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⁽¹⁾ Text with EEA relevance.

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⁽¹⁾ Text with EEA relevance.

I

(Resolutions, recommendations and opinions)

RESOLUTIONS

COUNCIL

**Resolution of the Council and of the Representatives of the Governments of the Member States,
meeting within the Council, on a revised Code of Conduct for Business Taxation**

(2022/C 433/01)

THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL,

RECALLING the conclusions of the ECOFIN Council of 1 December 1997 concerning taxation policy in the light of the consideration that coordinated action at European level is needed in order to reduce distortions in the single market, prevent significant losses of tax revenue and help tax structures develop in a more employment-friendly way,

RECALLING the Resolution of the Council and the Representatives of the Governments of the Member States meeting within the Council of 1 December 1997 on a code of conduct for business taxation,

RECALLING the conclusions of the Council of 5 December 2017 on the EU list of non-cooperative jurisdictions for tax purposes and the latest international developments in the fight against tax avoidance and tax evasion,

ACKNOWLEDGING the positive effects of fair competition and the need to consolidate the competitiveness of the European Union and the Member States at international level, whilst noting that some tax measures might lead to harmful effects,

EMPHASIZING that the code of conduct is a political commitment and does not affect the Member States' rights and obligations or the respective spheres of competence of the Member States and the Union resulting from the Treaties,

EMPHASIZING that the code of conduct group operates as a peer-to-peer group between Member States with indispensable assistance of the Commission,

RECOGNISING the successful work of the code of conduct group with its elected chairs, which has allowed to roll back a large number of tax measures and to establish a constructive cooperation framework with third countries and jurisdictions,

NOTING that the secretariat functions for the Group are assumed by the General Secretariat of the Council,

ACKNOWLEDGING the development of agreed guidance notes to facilitate the successful work of the code of conduct group with relevance for procedural aspects as well as agreed guidance with relevance for substantive issues, which are all made public,

RECONFIRMING, therefore, the continuing need for a code of conduct for business taxation designed to curb harmful tax measures,

EMPHASISING that the fair treatment within the EU and with respect to third countries and tax jurisdictions continues to be essential for the coherent implementation of the principles of the code of conduct,

REITERATING the willingness to keep the application of the code of conduct for business taxation as transparent as possible without jeopardizing the confidentiality which is needed for a trustful exchange of views and sensitive information between the members of the group as well as with third countries and tax jurisdictions, since this ensures effective and result-oriented work under the code,

CONSIDERING that the existing code of conduct for business taxation set out in the Resolution of the Council and the Representatives of the Governments of the Member States meeting within the Council of 1 December 1997 should be revised to meet new challenges as efficiently as possible in an increasingly globalised and digitalised economic environment,

HEREBY APPROVE THE FOLLOWING REVISED CODE OF CONDUCT FOR BUSINESS TAXATION

Tax measures covered

A. Without prejudice to the respective spheres of competence of the Member States and the Union, this code of conduct, which covers business taxation (referred to as code), concerns those preferential tax measures and tax features of general application which affect, or may affect, in a significant way the location of business activity in the Union.

Business activity in this respect also includes all activities carried out within a group of companies.

The preferential tax measures and tax features of general application (jointly referred to as tax measures) covered by the code include both laws or regulations and administrative practices.

B.1. Within the scope specified in paragraph A, preferential tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code.

Such a level of taxation may operate by virtue of the nominal tax rate, the tax base or any other relevant factor.

When assessing whether such measures are harmful, account should be taken of, inter alia:

1. whether advantages are ring-fenced de facto or de jure from the domestic market, e.g., they are accorded only to non-residents or in respect of transactions carried out with non-residents, or they do not affect the national tax base, or
2. whether advantages are granted even without any real economic activity and substantial economic presence within the Member State offering such tax advantages, or
3. whether the rules for profit determination in respect of activities within a multinational group of companies departs from internationally accepted principles, notably the rules agreed upon within the OECD, or
4. whether the tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way.

B.2. Within the scope specified in paragraph A, tax features of general application of a Member State, which create opportunities for double non-taxation or that can lead to the double or multiple use of tax benefits, in connection with the same expenses, amount of income or chain of transactions are to be regarded as potentially harmful and therefore covered by this code.

Such effects may occur by virtue of any relevant feature of a Member State national tax system that leads to lower tax liability, including no tax liability, other than the nominal tax rate or deferred taxation as a feature of a distribution tax system.

When assessing whether a tax feature of general application of a Member State is harmful, account should be taken of the following cumulative criteria and the existence of a direct causal link between them:

1. the tax feature of general application is not accompanied by appropriate anti-abuse provisions or other adequate safeguards and as a result, leads to double non-taxation or allows the double or multiple use of tax benefits in connection with the same expenses, amount of income or chain of transactions;
2. the tax feature of general application affects in a significant way the location of business activity in the Union. When evaluating whether the tax feature is a significant factor in determining the location of business activity in the Union, the Code of Conduct Group (Business Taxation) (referred to as the Group) should take into account the fact that the location of business activity can also be influenced by circumstances other than tax features.

Standstill and Rollback

Standstill

- C. Member States commit themselves not to introduce new tax measures which are harmful within the meaning of this code. Member States will therefore respect the principles underlying the code when determining future policy and will have due regard for the review process referred to in paragraphs E to I in assessing whether any new tax measure is harmful.

Rollback

- D. Member States commit themselves to re-examining their existing laws and established practices, having regard to the principles underlying the code and to the review process outlined in paragraphs E to I. Member States will amend such laws and practices as necessary with a view to eliminating any harmful tax measures, or to adopting appropriate anti-abuse provisions or other adequate safeguards in relation to harmful tax measures, as soon as possible taking into account the Council's discussions following the review process.

Review process

Notification

- E.1. In accordance with the principles of transparency and openness Member States will inform each other by the end of each calendar year of existing and proposed tax measures which may fall within the scope of the code.

Member States concerned may also inform each other of existing or proposed tax measures in relation to which they want to obtain certainty about their compliance with the code.

In the absence of a notification under subparagraphs 1 and 2, Member States are called upon to provide at the request of another Member State or the Commission information on any tax measure which appears to fall within the scope of the code. Where envisaged tax measures need parliamentary approval, such information need not be given until after their announcement to Parliament.

- E.2. Tax measures of a Member State that have not been notified under paragraph E.1, may be brought to the attention of the Group at the request of another Member State or the Commission. Before bringing such tax measures to the attention of the Group, the transmitting Member State or the Commission should inform the Member State concerned.

With regard to tax features of general application, the transmitting Member State or the Commission should present to the Group any information:

- i) that reasonably indicates the tax feature has at least one of the effects described in paragraph B.2, and
- ii) that can reasonably lead to the conclusion of a potentially significant impact on the location of business activities in the Union.

Agreed description

- F.1. Any Member State or the Commission may request the opportunity to discuss and comment on a tax measure of a Member State notified under paragraphs E1 and E2. Member States then decide whether to follow up and to prepare the agreed description of such measure.

Assessment

- F.2. The agreed description will permit an assessment to be made of whether the tax measures in question are harmful, in the light of the effects that they may have within the Union. In respect of preferential tax measures, that assessment will take into account all the factors identified in paragraph B.1. In respect of the tax features of general application, that assessment will take into account all the factors identified in paragraph B.2 and guidance under paragraph L in respect of specific tax features of general application.
- G. In reviewing notified tax measures the Council also emphasizes the need to evaluate carefully the effects that they have on other Member States, inter alia in the light of how the activities concerned are effectively taxed throughout the Union and requests the Group to consider relevant economic factors and impact data that is brought to its attention, and to take into account the size and openness of the economy of the concerned Member State.

Insofar as the tax measures are used to support the economic development of particular regions, an assessment will be made of whether the measures are in proportion to, and targeted at, the aims sought. In assessing this, particular attention will be paid to special features and constraints in the case of the outermost regions and small islands, without undermining the integrity and coherence of the Union legal order, including the internal market and common policies.

Procedure

- H. The Code of Conduct Group, as set up by the Council conclusions of 9 March 1998, will continue to assess the tax measures that may fall within the scope of this code and to oversee the provision of information on those measures. The Council invites each Member State and the Commission to appoint a high-level representative and a deputy to this Group, which will be chaired by a representative of a Member State. The elected chairs are assisted by the General Secretariat of the Council, which provides secretariat functions for the Group. The Group, which will meet regularly, will select and review the tax measures for assessment in accordance with the provisions laid down in paragraphs E to G. The Group will report regularly on the measures assessed. These reports will be forwarded to the Council for deliberation. They will include the agreed descriptions and final assessments of the tax measures it has examined.

Final documents, as approved by the Council, will be made public and additional documents will be made public, as appropriate, in accordance with relevant rules.

- I. The Council invites the Commission to assist the Group in carrying out the necessary preparatory work for its meetings and to facilitate the provision of information and the review process. To this end, the Council requests Member States to provide the Commission with the information referred to in paragraph E so that the Commission could prepare the draft descriptions and draft assessments referred to in paragraph F. The Commission should perform similar tasks for the assessments referred to in paragraph N. The Commission does not take part in the decision-taking of the Group. The outcomes of the Group's work are validated by the representatives of the Member States at the level of the Group and submitted to the Council for approval.

State aid

- J. The Council notes that some of the tax measures covered by this code may fall within the scope of the provisions on State aid in Articles 107 to 109 of the Treaty on the Functioning of the European Union. The work of the Group is conducted without prejudice to Union law. In cases where the Commission opens state aid proceedings, the Group should suspend its examination of the measures concerned until the end of that state aid procedure. A preliminary description of the measure, drafted by the Commission in close consultation with the Member State concerned, can already be provided to the Group. A final description should be provided as soon as the state aid procedure has ended, if needed.

Action to combat tax avoidance and evasion

- K. The Council calls on the Member States to cooperate fully in the fight against tax avoidance and evasion, notably in the timely exchange of information between Member States, in accordance with their respective national laws, Union law as well as international standards.

The Council invites the Group to hold, where this is deemed appropriate, exchanges on issues of common interest discussed in international fora that fall within the scope of the code.

- L. When deemed appropriate, the Group could also submit to the Council for approval proposals for general guidance within the scope of its mandate, to the extent that the proposed general guidance is not already covered by Union legislation. Once approved by the Council, the final guidance will be published. In particular, the Group will submit for approval by the Council proposals for guidance on specific tax features of general application that fall within the scope of paragraph B2, and such features will be assessed with respect to Member States – in accordance with the preceding provisions of this code – taking account of such guidance.
- M. The Council notes that anti-abuse provisions or defensive measures contained in national tax laws and in double taxation conventions play a fundamental role in counteracting tax avoidance and evasion, also with respect to the external strategy of the EU.

External Strategy of the EU and geographical scope of the code of conduct for business taxation

- N. The Council considers it advisable that principles aimed at abolishing harmful tax measures should be adopted on as broad a geographical basis as possible. To this end, Member States undertake to promote their implementation at the global level by seeking cooperation with jurisdictions located outside the Union, including through the EU list of non-cooperative jurisdictions for tax purposes. The details of the listing process are set out in the Council conclusions of 5 December 2017 and subsequent updates and revisions, as well as the relevant procedural guidelines for the monitoring process.

To that end, the Group carries out regular assessments of relevant jurisdictions on the basis of objective criteria in relation to tax transparency, fair taxation and implementation of anti-BEPS measures.

The Group will regularly inform the Council of the progress made and recommend to the Council updates and revisions of the list.

- O. Member States also commit to promoting the adoption of the principles of the code in territories to which the Treaty does not apply. In particular, Member States with dependent or associated territories or which have special responsibilities or taxation prerogatives in respect of other territories, provided that these are not in the scope of the EU list of non-cooperative jurisdictions for tax purposes, commit, within the framework of their constitutional arrangements, to ensuring that these principles are applied in those territories. In this connection, those Member States will take stock of the situation in the form of reports to the Group, which will assess them under the review procedure described above.

Application, monitoring and revision

- P. The present code replaces, from 1 January 2023, the code of conduct for business taxation set out in the Resolution of the Council and the representatives of the governments of the Member States meeting within the Council of 1 December 1997. However, with regard to tax features of general application as defined in paragraph B.2, paragraphs E.1 to F.2 will apply from 1 January 2024, and will only be used for measures enacted or modified on or after 1 January 2023.

In order to ensure the even and effective implementation of the code, the Council invites the Commission to report to it annually on the implementation thereof and on the application of fiscal state aid. The Council and the Member States will review the provisions of the code, when appropriate, especially when there is a new international consensus on relevant issues.

RECOMMENDATIONS

COUNCIL

COUNCIL RECOMMENDATION

of 14 November 2022

assessing the progress made by the participating Member States to fulfil commitments undertaken in the framework of the permanent structured cooperation (PESCO)

(2022/C 433/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, in particular Article 46(6) thereof,

Having regard to Protocol No 10 on permanent structured cooperation established by Article 42 of the Treaty on European Union attached to the Treaty on European Union and to the Treaty on the Functioning of the European Union,

Having regard to Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of Participating Member States ⁽¹⁾,

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

Whereas:

- (1) Article 4(2)(d) of Decision (CFSP) 2017/2315 provides that the Council is to adopt decisions and recommendations on assessing the contributions of participating Member States (pMS) to fulfil the agreed commitments, according to the mechanism described in Article 6 of that Decision.
- (2) Article 6(3) of Decision (CFSP) 2017/2315 provides that, on the basis of the annual report on PESCO presented by the High Representative of the Union for Foreign Affairs and Security Policy (the 'High Representative'), the Council is to review once a year whether the pMS continue to fulfil the more binding commitments referred in Article 3 of that Decision.
- (3) Appendix 1 to the Annex to the Council Conclusions of 20 November 2020 on the PESCO Strategic Review 2020 provides that the High Representative is to present the annual report on PESCO implementation by July of each year, with a view to the Council adopting its recommendation assessing the progress made by the pMS to fulfil the commitments undertaken in the framework of PESCO by November of that year. Paragraph 16 of the Council Recommendation of 6 March 2018 concerning a roadmap for the implementation of PESCO ⁽²⁾ provides that the Military Committee of the European Union is to provide the Political and Security Committee with military advice and recommendations to enable it to prepare the Council's review on whether the pMS continue to fulfil the more binding commitments.

⁽¹⁾ OJ L 331, 14.12.2017, p. 57.

