) For what purpose was the alleged aid given (if known)?

- (c) What is the amount of the alleged aid (if known)? If you do not have the exact figure, please provide an estimate and as much justifying evidence as possible.

- (d) Who is the beneficiary? Please give as much information as possible, including a description of the main activities of the beneficiary/firm(s) concerned.

- (e) To your knowledge, when was the alleged aid granted?

- (f) Please select one of the following options:

- ☐ According to my knowledge, the State aid was not notified to the Commission.
- ☐ According to my knowledge, the State aid was notified, but it was granted before the decision of the Commission. If known, please indicate the notification reference number or indicate when the aid was notified.

- ☐ According to my knowledge, the State aid was notified and approved by the Commission, but its implementation did not respect the applicable conditions. If known, please indicate the notification reference number or indicate when the aid was notified and approved.

- ☐ According to my knowledge, the State aid was granted under a block exemption regulation, but its implementation did not respect the applicable conditions.

7. Grounds of complaint*

Please note that, for a measure to qualify as State aid under Article 107(1) TFEU, the alleged aid has to be granted by a Member State or through State resources, it has to distort or threaten to distort competition by favouring certain undertakings or the production of certain goods, and affect trade between Member States.

- (a) Please explain to what extent public resources are involved (if known) and, if the measure was not adopted by a public authority (but for instance by a public undertaking), please explain why, in your view, it is imputable to public authorities of a Member State.

- (b) Please explain why, in your opinion, the alleged State aid is selective (i.e. favours certain commercial undertakings or the production of certain goods).

- (c) Please explain how, in your opinion, the alleged State aid provides an economic advantage for the beneficiary or beneficiaries.

- (d) Please explain why, in your view, the alleged State aid distorts or threatens to distort competition.

- (e) Please explain why, in your view, the alleged aid affects trade between Member States.

8. Compatibility of the aid

Please indicate the reasons why in your view the alleged aid is not compatible with the internal market.

9. Information on alleged infringement of other rules of European Union law and on other procedures

- (a) If known, please indicate what other rules of European Union law you think have been infringed by the granting of the alleged aid. Please be aware that this does not imply necessarily that those potential infringements will be dealt with within the State aid investigation.

- (b) Have you already approached the Commission's services or any other European institution concerning the same issue? *

Yes No

If yes, please attach copies of correspondence.

- (c) Have you already approached national authorities or national courts concerning the same issue? *

Yes No

If yes, please indicate which authorities or courts; also, if there has already been a decision or judgement, please attach a copy (if available); if, on the contrary, the case is still pending, please indicate its reference (if available).

- (d) Please provide any other information that may be relevant for the assessment of this case.

10. Supporting documents

Please list any *documents and evidence* which are submitted in support of the complaint and add annexes if necessary

- Whenever possible, a copy of the national law or other measure which provides the legal basis for the payment of the alleged aid should be provided.
- Whenever possible, please attach any available evidence that the State aid was granted (e.g. press release, published accounts).
- If the complaint is submitted on behalf of someone else (a natural person or a firm) please attach proof that you as a representative are authorised to act.
- Where applicable, please attach copies of all previous correspondence with the European Commission or any other European or national institution concerning the same issue.
- If the issue has already been dealt with by a national court/authority, please attach a copy of the judgement/decision, if available.

I hereby declare that all the information in this form and annexes is provided in good faith.

Place, date and signature of complainant'

COMMISSION IMPLEMENTING REGULATION (EU) No 373/2014**of 11 April 2014****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to 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 (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 April 2014.

*For the Commission,
On behalf of the President,*

Jerzy PLEWA
Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	65,2
	TN	123,3
	TR	106,4
	ZZ	98,3
0707 00 05	MK	51,2
	TR	124,4
	ZZ	87,8
0709 93 10	MA	44,0
	TR	93,6
	ZZ	68,8
0805 10 20	EG	47,9
	IL	67,9
	MA	49,8
	TN	48,3
	TR	53,1
	ZZ	53,4
0805 50 10	MA	35,6
	TR	92,4
	ZZ	64,0
0808 10 80	AR	93,3
	BR	104,5
	CL	108,2
	CN	115,5
	MK	25,2
	NZ	132,7
	US	190,8
	ZA	118,5
	ZZ	111,1
0808 30 90	AR	92,3
	CL	123,2
	CN	79,2
	ZA	92,6
	ZZ	96,8

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COUNCIL DECISION 2014/205/CFSP

of 10 April 2014

amending Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Whereas:

- (1) On 12 April 2011, the Council adopted Decision 2011/235/CFSP ⁽¹⁾.
- (2) On the basis of a review of Decision 2011/235/CFSP, the restrictive measures should be renewed until 13 April 2015.
- (3) The entries concerning certain persons included in Annex to Decision 2011/235/CFSP should be updated.
- (4) Decision 2011/235/CFSP should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 6(2) of Decision 2011/235/CFSP is replaced by the following:

‘2. This Decision shall apply until 13 April 2015. It shall be kept under constant review. It shall be renewed or amended, as appropriate, if the Council deems that its objectives have not been met.’.

Article 2

The Annex to Decision 2011/235/CFSP shall be amended as set out in the Annex to this Decision.

Article 3

This Decision shall enter into force on the date of its publication in the *Official Journal of the European Union*.

Done at Brussels, 10 April 2014.

For the Council
The President
D. KOURKOULAS

⁽¹⁾ Council Decision 2011/235/CFSP of 12 April 2011 concerning restrictive measures directed against certain persons and entities in view of the situation in Iran (OJ L 100, 14.4.2011, p. 51).

ANNEX

The entries for the persons listed below shall replace the entries for them set out in the Annex to Decision 2011/235/CFSP:

Persons

	Name	Identifying information	Reasons	Date of listing
1.	RAJABZADEH Azizollah		Head of Tehran Disaster Mitigation Organization (TDMO). Former Head of Tehran Police (until January 2010). As Commander of the Law Enforcement Forces in the Greater Tehran, Azizollah Rajabzadeh is the highest ranking accused in the case of abuses in Kahrizak Detention Center.	
2.	DORRI- NADJAFABADI Ghorban-Ali	POB: Najafabad (Iran) — DOB: 1945	Member of the Expediency Council and also representative of the Supreme Leader in Markazi ('Central') Province. Former Prosecutor General of Iran until September 2009 (former Intelligence minister under Khatami presidency). As Prosecutor General of Iran, he ordered and supervised the show trials following the first post-election protests, where the accused were denied their rights, and an attorney. He also carries responsibility for the Kahrizak abuses.	
3.	MORTAZAVI Said	POB: Meybod, Yazd (Iran) — DOB: 1967	Former Head of Iran's Anti-smuggling Task Force, former Prosecutor general of Tehran until August 2009. As Tehran Prosecutor General, he issued a blanket order used for the detention of hundreds of activists, journalists and students. He was suspended from office in August 2010 after an investigation by the Iranian judiciary of his role in the deaths of three men detained on his orders following the election.	
4.	ZARGAR Ahmad		Head of the 'Organization for the Preservation of Morality'. Former judge, Tehran Appeals Court, branch 36. He confirmed long-term jail warrants and death warrants against protesters.	
5.	ABBASZADEH-MESHKINI, Mahmoud		Governor of Ilam Province. Former Interior Ministry's political director. As Head of the Article 10 Committee of the Law on Activities of Political Parties and Groups he was in charge of authorising demonstrations and other public events and registering political parties.	10.10.2011

