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## Legislation

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<sup>(1)</sup> Text with EEA relevance

## II

(Non-legislative acts)

## INTERNATIONAL AGREEMENTS

## COUNCIL DECISION (EU) 2016/2079

of 29 September 2016

**on the signing, on behalf of the European Union, and provisional application of the Partnership Agreement on Relations and Cooperation between the European Union and its Member States, of the one part, and New Zealand, of the other part**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 37 thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 and Article 212(1), in conjunction with Article 218(5) and the second subparagraph of Article 218(8) thereof,

Having regard to the joint proposal from the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 25 June 2012, the Council authorised the Commission and the High Representative of the Union for Foreign Affairs and Security Policy to open negotiations with New Zealand on a Framework Agreement to replace the Joint Declaration on relations and cooperation between the European Union and New Zealand of 21 September 2007.
- (2) The negotiations on the Partnership Agreement on Relations and Cooperation between the European Union and its Member States, of the one part, and New Zealand, of the other part (the 'Agreement') were successfully concluded on 30 July 2014. The Agreement reflects both the historically close relationship and increasingly strong links developing between the Parties, and their desire to further strengthen and extend their relations in an ambitious and innovative way.
- (3) Article 58 of the Agreement provides that the Union and New Zealand may apply provisionally certain provisions of the Agreement, determined mutually by the two Parties, pending its entry into force.
- (4) The Agreement should therefore be signed on behalf of the Union and some of its provisions should be applied on a provisional basis, pending the completion of the procedures necessary for its conclusion,

HAS ADOPTED THIS DECISION:

*Article 1*

The signing on behalf of the Union of the Partnership Agreement on Relations and Cooperation between the European Union and its Member States, of the one part, and New Zealand, of the other part, is hereby authorised, subject to the conclusion of the Agreement.

The text of the Agreement is attached to this Decision.

*Article 2*

Pending its entry into force, in accordance with Article 58 of the Agreement and subject to the notifications provided for therein, the following provisions of the Agreement shall be applied provisionally between the Union and New Zealand, but only to the extent that they cover matters falling within the Union's competence, including matters falling within the Union's competence to define and implement a common foreign and security policy <sup>(1)</sup>:

- Article 3 (Dialogue),
- Article 4 (Cooperation in regional and international organisations),
- Article 5 (Political dialogue),
- Article 53 (Joint Committee), with the exception of points (g) and (h) of paragraph 3 thereof, and
- Title X (Final provisions), with the exception of Article 57 and Article 58(1) and (3), to the extent necessary for the purpose of ensuring the provisional application of the provisions of the Agreement referred to in this Article.

*Article 3*

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

*Article 4*

This Decision shall enter into force on the day following that of its adoption.

Done at Brussels, 29 September 2016.

*For the Council*  
*The President*  
P. ŽIGA

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<sup>(1)</sup> The date from which the provisions of the Agreement referred to in Article 2 will be applied provisionally, will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

**PARTNERSHIP AGREEMENT****on Relations and Cooperation between the European Union and its Member States, of the one part, and New Zealand, of the other part**

The EUROPEAN UNION, hereinafter referred to as 'the Union',

and

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE REPUBLIC OF CROATIA,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Member States of the European Union, hereinafter referred to as the 'Member States',

of the one part, and

NEW ZEALAND,

of the other part,

hereinafter referred to as 'the Parties',

CONSIDERING their shared values and close historical, political, economic and cultural ties,

WELCOMING the progress made in developing their mutually beneficial relationship since the adoption of the Joint Declaration on Relations and Cooperation between the European Union and New Zealand on 21 September 2007,

REAFFIRMING their commitment to the purposes and principles of the Charter of the United Nations ('UN Charter') and to strengthening the role of the United Nations ('UN'),

REAFFIRMING their commitment to democratic principles and human rights as laid down in the Universal Declaration of Human Rights and other relevant international human rights instruments as well as to the principles of the rule of law and good governance,

ACKNOWLEDGING the New Zealand Government's particular commitment to the principles of the Treaty of Waitangi,

EMPHASISING the comprehensive nature of their relationship and the importance of providing a coherent framework to promote the development of this relationship,

EXPRESSING their common will to elevate their relations into a strengthened partnership,

CONFIRMING their desire to intensify and develop their political dialogue and cooperation,

DETERMINED to consolidate, deepen and diversify cooperation in areas of mutual interest, at the bilateral, regional and global levels and for their mutual benefit,

RECOGNISING the need for enhanced cooperation in the fields of justice, freedom and security,

RECOGNISING their desire to promote sustainable development in its economic, social and environmental dimensions,

FURTHER RECOGNISING their common interest in promoting mutual understanding and strong people-to-people links, including through tourism, reciprocal arrangements that enable young people to visit other countries and take up work and study options, and other short-term visits,

REAFFIRMING their strong commitment to promote economic growth, global economic governance, financial stability and effective multilateralism,

REAFFIRMING their commitment to cooperating in promoting international peace and security,

BUILDING ON the agreements concluded between the Union and New Zealand, notably in relation to crisis management, science and technology, air services, conformity assessment procedures and sanitary measures,

NOTING that in case the Parties decided, within the framework of this Agreement, to enter into specific agreements in the area of freedom, security and justice which were to be concluded by the Union pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, the provisions of such future agreements would not bind the United Kingdom and/or Ireland unless the Union, simultaneously with the United Kingdom and/or Ireland as regards their respective previous bilateral relations, notifies New Zealand that the United Kingdom and/or Ireland has/have become bound by such agreements as part of the Union in accordance with Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union. Likewise, any subsequent Union internal measures which were to be adopted pursuant to the above mentioned Title V to implement this Agreement would not bind the United Kingdom and/or Ireland unless they have notified their wish to take part or accept such measures in accordance with Protocol No 21. Also noting that such future agreements or such subsequent Union internal measures would fall within Protocol No 22 on the position of Denmark annexed to those Treaties,

HAVE AGREED AS FOLLOWS:

## TITLE I

### GENERAL PROVISIONS

#### *Article 1*

#### **Purpose of the Agreement**

The purpose of this Agreement is to establish a strengthened partnership between the Parties and to deepen and enhance cooperation on issues of mutual interest, reflecting shared values and common principles, including through the intensification of high-level dialogue.

#### *Article 2*

#### **Basis of cooperation**

1. The Parties reaffirm their commitment to democratic principles, human rights and fundamental freedoms, and the rule of law and good governance.

Respect for democratic principles and human rights and fundamental freedoms as laid down in the Universal Declaration of Human Rights and other relevant international human rights instruments, and for the principle of the rule of law, underpins the domestic and international policies of the Parties and constitutes an essential element of this Agreement.

2. The Parties reaffirm their commitment to the UN Charter and the shared values expressed therein.

3. The Parties reaffirm their commitment to promoting sustainable development and growth in all its dimensions, contributing to the attainment of internationally agreed development goals and cooperating to address global environmental challenges, including climate change.

4. The Parties emphasise their shared commitment to the comprehensive nature of their bilateral relationship and to broadening and deepening this relationship including through the conclusion of specific agreements or arrangements.

5. The implementation of this Agreement shall be based on the principles of dialogue, mutual respect, equal partnership, consensus and respect for international law.

#### *Article 3*

#### **Dialogue**

1. The Parties agree to enhance their regular dialogue in all areas covered by this Agreement with a view to fulfilling its purpose.

2. Dialogue between the Parties shall take place through contacts, exchanges and consultations at any level, particularly in the following forms:

- (a) meetings at leaders level, which shall be held regularly whenever the Parties deem it necessary;
- (b) consultations and visits at ministerial level, which shall be held on such occasions and at such locations as determined by the Parties;
- (c) consultations at the level of foreign ministers, which shall be held regularly, where possible annually;
- (d) meetings at the level of senior officials for consultations on issues of mutual interest or briefings and cooperation on major domestic or international developments;

- (e) sectoral dialogues on issues of common interest; and
- (f) exchanges of delegations between European Parliament and the New Zealand Parliament.

#### Article 4

### Cooperation in regional and international organisations

The Parties undertake to cooperate by exchanging views on policy issues of mutual interest, and, where appropriate, sharing information on positions in regional and international fora and organisations.

#### TITLE II

#### POLITICAL DIALOGUE AND COOPERATION ON FOREIGN POLICY AND SECURITY MATTERS

#### Article 5

### Political dialogue

The Parties agree to enhance their regular political dialogue at all levels, especially with a view to discussing matters of common concern covered by this Title and strengthening their common approach to international issues. The Parties agree that for the purposes of this Title the term 'political dialogue' shall mean exchanges and consultations, whether formal or informal, at any level of government.

#### Article 6

### Commitment to democratic principles, human rights and the rule of law

In the interests of advancing the Parties' shared commitment to democratic principles, human rights and the rule of law, the Parties agree to:

- (a) promote core principles regarding democratic values, human rights and the rule of law, including in multilateral fora; and
- (b) collaborate on and coordinate, where appropriate, in the practical advancement of democratic principles, human rights and the rule of law, including in third countries.

#### Article 7

### Crisis management

The Parties reaffirm their commitment to promoting international peace and security including, *inter alia*, through the Agreement between New Zealand and the European Union establishing a framework for the participation of New Zealand in European Union crisis management operations, signed in Brussels on 18 April 2012.

#### Article 8

### Countering the proliferation of weapons of mass destruction

1. The Parties consider that the proliferation of weapons of mass destruction ('WMD') and their means of delivery, both to state and non-state actors, represents one of the most serious threats to international peace and security. The Parties reaffirm their commitment to comply with and fully implement at the national level their existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations. The Parties agree to cooperate and to contribute to countering the proliferation of WMD and their means of delivery. The Parties agree that this provision constitutes an essential element of this Agreement.



2. The Parties furthermore agree to cooperate and to contribute to preventing the proliferation of WMD and their means of delivery by:
  - (a) taking steps, as appropriate, to sign, ratify, or accede to, and fully implement all other relevant international instruments;
  - (b) maintaining an effective system of national export controls, controlling the export as well as transit of WMD-related goods, including a WMD end-use control on dual-use technologies and containing effective sanctions for breaches of export controls.
3. The Parties agree to establish a regular political dialogue on those issues.

#### *Article 9*

### **Small arms and light weapons**

1. The Parties recognise that the illicit manufacture, transfer and circulation of small arms and light weapons ('SALW'), including their ammunition, and their excessive accumulation, poor management, inadequately secured stockpiles and uncontrolled spread continue to pose a serious threat to international peace and security.
2. The Parties reaffirm their commitment to observing and fully implementing their respective obligations to deal with the illicit trade in SALW, including their ammunition, under existing international agreements and UN Security Council ('UNSC') resolutions, as well as their commitments within the framework of other international instruments applicable in this area, such as the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.
3. The Parties undertake to cooperate and to ensure coordination and complementarity in their efforts to deal with the illicit trade in SALW, including their ammunition, at global, regional, sub-regional and national levels and agree to establish a regular political dialogue on those issues.

#### *Article 10*

### **International Criminal Court**

1. The Parties reaffirm that the most serious crimes of concern to the international community as a whole should not go unpunished and that their prosecution should be ensured by measures at either the domestic or the international level, including through the International Criminal Court.
2. In promoting the strengthening of peace and international justice, the Parties reaffirm their determination to:
  - (a) take steps to implement the Rome Statute of the International Criminal Court ('Rome Statute') and, as appropriate, related instruments;
  - (b) share experience with regional partners in the adoption of legal adjustments required to allow for the ratification and implementation of the Rome Statute; and
  - (c) cooperate to further the goal of the universality and integrity of the Rome Statute.

#### *Article 11*

### **Cooperation in combating terrorism**

1. The Parties reaffirm the importance of the fight against terrorism in full respect for the rule of law, international law, in particular the UN Charter and relevant UNSC resolutions, human rights law, refugee law and international humanitarian law.

2. Within this framework and taking into account the UN Global Counter-Terrorism Strategy, contained in UN General Assembly Resolution 60/288 of 8 September 2006, the Parties agree to cooperate in the prevention and suppression of terrorism, in particular, as follows:

- (a) in the framework of the full implementation of UNSC Resolutions 1267, 1373 and 1540 and other applicable UN resolutions and international instruments;
- (b) by exchanging information on terrorist groups and their support networks in accordance with applicable international and national law;
- (c) by exchanging views on:
  - (i) means and methods used to counter terrorism, including in technical fields and training;
  - (ii) terrorism prevention; and
  - (iii) best practices with regard to the protection of human rights in the fight against terrorism;
- (d) by cooperating so as to deepen the international consensus on the fight against terrorism and its normative framework and by working towards an agreement on the Comprehensive Convention on International Terrorism as soon as possible so as to complement the existing UN counter-terrorism instruments; and
- (e) by promoting cooperation among UN Member States to effectively implement the UN Global Counter-Terrorism Strategy by all appropriate means.

3. The Parties reaffirm their commitment to the international standards established by the Financial Action Task Force ('FATF') to combat the financing of terrorism.

4. The Parties reaffirm their commitment to work together to provide counter-terrorism capacity-building assistance to other states that require resources and expertise to prevent and respond to terrorist activity, including in the context of the Global Counter-Terrorism Forum (GCTF).

### TITLE III

#### COOPERATION ON GLOBAL DEVELOPMENT AND HUMANITARIAN AID

##### *Article 12*

#### **Development**

1. The Parties reaffirm their commitment to supporting sustainable development in developing countries in order to reduce poverty and contribute to a more secure, equitable and prosperous world.
2. The Parties recognise the value of working together to ensure development activities have greater impact, reach and influence, including in the Pacific.
3. To this end the Parties agree to:
  - (a) exchange views and, where appropriate, coordinate positions on development issues in regional and international fora to promote inclusive and sustainable growth for human development; and
  - (b) exchange information on their respective development programmes and, where appropriate, coordinate engagement in-country to increase their impact on sustainable development and poverty eradication.

##### *Article 13*

#### **Humanitarian aid**

The Parties reaffirm their common commitment to humanitarian aid and shall endeavour to offer coordinated responses as appropriate.

## TITLE IV

## COOPERATION ON ECONOMIC AND TRADE MATTERS

## Article 14

**Dialogue on economic, trade and investment matters**

1. The Parties are committed to dialogue and cooperation in economic and trade and investment related areas in order to facilitate bilateral trade and investment flows. At the same time, recognising the importance of pursuing this through a rule-based multilateral trading system, the Parties affirm their commitment to working together within the World Trade Organization ('WTO') to achieve further trade liberalisation.
2. The Parties agree to promote the exchange of information and the sharing of experiences on their respective macroeconomic policies and trends, including the exchange of information on the coordination of economic policies in the context of regional economic cooperation and integration.
3. The Parties shall pursue substantive dialogue aimed at promoting trade in goods, including agriculture and other primary commodities, raw materials, manufactured goods and high value-added products. The Parties recognise that a transparent, market-based approach is the best way to create an environment favourable to investment in the production of, and trade in such products and to foster their efficient allocation and use.
4. The Parties shall pursue substantive dialogue aimed at promoting bilateral trade in services and exchanging information and experiences on their respective supervisory environments. The Parties also agree to strengthen cooperation with a view to improving accounting, auditing, supervisory and regulatory systems for banking, insurance and other parts of the financial sector.
5. The Parties shall encourage the development of an attractive and stable environment for two-way investment through dialogue aimed at enhancing their mutual understanding and cooperation on investment issues, exploring mechanisms to facilitate investment flows and fostering stable, transparent and open rules for investors.
6. The Parties shall keep each other informed concerning the development of bilateral and international trade, investment and trade-related aspects of other policies, including their policy approaches to free trade agreements ('FTAs') and respective FTA agendas and regulatory issues, with a potential impact on bilateral trade and investment.
7. Such dialogue and cooperation on trade and investment will be pursued through, *inter alia*:
  - (a) an annual trade policy dialogue at the level of senior officials, complemented by ministerial meetings on trade, when determined by the Parties;
  - (b) an annual agricultural trade dialogue; and
  - (c) other sectoral exchanges, when determined by the Parties.
8. The Parties undertake to cooperate on securing the conditions for and promoting increased trade and investment between them, including through the negotiation of new agreements, where feasible.

## Article 15

**Sanitary and phytosanitary issues**

1. The Parties agree to strengthen cooperation on sanitary and phytosanitary ('SPS') issues within the framework of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures and the Codex Alimentarius Commission, the World Organisation for Animal Health ('OIE') and the relevant international and regional organisations operating within the framework of the International Plant Protection Convention ('IPPC'). Such cooperation shall aim to enhance the mutual understanding of each other's SPS measures and to facilitate trade between the Parties, and may include:
  - (a) the sharing of information;

- (b) applying import requirements to the entire territory of the other Party;
- (c) carrying out verification of all or part of the other Party's authorities' inspection and certification systems in accordance with the relevant international standards of the Codex Alimentarius, OIE and IPPC on the assessment of such systems; and
- (d) recognising pest-free and disease-free areas and areas of low pest or disease prevalence.

2. For that purpose, the Parties commit to making full use of existing instruments such as the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products, signed in Brussels on 17 December 1996, and to cooperate in an appropriate bilateral forum on other SPS issues not covered by that Agreement.

#### *Article 16*

### **Animal welfare**

The Parties also reaffirm the importance of maintaining their mutual understanding and cooperation on animal welfare matters, and will continue to share information and cooperate within the Animal Welfare Cooperation Forum of the European Commission and the competent authorities of New Zealand and to work closely together in the OIE on these matters.

#### *Article 17*

### **Technical barriers to trade**

1. The Parties share the view that greater compatibility of standards, technical regulations and conformity assessment procedures is a key element in facilitating trade in goods.
2. The Parties recognise their mutual interest in reducing technical barriers to trade and to this end agree to cooperate within the framework of the WTO Agreement on Technical Barriers to Trade and through the Agreement on mutual recognition in relation to conformity assessment between the European Community and New Zealand, signed in Wellington on 25 June 1998.

#### *Article 18*

### **Competition policy**

The Parties reaffirm their commitment to promoting competition in economic activities through their respective competition laws and regulations. The Parties agree to share information on competition policy and related issues and to enhance cooperation between their competition authorities.

#### *Article 19*

### **Government procurement**

1. The Parties reaffirm their commitment to open and transparent government procurement frameworks which, consistent with their international obligations, promote value for money, competitive markets, and non-discriminatory purchasing practices and thus enhance trade between the Parties.
2. The Parties agree to further strengthen their consultation, cooperation and exchanges of experience and best practices in the area of government procurement on issues of mutual interest, including on their respective regulatory frameworks.

3. The Parties agree to explore ways to further promote access to each other's government procurement markets and exchange views on measures and practices which could adversely affect procurement trade between them.

#### Article 20

##### **Raw materials**

1. The Parties will enhance cooperation on issues relating to raw materials through bilateral dialogue or within relevant plurilateral settings or international institutions, at the request of either Party. In particular, this cooperation shall in particular aim at removing barriers to trade in raw materials, strengthening a rules-based global framework for trade in raw materials and promoting transparency in global markets for raw materials.

2. Topics for cooperation may include, *inter alia*:

- (a) questions of supply and demand, bilateral trade and investment issues as well as issues of interest stemming from international trade;
- (b) tariff and non-tariff barriers for raw-material goods, related services and investments;
- (c) the parties' respective regulatory frameworks; and
- (d) best practices in relation to sustainable development of the mining industry, including minerals policy, land-use planning and permitting procedures.

#### Article 21

##### **Intellectual property**

1. The Parties reaffirm the importance of their rights and obligations in relation to intellectual property rights, including copyright and related rights, trademarks, geographical indications, designs and patents, and their enforcement, in accordance with the highest international standards that the Parties adhere to.

2. The Parties agree to exchange information and share experiences on intellectual property issues including:

- (a) the practice, promotion, dissemination, streamlining, management, harmonisation, protection and effective implementation of intellectual property rights;
- (b) the prevention of infringements of intellectual property rights;
- (c) the fight against counterfeiting and piracy, through the appropriate forms of cooperation; and
- (d) the functioning of bodies in charge of the protection and enforcement of intellectual property rights.

3. The Parties agree to exchange information and promote dialogue on the protection of genetic resources, traditional knowledge and folklore.

#### Article 22

##### **Customs**

1. The Parties shall enhance cooperation on customs matters, including trade facilitation, with a view to further simplifying and harmonising customs procedures and promoting joint action in the context of relevant international initiatives.

2. Without prejudice to other forms of cooperation provided for under this Agreement, the Parties shall consider the possibility of concluding instruments on customs cooperation and mutual administrative assistance in customs matters.

*Article 23***Cooperation on taxation matters**

1. With a view to strengthening and developing economic activities while taking into account the need to develop an appropriate regulatory framework, the Parties recognise and commit themselves to implementing the principles of good governance in the area of tax, i.e. transparency, exchange of information and fair tax competition.
2. To that effect, in accordance with their respective competences, the Parties will work to improve international cooperation in the area of tax, facilitate the collection of legitimate tax revenues and develop measures for the effective implementation of the principles of good governance referred to in paragraph 1.

*Article 24***Transparency**

The Parties recognise the importance of transparency and due process in the administration of their trade-related laws and regulations, and to this end the Parties reaffirm their commitments as set out in WTO Agreements, including Article X of the General Agreement on Tariffs and Trade 1994 and Article III of the General Agreement on Trade in Services.

*Article 25***Trade and sustainable development**

1. The Parties recognise the contribution to the goal of sustainable development that can be made by promoting mutually supportive trade, environment and labour policies and reaffirm their commitment to promoting global and bilateral trade and investment in such a way as to contribute to that goal.
2. The Parties recognise the right of each Party to establish its own levels of domestic environmental and labour protection, and to adopt or modify its own relevant laws and policies, consistent with their commitment to internationally recognised standards and agreements.
3. The Parties recognise that it is inappropriate to encourage trade or investment by lowering or offering to lower the levels of protection afforded in domestic environmental or labour laws. The Parties recognise that it is also inappropriate to use environmental or labour laws, policies and practices for trade-protectionist purposes.
4. The Parties shall exchange information and share experience on their actions to promote coherence and mutual supportiveness between trade, social and environmental objectives, including on areas such as corporate social responsibility, environmental goods and services, climate-friendly products and technologies and sustainability assurance schemes, as well as on the other aspects set out in Title VIII, and shall strengthen dialogue and cooperation on sustainable development issues that may arise in the context of trade relations.

*Article 26***Dialogue with civil society**

The Parties shall encourage dialogue between governmental and non-governmental organisations, such as trade unions, employers, business associations, chambers of commerce and industry, with a view to promoting trade and investment in areas of mutual interest.

*Article 27***Business cooperation**

The Parties shall encourage stronger business-to-business links and enhance links between government and business through activities involving business, including in the context of the Asia-Europe Meeting ('ASEM').

In particular, this cooperation shall aim at improving the competitiveness of small and medium-sized enterprises.

*Article 28***Tourism**

Recognising the value of tourism in deepening mutual understanding and appreciation between the peoples of the Union and New Zealand and the economic benefits flowing from increased tourism, the Parties agree to cooperate with a view to increasing tourism in both directions between the Union and New Zealand.

## TITLE V

## COOPERATION ON JUSTICE, FREEDOM AND SECURITY

*Article 29***Legal cooperation**

1. The Parties agree to develop cooperation in civil and commercial matters, in particular as regards the negotiation, ratification and implementation of multilateral conventions on judicial cooperation in civil matters and, in particular, the Conventions of the Hague Conference on Private International Law in the field of international legal cooperation and litigation as well as the protection of children.

2. As regards judicial cooperation in criminal matters, the Parties shall continue engaging in matters of mutual legal assistance, in accordance with relevant international instruments.

This may include, where appropriate, accession to and implementation of relevant UN instruments. It may also include, where appropriate, support for relevant Council of Europe instruments and cooperation between relevant New Zealand authorities and Eurojust.

*Article 30***Law-enforcement cooperation**

The Parties agree to cooperate among law-enforcement authorities, agencies and services and to contribute to disrupting and dismantling transnational crime and terrorist threats common to the Parties. Cooperation among law-enforcement authorities, agencies and services may take the form of mutual assistance in investigations, the sharing of investigative techniques, joint education and training of law-enforcement personnel and any other type of joint activity and assistance as may be mutually determined by the Parties.

*Article 31***Combating organised crime and corruption**

1. The Parties reaffirm their commitment to cooperating on preventing and combating transnational organised, economic and financial crime, corruption, and counterfeiting and illegal transactions, through full compliance with their existing mutual international obligations in this area, including those on effective cooperation in the recovery of assets or funds derived from acts of corruption.

2. The Parties shall promote the implementation of the UN Convention against Transnational Organized Crime, adopted on 15 November 2000.
3. The Parties shall also promote the implementation of the UN Convention against Corruption, adopted on 31 October 2002, taking account of the principles of transparency and participation of civil society.