⁽²⁾ OJ C 88, 8.3.2018, p. 1.

- (4) Paragraph 26 of the Council Recommendation of 16 November 2021 concerning the sequencing of the fulfilment of the more binding commitments undertaken in the framework of PESCO and specifying more precise objectives, and repealing the Recommendation of 15 October 2018 ⁽³⁾ (Recommendation of 16 November 2021 concerning the sequencing of the fulfilment of the more binding commitments), provides that the pMS will review and update their national implementation plans (NIPs) accordingly and communicate them to the PESCO secretariat by 10 March 2022, and annually thereafter by the same date in accordance with Article 3(2) of Decision (CFSP) 2017/2315, in view of the assessment process set out in Article 6(3) of that Decision. Every other year, the NIPs are to be accompanied by a high-level political statement in which the pMS could outline main achievements and state specific national priorities and share their experience in terms of planning and contributions to the fulfilment of all more binding commitments.
- (5) Paragraph 28 of the Council Recommendation of 16 November 2021 concerning the sequencing of the fulfilment of the more binding commitments, provides that the High Representative is to take into account that Recommendation in the annual report on PESCO from 2022 onwards, which will support the assessment of the fulfilment of the more binding commitments by each pMS.
- (6) On 21 March 2022, the Council has adopted the Strategic Compass for Security and Defence, underlining Member States' commitment to fulfil all more binding commitments by 2025, and to make full use of the Permanent Structured Cooperation to intensify their cooperation on capability development ⁽⁴⁾.
- (7) On 18 May 2022, the European Commission and the High Representative have adopted a Joint Communication on the Defence Investment Gaps Analysis and Way Forward (DIGA) ⁽⁵⁾.
- (8) On 13 July 2022 the High Representative provided the Council with his Annual Report on the status of PESCO implementation (the 'Annual Report'), including on the fulfilment, by each pMS, of its commitments, in accordance with its updated and reviewed NIPs.
- (9) On that basis, the Council should therefore adopt a recommendation assessing the progress made by the pMS to fulfil commitments undertaken in the framework of PESCO,

HAS ADOPTED THIS RECOMMENDATION:

I. Objective and scope

1. The objective of this Recommendation is to assess the contributions made by the pMS to fulfil the more binding commitments undertaken in the framework of PESCO. The assessment is based on the Annual Report on the Status of PESCO Implementation provided by the High Representative on 13 July 2022 (the 'Annual Report') and on the NIPs presented by the pMS in 2022, which were accompanied by high-level political statements.

II. Findings and recommendations

2. The Annual Report offers a solid basis to assess the status of PESCO implementation, including the fulfilment of the 20 more binding commitments by each pMS in accordance with its NIP.
3. In light of the geopolitical context, including the Russian war of aggression against Ukraine putting European and global peace and security at risk, and the constantly evolving threat landscape, PESCO remains a valuable instrument for cooperation and for enhancing pMS defence capabilities. Through their efforts, the pMS contribute to enhancing the Union's capacity to act as a security provider and its strategic autonomy, and to strengthening its ability to

⁽³⁾ OJ C 464, 17.11.2021, p. 1.

⁽⁴⁾ Doc. 7371/22.

⁽⁵⁾ JOIN(2022)24 final.

cooperate with partners, to protect its citizens and defend its values and interests. Furthermore, in view of the objectives adopted in the framework of the Strategic Compass, more efforts are needed to use the full potential of PESCO. A stronger and more capable EU in security and defence will contribute positively to global and transatlantic security and is complementary to NATO, which remains the foundation of collective defence for its members.

1. National Implementation Plans

4. Acknowledging the need for the pMS to better achieve concrete deliverables and to facilitate implementation with regard to the fulfilment of the more binding commitments as soon as possible, and by the end of 2025, the Council underlines that the pMS have made progress, to varying degrees, in implementing the 20 more binding commitments they have made to each other and in implementing projects. However, they should step up efforts to fulfil all of them by no later than 2025, as requested by the Council Recommendation of 16 November 2021 regarding the sequencing of the fulfilment of the more binding commitments, and as reiterated in the Strategic Compass. Furthermore, the Council underlines that the pMS:

- (a) have continued increasing their defence expenditure and indicated plans for further increases in 2022 and in the 2023-25 period, also in reaction to the Russian war of aggression against Ukraine. This positive trend in defence expenditure and defence investment should be maintained in the long term, while a majority of pMS should also substantially increase defence research and technology expenditure to reach the agreed 2 % of total defence spending (collective benchmark). In this regard, available EU tools and structures, including the newly established Hub for European Defence Innovation within the European Defence Agency (EDA) and the EU Defence Innovation Scheme within the Commission should be fully considered, harnessing their potential;
- (b) have demonstrated little progress regarding the commitment to increase the number of collaborative defence capability projects and related investment in defence equipment procurement and defence research and technology. To address the EU Capability Development Priorities and to achieve the agreed collective benchmarks (20 % of total collaborative defence research and technology expenditure, 35 % of total collaborative defence equipment procurement expenditure) the pMS should make the best possible use of existing EU defence initiatives and tools, and should further increase and leverage collaborative defence investment at the EU level ⁽⁶⁾. In this respect, they are encouraged to make full use of the Coordinated Annual Review on Defence (CARD) findings and its recommendations, notably the collaborative opportunities and Focus Areas. Taking the Strategic Compass into account, they are also invited to take new opportunities forward in the PESCO framework, such as fostering joint procurement, including in the follow-up to the Joint Communication on DIGA;
- (c) have overall maintained or slightly increased their contribution to military Common Security and Defence Policy (CSDP) missions and operations, but gaps still persist and should be filled urgently. PMS should significantly enhance their efforts to fulfil the operational commitments, taking into account the single set of forces principle, as contributions to missions and operations are still of concern. PMS should step up their contributions to the EU Battlegroups roster and to the Rapid Response Database. Moreover, they should address more specifically strategic capability shortfalls, namely the High Impact Capability Goals. In addition, pMS should provide concrete proposals to improve common funding of CSDP missions and operations, also in the context of the EU Rapid Deployment Capacity (RDC), including through a re-assessment of the scope and definition of common costs to enhance solidarity and stimulate participation in military missions and operations as well as in exercise-related costs. The work on the definition of the parameters of a fair share of contributions to military missions and operations, as requested in the Council Recommendation of 16 November 2021 concerning the sequencing of the fulfilment of the more binding commitments, should be finalised as soon as possible. This is important to encourage and support pMS to increase their contributions, within their means and capabilities, to CSDP missions and operations, ensuring transparency among them on the fulfilment of their respective commitments;

⁽⁶⁾ As stated in the Joint Communication on DIGA, the share of collaborative defence equipment procurement has decreased on average from 11 % in 2020 to around 8 % in 2021, while combined defence Research and Technology spending amounted to 1,2 % of total defence spending in 2020.

- (d) have made modest progress in their uptake of the Union's capability planning and development tools and processes as an orientation for national planning and decision-making. PMS are encouraged to step up their efforts towards a more systematic and active use of these instruments, including the CARD recommendations, to unfold their full potential and overcome capability shortcomings in a collaborative manner;
 - (e) are not sufficiently addressing the commitment to work together to overcome capability shortcomings. The use of a European collaborative approach is still very limited and should be increased substantially. In their NIPs, pMS express interest in exploiting the CARD recommendations on defence cooperation, notably the identified collaborative opportunities. To this end, they should include these opportunities in a systematic manner in their national planning and report on them in their NIPs. PMS should also further work together to deliver capabilities in order to strengthen the EU's command and control structures, in particular the Military Planning and Conduct Capability (MPCC) as the preferred command and control structure, as well as in order to operationalise the EU RDC, in line with the Strategic Compass. The Council recalled that coherence of output between the CDP and the CARD, on the one hand, and respective NATO processes such as the NATO Defence Planning Process, on the other hand, has been and will continue to be ensured where requirements overlap, while recognising the different nature of the two organisations and their respective responsibilities and memberships;
 - (f) have demonstrated that the EDA is largely used as the European forum for capability development. However, the level of investment in projects developed in the EDA framework remains low and should be stepped up, also with the aim of further strengthening the EDA's role as a forum for capability development;
 - (g) have provided clearer indications that they participate in collaborative projects, strengthening the European Defence Technological and Industrial Base (EDTIB) throughout the Union, also by taking advantage of initiatives to jointly procure defence capabilities. However, pMS should further reflect these principles in their respective industrial policies and acquisition strategies.
5. The Council notes that the assessment of updated NIPs confirmed that the implementation of several commitments continues to fall behind if they are to be fulfilled by 2025. In further implementing PESCO, each pMS is therefore encouraged to take into account the findings and recommendations presented in the Annual Report, and to review accordingly its contribution to the fulfilment of the more binding commitments. The pMS are invited to share more detailed information in their NIPs to achieve the objectives set for the second initial PESCO phase. Demonstrating a sustainable upward trajectory remains instrumental for progressing towards the fulfilment of all PESCO more binding commitments by 2025. The PESCO secretariat should therefore organise a workshop dedicated to identifying ways to address the more challenging commitments, ahead of the next NIP update.
6. All pMS have accompanied their NIPs with a high-level political statement, outlining main achievements and stating specific national priorities and contributions to the fulfilment of the more binding commitments. The Council stresses the relevance of the political statements for presenting the pMS' positions. It underlines the importance of ensuring the necessary political ownership and support stimulating discussions at political level. The pMS should, in 2024, as well as every other year thereafter, again accompany their NIP with such a high-level political statement.
7. The majority of pMS already took advantage of the digital platform developed by the EDA to submit their NIPs. PMS are encouraged to continue doing so in the future, as this will allow them to use data they have already provided in the context of relevant Union defence initiatives and to alleviate administrative burden.

2. PESCO projects

8. With the adoption of 14 new projects in the fourth wave of PESCO projects in November 2021 ⁽⁷⁾, the number of PESCO projects has reached 60, contributing to the fulfilment of the 20 more binding commitments, thus confirming the value of the PESCO framework for developing collaborative projects. The adoption of PESCO projects addressing collaborative opportunities, including pertaining Focus Areas identified by the CARD, has shown increasing coherence between the two initiatives.
9. The Council encourages pMS to use the fifth wave of PESCO projects, to be adopted in 2023, to launch strategically relevant projects aimed at delivering critical capabilities and improving the interoperability of forces, also in line with the EU Capability Development Priorities derived from the CDP, and the guidance agreed in the Strategic Compass. The Council underlines that the upcoming fifth wave provides the opportunity to take forward the results of the second CARD cycle, notably by increasing the use of the identified collaborative opportunities including those with an operational focus, as well as the Focus Areas. The Council recalls that PESCO remains a Member State-driven process and invites the PESCO secretariat to support generating project proposals as well as their further progress as appropriate, thus ensuring that new projects are better prepared and deliver without delays, even in the fifth wave.
10. The Council notes that, as indicated in the PESCO projects' progress report to the Council of 29 June, overall progress was made with regard to projects, with 18 of them, across all domains, already reaching execution phase, and two having already reached their full operational capability. The Council also welcomes that nearly half of the projects are expected to deliver concrete results by 2025. This includes 77 % of the projects (20 out of 26) identified in the Council Conclusions of 20 November 2020 on the PESCO Strategic Review 2020 as expected to deliver in this timeframe. PMS should consider an enhanced role for the PESCO secretariat to support project implementation, namely by taking advantage of the EDA's expertise as a framework for joint capability development project implementation, including the project management tools already offered to pMS, and European Union Military Staff expertise on operational aspects. Moreover, pMS, with the support of the PESCO secretariat as appropriate, should enhance strategic communication around the projects about their advancement and their usefulness for European security and defence. PMS should also consider taking advantage of the European Security and Defence College course on the management of PESCO projects.
11. At the same time, the Council notes that a number of other projects continue to face difficulties in their implementation, including delays in reaching project objectives. The Council highlights that pMS should undertake enhanced efforts to deliver tangible results as planned, especially for those projects officially established in 2018 that have not yet rendered any concrete deliverables. Where project members identify that projects cannot provide the expected outputs, such projects should be revitalised or closed, in order to ensure the relevance, effectiveness and credibility of all PESCO projects. In a similar vein, new projects are invited to kick-start their activities within six months of their acceptance into PESCO. In the context of the progress of PESCO projects, the pMS could invite the PESCO secretariat to provide an assessment in this regard. Furthermore, in order to mitigate identified risks to project implementation, project members could agree on a feasible scope, its indicative timelines and allocation of necessary resources for the implementation of PESCO projects, also by seeking EU funding where possible. The PESCO secretariat could be invited to collect best practices for PESCO project management and implementation, and share them with pMS in the form of a guide for project coordinators.
12. The PESCO secretariat could also propose and facilitate meetings between groups of PESCO projects with identified synergies and commonalities, to promote cooperation and increase their impact and efficiency, save resources and prevent unnecessary duplication. For those projects approaching their completion, the PESCO secretariat could encourage and facilitate discussions on the use of capabilities and related structures delivered, including possible follow-on projects.

⁽⁷⁾ Council Decision (CFSP) 2021/2008 of 16 November 2021 amending and updating Decision (CFSP) 2018/340 establishing the list of projects to be developed under PESCO (OJ L 407, 17.11.2021, p. 37).

13. The Council welcomes the fact that, in line with Council Decision (CFSP) 2020/1639 ⁽⁸⁾, and following Council Decisions (CFSP) 2021/748 ⁽⁹⁾, (CFSP) 2021/749 ⁽¹⁰⁾ and (CFSP) 2021/750 ⁽¹¹⁾, the United States of America, Canada and Norway have joined the Military Mobility project in December 2021.

It recalls that partners that meet the general conditions could exceptionally be invited to participate in individual PESCO projects in the future, in accordance with the invitation procedure contained in Decision (CFSP) 2020/1639, and notes the interest of several EU partners to join PESCO projects. In this regard, the Council looks forward to the participation of the United Kingdom in the Military Mobility project, following Council Decision (CFSP) 2022/2244 ⁽¹²⁾.