	Name	Identifying information	Reasons	Date of listing
			In 2010, he suspended the activities of two reformist political parties linked to Mousavi — the Islamic Iran Participation Front and the Islamic Revolution Mujahedeen Organization. From 2009 onwards he has consistently and continuously prohibited all non-governmental gatherings, therefore denying a constitutional right to protest and leading to many arrests of peaceful demonstrators in contravention of the right to freedom of assembly. He also denied in 2009 the opposition a permit for a ceremony to mourn people killed in protests over the Presidential elections.	
6.	FIRUZABADI Maj-Gen Dr Seyyed Hasan (Aka: FIRUZABADI Maj-Gen Dr Seyed Hassan; FIROUZABADI Maj-Gen Dr Seyyed Hasan; FIROUZABADI Maj-Gen Dr Seyed Hassan)	POB: Mashad DOB: 3.2.1951	As Chief of Staff of Iran's Armed Forces, he is the highest military commander responsible for directing all military divisions and policies, including the Islamic Revolutionary Guards Corps (IRGC) and police. Forces under his formal chain of command brutally suppressed peaceful protestors and perpetrated mass detentions. Also member of the Supreme National Security Council (SNSC) and the Expediency Council.	10.10.2011
7.	JOKAR Mohammad Saleh		Since 2011 parliamentary deputy for Yazd Province. Former Commander of Student Basij Forces. In the capacity of Commander of Student Basij Forces he was actively involved in suppressing protests in schools and universities and extra-judicial detention of activists and journalists.	10.10.2011
8.	SALARKIA Mahmoud	Director of Tehran Football Club 'Persepolis'	Head of the Petrol and Transport commission of the City of Tehran. Deputy to the Prosecutor-General of Tehran for Prison Affairs during the crackdown of 2009. As Deputy to the Prosecutor-General of Tehran for Prison Affairs he was directly responsible for many of the arrest warrants against innocent, peaceful protesters and activists. Many reports from human rights defenders show that virtually all those arrested are, on his instruction, held incommunicado without access to their lawyer or families, and without charge, for varying lengths of time, often in conditions amounting to enforced disappearance. Their families are often not notified of the arrest.	10.10.2011
9.	SOURI Hojatollah		Parliamentary deputy for Lorestan Province. Member of the Parliamentary Commission for Foreign and Security Policy. Former head of Evin prison.	10.10.2011

	Name	Identifying information	Reasons	Date of listing
			As head of Evin prison during 2009, he was responsible for severe human rights abuses in this prison during his time in office, such as beatings, and mental and sexual abuse. According to consistent information from different sources, torture is a common practice in Evin prison. In Ward 209, many activists are being held for their peaceful activities in opposition to the ruling government.	
10.	TALA Hossein (Aka: TALA Hosseyn)		Deputy Governor-General ('Farmandar') of Tehran Province until September 2010, in particular responsible for the intervention of police forces and therefore for the repression of demonstrations. He received a prize in December 2010 for his role in the post-election repression.	10.10.2011
11.	TAMADDON Morteza (Aka: TAMADON Morteza)	POB: Shahr Kord-Isfahan DOB: 1959	Former Governor- General of Tehran Province, and head of Tehran provincial Public Security Council, member of the IRGC. In his capacity as governor and head of Tehran provincial Public Security Council, he was bearing overall responsibility for all repressive activities, including cracking down on political protests in June 2009. He is known for being personally involved in the harassing of opposition leaders Karroubi and Moussavi.	10.10.2011
12.	BAKHTIARI Seyyed Morteza	POB: Mashad (Iran) DOB: 1952	Former Minister of Justice (2009-2013), former Isfahan governor-general and director of the State Prisons Organisation (until June 2004). As Minister of Justice, he played a key role in threatening and harassing the Iranian diaspora by announcing the establishment of a special court to deal specifically with Iranians who live outside the country. With the Tehran Prosecutor's assistance, two branches of the courts of first instance and appeal courts and several branches of the magistrate courts will be assigned to deal with expatriate affairs.	10.10.2011
13.	HOSSEINI Dr Mohammad (Aka: HOSSEYNI, Dr Seyyed Mohammad; Seyyed, Sayyed and Sayyid)	POB: Rafsanjan, Kerman DOB: 1961	Former Minister of Culture and Islamic Guidance (2009-2013). Ex-IRGC, he was complicit in the repression of journalists.	10.10.2011

	Name	Identifying information	Reasons	Date of listing
14.	MOSLEHI Heydar (Aka: MOSLEHI Heidar; MOSLEHI Haidar)	POB: Isfahan (Iran) DOB: 1956	Former Minister of Intelligence (2009-2013). Under his leadership, the Ministry of Intelligence has continued the practices of widespread arbitrary detention and persecution of protesters and dissidents. The Ministry of Intelligence continues to run Ward 209 of Evin Prison, where many activists are being held on account of their peaceful activities in opposition to the government in power. Interrogators from the Ministry of Intelligence have subjected prisoners in Ward 209 to beatings and mental and sexual abuse. As former Minister of Intelligence, Moslehi bears responsibility for abuse during his time in office.	10.10.2011
15.	TAGHIPOUR Reza	POB: Maragheh (Iran) DOB: 1957	Member of the City Council of Teheran. Former Minister for Information and Communications (2009-2012). As Minister for Information, he was one of the top officials in charge of censorship and control of internet activities and also all types of communications (in particular mobile phones). During interrogations of political detainees, the interrogators make use of the detainees' personal data, mail and communications. On several occasions following the last presidential election and during street demonstrations, mobile lines and text messaging were blocked, satellite TV channels were jammed and the internet locally suspended or at least slowed down.	23.3.2012
16.	EMADI, Hamid Reza (aka: Hamidreza Emadi)	Date of Birth: appr. 1973 Place of Birth: Hamedan Place of residence: Tehran Place of work: Press TV HQ, Tehran	Press TV Newsroom Director. Former Press TV Senior Producer. Responsible for producing and broadcasting the forced confessions of detainees, including journalists, political activists, persons belonging to Kurdish and Arab minorities, violating internationally recognised rights to a fair trial and due process. Independent broadcast regulator OFCOM fined Press TV in the UK GBP 100 000 for broadcasting the forced confession of Iranian-Canadian journalist and film-maker Maziar Bahari in 2011, which was filmed in prison whilst Bahari was under duress. NGOs have reported further instances of forced televised confessions by Press TV. Emadi is therefore associated with violating the right to due process and fair trial.	12.3.2013

COMMISSION DECISION
of 6 November 2013
on the measures implemented by Germany in favour of HoKaWe Eberswalde GmbH SA.34721
(2012/C) (ex 2012/NN)

(notified under document C(2013) 7058)

(Only the German text is authentic)

(Text with EEA relevance)

(2014/206/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾, and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) On 30 April 2012, the Commission received a complaint by a wood-processing undertaking established in the Land Brandenburg alleging that a 15-year-framework agreement concluded between the German Land of Brandenburg and HoKaWe Eberswalde GmbH (HoKaWe) constitutes State aid within the meaning of Article 107(1) TFEU.
- (2) On 11 May 2012 the Commission submitted a non-confidential version of the complaint to Germany and requested additional information. By letter dated 6 June 2012 Germany provided comments on the complaint and submitted the additional information requested.
- (3) On 27 August 2012 the Commission sent a non-confidential version of the reply to the complainant, inquiring if the complainant wanted to pursue the matter further. The complainant replied on 4 September 2012 that the complaint would be upheld.
- (4) By letter of 19 December 2013, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 108(2) TFEU in respect of the aid.
- (5) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission invited interested parties to submit their comments on the measure.
- (6) By letter of 28 February 2013 Germany provided comments on the decision. The Commission received observations from two interested third parties on 30 April 2013 and from the complainant on 3 May 2013.
- (7) On 17 May 2013 non-confidential versions of these observations were sent to Germany. Germany commented on these observations on 11 June 2013 and completed these comments by letter of 13 June 2013.
- (8) The Commission sent further requests for information to Germany by letters of 2 August 2013, 17 September 2013 and 23 September 2013 to which Germany replied by letters of 15 August 2013, 20 September 2013 and 1 October 2013 respectively.