#### Article 32

### Combating illicit drugs

1. Within their respective powers and competences, the Parties shall cooperate to ensure a balanced and integrated approach towards drug issues.
2. The Parties shall cooperate with a view to dismantling the transnational criminal networks involved in drug-trafficking through, *inter alia*, the exchange of information, training or the sharing of best practices, including special investigative techniques. A particular effort shall be made to combat the penetration of the licit economy by criminals.

#### Article 33

### Combating cybercrime

1. The Parties shall strengthen cooperation to prevent and combat high-technology, cyber- and electronic crimes and the distribution of illegal content, including terrorist content and child sexual abuse material, via the internet, through exchanging information and practical experiences in compliance with their national legislation and international human rights obligations.
2. The Parties shall exchange information in the fields of the education and training of cybercrime investigators, the investigation of cybercrime, and digital forensic science.

#### Article 34

### Combating money-laundering and the financing of terrorism

1. The Parties reaffirm the need to cooperate on preventing the use of their financial systems to launder the proceeds of all criminal activities including drug-trafficking and corruption and on combating the financing of terrorism. This cooperation extends to the recovery of assets or funds derived from criminal activities.
2. The Parties shall exchange relevant information within the framework of their respective legislation and implement appropriate measures to combat money-laundering and the financing of terrorism in accordance with standards adopted by relevant international bodies active in this area, such as the FATF.

#### Article 35

### Migration and asylum

1. The Parties reaffirm their commitment to cooperating and exchanging views in the areas of migration, including irregular immigration, trafficking in human beings, asylum, integration, labour mobility and development, visas, document security, biometrics and border management.
2. The Parties agree to cooperate in order to prevent and control irregular immigration. To this end:
  - (a) New Zealand shall readmit any of its nationals irregularly present on the territory of a Member State, upon request by the latter and without further formalities; and
  - (b) each Member State shall readmit any of its nationals irregularly present on the territory of New Zealand, upon request by the latter and without further formalities.



Consistent with their international obligations, including under the Convention on International Civil Aviation, signed on 7 December 1944, the Member States and New Zealand will provide their nationals with appropriate identity documents for such purposes.

3. The Parties will, at the request of either Party, explore the possibility of concluding an agreement between New Zealand and the Union on readmission in accordance with Article 52(1) of this Agreement. This agreement will include consideration of appropriate arrangements for third-country nationals and stateless persons.

#### Article 36

##### **Consular protection**

1. New Zealand agrees that the diplomatic and consular authorities of any represented Member State may exercise consular protection in New Zealand on behalf of other Member States which do not have accessible permanent representation in New Zealand.

2. The Union and the Member States agree that the diplomatic and consular authorities of New Zealand may exercise consular protection on behalf of a third country and that third countries may exercise consular protection on behalf of New Zealand in the Union in places where New Zealand or the third country concerned do not have accessible permanent representation.

3. Paragraphs 1 and 2 are intended to dispense with any requirements for notification or consent which might otherwise apply.

4. The Parties agree to facilitate a dialogue on consular affairs between their respective competent authorities.

#### Article 37

##### **Protection of personal data**

1. The Parties agree to cooperate with a view to advancing their relationship following the European Commission's decision on the adequate protection of personal data by New Zealand, and to ensuring a high level of protection of personal data in accordance with relevant international instruments and standards, including the Organisation for Economic Cooperation and Development (OECD) Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.

2. Such cooperation may include, *inter alia*, the exchange of information and expertise. It may also include cooperation between regulatory counterparts in bodies such as the OECD's Working Party on Security and Privacy in the Digital Economy and the Global Privacy Enforcement Network.

#### TITLE VI

##### COOPERATION IN THE AREAS OF RESEARCH, INNOVATION AND THE INFORMATION SOCIETY

#### Article 38

##### **Research and innovation**

1. The Parties agree to strengthen their cooperation in the areas of research and innovation.

2. The Parties shall encourage, develop and facilitate cooperative activities in the areas of research and innovation for peaceful purposes, in support of or complementary to the Agreement on scientific and technological cooperation between the European Community and the Government of New Zealand, signed in Brussels on 16 July 2008.

## Article 39

**Information society**

1. Recognising that information and communication technologies are key elements of modern life and of vital importance to economic and social development, the Parties agree to exchange views on their respective policies in this field.
2. Cooperation in this area may focus, *inter alia*, on:
  - (a) exchanging views on different aspects of the information society, in particular high-speed broadband rollout, electronic communications policies and regulation, including universal service, licensing and general authorisations, the protection of privacy and personal data, e-government and open government, internet security and the independence and efficiency of regulatory authorities;
  - (b) the interconnection and interoperability of research networks and computing and scientific data infrastructures and services, including in a regional context;
  - (c) the standardisation, certification and dissemination of new information and communication technologies;
  - (d) security, trust and privacy aspects of information and communication technologies and services, including the promotion of online safety, the combating of misuses of information technology and all forms of electronic media, and the sharing of information; and
  - (e) exchanging views on measures to address the issue of international mobile roaming costs.

## TITLE VII

## COOPERATION IN THE AREA OF EDUCATION, CULTURE AND PEOPLE TO PEOPLE LINKS

## Article 40

**Education and training**

1. The Parties acknowledge the crucial contribution of education and training to the creation of quality jobs and sustainable growth for knowledge-based economies, notably through the development of citizens who are not only prepared for informed and effective participation in democratic life, but who also have the capacity to solve problems and take up opportunities that result from the globally connected world of the 21<sup>st</sup> century. Consequently, the Parties recognise that they have a common interest in cooperating in the areas of education and training.
2. In accordance with their mutual interests and the aims of their policies on education, the Parties undertake to support jointly appropriate cooperative activities in the field of education and training. This cooperation will concern all education sectors and may include:
  - (a) cooperating on learning mobility of individuals through the promotion and facilitation of the exchange of students, researchers, academic and administrative staff of tertiary education institutions and teachers;
  - (b) joint cooperation projects between education and training institutions in the Union and New Zealand with a view to promoting curriculum development, joint study programmes and degrees and staff and student mobility;
  - (c) institutional cooperation, linkages and partnerships with a view to strengthening the educational element of the knowledge triangle and to promoting the exchange of experience and know-how; and
  - (d) support for policy reform through studies, conferences, seminars, working groups, benchmarking exercises and the exchange of information and good practice, particularly in view of the Bologna and Copenhagen processes and the tools and principles in place that increase transparency and innovation in education.

*Article 41***Cultural, audiovisual and media cooperation**

1. The Parties agree to promote closer cooperation in the cultural and creative sectors, in order to enhance, *inter alia*, mutual understanding and knowledge of their respective cultures.
2. The Parties shall endeavour to take appropriate measures to promote cultural exchanges and carry out joint initiatives in various cultural areas, using available cooperation instruments and frameworks.
3. The Parties shall endeavour to promote the mobility of culture professionals, works of art and other cultural objects between New Zealand and the Union and its Member States.
4. The Parties agree to explore, through policy dialogue, a range of ways in which cultural objects held outside their countries of origin can be made accessible to the communities in which those objects originated.
5. The Parties shall encourage intercultural dialogue between civil society organisations as well as individuals from both Parties.
6. The Parties agree to cooperate, notably through policy dialogue, in relevant international fora, in particular the United Nations Education, Science and Culture Organization (UNESCO), in order to pursue common objectives and to foster cultural diversity, including through the implementation of the UNESCO Convention on the Protection and Promotion of Diversity of Cultural Expressions.
7. The Parties shall encourage, support and facilitate exchanges, cooperation and dialogue between institutions and professionals in the audiovisual and media sectors.

*Article 42***People-to-people links**

Recognising the value of people-to-people links and their contribution to enhancing understanding between the Union and New Zealand, the Parties agree to encourage, foster and deepen such links as appropriate. Such links may include exchanges of officials and short-term internships for post-graduate students.

## TITLE VIII

## COOPERATION IN THE AREA OF SUSTAINABLE DEVELOPMENT, ENERGY AND TRANSPORT

*Article 43***Environment and natural resources**

1. The Parties agree to cooperate on environmental matters, including the sustainable management of natural resources. The aim of such cooperation is to promote environmental protection and to mainstream environmental considerations into relevant sectors of cooperation, including in an international and regional context.
2. The Parties agree that cooperation may be undertaken through modes such as dialogue, workshops, seminars, conferences, collaborative programmes and projects, the sharing of information such as best practices, and exchanges of experts, including at the bilateral or multilateral level. The topics and objectives for cooperation shall be jointly identified at the request of either Party.

## Article 44

**Health improvement, protection and regulation**

1. The Parties agree to enhance cooperation in the field of health, including in the context of globalisation and demographic change. Efforts shall be made to promote cooperation and exchanges of information and experiences on:
  - (a) health protection;
  - (b) communicable disease surveillance (such as influenza and acute disease outbreaks) and other activities within the scope of the International Health Regulations (2005), including preparedness actions against major cross-border threats, in particular preparedness planning and risk assessment;
  - (c) cooperation on standards, and conformity assessment to manage regulation and risk from products (including pharmaceuticals and medical devices);
  - (d) issues relating to the implementation of the World Health Organisation ('WHO') Framework Convention on Tobacco Control; and
  - (e) issues relating to the implementation of the WHO Global Code of Practice on the International Recruitment of Health Personnel.
2. The Parties reaffirm their commitments to respect, promote and effectively implement, as appropriate, internationally recognised health practices and standards.
3. The forms of cooperation may include, *inter alia*, specific programmes and projects, as mutually agreed, as well as dialogue, cooperation and initiatives on topics of common interest at the bilateral or multilateral level.

## Article 45

**Climate change**

1. The Parties acknowledge climate change as a global and urgent concern that requires collective action consistent with the overall goal of keeping the increase in global average temperature below 2 degrees Celsius above pre-industrial levels. Within the scope of their respective competences and without prejudice to discussions in other fora, the Parties agree to cooperate in areas of joint interest, including but not limited to:
  - (a) the transition to economies with low greenhouse-gas emissions through nationally appropriate mitigation strategies and actions, including green growth strategies;
  - (b) the design, implementation and operation of market-based mechanisms, and in particular of carbon-trading schemes;
  - (c) public- and private-sector financing instruments for climate action;
  - (d) low greenhouse-gas emission technology research, development and deployment; and
  - (e) the monitoring of greenhouse gases and the analysis of their effects, including developing and implementing adaptation strategies as appropriate.
2. Both Parties agree to further cooperate on international developments in this area and, in particular, on progress towards the adoption of a new post-2020 international agreement under the UN Framework Convention on Climate Change as well as on complementary cooperative initiatives that would help address the mitigation gap before 2020.

*Article 46***Disaster risk management and civil protection**

The Parties recognise the need to manage both domestic and global natural and man-made disaster risks. The Parties affirm their common commitment to improving prevention, mitigation, preparedness, response and recovery measures in order to increase the resilience of their societies and infrastructure, and to cooperate as appropriate, at the bilateral and multilateral political level to improve global disaster risk-management outcomes.

*Article 47***Energy**

The Parties recognise the importance of the energy sector, and the role of a well-functioning market in energy. The Parties acknowledge the significance of energy to sustainable development, economic growth and its contribution to the attainment of internationally agreed development goals, as well as the importance of cooperation to address global environmental challenges, in particular climate change. The Parties shall endeavour, within the scope of their respective competences, to enhance cooperation in this field with a view to:

- (a) developing policies to increase energy security;
- (b) promoting global energy trade and investment;
- (c) improving competitiveness;
- (d) improving the functioning of global energy markets;
- (e) exchanging information and policy experiences through existing multilateral energy fora;
- (f) promoting the use of renewable energy sources as well as the development and uptake of clean, diverse and sustainable energy technologies, including renewable and low-emission energy technologies;
- (g) achieving rational use of energy with contributions from both the supply and demand sides by promoting energy efficiency in the energy production, transportation and distribution and the end-use of energy;
- (h) implementing their respective international commitments to rationalise and phase out over the medium term inefficient fossil-fuel subsidies that encourage wasteful consumption; and
- (i) sharing best practices in energy exploration and production.

*Article 48***Transport**

1. The Parties shall cooperate in all relevant areas of transport policy, including integrated transport policy, with a view to improving the movement of goods and passengers, promoting maritime and aviation safety and security, promoting environmental protection and increasing the efficiency of their transport systems.

2. Cooperation and dialogue between the Parties in this area should aim to promote:

- (a) the exchange of information on their respective policies and practices;
- (b) the strengthening of aviation relations between the Union and New Zealand with a view to:
  - (i) enhancing market access, investment opportunities and liberalisation of air-carrier ownership and control clauses in air services agreements in accordance with domestic policies;

- (ii) broadening and deepening regulatory cooperation in aviation safety and security and economic regulation of the air-transport industry; and
  - (iii) supporting regulatory convergence and removal of obstacles to doing business, as well as cooperation on air-traffic management;
- (c) the goals of unrestricted access to the international maritime markets and trade based on fair competition on a commercial basis; and
- (d) mutual recognition of driving licences for land-based motor vehicles.

#### *Article 49*

### **Agriculture, rural development and forestry**

1. The Parties agree to encourage cooperation and dialogue in agriculture, rural development and forestry.
2. Areas in which activities could be considered include, but are not limited to, agricultural policy, rural development policy, the structure of land-based sectors and geographical indications.
3. The Parties agree to cooperate, at the national and international level, on sustainable forest management and related policies and regulations, including measures to combat illegal logging and related trade, as well as the promotion of good forest governance.

#### *Article 50*

### **Fisheries and maritime affairs**

1. The Parties shall strengthen dialogue and cooperation on issues of common interest in the areas of fisheries and maritime affairs. The Parties shall aim to promote long-term conservation and sustainable management of marine living resources, the prevention and combat of illegal, unreported and unregulated fishing ('IUU fishing') and the implementation of an ecosystem-based approach to management.
2. The Parties may cooperate and exchange information with regard to the conservation of marine living resources through the regional fisheries management organisations ('RFMOs') and multilateral fora (the UN, the Food and Agriculture Organization of the United Nations). In particular, the Parties shall cooperate in order to:
  - (a) ensure, through effective management by the Western and Central Pacific Fisheries Commission, and based on the best available science, the long-term conservation and sustainable use of highly migratory fish stocks throughout their range in the western and central Pacific Ocean, including by giving full recognition, in accordance with the relevant UN Conventions and other international instruments, to the special requirements of Small Island Developing States and Territories and ensuring a transparent decision-making process;
  - (b) ensure the conservation and rational use of marine living resources under the purview of the Commission for the Conservation of Antarctic Marine Living Resources, including efforts to combat IUU activities in the area to which the Convention on the Conservation of Antarctic Marine Living Resources applies;
  - (c) ensure the adoption and implementation of effective conservation and management measures for the stocks under the purview of the South Pacific RFMO; and
  - (d) facilitate accession to RFMOs where one Party is a Member and the other an acceding Party.
3. The Parties shall cooperate to promote an integrated approach to maritime affairs at international level.
4. The Parties shall hold a regular biennial dialogue at the level of senior officials, in order to strengthen dialogue and cooperation as well as to exchange information and experience on fisheries policy and maritime affairs.

*Article 51***Employment and social affairs**

1. The Parties agree to enhance cooperation in the field of employment and social affairs, including in the context of the social dimension of globalisation and demographic change. Efforts shall be made to promote cooperation and the exchange of information and experience regarding employment and labour matters. Areas of cooperation may include employment policies, labour law, gender issues, non-discrimination in employment, social inclusion, social security and social protection policies, industrial relations, social dialogue, lifelong skills development, youth employment, health and safety in the workplace, corporate social responsibility and decent work.
2. The Parties reaffirm the need to support a process of globalisation which is beneficial to all and to promote full and productive employment and decent work as a key element of sustainable development and poverty reduction. In this context, the Parties recall the International Labour Organisation ('ILO') Declaration on Social Justice for a Fair Globalization.
3. The Parties reaffirm their commitment to respecting, promoting and effectively implementing internationally recognised labour principles and rights, as laid down in particular in the ILO Declaration on Fundamental Principles and Rights at Work.
4. The forms of cooperation may include, *inter alia*, specific programmes and projects, as mutually determined, as well as dialogue, cooperation and initiatives on topics of common interest at the bilateral or multilateral level.

## TITLE IX

## INSTITUTIONAL FRAMEWORK

*Article 52***Other agreements or arrangements**

1. The Parties may complement this Agreement by concluding specific agreements or arrangements in any area of cooperation falling within its scope. Such specific agreements and arrangements concluded after the signature of this Agreement shall be an integral part of the overall bilateral relations as governed by this Agreement and shall form part of a common institutional framework. Existing agreements and arrangements between the Parties do not form part of the common institutional framework.
2. Nothing in this Agreement shall affect or prejudice the interpretation or application of other agreements between the Parties including those referred to in paragraph 1. In particular, the provisions of this Agreement shall not replace or affect in any way the dispute-settlement or termination provisions of other agreements between the Parties.

*Article 53***Joint Committee**

1. The Parties hereby establish a Joint Committee consisting of representatives of the Parties.
2. Consultations shall be held in the Joint Committee to facilitate the implementation and to further the general aims of this Agreement as well as to maintain overall coherence in relations between the Union and New Zealand.
3. The functions of the Joint Committee shall be to:
  - (a) promote the effective implementation of this Agreement;
  - (b) monitor the development of the comprehensive relationship between the Parties;

- (c) request, as appropriate, information from committees or other bodies established under other specific agreements between the Parties that form part of the common institutional framework in accordance with Article 52(1), and consider any reports submitted by them;
- (d) exchange views and make suggestions on any issues of common interest, including future actions and the resources available to carry them out;
- (e) set priorities in relation to the purpose of this Agreement;
- (f) seek appropriate methods of forestalling problems which might arise in areas covered by this Agreement;
- (g) endeavour to resolve any dispute arising in the application or interpretation of this Agreement;
- (h) examine the information presented by a Party in accordance with Article 54; and
- (i) make recommendations and adopt decisions, where appropriate, to give effect to specific aspects of this Agreement.

4. The Joint Committee shall operate by consensus. It shall adopt its own rules of procedure. It may set up subcommittees and working groups to deal with specific issues.

5. The Joint Committee shall normally meet once a year in the Union and New Zealand alternately, unless otherwise decided by both Parties. Special meetings of the Joint Committee shall be held at the request of either Party. The Joint Committee shall be co-chaired by the two sides. It shall normally meet at the level of senior officials.

#### Article 54

#### **Modalities for implementation and dispute settlement**

1. The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement.
2. Without prejudice to the procedure described in paragraphs 3 to 8 of this Article, any dispute relating to the interpretation or application of this Agreement shall be resolved exclusively through consultations between the Parties within the Joint Committee. The Parties shall present the relevant information required for a thorough examination of the matter to the Joint Committee, with a view to resolving the dispute.
3. Reaffirming their strong and shared commitment to human rights and non-proliferation, the Parties agree that if either Party considers that the other Party has committed a particularly serious and substantial violation of any of the obligations described in Articles 2(1) and 8(1) as essential elements, which threatens international peace and security so as to require an immediate reaction, it shall immediately notify the other Party of this fact and the appropriate measure (s) it intends to take under this Agreement. The notifying Party shall advise the Joint Committee of the need to hold urgent consultations on the matter.
4. In addition, the particularly serious and substantial violation of the essential elements could serve as grounds for appropriate measures under the common institutional framework as referred to in Article 52(1).
5. The Joint Committee shall be a forum for dialogue and the Parties shall do their utmost to find an amicable solution in the unlikely event that a situation as described in paragraph 3 would arise. Where the Joint Committee is unable to reach a mutually acceptable solution within 15 days from the commencement of consultations, and no later than 30 days from the date of the notification described in paragraph 3, the matter shall be referred for consultations at the ministerial level, which shall be held for a further period of up to 15 days.
6. If no mutually acceptable solution has been found within 15 days from the commencement of consultations at the ministerial level, and no later than 45 days from the date of notification, the notifying Party may decide to take the appropriate measures notified in accordance with paragraph 3. In the Union, the decision to suspend would entail unanimity. In New Zealand, the decision to suspend would be taken by the Government of New Zealand in accordance with its laws and regulations.



7. For the purposes of this Article, 'appropriate measures' means the suspension in part, suspension in full or termination of this Agreement or, as the case may be, of another specific agreement that forms part of the common institutional framework as referred to in Article 52(1), pursuant to the relevant provisions of such agreement. Appropriate measures taken by a Party to suspend this Agreement in part, shall only apply to the provisions falling within Titles I to VIII. In the selection of appropriate measures, priority must be given to those which least disturb the relations between the Parties. These measures, which are subject to Article 52(2), shall be proportionate to the violation of obligations under this Agreement, and shall be in accordance with international law.

8. The Parties shall keep under constant review the development of the situation which prompted action under this Article. The Party taking the appropriate measures shall withdraw them as soon as warranted, and in any event as soon as the circumstances that gave rise to their application no longer exist.

#### TITLE X

#### FINAL PROVISIONS

#### *Article 55*

#### **Definitions**

For the purposes of this Agreement, the term 'the Parties' means the Union or its Member States, or the Union and its Member States, in accordance with their respective competences, on the one hand, and New Zealand, on the other.

#### *Article 56*

#### **Disclosure of information**

1. Nothing in this Agreement shall cause prejudice to national laws and regulations or Union acts regarding public access to official documents.
2. Nothing in this Agreement shall be construed as requiring either Party to provide information, the disclosure of which it considers contrary to its essential security interests.

#### *Article 57*

#### **Amendment**

This Agreement may be amended by written agreement between the Parties. Such amendments shall enter into force on such date or dates as may be agreed by the Parties.

#### *Article 58*

#### **Entry into force, duration and notification**

1. This Agreement shall enter into force on the thirtieth day after the date on which the Parties have notified each other of the completion of their respective legal procedures necessary for that purpose.
2. Notwithstanding paragraph 1, New Zealand and the Union may provisionally apply mutually determined provisions of this Agreement pending its entry into force. Such provisional application shall commence on the thirtieth day after the date on which both New Zealand and the Union have notified each other of the completion of their respective internal procedures necessary for such provisional application.

3. This Agreement shall be valid indefinitely. Either Party may notify in writing the other Party of its intention to terminate this Agreement. The termination shall take effect six months after the date of the notification.

4. The notifications made in accordance with this Article shall be made to the General Secretariat of the Council of the European Union and to the Ministry of Foreign Affairs and Trade of New Zealand.

#### Article 59

### Territorial application

This Agreement shall apply, on the one hand, to the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union apply and under the conditions laid down in those Treaties, and, on the other hand, to the territory of New Zealand, but shall not include Tokelau.

#### Article 60

### Authentic texts

This Agreement is done 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 and Swedish languages, each text being equally authentic. In the event of any divergence between the texts of this Agreement the Parties shall refer the matter to the Joint Committee.

Съставено в Брюксел на пети октомври през две хиляди и шестнадесета година.

Hecho en Bruselas, el cinco de octubre de dos mil dieciséis.

V Bruselu dne pátého října dva tisíce šestnáct.

Udfærdiget i Bruxelles den femte oktober to tusind og seksten.

Geschehen zu Brüssel am fünften Oktober zweitausendsechzehn.

Kahe tuhande kuueteistkümnenda aasta oktoobrikuu viiendal päeval Brüsselis.

Έγινε στις Βρυξέλλες, στις πέντε Οκτωβρίου δύο χιλιάδες δεκαέξι.

Done at Brussels on the fifth day of October in the year two thousand and sixteen.

Fait à Bruxelles, le cinq octobre deux mille seize.

Sastavljeno u Bruxellesu petog listopada godine dvije tisuće šesnaeste.

Fatto a Bruxelles, addì cinque ottobre duemilasedici.

Briselē, divi tūkstoši sešpadsmitā gada piektajā oktobrī.

Priimta du tūkstančiai šešioliktų metų spalio penktą dieną Briuselyje.

Kelt Brüsszelben, a kétézer-tizenhatodik év október havának ötödik napján.

Magħmul fi Brussell, fil-hames jum ta' Ottubru fis-sena elfejn u sittax.

Gedaan te Brussel, vijf oktober tweeduizend zestien.

Sporządzono w Brukseli dnia piątego października roku dwa tysiące szesnastego.

Feito em Bruxelas, em cinco de outubro de dois mil e dezasseis.

Íntocmit la Bruxelles la cinci octombrie două mii șaisprezece.

V Bruseli piatého oktobra dvetisícšestnásť.

V Bruslju, dne petega oktobra leta dva tisoč šestnajst.

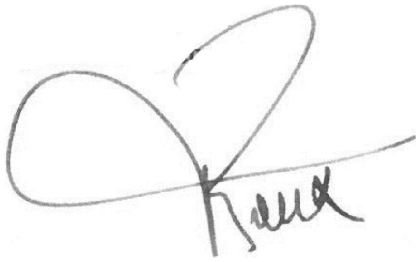
Tehty Brysselissä viidentenä päivänä lokakuuta vuonna kaksituhattakuusitoista.