III. Way forward

14. PMS are invited to update their NIPs and present them to the PESCO secretariat by 10 March 2023.
15. PMS are encouraged to make further progress in the implementation of both the 20 more binding commitments, with a view to fulfilling them by 2025, and the related projects, taking into account proposals outlined in this Recommendation. Regular high-level political discussions between pMS and the High Representative, as well as by respective Council preparatory bodies and in other relevant formats, should continue to ensure political momentum and enhanced pMS' ownership. The Council invites the PESCO secretariat to undertake its supporting role, across the actions identified in this Recommendation, including through the organisation of dedicated workshops.
16. The Council notes that PESCO, both through its more binding commitments and collaborative projects, is a valuable instrument for cooperation, in particular in light of the geopolitical context. The PESCO framework is instrumental in supporting the implementation of the Strategic Compass, in addressing the EU Capability Development Priorities and in making full use of the CARD findings, in particular of the identified collaborative opportunities, taking into account the Joint Communication on the DIGA, and in strengthening the EDTIB throughout the Union. The Council also calls for bringing forward work on the improvement of coherence of the EU defence initiatives, also with a view to simplifying procedures, increasing information sharing and providing more specific priorities. It welcomes the holding of the first annual defence Ministerial meeting on EU defence initiatives addressing capability development, making full use of existing formats, which would further support the coherence of EU defence initiatives.
17. The Council recalls that pMS, in the context of the PESCO Strategic Review process to be conducted before the end of the second PESCO initial phase in 2025, and as stated in the PESCO notification, which also recalls the specific character of the security and defence policy of certain Member States, will assess the fulfilment of all PESCO commitments, and discuss and decide on new commitments, with a view to embarking on a new stage towards European security and defence integration. The Council encourages the pMS, with the support of the PESCO secretariat, to initiate in 2023 discussions on the upcoming Strategic Review, including on possible timelines and milestones.

⁽⁸⁾ Council Decision (CFSP) 2020/1639 of 5 November 2020 establishing the general conditions under which third States could exceptionally be invited to participate in individual PESCO projects (OJ L 371, 6.11.2020, p. 3).

⁽⁹⁾ Council Decision (CFSP) 2021/748 of 6 May 2021 on the participation of Canada in the PESCO project Military Mobility (OJ L 160, 7.5.2021, p. 106).

⁽¹⁰⁾ Council Decision (CFSP) 2021/749 of 6 May 2021 on the participation of the Kingdom of Norway in the PESCO project Military Mobility (OJ L 160, 7.5.2021, p. 109).

⁽¹¹⁾ Council Decision (CFSP) 2021/750 of 6 May 2021 on the participation of the United States of America in the PESCO project Military Mobility (OJ L 160, 7.5.2021, p. 112).

⁽¹²⁾ Council Decision (CFSP) 2022/2244 of 14 November 2022 on the participation of the United Kingdom of Great Britain and Northern Ireland in the PESCO project Military Mobility (OJ L 295, 15.11.2022, p. 22).

Done at Brussels, 14 November 2022

For the Council
The President

II

*(Information)*INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES
AND AGENCIES

EUROPEAN COMMISSION

Non-opposition to a notified concentration**(Case M.10845 – HG / WCAS / WARBURG PINCUS / NORSTELLA)****(Text with EEA relevance)**

(2022/C 433/03)

On 10 October 2022, the Commission decided not to oppose the above notified concentration and to declare it compatible with the internal market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004 ⁽¹⁾. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- in the merger section of the ‘Competition policy’ website of the Commission (<http://ec.europa.eu/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
- in electronic form on the EUR-Lex website (<http://eur-lex.europa.eu/homepage.html?locale=en>) under document number 32022M10845. EUR-Lex is the online point of access to European Union law.

⁽¹⁾ OJ L 24, 29.1.2004, p. 1.

III

(Preparatory acts)

COUNCIL

POSITION (EU) No 3/2022 OF THE COUNCIL AT FIRST READING

with a view to the adoption of a Directive of the European Parliament and of the Council on improving the gender balance among directors of listed companies and related measures

Adopted by the Council on 17 October 2022

(Text with EEA relevance)

(2022/C 433/04)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 157(3) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) Under Article 2 of the Treaty on European Union (TEU), equality is a founding value of the Union and is common to the Member States in a society in which equality between women and men prevails. Under Article 3(3) TEU, the Union is to promote equality between women and men.
- (2) Article 157(3) of the Treaty on the Functioning of the European Union (TFEU) confers upon the European Parliament and the Council the power to adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.
- (3) With a view to ensuring full equality in practice between men and women in working life, Article 157(4) TFEU permits positive action by allowing Member States to maintain or adopt measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. Article 23 of the Charter of Fundamental Rights of the European Union (the 'Charter') provides that equality between women and men is to be ensured in all areas and that the principle of equality cannot prevent the maintenance or adoption of measures providing for specific advantages in favour of the underrepresented sex.

⁽¹⁾ OJ C 133, 9.5.2013, p. 68.

⁽²⁾ OJ C 218, 30.7.2013, p. 33.

⁽³⁾ Position of the European Parliament of 20 November 2013 (OJ C 436, 24.11.2016, p. 225) and position of the Council at first reading of 17 October 2022. Position of the European Parliament of ... [(OJ ...)]/(not yet published in the Official Journal)].

- (4) The European Pillar of Social Rights, which was jointly proclaimed by the European Parliament, the Council, and the Commission in 2017, incorporates among its principles equality of treatment and opportunities between women and men, including regarding participation in the labour market, terms and conditions of employment and career progression.
- (5) Achieving gender equality in the workplace requires a comprehensive approach, which also includes fostering gender-balanced decision-making within companies at all levels, as well as closing the gender pay gap. Ensuring equality in the workplace is also a key prerequisite for reducing poverty among women.
- (6) Council Recommendation 84/635/EEC ⁽⁴⁾ recommended that Member States take steps to ensure that positive action includes, as far as possible, actions having a bearing on active participation by women in decision-making bodies. Council Recommendation 96/694/EC ⁽⁵⁾ recommended that Member States encourage the private sector to increase the presence of women at all levels of decision-making, in particular by the adoption, or within the framework, of equality plans and positive action programmes.
- (7) This Directive is aimed at ensuring the application of the principle of equal opportunities between women and men and achieving a gender-balanced representation among top management positions by establishing a set of procedural requirements concerning the selection of candidates for appointment or election to director positions based on transparency and merit.
- (8) In recent years the Commission has presented several reports taking stock of the situation concerning gender equality in economic decision-making. It has encouraged listed companies to increase the number of members of the underrepresented sex on their boards by means of self-regulatory measures and to make concrete voluntary commitments in that regard. In its communication of 5 March 2010 entitled 'A Strengthened Commitment to Equality between Women and Men – A Women's Charter', the Commission underlined that women still do not have full access to the sharing of power and decision-making in political and economic life and in the public and private sectors, and reaffirmed its commitment to using its powers to pursue a fairer representation of women and men in positions of power in public life and the economy. Improving the gender balance in decision-making was one of the priorities set by the Commission in its communication of 21 September 2010 entitled 'Strategy for equality between women and men 2010-2015'. Achieving gender balance in decision-making and politics is one of the priorities set out in the Commission's communication of 5 March 2020 entitled 'A Union of Equality: Gender Equality Strategy 2020-2025'.
- (9) In its conclusions of 7 March 2011 on European Pact for Gender Equality (2011-2020), the Council acknowledged that gender equality policies are vital to economic growth, prosperity and competitiveness. It reaffirmed its commitment to closing the gender gaps with a view to meeting the objectives of the Europe 2020 Strategy, especially in three areas of great relevance to gender equality, namely employment, education and promoting social inclusion. It also urged action to promote the equal participation of women and men in decision-making at all levels and in all fields, in order to make full use of all talents. In that regard, making use of all available talent, knowledge and ideas would enrich the diversity of human resources and improve business prospects.
- (10) In its communication of 3 March 2010 entitled 'Europe 2020: A strategy for smart, sustainable and inclusive growth' (the 'Europe 2020 Strategy'), the Commission recognised that increasing women's labour market participation is a precondition for boosting growth and for tackling demographic challenges in Europe. The Europe 2020 Strategy set a headline target of reaching an employment rate of at least 75 % for the Union population aged between 20 and 64 years by 2020. It is important that a clear commitment be made to eliminate the persisting gender pay gap and that a reinforced effort be made to tackle all barriers to women's participation in the labour market, including the existing 'glass ceiling' phenomenon. The Porto Declaration, which was signed by the Heads of State or Government on 8 May 2021 ⁽⁶⁾, welcomed the new Union headline targets on jobs, skills and poverty reduction and the revised social scoreboard proposed by the Commission in its communication of 4 March 2021 entitled 'The European Pillar of Social Rights Action Plan'. That Action Plan provides that, in order to achieve the overall goal of an employment

⁽⁴⁾ Council Recommendation 84/635/EEC of 13 December 1984 on the promotion of positive action for women (OJ L 331, 19.12.1984, p. 34).

⁽⁵⁾ Council Recommendation 96/694/EC of 2 December 1996 on the balanced participation of women and men in the decision-making process (OJ L 319, 10.12.1996, p. 11).

⁽⁶⁾ <https://www.consilium.europa.eu/en/press/press-releases/2021/05/08/the-porto-declaration/>

rate of at least 78 % among the Union population aged between 20 and 64 years by 2030, it is necessary to strive to at least halve the gender employment gap compared to 2019. Enhancing women's participation in economic decision-making, on boards in particular, is expected to have a positive spill-over effect on women's employment in the companies concerned and throughout the whole economy. In the aftermath of the COVID-19 crisis, gender equality and inclusive leadership matter more than ever, in line with the need to make full use of the available pool of talent, of both women and men. Research has shown that inclusion and diversity enable recovery and resilience. They are of vital importance in ensuring the Union's economic competitiveness, encouraging innovation and enhancing professional standards on boards.

- (11) The European Parliament, in its resolution of 6 July 2011 on women and business leadership, urged companies to attain the critical threshold of 30 % female membership of management bodies by 2015 and 40 % by 2020. It called on the Commission, if the steps taken by companies and the Member States were found to be inadequate, to propose legislation by 2012, including quotas. It would be important that such legislation be implemented on a temporary basis and serve as a catalyst for change and for rapid reforms designed to eliminate persisting gender inequalities and stereotypes in economic decision-making. The European Parliament reiterated that call for legislation in its resolutions of 13 March 2012 and 21 January 2021.
- (12) It is important that Union institutions, bodies, offices and agencies lead by example when it comes to gender equality by, inter alia, setting objectives for a gender-balanced representation at all levels of management. Particular attention needs to be given to policies for the recruitment of senior management. Therefore, in its communication of 5 March 2020 entitled 'A Union of Equality: the Gender Equality Strategy 2020-2025' the Commission emphasised that Union institutions, bodies, offices and agencies should ensure gender balance in leadership positions. In its communication of 5 April 2022 entitled 'A new Human Resources Strategy for the Commission', the Commission committed to ensuring full gender equality at all levels of its management by 2024. The Commission will monitor progress and report regularly in that regard on its website. The Commission further shares best practices with other Union institutions, bodies, offices and agencies and will report on the situation of gender balance in leadership positions in those institutions, bodies, offices and agencies on its website. The European Parliament, in its Bureau decision of 13 January 2020, has agreed on setting targets for gender balance in senior and middle management positions for 2024. The European Parliament will continue to monitor the progress at all levels of its management and aims to lead by example. The Council committed, in its Diversity and Inclusion Strategy 2021-2024, to achieving gender equality in management positions of its General Secretariat (GSC) with a 45 to 55 % margin at the latest by the end of 2026. The GSC's Action Plan for Gender Equality in Management sets out measures to achieve that objective.
- (13) It is important that companies and businesses foster, support and develop female talent at all levels and throughout their careers in order to ensure that qualified women are provided with opportunities to hold board and management positions.
- (14) In order to promote gender equality and support the participation of women in decision-making, Directive (EU) 2019/1158 of the European Parliament and of the Council (⁽⁷⁾), which promotes work-life balance for parents and carers, provides that Member States take the necessary measures to ensure an equal sharing of caring responsibilities between women and men by means of parental, paternity and carers' leave, alongside the existing maternity leave. That Directive also provides for the right to request flexible working arrangements.
- (15) The appointment of women as directors is hampered by a number of specific factors which can be overcome not only by means of binding rules but also by means of educational initiatives and incentives to promote good practices. First, it is essential to heighten awareness in business schools and universities of the benefits of gender equality in making companies more competitive. It is also necessary to encourage a regular turnover of directors and to introduce positive measures to promote and reward efforts by Member States and companies to adopt a more decisive approach to such changes in top economic decision-making bodies at all levels.

(⁷) Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.7.2019, p. 79).

- (16) The Union has a large pool of highly qualified women, which is constantly growing as evidenced by the fact that 60 % of university graduates are female. Achieving gender balance on boards is essential for an efficient use of that existing pool, which is key to addressing the Union's demographic and economic challenges. Thus, the under-representation of women on boards is a missed opportunity for Member States' economies in general and for their development and growth. Making full use of the existing pool of female talent would also improve the return on education for both individuals and the public sector. It is widely acknowledged that the presence of women on boards improves corporate governance, as team performance and the quality of decision-making are enhanced by a more diverse and collective mind-set incorporating a wider range of perspectives. Numerous studies have shown that diversity leads to a more proactive business model, more balanced decisions and enhanced professional standards on boards that better reflect societal realities and consumer needs. It also encourages innovation. Numerous studies have also shown that there is a positive relationship between gender diversity at top management level and a company's financial performance and profitability, resulting in substantial long-term sustainable growth. Achieving gender balance on boards is therefore vitally important for ensuring the Union's competitiveness in a globalised economy and would offer a comparative advantage vis-à-vis third countries.
- (17) Increasing the representation of women on boards not only affects the women appointed to boards, but also contributes to attracting female talent to the company and ensuring a greater presence of women at all levels of management and in the workforce. Therefore, a higher share of women on boards is likely to have a positive impact on closing both the gender employment gap and the gender pay gap.
- (18) Despite evidence of the beneficial impact of gender balance on companies themselves and on the economy in general, and despite the existing Union law prohibiting sex discrimination and the existing Union-level actions encouraging self-regulation, women continue to be vastly underrepresented in the highest decision-making bodies of companies throughout the Union. Statistics show that the proportion of women involved in top-level business decision-making remains very low. If one half of the talent pool is not even considered for leadership positions, the very process and quality of appointments could be compromised, leading to increased distrust of business power structures and possibly to a reduction in the efficient use of available human capital. It is important that the make-up of society is faithfully reflected in corporate decision-making and that the potential of the entire population of the Union is utilised. According to the European Institute for Gender Equality, in 2021, women accounted for an average of 30,6 % of the members of boards in the largest listed companies and for only 8,5 % of chairpersons. That indicates unfair and discriminatory under-representation of women, thereby clearly undermining the Union principles of equal opportunities and equal treatment of women and men in the fields of employment and occupation. Measures to encourage career progression for women at all levels of management should therefore be introduced and reinforced, and particular attention should be paid to ensuring that that is the case in listed companies, due to the significant economic and social responsibility of such companies. In addition, it is important that Union bodies, offices and agencies lead by example when it comes to redressing existing gender imbalances within the composition of their own management boards.
- (19) The proportion of women on boards has increased very slowly over recent years. The rate of improvement has varied among Member States and has led to highly divergent results. Much more significant progress was noted in those Member States where binding measures have been introduced. That divergence is likely to increase given the very different approaches to improving gender balance on boards. Therefore, Member States are encouraged to share information about the effective measures taken and policies adopted at national level, and to exchange best practices, with a view to supporting progress across the Union towards achieving a more balanced representation of women and men on boards.
- (20) The scattered and divergent regulation or the absence of regulation at national level as regards the gender balance on boards of listed companies not only leads to discrepancies in the number of women among non-executive directors and to different rates of improvement across Member States, but it also poses barriers to the internal market by imposing divergent corporate governance requirements on listed companies in the Union. Those differences in legal and self-regulatory requirements for the composition of boards can lead to practical complications for listed companies operating across borders, in particular when establishing subsidiaries or in mergers and acquisitions, and for candidates for director positions.