⁽¹⁾ OJ C 99, 5.4.2013, p. 79.

⁽²⁾ See footnote 1.

2. DESCRIPTION OF THE AID

2.1. The beneficiary

- (9) HoKaWe is a limited liability company that operates a wood-fired biomass power plant in Eberswalde in the Land Brandenburg. The power plant was built in 2005 and started operating in 2006. In June 2011 the county court of Frankfurt/Oder opened insolvency proceedings against HoKaWe. However, the company is still economically active.
- (10) The Landkreis Barnim (district of Barnim) was interested in purchasing HoKaWe's assets in order to continue operating the power plant; in May 2012 the asset transaction was approved in a meeting of HoKaWe's creditors and the sale was notarised. However, since the Land Brandenburg did not agree to transfer the framework agreement governing deliveries of wood from the Brandenburg State Forest (which is the subject of the present decision) to the new owner, the district of Barnim withdrew from the transaction.

2.2. Description of the measure

- (11) In June 2005 the Land Brandenburg and HoKaWe concluded a framework agreement for the delivery of wood from the Brandenburg State Forest. The agreement at stake stipulates the quantity and the terms and conditions of wood ⁽³⁾ deliveries to HoKaWe for a period of 15 years, from 1 June 2006 to 1 June 2021. The agreement concerns a yearly volume of 150 000 cubic meters of wood originating from forests located in a distance of not more than 70 km from Eberswalde.
- (12) In the agreement an initial reference price for the year 2004 of EUR 15,50/cubic meter was fixed. In addition, the text of the agreement foresaw that yearly price adjustments would be agreed between the parties on the basis of the development of the industrial wood price index of the German Federal Statistical Office ⁽⁴⁾; changes of the wood price compared to the initial reference price were to be borne 50 % by the seller and 50 % by the buyer (hereinafter: the '*price adjustment clause*').
- (13) For the purpose of the calculation of the corresponding price adjustment, the agreement furthermore laid down the following formula (hereinafter: the '*price adjustment formula*' or '*formula*'):

$$\text{ISE} = 15,50\text{€}/\text{rm} + \frac{\text{Index} - 135,89\%}{135,89\%} \text{€}/\text{rm} * 15,50 * 0,5$$

- (14) It is therefore necessary to distinguish between the price adjustment clause as laid down in the *text* of the agreement and the price adjustment *formula*.
- (15) According to the submissions by Germany, on the one hand, the *price adjustment clause* must be seen as the representation of the intentions of the parties to the agreement. This is supported by an internal note of the Ministry of Agriculture, Environment and Regional Planning of the Land Brandenburg of 1 October 2003 concerning a meeting between representatives of the Land Brandenburg and HoKaWe, which clearly shows that the price adjustment envisaged by the parties during the negotiations corresponded to the *price adjustment clause*. It is also supported by a note from the Ministry of Economic and European Affairs of the Land Brandenburg of 5 January 2011, which recommended to adjust or interpret the framework agreement in a way that would respect the text of the agreement in order to reflect the true intentions of the parties.
- (16) The *formula* on the other hand was flawed, as confirmed by Germany and by two expert opinions prepared in 2010 for the Land Brandenburg ⁽⁵⁾, and did not lead to a result that corresponded to the intentions of the parties as expressed in the *price adjustment clause*.

⁽³⁾ The agreement concerned transportable hardwood or softwood of a length of 3 m with a diameter from 3 cm to 70 cm. The purchase was carried out ex forest track. Rotten and curved wood was also acceptable.

⁽⁴⁾ See Federal Statistical Office (Statistisches Bundesamt): <https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/Preise/PreisindizesLandForstwirtschaft/Tabellen/ErzeugerpreiseForstwirtschaft.html>.

⁽⁵⁾ An external expertise was provided by RAUE LP, an external legal counsel of the Land Brandenburg; an internal expertise was established by the Ministry for Economic and European Affairs.

- (17) After the agreement entered into force, the price was adjusted on the basis of the *formula*. Contrary to the intentions expressed in the *text* of the agreement, the price adjustments calculated in accordance with the *formula* did not follow the actual development of the industrial wood price index and led to prices that were significantly lower than the average price for wood from the Brandenburg State forests. Moreover, the *formula* did not lead to the envisioned result of sharing the risk of price fluctuations evenly between the State and HoKaWe.
- (18) This was due to fact that, as pointed out above in recital (16), the *formula* was flawed and did not mathematically reflect the intentions of the parties as laid down in the *price adjustment clause* ⁽⁶⁾.
- (19) In addition, the submission by Germany of 28 February 2013 shows that, during the course of the agreement the parties repeatedly exercised their discretion as regards the parameters actually used for the calculation of the price adjustment pursuant to the *formula* ⁽⁷⁾. The German authorities have informed the Commission that the reasons for this cannot be reconstructed from the files.
- (20) The two expert opinions carried out for the Land Brandenburg in 2010 (see paragraph (16)) pointed to possible State aid problems and recommended to amend the agreement by changing the *formula*. Following negotiations between HoKaWe and the Land Brandenburg, the parties therefore signed a modified version of the agreement on 26 August 2011, with effect from 1 July 2011. This modified version remedied the problems outlined in recitals (12) to (19) by laying down that from 1 July 2011 onwards prices had to be adjusted in accordance with the *price adjustment clause* and, thereby, in accordance with the original intentions of the parties. Thus, from that date onwards the *formula* ceased to be part of the agreement and could, therefore, not be applied anymore.
- (21) Furthermore, the Land Brandenburg decided not to continue the contract with future investors taking over HoKaWe's assets.

2.3. Grounds for initiating the procedure

- (22) On 19 December 2012 the Commission decided to open a formal investigation procedure in accordance with Article 108(2) TFEU ('the opening decision').
- (23) In the opening decision the Commission preliminarily considered that the implementation of the framework agreement entered into between the Land Brandenburg and HoKaWe involved State aid.
- (24) The Commission questioned whether, from an *ex ante* perspective, a private vendor on the market would have accepted a remuneration as that resulting from the application of the described *price adjustment formula*.
- (25) Moreover, even if the contracting parties would have been unaware of the flaws of the *formula*, the Commission expressed serious doubts as to whether Germany had acted in a market-conform manner during the implementation of the agreement. This followed from the price development for wood sold under the agreement, which showed that the price calculated on the basis of the *formula* led to significantly lower prices than the average wood price in the Land Brandenburg. A prudent private vendor placed in a similar situation would have immediately used all possibilities to modify the adjustment method. In contrast, Germany continued using the *formula* until 2011.
- (26) On the basis of these considerations the Commission came to the preliminary conclusion that an advantage in favour of HoKaWe and therefore the existence of State aid could not be excluded for the period from the date of coming into effect of the agreement (1 June 2006) until the amendment of the agreement (30 June 2011). Since a legal basis for compatibility of the aid was neither evident nor had been claimed by Germany, the Commission had further doubts as to whether the measure could be considered as being compatible with the internal market.