Som skedde i Bryssel den femte oktober år tjugohundrasexton.

Voor het Koninkrijk België

Pour le Royaume de Belgique

Für das Königreich Belgien

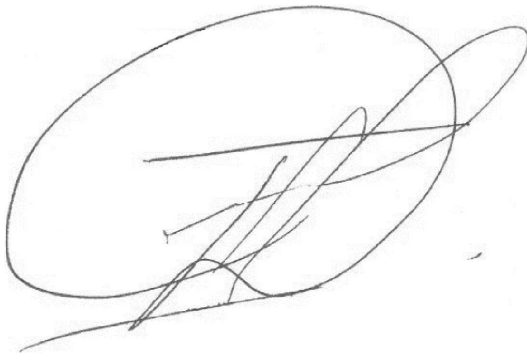


Deze handtekening verbindt eveneens de Vlaamse Gemeenschap, de Franse Gemeenschap, de Duitstalige Gemeenschap, het Vlaamse Gewest, het Waalse Gewest en het Brussels Hoofdstedelijk Gewest.


Cette signature engage également la Communauté française, la Communauté flamande, la Communauté germanophone, la Région wallonne, la Région flamande et la Région de Bruxelles-Capitale.

Diese Unterschrift bindet zugleich die Deutschsprachige Gemeinschaft, die Flämische Gemeinschaft, die Französische Gemeinschaft, die Wallonische Region, die Flämische Region und die Region Brüssel-Hauptstadt.

За Република България



Za Českou republiku



For Kongeriget Danmark



Für die Bundesrepublik Deutschland

A handwritten signature in black ink, appearing to be 'D. Müller'.

Eesti Vabariigi nimel

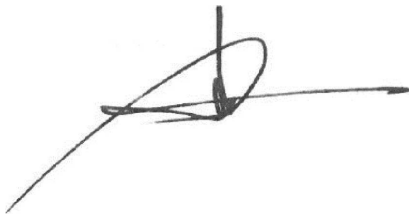
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Thar cheann Na hÉireann

For Ireland

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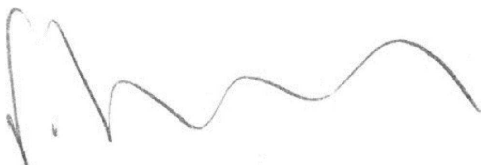
Για την Ελληνική Δημοκρατία

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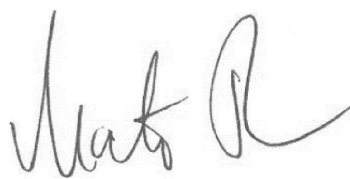
Por el Reino de España

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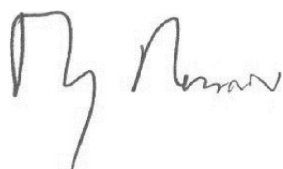
Pour la République française

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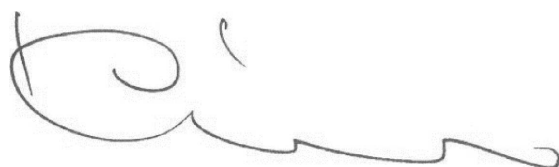
Za Republiku Hrvatsku



Per la Repubblica italiana



Για την Κυπριακή Δημοκρατία



Latvijas Republikas vārdā –



Lietuvos Respublikos vardu



Pour le Grand-Duché de Luxembourg



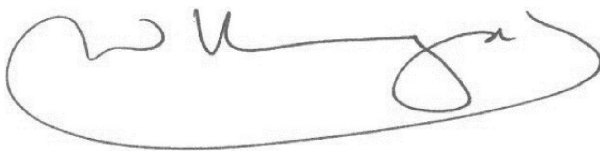
Magyarország részéről



Għar-Repubblika ta' Malta



Voor het Koninkrijk der Nederlanden

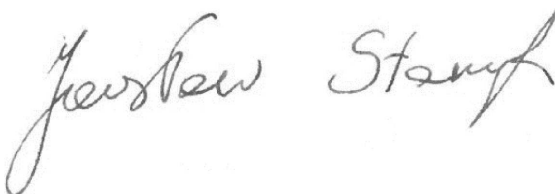


Für die Republik Österreich

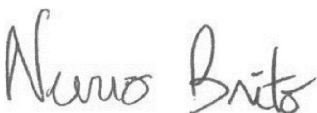


Peter Wanner  
e.v.

W imieniu Rzeczypospolitej Polskiej



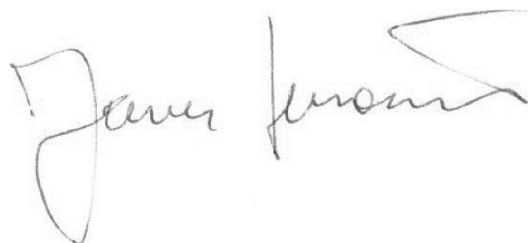
Pela República Portuguesa



Pentru România



Za Republiko Slovenijo



Za Slovenskú republiku

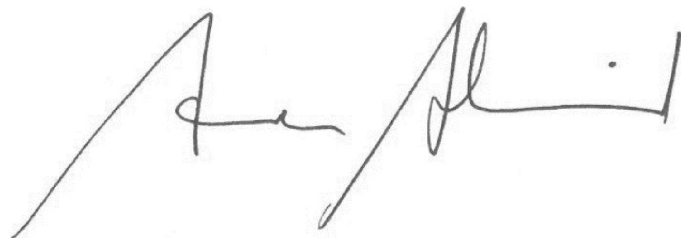


Suomen tasavallan puolesta

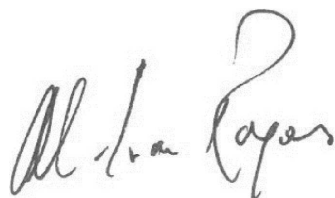
För Republiken Finland



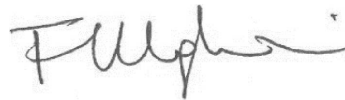
För Konungariket Sverige



For the United Kingdom of Great Britain and Northern Ireland



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 Europsku uniju  
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 New Zealand





**Amendment to the Customs Convention on the International Transport of Goods Under the Cover of TIR Carnets (TIR Convention, 1975)**

*According to the UN Depository Notification C.N.742.2016.TREATIES — XI.A.16 the following amendments to the TIR Convention enter into force on 1 January 2017 for all Contracting Parties:*

**Annex 6, new Explanatory Note 0.42 bis:**

Add a new Explanatory Note to Article 42 bis to read as follows:

'0.42 bis The term "immediately" in Article 42 bis is understood to mean that national measures that may affect the application of the TIR Convention and/or functioning of the TIR system, ought to be communicated in writing to the TIR Executive Board (TIRExB) as soon as possible and, if possible, prior to their entry into force, so as to allow TIRExB to efficiently discharge its supervisory functions and fulfil its responsibility to examine the measure as to its conformity with the TIR Convention in accordance with Article 42 bis and its Terms of Reference as laid down in Annex 8 of the TIR Convention.'

**Annex 2, Article 4, paragraph 2(i):**

For the existing text substitute:

'(i) The sliding sheets, floor, doors and all other constituent parts of the load compartment shall be assembled either by means of devices which cannot be removed and replaced from the outside without leaving obvious traces, or by such methods as will produce a structure which cannot be modified without leaving obvious traces.'

**Annex 2, Article 4, paragraph 2(iii):**

For the existing text substitute:

'(iii) The sliding sheet guidance, sliding sheet tension devices and other movable parts shall be assembled in such a way that when closed, and Customs sealed, doors and other movable parts cannot be opened or closed from the outside without leaving obvious traces. The sliding sheet guidance, sliding sheet tension devices and other movable parts shall be assembled in such a way that it is impossible to gain access to the load compartment without leaving obvious traces once the closing devices have been secured. An example of such a system of construction is given in sketch No 9 appended to these Regulations.'

**Annex 2, new Article 5:**

After the modified Article 4 insert:

'Article 5

**Vehicles with a sheeted sliding roof**

1. Where applicable, the provisions of Articles 1, 2, 3 and 4 of these Regulations shall apply to vehicles with a sheeted sliding roof. In addition, these vehicles shall conform to the provisions of this Article.
2. The sheeted sliding roof shall fulfil the requirements set out in (i) to (iii) below.
  - (i) The sheeted sliding roof shall be assembled either by means of devices which cannot be removed and replaced from the outside without leaving obvious traces, or by such methods as will produce a structure which cannot be modified without leaving obvious traces.
  - (ii) The sliding roof sheet shall overlap with the solid part of the roof at the front side of the load compartment, so that the roof sheet cannot be pulled over the top edge of the upper cantrail. In the length of the load compartment, at both sides, in the hem of the roof sheet, a pre-stressed steel cable shall be inserted in such a way that it cannot be removed and re-inserted without leaving obvious traces. The roof sheet shall be secured to the sliding carriage in such a way that it cannot be removed and re-secured without leaving obvious traces.

- (iii) The sliding roof guidance, the sliding roof tension devices and other movable parts shall be assembled in such a way that when closed, and Customs sealed, doors, roof and other movable parts cannot be opened or closed from the outside without leaving obvious traces. The sliding roof guidance, sliding roof tension devices and other movable parts shall be assembled in such a way that it is impossible to gain access to the load compartment without leaving obvious traces once the closing devices have been secured.

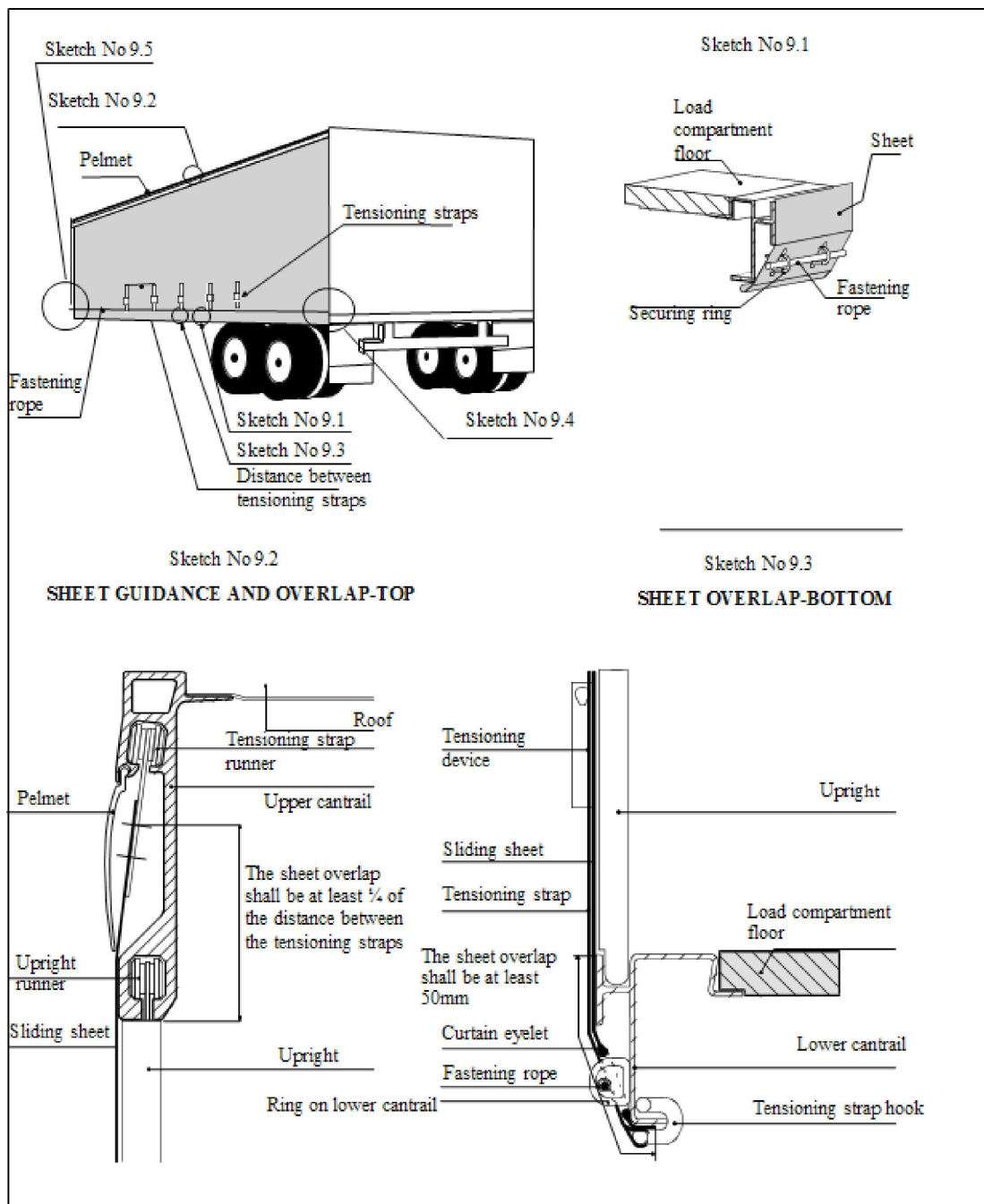
An example of a possible system of construction is shown in sketch No 10, appended to these Regulations.’

## Annex 2, Sketch No 9:

For the existing Sketch No 9 substitute:

‘Sketch No 9

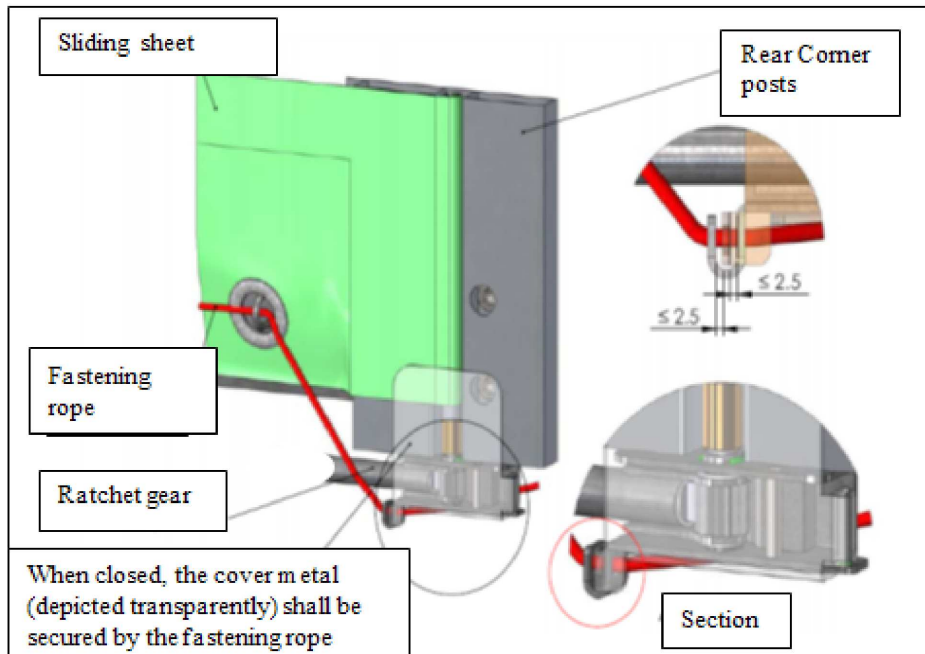
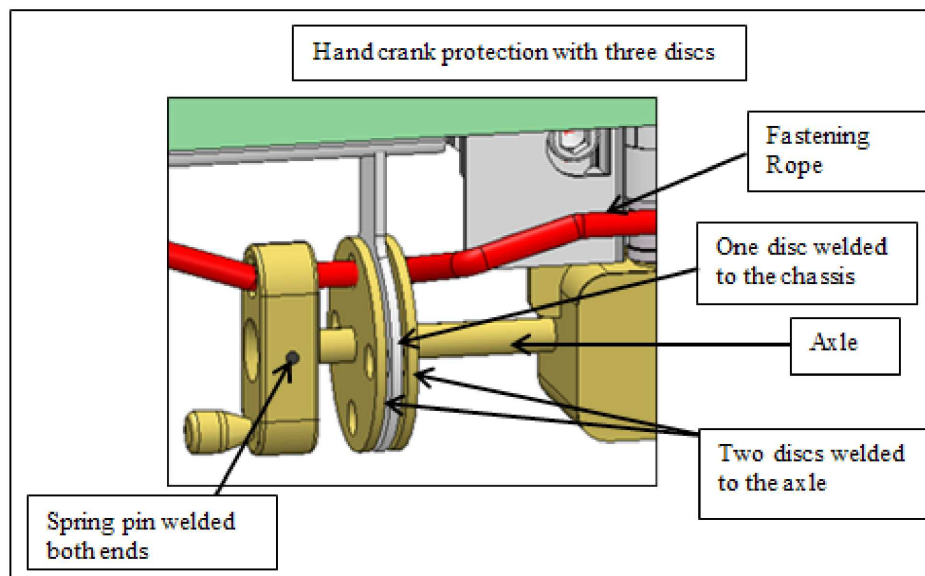
### EXAMPLE OF A CONSTRUCTION OF A VEHICLE WITH SLIDING SHEETS



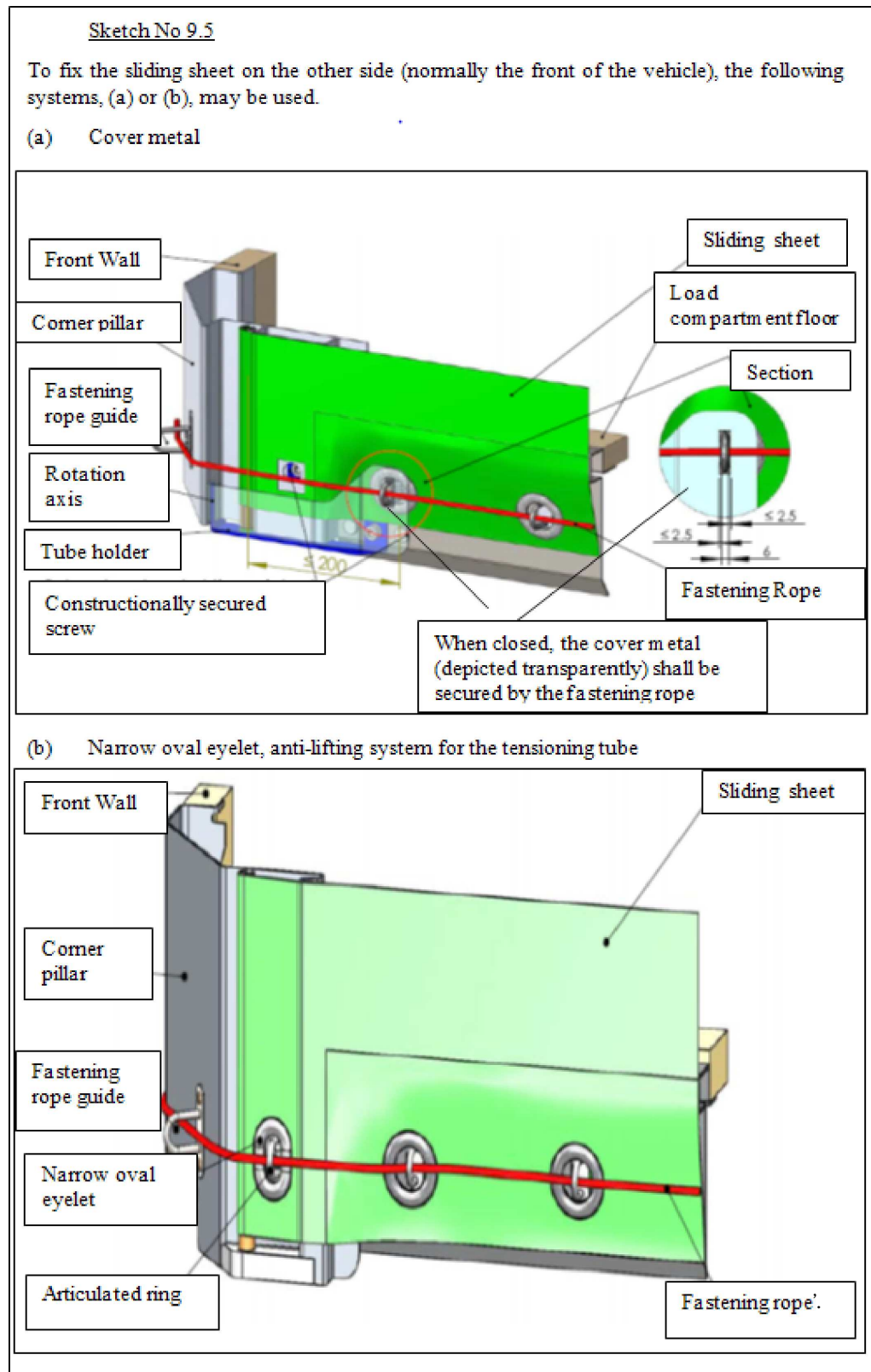
Sketch No 9 continued

**Sketch No 9.4**

To tighten the sliding sheets in the horizontal direction, a ratchet gear is used (normally at the rear end of the vehicle). This sketch shows two examples, (a) and (b), of how the ratchet or gearbox may be secured.