- (21) Gender imbalances within companies are greater at more senior levels. Furthermore, many of those women who are represented at senior management level are to be found in fields such as human resources and communication, while men at a senior level are more likely to be employed in general management or line management within the company. As the main pool for recruitment to director positions is comprised largely of candidates with senior management experience, it is vital that the number of women advancing to such management positions within companies be increased.
- (22) One of the main factors enabling this Directive to be correctly implemented is the effective application of criteria, to be set in advance and with full transparency, for the selection of directors, with candidates' qualifications, knowledge and skills being considered on an equal basis, regardless of their gender.
- (23) The current lack of transparency in the selection process and qualification criteria for director positions in most Member States represents a significant barrier to greater gender balance among directors and negatively affects both the board candidates' careers and freedom of movement and investor decisions. Such a lack of transparency prevents potential candidates for director positions from applying to boards where their qualifications would be most required and from challenging gender-biased appointment decisions, thus restricting their freedom of movement within the internal market. On the other hand, investors might have investment strategies that require that information linked also to the expertise and competence of directors be provided. More transparency in the qualification criteria and the selection process for directors enables investors to better assess the company's business strategy and to take informed decisions. It is therefore important that board appointment procedures be clear and transparent and that candidates be assessed objectively on their individual merits, regardless of their gender.
- (24) While this Directive does not aim to harmonise national laws on the selection process and qualification criteria for director positions in detail, the introduction of certain minimum requirements for listed companies without balanced gender representation relating to the selection of candidates for appointment or election to director positions on the basis of a transparent and clearly defined selection process and an objective comparative assessment of their qualifications in terms of suitability, competence and professional performance is necessary for achieving gender balance. Only a binding measure at Union level can effectively help to ensure a competitive level-playing field throughout the Union and avoid practical complications in business life.
- (25) The Union should therefore aim to increase the presence of women on boards in all Member States, in order to boost economic growth, encourage labour market mobility, strengthen the competitiveness of listed companies and achieve effective gender equality on the labour market. That aim should be pursued by laying down minimum requirements with regard to positive action in the form of binding measures. Those binding measures should seek to achieve a quantitative objective for the gender composition of boards, in view of the fact that Member States and third countries which have chosen that or a similar method have achieved the best results in reducing the under-representation of women in economic decision-making positions.
- (26) It is important that each listed company develop a gender equality policy in order to achieve a more balanced gender representation at all levels. Such policies might include the nomination of both a female candidate and a male candidate for key positions, mentoring schemes and career development guidance for women, and human-resources strategies designed to encourage diverse recruitment.
- (27) Listed companies have a particular economic importance, visibility and impact on the market as a whole. Such companies set standards for the wider economy and their practices can be expected to be followed by other types of companies. The public nature of listed companies justifies their being regulated to a greater extent in the public interest.
- (28) The measures provided for in this Directive should apply to listed companies.
- (29) This Directive should not apply to micro, small and medium-sized enterprises (SMEs).

- (30) For the purposes of this Directive, the Member State competent to regulate matters covered by this Directive should be the Member State in which the listed company in question has its registered office. This Directive does not affect national rules determining the law applicable to companies for matters not governed by this Directive.
- (31) There are various systems of board structures for listed companies in the Member States, the main distinction being between a dual system with both a management board and a supervisory board and a unitary system combining the management and supervisory functions in a single board. There are also mixed systems, which feature aspects of both systems or give companies an option between different models. This Directive should apply to all board systems existing in the Member States.
- (32) All board systems distinguish, *de jure* or *de facto*, between executive directors, who are involved in the daily management of the company, and non-executive directors who perform a supervisory function and are not involved in the daily management of the listed company. This Directive aims to improve the gender balance among both categories of directors. In order to strike the right balance between the need to increase the gender balance of boards and the need to minimise interference with the day-to-day management of a company, this Directive distinguishes between those two categories of director.
- (33) In several Member States, a certain proportion of the non-executive directors can or must, pursuant to national law or practice, be appointed or elected by the companies' workforce, by employee organisations or by both. The quantitative objectives laid down in this Directive should also apply to such directors. However, because some non-executive directors are employee representatives, the Member States should establish the means for ensuring that those objectives are achieved, with due regard to the specific rules for the election or designation of employee representatives as laid down in national law and with respect for the freedom of vote in the election of employee representatives. Given the differences between Member States' national company law, it should be possible for Member States to apply the quantitative objectives separately to shareholder representatives and employee representatives.
- (34) Member States should subject listed companies either to the objective of having boards on which members of the underrepresented sex hold at least 40 % of non-executive director positions by 30 June 2026 or, alternatively, since it is important that listed companies increase the proportion of the underrepresented sex in all decision-making positions, to the objective of having boards on which members of the underrepresented sex hold at least 33 % of all director positions by 30 June 2026, regardless of whether they are executive or non-executive, with a view to promoting a more balanced gender representation among all directors.
- (35) The objectives of having boards on which members of the underrepresented sex hold at least 40 % of non-executive director positions or at least 33 % of all director positions concern the overall gender balance among directors and do not interfere with the concrete choice of individual directors from a wide pool of male and female candidates in each individual case. In particular, this Directive does not exclude any particular candidates for director positions, nor does it impose any individual directors on listed companies or shareholders. The decision on the appropriate directors thus remains with the listed companies and the shareholders.
- (36) Due to their nature, it is appropriate that public undertakings which fall under the scope of this Directive serve as a model for the private sector. Member States exercise a dominant influence over public undertakings within the meaning of Article 2, point (b), of Commission Directive 2006/111/EC⁽⁸⁾ which are listed on a regulated market. Due to that dominant influence, Member States have the instruments at their disposal to bring about the necessary change more rapidly.

⁽⁸⁾ Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17).

- (37) Determining the number of director positions necessary to achieve the objectives laid down in this Directive requires further specification since, given the size of most boards, it is not possible mathematically to reach the exact proportion of 40 % or, where applicable, 33 %. Therefore, the number of director positions necessary to meet the objectives laid down in this Directive should be the number closest to the proportion of 40 %, or, where applicable, 33 %, and in both cases should not exceed 49 %.
- (38) In its case-law⁽⁹⁾ on positive action and the compatibility thereof with the principle of non-discrimination based on sex, which also is laid down in Article 21 of the Charter, the Court of Justice of the European Union (the 'Court of Justice') accepted that priority can in certain cases be given to the underrepresented sex in selection for employment or promotion, provided that the candidate of the underrepresented sex is equally qualified as compared with the competitor of the other sex in terms of suitability, competence and professional performance, that the priority is not automatic and unconditional but can be overridden if reasons specific to an individual candidate of the other sex tilt the balance in that candidate's favour, and that the application of each candidate is the subject of an objective assessment which specifically applies all the selection criteria to the individual candidates.
- (39) Member States should ensure that those listed companies on whose boards members of the underrepresented sex hold less than 40 % of non-executive director positions or less than 33 % of all director positions, including both executive and non-executive directors, as applicable, select the best qualified candidates for appointment or election to those positions on the basis of a comparative assessment of the qualifications of candidates by applying clear, neutrally formulated and unambiguous criteria established in advance of the selection process, with a view to improving gender balance on boards. Examples of types of selection criteria that listed companies could apply include professional experience in managerial or supervisory tasks, international experience, multidisciplinary leadership, communication skills, networking abilities and knowledge in specific relevant areas such as finance, financial oversight or human resources management.
- (40) When selecting candidates for appointment or election to director positions, priority should be given to the equally qualified candidate of the underrepresented sex. Such priority should not, however, constitute an automatic and unconditional preference. There might be exceptional cases where an objective assessment concerning the specific situation of an equally qualified candidate of the other sex might override the preference which should, otherwise, be accorded to the candidate of the underrepresented sex. Such an overriding of preference could take place, for instance, where broader diversity policies apply at national or company level for the selection of directors. The overriding of the application of positive action should nevertheless remain exceptional, be based on a case-by-case assessment and be duly justified by objective criteria which should not, in any event, discriminate against the underrepresented sex.
- (41) In Member States where the requirements laid down in this Directive relating to the selection of candidates for appointment or election to director positions are applicable, listed companies on whose boards members of the underrepresented sex hold at least 40 % of non-executive director positions or at least 33 % of all director positions, as applicable, should not be obliged to comply with those requirements.
- (42) The methods of selecting candidates for appointment or election to director positions differ from one Member State to another and from one listed company to another. They might involve the pre-selection of candidates to be presented to the shareholders' assembly, for example by a nomination committee or by executive search firms. The requirements for the selection of candidates for appointment or election to director positions should be met at the appropriate stage of the selection process in accordance with national law and the articles of association of the listed companies concerned, including prior to the election of a candidate by shareholders, for example while preparing a shortlist. In that respect, this Directive establishes minimum standards only for selecting candidates for appointment or election to director positions, making it possible to apply the conditions provided for by the case-law of the Court of Justice with a view to allowing for gender equality and achieving the objective of a more

⁽⁹⁾ Judgment of the Court of Justice of 17 October 1995, *Kalanke v Freie Hansestadt Bremen*, C-450/93, ECLI:EU:C:1995:322; judgment of the Court of Justice of 11 November 1997, *Marschall v Land Nordrhein-Westfalen*, C-409/95, ECLI:EU:C:1997:533; judgment of the Court of Justice of 28 March 2000, *Badeck and Others*, C-158/97, ECLI:EU:C:2000:163; judgment of the Court of Justice of 6 July 2000, *Abrahamsson and Anderson*, C-407/98, ECLI:EU:C:2000:367.

balanced representation of women and men on boards of listed companies. This Directive does not unduly interfere with the day-to-day management of listed companies, since they maintain the freedom to select candidates on the basis of qualifications or other objective relevant considerations.

- (43) In view of the objectives of this Directive as regards gender balance, listed companies should be required at the request of a candidate for appointment or election to a director position, to inform that candidate of the qualification criteria upon which the selection was based, the objective comparative assessment of the candidates under those criteria and, where relevant, the specific considerations exceptionally tilting the balance in favour of a candidate who is not of the underrepresented sex. A requirement to provide such information might imply a limitation to the right to respect for private life and to the right to the protection of personal data that are recognised, respectively, by Articles 7 and 8 of the Charter. However, such limitations are necessary and, in conformity with the principle of proportionality, genuinely meet recognised objectives of general interest. They are therefore in line with the requirements for such limitations laid down in Article 52(1) of the Charter and with the relevant case-law of the Court of Justice. Such limitations should be applied in compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽¹⁰⁾.
- (44) Where a candidate of the underrepresented sex for appointment or election to a director position establishes facts, before a court or other competent authority, from which it can be presumed that that candidate was as equally qualified as the selected candidate of the other sex, the listed company should be required to demonstrate the correctness of the choice.
- (45) While this Directive seeks to establish minimum requirements in the form of binding measures to improve the gender composition of boards, it is important, in accordance with the principle of subsidiarity, to recognise the legitimacy of different approaches and to acknowledge the effectiveness of certain existing national measures, already adopted in this policy area, which have shown satisfactory results. In some Member States, efforts to ensure a more balanced representation of women and men on boards have thus already been made through the adoption of binding measures that are considered equally effective to those laid down in this Directive. Those Member States should be able to suspend the application of the requirements laid down in this Directive relating to the selection of candidates for appointment or election to director positions and, where relevant, those relating to the establishment of individual quantitative objectives, provided that the conditions for a suspension set out in this Directive are fulfilled. In such cases, where Member States have introduced such binding measures by way of national law, the rounding rules set out in this Directive with regard to the specific number of directors should be applied *mutatis mutandis* for the purpose of assessing those national measures under this Directive. In a Member State where such suspension applies, the objectives laid down in this Directive should be deemed to be attained and thus the objectives laid down in this Directive in relation to non-executive directors or all directors do not replace and are not added to the relevant national measures.
- (46) With a view to improving the gender balance among directors involved in daily management tasks, listed companies should be required to set individual quantitative objectives regarding a more balanced representation of both sexes among executive directors, with the aim of achieving such objectives by the date set out in this Directive. Those objectives should help companies to achieve tangible progress as compared with their current situation. That obligation should not apply to listed companies which pursue the objective of 33 % relating to all directors, whether executive or non-executive.
- (47) Member States should require listed companies to provide, on a yearly basis, information on the gender composition of their boards and on the measures taken with a view to achieving the objectives laid down in this Directive to the competent authorities in order to enable them to assess the progress made by each listed company towards achieving gender balance among directors. Listed companies should publish such information in an appropriate and easily accessible manner on their websites and include it in their annual reports. Where a listed company has not

⁽¹⁰⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

achieved the applicable quantitative objectives, it should include in such information a description of the concrete measures that it has taken so far or intends to take in the future in order to achieve the objectives laid down in this Directive. In order to avoid unnecessary administrative burden and duplication of efforts, the information on gender balance on boards to be reported pursuant to this Directive should form part, where applicable, of the corporate governance statement of listed companies, in accordance with applicable Union law and, in particular, Directive 2013/34/EU of the European Parliament and of the Council⁽¹⁾. Where Member States have suspended the application of Article 6 pursuant to Article 12, the reporting obligations set out in this Directive should not apply, provided that the national law of those Member States provides for reporting obligations that ensure that information regarding the progress made by listed companies towards achieving a more balanced representation of women and men on their boards is regularly published.

