

Official Journal of the European Union

L 82



English edition

Legislation

Volume 65

9 March 2022

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

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II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2022/398

of 9 March 2022

amending Regulation (EC) No 765/2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof,

Having regard to Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine ⁽¹⁾,

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

Whereas:

- (1) On 18 May 2006, Council adopted Regulation (EC) No 765/2006 ⁽²⁾.
- (2) Regulation (EC) No 765/2006 gives effect to the measures provided for in Decision 2012/642/CFSP.
- (3) Council Decision (CFSP) 2022/399 ⁽³⁾ expands the scope of the sanctions to further implement the conclusions of the European Council of 24 February 2022 following the involvement of Belarus in the unacceptable and illegal Russian military aggression against Ukraine, which under international law qualifies as an act of aggression.
- (4) In view of the gravity of the situation, it appears necessary to take additional measures. Consequently, Decision (CFSP) 2022/399 further expands the existing financial restrictions. In particular, it prohibits the listing and provision of services in relation to shares of Belarusian state-owned entities on Union trading venues. In addition, it introduces new measures which significantly limit the financial inflows from Belarus to the Union by prohibiting the acceptance of deposits exceeding certain values from Belarusian nationals or residents, the holding of accounts of Belarusian clients by the Union central securities depositories as well as the selling of euro-denominated securities to Belarusian clients. It also prohibits transactions with the Central Bank of Belarus related to the management of reserves or assets, the provision of public financing for trade with and investment in Belarus, with limited exceptions, and the provision of euro denominated banknotes to Belarus or for use in Belarus.

⁽¹⁾ OJ L 285, 17.10.2012, p. 1.

⁽²⁾ Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ L 134, 20.5.2006, p. 1).

⁽³⁾ See page 9 of this Official Journal.

- (5) Decision (CFSP) 2022/399 imposes further restrictive measures with regard to the provision of specialised financial messaging services to certain Belarusian credit institutions and their Belarusian subsidiaries, which are relevant for the Belarusian financial system and which are already the subject of restrictive measures imposed by the Union.
- (6) In order to ensure correct implementation of the measures set out in Regulation (EC) No 765/2006, it is also necessary to add obligations on the Network Manager for air traffic management network functions of the single European sky regarding overflight prohibitions and amend the provisions on non-circumvention. Whereas it is commonly understood that the notion of 'assets' and 'economic resources' subject to freezing also includes crypto-assets, and that loans and credits can also be provided via crypto assets, it is appropriate to further specify the notion of 'transferable securities' in relation to such assets given their specific nature.
- (7) Regulation (EC) No 765/2006 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 765/2006 is amended as follows:

(1) in Article 1, point 9 is replaced by the following:

- '9. "transferable securities" means the following classes of securities, including in the form of crypto-assets, which are negotiable on the capital market, with the exception of instruments of payment:
- (i) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
 - (ii) bonds or other forms of securitised debt, including depositary receipts in respect of such securities;
 - (iii) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities.;

(2) in Article 1, the following points are added:

- '20. "central securities depository" means a legal person as defined in point 1 of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council (*);
21. "deposit" means a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed-term deposit and a savings deposit, but excluding a credit balance where:
- (i) its existence can only be proven by a financial instrument as defined in Article 4(1)(15) of Directive 2014/65/EU of the European Parliament and of the Council (**), unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which exists in a Member State on 2 July 2014;
 - (ii) its principal is not repayable at par;
 - (iii) its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party;
22. "investor citizenship schemes" (or "golden passports") means the procedures put in place by a Member State, which allow third-country nationals to acquire its nationality in exchange for pre-determined payments and investments;
23. "investor residence schemes" (or "golden visas") means the procedures put in place by a Member State, which allow third-country nationals to obtain a residence permit in a Member State in exchange for pre-determined payments and investments;

24. "trading venue", as defined in Article 4(1)(24) of Directive 2014/65/EU, means a regulated market, a multilateral trading facility or an organised trading facility.

(*) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

(**) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).;

- (3) Article 1m is replaced by the following:

'It shall be prohibited to participate, knowingly and intentionally, in activities whose object or effect is, directly or indirectly, to circumvent the prohibitions set out in this Regulation.');

- (4) the following Articles are inserted:

Article 1ja

1. Transactions related to the management of reserves as well as of assets of the Central Bank of Belarus, including transactions with any legal person, entity or body acting on behalf of, or at the direction of, the Central Bank of Belarus, are prohibited.