**(a) Ratchet securing****(b) Gearbox securing**

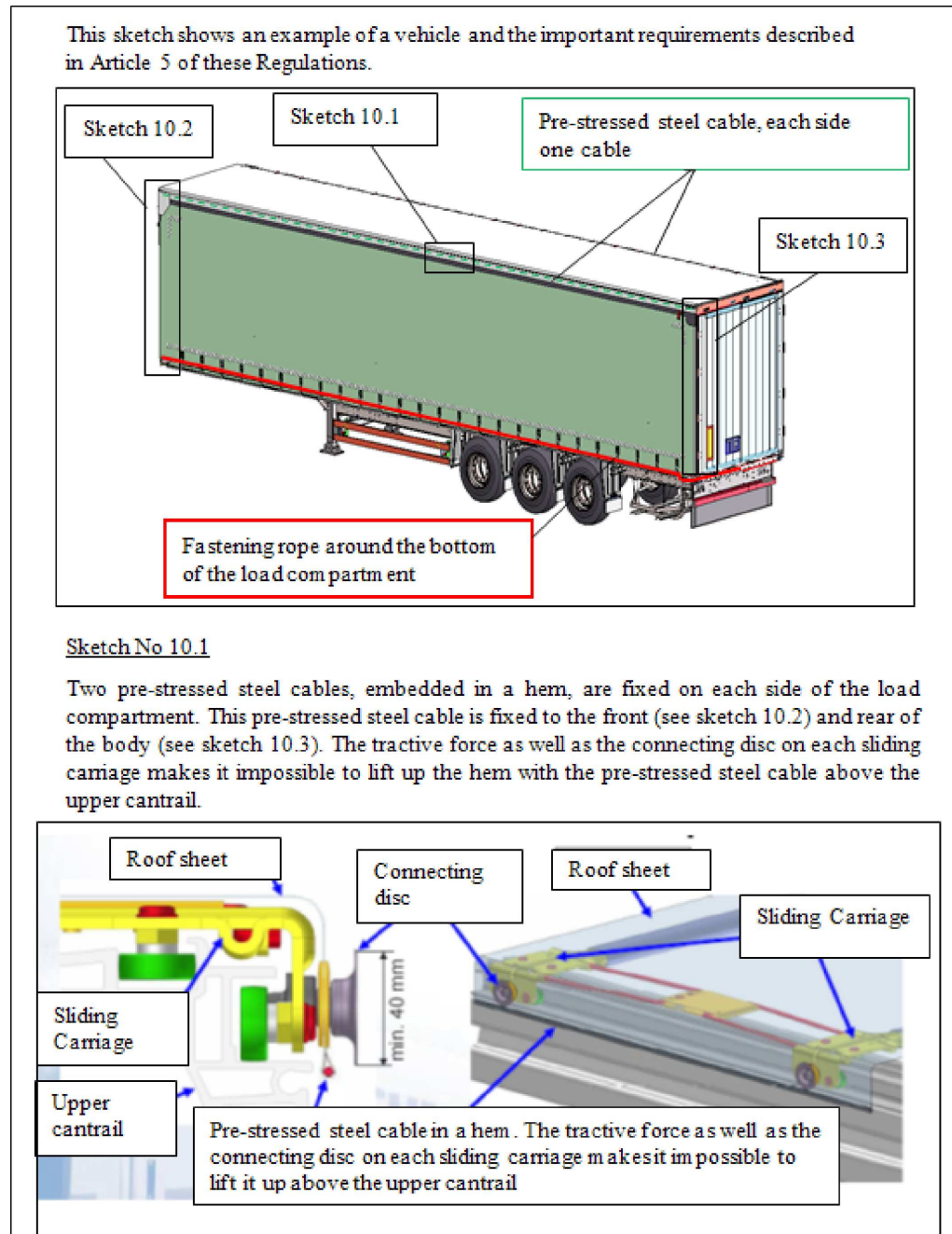
Sketch No 9 continued:



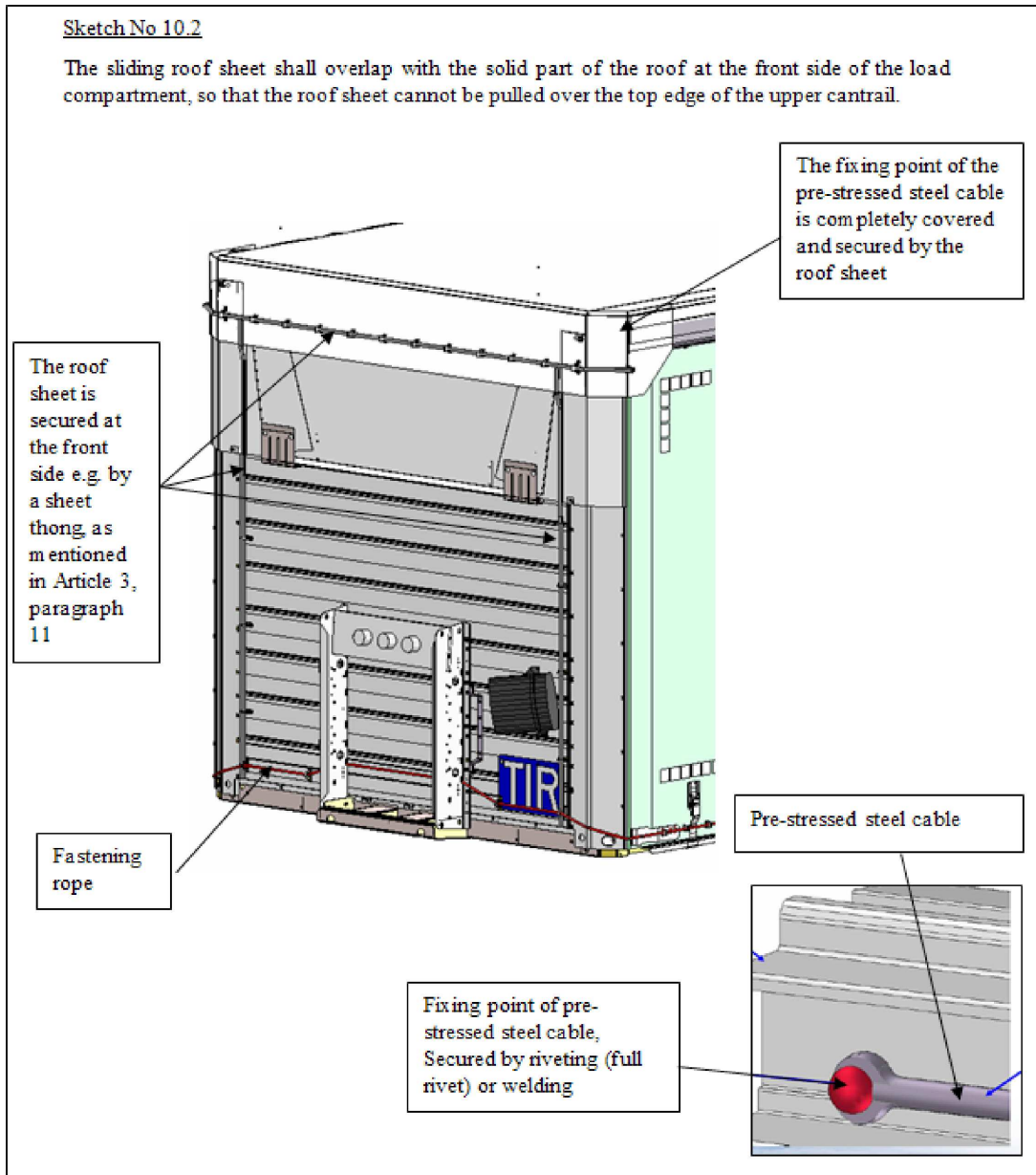
**Annex 2, new Sketch No 10:**

After new Sketch No 9 insert:

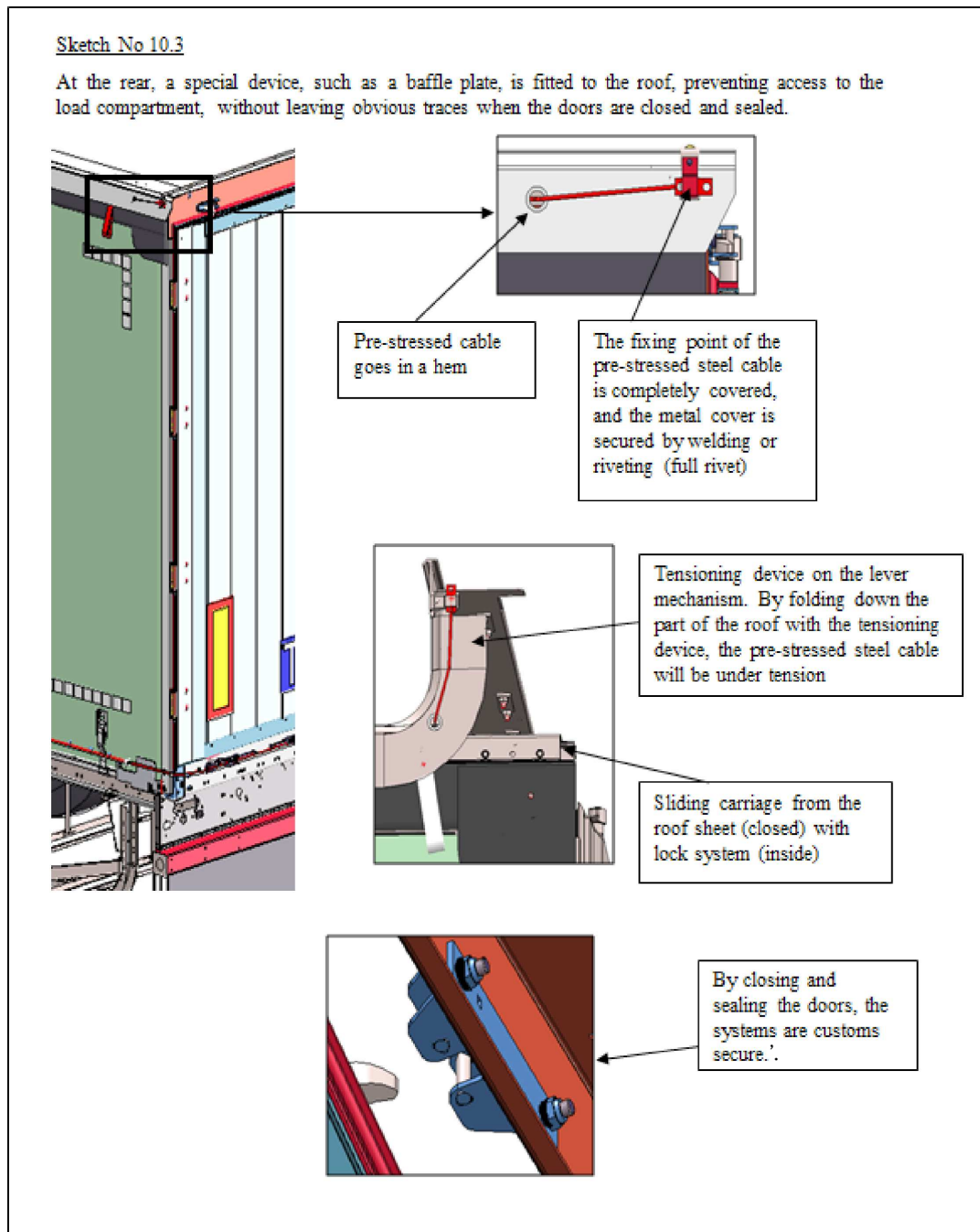
'Sketch No 10

**EXAMPLE OF A CONSTRUCTION OF A VEHICLE WITH A SHEETED SLIDING ROOF**

Sketch No 10 continued:



Sketch No 10 continued:



**Annex 7, Part I, Article 5, paragraph 2(i):**

For the existing text substitute:

- (i) The sliding sheets, floor, doors and all other constituent parts of the container shall be assembled either by means of devices which cannot be removed and replaced from the outside without leaving obvious traces, or by such methods as will produce a structure which cannot be modified without leaving obvious traces.'

**Annex 7, Part I, Article 5, paragraph 2(iii):**

For the existing text substitute:

- (iii) The sliding sheet guidance, sliding sheet tension devices and other movable parts shall be assembled in such a way that when closed, and Customs sealed, doors and other movable parts cannot be opened or closed from the outside without leaving obvious traces. The sliding sheet guidance, sliding sheet tension devices and other movable parts shall be assembled in such a way that it is impossible to gain access to the container without leaving obvious traces once the closing devices has been secured. An example of such a system of construction is given in sketch No 9 appended to these Regulations.'

**Annex 7, Part I, new Article 6:**

After the modified Article 5 insert:

*Article 6*

**Containers with a sheeted sliding roof**

1. Where applicable, the provisions of Articles 1, 2, 3, 4 and 5 of these Regulations shall apply to containers with a sheeted sliding roof. In addition, these containers shall conform to the provisions of this Article.
2. The sheeted sliding roof shall fulfil the requirements set out in (i) to (iii) below.
  - (i) The sheeted sliding roof shall be assembled either by means of devices which cannot be removed and replaced from the outside without leaving obvious traces, or by such methods as will produce a structure which cannot be modified without leaving obvious traces.
  - (ii) The sliding roof sheet shall overlap with the solid part of the roof at the front side of the container, so that the roof sheet cannot be pulled over the top edge of the upper cantrail. In the length of the container, at both sides, in the hem of the roof sheet, a pre-stressed steel cable shall be inserted in such a way that it cannot be removed and re-inserted without leaving obvious traces. The roof sheet shall be secured to the sliding carriage in such a way that it cannot be removed and re-secured without leaving obvious traces.
  - (iii) The sliding roof guidance, the sliding roof tension devices and other movable parts shall be assembled in such a way that when closed, and Customs sealed, doors, roof and other movable parts cannot be opened or closed from the outside without leaving obvious traces. The sliding roof guidance, sliding roof tension devices and other movable parts shall be assembled in such a way that it is impossible to gain access to the container without leaving obvious traces once the closing devices have been secured.

An example of a possible system of construction is shown in sketch No 10, appended to these Regulations.'

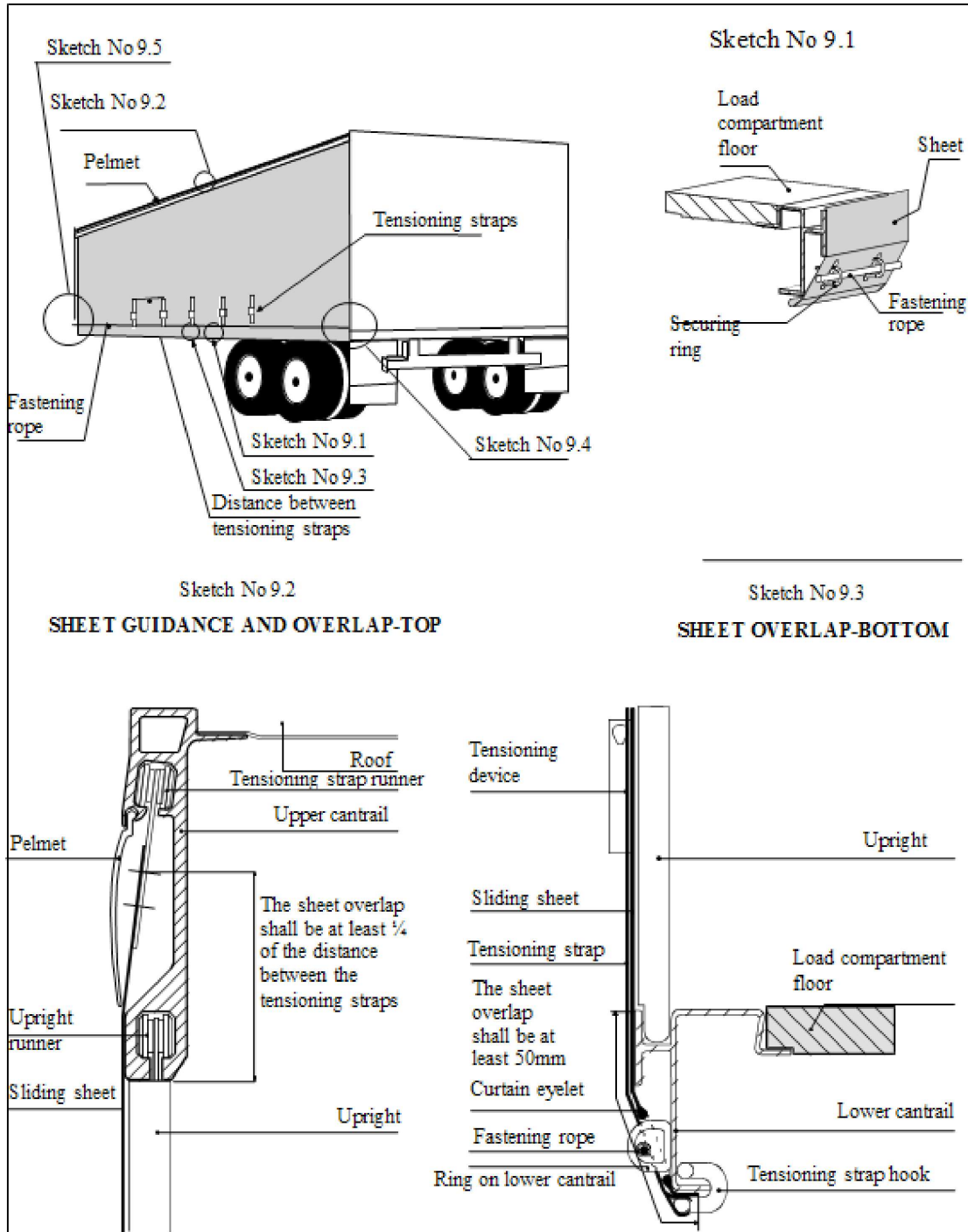


**Annex 7, Part I, Sketch No 9:**

For the existing Sketch No 9 substitute:

‘Sketch No 9

**EXAMPLE OF A CONSTRUCTION OF A CONTAINER WITH SLIDING SHEETS**

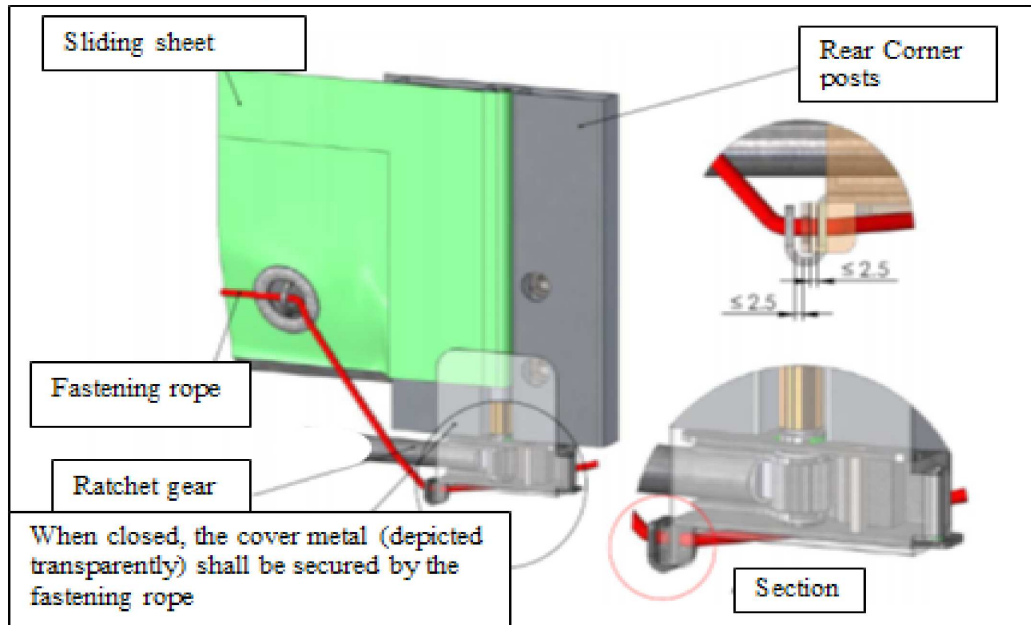


Sketch No 9 continued:

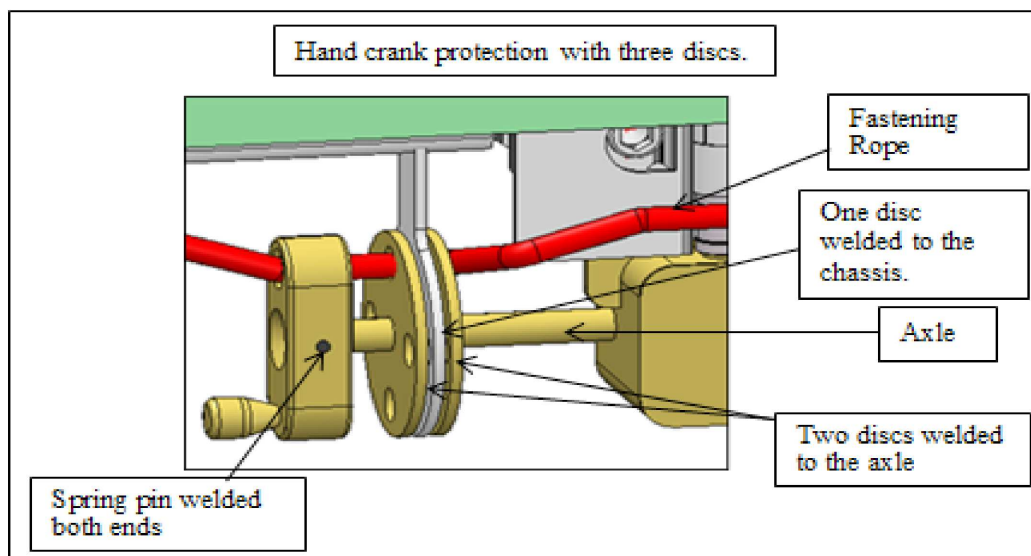
Sketch No 9.4

To tighten the sliding sheets in the horizontal direction, a ratchet gear is used (normally at the rear end of the container). This sketch shows two examples, (a) and (b), of how the ratchet or gearbox may be secured.

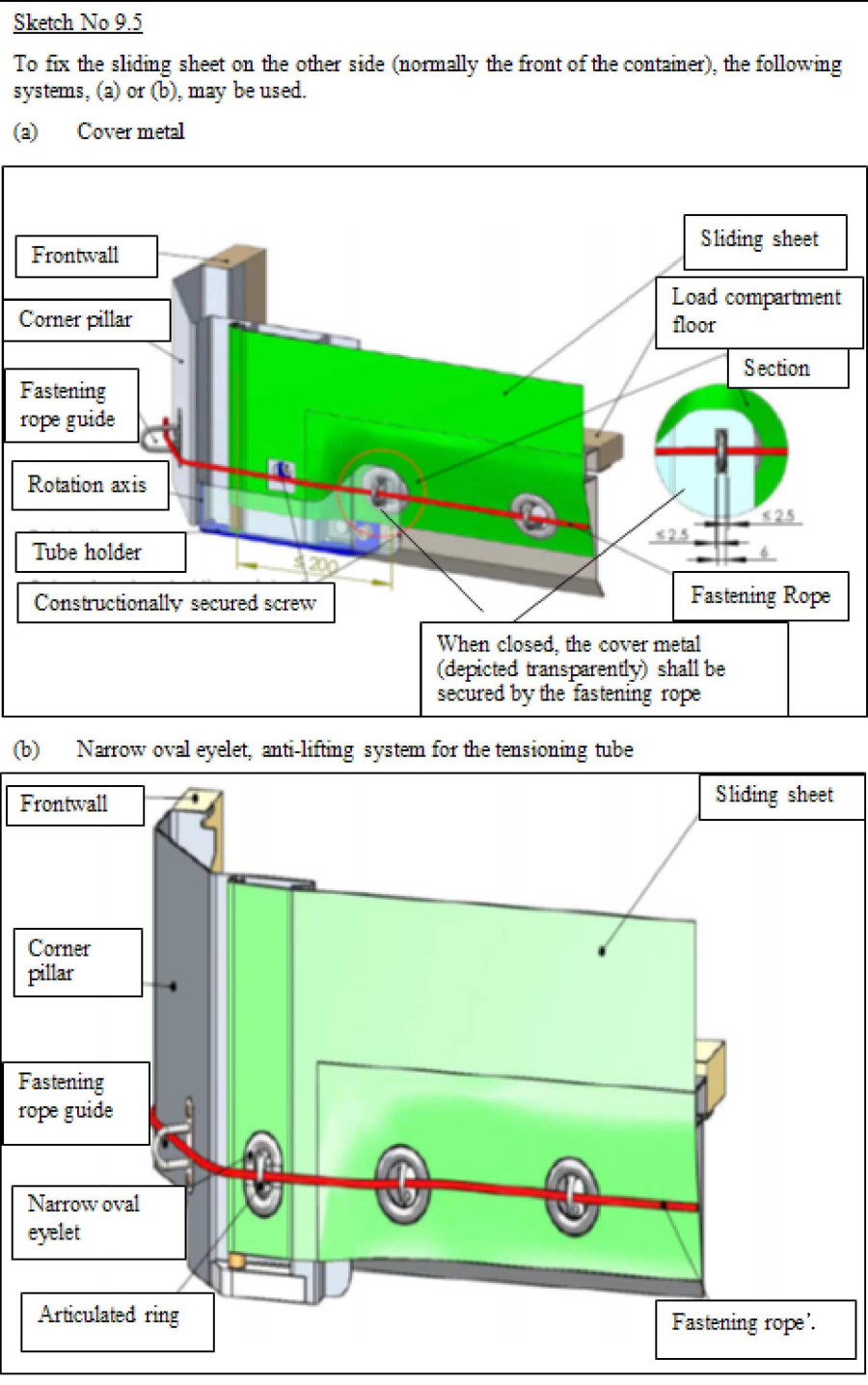
(a) Ratchet securing



(b) Gearbox securing



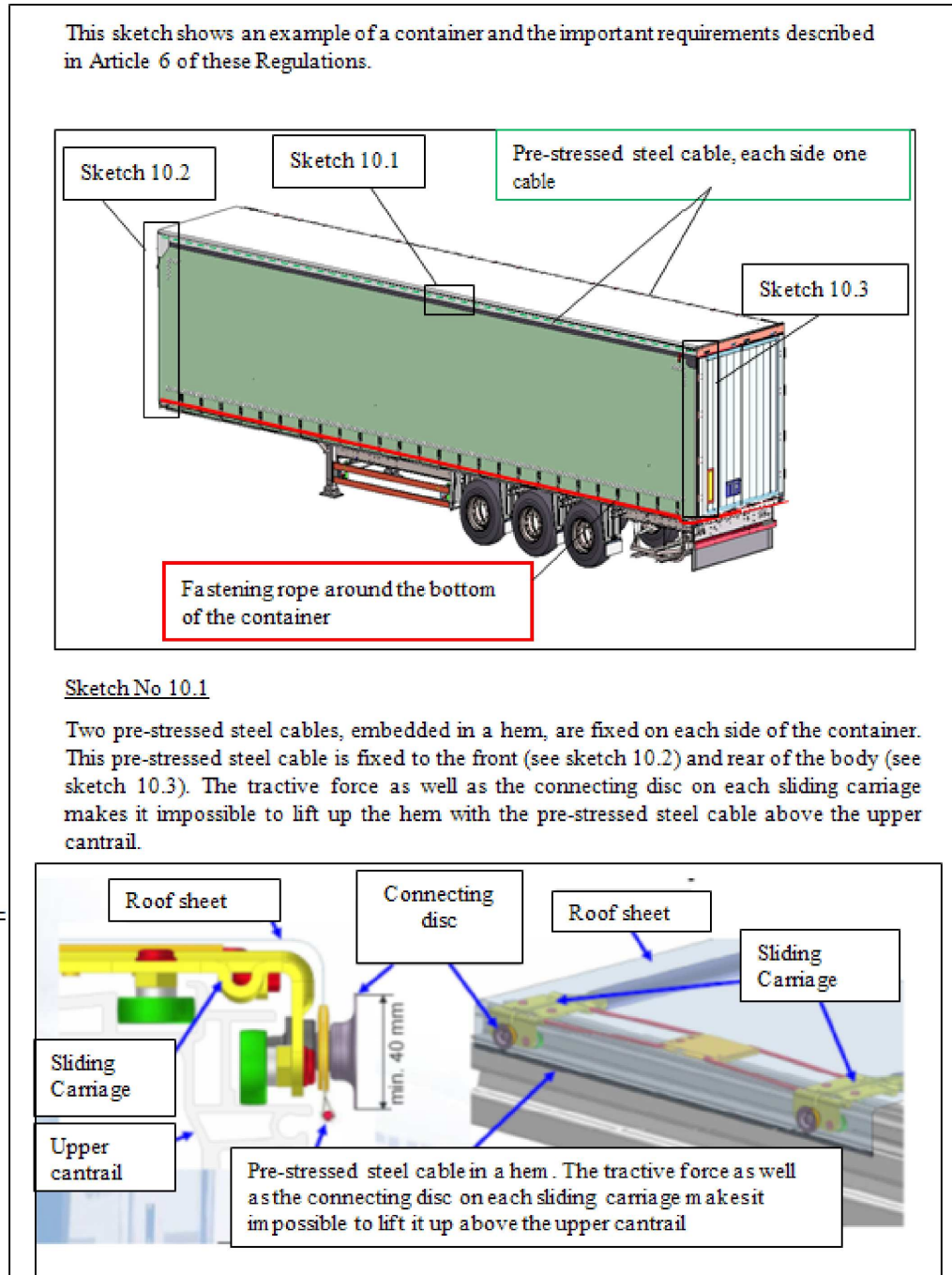
Sketch No 9 continued:



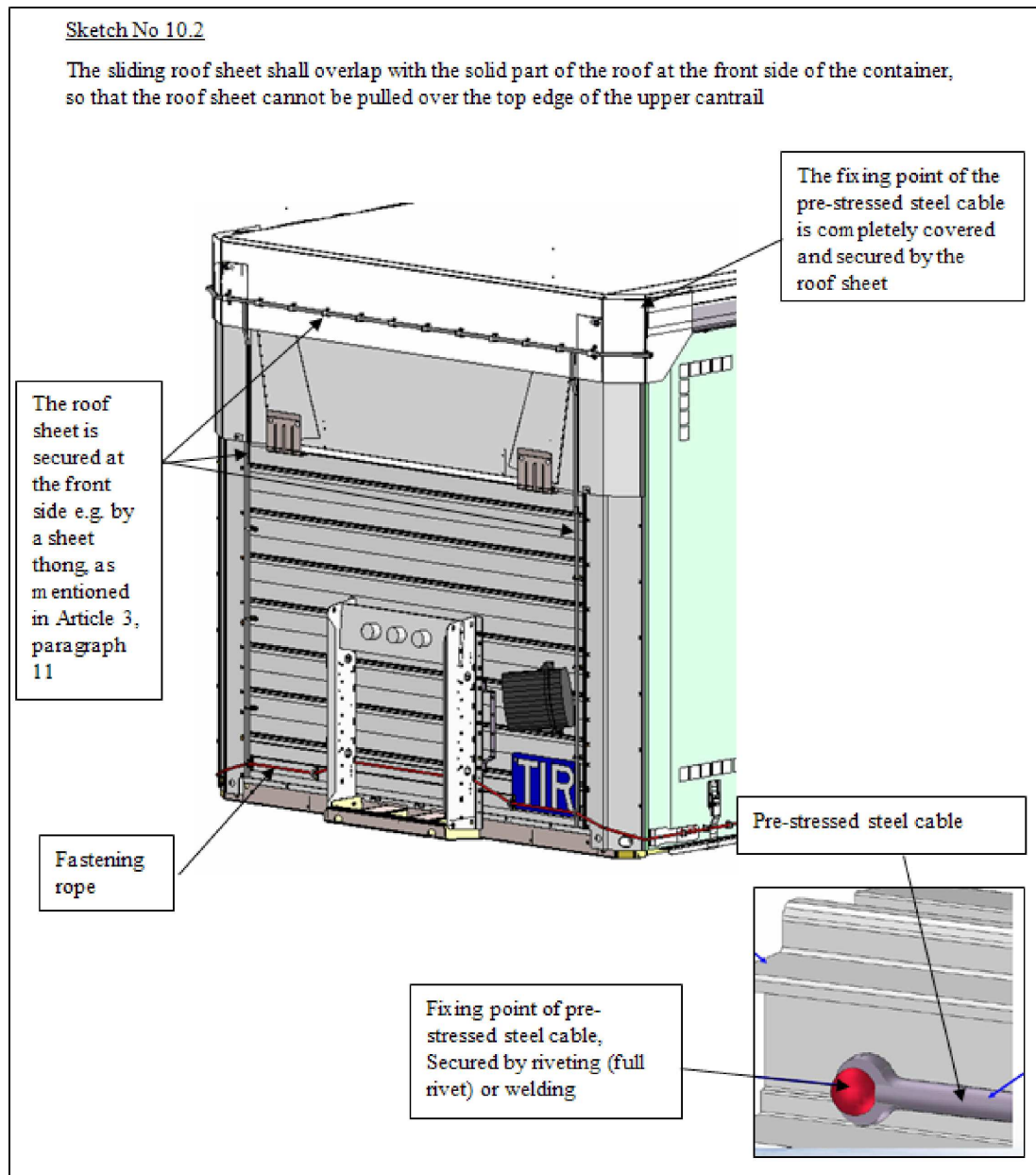
**Annex 7, Part I, new Sketch No 10:**

After new Sketch No 9 insert:

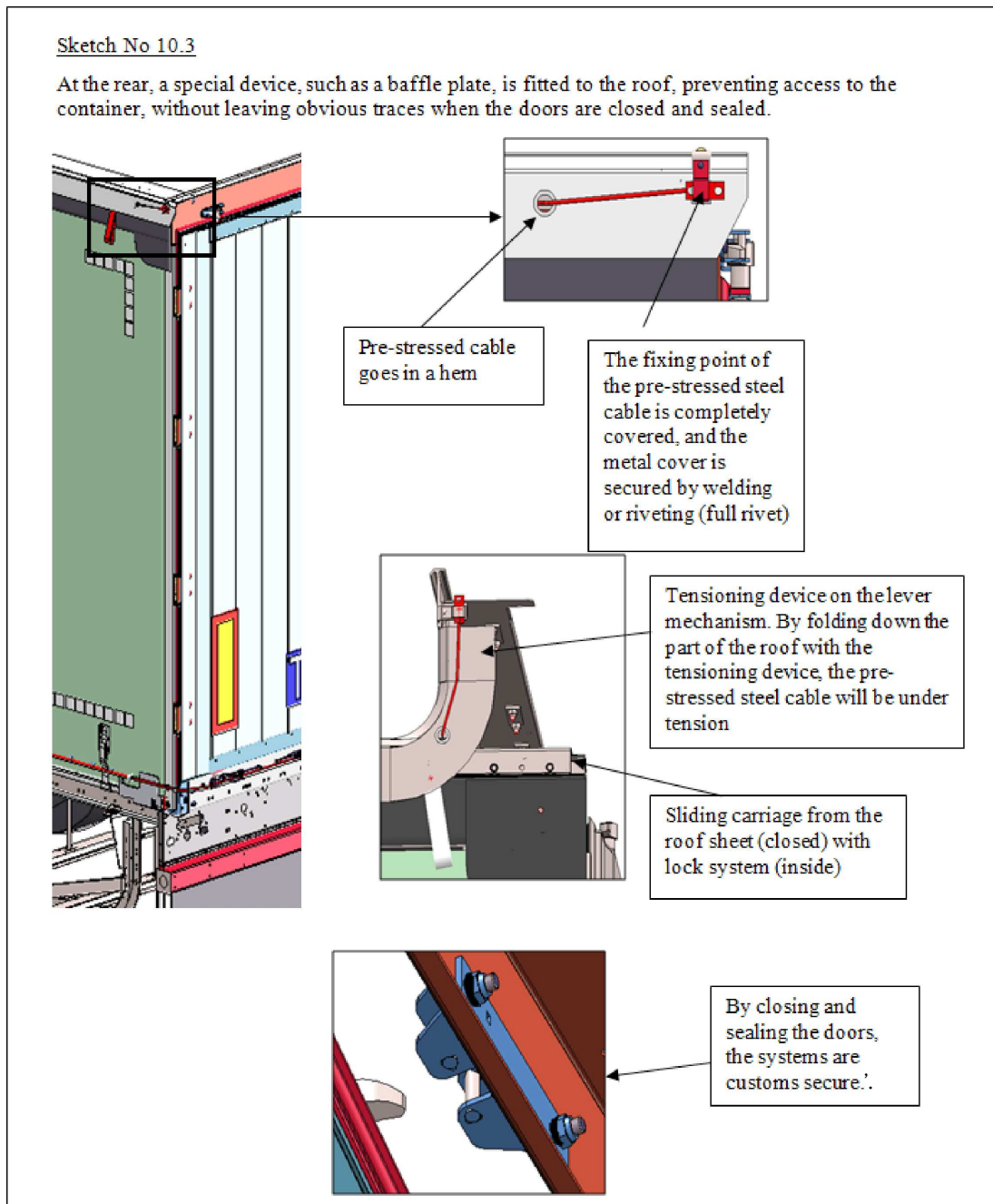
‘Sketch No 10

**EXAMPLE OF A CONSTRUCTION OF A CONTAINER WITH A SHEETED SLIDING ROOF**

Sketch No 10 continued:



Sketch No 10 continued:



# REGULATIONS

## COMMISSION IMPLEMENTING REGULATION (EU) 2016/2080 of 25 November 2016 opening the sale of skimmed milk powder by a tendering procedure

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 <sup>(1)</sup>,

Having regard to Commission Implementing Regulation (EU) 2016/1240 of 18 May 2016 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to public intervention and aid for private storage <sup>(2)</sup>, and in particular Article 28 and Article 31(1) thereof,

Whereas:

- (1) Given the current situation on the skimmed milk powder market in terms of price recovery and the high level of intervention stocks it is appropriate to open the sale of skimmed milk powder from public intervention by a tendering procedure in accordance with Implementing Regulation (EU) 2016/1240.
- (2) In order to manage sales from intervention in an adequate way, it is necessary to specify the date before which the skimmed milk powder that is available for sale must have entered into public intervention.
- (3) Pursuant to Article 28(4)(b), (c) and (d) of Implementing Regulation (EU) 2016/1240, it is necessary to fix the periods for the submission of tenders, the minimum quantity for which a tender may be submitted and the amount of the security that has to be lodged when submitting a tender.
- (4) For the purposes of Article 31(1) of Implementing Regulation (EU) 2016/1240, it is necessary to lay down the time limits by which Member States are to notify the Commission of all admissible tenders.
- (5) In the interests of an efficient administration, Member States should make their notifications to the Commission in accordance with Commission Regulation (EC) No 792/2009 <sup>(3)</sup>.
- (6) The Committee for the Common Organisation of the Agricultural Markets has not delivered an opinion within the time limit laid down by its chair,

HAS ADOPTED THIS REGULATION:

### Article 1

#### Scope

Sales by a tendering procedure of skimmed milk powder entered into storage before 1 November 2015 are open under the conditions provided for in Chapter III of Title II of Implementing Regulation (EU) 2016/1240.

<sup>(1)</sup> OJ L 347, 20.12.2013, p. 671.

<sup>(2)</sup> OJ L 206, 30.7.2016, p. 71.

<sup>(3)</sup> Commission Regulation (EC) No 792/2009 of 31 August 2009 laying down detailed rules for the Member States' notification to the Commission of information and documents in implementation of the common organisation of the markets, the direct payments' regime, the promotion of agricultural products and the regimes applicable to the outermost regions and the smaller Aegean islands (OJ L 228, 1.9.2009, p. 3).

*Article 2***Submission of tenders**

1. The period during which tenders may be submitted in response to the first partial invitation to tender shall end on 13 December 2016 at 11.00 (Brussels time).
2. The periods during which tenders may be submitted in response to the second and subsequent partial invitations shall begin on the first working day following the end of the preceding period. They shall end at 11.00 (Brussels time) on the first and third Tuesday of the month. However, in August it shall be 11.00 (Brussels time) on the fourth Tuesday and in December it shall be 11.00 (Brussels time) on the second Tuesday. If Tuesday is a public holiday the time limit shall be 11.00 (Brussels time) on the previous working day.
3. Tenders shall be submitted to the paying agencies approved by the Member States <sup>(1)</sup>.

*Article 3***Quantity per tender and unit of measurement**

The minimum quantity of skimmed milk powder for which a tender may be submitted shall be 20 tonnes.

The proposed price shall be the price per 100 kg of product.

*Article 4***Security**

When submitting a tender for the sale of skimmed milk powder, a security of EUR 50/tonne shall be lodged to the paying agency where the tender is submitted.

*Article 5***Notification to the Commission**

The notification provided for in Article 31(1) of Implementing Regulation (EU) 2016/1240 shall be made in accordance with Regulation (EC) No 792/2009 by 16.00 (Brussels time) on the days referred to in Article 2 of this Regulation.

*Article 6***Entry into force**

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

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<sup>(1)</sup> The addresses of the paying agencies are available on the European Commission website [http://ec.europa.eu/agriculture/milk/policy-instruments/index\\_en.htm](http://ec.europa.eu/agriculture/milk/policy-instruments/index_en.htm)



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

Done at Brussels, 25 November 2016.

*For the Commission,  
On behalf of the President,  
Phil HOGAN  
Member of the Commission*

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**COMMISSION IMPLEMENTING REGULATION (EU) 2016/2081****of 28 November 2016****re-imposing a definitive anti-dumping duty on imports of oxalic acid originating in the People's Republic of China and produced by Yuanping Changyuan Chemicals Co. Ltd**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union <sup>(1)</sup>, and in particular Article 9(4) thereof,

Whereas:

**A. PROCEDURE**

- (1) On 18 April 2012, by Council Implementing Regulation (EU) No 325/2012 <sup>(2)</sup> ('the contested regulation'), the Council imposed a definitive anti-dumping duty on imports of oxalic acid originating in India and the People's Republic of China in the range of 14,6 % to 52,2 % following an anti-dumping investigation under Article 5 of the Council Regulation (EC) No 1225/2009 <sup>(3)</sup>.
- (2) By judgment of 20 May 2015 <sup>(4)</sup>, the General Court annulled the contested regulation, in so far as Yuanping Changyuan Chemicals Co. Ltd, a cooperating Chinese exporting producer, is concerned. The General Court ruled that the Council's reasoning concerning two matters on the determination of the injury elimination level did not comply with Article 296 of the Treaty of the Functioning of the European Union.
- (3) Following the General Court's judgment, the Commission published a Notice informing that it had decided to resume the anti-dumping investigation concerning oxalic acid for the purposes of implementing the judgment in regard to Yuanping Changyuan Chemicals Co. Ltd

**B. IMPLEMENTATION****1. Customs duty for the calculation of the injury elimination level (injury margin)**

- (4) As stated in recitals 66 and 83 of the contested regulation, Yuanping Changyuan Chemicals Co. Ltd had claimed that the Commission had failed to include fully an allowance of 6,5 % corresponding to the normal customs duty in the injury margin calculation.
- (5) The Commission had found in the original investigation that the claim was warranted and it had revised the calculations with regard to the injury margin as follows: the final weighted average import price was calculated by adding, to the weighted average CIF Union border export price of Yuanping Changyuan Chemicals Co. Ltd, for the two types of oxalic acid (refined and unrefined) first, 6,5 % for customs duties, and then, a fixed amount of 10 EUR/tonne for post-importation costs.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<sup>(2)</sup> Council Implementing Regulation (EU) No 325/2012 of 12 April 2012 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of oxalic acid originating in India and the People's Republic of China (OJ L 106, 18.4.2012, p. 1).

<sup>(3)</sup> Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51). As of 20 July 2016: Regulation (EU) 2016/1036.

<sup>(4)</sup> Case T-310/12 *Yuanping Changyuan Chemicals Co. Ltd v. Council of the European Union*.

- (6) The result was a reduction of the Yuanping Changyuan Chemicals Co. Ltd's injury margin to 18,7 %. However, as already indicated in recitals 83 and 87 of the contested regulation, the reduced injury margin remained above the dumping margin established for Yuanping Changyuan Chemicals Co. Ltd (14,6 %), which is the basis for the anti-dumping duty imposed.

## 2. Profit margin for the calculation of the injury elimination level (injury margin)

- (7) As stated in recitals 142 and 143 of Commission Regulation (EU) No 1043/2011 <sup>(5)</sup> imposing provisional measures in the case at hand, and as confirmed by the contested regulation, the profit used for the calculation of the injury elimination level was 8 % of turnover, which was considered being the profit that the Union industry could reasonably have expected to achieve under normal conditions of competition in the absence of injurious dumping. The considerations for the use of this figure are discussed as follows.
- (8) In the investigation leading to the contested regulation it was established that during the period considered the Union industry was either loss-making or making a very limited profit. That level of profits was insufficient to maintain the production in the medium term. In addition, during the period considered in the original investigation there were significant amounts of imports, at price levels that on average were lower than the prices found to be dumped in the original investigation period. These low priced imports had a negative impact on the economic performance of the Union industry. Therefore, the levels of profit actually realised by the Union industry during the period considered could not be considered as a profit that the Union industry could reasonably expect to achieve under normal conditions of competition.
- (9) Furthermore, during the original investigation, the Commission did not collect any data regarding Union industry's profit for a period before the period considered. Consequently, no profit data relating to the Union industry for a period immediately before the period considered, that could be used as a reasonable profit margin for the calculation of the injury margin, was available. Following disclosure, Yuanping argued that the Commission services should have used information falling outside the period considered in order to make a proper assessment for establishing the target profit.
- (10) This claim was not accepted. The EU Courts have recognised the Commission a wide discretion as regards the period to be taken into account for the purpose of determining injury <sup>(6)</sup>. The Commission, at the beginning of the original investigation, set out a period to collect data for the assessment of injury, i.e. the period considered, (1 January 2007 to 31 December 2010), and it did not collect data falling outside that period. Furthermore, as explained in recital 23 below, within the scope of this resumption of the investigation, the Commission has to rely only on the information that was available during the original investigation.
- (11) The Commission therefore analysed the target profit proposed by the complainant in the investigation leading to the contested regulation. In the complaint, a target profit margin of 10 % for the calculation of the injury margin was proposed. In this respect, the Commission noted that the profit margin used by the Council in a previous investigation concerning imports of oxalic acid from India and the People's Republic of China in 1991 was 10 % <sup>(7)</sup>. The complainant justified the figure by arguing that such a level of profitability could be achieved if it produced at full capacity utilisation. However, the profit margin proposed by the complainant does not relate to actual data on profit achieved in the absence of dumped imports under normal conditions of competition, but to a theoretical situation of full capacity utilisation. Given that the complainant did not demonstrate that the full capacity utilisation on which it based the proposed target profit was, or could be, achieved under normal market conditions in the absence of the dumped imports the claimed target profit could not be used for this reason.
- (12) Under these circumstances the Commission examined the profit margin established in other investigations concerning the chemical sector, which are as well capital intensive industries like the oxalic acid industry and having similar a production process.

<sup>(5)</sup> Commission Regulation (EU) No 1043/2011 of 19 October 2011 imposing a provisional anti-dumping duty on imports of oxalic acid originating in India and the People's Republic of China (OJ L 275, 20.10.2011, p. 1).

<sup>(6)</sup> *Epicheiriseon Metallifiton Viomichanikon kai Naftiliaekon AE and others v Council* (Case C-121/86, [1989] ECR 3919).

<sup>(7)</sup> Commission Regulation (EEC) No 1472/91 of 29 May 1991 imposing a provisional anti-dumping duty on imports of oxalic acid originating in India or China and terminating the anti-dumping proceeding in respect of imports of oxalic acid originating in Czechoslovakia (OJ L 138, 1.6.1991, p. 62) (recital 45); confirmed by the definitive regulation: Council Regulation (EEC) No 3434/91 of 25 November 1991 imposing a definitive anti-dumping duty on imports of oxalic acid originating in India or the People's Republic of China (OJ L 326, 28.11.1991, p. 6) (recital 26).

- (13) In regard to profit margins used in previous investigations in the chemical sector <sup>(8)</sup> (including the profit margin used in the previous investigation on oxalic acid) it was found that, on average, a profit margin of around 8 % had been considered constituting a reasonable profit that the Union industry could achieve under normal market conditions in the absence of injurious dumping.
- (14) In addition, the Commission examined the profit margin used in investigations concerning other sectors which, like the chemical sector, are capital intensive. In this regard, the Commission found that the profit margin used in those investigations <sup>(9)</sup>, were consistent with the average profit margin found for the chemical sector, including oxalic acid.
- (15) On the basis of the considerations referred to above, and absent actual data on profitability levels that could be achieved by the Union industry during the investigation period under normal conditions, and in the absence of injurious dumping, the Commission found it appropriate to establish such reasonable profit margin on the basis of the average profit margin established in anti-dumping investigations for other chemical industries, and other industries with similar characteristics, such as being capital intensive. On this basis, the Commission concluded that 8 % was a profit margin that the Union industry could reasonably expect to realise under normal conditions of competition, namely in the absence of dumped imports, and this profit margin should therefore be used for the calculation of the injury elimination level.

### C. DISCLOSURE

- (16) The Commission disclosed the facts and considerations referred to above on 29 June 2016. Yuanping Changyuan Chemicals Co. Ltd and the Union industry were given an opportunity to comment on them.
- (17) Comments were received within the prescribed deadlines and were duly taken into consideration. In addition, on 11 August 2016 a hearing was held between the Commission services and Yuanping.
- (18) As a result of the comments received from interested parties, some changes were made with respect to the original disclosure document of 29 June 2016. Therefore, the Commission disclosed again the above facts and considerations to interested parties on 24 August 2016.
- (19) Following disclosure, Oxaquim claimed that it was unclear whether Yuanping's claim referred to in recital 4 above had been fully or only partially warranted. In this respect, the Commission confirmed that the claim had been warranted in full. In fact, as explained in detail in recitals 5 and 6 above, the revised calculation performed by the Commission in the original investigation fully reflected the comments made by Yuanping at the time of the original investigation.
- (20) For its part, Yuanping alleged that in implementing the Court judgment, the Commission conducted a post hoc analysis in order to justify the findings of the original investigation. According to Yuanping this was evidenced by the fact that the Commission relied on Council Implementing Regulation (EU) No 1138/2011 <sup>(10)</sup>, which was published after the assessment of the target profit in the current proceeding. Yuanping claimed that such a post hoc analysis could not be used to justify the original findings. This claim was not correct and it was rejected for the following reasons.

<sup>(8)</sup> See amongst others, Council Regulation (EC) No 130/2006 of 23 January 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of tartaric acid originating in the People's Republic of China (OJ L 23, 27.1.2006, p. 1); Council Regulation (EC) No 1193/2008 of 1 December 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duties imposed on imports of citric acid originating in the People's Republic of China (OJ L 323, 3.12.2008, p. 1); Council Implementing Regulation (EU) No 1138/2011 of 8 November 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia (OJ L 293, 11.11.2011, p. 1).

<sup>(9)</sup> Council Implementing Regulation (EU) No 451/2011 of 6 May 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of coated fine paper originating in the People's Republic of China (OJ L 128, 14.5.2011, p. 1); Council Regulation (EC) No 2093/2002 of 26 November 2002 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyester textured filament yarn (PTY) originating in India (OJ L 323, 28.11.2002, p. 1).

<sup>(10)</sup> See footnote 8.

- (21) Firstly, with regard to the cases relied on for the assessment of the target profit (out of which only a few of them have been referenced in the regulation), Yuanping claim is factually incorrect. The target profit in all these cases, including the regulation referred to above by Yuanping, had been either provisionally or definitively established prior to the determination of the target profit in the original investigation.
- (22) Secondly, in order to implement the judgment of the Court in accordance with Article 266 TFEU, the Commission must provide with a statement of reasons in accordance with Article 296 TFEU, for those findings made in the original investigation and for which the Court found that the statement of reasons was insufficient. In doing so, the Commission has to rely on the information that was available at the time of the original investigation.
- (23) Accordingly, the Commission motivated those findings, e.g. the use of 8 % as target profit, using only information that it had previously relied upon during the original investigation.
- (24) In addition, all the information presented by the Commission in this regulation was already in the case file of the original investigation and/or was publicly available at that time. Such information was provided to Yuanping in the context of this investigation again, showing that the Commission did not use any new evidence in its improved statement of reasons.
- (25) Yuanping further argued that an administrative procedure is not sufficient in order to correct the errors found by the Court.
- (26) This argument was rejected. The Court did not establish that the findings of the Commission were factually or substantially wrong. Rather, the Court established that in some instances, the contested regulation lacked sufficient reasoning. Providing an enhanced statement of reasons in this regulation, in accordance with Article 296 TFEU, is the appropriate means to comply with the Court judgment.
- (27) Lastly, Yuanping claimed that the figure used by the Commission for post-importation costs, i.e. 10 EUR/tonne, was too low. To support this claim, Yuanping provided the Commission with evidence in the form of several invoices from 2016, where the post-importation costs were allegedly higher.
- (28) This claim was rejected. The figures for post-importation costs used by the Commission in the original investigation were the result of verified information from cooperating unrelated importers. In this respect, Yuanping failed to substantiate why the Commission should recalculate this figure using unverified data from a period outside the original investigation period.
- (29) This Regulation is in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EC) No 1225/2009,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

A definitive anti-dumping duty of 14,6 % is hereby imposed on imports of oxalic acid, whether in dihydrate (CUS number 0028635-1 and CAS number 6153-56-6) or anhydrous form (CUS number 0021238-4 and CAS number 144-62-7) and whether or not in aqueous solution, originating in the People's Republic of China, currently falling within CN code ex 2917 11 00 (TARIC code 2917 11 00 91) and produced by Yuanping Changyuan Chemicals Co. Ltd (TARIC additional code B232)

#### *Article 2*

This Regulation shall enter into force on the 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, 28 November 2016.