- (48) The requirements relating to the selection of candidates for appointment or election to director positions, the obligation to set a quantitative objective in relation to executive directors and reporting obligations should be enforced by penalties which are effective, proportionate and dissuasive, and Member States should ensure that adequate administrative or judicial procedures are available for that purpose. Such penalties might include fines or the possibility for a judicial body to annul a decision concerning the selection of directors or to declare it null and void. Without prejudice to national law on the imposition of penalties, as long as listed companies comply with those obligations, they should not be penalised for failing to attain the quantitative objectives concerning the representation of women and men among directors. Penalties should not be applied to listed companies themselves if under national law a given action or omission is not attributable to the company, but to other natural or legal persons such as individual shareholders. It should be possible for Member States to apply penalties other than those listed in the non-exhaustive list of penalties set out in this Directive, especially in cases of serious and repeated infringements by a listed company related to the obligations laid down in this Directive. Member States should ensure that, in the performance of public contracts and concessions, listed companies comply with applicable obligations relating to social and labour law, in accordance with applicable Union law.
- (49) Member States or listed companies should be able to introduce or maintain more favourable measures to ensure a more balanced representation of women and men.
- (50) Member States should designate bodies for the promotion, analysis, monitoring and support of gender balance on boards. Furthermore, information campaigns and the sharing of best practices would significantly contribute to the raising of awareness of the issue among all listed companies and encourage them to achieve gender balance proactively. In particular, Member States are encouraged to put in place policies to support and incentivise SMEs to improve significantly the gender balance at all levels of management and on boards.
- (51) This Directive respects fundamental rights and observes the principles recognised by the Charter. In particular, it contributes to the fulfilment of the principle of equality between women and men (Article 23 of the Charter) and the freedom to choose an occupation and the right to engage in work (Article 15 of the Charter). This Directive seeks to ensure full respect for the right to an effective remedy and to a fair trial (Article 47 of the Charter). The limitations on the exercise of the freedom to conduct a business (Article 16 of the Charter) and of the right to property (Article 17(1) of the Charter) respect the essence of that freedom and that right and are necessary and proportionate. It is possible to make limitations only if they genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
- (52) While some Member States have taken regulatory action or encouraged self-regulation with mixed results, the majority of Member States have not taken action or indicated their willingness to act in a way that would bring about sufficient improvement. Projections based on a comprehensive analysis of all available information on past and current trends and intentions show that Member States acting individually will not achieve a balanced

⁽¹⁾ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

representation of women and men among directors across the Union in line with the objectives laid down in this Directive at any point in the foreseeable future. Inaction in this area slows down the pursuit of gender equality in the workplace more generally, including in terms of closing the gender pay gap, which results in part from vertical segregation. In the light of those circumstances and given the growing discrepancies between Member States in terms of the representation of women and men on boards, the gender balance on boards across the Union can only be improved by means of a common approach, and the potential for gender equality, competitiveness and growth can be better achieved through coordinated action at Union level rather than by means of national initiatives of varying scope, ambition and effectiveness. Since the objective of this Directive, namely to achieve a more balanced representation of women and men among the directors of listed companies by establishing effective measures that aim to accelerate progress towards gender balance, while allowing listed companies sufficient time to make the necessary arrangements for that purpose, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 TEU.

In accordance with the principle of proportionality, as set out in that Article, this Directive is limited to setting common objectives and principles and does not go beyond what is necessary in order to achieve that objective. Member States are given sufficient freedom to determine how the objectives laid down in this Directive should best be achieved taking national circumstances into account, in particular rules and practices concerning recruitment to boards. This Directive does not interfere with the possibility for listed companies to appoint the most qualified directors, and it grants a flexible framework and provides for a sufficiently long period of adaptation.

- (53) Member States should cooperate with the social partners and civil society in order to efficiently inform them about the significance, transposition and implementation of this Directive.
- (54) In accordance with the principle of proportionality, the objectives to be achieved by listed companies should be limited in time and should remain in force only until sustainable progress has been made in the gender composition of boards. For that reason, the Commission should regularly review the application of this Directive and report to the European Parliament and the Council. Furthermore, this Directive provides for a date on which it will expire. The Commission should assess, in its review, whether there is a need to extend the duration of this Directive beyond that date.
- (55) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents ⁽¹²⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose

This Directive aims to achieve a more balanced representation of women and men among the directors of listed companies by establishing effective measures that aim to accelerate progress towards gender balance, while allowing listed companies sufficient time to make the necessary arrangements for that purpose.

⁽¹²⁾ OJ C 369, 17.12.2011, p. 14.

*Article 2***Scope**

This Directive applies to listed companies. This Directive does not apply to micro, small and medium-sized enterprises (SMEs).

*Article 3***Definitions**

For the purposes of this Directive, the following definitions apply:

- (1) 'listed company' means a company which has its registered office in a Member State and whose shares are admitted to trading on a regulated market within the meaning of Article 4(1), point (21), of Directive 2014/65/EU in one or more Member States;
- (2) 'board' means an administrative, management or supervisory body of a listed company;
- (3) 'director' means a member of a board, including a member who is an employees' representative;
- (4) 'executive director' means a member of a unitary board who is engaged in the daily management of a listed company or, in the case of a dual board system, a member of the board which carries out the management functions of a listed company;
- (5) 'non-executive director' means a member of a unitary board other than an executive director or, in the case of a dual board system, a member of the board which carries out the supervisory functions of a listed company;
- (6) 'unitary board' means a single board that carries out both the management and supervisory functions of a listed company;
- (7) 'dual board system' means a system in which the management and supervisory functions of a listed company are carried out by separate boards;
- (8) 'micro, small and medium-sized enterprise' or 'SME' means a company which employs less than 250 persons and has an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million, or, for an SME having its registered office in a Member State whose currency is not the euro, the equivalent amounts in the currency of that Member State.

*Article 4***Applicable law**

The Member State competent to regulate matters covered by this Directive in respect of a given listed company shall be the Member State in which that company has its registered office. The applicable law shall be the law of that Member State.

*Article 5***Objectives with regard to gender balance on boards**

1. Member States shall ensure that listed companies are subject to either of the following objectives, to be reached by 30 June 2026:
 - (a) members of the underrepresented sex hold at least 40 % of non-executive director positions;
 - (b) members of the underrepresented sex hold at least 33 % of all director positions, including both executive and non-executive directors.
2. Member States shall ensure that listed companies which are not subject to the objective laid down in paragraph 1, point (b), set individual quantitative objectives with a view to improving the gender balance among executive directors. Member States shall ensure that such listed companies aim to achieve such individual quantitative objectives by 30 June 2026.

3. The number of non-executive director positions deemed necessary to achieve the objective laid down in paragraph 1, point (a), shall be the number closest to the proportion of 40 %, but not exceeding 49 %. The number of all director positions deemed necessary to achieve the objective laid down in paragraph 1, point (b), shall be the number closest to the proportion of 33 %, but not exceeding 49 %. Those numbers are set out in the Annex.

Article 6

Means to achieve the objectives

1. Member States shall ensure that listed companies which do not achieve the objectives referred to in Article 5(1), point (a) or (b), as applicable, adjust the process for selecting candidates for appointment or election to director positions. Those candidates shall be selected on the basis of a comparative assessment of the qualifications of each candidate. For that purpose, clear, neutrally formulated and unambiguous criteria shall be applied in a non-discriminatory manner throughout the entire selection process, including during the preparation of vacancy notices, the pre-selection phase, the shortlisting phase and the establishment of selection pools of candidates. Such criteria shall be established in advance of the selection process.

2. As regards the selection of candidates for appointment or election to director positions, Member States shall ensure that, when choosing between candidates who are equally qualified in terms of suitability, competence and professional performance, priority is given to the candidate of the underrepresented sex unless, in exceptional cases, reasons of greater legal weight, such as the pursuit of other diversity policies, invoked within the context of an objective assessment which takes into account the specific situation of a candidate of the other sex and which is based on non-discriminatory criteria, tilt the balance in favour of the candidate of the other sex.

3. Member States shall ensure that, at the request of a candidate who was considered during selection of candidates for appointment or election to a director position, listed companies are obliged to inform that candidate of the following:

- (a) the qualification criteria upon which the selection was based;
- (b) the objective comparative assessment of the candidates under those criteria; and
- (c) where relevant, the specific considerations exceptionally tilting the balance in favour of a candidate who is not of the underrepresented sex.

4. Member States shall take the necessary measures, in accordance with their national judicial systems, to ensure that where an unsuccessful candidate of the underrepresented sex establishes facts, before a court or other competent authority, from which it may be presumed that that candidate was as equally qualified as the candidate of the other sex who was selected for appointment or election to a director position, it is for the listed company to prove that there has been no breach of Article 6(2).

This paragraph shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

5. Where the process for selecting candidates for appointment or election to director position is made through a vote of shareholders or employees, Member States shall require listed companies to ensure that voters are properly informed regarding the measures provided for in this Directive, including penalties for non-compliance by the listed company.

Article 7

Reporting

1. Member States shall require listed companies to provide information to the competent authorities, once a year, about the gender representation on their boards, distinguishing between executive and non-executive directors and regarding the measures taken with a view to achieving the applicable objectives laid down in Article 5(1) and, where applicable, the objectives set in accordance with Article 5(2). Member States shall require listed companies to publish that information in an appropriate and easily accessible manner on their websites. On the basis of the information provided, Member States shall publish and regularly update, in an easily accessible and centralised manner, a list of the listed companies that have achieved either of the objectives laid down in Article 5(1).
2. Where a listed company has not achieved one of the objectives laid down in Article 5(1) or, where applicable, the objectives set in accordance with Article 5(2), the information referred to in paragraph 1 of this Article shall include the reasons for not achieving the objectives and a comprehensive description of the measures which the listed company has already taken or intends to take in order to achieve them.
3. Where applicable, the information referred to in paragraphs 1 and 2 of this Article shall also be included in the company's corporate governance statement, in accordance with the relevant provisions of Directive 2013/34/EU.
4. The obligations set out in paragraphs 1 and 2 of this Article shall not apply in a Member State which has suspended the application of Article 6 pursuant to Article 12 where national law provides for reporting obligations that ensure the regular publication of information regarding the progress made by listed companies towards a more balanced representation of women and men on their boards.

Article 8

Penalties and additional measures

1. Member States shall lay down rules on penalties applicable to infringements by listed companies of the national provisions adopted pursuant to Article 5(2) and Articles 6 and 7, as applicable, and shall take all necessary measures to ensure that they are implemented. In particular, Member States shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced. The penalties shall be effective, proportionate and dissuasive. Such penalties may comprise fines or the possibility for a judicial body to annul a decision concerning the selection of directors made contrary to the national provisions adopted pursuant to Article 6 or to declare it null and void. Member States shall, by ... [two years after entry into force of this Directive], notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.
2. Listed companies may be held liable only for acts or omissions which can be attributed to them in accordance with national law.
3. Member States shall ensure that, in the performance of public contracts and concessions, listed companies comply with applicable obligations relating to social and labour law, in accordance with applicable Union law.

Article 9

Minimum requirements

Member States may introduce or maintain provisions which are more favourable than those laid down in this Directive to ensure a more balanced representation of women and men in respect of listed companies incorporated in their national territory.

*Article 10***Bodies for the promotion of gender balance in listed companies**

Member States shall designate one or more bodies for the promotion, analysis, monitoring and support of gender balance on boards. For that purpose, Member States may designate, for example, the equality bodies they have designated pursuant to Article 20 of Directive 2006/54/EC of the European Parliament and of the Council ⁽¹³⁾.

*Article 11***Transposition**

1. Member States shall adopt and publish, by ... [*two years after entry into force of this Directive*] the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States which have suspended the application of Article 6 pursuant to Article 12 shall immediately communicate to the Commission the information demonstrating that the conditions laid down in Article 12 are fulfilled.

3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 12***Suspension of the application of Article 6**

1. A Member State may suspend the application of Article 6 and, where relevant, Article 5(2), where, by ... [*the date of entry into force of this Directive*], the following conditions have been fulfilled in that Member State:

- (a) members of the underrepresented sex hold at least 30 % of the non-executive director positions or at least 25 % of all director positions in listed companies; or
- (b) that Member State's national law:
 - (i) requires that members of the underrepresented sex hold at least 30 % of non-executive director positions or at least 25 % of all director positions in listed companies;
 - (ii) includes effective, proportionate and dissuasive enforcement measures in the event of non-compliance with the requirements referred to in point (i); and
 - (iii) requires that all listed companies not covered by that national law set individual quantitative objectives for all director positions.

Where a Member State has suspended the application of Article 6 and, where relevant, Article 5(2) on the basis of either of the conditions set out in paragraph 1 of this Article, the objectives laid down in Article 5(1) shall be deemed to have been achieved in that Member State.

2. For the purpose of assessing the fulfilment of the conditions for a suspension on the basis of paragraph 1, first subparagraph, point (a) or (b), the number of director positions required shall be the number closest to the proportion of 30 % of non-executive directors or 25 % of all director positions, but not exceed 39 %. That shall also be the case where, pursuant to national law, the quantitative objectives laid down in Article 5 are applied separately to shareholder representatives and employee representatives.

⁽¹³⁾ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23).

3. Where, in a Member State which has suspended the application of Article 6 and, where relevant, Article 5(2) pursuant to paragraph 1 of this Article, the conditions set out in paragraph 1 of this Article are no longer fulfilled, Article 6 and, where relevant, Article 5(2) shall apply at the latest six months after such conditions ceased to be fulfilled.