2. By way of derogation from paragraph 1, the competent authorities may authorise a transaction provided that it is strictly necessary to ensure the financial stability of the Union as a whole or of the Member State concerned.

3. The Member State concerned shall immediately inform the other Member States and the Commission of its intention to grant an authorisation under paragraph 2.

Article 1jb

It shall be prohibited to list and provide services as of 12 April 2022 on trading venues registered or recognised in the Union for the transferable securities of any legal person, entity or body established in Belarus and with over 50 % public ownership.

Article 1t

1. It shall be prohibited to provide public financing or financial assistance for trade with, or investment in, Belarus.

2. The prohibition in paragraph 1 shall not apply to:

- (a) binding financing or financial assistance commitments established prior to 10 March 2022;
- (b) the provision of public financing or financial assistance up to the total value of EUR 10 000 000 per project benefiting small and medium-sized enterprises established in the Union; or
- (c) the provision of public financing or financial assistance for trade in food, and for agricultural, medical or humanitarian purposes.

Article 1u

1. It shall be prohibited to accept any deposits from Belarusian nationals or natural persons residing in Belarus, or legal persons, entities or bodies established in Belarus, if the total value of deposits of the natural or legal person, entity or body per credit institution exceeds EUR 100 000.

2. Paragraph 1 shall not apply to nationals of a Member State, of a country member of the European Economic Area or of Switzerland, or to natural persons having a temporary or permanent residence permit in a Member State, in a country member of the European Economic Area or in Switzerland.

3. Paragraph 1 shall not apply to deposits which are necessary for non-prohibited cross-border trade in goods and services between the Union and Belarus.

Article 1v

1. By way of derogation from Article 1u(1), the competent authorities may authorise the acceptance of such a deposit, under such conditions as they deem appropriate, after having determined that the acceptance of such a deposit is:

- (a) necessary to satisfy the basic needs of natural or legal persons, entities or bodies referred to in Article 1u(1) and their dependent family members, including payments for food, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
- (b) intended exclusively for the payment of reasonable professional fees or the reimbursement of incurred expenses associated with the provision of legal services;
- (c) necessary for extraordinary expenses, provided that the relevant competent authority has notified the competent authorities of the other Member States and the Commission of the grounds on which it considers that a specific authorisation should be granted, at least two weeks prior to the authorisation; or
- (d) necessary for official purposes of a diplomatic mission or consular post or international organisation.

2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under points (a), (b) and (d) of paragraph 1 within two weeks of the authorisation.

Article 1w

1. By way of derogation from Article 1u(1), the competent authorities may authorise the acceptance of such a deposit, under such conditions as they deem appropriate, after having determined that the acceptance of such a deposit is:

- (a) necessary for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations; or
- (b) necessary for civil society activities that directly promote democracy, human rights or the rule of law in Belarus.

2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1 within two weeks of the authorisation.

Article 1x

1. It shall be prohibited for Union central securities depositories to provide any services as defined in the Annex to Regulation (EU) No 909/2014 for transferable securities issued after 12 April 2022 to any Belarusian national or natural person residing in Belarus or any legal person, entity or body established in Belarus.

2. Paragraph 1 shall not apply to nationals of a Member State or natural persons having a temporary or permanent residence permit in a Member State.

Article 1y

1. It shall be prohibited to sell euro denominated transferable securities issued after 12 April 2022 or units in collective investment undertakings providing exposure to such securities, to any Belarusian national or natural person residing in Belarus or any legal person, entity or body established in Belarus.

2. Paragraph 1 shall not apply to nationals of a Member State or natural persons having a temporary or permanent residence permit in a Member State.

Article 1z

Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, credit institutions shall:

- (a) supply to the national competent authority of the Member State where they are located or to the Commission by no later than 27 May 2022, a list of deposits exceeding EUR 100 000 held by Belarusian nationals or natural persons residing in Belarus, or by legal persons, entities or bodies established in Belarus. They shall provide updates regarding the amounts of such deposits every 12 months.

- (b) supply to the national competent authority of the Member State where they are located information on deposits exceeding EUR 100 000 held by Belarusian nationals or natural persons residing in Belarus who have acquired the citizenship of a Member State or residence rights in a Member State through an investor citizenship scheme or an investor residence scheme.