*For the Commission*

*The President*

Jean-Claude JUNCKER

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# DECISIONS

## COUNCIL DECISION (CFSP) 2016/2082

of 28 November 2016

### **amending Joint Action 2008/851/CFSP on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 42(4) and 43(2) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 10 November 2008, the Council adopted Joint Action 2008/851/CFSP <sup>(1)</sup> establishing the EU military operation Atalanta ('Atalanta').
- (2) On 21 November 2014, Council Decision 2014/827/CFSP <sup>(2)</sup> amended Joint Action 2008/851/CFSP and extended Atalanta until 12 December 2016.
- (3) Atalanta's 2016 strategic review has led to the conclusion that Atalanta's mandate should be extended to December 2018.
- (4) Joint Action 2008/851/CFSP should be amended accordingly.
- (5) In accordance with Article 5 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications. Denmark does not participate in the implementation of this Decision and therefore does not participate in the financing of this operation,

HAS ADOPTED THIS DECISION:

#### *Article 1*

Joint Action 2008/851/CFSP is hereby amended as follows:

- (1) in Article 14, the following paragraph is added:

'5. The financial reference amount for the common costs of the EU military operation for the period from 13 December 2016 until 31 December 2018 shall be EUR 11 064 000. The percentage of the reference amount referred to in Article 25(1) of Council Decision (CFSP) 2015/528 <sup>(\*)</sup> shall be 0 %.

<sup>(\*)</sup> Council Decision (CFSP) 2015/528 of 27 March 2015 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena) and repealing Decision 2011/871/CFSP (OJ L 84, 28.3.2015, p. 39).';

<sup>(1)</sup> Council Joint Action 2008/851/CFSP of 10 November 2008 on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (OJ L 301, 12.11.2008, p. 33).

<sup>(2)</sup> Council Decision 2014/827/CFSP of 21 November 2014 amending Joint Action 2008/851/CFSP on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (OJ L 335, 22.11.2014, p. 19).

(2) in Article 16, paragraph 3 is replaced by the following:

‘3. The EU military operation shall terminate on 31 December 2018.’.

*Article 2*

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

Done at Brussels, 28 November 2016.

*For the Council*  
*The President*  
F. MOGHERINI

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**COUNCIL DECISION (CFSP) 2016/2083****of 28 November 2016****amending Decision 2014/486/CFSP on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article 28, Article 42(4) and Article 43(2) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 22 July 2014, the Council adopted Decision 2014/486/CFSP <sup>(1)</sup> on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine).
- (2) Decision 2014/486/CFSP, as amended by Decision (CFSP) 2015/2249 <sup>(2)</sup>, provided EUAM Ukraine with a financial reference amount until 30 November 2016 and a mandate until 30 November 2017.
- (3) On 12 May 2016, the Council adopted Decision (CFSP) 2016/712 <sup>(3)</sup> adapting the financial reference amount for the period until 30 November 2016.
- (4) A financial reference amount for the period from 1 December 2016 until 30 November 2017 should be provided for, and Decision 2014/486/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

Decision 2014/486/CFSP is amended as follows:

- (1) in Article 14, paragraph 1 is replaced by the following:

‘1. The financial reference amount intended to cover the expenditure related to EUAM Ukraine until 30 November 2014 shall be EUR 2 680 000. The financial reference amount intended to cover the expenditure related to EUAM Ukraine for the period from 1 December 2014 to 30 November 2015 shall be EUR 13 100 000. The financial reference amount intended to cover the expenditure related to EUAM Ukraine for the period from 1 December 2015 to 30 November 2016 shall be EUR 17 670 000. The financial reference amount intended to cover the expenditure related to EUAM Ukraine for the period from 1 December 2016 to 30 November 2017 shall be EUR **20 800 000**. The financial reference amount for the subsequent periods shall be decided by the Council.’;

- (2) in Article 17, the following paragraph is inserted:

‘1a. The HR shall be authorised to release to the European Border and Coast Guard Agency (“Frontex”) EU classified information and documents generated for the purposes of EUAM Ukraine up to the level of classification determined by the Council in accordance with Decision 2013/488/EU. Arrangements between the HR and Frontex shall be drawn up for this purpose.’.

<sup>(1)</sup> Council Decision 2014/486/CFSP of 22 July 2014 on the European Union Advisory Mission for Civilian Sector Reform Ukraine (EUAM Ukraine) (OJ L 217, 23.7.2014, p. 42).

<sup>(2)</sup> Council Decision (CFSP) 2015/2249 of 3 December 2015 amending Decision 2014/486/CFSP on the European Union Advisory Mission for Civilian Sector Reform Ukraine (EUAM Ukraine) (OJ L 318, 4.12.2015, p. 38).

<sup>(3)</sup> Council Decision (CFSP) 2016/712 of 12 May 2016 amending Decision 2014/486/CFSP on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine) (OJ L 125, 13.5.2016, p. 11).

*Article 2***Entry into force**

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

Done at Brussels, 28 November 2016.

*For the Council*

*The President*

P. ŽIGA

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**COMMISSION DECISION (EU) 2016/2084****of 10 June 2016****on State aid SA.38132 (2015/C) (ex 2014/NN) — additional PSO compensation for Arfea***(notified under document C(2016) 3472)***(Only the Italian text is authentic)****(Text with EEA relevance)**

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 provision(s) cited above <sup>(1)</sup> and having regard to their comments,

Whereas:

**1. PROCEDURE**

- (1) By electronic notification of 9 January 2014, the Italian authorities notified, in accordance with Article 108(3) TFEU, the additional compensation awarded by the Regional Administrative Court of Piedmont) to Arfea - Aziende Riunite Filovie ed Autolinee ('Arfea'), for the provision of passenger transport services by bus based on concessions granted by the Italian Piedmont Region ('the Region') during the period 1997-1998 ('the period under review').
- (2) The notification was registered under case number SA.38132. Following a request for information sent by the Commission on 7 February 2014 to clarify whether the additional compensation had been paid, the Region confirmed on 11 March 2014 having paid the additional compensation to Arfea on 7 February 2014, that is, after the Italian government had notified the measure to the Commission. The measure is therefore treated as a non-notified measure.
- (3) Further information was provided by the Italian authorities on 7 April 2014 and 21 May 2014 and, following a request for information sent by the Commission on 24 July 2014, additional information was provided by the Italian authorities on 20 August 2014.
- (4) By letter dated 23 February 2015, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (hereinafter 'TFEU') in respect of the aid. The Italian authorities submitted their observations on the opening decision by letter of 16 April 2015.
- (5) In its decision to initiate the procedure, which was published in the *Official Journal of the European Union* <sup>(2)</sup>, the Commission invited interested parties to submit their comments on the measure.
- (6) The only third party to submit observations in reply to the opening decision was Arfea, the beneficiary of the measure. Its submission was received on 30 July 2015 and forwarded to Italy on 18 August 2015, which was given the opportunity to react. Italy's comments were received by letter dated 24 September 2015.

<sup>(1)</sup> OJ C 219, 3.7.2015, p. 12.

<sup>(2)</sup> Cf. footnote [1].

## 2. DETAILED DESCRIPTION OF THE AID

### 2.1. The company and the services provided

- (7) Arfea is a private company providing local public transport services based on concessions and private commercial transport services. More specifically, according to the Italian authorities, Arfea operated a network of bus connections as concessionaire in the Province of Alessandria and the Province of Asti ('the Provinces') throughout the period under review (1997 and 1998). The company also provided other private services, such as touristic services and bus rentals.
- (8) According to the information provided by the Italian authorities, the Region has already paid public contributions to Arfea for the above-mentioned service during the period 1997-1998 pursuant to the framework decision of the Regional Government (Delibera della Giunta Regionale or D.G.R.) no. 658-2041 of 16 February 1984 ('the 1984 Framework Decision') implementing Law no. 151/1981<sup>(3)</sup> and Regional Law no. 16/1982<sup>(4)</sup>. Those laws established the rules for granting public contributions for investments and operating deficits of entities or undertakings providing passenger transport services. According to Article 1 of Regional Law no. 16/82, such services are those 'normally meant for the collective transportation of people or goods provided continuously or periodically with tariffs, times, frequencies and predefined itineraries and undifferentiated offer'. In 1997, Arfea also requested and obtained additional public contributions from the Region under Article 12 of Law no. 472/1999 for 1997. Since it appears that those public contributions were awarded to Arfea more than ten years before the Commission sent its first request for information to the Italian State, those contributions will not be subject to an assessment under the present decision.
- (9) In 2007, following a judgment of the Consiglio di Stato (the Italian supreme Administrative Court) awarding retroactive public service compensation to a transport service provider directly under Regulation (EEC) No 1191/69 of the Council<sup>(5)</sup> in addition to the compensation it had already received under national law<sup>(6)</sup>, Arfea requested additional public service compensation from the Region on the basis of that regulation for the economic disadvantages it suffered as a result of public service obligations ('PSOs') allegedly imposed upon it in 1997 and 1998, respectively. According to Arfea, the amount of compensation it received, as calculated under national legislation, did not allow for the full compensation of its deficits in operating the PSOs. That request was rejected by the Region by notes of 14 May 2007 and 25 January 2008. By appeals nos. 913/2007 and 438/2008, Arfea and other service providers challenged those notes rejecting their requests for additional compensation.

### 2.2. The judgments of the Regional Administrative Court of Piedmont (Tribunale Amministrativo Regionale del Piemonte — TAR Piemonte)

- (10) By judgments of 18 February 2010 (Sentenze nos. 976 and 977/2010), the Regional Administrative Court of Piedmont ('the Regional Administrative Court') upheld Arfea's appeals and concluded that it was entitled to receive additional compensation for the public service it had carried out, in accordance with the Regulation (EEC) No 1191/69.
- (11) In those judgments, the Regional Administrative Court held that an undertaking operating a public service cannot be denied its claim for repayment of the costs effectively incurred in performing that service. The inadequate level of contribution applied by Italy would have represented an unjustified disadvantage for the concessionaire. The Regional Administrative Court further considered that Arfea was entitled to receive public service compensation even in the absence of a prior request for the elimination of the PSOs. According to the Regional Administrative Court, the precise amount of the additional compensation owed to Arfea had to be determined by the Region on the basis of reliable data taken from the accounts of the company, showing the difference between the costs attributable to the portion of Arfea's activities associated with the PSO and the

<sup>(3)</sup> Legge 10 aprile 1981, n. 151 *Legge quadro per l'ordinamento, la ristrutturazione ed il potenziamento dei trasporti pubblici locali. Istituzione del Fondo nazionale per il ripiano dei disavanzi di esercizio e per gli investimenti nel settore* (GU n. 113 del 24.4.1981), available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1981-04-10;151>

<sup>(4)</sup> Legge regionale 23 luglio 1982, n. 16. *Interventi finanziari della Regione nel settore del trasporto pubblico di persone* (B.U. 28 luglio 1982, n. 30), available at: <http://arianna.consiglioregionale.piemonte.it/base/leggi/1982016.html>

<sup>(5)</sup> Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ L 156, 28.6.1969, p. 1).

<sup>(6)</sup> Sentenza n. 5043 of 28 August 2006.

corresponding revenues. However, the Region failed to calculate the amount of compensation that had to be paid to Arfea, as ordered by the Regional administrative Court.

- (12) By orders (ordinanze istruttorie) nos. 198 and 199 of 14 February 2013, the Regional Administrative Court appointed an expert ('the expert') to undertake the task of verifying whether the amounts claimed by Arfea (EUR 1 446 526 for 1997 and EUR 421 884 for 1998) had been calculated in compliance with Regulation (EEC) No 1191/1969 and paragraphs 87 to 95 of the Altmark judgment <sup>(7)</sup>. It appears from the judgments of the Regional Administrative Court (giudizio per l'ottemperanza) nos. 1070 and 1071/2013 of 10 October 2013, that the expert verified that the economic disadvantage in the form of an undercompensation suffered by Arfea was EUR 1 196 780 for 1997 and EUR 102 814 for 1998. The Regional Administrative Court quantified the amounts of additional compensation the Region was obliged to pay to Arfea accordingly and ordered payment of those sums to take place by 7 February 2014. The Italian authorities confirmed that the payment of those sums was made by the Region to Arfea on 7 February 2014.
- (13) It is the payment of those additional compensations by the Region to Arfea as a consequence of judgments nos. 1070 and 1071/2013 that constitute the non-notified measures and which are the subject of the present Decision.

### 2.3. Amount of additional compensation

- (14) As explained in the preceding section, the Regional Administrative Court appointed an expert to determine the additional compensation owed to Arfea by the Region. On 17 June 2013, the expert issued two reports, one for 1997 and one for 1998. The expert made accounting corrections to the calculation of the amount of compensation made by Arfea's consultants but confirmed that the methodology used for the calculation of the additional compensation was in line with Articles 10 et seq. of Regulation (EEC) No 1191/69 and paragraphs 87 to 95 of the Altmark judgment. The methodology employed by the expert was the following:
- (a) Calculate the difference between the net costs and revenues originating from the provision of PSOs;
  - (b) From the amount calculated under (a), deduct the public contributions already granted to Arfea (the 'verified deficit');
  - (c) The verified deficit was then compared to the net financial effect 'equivalent to the total of the effects, positive or negative, of compliance with the public service obligation on the costs and revenue of the public service operator' <sup>(8)</sup>. To this end, the expert calculated the net financial effect following the methodology indicated in the Annex to Regulation (EC) No 1370/2007 of the European Parliament and of the Council <sup>(9)</sup>.
- (15) In its reports, the expert explains that the data used for the verification was certified by the Region. In contrast to the claim made by the Italian authorities, the expert considers that it is possible to determine, on the basis of Arfea's accounts, which were the costs incurred in the discharge of public service obligations allegedly imposed by the Piedmont Region. According to the expert, some costs can be allocated directly, while some common costs can only be separated by making an indirect attribution of such costs to Arfea's public and private activities. The indirect allocation of common costs was done on the basis of parameters indicated in the so-called 'base model' (modelli base) prepared by Arfea allegedly on the basis of instructions provided by the Region (so called

<sup>(7)</sup> Case C-280/00 *Altmark Trans v Regierungspräsidium Magdeburg* EU:C:2003:415.

<sup>(8)</sup> See the Annex to Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).

<sup>(9)</sup> According to point 2 of the Annex, 'the effects shall be assessed by comparing the situation where the public service obligation is met with the situation which would have existed if the obligation had not been met. In order to calculate the net financial effect, the competent authority shall be guided by the following scheme:

- costs incurred in relation to a public service obligation or a bundle of public service obligations imposed by the competent authority/authorities, contained in a public service contract and/or in a general rule,
  - minus any positive financial effects generated within the network operated under the public service obligation(s) in question,
  - minus receipts from tariff or any other revenue generated while fulfilling the public service obligation(s) in question,
  - plus a reasonable profit,
- equals net financial effect'.

'Instructions 97'). Such parameters indicated the percentage of activity for the urban and inter-city public service performed in the Region and the percentage of other private activities (e.g. bus rentals). The expert applied these percentages to the common costs for which it was allegedly not possible to keep separate accounts.

- (16) As regards compliance with the Altmark judgment, the expert does not take a view on whether Arfea was actually entrusted with clearly defined PSOs as this was not within his mandate. He confirms that the parameters for the calculation of the public contributions were established by the 1984 Framework Decision and that the additional compensation verified in his reports does not exceed what is necessary to cover all or part of the costs incurred in discharging the PSOs, taking into account the relevant receipts and a reasonable profit for discharging those obligations.
- (17) The expert agrees with the calculations made by Arfea's consultants on the reasonable profit, which is defined as an average remuneration of capital, based on the following assumptions:
- (a) The invested capital was calculated as the net assets of Arfea resulting from the accounts (in 1997: ITL 7,98 billion) minus the regional contributions for investments. The amount was then reduced to reflect the proportion of the assets used to provide public services only, using the relevant percentage of Arfea's activities. The resulting amount for 1997 was ITL 1,6 billion.
- (b) Based on the formula chosen by the consultant for calculating the required return on invested capital, the relevant rate of return was set at 12,39 % for 1997 and 10,81 % for 1998;
- (18) Finally, the expert maintains that the unit costs of Arfea in 1997 and 1998 are coherent with those of a typical well-run undertaking providing similar services on the market.
- (19) As a result, the additional compensations for 1997 and 1998 (EUR 1 196 780 for 1997 and EUR 102 814 for 1998) would correspond to the difference between the verified deficit and the net financial effect, minus the public contributions already paid by the Region.

#### 2.4. The Concessions Agreements

- (20) The Italian authorities provided 28 concessions (*disciplinari di concessione*) granted by the Provinces to Arfea for the provision of services on 27 regional routes and one interregional route, with different validity dates. Some of the concessions were clearly in force during the period under review, while for others there is no evidence of renewal but only of subsequent modifications:

| Concession  | Validity  |
|---|---|
| 1. Alessandria - Voghera (interregional service)                    | 1996  |
| 2. Acqui - Mombaruzzo   | 15.9.1993-31.12.93 - evidence of modifications, the last one in September 1996                        |
| 3. Acqui - Spinetta - industrial factories ( <i>linea operaia</i> ) | 1996 - evidence of modifications, the last one in October 1998  |
| 4. Oviglio - Asti fs  | 18.10.93 - 31.12.93 - evidence of modifications, the last one in September 1996                       |
| 5. Alessandria - Mirabello - Casale                                 | 1986 - evidence of modifications, the last one in 1994  |
| 6. Alessandria - Ovada  | 1.6.97-31.12.97 (signed in 1999 - the concession mentions payments from Arfea for both 1997 and 1998) |
| 7. Altavilla - Casale   | 1983 - evidence of modifications, the last one in 1994  |

| Concession  | Validity   |
|---|--|
| 8. Arquata – Spinetta - Alessandria - industrial factories Michelin and Montedison ( <i>linea operaia</i> ) | 1997 (signed in 1998)  |
| 9. Cassano Spinola - Novi - industrial factory (ILVA)   | 15.9.93-31.12.93 - evidence of modifications, the last one in September 1997     |
| 10. Avolasca – Tortona  | 1.3.83-31.12.83 - evidence of modifications, the last one in 1995                |
| 11. Moretti - Acqui Terme   | 15.9.93-31.12.93 - evidence of modifications, the last one in 1996               |
| 12. Novi Ligure – Tortona   | 1998 (previous concession from 1994 is mentioned)                                |
| 13. Sarizzola-Tortona   | 15.9.93-31.12.93 - evidence of modifications, the last one in 1995               |
| 14. Fontanile-Alessandria   | 15.9.93-31.12.93 - signed in 1996  |
| 15. Isola s. Antonio – Tortona  | 8.11.93-31.12.93 - evidence of modifications, the last one in 1996               |
| 16. Mombaruzzo-Quattordio   | 1993 - evidence of modifications, the last one in November 1996                  |
| 17. Altavilla-Alessandria   | 18.10.93 - evidence of modifications, the last one in June 1996                  |
| 18. Arquata – Tortona   | 29.9.97-31.12.98 - signed in 1999  |
| 19. Garbagna – Tortona  | 1997 - signed in October 1998  |
| 20. Bassignana - Alessandria  | 18.10.93-31.12.93 - evidence of modifications, the last one in 1997              |
| 21. Caldirola - Alessandria   | 1.4.96-31.12.96 - signed November 1996   |
| 22. Masio - Alessandria   | 18.10.93-31.12.93 - last modifications agreed in October 1997 as from April 1997 |
| 23. Quattordio - Alessandria  | Request 1993 - evidence of the renewal in 1994, 1995, 1996 and 1997              |
| 24. S.Agata Fossili - Tortona   | 1.4.92-31.12.92 - evidence of modifications, the last one in 1995                |
| 25. Torre Garofoli - Tortona  | 1973 - evidence of modifications, the last one in 1993                           |
| 26. Castelnuovo S.- Spinetta M.   | 1981 - evidence of modifications, the last one in 1997                           |
| 27. Acqui - Alessandria   | 1994 - evidence of modifications, the last one in 1999                           |
| 28. Alessandria - Acqui Terme   | 1994 - evidence of modifications, the last one in 1996                           |

- (21) All concessions are annual concessions, the renewal of which was subject to the introduction of a request for renewal at least one month before the expiry of the concession and to the payment of a concession fee. They all stipulate that the services were carried out entirely at the risk of the undertaking. Several concessions refer to regional tables establishing tariffs. Five concessions indicate that the provision of the service does not constitute a right to a subsidy or compensation of any kind. The remaining 23 concessions indicate that access to public contributions is subordinated to compliance with the provisions of the concessions and that the relevant calculations shall be made on the basis of the 1984 Framework Decision <sup>(10)</sup>.

### 2.5. Grounds for initiating the procedure

- (22) As explained in the opening decision, the Commission had several doubts regarding the compatibility of the measure with the internal market.
- (23) First, the Commission questioned whether the four conditions laid down by the Court of Justice of the European Union ('CJEU') in its *Altmark* case-law had been fulfilled.
- (24) Second, the Commission had doubts whether the measure at stake was exempted from the notification obligation under Article 17(2) of Regulation (EEC) No 1191/69. In particular, the Commission expressed doubts first whether any PSO had been unilaterally imposed on Arfea by the Region and, second, whether the compensation at stake complied with all the requirements of Regulation (EEC) No 1191/69. If neither of these conditions was shown to have been satisfied, the compatibility of the notified measure would need to be assessed under Regulation (EC) No 1370/2007.
- (25) Third, the Commission had doubts regarding the compatibility of the measure at stake under Regulation (EC) No 1370/2007. The Commission questioned whether Arfea had been entrusted with public service obligations (PSO) within the meaning of Regulation (EC) No 1370/2007 by way of a public service contract or by way of general rules. To the extent that the concession agreements could be considered as public service contracts, the Commission doubted that these agreements met the requirements of Article 4 of Regulation (EC) No 1370/2007, establishing the mandatory content of public service contracts. The Commission also had doubts on whether the calculation of the compensation granted to Arfea met the requirements laid down in Regulation (EC) No 1370/2007 in order to avoid overcompensation.
- (26) Fourth, the Commission had doubts regarding the exact nature of the measure at stake. In particular, the Commission questioned whether the measure at stake could, instead of an award of public service compensation, be considered as an award of damages for wrongful act, which does not constitute an advantage in the meaning of 107(1) of the TFEU.

### 3. COMMENTS FROM ITALY

- (27) In their submissions, the Italian authorities considered that the notified measure constituted State aid within the meaning of Article 107(1) TFEU, specifically because it did not satisfy all the conditions laid down by the European Court of Justice in its *Altmark* judgment. The Italian authorities also considered that the compensation awarded by the Region neither complied with Regulation (EEC) No 1191/69 nor with Regulation (EC) No 1370/2007. In this regard Italy submitted essentially the following arguments.
- (28) The Italian authorities stressed that neither a unilateral nor a contractual imposition of public service obligations existed for the bus services during the period concerned. First, Italy maintains that Arfea operated on the basis of concessions which had to be renewed annually upon the request of the company. Those concessions (28 in total, listed in recital 19 above) included an obligation to use a tariff system approved by the Region for a pre-determined schedule in return for the exclusive right to provide the relevant services, but did not identify any

<sup>(10)</sup> The 1984 Framework Decision established the levels of 'standard costs' for buses and tram services for the city of Turin and for other municipalities in Piemonte, and further distinguished between level lines and mountain lines. Article 1 specifies that standard costs were established on the basis of prudent and rigorous management criteria, taking also into account the quality of the service provided and the geographical conditions. According to Article 4, the amount deriving from the application of the standard costs to the kilometres performed by the service provider represented the maximum admissible level of public contributions per year, unless the actual costs incurred by the service provider were lower than the standard costs. If this was the case, public contributions were to be granted on the basis of the actual costs of the service provider.



specific PSOs within the meaning of Article 2 of Regulation (EEC) No 1191/69. Similarly, in the opinion of the Italian authorities, those concessions did not indicate compensation parameters established in advance referring to specific PSOs. The award of *ex post* compensation by means of a judgment from a national court would be incompatible with that requirement.