Article 13

Review

1. By ... [*one year after the date provided for in Article 11(1)*], and every two years thereafter, Member States shall communicate to the Commission a report on the implementation of this Directive. Such a report shall include comprehensive information about the measures taken with a view to achieving the objectives laid down in Article 5(1), information provided in accordance with Article 7 and, where applicable, representative information about individual quantitative objectives set by listed companies pursuant to Article 5(2).

2. Member States which have suspended the application of Article 6 and, where relevant, Article 5(2) pursuant to Article 12 shall include in the reports mentioned in paragraph 1 of this Article information showing whether and how the conditions laid down in Article 12 are fulfilled and whether they continue to make progress towards a more balanced representation between women and men among non-executive director positions or all director positions in listed companies.

By ... [*two years after the date provided for in Article 11(1)*], and every two years thereafter, the Commission shall issue a specific report ascertaining, *inter alia*, whether and how the conditions laid down in Article 12(1) are fulfilled and, as applicable, whether the Member States have resumed the application of Article 6 and Article 5(2), in accordance with Article 12(3).

3. By 31 December 2030, and every two years thereafter, the Commission shall review the application of this Directive and report to the European Parliament and to the Council. The Commission shall evaluate in particular whether the objectives of this Directive have been achieved.

4. In its report referred to in paragraph 3 of this Article, the Commission shall assess whether, in the light of developments in the representation of women and men on boards at different levels of decision-making throughout the economy and taking into account whether the progress made is sufficiently sustainable, this Directive is an efficient and effective instrument for increasing the gender balance on boards. On the basis of that assessment, the Commission shall consider whether there is a need to extend the duration of this Directive beyond 31 December 2038 or whether there is a need to amend it, for instance by extending its scope to non-listed companies which do not fall within the definition of SMEs or by revising the conditions set out in Article 12(1), first subparagraph, point (a), so as to ensure continued progress towards a more balanced representation between women and men among executive and non-executive director positions or all director positions in listed companies.

Article 14

Entry into force and expiry

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

It shall expire on 31 December 2038.

Article 15

Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President

ANNEX

Target numbers of directors of the underrepresented sex

Number of positions on the board	Minimum number of non-executive directors of the underrepresented sex necessary to meet the objective of 40 % (Article 5(1), point (a))	Minimum number of directors of the underrepresented sex necessary to meet the objective of 33 % (Article 5(1), point (b))
1	-	-
2	-	-
3	1 (33,3 %)	1 (33,3 %)
4	1 (25 %)	1 (25 %)
5	2 (40 %)	2 (40 %)
6	2 (33,3 %)	2 (33,3 %)
7	3 (42,9 %)	2 (28,6 %)
8	3 (37,5 %)	3 (37,5 %)
9	4 (44,4 %)	3 (33,3 %)
10	4 (40 %)	3 (30 %)
11	4 (36,4 %)	4 (36,4 %)
12	5 (41,7 %)	4 (33,3 %)
13	5 (38,4 %)	4 (30,8 %)
14	6 (42,9 %)	5 (35,7 %)
15	6 (40 %)	5 (33,3 %)
16	6 (37,5 %)	5 (31,3 %)
17	7 (41,2 %)	6 (35,3 %)
18	7 (38,9 %)	6 (33,3 %)
19	8 (42,1 %)	6 (31,6 %)
20	8 (40 %)	7 (35 %)
21	8 (38,1 %)	7 (33,3 %)
22	9 (40,1 %)	7 (31,8 %)
23	9 (39,1 %)	8 (34,8 %)
24	10 (41,7 %)	8 (33,3 %)
25	10 (40 %)	8 (32 %)
26	10 (38,5 %)	9 (34,6 %)
27	11 (40,7 %)	9 (33,3 %)
28	11 (39,3 %)	9 (32,1 %)
29	12 (41,4 %)	10 (34,5 %)
30	12 (40 %)	10 (33,3 %)

Statement of the Council's reasons: Position (EU) No 3/2022 of the Council at first reading with a view to the adoption of a Directive of the European Parliament and of the Council on improving the gender balance among directors of listed companies and related measures

(2022/C 433/05)

I. INTRODUCTION

1. The European Commission submitted the above-mentioned proposal to the European Parliament and to the Council on 14 November 2012.
2. The proposal aimed to address the serious problem of women's under-representation on the boards of listed companies.
3. The European Parliament, during its 7th term, designated the Committee on Legal Affairs (JURI) and Committee on Women's Rights and Gender Equality (FEMM) as committees jointly responsible for the legislative proposal. The JURI Committee appointed Ms Evelyn Regner (SD, AT) and the FEMM Committee appointed Ms Rodi Kratsa-Tsagaropoulou (EPP, EL) as co-rapporteurs and voted on the report on 14 October 2013. The European Parliament adopted its first reading position, containing 66 amendments, on 20 November 2013. ⁽¹⁾
4. During the 9th term of the European Parliament, the JURI and FEMM Committees appointed respectively Ms Lara Wolters (SD, NL) and Ms Evelyn Regner (SD, AT) as the co-rapporteurs and, after the Council had reached its general approach on the proposal, decided jointly, on 16 March 2022, to enter into interinstitutional negotiations, based on the Parliament's first reading position.
5. In the Council, on 1 February 2013, the Working Party on Social Questions first examined the proposal. The Working Party also examined the impact assessment at this and subsequent meetings (18 February 2013 and 25 March 2013).
6. Progress reports were submitted to the EPSCO Council on 20 June 2013, 9 December 2013, 19 June 2014, 11 December 2014 and 18 June 2015. On 7 December 2015, the EPSCO Council examined a compromise text tabled by the Presidency but was unable to reach a qualified majority. A further progress report was presented to the EPSCO Council on 15 June 2017. Following further work at various levels, the Council reached a general approach on 14 March 2022. ⁽²⁾
7. Between March and June 2022, negotiations took place between the European Parliament, the Council and, as facilitator, the Commission, with a view to reaching an agreement on the proposal. On 7 June 2022, the negotiators provisionally agreed on a compromise text, which was subsequently analysed and endorsed by the Committee of Permanent Representatives on 15 June 2022. ⁽³⁾

⁽¹⁾ P7_TA(2013)0488.

⁽²⁾ 6468/22 + ADD 1.

⁽³⁾ 9880/22 + ADD 1.

8. In carrying out its work, the Council also took account of the opinions of the European Economic and Social Committee of 13 February 2013 and of the Committee of the Regions of 30 May 2013.
9. Considering the provisional agreement between the co-legislators and following legal-linguistic revision, the Council is expected to adopt its position at first reading on the proposal in October 2022.

II. OBJECTIVE

10. The Commission's proposal set a 40 % quantitative objective for the proportion of the under-represented sex on the boards of listed companies and an obligation for companies to work towards that objective, *inter alia*, by introducing procedural rules on the selection and appointment of non-executive board members.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

A. General

11. Based on the Commission's proposal, the Parliament and Council have conducted negotiations with the aim of concluding an agreement at the stage of the Council's position at first reading (early second reading agreement). The text of the draft Council position fully reflects the compromise reached between the co-legislators.
12. The Parliament's position at first reading broadly confirmed the approach taken by the Commission in its proposal which presented a minimum standard for fair and transparent selection procedures for improving the gender balance on company boards, but did not set binding quotas. The Council's general approach, which was agreed more than nine years after the Parliament's first reading position, also endorsed this approach, while also stressing the need to acknowledge the different means by which the Member States could achieve the objectives of the Directive, in line with the principle of subsidiarity.
13. The compromise reflected in the Council position at first reading contains the following key elements:

B. Structure and scope

a. Reorganisation of the text

14. The Council reorganised the structure of the text for greater clarity and in order to highlight the distinction between the objectives to be pursued by listed companies and the means to achieve them (see Articles 5 and 6) and in order to clarify the other provisions, including those concerning individual objectives, reporting and bodies for the promotion of equality (see Articles 5, 7 and 10). This restructuring also made it possible to clarify the functioning of the suspension clause (see below). In order to clarify the fact that suspension takes place when implementing the Directive, during the negotiations between the co-legislators, the relevant article was moved to the latter part of the text (see Article 12). The rest of the structure of the agreed text follows the logic introduced by the Council in its general approach.

b. Title

15. The title of the original proposal only referred to non-executive directors although the proposal in fact contained provisions applicable to executive directors as well. In order to ensure clarity, the Council amended the title so as to explain that the Directive covers *all* directors, i.e. *both* executive and non-executive directors. The same clarification was also made where relevant throughout the text. This approach was agreed by the co-legislators during the negotiations and is maintained in the compromise text.

c. **Definitions (Article 3)**

16. In the compromise text, the main definitions have been aligned with the Council's general approach. In particular, the definition of 'a listed company' refers to a company having its registered office in a Member State, and whose *shares* are admitted to trading on a regulated market.

d. **Objectives (Article 5)**

17. Two alternative objectives were already contained in the European Commission's proposal: 40 % for non-executive directors or 33 % for all directors, although the latter option was given less visibility. The Council reformulated the two objectives, making both equally explicit, with a view to clarifying the scope and the alternatives foreseen. The European Parliament had not seen a need for such a change and expressed the concern that it might appear to reduce the level of ambition. As a compromise, Article 5 was slightly reworded, so that it no longer uses the phrase 'aim to attain' but instead refers to the obligation of Member States to ensure that listed companies are 'subject to' one of the two objectives. However, the objectives themselves have been left unchanged.

e. **Public vs private companies, and companies in which members of the under-represented sex represent less than 10 % of employees**

18. The Council wished to delete the provision that made a distinction between public and private companies, the former being subject to an earlier target date. For its part, the Parliament wished to delete the provision that allowed Member States to exempt from the key provisions those companies in which members of the under-represented sex represent less than 10 % of employees. As a compromise, both provisions were deleted.

C. **Selection procedures**

a. **Positive action (Article 6)**

19. The Parliament's position contained several provisions applicable to the pre-selection phase. As a compromise, the co-legislators agreed on a wording that spells out clearly that positive action applies to the entire selection process. In line with this approach and in the light of the established case law on the subject, the compromise text specifies that the objective of improving gender equality should govern the whole process, including pre-selection, and that priority should be given to the under-represented sex provided that the candidate possesses equal qualifications to those of the candidate of the other sex, but not automatically or unconditionally.

b. **Information requirements (Article 6(3))**

20. The Parliament's position extended the list of information that companies would be required to provide to unsuccessful candidates. However, as part of the overall compromise, the relevant provisions were retained in a form close to what was originally proposed by the Commission.

D. **Suspension clause (Article 12)**

21. In its general approach, in a spirit of subsidiarity, the Council further developed and fine-tuned the suspension clause contained in the Commission's proposal, in order to provide essential flexibility to the Member States that had already taken equally effective measures to improve the gender balance on company boards and should therefore be allowed to suspend the procedural requirements set out in the Directive. However, the Parliament considered that the suspension clause contained in the Council's text was potentially too open-ended, and also unclear in parts, thus giving the impression of a loophole. As a compromise, the co-legislators agreed to specify that the suspension clause would only be available to Member States that had adopted national measures that were demonstrably 'equally effective', meaning that either binding quantitative measures in national legislation or actual results in terms of a specific percentage achieved should be required. Moreover, according to the compromise text, for a Member State to be able to avail itself of the suspension clause, the conditions must be fulfilled by the date of entry into force of the Directive.

22. Moreover, the compromise that was struck includes *a closed list of conditions* to be fulfilled by Member States in order to qualify for suspension and a clearer description of the core elements that the national legislation should include. It also omits the additional option contained in the Commission's proposal that would have allowed for a suspension based on momentum towards progress (rather than a specific percentage already achieved). In addition, a provision was inserted into the review article requiring the Commission to consider the possible need to revise the conditions of the suspension clause in its 2030 report. In addition, Member States making use of the suspension clause will also be required to report not only on whether and how they have fulfilled the applicable conditions, but also on whether they are making further progress towards a more balanced representation of both sexes, which is in line with their broader obligation to report on their progress in general. The compromise also stipulates that Member States apply the Directive and the Commission reports on this application.

E. Dates and deadlines (Article 5)

23. Given the number of years that had elapsed since the proposal was first conceived, the Council updated the dates and deadlines in its general approach. However, the Parliament, having adopted its opinion already in 2013, did not have the opportunity for such updating. The negotiations between the co-legislators focused on the transposition deadline and on the target date set with reference to the objectives of the directive, with the Parliament calling for a tighter calendar. The compromise agreed reverts to a standard transposition period of two years and sets the target date for reaching the quantitative objectives at 30 June 2026, halfway between the co-legislators' respective mandates.

F. Penalties (Article 8)

24. There was a significant gap between the position contained in the Council's general approach, which retained a short and general wording, referring to 'enforcement measures', and that of the Parliament, which was more detailed and would have obliged Member States to put in place specific penalties such as fines, annulment of appointments, and exclusion from public tenders and from access to European funds. The compromise text that was agreed uses the term 'penalties' and takes up the Commission's original idea of mentioning, by way of example only, fines and annulment of appointments. A general provision on public procurement has also been included, obliging Member States to ensure that, in the performance of public contracts and concessions, listed companies comply with applicable obligations relating to social and labour law, in accordance with applicable EU legislation. Finally, an alternative form of sanction or informal incentive was also included in the text as part of the compromise, namely, publication by Member States of a list of companies that have succeeded in meeting the quantitative objectives set in the Directive.

G. Review (Article 13)

25. In its position, the Parliament envisaged making explicit the possibility for the Commission to propose a revision of the scope of the Directive to include the European institutions and bodies, non-listed companies, sanctions and the suspension clause. The Council favoured a more general formulation, bearing in mind that the Commission in any case has the right of initiative when it comes to deciding on future proposals revising or supplementing the Directive. The compromise text invites the Commission to examine, in its 2030 report, the effectiveness of the Directive, the possible need to extend the scope of the directive at a later date to cover non-listed companies that are not SMEs, and one of the conditions of the suspension clause, namely the one based on progress made (Article 12(1)(a)). SMEs and the EU institutions are clearly excluded from the review article as it appears in the compromise that was reached. However, a recital on the exemplary role of the EU institutions has been added to take note of existing equality strategies (Recital 12).

H. **Technical annex**

26. In its position, the Council added a technical annex spelling out the specific number of director positions deemed necessary to attain the quantitative objectives that are expressed in percentages in the Directive. This annex is included in the compromise agreed by the co-legislators.