Article 1za

1. It shall be prohibited to sell, supply, transfer or export euro denominated banknotes to Belarus or to any natural or legal person, entity or body in Belarus, including the Government and the Central Bank of Belarus, or for use in Belarus.
2. The prohibition in paragraph 1 shall not apply to the sale, supply, transfer or export of euro denominated banknotes provided that such sale, supply, transfer or export is necessary for:
 - (a) the personal use of natural persons travelling to Belarus or members of their immediate families travelling with them; or
 - (b) the official purposes of diplomatic missions, consular posts or international organisations in Belarus enjoying immunities in accordance with international law.

Article 1zb

It shall be prohibited as of 20 March 2022 to provide specialised financial messaging services, which are used to exchange financial data, to the legal persons, entities or bodies listed in Annex XV or to any legal person, entity or body established in Belarus whose proprietary rights are directly or indirectly owned for more than 50 % by an entity listed in Annex XV.

Article 8ca

1. The Network Manager for air traffic management network functions of the single European sky shall support the Commission and the Member States in ensuring the implementation of, and compliance with, Articles 2(2) and 8b of this Regulation. The Network Manager shall, in particular, reject all flight plans filed by aircraft operators indicating an intent to carry out activities over the territory of the Union or of Belarus that constitute a violation of this Regulation, such that the pilot is not permitted to fly.

2. The Network Manager shall regularly supply to the Commission and the Member States, based on the analysis of flight plans, reports on the implementation of Article 8b.;

- (5) Article 7 is replaced by the following:

‘1. The Member States and the Commission shall inform each other of the measures taken under this Regulation and share any other relevant information at their disposal in connection with this Regulation, in particular information in respect of:

- (a) authorisations granted under this Regulation;
- (b) information received under Article 1z;
- (c) violation and enforcement problems and judgments handed down by national courts.

2. The Member States shall immediately inform each other and the Commission of any other relevant information at their disposal which might affect the effective implementation of this Regulation.

3. Any information provided or received in accordance with this Article shall be used for the purposes for which it was provided or received, including ensuring the effectiveness of the measures set out in this Regulation.’;

- (6) in Article 8d, point b is replaced by the following:

‘(b) entities referred to in Articles 1j, 1k, 1l and 1zb or listed in Annexes V, IX and XV.’;

- (7) in Article 8e, point (c)(ii) of paragraph 1 is replaced by the following:
'(ii) processing information on the impact of the measures provided for in this Regulation such as the value of frozen funds, information on deposits and information on authorisations granted by the competent authorities.';
- (8) Annex I to this Regulation is added as Annex XV to Regulation (EC) No 765/2006;
- (9) Annex Va to Regulation (EC) No 765/2006 is amended as set out in Annex II to this Regulation.

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, 9 March 2022.

For the Council
The President
J.-Y. LE DRIAN

ANNEX I

'ANNEX XV

LIST OF LEGAL PERSONS, ENTITIES OR BODIES REFERRED TO IN ARTICLE 1zb

Belagroprombank

Bank Dabrabyt

Development Bank of the Republic of Belarus'

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ANNEX II

Annex Va to Regulation (EC) No 765/2006 is amended as follows:

(1) in the introductory text, the third sentence is replaced by the following:

‘Without prejudice to Article 1m of this Regulation, non-controlled items containing one or more components listed in this Annex are not subject to the controls under Articles 1f and 1fa of this Regulation.’;

(2) in point i of subcategory X.B.I.001 of Category I – Electronics, point 1 is replaced by the following:

‘1. “Chemical vapor deposition” equipment operating below 10^5 Pa; or’;

(3) in subcategory X.A.VII.001 of Category VII – Aerospace and Propulsion, the first sentence is replaced by the following:

‘X.A.VII.001 Diesel engines, and tractors and specially designed components therefor, other than those specified in the CML or in Regulation (EU) 2021/821.’;

(4) in subcategory X.A.VII.002 of Category VII – Aerospace and Propulsion, point c is replaced by the following:

‘c. Aero gas turbine engines and components specially designed therefor.’.