⁽⁶⁾ According to the expert opinion by RAUE LLP, the intentions of the parties as expressed in the *price adjustment clause* could have been represented by the following formula:

$$P = 15,50\text{€}/\text{rm} + \frac{\text{Index}_{n+1} - \text{Index}_n}{\text{Index}_n} \text{€}/\text{rm} * 15,50 * 0,5$$

⁽⁷⁾ For instance, for calculating the price applicable as from 1 July 2006 the index value of July 2006 was used instead of the index value of January 2005, as required by the agreement.

3. COMMENTS FROM INTERESTED PARTIES

- (27) In the course of the formal investigation procedure the Commission received observations from two interested third parties as well as from the complainant.
- (28) The complainant submitted internal notes of the Ministry of Agriculture, Environment and Regional Planning of the Land Brandenburg dated December 2003 and March 2004. According to the complainant, these notes expressed, already prior to the conclusion of the agreement, concerns regarding several aspects of the agreement: Assessing the consequences of an agreement at the time, the note from December 2003 observed that, already for the year 2004, it would lead to a price well below the price for industrial wood at the time. Likewise, the internal note from March 2004 pointed out that the price adaptation method would lead to inappropriate price concessions by the Land Brandenburg and explicitly recommended reconsidering or renegotiating the agreement.
- (29) The complainant argued that in such a situation no private vendor would have entered into such an agreement and, furthermore, that a private vendor would have reacted immediately when it became clear that the prices were below market prices and would not have waited for five years. As regards the price adaptation, the complainant alleges that the prices agreed did not reflect the actual development in the wood market and resulted in an undue advantage in favour of HoKaWe. The complainant estimates the amount of the aid between 2006 and 2011 at EUR 7,3 million (taking into account the average wood price as agreed between the complainant and other suppliers).
- (30) In addition, the Commission received observations from two wood-processing undertakings in the Land Brandenburg. These undertakings alleged that due to the long-term agreement, a significant part of the wood produced in the Brandenburg State forest was withdrawn from the regional wood market which led to undue distortions of competition and endangered the existence of small wood-processing undertakings in the Land Brandenburg.

4. COMMENTS FROM GERMANY

- (31) Germany maintained that the framework agreement was market-conform and therefore did not involve State aid.
- (32) Germany stated that, at the time of signing of the agreement, no market for wood to be used in energy production (energy wood, 'Energieholz') existed and that, consequently, the parties agreed to base the price to be paid by HoKaWe on the price for industrial wood and the price adjustments on the development of the index for industrial wood. Germany also submitted that the text of the agreement reflected the intended *modus operandi* for price adjustments but admitted that the application of the *formula* led to results that did not correspond to the intended sharing of the risk of price fluctuations between the parties.
- (33) Germany, therefore, argued that the initial reference price as well as the *price adjustment clause* laid down in the text of the agreement, with price adjustments based on the index for industrial wood in Germany and an equal sharing of the risk of price fluctuations between the parties, must be regarded as being market-conform at the time of signing the agreement.
- (34) According to Germany, it was only discovered in the course of a reorganisation of the forestry administration in the Land Brandenburg in January 2009 that the application of the *formula* had resulted in HoKaWe's paying lower prices than other companies. Therefore, in 2010 the responsible authorities of the Land Brandenburg requested an assessment of the agreement by an external legal expert, RAUE LLP, and also carried out an in-house legal assessment of the agreement. Both expertises pointed to possible State aid issues. Furthermore, the Ministry for Economic and European Affairs concluded in a written statement of 5 January 2011 that the *price adjustment clause* was market-conform but that a price adjustment on the basis of the *formula* constituted State aid and, therefore, recommended to amend the agreement in a way which would reflect the true intentions by, for example, modifying the *formula*. The Land Brandenburg followed this recommendation in August 2011.
- (35) In this regard Germany argued that the Land Brandenburg acted in a market-conform manner by adjusting the agreement in 2011 and that it could not react faster, as contracts have to be fulfilled and since the agreement could only be amended by agreement between the parties.
- (36) Moreover, according to Germany the agreement does neither distort competition nor affect trade between Member States.

5. ASSESSMENT

5.1. Existence of aid

- (37) Article 107(1) TFEU provides that any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (38) According to the settled practice of the Commission and as confirmed by the case law, the criterion for assessing whether a commercial transaction between a public body and an economic entity amounts to State aid is the market economy investor principle. It follows from this principle that, when the State acts in the market as a commercial operator, it must do so in a way comparable to a private operator. If the State does not do so, State aid could be involved. In other words, the benchmark for appreciating whether a transaction involves State aid is whether a private operator placed in a similar situation would have behaved in the same way, i.e. in the case at hand would have sold the assets, goods or service at the same price (private vendor test). In applying this principle, non-economic considerations cannot be taken into account as reasons for accepting a lower price. This principle has been repeatedly applied by the Commission and constantly confirmed by the Court ⁽⁸⁾.
- (39) The Commission, therefore, has to assess in the present case whether a private vendor would have entered into an agreement with a comparable duration, on the basis of a comparable initial reference price and with a similar price adjustment mechanism.
- (40) As stated in recitals (11) to (12), the framework agreement with a duration of 15 years stipulated that the prices should be adjusted yearly in accordance with the development of the industrial wood price index and that the corresponding changes to the initial reference price, which was set at EUR 15,50/cubic meter, should be borne 50 % by the State and 50 % by HoKaWe. In addition, the agreement laid down a *formula* to be used for the calculation of this price adjustment.

Long duration of the agreement

- (41) The complainant argued that the duration of the agreement, that is to say 15 years, was not customary on the market.
- (42) However, the Commission does not have any indication that would justify a conclusion that this duration was not market-conform. While a duration of 15 years appears rather long, it is not unreasonable for a vendor to bind itself to a buyer if this would guarantee to the vendor, as was the case under the agreement at stake, to sell steady volumes of wood which, in addition, at least partly did not fulfil the quality requirements for industrial wood.
- (43) In the light of this fact and the foreseen sharing of the risk of price fluctuations it cannot be excluded that a private vendor would have entered into an agreement of comparable duration.

Initial reference price agreed

- (44) Similarly, regarding the initial reference price of EUR 15,50/cubic meter, the Commission does not have any indications that this price was not market-conform.
- (45) As argued by Germany, at the time the agreement was signed, no established market price for energy wood existed. The contracting parties, therefore, based the framework agreement on the price for industrial wood. According to an overview of market prices for industrial wood submitted by the complainant, prices between EUR 15,50/cubic meter and EUR 17,50/cubic meter for the year 2004 and between EUR 15,00/cubic meter and EUR 17,00/cubic meter for the year 2005 can be regarded as market-conform. Also taking into account the fact that the agreement was a long-term contract, with the agreed price of EUR 15,50/cubic meter the initial reference price of the framework agreement stayed within the range of market-conform prices for industrial wood.

⁽⁸⁾ See, e.g., Case C-305/89 *Italy v Commission* ('ALFA Romeo') [1991] ECR I-1603, paragraphs 18 and 19; Case T-16/96 *Cityflyer Express v Commission* [1998] ECR II-757, paragraph 51; Joined Cases T-129/95, T-2/96 and T-97/96 *Neue Maxhütte Stahlwerke and Lech-Stahlwerke v Commission* [1999] ECR II-17, paragraph 104; Joined Cases T-268/08 and T-281/08 *Land Burgenland and Austria v Commission* [2012] ECR II-0000, paragraph 48.