IV. **CONCLUSION**

27. The Council's position preserves the main objectives of the European Commission's proposal and fully respects the compromise reached in the informal negotiations between the Council and the European Parliament, with the support of the Commission.
 28. The compromise reached by the co-legislators was confirmed by a letter from the Chairs of the European Parliament's JURI Committee and FEMM Committee dated 16 June 2022. It is expected to be adopted by the Council as a first-reading position in due course.
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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Euro exchange rates ⁽¹⁾

14 November 2022

(2022/C 433/06)

1 euro =

Currency	Exchange rate	Currency	Exchange rate		
USD	US dollar	1,0319	CAD	Canadian dollar	1,3706
JPY	Japanese yen	144,86	HKD	Hong Kong dollar	8,0852
DKK	Danish krone	7,4382	NZD	New Zealand dollar	1,6957
GBP	Pound sterling	0,87513	SGD	Singapore dollar	1,4177
SEK	Swedish krona	10,7713	KRW	South Korean won	1 369,32
CHF	Swiss franc	0,9751	ZAR	South African rand	17,8393
ISK	Iceland króna	150,30	CNY	Chinese yuan renminbi	7,2906
NOK	Norwegian krone	10,3143	HRK	Croatian kuna	7,5465
BGN	Bulgarian lev	1,9558	IDR	Indonesian rupiah	16 052,12
CZK	Czech koruna	24,289	MYR	Malaysian ringgit	4,7429
HUF	Hungarian forint	407,28	PHP	Philippine peso	59,040
PLN	Polish zloty	4,6898	RUB	Russian rouble	
RON	Romanian leu	4,9043	THB	Thai baht	36,978
TRY	Turkish lira	19,1923	BRL	Brazilian real	5,4605
AUD	Australian dollar	1,5427	MXN	Mexican peso	20,0985
			INR	Indian rupee	83,7779

⁽¹⁾ Source: reference exchange rate published by the ECB.

COUNCIL

Notice for the attention of the persons and entity subject to the restrictive measures provided for in Council Decision (CFSP) 2018/1544, as amended by Council Decision (CFSP) 2022/2232, and in Council Regulation (EU) 2018/1542, as implemented by Council Implementing Regulation (EU) 2022/2228 concerning restrictive measures against the proliferation and use of chemical weapons

(2022/C 433/07)

The following information is brought to the attention of the persons and entity that appear in the Annex to Council Decision (CFSP) 2018/1544 ⁽¹⁾, as amended by Council Decision (CFSP) 2022/2232 ⁽²⁾, and in Annex I to Council Regulation (EU) 2018/1542 ⁽³⁾, as implemented by Council Implementing Regulation (EU) 2022/2228 ⁽⁴⁾ concerning restrictive measures against the proliferation and use of chemical weapons.

The Council of the European Union has decided that the persons and entity that appear in the above-mentioned Annexes should be included on the list of persons and entities subject to the restrictive measures provided for in Decision (CFSP) 2018/1544 and Regulation (EU) 2018/1542 concerning restrictive measures against the proliferation and use of chemical weapons. The grounds for the listing of the persons and entity concerned appear in the relevant entries in those Annexes.

The attention of the persons and entity concerned is drawn to the possibility of making an application to the competent authorities of the relevant Member State(s) as indicated on the websites in Annex II to Regulation (EU) 2018/1542, in order to obtain an authorisation to use frozen funds for basic needs or specific payments (cf. Article 3 of the Regulation).

The persons and entity concerned may submit a request to the Council, together with supporting documentation, that the decision to include them on the above-mentioned lists should be reconsidered, before 19 June 2023, to the following address:

Council of the European Union
General Secretariat
RELEX.1
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË

Email: sanctions@consilium.europa.eu

Any observations received will be taken into account for the purpose of the Council's periodic review, in accordance with Article 8 of Decision (CFSP) 2018/1544 and Article 12(4) of Regulation (EU) 2018/1542.

The attention of the persons and entity concerned is also drawn to the possibility of challenging the Council's decision before the General Court of the European Union, in accordance with the conditions laid down in Article 275, second paragraph, and Article 263, fourth and sixth paragraphs, of the Treaty on the Functioning of the European Union.

⁽¹⁾ OJ L 259, 16.10.2018, p. 25.

⁽²⁾ OJ L 293, 14.11.2022, p. 32.

⁽³⁾ OJ L 259, 16.10.2018, p. 12.

⁽⁴⁾ OJ L 293, 14.11.2022, p. 1.

Notice for the attention of the data subjects to whom the restrictive measures provided for in Council Decision (CFSP) 2018/1544 and Council Regulation (EU) 2018/1542 concerning restrictive measures against the proliferation and use of chemical weapons apply

(2022/C 433/08)

The attention of data subjects is drawn to the following information in accordance with Article 16 of Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽¹⁾.

The legal basis for this processing operation are Council Decision (CFSP) 2018/1544 ⁽²⁾, as amended by Council Decision (CFSP) 2022/2232 ⁽³⁾, and Council Regulation (EU) 2018/1542 ⁽⁴⁾, as implemented by Council Implementing Regulation (EU) 2022/2228 ⁽⁵⁾.

The controller of this processing operation is the Department RELEX.1 in the Directorate-General External Relations - RELEX of the General Secretariat of the Council (GSC), that can be contacted at:

Council of the European Union
General Secretariat
RELEX.1
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË

Email: sanctions@consilium.europa.eu

The GSC's Data Protection Officer can be contacted at:

Data Protection Officer

data.protection@consilium.europa.eu

The purpose of the processing operation is the establishment and updating of the list of persons subject to restrictive measures in accordance with Council Decision (CFSP) 2018/1544, as amended by Council Decision (CFSP) 2022/2232, and Council Regulation (EU) 2018/1542, as implemented by Council Implementing Regulation (EU) 2022/2228.

The data subjects are the natural persons who fulfil the listing criteria as laid down in Decision (CFSP) 2018/1544 and Regulation (EU) 2018/1542.

The personal data collected includes data necessary for the correct identification of the person concerned, the statement of reasons and any other data related thereto.

The personal data collected may be shared as necessary with the European External Action Service and the Commission.

Without prejudice to restrictions pursuant to Article 25 of Regulation (EU) 2018/1725, the exercise of the rights of the data subjects such as the right of access, as well as the rights to rectification or to object will be answered in accordance with Regulation (EU) 2018/1725.

Personal data will be retained for 5 years from the moment the data subject has been removed from the list of persons subject to the restrictive measures or the validity of the measure has expired, or for the duration of court proceedings in the event they had been started.

⁽¹⁾ OJ L 295, 21.11.2018, p. 39.

⁽²⁾ OJ L 259, 16.10.2018, p. 25.

⁽³⁾ OJ L 293, 14.11.2022, p. 32.

⁽⁴⁾ OJ L 259, 16.10.2018, p. 12.

⁽⁵⁾ OJ L 293, 14.11.2022, p. 1.

Without prejudice to any judicial, administrative or non-judicial remedy, data subjects may lodge a complaint with the European Data Protection Supervisor in accordance with Regulation (EU) 2018/1725 (edps@edps.europa.eu).

Notice for the attention of the persons, entities and bodies subject to the restrictive measures provided for in Council Decision 2014/145/CFSP, as amended by Council Decisions (CFSP) 2022/2233, and Council Regulation (EU) No 269/2014, as implemented by Council Implementing Regulation (EU) 2022/2229 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

(2022/C 433/09)

The following information is brought to the attention of the persons, entities and bodies that appear in the Annex to Council Decision 2014/145/CFSP ⁽¹⁾, as amended by Council Decision (CFSP) 2022/2233 ⁽²⁾, and in Annex I to Council Regulation (EU) No 269/2014 ⁽³⁾, as implemented by Council Implementing Regulation (EU) 2022/2229 ⁽⁴⁾ concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

The Council of the European Union has decided that those persons, entities and bodies should be included on the list of persons, entities and bodies subject to restrictive measures provided for in Council Decision 2014/145/CFSP and in Council Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. The grounds for the designation of those persons, entities and bodies appear in the relevant entries in those Annexes.

The attention of the persons, entities and bodies concerned is drawn to the possibility of making an application to the competent authorities of the relevant Member State(s) as indicated in the websites in Annex II to Council Regulation (EU) No 269/2014, in order to obtain an authorisation to use frozen funds for basic needs or specific payments (cf. Article 4 of the Regulation).

The persons, entities and bodies concerned may submit a request to the Council, together with supporting documentation, that the decision to include them on the above-mentioned list should be reconsidered, to the following address before 30 December 2022:

Council of the European Union
General Secretariat
RELEX.1
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË
Email: sanctions@consilium.europa.eu

The attention of the persons, entities and bodies concerned is also drawn to the possibility of challenging the Council's decision before the General Court of the European Union, in accordance with the conditions laid down in Article 275, second paragraph, and Article 263, fourth and sixth paragraphs, of the Treaty on the Functioning of the European Union.

⁽¹⁾ OJ L 78, 17.3.2014, p. 16.

⁽²⁾ OJ L 293, 14.11.2022, p. 40.

⁽³⁾ OJ L 78, 17.3.2014, p. 6.

⁽⁴⁾ OJ L 293, 14.11.2022, p. 9.

Notice for the attention of the natural or legal persons, entities or bodies subject to the restrictive measures provided for in Council Decision 2014/145/CFSP, as amended by Council Decision (CFSP) 2022/2233, and Council Regulation (EU) No 269/2014 as implemented by Council Implementing Regulation (EU) 2022/2229 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

(2022/C 433/10)

The following information is brought to the attention of the natural or legal persons, entities or bodies that appear in the Annex to Council Decision 2014/145/CFSP ⁽¹⁾, as amended by Council Decision (CFSP) 2022/2233 ⁽²⁾, and in Annex I to Council Regulation (EU) No 269/2014 ⁽³⁾ as implemented by Council Implementing Regulation (EU) 2022/2229 ⁽⁴⁾ concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

Article 9(2) of Regulation (EU) No 269/2014 requires that those natural or legal persons, entities or bodies must report, before 1 September 2022 or within 6 weeks from the date of listing in Annex I, whichever is latest, funds or economic resources within the jurisdiction of a Member State belonging to, owned, held or controlled by them, to the competent authority of the Member State where those funds or economic resources are located. They must cooperate with the national competent authority in any verification of such information. Failure to comply with these obligations will be considered as circumvention of the measures on the freezing of funds and of economic resources.

The information to be reported must be sent to the competent authority of the relevant Member State, via its website as indicated in Annex II to Regulation (EU) No 269/2014 ⁽⁵⁾.

The obligation to report under Article 9(2) of Regulation (EU) No 269/2014 does not apply until 1 January 2023 with regard to funds or economic resources located in a Member State which had laid down a similar reporting obligation under national law before 21 July 2022.

⁽¹⁾ OJ L 78, 17.3.2014, p. 16.

⁽²⁾ OJ L 293, 14.11.2022, p. 40.

⁽³⁾ OJ L 78, 17.3.2014, p. 6.

⁽⁴⁾ OJ L 293, 14.11.2022, p. 9.

⁽⁵⁾ Last consolidated version available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0269-20220916&qid=1666170179071>

Notice for the attention of the data subjects to whom the restrictive measures provided for in Council Decision 2014/145/CFSP and Council Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine apply

(2022/C 433/11)

The attention of data subjects is drawn to the following information in accordance with Article 16 of Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽¹⁾.

The legal bases for this processing operation are Council Decision 2014/145/CFSP ⁽²⁾, as amended by Council Decision (CFSP) 2022/2233 ⁽³⁾, and Council Regulation (EU) No 269/2014 ⁽⁴⁾, as implemented by Council Implementing Regulation (EU) 2022/2229 ⁽⁵⁾.

The controller of this processing operation is department RELEX.1 in the Directorate-General for External Relations (RELEX) of the General Secretariat of the Council (GSC), which may be contacted at:

Council of the European Union
General Secretariat
RELEX.1
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË

Email: sanctions@consilium.europa.eu

The GSC's Data Protection Officer can be contacted at:

Data Protection Officer

data.protection@consilium.europa.eu

The purpose of the processing operation is the establishment and updating of the list of persons subject to restrictive measures in accordance with Decision 2014/145/CFSP, as amended by Decisions (CFSP) 2022/2233, and Regulation (EU) No 269/2014, as implemented by Implementing Regulation (EU) 2022/2229.

The data subjects are the natural persons who fulfil the listing criteria as laid down in Decision 2014/145/CFSP and Regulation (EU) No 269/2014.

The personal data collected include data necessary for the correct identification of the person concerned, the statement of reasons and any other data related thereto.

The personal data collected may be shared as necessary with the European External Action Service and the Commission.

Without prejudice to restrictions pursuant to Article 25 of Regulation (EU) 2018/1725, the exercise of the rights of the data subjects, such as the right of access and the right to rectification or to object, will be governed by the provisions of Regulation (EU) 2018/1725.

Personal data will be retained for five years from the moment the data subject has been removed from the list of persons subject to the restrictive measures or the validity of the measure has expired, or for the duration of court proceedings in the event they had been started.

⁽¹⁾ OJ L 295, 21.11.2018, p. 39.

⁽²⁾ OJ L 78, 17.3.2014, p. 16.

⁽³⁾ OJ L 293, 14.11.2022, p. 40.

⁽⁴⁾ OJ L 78, 17.3.2014, p. 6.

⁽⁵⁾ OJ L 293, 14.11.2022, p. 9.

Without prejudice to any judicial, administrative or non-judicial remedy, data subjects may lodge a complaint with the European Data Protection Supervisor in accordance with Regulation (EU) No 2018/1725 (edps@edps.europa.eu).

Notice for the attention of the person to whom measures provided for in Council Decision 2011/235/CFSP as implemented by Implementing Decision (CFSP) 2022/2234 and in Council Regulation (EU) No 359/2011, as implemented by Implementing Regulation (EU) 2022/2230 concerning restrictive measures directed against certain persons and entities in view of the situation in Iran apply

(2022/C 433/12)

The following information is brought to the attention of the person that appear in the Annex to Council Decision 2011/235/CFSP ⁽¹⁾, as implemented by Council Implementing Decision (CFSP) 2022/2234 ⁽²⁾, and in Annex I to Council Regulation (EU) No 359/2011 ⁽³⁾, as implemented by Council Implementing Regulation (EU) 2022/2230 ⁽⁴⁾ concerning restrictive measures directed against certain persons and entities in view of the situation in Iran.