DECISIONS

COUNCIL DECISION (CFSP) 2022/399

of 9 March 2022

amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

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

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

Whereas:

- (1) On 15 October 2012, the Council adopted Decision 2012/642/CFSP ⁽¹⁾.
- (2) On 24 February 2022, the President of the Russian Federation announced a military operation in Ukraine and Russian armed forces began an attack on Ukraine, including from the territory of Belarus. That attack is a blatant violation of the territorial integrity, sovereignty and independence of Ukraine.
- (3) In its conclusions of 24 February 2022, the European Council condemned in the strongest possible terms the Russian Federation's unprovoked and unjustified military aggression against Ukraine. By its illegal military actions, Russia is grossly violating international law and the principles of the UN Charter and undermining European and global security and stability. The European Council also strongly condemned the involvement of Belarus in this aggression against Ukraine and called on it to refrain from such action and to abide by its international obligations. It called for the urgent preparation and adoption of a further individual and economic sanctions package also covering Belarus.
- (4) On 2 March 2022, the Council adopted Decision (CFSP) 2022/356 ⁽²⁾, which amended the title of Decision 2012/642/CFSP and introduced further restrictive measures in response to the involvement of Belarus in the Russian aggression against Ukraine.
- (5) In view of the gravity of the situation, and in response to Belarus's involvement in Russia's aggression against Ukraine, it is appropriate to introduce additional restrictive measures related to the financial sector.
- (6) In particular, it is appropriate to: prohibit the listing and provision of services in relation to shares of Belarusian state-owned entities on Union trading venues; limit the financial inflows from Belarus to the Union; prohibit transactions with the Central Bank of Belarus; restrict the provision of specialised financial messaging services to certain Belarusian credit institutions and their Belarusian subsidiaries. It is also appropriate to add obligations on the Network Manager for air traffic management network functions of the single European sky regarding overflight prohibitions.
- (7) Further action by the Union is needed in order to implement certain measures.
- (8) Decision 2012/642/CFSP should therefore be amended accordingly,

⁽¹⁾ Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ L 285, 17.10.2012, p. 1).

⁽²⁾ Council Decision (CFSP) 2022/356 of 2 March 2022 amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus (OJ L 67, 2.3.2022, p. 103).

HAS ADOPTED THIS DECISION:

Article 1

Decision 2012/642/CFSP is amended as follows:

(1) the following Articles are inserted:

'Article 2ha

1. Transactions related to the management of reserves as well as of assets of the Central Bank of Belarus, including transactions with any legal person, entity or body acting on behalf of, or at the direction of, the Central Bank of Belarus, are prohibited.
2. By way of derogation from paragraph 1, the competent authorities may authorise a transaction provided that it is strictly necessary to ensure the financial stability of the Union as a whole or of the Member State concerned.
3. The Member State concerned shall immediately inform the other Member States and the Commission of its intention to grant an authorisation under paragraph 2.

Article 2hb

It shall be prohibited to list and provide services as of 12 April 2022 on trading venues registered or recognised in the Union for the transferable securities of any legal person, entity or body established in Belarus and with over 50 % public ownership.;

(2) Article 2k is replaced by the following:

'It shall be prohibited to participate, knowingly and intentionally, in activities whose object or effect is, directly or indirectly, to circumvent the prohibitions set out in this Decision.;

(3) the following Articles are inserted:

'Article 2t

1. It shall be prohibited to provide public financing or financial assistance for trade with, or investment in, Belarus.
2. The prohibition in paragraph 1 shall not apply to:
 - (a) binding financing or financial assistance commitments established prior to 10 March 2022;
 - (b) the provision of public financing or financial assistance up to the total value of EUR 10 000 000 per project benefiting small and medium-sized enterprises established in the Union; or
 - (c) the provision of public financing or financial assistance for trade in food, and for agricultural, medical or humanitarian purposes.

Article 2u

1. It shall be prohibited to accept any deposits from Belarusian nationals or natural persons residing in Belarus, or legal persons, entities or bodies established in Belarus, if the total value of deposits of the natural or legal person, entity or body per credit institution exceeds EUR 100 000.
2. Paragraph 1 shall not apply to nationals of a Member State, of a country member of the European Economic Area or of Switzerland, or to natural persons having a temporary or permanent residence permit in a Member State, in a country member of the European Economic Area or in Switzerland.
3. Paragraph 1 shall not apply to deposits which are necessary for non-prohibited cross-border trade in goods and services between the Union and Belarus.