- (46) Furthermore, an internal note from the Ministry of Agriculture, Environment and Regional Planning of the Land Brandenburg dated 1 October 2003 shows that during the negotiations the representatives of the Land Brandenburg suggested an initial reference price of EUR 15,50/cubic meter, whereas HoKaWe argued for a price of EUR 15,00/cubic meter. The parties finally agreed upon the higher price, namely EUR 15,50/cubic meter.
- (47) It follows that the initial reference price of EUR 15,50/cubic meter may be regarded as market-conform. Given the lack of an established market price for comparison, and the fact that the quality requirements of energy wood are at least not higher than industrial wood, it was reasonable for the Land Brandenburg to conclude an agreement according to which the price would be based on the price for industrial wood (reference price). The price agreed was the result of negotiations between the parties and was furthermore within the price range of market prices for industrial wood in the Land Brandenburg. It was agreed upon in knowledge of the quality of wood available to the State forests of the Land Brandenburg ⁽⁹⁾ and thus represents what a private vendor would have considered as being acceptable for the quality of wood to be delivered.

Price adjustment

- (48) Regarding the price adjustment, as pointed out in recital (14), it is necessary to distinguish between the *price adjustment clause* and the price adjustments actually applied on the basis of the *formula*.
- (49) With regard to the *price adjustment clause* the Commission does not have any indications that it was not market-conform. Similarly to what has been stated in recital (45) concerning the initial reference price, there was no index for price developments of energy wood. It was, therefore, not only reasonable to base the initial reference price on the price for industrial wood but also reasonable to agree upon a price adjustment in parallel to the index for industrial wood.
- (50) Furthermore, the text of the agreement foresaw that the parties should share price fluctuations at 50 %. Since the price development was, at the time of signing, not fully foreseeable, this mechanism had the effect that both parties shared both the risk and (potential) benefits, which could have also resulted in an advantage for the Land Brandenburg. In view of this uncertainty, also a private vendor could have agreed to such a clause. This clause must therefore be regarded as being market-conform.
- (51) It can be concluded that the *price adjustment clause*, foreseeing a development of the price in parallel with the index for industrial wood and an even sharing of the risk of price fluctuations between the parties, was market-conform and that a reasonable private vendor would have entered into such an agreement.
- (52) However, as already stated, the actual price adjustments were made by applying the *formula*. As can be seen from the overview in the following table, the prices that resulted from the application of this *formula* were significantly lower than the prices that would have resulted from the application of the *price adjustment clause*:

(in EUR per cubic meter)			
	Price actually paid (based on the application of the <i>formula</i>)	Price calculated (*) on the basis of the <i>price adjustment clause</i>	Average price for all wood in the Land Brandenburg
2006	13,00	15,42	17,72
2007	13,21	15,95	21,02
2008	16,55	20,96	22,76
2009	16,42	20,76	19,20

⁽⁹⁾ In the course of the formal investigation proceeding, third parties complained that due to the agreement with HoKaWe industrial wood is withdrawn from the market in large quantities. This suggests that the energy wood delivered to HoKaWe contained substantial quantities of industrial wood.

(in EUR per cubic meter)

	Price actually paid (based on the application of the <i>formula</i>)	Price calculated (*) on the basis of the <i>price adjustment clause</i>	Average price for all wood in the Land Brandenburg
2010	16,14	20,03	24,50
2011	15,79	19,33	n.a.

(*) calculation submitted by Germany

- (53) The table also clearly shows that the prices calculated on the basis of the *formula* were not only significantly lower than the prices that would have resulted from the application of the *price adjustment clause* but also significantly lower than the average prices in the Land Brandenburg.
- (54) Furthermore, these effects of the *formula* were already foreseeable before the signing of the agreement. This is of particular importance as, in order to assess whether a private market vendor would have acted in the same or a comparable way as the Land Brandenburg, it is necessary to carry out an *ex ante* assessment of the agreement ⁽¹⁰⁾.
- (55) As stated above in recitals (16) and (18), the *formula* was flawed and did not reflect the intentions as expressed in the *price adjustment clause*. These intentions could have been mathematically reflected, as also confirmed by the expert opinion of RAUE LLP, in the following formula:

$$P = 15,50\text{€}/\text{rm} + \frac{\text{Index}_{n+1} - \text{Index}_n}{\text{Index}_n} \text{€}/\text{rm} * 15,50 * 0,5$$

- (56) However, the parties to the agreement deducted a fixed amount instead of Index_n . While it may be justified, depending on the circumstances, to use a fixed deduction, such a deduction should at least result in the agreed initial reference price for the year in which the agreement is concluded. Yet, in the present case the parties chose a deduction that, already for the year of signing, led to a price significantly below the agreed initial and market-conform reference price of EUR 15,50/cubic meter.
- (57) Hence, the fact that the *formula* was flawed and did not lead to the prices agreed in the *price adjustment clause* was objectively foreseeable at the time of signing.
- (58) In this situation, a private vendor would have used a different formula or at least requested a change of the *formula*, especially since the parties had agreed in the text of the agreement that the price adjustment would be established in accordance with the index for industrial wood and with the risk of price fluctuations to be shared equally between the State and HoKaWe (as expressed in the *price adjustment clause*).
- (59) In this regard it also needs to be underlined that the price developments under the agreement were not simply the automatic result of a predetermined mathematical calculation laid down in the *formula*. As stated above in recital (19) it rather follows from the information provided by Germany in the formal investigation procedure that the *formula* was adjusted several times ⁽¹¹⁾ during the course of the duration of the agreement.
- (60) As can clearly be seen from the table shown in recital (52), these foreseeable negative effects of applying the *formula* also materialized, given that the price actually paid by HoKaWe was significantly lower than the price to be charged according to the *price adjustment clause*. It was also significantly lower than the average prices paid for wood from Brandenburg's State forest, that is to say the prices for which the Land Brandenburg sold wood to other companies ⁽¹²⁾.

⁽¹⁰⁾ See Case C-482/99 *France v Commission* [2002] ECR I-4397, paragraphs 70-72; Case C-124/10 P *Commission v EDF* [2012] ECR I-0000, paragraphs 83-85 and 105.

⁽¹¹⁾ This was done in addition to the adjustment of the *formula* reflecting the recalculation of the index for industrial wood on a new base year by the German Federal Statistical Office.

⁽¹²⁾ As can be seen from the table shown in recital (52), with the exception of the year 2009 the application of the *price adjustment clause* would also have led to prices below the average price in the Land Brandenburg, however to a significantly lesser extent. As already explained with regard to the market-conformity of the price adjustment clause, an arm's length transaction with a significant buyer assuring in the long-term large and steady purchase volumes may lead to prices below market average. See also Commission Decision C(2012) 834 final in the case SA.19045 (*Alleged aid of the Land Bavaria (Bavarian State Forest Enterprise) in form of long-term supply agreements for wood with the company Klausner*), points 47 et seq.

- (61) It follows that the fact that the application of the *formula* did not lead to the intended result of a price development based on the index for industrial wood, with the risk of price fluctuations being shared between the parties, was both known and accepted by the State.