- (29) Second, all concessions documents specify that the service is to be provided entirely at the company's own risk and that the cost is to be borne in full by the service provider. Despite the fact that the concessions provided by the Italian authorities stipulated that the operation of the service was operated entirely at the company's own risk, Arfea repeatedly requested the prolongation of those concessions.
- (30) Third, the concession documents also show that the routes served by the company's buses were changed several times at the company's request, and it can therefore be ruled out that any public service obligations were imposed, even implicitly, by the awarding regional or provincial authority.
- (31) Furthermore, the Italian authorities explained that in return for the exclusive right to provide the transport services, on the conditions specified with the changes made at its request, the company received the operating contributions provided for by Italian law as remuneration for the services provided, based on a standard cost calculated on the basis of the 1984 Framework Decision. The standard cost of the service was calculated in accordance with the legislation then in force (Law No 151/81 and Regional Law No 16/82), which made provision for a contribution to the costs of providing local public transport services on the basis of standard eligible expenditure. This was intended to fully cover the company's operating deficit. Under the Italian legislation such operating contributions were intended to enable the service provider to achieve economic balance, whereas any further deficits were to be ascribed to inefficient management by the provider. Accordingly, it was expressly provided that any such deficits were to be borne by the company, on the ground that it had failed to adopt all the measures required to reduce costs and increase revenues.
- (32) The Italian authorities also maintain that the calculation of the additional compensation made *ex post* by the Court mandated expert is in clear breach of the requirements of the common compensation procedure set out in Articles 10 *et seq.* of Regulation (EEC) No 1191/69. According to the Italian authorities, the expert consulted by the Court simply analysed the costs and revenues presented by the company's consultant, which had been determined *ex post* and in the absence of proper separation of accounts. It then, concluded that, apart from a few items where discrepancies were found, the result obtained was essentially correct.
- (33) The Italian authorities further consider that the compensation does not meet either the requirements of Regulation (EC) No 1370/2007. In particular, the calculation of the amount of compensation would not respect the method set out in the Annex to Regulation (EC) No 1370/2007 to calculate the net financial effect of compliance with PSOs.
- (34) Finally, the Italian authorities argue that the judgments of the Regional Administrative Court ordered to pay Arfea financial compensation for the discharge of service obligations in 1997 and 1998, but did not award compensation for damages arising as a result of those contributions not having been paid. The Italian authorities explained that Arfea lodged on 6 June 2014 an application for an award of damages in addition to the compensation it had already been granted by the Regional Administrative Court. According to the Italian authorities, this would show that the compensation granted to Arfea by the Regional Administrative Court, and which are the object of the present decision, did not constitute an award of damages.

#### 4. COMMENTS FROM INTERESTED PARTIES

- (35) The only interested party to submit observations in response to the opening decision was Arfea, the beneficiary of the measure. In its submissions, Arfea disagrees with the preliminary positions taken by the Commission in the opening decision.
- (36) Arfea argues first that the compatibility and legality of the measure at stake should be assessed by the Commission only under Regulation (EEC) No 1191/69 and not under Regulation (EC) No 1370/2007. According to Arfea, Regulation (EC) No 1370/2007 cannot apply to situations which originated before its entry into force, i.e. 3 December 2009, as would have been confirmed by the General Court in its judgment of 20 March 2013 in *Andersen* case T-92/11. Arfea maintains however that, in any event, the compensations granted to it comply with the requirements of Regulation (EC) No 1370/2007.

- (37) Second Arfea claims that it was entrusted with public services obligations in the meaning of Article 2(1) and 2(2) of Regulation (EEC) No 1191/69. According to Arfea, local public transport services are public services. In Italy, these services would be assigned by way of administrative concessions and public services obligations attached to the provision of these services would be laid down in the concession agreements as well as in agreements and regulations attached to these concessions agreements. In Arfea's case, these public service obligations would concern operating programmes, bus routes, stops and tariffs. As regards the fact that the concessions specified that the services was to be operated at the companies own risk, Arfea argues that this relates to safety risks for passengers and third parties, not to a general business risk.
- (38) Third, Arfea claims that its failure to request the termination of these PSOs, as required by Article 4 of Regulation (EEC) No 1191/69, does not deprive it of its right to compensation under Regulation (EEC) No 1191/69. According to Arfea, the procedure imposed by Article 4 of Regulation (EEC) No 1191/69 would not apply to PSOs which were imposed on an undertaking after the entry into force of Regulation (EEC) No 1191/69. This interpretation of Article 4 of Regulation (EEC) No 1191/69 would, according to Arfea, be supported by the judgment of the Court of Justice of 3 March 2014 in *CTP* case C-518/12.
- (39) Fourth, as regards the calculation of the amount of compensation granted to it by the Regional Administrative Court of the Region of Piedmont, Arfea argues that the report of the expert mandated by the court cannot be questioned by the Commission because it is a preliminary technical activity that would fall exclusively under the responsibility of the national courts. In any event, according to Arfea, the parameters for the calculation of the compensation would have been set in advance in the decision of the Regional Council of 16 February 1984 and it would not have been overcompensated. The compensations at stake would therefore comply with the requirements set in that regard by Regulation (EEC) No 1191/69.
- (40) Fifth, according to Arfea, the arguments summarised in recitals 37 to 39 above would also apply for the assessment of the compatibility of the compensation at stake with the requirements of Regulation (EC) No 1370/2007. However, as regards the compliance of these compensations with the formal requirements imposed by this Regulation cited by the Commission in recitals 64 and following of its opening decision, Arfea argues that they should not apply in the case at stake. According to Arfea, it would be legally and logically impossible to demonstrate compliance with these requirements, as the situation at stake predates by many years the entry into force of Regulation (EC) No 1370/2007.
- (41) Finally, Arfea claims that the compensations awarded to it by the Regional Administrative Court of the Region of Piemonte meet the four Altmark conditions. First, Arfea would have been entrusted with clearly defined public service obligations, in accordance with the first Altmark condition. Second, the parameters for compensation would have been set in advance in a transparent and objective manner in the decision of the Regional Council of 16 February 1984, in accordance with the second Altmark condition. Third, the expert report would have established that the compensation did not exceed the cost of the discharge of the public service obligations, including a reasonable profit, in accordance with the third Altmark condition. Finally, Arfea would qualify as a typical and well run undertaking in the meaning of the fourth Altmark criterion, as evidenced by the fact that its average cost/km was below the standard regional costs.

## 5. COMMENTS ON THIRD PARTY COMMENTS

- (42) In their comments on Arfea's comments, the Italian authorities reaffirm their position expressed in their comments to the opening decision without additional comments.

## 6. ASSESSMENT OF THE AID

### 6.1. Existence of aid

- (43) According to Article 107(1) of the Treaty, '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 provision of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.

- (44) Accordingly, for a support measure to be considered State aid within the meaning of Article 107(1) the Treaty, it must cumulatively fulfil all of the following conditions:
- it must be granted by the State or through State resources,
  - it must confer a selective advantage, by favouring certain undertakings or the production of certain goods,
  - it must distort or threaten to distort competition, and
  - it must affect trade between Member States.

#### 6.1.1. *Imputability and State resources*

- (45) The Commission notes that the judgments of the Regional Administrative Court require the Region to pay additional compensation to Arfea with respect to the provision of scheduled bus services in 1997 and 1998 concerning regional routes. The expert verified that Arfea suffered an economic disadvantage in the form of an undercompensation in the amount of EUR 1 196 780 for 1997 and EUR 102 814 for 1998, as a result of PSOs allegedly being imposed upon it. On 7 February 2014, the Region effectively paid this sum to Arfea in order to comply with these judgments.
- (46) The fact that the Region is obliged by a national court to pay compensation to an undertaking does not render the Region complying with that judgment unimputable, since the domestic courts of that State are to be considered organs of that State and are thus bound by their duty of sincere cooperation <sup>(11)</sup>.
- (47) The measure is thus imputable to the State and the resources from which that compensation has been paid are State resources.

#### 6.1.2. *Selective economic advantage*

- (48) The Commission notes at the outset that Arfea is engaged in an economic activity, namely passenger transportation against remuneration. Therefore, Arfea should be considered an ‘undertaking’ within the meaning of Article 107(1) of the Treaty.
- (49) The grant of the measure should also be considered selective, since it benefits only Arfea.
- (50) As regards the granting of an economic advantage, it follows from the *Altmark* judgment that compensation granted by the State or through State resources to undertakings in consideration for PSOs imposed on them does not confer such an advantage on the undertakings concerned, and hence does not constitute State aid within the meaning of Article 107(1) of the Treaty, provided four cumulative conditions are satisfied:
- First, the recipient undertaking is actually required to discharge PSOs and those obligations have been clearly defined,
  - Second, the parameters on the basis of which the compensation is calculated have been established beforehand in an objective and transparent manner,
  - Third, the compensation does not exceed what is necessary to cover all or part of the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations,
  - Fourth, where the undertaking which is to discharge public service obligations is not chosen in a public procurement procedure, the level of compensation needed has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

<sup>(11)</sup> Case C-527/12 *Commission v Germany* EU:C:2014:2193, paragraph 56 and the case-law cited. See also, Case C-119/05 *Lucchini* EU:C:2007:434, paragraph 59.

(51) The Altmark judgment requires that all four conditions are cumulatively satisfied to exclude the presence of an economic advantage where compensation is granted to undertakings in consideration for public services obligations imposed on them.

(a) First Altmark condition

(52) As regards the first Altmark condition, the Commission notes first of all that it is for Member States to show that a particular undertaking was entrusted with public service obligations and that the imposition of such public service obligations is justified by considerations of general interest<sup>(12)</sup>. However, the Italian authorities did not explain what public service obligations justified by considerations of general interest were imposed on Arfea. On the contrary, they argued that Arfea had not been entrusted with any public service obligation.

(53) Second, the Commission notes that the notion of public service obligation relates to conditions imposed on an operator, which that operator, if it were considering its own commercial interest, would not assume or would not assume to the same extent without reward. Moreover, these conditions must be clearly defined by the authority in an entrustment act. In that regard, Arfea has not been able to explain precisely what public service obligations had been imposed upon it nor to show that these PSOs had been clearly defined in an entrustment act. Moreover, for the reasons explained in recitals 77 to 82 below, the Commission considers that there are serious indications that no such clearly defined public service obligations were imposed upon Arfea.

(b) Second Altmark condition

(54) As regards the second Altmark condition, the Commission observes that, the parameters for the calculation of the compensation awarded to Arfea by the judgments of the Regional Administrative Court were not set in advance. They were determined based solely on an *ex post* calculation made by the expert on the basis of various assumptions which were not properly explained and in the absence of separation of accounts.

(55) Contrary to what Arfea argues, it cannot be considered that the parameters for the calculation of these compensations had been established in the decision of the Regional Council of 16 February 1984. Indeed, the compensations awarded to Arfea by the Regional Administrative Court are additional compensations, the purpose of which was precisely to cover the financial burden of the PSOs allegedly imposed on Arfea, which would not have been fully covered by the compensations already granted to it in application of the decision of the Regional Council of 16 February 1984.

(56) Such an approach is in contradiction with the second Altmark condition and any compensation granted on that basis constitutes State aid. The Court has indeed made clear in its Altmark judgment that 'payment by a Member State of compensation for the loss incurred by an undertaking without the parameters of such compensation having been established in advance beforehand, where it turns out that after the event that the operation of certain services in connection with the discharge of public service obligations was not economically viable, constitutes a financial measure which falls within the concept of State aid within the meaning of 107§1 of the TFEU'<sup>(13)</sup>.

(57) The Commission therefore concludes that the notified measure does not meet the second Altmark condition.

(c) Third Altmark condition

(58) As regards the third Altmark condition, the Commission considers first of all that, when an undertaking carries out both activities which are subject to PSOs and activities which are not subject to PSOs, it is not possible to determine precisely what are the costs incurred in the discharge of PSOs in the absence of a proper separation of account between the different activities of the provider.

<sup>(12)</sup> Case T-17/02 Fred Olsen [2005] ECR II-2031, paragraph 216; Case T-289/03 *BUPA and Others v Commission* [2008] ECR II-81, paragraphs 166-169 and 172.

<sup>(13)</sup> Case C-280/00 *Altmark Trans v Regierungspräsidium Magdeburg* EU:C:2003:415, paragraph 91.

- (59) In the present instance, the Italian authorities have argued that Arfea did not implement a proper separation of account between its activities allegedly subject to PSOs imposed by the Piedmont Region and its other activities. The Commission also expressed doubts on whether Arfea had implemented such a separation of accounts and Arfea did not provide any comments on this issue. Moreover, the extracts of Arfea's account which the expert mandated by the court used to determine the amount of the compensations do not show any separation of account between the different activities of Arfea. The cost allocation done by the Court mandated expert has been done *ex post*, based on the base model prepared by Arfea's consultants, which determined percentages of costs to be allocated to the different activities of Arfea.
- (60) Second, the Commission considers that the profit levels taken into account by the expert for the calculation of the amounts of compensation are higher than what can be considered as a reasonable profit in the meaning of the third Altmark condition.
- (61) The expert considered that a rate of return on invested capital of 12,89 % for 1997 and of 10,81 % for 1998 was a reasonable profit rate; these rates being based on the yield of Italian 10 years State bond (6,8 % for 1997) plus an average risk premium (4,8 % for 1997) corrected upwards to take into account Arfea's own financial situation (by 1,28 for 1997).
- (62) In that regard, the Commission observes that the risk premium determined by the expert is particularly high, given that the risk to which Arfea was exposed was rather limited. Indeed, Arfea operated the concessions on the basis of an exclusive right, which shielded it from competition from other operators, and the compensation determined by the expert compensated the alleged full cost incurred in the discharge of public service obligations.
- (63) Moreover, the Commission notes that, while the expert noted that the transport sector benefited from an average risk below market, it corrected the risk premium upwards in order to take into account Arfea's own financial exposure which was higher than the sector's average. By doing so the expert therefore did not take into account the risk of a typical transport company but Arfea's own risk, which was higher than the average of the sector.
- (64) Taking into account the above, the Commission considers that the third Altmark condition is not met.

(d) Conclusion

- (65) Considering the cumulative nature of the Altmark conditions and the fact that the measure at stake does not comply with the first three Altmark conditions, there is no need for the Commission to examine whether the fourth Altmark condition is met.
- (66) Based on the above, the Commission considers the additional compensation paid to Arfea for services performed during the period under review does not meet the four cumulative Altmark condition and therefore confer on that company a selective economic advantage for the purposes of Article 107(1) of the Treaty.

6.1.3. *Distortion of competition and effect on trade between Member States*

- (67) The Commission notes, in the first place, that the compensations at stake were awarded to Arfea by two judgments of the Regional Administrative Court of Piedmont of 10 October 2013 and were paid by the Piedmont Region on 7 February 2014, i.e. long after the market for passenger transport by bus had been opened to competition in the EU.
- (68) In that regard, the CJEU remarked in its *Altmark* judgment that since 1995 several Member States started to open certain transport markets to competition from undertakings established in other Member States, so that a number of undertakings were already offering their urban, suburban or regional transport services in Member States other than their State of origin by that point in time.

- (69) Accordingly, any compensation granted to Arfea should be considered liable to distort competition for the provision of passenger transport services by bus and liable to affect trade between Member States, to the extent that it negatively impacts on the ability of transport undertakings established in other Member States to offer their services in Italy and strengthens the market position of Arfea by relieving it of expenses it would otherwise have had to bear in the course of its day-to-day business operations.
- (70) The Commission further notes that Arfea is active on other markets, such as private transport services, and thus competes with other companies within the Union on those markets. Any compensation granted to Arfea may also risk distorting competition and affecting trade between Member States on those markets as well.
- (71) Accordingly, the Commission concludes that the measure distorts competition and affects trade between Member States.

#### 6.1.4. Conclusion

- (72) In light of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) of the Treaty.

### 6.2. Exemption from notification obligation under Regulation (EEC) No 1191/69

- (73) For the reasoning of the Regional Administrative Court to hold that Arfea was entitled to additional PSO compensation under Regulation (EEC) No 1191/69, Arfea would have had to have acquired the right to additional compensation at the point in time at which it carried out those services and those compensation payments must have been exempted from the compulsory notification procedure pursuant to Article 17(2) of Regulation (EEC) No 1191/69. Otherwise, to the extent the compensation constitutes State aid within the meaning of Article 107(1) TFEU, failure to notify that compensation would have rendered that compensation unlawful in accordance with Article 108 TFEU. This is because, in accordance with Article 17(2) of that regulation, compensation paid pursuant to this regulation is exempted from the preliminary information procedure laid down in Article 108(3) TFEU and thus from notification.
- (74) In that regard, it follows from the *Combus* judgment that the concept of 'public service compensation' within the meaning of that provision must be interpreted in a very narrow manner<sup>(14)</sup>. The exemption from notification provided by Article 17(2) of Regulation (EEC) No 1191/69 covers only compensation for PSOs imposed unilaterally on an undertaking pursuant to Article 2 of that Regulation which are calculated using the method described in Articles 10 to 13 of that Regulation (the common compensation procedure). It does not apply however to public service contracts as defined by Article 14. Compensation paid pursuant to a public service contract as defined by Article 14 of Regulation (EEC) No 1191/69, which entails State aid, must be notified to the Commission before it is put into effect. Failure to do so will result in that compensation being deemed illegally implemented aid in accordance with Article 108 of the Treaty.
- (75) The question whether Article 17(2) of Regulation (EEC) No 1191/69 indeed dispensed the Italian authorities from prior notification in the present case thus depends, first, on whether a PSO was in fact unilaterally imposed on Arfea by the Region and, second, on whether the compensation paid pursuant to that obligation complies with Regulation (EEC) No 1191/69. The Commission will examine both questions in turn.

#### (i) PSO unilaterally imposed

- (76) According to Arfea, the Piedmont Region imposed upon it public service obligations which were defined in the concession agreements for the provision of bus transport services as well as in agreements and regulations attached to these concession agreements. These public service obligations would concern the operating programmes, bus routes, bus stops and tariffs.

<sup>(14)</sup> Case T 157/01 *Danske Busvognmænd* [2004] EU:T:2004:76, points 77, 78 and 79.

- (77) The Commission notes first of all that the concessions agreements clearly foresaw that they were valid for only one year and were renewable upon request of the transport provider, subject to the payment of a concession fee. It follows that these concessions formed the basis of a contractual relationship between Arfea and the Piedmont Region, in which Arfea voluntarily entered.
- (78) It can therefore not be considered that public service obligations in the meaning Regulation (EEC) No 1191/69 were unilaterally imposed upon Arfea on the basis of these agreements. As recalled by the General Court in its judgment of 3 March 2016 in *Simet* case T-15/14, a voluntary adherence to a contractual relationship is different from a unilateral imposition of PSOs and does not give rise to an obligation of compensation under Regulation (EEC) No 1191/69 <sup>(15)</sup>.
- (79) Second, the Commission notes that Arfea did not clearly identify the agreements and regulations attached to the concession agreements, which would have imposed upon it public service obligations. The Commission understands however that Arfea refers to the agreements on the bus routes and timetables which were attached to the concession agreements and to tables establishing regional tariffs, to which some of the concession agreements referred.
- (80) As regards these agreements on bus routes and timetables, the Commission notes that they cannot be considered to impose unilaterally PSOs on Arfea. Indeed, as the concessions agreements themselves, they were voluntarily concluded by Arfea. Moreover, the content of these agreement, e.g. the bus routes, has been modified at Arfea's request for several concessions. They can therefore not be considered to have imposed unilaterally public service obligations in the meaning of Article 2 of Regulation (EEC) No 1191/69.
- (81) As regards tables establishing regional tariffs, which establish maximum tariffs for all passengers, the Commission notes that the General Court has clearly explained in its judgment of 3 March 2016 in *Simet* case T-15/14 that such general rules on tariffs do not impose PSOs in the meaning of Article 2 of Regulation (EEC) No 1191/69. Indeed, according to the Court, the notion of tariff obligations in the meaning of that provision is limited to maximum tariffs imposed for a particular category passengers or products and does not cover general measures of price policy <sup>(16)</sup>.
- (82) Finally the Commission notes that, in any event, the fact that Arfea requested the renewal of the concessions and even paid a concession fee for it is hardly reconcilable with the imposition of any public service obligation in the meaning of Article 2(1) of Regulation (EEC) No 1191/69. Indeed, pursuant to that provision, public service obligation 'means obligations which the transport undertaking in question, if it were considering its own commercial interest, would not assume or would not assume to the same extent or under the same conditions'. As observed by the General Court in its judgment of 3 March 2016 in *Simet* case T-15/14, it is difficult to admit an undertaking would ask for the renewal of a concession, taking into account the obligations attached to it, while the execution of that concession is not in its commercial interest.

(ii) Compliance of the compensation with the common compensation procedure

- (83) Even if PSOs were shown to have been unilaterally imposed on Arfea in the present case, quod non, the compensation for those services would still need to comply with the common compensation procedure (Section IV) of Regulation (EEC) No 1191/69 to be exempted from prior notification under Article 17(2) of that Regulation. The Commission does not consider this to be the case.
- (84) In that regard, the Commission recalls first that it follows from Articles 10 and 11 of Regulation (EEC) No 1191/69 that a compensation may not be higher than the financial burden born by an undertaking as a result of the imposition of public service obligations. Moreover, Article 1 paragraph 5 of Regulation (EEC) No 1191/69, in its version applicable as of 1 July 1992, provided that: 'Where a transport undertaking not only

<sup>(15)</sup> Case T-15/14, *Simet SpA v Commission*, paragraph 163.

<sup>(16)</sup> Case T-15/14, *Simet SpA v Commission*, paragraph 159.

operates services subject to public service obligations but also engages in other activities, the public services must be operated as separate divisions meeting at least the following conditions:

- (a) the operating accounts corresponding to each of these activities shall be separate and the proportion of the assets pertaining to each shall be used in accordance with the accounting rules in force;

[...]

- (85) Second, the Commission recalls that Article 13 of Regulation (EEC) No 1191/69 requires that the administration fixes the amount of the compensation in advance.
- (86) In the present instance, the Commission considers that the compensations awarded to Arfea do not comply with these requirements.
- (87) First, the Commission notes that, as indicated in recital 59 above, it has not been shown that Arfea implemented a proper separation of accounts between its activities allegedly subject to PSOs and its other activities, as required by Article 1 paragraph 5 (a) of Regulation (EEC) No 1191/69. On the contrary, the extracts of Arfea's accounts for the years 1997 and 1998, which the expert mandated by the court used to determine the amount of the compensations, rather show that costs were not separated per activity.
- (88) Second, the Commission notes that, contrary to Article 13 of Regulation (EEC) No 1191/69, the compensation awarded to Arfea has not been set in advance but has been determined on the basis of an *ex post* assessment, as prescribed by the Regional Administrative Court.
- (89) In light of these observations, the Commission concludes that the additional compensations awarded by the Regional Administrative Court of Piedmont to Arfea was not exempted from compulsory prior notification on the basis of Article 17(2) of Regulation (EEC) No 1191/69.

### 6.3. Compatibility of the aid

- (90) Since it has not been shown that the measure under review was exempted from prior notification pursuant to Article 17(2) of Regulation (EEC) No 1191/69, the compatibility of those payments with the internal market will need to be examined, as they are considered to constitute State aid within the meaning of Article 107(1) of the Treaty, as explained in section 6.1.
- (91) In that regard, Article 93 of the Treaty contains rules for the compatibility of State aid in the area of coordination of transport and PSOs in the field of transport and constitutes a *lex specialis* with respect to Article 107(3), as well as Article 106(2), as it contains special rules for the compatibility of State aid. The CJEU has ruled that this provision 'acknowledges that aid to transport is compatible with the internal market only in well-defined cases which do not jeopardise the general interests of the [Union]' <sup>(17)</sup>.
- (92) On 3 December 2009, Regulation (EC) No 1370/2007 entered into force and repealed Regulation (EEC) No 1191/69 and Regulation (EEC) No 1107/70 of the Council <sup>(18)</sup>. Regulation (EC) No 1370/2007 applies to the compensation of PSOs concerning public passenger transport services by rail and by road.
- (93) The Commission considers that the examination of the compatibility of the non-notified measure should be conducted under Regulation (EC) No 1370/2007, since that is the legislation in force at the time the present Decision is adopted. The Commission also notes that the additional compensation awarded to Arfea by the Regional Administrative Court was paid on 7 February 2014 <sup>(19)</sup>.
- (94) Article 9(1) of Regulation (EC) No 1370/2007 states '[p]ublic service compensation for the operation of public passenger transport services or for complying with tariff obligations established through general rules paid in accordance with this Regulation shall be compatible with the [internal] market. Such compensation shall be exempt from the prior notification requirement laid down in Article [108(3)] of the Treaty'.