4. By way of derogation from paragraph 1, the competent authorities may authorise the acceptance of such a deposit, under such conditions as they deem appropriate, after having determined that the acceptance of such a deposit is:

- (a) necessary to satisfy the basic needs of natural or legal persons, entities or bodies referred to in paragraph 1 and their dependent family members, including payments for food, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
- (b) intended exclusively for the payment of reasonable professional fees or the reimbursement of incurred expenses associated with the provision of legal services;
- (c) necessary for extraordinary expenses, provided that the relevant competent authority has notified the competent authorities of the other Member States and the Commission of the grounds on which it considers that a specific authorisation should be granted, at least two weeks prior to the authorisation; or
- (d) necessary for official purposes of a diplomatic mission or consular post or international organisation.

The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this paragraph within two weeks of the authorisation.

5. By way of derogation from paragraph 1, the competent authorities may authorise the acceptance of such a deposit, under such conditions as they deem appropriate, after having determined that the acceptance of such a deposit is:

- (a) necessary for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations; or
- (b) necessary for civil society activities that directly promote democracy, human rights or the rule of law in Belarus.

The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this paragraph within two weeks of the authorisation.

Article 2v

1. It shall be prohibited for Union central securities depositories to provide any services as defined in the Annex to Regulation (EU) No 909/2014 of the European Parliament and of the Council (*) for transferable securities issued after 12 April 2022 to any Belarusian national or natural person residing in Belarus or any legal person, entity or body established in Belarus.

2. Paragraph 1 shall not apply to nationals of a Member State or natural persons having a temporary or permanent residence permit in a Member State.

Article 2w

1. It shall be prohibited to sell euro denominated transferable securities issued after 12 April 2022 or units in collective investment undertakings providing exposure to such securities, to any Belarusian national or natural person residing in Belarus or any legal person, entity or body established in Belarus.

2. Paragraph 1 shall not apply to nationals of a Member State or natural persons having a temporary or permanent residence permit in a Member State.

Article 2x

1. It shall be prohibited to sell, supply, transfer or export euro denominated banknotes to Belarus or to any natural or legal person, entity or body in Belarus, including the government and the Central Bank of Belarus, or for use in Belarus.

2. The prohibition in paragraph 1 shall not apply to the sale, supply, transfer or export of euro denominated banknotes provided that such sale, supply, transfer or export is necessary for:

- (a) the personal use of natural persons travelling to Belarus or members of their immediate families travelling with them; or
- (b) the official purposes of diplomatic missions, consular posts or international organisations in Belarus enjoying immunities in accordance with international law.

Article 2y

It shall be prohibited as of 20 March 2022 to provide specialised financial messaging services, which are used to exchange financial data, to the legal persons, entities or bodies listed in Annex V or to any legal person, entity or body established in Belarus whose proprietary rights are directly or indirectly owned for more than 50 % by an entity listed in Annex V.

(*) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).;

- (4) the following Article is inserted:

'Article 2ab

1. The Network Manager for air traffic management network functions of the single European sky shall support the Commission and the Member States in ensuring the implementation of, and compliance with, Articles 2a and 4(2) of this Decision. The Network Manager shall, in particular, reject all flight plans filed by aircraft operators indicating an intent to carry out activities over the territory of the Union or of Belarus that constitute a violation of the provisions of this Decision, such that the pilot is not permitted to fly.

2. The Network Manager shall regularly supply to the Commission and Member States, based on the analysis of flight plans, reports on the implementation of Article 2a.;

- (5) In Article 2n (1), point (a) is replaced by the following:

'(a) any natural or legal person, entity or body referred to in Articles 2h, 2i, 2j, 2y or listed in Annexes II or V.;

- (6) The Annex to this Decision is added as Annex V to Decision 2012/642/CFSP.

Article 2

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

Done at Brussels, 9 March 2022.

For the Council
The President
J.-Y. LE DRIAN

ANNEX

'ANNEX V

LIST OF LEGAL PERSONS, ENTITIES OR BODIES REFERRED TO IN ARTICLE 2y

Belagroprombank

Bank Dabrabyt

Development Bank of the Republic of Belarus'

ISSN 1977-0677 (electronic edition)
ISSN 1725-2555 (paper edition)



Publications Office
of the European Union
L-2985 Luxembourg
LUXEMBOURG

EN