Conclusion

- (62) As regards the *price adjustment clause*, it can be concluded that although it would have led to prices below the average price for the Land Brandenburg, these prices would have been market-conform. They were based on reasonable considerations and negotiations between the parties involved and, therefore, it cannot be excluded that also a private actor on the market would have entered into an agreement with the same or comparable conditions.
- (63) However, the actual price adjustment implemented by the parties on the basis of the *formula* did not reflect such market-conform conditions and led to significantly lower prices than the ones that would have resulted from the application of the *price adjustment clause* (and, even more so, the average price for wood in the Land Brandenburg).
- (64) While the price development on the basis of the *price adjustment clause* reflects a reasonable business decision and a fair balance of risks concerning price fluctuations between the contracting parties, the prices resulting from the application of the *formula* were significantly lower and, furthermore, also did not reflect that balance of risks. Contrary to the situation underlying the Commission decision in case SA.19045 (*Alleged aid of the Land Bavaria (Bavarian State Forest Enterprise) in form of long-term supply agreements for wood with the company Klausner*)⁽¹³⁾ in which prices below market average were held not to contain State aid as the market suffered from overcapacities and the Land Bavaria tried to attract a significant buyer that would guarantee in the long term large and steady volumes of purchase, nothing in the facts of the present case would justify prices below the ones that would have resulted from the application of the *price adjustment clause*. The price adjustment clause agreed between the parties took the nature of the long term contract and the quality of wood to be sold into account and already would have led to prices below the average price in the Land Brandenburg. There is nothing to indicate that a private actor on the market would have agreed to even lower prices than those.
- (65) This is furthermore confirmed by the submissions from Germany, which explicitly stated that the *price adjustment clause* represented the true intentions of the parties. Moreover, in 2011 the Land Brandenburg negotiated the amendment to the agreement which discarded the flawed *formula*, as a reaction to the two legal opinions from 2010 referred to above in recital (16) which had raised State aid concerns due to the application of the *formula*. Thus, the Land Brandenburg negotiated the amendment to the agreement without the *formula* specifically in order to implement the true intentions of the parties and to put an end to those State aid concerns.
- (66) It follows that the way the agreement was implemented, more specifically the price adjustments on the basis of the *formula*, fails the private vendor test and is not market-conform.
- (67) Germany argued that the regional government of the Land Brandenburg only became aware of the fact that the prices actually paid by HoKaWe did not follow the price development as intended by the *price adjustment clause* and led to significantly lower prices than the prices for which wood was delivered to other companies in the course of a reorganisation of the forest administration in 2009 and that the Land Brandenburg subsequently acted in a market-conform manner by ordering the two expert opinions mentioned in recital (16) and then by renegotiating the agreement, leading to the amendment of that agreement in 2011.
- (68) These arguments, however, do not appear plausible. First, as explained in recitals (55) to (55), the effects of the *formula* were foreseeable at the time of the signing of the agreement. Secondly, a private market vendor seeking to ensure the implementation of the agreed solution found in the *price adjustment clause* and therefore closely monitoring the price adjustments would have reacted immediately by requesting a renegotiation of the price. As indicated in recital (65), the successful renegotiation of the agreement by the Land Brandenburg rather confirms that the *formula* did not reflect the true intentions of the parties (as agreed in the *price adjustment clause*). It also shows that HoKaWe could not refuse to discard the *formula*.
- (69) Consequently, HoKaWe benefitted from an economic advantage in the period from the date of coming into effect of the agreement (1 June 2006) until the amendment of the agreement (30 June 2011).

⁽¹³⁾ Ibid.

- (70) Furthermore, all other criteria of Article 107(1) TFEU are fulfilled. The advantage was selective because the agreement specifically benefitted a certain company. The advantage was granted by the authorities of a Member State, i.e. the Land Brandenburg. The average volume of wood sold to HoKaWe under the terms of the agreement was significant; the wood supply at favourable terms improved the position of the recipient in relation to its competitors and therefore distorted competition. The market for wood is open to competition from other Member States. Even taking into account the fact that the supply agreement covers only wood originating from forests not further away than 70 km from Eberswalde, the Commission notes that Eberswalde is situated very close to the Polish border (only 30 km). Therefore, the aid also affects trade between Member States. Consequently, it can be concluded that the implementation of the agreement leading to the prices paid on the basis of the *formula* constituted State aid.
- (71) The amendment to the agreement, which entered into force on 1 July 2011, must be regarded as having brought the State aid measure to an end. This amendment provides that from 1 July 2011 onwards price adjustments had to be made in accordance with the *price adjustment clause* and, thereby, reconfirmed and correctly implemented the initial intentions of the parties. As the agreement in this form is market-conform, the Commission considers that after 30 June 2011 HoKaWe no longer received an economic advantage from payments under the agreement.

5.2. Compatibility with the internal market

- (72) A legal basis for compatibility of the aid is neither evident nor has one been claimed by the Member State. This leads to the conclusion that HoKaWe's advantage from the implementation of the agreement between June 2006 and June 2011 constitutes incompatible State aid.

5.3. Calculation of the aid element

- (73) As already explained in recitals (49) to (51), the *price adjustment clause* can be regarded as being market-conform. Therefore, the Commission considers that the aid element consists of the difference between the price actually paid ⁽¹⁴⁾ on the basis of the *formula* and the price to be paid in accordance with the *price adjustment clause*.

	(a) Price actually paid (in EUR per cubic metre) (*)	(b) Price calculated on the basis of the <i>price adjustment clause</i> (in EUR per cubic metre)	(c) Difference between (a) and (b) (*)	(d) Amount of wood actually delivered (in cubic metres)	(e) Aid element: (c) × (d) (in EUR) (*)
2006	13,00	15,42	2,42	13 115,73	31 794
2007	13,21	15,95	2,74	142 792,67	391 452
2008	16,55	20,96	4,41	137 683,00	607 291
2009	16,42	20,76	4,34	141 273,68	613 128
2010	16,14	20,03	3,89	139 045,38	540 699
2011	15,79	19,33	3,54	62 680,29	222 051
Total					2 406 415

(*) The figures in columns (a) and (c) have been rounded; column (e) has been calculated on the basis of the precise figures, with the final result rounded to the nearest EUR-amount.

- (74) The aid granted to HoKaWe therefore amounts to EUR 2 406 415.

⁽¹⁴⁾ The price actually paid as submitted by Germany in its submission from 1 October 2013.

6. RECOVERY

- (75) According to the TFEU and the Court of Justice's established case-law, the Commission is competent to decide that the Member State concerned must abolish or alter aid ⁽¹⁵⁾ when it has found that it is incompatible with the internal market. The Court has also consistently held that the obligation on a Member State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation. ⁽¹⁶⁾ In this context, the Court has established that this objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored. ⁽¹⁷⁾
- (76) In line with the case-law, Article 14(1) of Council Regulation (EC) No 659/1999 ⁽¹⁸⁾ laid down that '*where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary [...]*'.
- (77) Thus, given that the measure at hand was not notified to the Commission in violation of Article 108 TFEU and is, therefore, to be considered as unlawful and incompatible aid, the aid must be recovered in order to re-establish the situation that existed on the market prior to the granting of the aid. Recovery should cover the time from when the advantage accrued to the beneficiary, that is to say when the aid was put at the disposal of the beneficiary, until effective recovery, and the sums to be recovered should bear interest until effective recovery.

7. CONCLUSION

- (78) The implementation of the framework agreement between the Land Brandenburg and HoKaWe from its signing (1 June 2006) until its amendment (30 June 2011) involved State aid not compatible with the internal market. Therefore, the State aid has to be recovered from HoKaWe together with recovery interest,

HAS ADOPTED THIS DECISION:

Article 1

The State aid amounting to EUR 2 406 415, unlawfully granted by Germany to HoKaWe Eberswalde GmbH in breach of Article 108(3) of the Treaty on the Functioning of the European Union, is incompatible with the internal market.

Article 2

1. Germany shall recover the aid referred to in Article 1 from the beneficiary.
2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiary until their actual recovery.
3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ⁽¹⁹⁾ and Commission Regulation (EC) No 271/2008 ⁽²⁰⁾ amending Regulation (EC) No 794/2004.