<sup>(17)</sup> Case 156/77 *Commission v Belgium* [1978] EU:C:1978:180, paragraph 10.

<sup>(18)</sup> Regulation (EEC) No 1107/70 of the Council of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway (OJ L 130, 15.6.1970, p. 1).

<sup>(19)</sup> C 303/13 P *Commission v. Andersen*, paragraph 55.



- (95) For the reasons set out below, the Commission considers that the non-notified compensation does not comply with Regulation (EC) No 1370/2007, so that it cannot be declared compatible with the internal market under Article 9(1) of that Regulation.
- (96) First, the Commission notes that the concessions agreements do not meet the requirements of Article 4 of this Regulation, which establishes the mandatory content of general rules and public service contracts establishing public service obligations:
- Article 4(1)(b) requires the parameters on the basis of which the compensation is calculated to be established in advance in an objective and transparent manner in a way that prevents overcompensation. However, as explained above in recitals 54 to 57 concerning the fulfilment of the second Altmark condition, the additional compensations granted to Arfea were not calculated on the basis parameters established in advance in an objective and transparent manner.
  - Article 4(1)(c) and Article 4(2) require that the public service contract provides the arrangements for the allocation of costs and revenues connected with the provision of the services. However, the concession agreements did not contain any arrangements regarding the allocation of costs and revenues and, as explained in recital 59 above, Arfea did not apply a proper separation of accounts between its different activities.
- (97) Second, the Commission notes that the measure at stake does not meet the relevant requirements of Regulation (EC) No 1370/2007 concerning the calculation of the amount of compensation.
- (98) Article 6(1) of Regulation (EC) No 1370/2007 provides that, in the case of directly awarded public service contracts, compensation must comply with the provisions of Regulation (EC) No 1370/2007 and with the provisions laid down in the Annex to ensure that the compensation does not go beyond what is necessary to carry out the public service obligation.
- (99) Point 2 of the Annex to Regulation (EC) No 1370/2007 provides that the compensation may not exceed an amount corresponding to the financial amount composed of the following factors: costs incurred in relation to the PSO minus ticket revenue, minus any positive financial effects generated within the network operated under the public service obligation, plus a reasonable profit. Point 4 of that Annex requires that costs and revenues be calculated in accordance with the accounting and tax rules in force. Point 5 of the annex provides that: 'where a public service operator not only operates compensated services subject to public transport service obligations, but also engages in other activities, the accounts of the said public services must be separated so as to meet at least the following conditions:
- the operating accounts corresponding to each of these activities must be separate and the proportion of the corresponding assets and the fixed costs must be allocated in accordance with the accounting and tax rules in force,
  - all variable costs, an appropriate contribution to the fixed costs and a reasonable profit connected with any other activity of the public service operator may under no circumstances be charged to the public service in question,
  - the costs of the public service must be balanced by operating revenue and payments from public authorities, without any possibility of transfer of revenue to another sector of the public service operator's activity.'
- (100) However, as already noted in recital 59, Arfea did not apply a proper separation of account between its activities allegedly subject to PSOs and its other activities, as required by point 5 of the Annex to Regulation (EC) No 1370/2007. Consequently, it is impossible to demonstrate that whatever compensation is ultimately awarded does not exceed an amount corresponding to the net financial effect equivalent to the total of the effects, positive or negative, of compliance with the public service obligation on the costs and revenue of the public service operator (Point 2 of the Annex to Regulation (EC) No 1370/2007). Moreover, in the absence of compensation parameters laid down in advance, any calculation of compensation must necessarily be conducted ex-post on the basis of arbitrary assumptions, as was done by Arfea's consultants and the expert mandated by the Regional Administrative Court of Piedmont. Finally, as explained in recitals 60 to 63 the profit levels taken into account by the expert for the calculation of the amounts of compensation are higher than what can be considered as a reasonable profit.

- (101) Third, the Commission notes that Arfea itself has recognised that the requirements of Regulation (EC) No 1370/2007 were not met in the present case, by arguing that such compliance would be legally and logically impossible, as the situation at stake predates by many years the entry into force of the said Regulation.
- (102) Accordingly, the Commission considers that the additional compensation ordered by the Regional Administrative Court has not been paid in accordance with Regulation (EC) No 1370/2007 and therefore that the additional compensation is incompatible with the internal market.

#### 6.4. The compensation awarded by the Regional Administrative Court does not constitute damages

- (103) In the opening decision, the Commission invited interested parties to comment on the question whether the judgments of the Regional Administrative Court concern an award for damages for alleged breach of law as opposed to an award of public service compensation based on the applicable Council Regulations. Only the Italian authorities submitted comments in that regard, arguing that the measure at stake constituted an award of compensation for the discharge of PSOs, not an award of damages.
- (104) The Commission notes in this respect that, under certain circumstances, compensation for damages due to the wrongful act or other conduct of the national authorities <sup>(20)</sup> does not constitute an advantage and is therefore not to be considered as State aid within the meaning of Article 107(1) of the Treaty <sup>(21)</sup>. The purpose of compensation for damage suffered is different from that of State aid since it aims to bring the damaged party back to the situation in which he found itself prior to the damaging act, as if the latter had not occurred (*restitutio in integrum*).
- (105) However, for compensation for damages to fall outside the State aid rules, it must be based on a general rule of compensation <sup>(22)</sup>. Moreover, in its judgment in *Lucchini*, the CJEU held that a national court was prevented from applying national law where the application of that law would have the effect to ‘frustrate the application of Community law in so far as it would make it impossible to recover State aid that was granted in breach of Community law’ <sup>(23)</sup>. The principle underlying this pronouncement is that a rule of national law cannot be applied where such application would frustrate the proper application of Union law <sup>(24)</sup>. In that regard, the General Court has held in its judgment of 3 March 2016 in *Simet* case T-15/14 that an award of damages that would consist in the indemnification of a prejudice suffered as a result of the imposition of public service obligations could not escape to the qualification of State aid merely because it consisted in an award of damages, as this would allow the circumvention of Articles 107 and 108 of the Treaty <sup>(25)</sup>.
- (106) As regards the additional compensations awarded to Arfea by the Regional Administrative Court, the Commission notes, first of all, that the Regional Administrative Court’s judgments refer to Arfea’s right to receive amounts by way of compensation pursuant to Articles 6, 10 and 11 of Regulation (EEC) No 1191/69, which must be determined by the administration on the basis of reliable data. This indicates that Arfea’s right to additional compensation flows, according to the Regional Administrative Court, not from a general rule of compensation for damages as a result of a wrongful act or other conduct of the national authorities, but from rights allegedly derived from Regulation (EEC) No 1191/69.
- (107) Second, the Commission notes that Arfea lodged on 6 June 2014 an application in front of the Italian Courts requesting the payment of damages by the Piedmont Region in addition to the compensations already granted to it by the Regional administrative Court. Arfea alleged in its application that it suffered damages as a result of the late recognition and payment of the compensations owed to it for the years 1997 and 1998 by the Region. This indicates that Arfea itself does not consider that the compensations already awarded to it by the Regional Administrative Court constitute an award of damages.

<sup>(20)</sup> For example, tort or unjustified enrichment.

<sup>(21)</sup> Joined cases 106 to 120/87, *Asteris and Others v Greece and EEC* EU:C:1988:457.

<sup>(22)</sup> See Commission Decision of 16 June 2004 on Dutch aid in favour of Akzo-Nobel in order to minimise chlorine transports (Case N 304/2003), summary notice in OJ C 81, 2.4.2005, p. 4; see also Commission Decision of 20 December 2006 on Dutch aid for relocation of car dismantling company Steenberg (Case N 575/2005), summary notice in OJ C 80, 13.4.2007, p. 1.

<sup>(23)</sup> Case C-119/05 *Lucchini* EU:C:2007:434, paragraph 59.

<sup>(24)</sup> See *ibid*, paragraph 61.

<sup>(25)</sup> Case T-15/14, *Simet SpA v Commission*, paragraphs 102-103.

- (108) Third, the Commission considers that, in any event, an award of damages in favour of Arfea to compensate for the financial burden resulting from the alleged illegal unilateral imposition of PSOs by the Italian authorities would be in breach of Articles 107 and 108 of the Treaty.
- (109) This is because such an award would produce the exact same result for Arfea as an award of public service compensation for the period under review, despite the fact that the concession agreements governing the services in question were neither exempt from prior notification nor complied with the substantive requirements of Regulation (EEC) No 1191/69 or Regulation (EC) No 1370/2007, as demonstrated above.
- (110) The availability of such an award would thus effectively enable the circumvention of the State aid rules and the conditions laid down by the Union legislator under which competent authorities, when imposing or contracting for PSOs, compensate public service operators for the costs incurred in return for the discharge of PSOs. Indeed, an award of damages equal to the sum of the amounts of aid that were envisaged to be granted would constitute an indirect grant of State aid found to be illegal and incompatible with the internal market <sup>(26)</sup>. As recalled above, the General Court has made clear that, in such circumstances, State aid rules cannot be circumvented merely because the measure at stake would consist in an award of damages <sup>(27)</sup>.
- (111) Accordingly, the Commission does not consider the judgment of the Administrative Regional Court to constitute an award of compensation for damages suffered by Arfea as a result of the wrongful act or other conduct of the national authorities, rather than a grant of unlawful and incompatible State aid, which is prohibited under Article 107(1) of the Treaty.
- (112) In light of the foregoing, the Commission concludes that the non-notified measure constitutes State aid within the meaning of Article 107(1) of the Treaty which is incompatible with the internal market.

## 7. RECOVERY OF THE AID

- (113) According to the Treaty and the Court's established case-law, the Commission is competent to decide that the Member State concerned must abolish or alter aid when it has found that it is incompatible with the internal market <sup>(28)</sup>. 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 <sup>(29)</sup>.
- (114) 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 <sup>(30)</sup>.
- (115) In line with the case-law, Article 16(1) of Council Regulation (EU) No 2015/1589 <sup>(31)</sup> stated 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 [...]'

<sup>(26)</sup> Opinion of 28 April 2005 in Joined Cases C-346/03 and C-529/03 *Atzori* EU:C:2005:256, paragraph 198.

<sup>(27)</sup> Case T-15/14, *Simet SpA v Commission*, paragraph 102-103.

See also the case-law of the General Court on indemnification clauses for the recovery of State aid: Case T-384/08 *Elliniki Nafpigokataskevastiki AE Chartofylakeiou v Commission* EU:T:2011:650, and Case T-565/08 *Corsica Ferries v Commission* EU:T:2012:415, paragraphs 23, 114 and 120 to 131. See also, by analogy, Case C-111/10 *Commission v Council* EU:C:2013:785, paragraph 44.

<sup>(28)</sup> See Case C-70/72 *Commission v Germany* [1973] ECR 813, paragraph 13.

<sup>(29)</sup> See Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* [1994] ECR I-4103, paragraph 75.

<sup>(30)</sup> See Case C-75/97 *Belgium v Commission* [1999] ECR I-3671 paragraphs 64 and 65.

<sup>(31)</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

- (116) Thus, given that the measures in question were implemented in violation of Article 108 of the Treaty, and are to be considered as unlawful and incompatible aid, they must be recovered in order to re-establish the situation that existed on the market prior to their granting. Recovery should cover the time from when the advantage accrued to Arfea, that is to say when the aid was put at its disposal (i.e. on 7 February 2014), until effective recovery, and the sums to be recovered should bear interest until effective recovery,

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid amounting to EUR 1 299 594 unlawfully granted by the Italian Republic, in breach of Article 108(3) of the Treaty on the Functioning of the European Union, in favour of Arfea is incompatible with the internal market.

*Article 2*

1. The Italian Republic shall recover the aid referred to in Article 1 from the beneficiary.
2. The sums to be recovered shall bear interest from 7 February 2014 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 <sup>(32)</sup> and to Commission Regulation (EC) No 271/2008 <sup>(33)</sup> amending Regulation (EC) No 794/2004.
4. The Italian Republic shall cancel all outstanding payments of the aid referred to in Article 1 with effect from the date of adoption of this Decision.

*Article 3*

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

*Article 4*

1. Within two months following notification of this Decision, the Italian Republic shall submit the following information to the Commission:
  - (a) the total amount (principal and recovery interests) 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. The Italian Republic 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.

<sup>(32)</sup> Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140 30.4.2004, p. 1).

<sup>(33)</sup> Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 82, 25.3.2008, p. 1).

*Article 5*

This Decision is addressed to the Italian Republic.

Done at Brussels, 10 June 2016.

*For the Commission*  
Margrethe VESTAGER  
*Member of the Commission*

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**COMMISSION IMPLEMENTING DECISION (EU) 2016/2085****of 28 November 2016****concerning certain interim protective measures in relation to highly pathogenic avian influenza of subtype H5N8 in the Netherlands***(notified under document C(2016) 7851)***(Only the Dutch text is authentic)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market <sup>(1)</sup>, and in particular Article 9(3) thereof,Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market <sup>(2)</sup>, and in particular Article 10(3) thereof,

Whereas:

- (1) Avian influenza is an infectious viral disease in birds, including poultry. Infections with avian influenza viruses in domestic poultry cause two main forms of that disease that are distinguished by their virulence. The low pathogenic form generally only causes mild symptoms, while the highly pathogenic form results in very high mortality rates in most poultry species. That disease may have a severe impact on the profitability of poultry farming.
- (2) Avian influenza is mainly found in birds, but under certain circumstances infections can also occur in humans even though the risk is generally very low.
- (3) In the event of an outbreak of avian influenza, there is a risk that the disease agent might spread to other holdings where poultry or other captive birds are kept. As a result it may spread from one Member State to other Member States or to third countries through trade in live birds or their products.
- (4) Council Directive 2005/94/EC <sup>(3)</sup> sets out certain preventive measures relating to the surveillance and the early detection of avian influenza and the minimum control measures to be applied in the event of an outbreak of that disease in poultry or other captive birds. That Directive provides for the establishment of protection and surveillance zones in the event of an outbreak of highly pathogenic avian influenza.
- (5) The Netherlands notified the Commission of an outbreak of highly pathogenic avian influenza of subtype H5N8 in a holding on its territory where poultry or other captive birds are kept and it immediately took the measures required pursuant to Directive 2005/94/EC, including the establishment of protection and surveillance zones.
- (6) The Commission has examined those measures in collaboration with the Netherlands, and it is satisfied that the borders of the protection and surveillance zones, established by the competent authority in that Member State, are at a sufficient distance to the actual holding where the outbreak was confirmed.
- (7) In order to prevent any unnecessary disturbance to trade within the Union and to avoid unjustified barriers to trade being imposed by third countries, it is necessary to rapidly describe the protection and surveillance zones established in relation to highly pathogenic avian influenza in the Netherlands at Union level.

<sup>(1)</sup> OJ L 395, 30.12.1989, p. 13.

<sup>(2)</sup> OJ L 224, 18.8.1990, p. 29.

<sup>(3)</sup> Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC (OJ L 10, 14.1.2006, p. 16).

- (8) Accordingly, pending the next meeting of the Standing Committee on Plants, Animals, Food and Feed, the protection and surveillance zones in the Netherlands, where the animal health control measures as laid down in Directive 2005/94/EC are applied, should be defined in the Annex to this Decision and the duration of that regionalisation fixed.
- (9) This Decision is to be reviewed at the next meeting of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

*Article 1*

The Netherlands shall ensure that the protection and surveillance zones established in accordance with Article 16(1) of Directive 2005/94/EC comprise at least the areas listed in Parts A and B of the Annex to this Decision.

*Article 2*

This Decision shall apply until 31 December 2016.

*Article 3*

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 28 November 2016.

*For the Commission*  
Vytenis ANDRIUKAITIS  
*Member of the Commission*

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## ANNEX

## PART A

Protection zone as referred to in Article 1:

| ISO Country Code | Member State    | Name  |
|------------------|-----------------|---|
| NL               | The Netherlands | <p>Area comprising:</p> <p>Biddinghuizen</p> <ul style="list-style-type: none"> <li>— Vanaf kruising Swifterweg (N710) met Hoge Vaart (water), Hoge Vaart volgen in noordoostelijke richting tot aan Oosterwoldertocht (water).</li> <li>— Oosterwoldertocht volgen in zuidoostelijke richting tot aan Elburgerweg (N309).</li> <li>— Elburgerweg (N309) volgen tot aan de brug in Flevoweg over het Veluwemeer.</li> <li>— Veluwemeer volgen in zuidwestelijke richting tot aan Bremerbergweg (N708).</li> <li>— Bremerbergweg (N708) volgen in noordwestelijke richting overgaand in Oldebroekerweg tot aan Swifterweg (N710).</li> <li>— Swifterweg (N710) volgen in noordelijke richting tot aan Hoge Vaart (water).</li> </ul> |

## PART B

Surveillance zone as referred to in Article 1:

| ISO Country Code | Member State    | Name  |
|------------------|-----------------|---|
| NL               | The Netherlands | <p>Area comprising:</p> <p>Biddinghuizen</p> <ul style="list-style-type: none"> <li>— Vanaf Knardijk N302 in Harderwijk de N302 volgen in noordwestelijke richting tot aan de N305.</li> <li>— Bij splitsing de N305 volgen in noordelijke richting tot aan N302.</li> <li>— De N302 volgen tot Vleetweg.</li> <li>— De Vleetweg volgen tot aan de Kuilweg.</li> <li>— De kuilweg volgen tot aan de Rietweg.</li> <li>— De Rietweg volgen in noordoostelijke richting tot aan de Larserringweg.</li> <li>— De Larserringweg volgen in noordelijke richting tot de Zeeasterweg.</li> <li>— De Zeeasterweg volgen in oostelijke richting tot aan Lisdoddepad.</li> <li>— Lisdoddepad volgen in noordelijke richting tot aan de Dronterweg.</li> <li>— De Dronterweg volgen in oostelijke richting tot aan de Biddingweg (N710).</li> <li>— De Biddingweg (N710) in noordelijke richting volgen tot aan de Elandweg.</li> <li>— De Elandweg volgen in westelijke richting tot aan de Dronterringweg (N307).</li> <li>— Dronterringweg (N307) volgen in Zuidoostelijke overgaand in Hanzeweg tot aan Drontermeer(Water).</li> <li>— Drontermeer volgen in zuidelijke richting ter hoogte van Buitendijks.</li> <li>— Buitendijks overgaand in Buitendijksweg overgaand in Grote Woldweg volgen tot aan Zwarteweg.</li> <li>— De Zwarteweg in westelijke richting volgen tot aan de Mheneweg Noord.</li> <li>— Mheneweg Noord volgen in zuidelijke richting tot aan de Zuiderzeestraatweg.</li> <li>— Zuiderzeestraatweg in zuidwestelijke richting volgen tot aan de Feithenhofsweg.</li> </ul> |



| ISO Country Code | Member State | Name  |
|------------------|--------------|---|
|                  |              | <ul style="list-style-type: none"> <li>— Feithenhofsweg volgen in zuidelijkerichting tot aan Bovenstraatweg.</li> <li>— Bovenstraatweg in westelijke richting volgen tot aan Laanzichtsweg.</li> <li>— Laanzichtsweg volgen in zuidelijke richting tot aan Bovendwarsweg.</li> <li>— Bovendwarsweg volgen in westelijke richting tot aan de Eperweg (N309).</li> <li>— Eperweg (N309) volgen in zuidelijke richting tot aan autosnelweg A28 (E232).</li> <li>— A28 (E232) volgen in zuidwestelijke richting tot aan Harderwijkerweg (N303).</li> <li>— Harderwijkerweg(N303) volgen in zuidelijke richting tot aan Horsterweg.</li> <li>— Horsterweg volgen in westelijke richting tot aan Oude Nijkerkerweg.</li> <li>— Oude Nijkerkerweg overgaand in arendlaan volgen in zuidwestelijke richting tot aan Zandkampweg.</li> <li>— Zandkampweg volgen in noordwestelijke richting tot aan Telgterengweg.</li> <li>— Telgterengweg volgen in zuidwestelijke richting tot aan Bulderweg.</li> <li>— Bulderweg volgen in westelijke richting tot aan Nijkerkerweg.</li> <li>— Nijkerkerweg volgen in westelijke richting tot aan Riebroeksesteeg.</li> <li>— Riebroekersteeg volgen in noordelijke/westelijke richting (doodlopend) overstekend A28 tot aan Nuldernauw (water).</li> <li>— Nuldernauw volgen in noordelijke richting overgaand in Wolderwijd (water) tot aan Knardijk (N302).</li> <li>— N302 volgen in Noordwestelijke richting tot aan N305.</li> </ul> |

**COMMISSION IMPLEMENTING DECISION (EU) 2016/2086****of 28 November 2016****concerning certain interim protective measures in relation to highly pathogenic avian influenza of subtype H5N8 in Sweden***(notified under document C(2016) 7852)***(Only the Swedish text is authentic)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market <sup>(1)</sup>, and in particular Article 9(3) thereof,Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market <sup>(2)</sup>, and in particular Article 10(3) thereof,

Whereas:

- (1) Avian influenza is an infectious viral disease in birds, including poultry. Infections with avian influenza viruses in domestic poultry cause two main forms of that disease that are distinguished by their virulence. The low pathogenic form generally only causes mild symptoms, while the highly pathogenic form results in very high mortality rates in most poultry species. That disease may have a severe impact on the profitability of poultry farming.
- (2) Avian influenza is mainly found in birds, but under certain circumstances infections can also occur in humans even though the risk is generally very low.
- (3) In the event of an outbreak of avian influenza, there is a risk that the disease agent might spread to other holdings where poultry or other captive birds are kept. As a result it may spread from one Member State to other Member States or to third countries through trade in live birds or their products.
- (4) Council Directive 2005/94/EC <sup>(3)</sup> sets out certain preventive measures relating to the surveillance and the early detection of avian influenza and the minimum control measures to be applied in the event of an outbreak of that disease in poultry or other captive birds. That Directive provides for the establishment of protection and surveillance zones in the event of an outbreak of highly pathogenic avian influenza.
- (5) Sweden notified the Commission of an outbreak of highly pathogenic avian influenza of subtype H5N8 in a holding on its territory where poultry or other captive birds are kept and it immediately took the measures required pursuant to Directive 2005/94/EC, including the establishment of protection and surveillance zones.
- (6) The Commission has examined those measures in collaboration with Sweden, and it is satisfied that the borders of the protection and surveillance zones, established by the competent authority in that Member State, are at a sufficient distance to the actual holding where the outbreak was confirmed.
- (7) In order to prevent any unnecessary disturbance to trade within the Union and to avoid unjustified barriers to trade being imposed by third countries, it is necessary to rapidly describe the protection and surveillance zones established in relation to highly pathogenic avian influenza in Sweden at Union level.

<sup>(1)</sup> OJ L 395, 30.12.1989, p. 13.

<sup>(2)</sup> OJ L 224, 18.8.1990, p. 29.

<sup>(3)</sup> Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC (OJ L 10, 14.1.2006, p. 16).

- (8) Accordingly, pending the next meeting of the Standing Committee on Plants, Animals, Food and Feed, the protection and surveillance zones in Sweden, where the animal health control measures as laid down in Directive 2005/94/EC are applied, should be defined in the Annex to this Decision and the duration of that regionalisation fixed.
- (9) This Decision is to be reviewed at the next meeting of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

*Article 1*

Sweden shall ensure that the protection and surveillance zones established in accordance with Article 16(1) of Directive 2005/94/EC comprise at least the areas listed in Parts A and B of the Annex to this Decision.

*Article 2*

This Decision shall apply until 31 December 2016.

*Article 3*

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 28 November 2016.

*For the Commission*  
Vytenis ANDRIUKAITIS  
*Member of the Commission*

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## ANNEX

## PART A

Protection zone as referred to in Article 1:

| ISO Country Code | Member State | Name  |
|------------------|--------------|---|
| SE               | Sweden       | Area comprising:<br>Those parts of Helsingborg municipality (ADNS code 01200) contained within a circle of a radius of three kilometres, centred on WGS84 dec. coordinates N56,053495 and E12,848939. |

## PART B

Surveillance zone as referred to in Article 1:

| ISO Country Code | Member State | Name   |
|------------------|--------------|--|
| SE               | Sweden       | Area comprising:<br>The area of the parts of the municipalities of Helsingborg, Ängelholm, Bjuv and Åstorp (ADNS code 01200) extending beyond the area described in the protection zone and within the circle of a radius of of ten kilometres, centred on WGS84 dec. coordinates N56,053495 and E12,848939. |







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