Article 3

1. Recovery of the aid referred to in Article 1 shall be immediate and effective.
2. Germany shall ensure that this Decision is implemented within four months following the date of notification of this Decision.

⁽¹⁵⁾ See Case C-70/72 *Commission v Germany* [1973] ECR 00813, paragraph 13.

⁽¹⁶⁾ See Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* [1994] ECR I-4103, paragraph 75.

⁽¹⁷⁾ See Case C-75/97 *Belgium v Commission* [1999] ECR I-030671 paragraphs 64-65.

⁽¹⁸⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 83, 27.3.1999, p. 1.

⁽¹⁹⁾ OJ L 140, 30.4.2004, p. 1.

⁽²⁰⁾ OJ L 82, 25.3.2008, p. 1.

Article 4

1. Within two months following notification of this Decision, Germany shall submit the following information to the Commission:

- (a) the total amount (principal and recovery interest) to be recovered from the beneficiary;
- (b) a detailed description of the measures already taken and planned to comply with this Decision;
- (c) documents demonstrating that the beneficiary has been ordered to repay the aid.

2. Germany shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiary

Article 5

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 6 November 2013.

For the Commission
Joaquín ALMUNIA
Vice-President

COMMISSION IMPLEMENTING DECISION
of 11 April 2014
on the designation of the .eu Top Level Domain Registry

(Text with EEA relevance)

(2014/207/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the .eu Top Level Domain ⁽¹⁾, and in particular Article 3(1)(b) thereof,

Whereas:

- (1) The Commission should designate the Registry entrusted with the organisation, administration and management of the .eu Top Level Domain after publishing a call for expressions of interest in the *Official Journal of the European Union*.
- (2) In 2003 the Commission designated European Registry for internet Domains (EURid) as the .eu Top Level Domain Registry by its Decision 2003/375/EC ⁽²⁾. The Commission concluded a contract with European Registry for internet Domains (EURid) that specified the conditions according to which the Commission supervises the organisation, administration and management of the .eu Top Level Domain by the Registry. That contract was signed on 12 October 2004 for a term of five years and then renewed in 2009 for another five years. It will expire on 12 October 2014.
- (3) The Commission published a Call for expressions of interest (2013/C 134/06) in the *Official Journal of the European Union* on 14 May 2013 jointly with the Commission Declaration on its role as supervisor of the organisation, administration and management of the .eu TDL by the Registry (2013/C 134/05), inviting applications from organisations wishing to be selected as the Registry to be entrusted with the organisation, management and administration of the .eu Top Level Domain.
- (4) The call was closed on 20 June 2013. Only one application was received, from European Registry for internet Domains (EURid).
- (5) An evaluation based on the eligibility criteria and selection criteria provided for in the call for expressions of interest was conducted on 25 July 2013.
- (6) The evaluators examined the application and established scorecard comprising different marks (individual and collective) for the application in line with the marking system provided in Section 4 of the call, and taking into account its overall quality in view of the selection criteria. The evaluators concluded that the application from European Registry for internet Domains (EURid) met the minimum requirements for each of the selection criteria. The Commission has examined the results arrived at by the evaluators and on this basis endorses the decision.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Communications Committee established by Article 22(1) of Directive 2002/21/EC of the European Parliament and of the Council ⁽³⁾,

⁽¹⁾ OJ L 113, 30.4.2002, p. 1.

⁽²⁾ Commission Decision 2003/375/EC of 21 May 2003 on the designation of the .eu Top Level Domain Registry (OJ L 128, 24.5.2003, p. 29).

⁽³⁾ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (OJ L 108, 24.4.2002, p. 33).

HAS ADOPTED THIS DECISION:

Article 1

European Registry for internet Domains (EURid) shall be the .eu Top Level Domain Registry entrusted with the organisation, management and administration of the .eu Top Level Domain.

Article 2

The Commission shall enter into a contract with European Registry for internet Domains (EURid) specifying the conditions according to which the Commission supervises the organisation, administration and management of the .eu Top Level Domain by the Registry, in accordance with Article 3(1)(c) of the Regulation (EC) No 733/2002.

That contract shall have an initial period of five years and may be extended two times each time for an additional period of maximum five years.

Article 3

Decision 2003/375/EC is repealed.

Article 4

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 11 April 2014.

For the Commission
The President
José Manuel BARROSO

RECOMMENDATIONS

COMMISSION RECOMMENDATION

of 9 April 2014

on the quality of corporate governance reporting ('comply or explain')

(Text with EEA relevance)

(2014/208/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) An effective corporate governance framework is of key importance to society, as well-run companies are likely to be more competitive and more sustainable in the long term. Good corporate governance is first and foremost the responsibility of the company concerned, and rules at European and national level are in place to ensure that certain standards are respected. These include legislation and soft law, namely national corporate governance codes.
- (2) Corporate governance codes aim to establish principles for good corporate governance in listed companies in Europe based on transparency, accountability and a long-term perspective. They provide standards and best practice for companies, enabling them to perform better and therefore contribute to fostering growth, stability and long-term investment.
- (3) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings ⁽¹⁾ requires companies to include a corporate governance statement in their management report if their transferable securities are admitted to trading on a regulated market of any Member State within the meaning of Article 4(1)(14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ⁽²⁾.
- (4) The corporate governance statement should provide essential information on the corporate governance arrangements of the company, such as information relating to the relevant corporate governance code(s) applied by that company, the internal control and risk management systems, the shareholder meeting and its powers, shareholders' rights, administrative, management and supervisory bodies and their committees.
- (5) High quality disclosure on companies' corporate governance arrangements offers useful information to investors and facilitates their investment decisions. It also gives investors more confidence in the companies they invest in. Increased transparency to the market can also bring, more generally, reputational benefits for companies and more legitimacy in the eyes of stakeholders and society as a whole.
- (6) The 'comply or explain' principle laid down in Article 20 of Directive 2013/34/EU is a key feature of European corporate governance. According to this principle, companies that depart from the relevant corporate governance code are required to explain in their corporate governance statement which parts of the code they depart from and the reasons for doing so.

⁽¹⁾ OJ L 182, 29.6.2013, p. 19.

⁽²⁾ OJ L 145, 30.4.2004, p. 1.

- (7) While full compliance with a code can send a positive message to the market, it may not always be the best approach for a company from a corporate governance perspective. Departing from a provision in the code could in some cases allow a company to govern itself more effectively. The 'comply or explain' approach provides companies with flexibility by allowing them to adapt their corporate governance to their size, shareholding structure or sectoral specificities. At the same time, it promotes a culture of accountability, encouraging companies to reflect more on corporate governance arrangements.
- (8) The 'comply or explain' principle is widely supported by companies, investors and regulators as an appropriate tool in corporate governance. Yet, as mentioned in the 2011 Green Paper on the EU corporate governance framework ⁽¹⁾, it appears that there are some shortcomings in the way the principle is applied in practice, in particular as regards the quality of explanations provided by companies when departing from corporate governance codes. In this respect, a large majority of respondents to the Green Paper were in favour of requiring companies to provide better quality explanations in case of departures.
- (9) According to more recent evidence gathered by the Commission, there has been gradual improvement in this area. Several Member States have, for instance, initiated discussions or issued guidelines on the quality of explanations. However, there is still scope for further improvement.
- (10) In its resolution of 29 March 2012 ⁽²⁾, the European Parliament considered the 'comply or explain' approach a useful tool for corporate governance. In particular, it was in favour of compulsory adherence to a relevant code by the company and requiring meaningful explanations for departures from a code, which should include a description of the alternative measure taken.
- (11) The 2012 Action Plan on European company law and corporate governance ⁽³⁾ underlined the importance of high quality explanations, in particular for investors, and announced a Commission initiative to improve the quality of corporate governance reports and the quality of explanations in particular.
- (12) The purpose of this Recommendation is to provide guidance for companies and to assist them in improving the quality of their corporate governance reporting. Given the diversity of legal traditions and approaches, these recommendations offer a general framework, which can be further developed and adapted to the specific national context.
- (13) This Recommendation applies to companies which are required to submit a corporate governance statement in accordance with Article 20 of Directive 2013/34/EU and which need to provide explanations in case of departure from the recommendations of the corporate governance code(s).
- (14) While this Recommendation is intended predominantly for listed companies pursuant to Article 20 of Directive 2013/34/EU, other entities preparing a corporate governance statement might also benefit from enhancing the quality of information they plan to disclose.
- (15) In addition to the information that they are required to provide in their corporate governance statement, companies in some Member States are also required to report on how they apply the main principles or recommendations of the code. In order to further improve transparency, all European listed companies are encouraged to report on how they followed the relevant codes regarding aspects which may be most important for shareholders. In addition, in order to facilitate access, companies should consider making this information also available online.
- (16) There is no standard format for corporate governance reporting throughout the Union. Presenting information in a general statement or on a provision by provision basis is acceptable as long as it is informative and useful for shareholders, investors and other stakeholders. Companies should avoid making overly general statements, which might not cover important aspects to shareholders but also, box-ticking statements with little informative value. Likewise, they should also avoid providing lengthy information which might not give sufficient insight.

⁽¹⁾ COM(2011) 164 of 5 April 2011.

⁽²⁾ European Parliament resolution of 29 March 2012 on a corporate governance framework for European companies, 2011/2181(INI).

⁽³⁾ COM(2012) 740 of 12 December 2012.

- (17) Appropriate disclosure of departures from the relevant codes and of the reasons for such departures is very important to ensure that stakeholders can make informed decisions about companies. Such disclosure reduces the information asymmetry between the company directors and its shareholders, and therefore, decreases the monitoring costs for the latter. Companies should clearly indicate which recommendations of the code they have departed from and, for each instance provide an explanation regarding: the manner in which the company has departed, the reasons for the departure, the way in which the decision to depart from a recommendation has been arrived at, the timeframe of the departure and the measures taken to ensure that the company action remains consistent with the objectives of the recommendation, and of the code.
- (18) In providing this information, companies should avoid using standardised language and should focus on the specific company context that explains the departure from a recommendation. The explanations should be structured and presented in such a way that they can be easily understood and used. This will make it easier for shareholders to engage in a constructive dialogue with the company.
- (19) An effective 'comply or explain' approach requires efficient monitoring to motivate businesses to comply with a corporate governance code or to explain non-compliance. The 2011 Green Paper indicated that the corporate governance statements which companies publish seemed not to be monitored as they should be and few Member States had public or specialised bodies check the completeness of the information provided, and in particular the explanations.
- (20) Various actors, such as boards, auditors and shareholders, are involved in monitoring the information disclosed by companies. Boards and shareholders also have an important role to play in encouraging good quality explanations. In particular, more active monitoring by shareholders, as owners of companies, could lead to better corporate governance practices.
- (21) Member States and bodies responsible for corporate governance codes are also encouraged to consider how more attention could be paid to the overall quality of explanations for departures submitted by companies in the context of the existing monitoring arrangements in their countries. Additional means of incentivising companies and other parties concerned could also be considered, to further improve the quality of the explanations and of corporate governance reporting in general.
- (22) In order to ensure efficient follow-up to this Recommendation, Member States should draw it to the attention of the bodies responsible for the national corporate governance codes, listed companies and other parties concerned. Member States should also inform the Commission about measures taken in accordance with this Recommendation,

HAS ADOPTED THIS RECOMMENDATION:

SECTION I

General provisions

1. The purpose of this Recommendation is to provide guidance to Member States, bodies responsible for national corporate governance codes, companies and other parties concerned. The guidance aims to improve the overall quality of corporate governance statements published by companies in accordance with Article 20 of Directive 2013/34/EU and, specifically, the quality of explanations provided by companies in case of departure from the recommendations of the relevant corporate governance code.
2. It is recommended that, where applicable, corporate governance codes make a clear distinction between the parts of the code which cannot be derogated from, the parts which apply on a 'comply or explain' basis and those which apply on a purely voluntary basis.

SECTION II

Quality of corporate governance statements

3. Article 20(1) of Directive 2013/34/EU requires listed companies to provide information about specific aspects of their corporate governance arrangements in their corporate governance statement.
4. In order to further improve transparency for shareholders, investors and other stakeholders, and in addition to the information on the topics referred to in paragraph 3, companies should describe how they have applied the relevant corporate governance code recommendations on the topics of most importance for shareholders.
5. The information referred to in paragraphs 3 and 4 should be sufficiently clear, accurate and comprehensive to enable shareholders, investors and other stakeholders to gain a good understanding of the manner in which the company is governed. In addition, it should refer to the company's specific characteristics and situation, such as size, company structure or ownership or any other relevant features.
6. In order to provide easier access for shareholders, investors and other stakeholders, companies should routinely make the information referred to in paragraphs 3 and 4 available on their websites and include a reference to the website in their management report, even if they already provide information by other means specified in Directive 2013/34/EU.

SECTION III

Quality of explanations in case of departure from a code

7. Article 20(1) of Directive 2013/34/EU requires listed companies to provide explanations in case of departure from the recommendations of the code to which they are subject or which they have voluntarily decided to apply.
8. For the purpose of paragraph 7, companies should clearly state which specific recommendations they have departed from and, for each departure from an individual recommendation:
 - (a) explain in what manner the company has departed from a recommendation;
 - (b) describe the reasons for the departure;
 - (c) describe how the decision to depart from the recommendation was taken within the company;
 - (d) where the departure is limited in time, explain when the company envisages complying with a particular recommendation;
 - (e) where applicable, describe the measure taken instead of compliance and explain how that measure achieves the underlying objective of the specific recommendation or of the code as a whole, or clarify how it contributes to good corporate governance of the company.
9. The information referred to in paragraph 8 should be sufficiently clear, accurate and comprehensive to enable shareholders, investors and other stakeholders to assess the consequences arising from the departure from a particular recommendation.

It should also refer to the specific characteristics and situation of the company, such as size, company structure or ownership or any other relevant features.

10. Explanations for departures should be clearly presented in the corporate governance statement in such a way that they are easy to find for shareholders, investors and other stakeholders. This could be done, for example, by following the same order of recommendations as in the relevant code or by grouping all explanations for departure in the same section of the corporate governance statement, as long as the method used is clearly explained.

SECTION IV

Final provisions

11. In order to motivate companies to comply with the relevant corporate governance code or to better explain departures from it, efficient monitoring needs to be carried out at national level, within the framework of the existing monitoring arrangements.
12. Member States should draw this Recommendation to the attention of the bodies responsible for national corporate governance codes, listed companies and other parties concerned. Member States are invited to inform the Commission of the measures taken in accordance with this Recommendation by 13 April 2015, in order to enable the Commission to monitor and assess the situation.
13. This Recommendation is addressed to the Member States, bodies responsible for national corporate governance codes, listed companies and other parties concerned.

Done at Brussels, 9 April 2014.

For the Commission

Michel BARNIER

Member of the Commission