The Council of the European Union has decided that this person should be included on the list of persons and entities subject to restrictive measures provided for in Decision 2011/235/CFSP and in Regulation (EU) No 359/2011.

The attention of the person concerned is drawn to the possibility of making an application to the competent authorities of the relevant Member State(s) as indicated on the websites in Annex II to Regulation (EU) No 359/2011, in order to obtain an authorisation to use frozen funds for basic needs or specific payments (cf. Article 4 of the Regulation).

The person concerned may submit a request to the Council before 31 December 2022, together with supporting documentation that the decision to include them on the above-mentioned list should be reconsidered to the following address:

Council of the European Union
General Secretariat
RELEX.1
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË

Email: sanctions@consilium.europa.eu

The attention of the persons concerned is also drawn to the possibility of challenging the Council's decision before the General Court of the European Union, in accordance with the conditions laid down in Article 275, 2nd paragraph, and Article 263, 4th and 6th paragraphs, of the Treaty on the Functioning of the European Union.

⁽¹⁾ OJ L 100, 14.4.2011, p. 51.

⁽²⁾ OJ L 294, 14.11.2022, p. 43.

⁽³⁾ OJ L 100, 14.4.2011, p. 1.

⁽⁴⁾ OJ L 294, 14.11.2022, p. 13.

Notice for the attention of the data subjects to whom the restrictive measures provided for in Council Decision 2011/235/CFSP and Council Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons and entities in view of the situation in Iran apply

(2022/C 433/13)

The attention of data subjects is drawn to the following information in accordance with Article 16 of Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽¹⁾.

The legal basis for this processing operation are Council Decision 2011/235/CFSP ⁽²⁾, as implemented by Implementing Decision (CFSP) 2022/2234 ⁽³⁾, and Council Regulation (EU) No 359/2011 ⁽⁴⁾, as implemented by Council Implementing Regulation (EU) 2022/2230 ⁽⁵⁾.

The controller of this processing operation is RELEX.1 in the Directorate-General for External Relations - RELEX of the General Secretariat of the Council (GSC), that can be contacted at:

Council of the European Union
General Secretariat
RELEX.1
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË

Email: sanctions@consilium.europa.eu

The GSC's Data Protection Officer can be contacted at:

Data Protection Officer

data.protection@consilium.europa.eu

The purpose of the processing operation is the establishment and updating of the list of persons subject to restrictive measures in accordance with Decision 2011/235/CFSP, as implemented by Implementing Decision (CFSP) 2022/2234, and Regulation (EU) No 359/2011, as implemented by Implementing Regulation (EU) 2022/2230.

The data subjects are the natural persons who fulfil the listing criteria as laid down in Decision 2011/235/CFSP and Regulation (EU) No 359/2011.

The personal data collected includes data necessary for the correct identification of the person concerned, the statement of reasons and any other data related thereto.

The personal data collected may be shared as necessary with the European External Action Service and the Commission.

Without prejudice to restrictions pursuant to Article 25 of Regulation (EU) 2018/1725, the exercise of the rights of the data subjects such as the right of access, as well as the rights to rectification or to object will be answered in accordance with Regulation (EU) 2018/1725.

Personal data will be retained for 5 years from the moment the data subject has been removed from the list of persons subject to the restrictive measures or the validity of the measure has expired, or for the duration of court proceedings in the event they had been started.

⁽¹⁾ OJ L 295, 21.11.2018, p. 39.

⁽²⁾ OJ L 100, 14.4.2011, p. 51.

⁽³⁾ OJ LI 293, 14.11.2022, p. 43.

⁽⁴⁾ OJ L 100, 14.4.2011, p. 1.

⁽⁵⁾ OJ LI 293, 14.11.2022, p. 13.

Without prejudice to any judicial, administrative or non-judicial remedy, data subjects may lodge a complaint with the European Data Protection Supervisor in accordance with Regulation (EU) 2018/1725 (edps@edps.europa.eu).

Notice for the attention of the persons, entities and bodies to whom measures provided for in Council Decision 2011/235/CFSP, as implemented by Council Implementing Decision (CFSP) 2022/2235 and in Council Regulation (EU) No 359/2011, as implemented by Council Implementing Regulation (EU) 2022/2231 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran apply

(2022/C 433/14)

The following information is brought to the attention of the persons and entities that appear in the Annex to Council Decision 2011/235/CFSP ⁽¹⁾, as implemented by Council Implementing Decision (CFSP) 2022/2235 ⁽²⁾, and in Annex I to Council Regulation (EU) No 359/2011 ⁽³⁾, as implemented by Council Implementing Regulation (EU) 2022/2231 ⁽⁴⁾ concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran.

The Council of the European Union has decided that those persons and entities should be included on the list of persons and entities subject to restrictive measures provided for in Decision 2011/235/CFSP and in Regulation (EU) No 359/2011.

The attention of the persons and entities concerned is drawn to the possibility of making an application to the competent authorities of the relevant Member State(s) as indicated on the websites in Annex II to Regulation (EU) No 359/2011, in order to obtain an authorisation to use frozen funds for basic needs or specific payments (cf. Article 4 of the Regulation).

The persons and entities concerned may submit a request to the Council before 31 December 2022, together with supporting documentation that the decision to include them on the above-mentioned list should be reconsidered to the following address:

Council of the European Union
General Secretariat
RELEX.1
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË

Email: sanctions@consilium.europa.eu

The attention of the persons and entities concerned is also drawn to the possibility of challenging the Council's decision before the General Court of the European Union, in accordance with the conditions laid down in Article 275, 2nd paragraph, and Article 263, 4th and 6th paragraphs, of the Treaty on the Functioning of the European Union.

⁽¹⁾ OJ L 100, 14.4.2011, p. 51.

⁽²⁾ OJ L 293, 14.11.2022, p. 46.

⁽³⁾ OJ L 100, 14.4.2011, p. 1.

⁽⁴⁾ OJ L 293, 14.11.2022, p. 16.

Notice for the attention of the data subjects to whom the restrictive measures provided for in Council Decision 2011/235/CFSP and Council Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran apply

(2022/C 433/15)

The attention of data subjects is drawn to the following information in accordance with Article 16 of Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽¹⁾.

The legal basis for this processing operation are Council Decision 2011/235/CFSP ⁽²⁾, as implemented by Council Implementing Decision (CFSP) 2022/2235 ⁽³⁾, and Council Regulation (EU) No 359/2011 ⁽⁴⁾, as implemented by Council Implementing Regulation (EU) 2022/2231 ⁽⁵⁾.

The controller of this processing operation is RELEX.1 in the Directorate-General for External Relations - RELEX of the General Secretariat of the Council (GSC), that can be contacted at:

Council of the European Union

General Secretariat
RELEX.1
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË
Email: sanctions@consilium.europa.eu

The GSC's Data Protection Officer can be contacted at:

Data Protection Officer

data.protection@consilium.europa.eu

The purpose of the processing operation is the establishment and updating of the list of persons subject to restrictive measures in accordance with Decision 2011/235/CFSP, as implemented by Implementing Decision (CFSP) 2022/2235, and Regulation (EU) No 359/2011, as implemented by Implementing Regulation (EU) 2022/2231.

The data subjects are the natural persons who fulfil the listing criteria as laid down in Decision 2011/235/CFSP and Regulation (EU) No 359/2011.

The personal data collected includes data necessary for the correct identification of the person concerned, the statement of reasons and any other data related thereto.

The personal data collected may be shared as necessary with the European External Action Service and the Commission.

Without prejudice to restrictions pursuant to Article 25 of Regulation (EU) 2018/1725, the exercise of the rights of the data subjects such as the right of access, as well as the rights to rectification or to object will be answered in accordance with Regulation (EU) 2018/1725.

Personal data will be retained for 5 years from the moment the data subject has been removed from the list of persons subject to the restrictive measures or the validity of the measure has expired, or for the duration of court proceedings in the event they had been started.

⁽¹⁾ OJ L 295, 21.11.2018, p. 39.

⁽²⁾ OJ L 100, 14.4.2011, p. 51.

⁽³⁾ OJ L 293, 14.11.2022, p. 46.

⁽⁴⁾ OJ L 100, 14.4.2011, p. 1.

⁽⁵⁾ OJ L 293, 14.11.2022, p. 16.

Without prejudice to any judicial, administrative or non-judicial remedy, data subjects may lodge a complaint with the European Data Protection Supervisor in accordance with Regulation (EU) 2018/1725 (edps@edps.europa.eu).

The following information is brought to the attention of - ABDOLLAHI Hamed, AL-NASSER Abdelkarim Hussein Mohamed, AL-YACOUB Ibrahim Salih Mohammed, ARBABSIAR Manssor, ASSADI Assadollah, BOUYERI Mohammed, EL HAJJ Hassan Hassan, AL-DIN Izz Hasan, MELIAD Farah, MOHAMMED Khalid Sheikh, SHAHLAI Abdul Reza, SHAKURI Ali Gholam, Al-Aqsa Martyrs' Brigade, Communist Party of the Philippines, including 'New People's Army' – 'NPA', Hizballah Military Wing, Ejército de Liberación Nacional ('National Liberation Army'), Popular Front for the Liberation of Palestine – 'PFLP', Popular Front for the Liberation of Palestine – General Command, Sendero Luminoso – 'SL' ('Shining Path'), and Teyrbazen Azadiya Kurdistan' – 'TAK' persons and groups included on the list of persons, groups and entities subject to Articles 2, 3 and 4 of Council Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and to Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism(see Annexes to Council Decision (CFSP) 2022/1241 and Council Implementing Regulation (EU) 2022/1230)

(2022/C 433/16)

The following information is brought to the attention of the above-mentioned persons and groups listed in Council Decision (CFSP) 2022/1241 ⁽¹⁾ and Council Implementing Regulation (EU) 2022/1230 ⁽²⁾.

Council Regulation (EC) No 2580/2001 ⁽³⁾ provides for a freezing of all funds, other financial assets and economic resources belonging to the persons and groups concerned and that no funds, other financial assets and economic resources may be made available to them, whether directly or indirectly.

The Council has been provided with new information relevant to the listing of the above-mentioned persons and groups. Having considered this new information, the Council intends to amend the statements of reasons accordingly.

The persons and groups concerned may submit a request to obtain the intended statements of reasons for maintaining them on the above-mentioned list to the following address:

Council of the European Union (Attn: COMET designations)
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË
Email: sanctions@consilium.europa.eu

Such a request should be submitted by 22 November 2022.

The persons and groups may submit at any time a request to the Council, together with any supporting documentation, that the decision to include and maintain them on the list should be reconsidered, to the address provided above. Such requests will be considered when they are received. In this respect, the attention of the persons and groups concerned is drawn to the regular review by the Council of the list according to Article 1(6) of Council Common Position 2001/931/CFSP ⁽⁴⁾.

The attention of the persons and groups concerned is drawn to the possibility of making an application to the competent authorities of the relevant Member State(s) as listed in the Annex to the Regulation in order to obtain an authorisation to use frozen funds for essential needs or specific payments in accordance with Article 5(2) of that Regulation.

⁽¹⁾ OJ L 190, 19.7.2022, p. 133.

⁽²⁾ OJ L 190, 19.7.2022, p. 1.

⁽³⁾ OJ L 344, 28.12.2001, p. 70.

⁽⁴⁾ OJ L 344, 28.12.2001, p. 93.

Notice for the attention of the persons subject to the restrictive measures provided for in Council Decision 2011/72/CFSP and Council Regulation (EU) No 101/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia

(2022/C 433/17)

The following information is brought to the attention of the persons that appear in the Annex to Council Decision 2011/72/CFSP ⁽¹⁾, and in Annex I to Council Regulation (EU) No 101/2011 ⁽²⁾, concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia.

The Council has received information from the Tunisian authorities that will be considered within the framework of the annual review of the restrictive measures concerning all persons listed in the Annex to Decision 2011/72/CFSP and in Annex I to Regulation (EU) No 101/2011. The persons concerned are hereby informed that they may submit a request to the Council to obtain the information that relates to them, before 22 November 2022, to the following address:

Council of the European Union
General Secretariat
RELEX.1
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË

Email: sanctions@consilium.europa.eu

Any observations received will be taken into account for the purpose of the Council's periodic review, in accordance with Article 5 of Decision 2011/72/CFSP and Article 12(4) of Regulation (EU) No 101/2011.

⁽¹⁾ OJ L 28, 2.2.2011, p. 62.

⁽²⁾ OJ L 31, 5.2.2011, p. 1.

COURT OF AUDITORS

Annual report on EU Joint Undertakings for the 2021 financial year

(2022/C 433/18)

The European Court of Auditors will publish its annual report for the 2021 financial year on EU Joint Undertakings, together with their replies, on 15 November 2022.

The report can be consulted directly or downloaded, from 17:00 on 15 November 2022, at the European Court of Auditors' website:

<https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=62403>

NOTICES FROM MEMBER STATES

Notice issued by the Ministry of the Environment of the Czech Republic in accordance with Article 3(2) of Directive 94/22/EC of the European Parliament and of the Council on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons

(2022/C 433/19)

In accordance with Article 3(2) of Directive 94/22/EC of the European Parliament and of the Council on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons, the Ministry of the Environment hereby gives notice that it has received an application for prior consent for a proposal to establish the Karviná-Doly IV extraction site for the working of the natural gas deposit associated with the Důl Darkov coal seam, plant No 3 (deposit registration number 070423). The application relates to a polygonal area of approximately 4,49875 km². The area is situated within the cadastral area of the municipalities of Karviná-Doly, Stonava and Darkov in the Moravia-Silesia Region (north-eastern Czech Republic).

With reference to the Directive mentioned in the title and to Section 24 of Act No 44/1988 on the protection and exploitation of mineral resources (the Mining Act), as amended, the Ministry of the Environment of the Czech Republic invites legal or natural persons authorised to carry out mining activities (contracting entities) to submit a competing application for prior consent to establish an extraction site in the area delineated above.

The authority competent to take the decision is the Ministry of the Environment. The criteria, conditions and requirements laid down in Article 5(1) and (2) and Article 6(2) of the Directive are set out in full in Czech legislation in Act No 44/1988 on the protection and exploitation of mineral resources (the Mining Act), as amended.

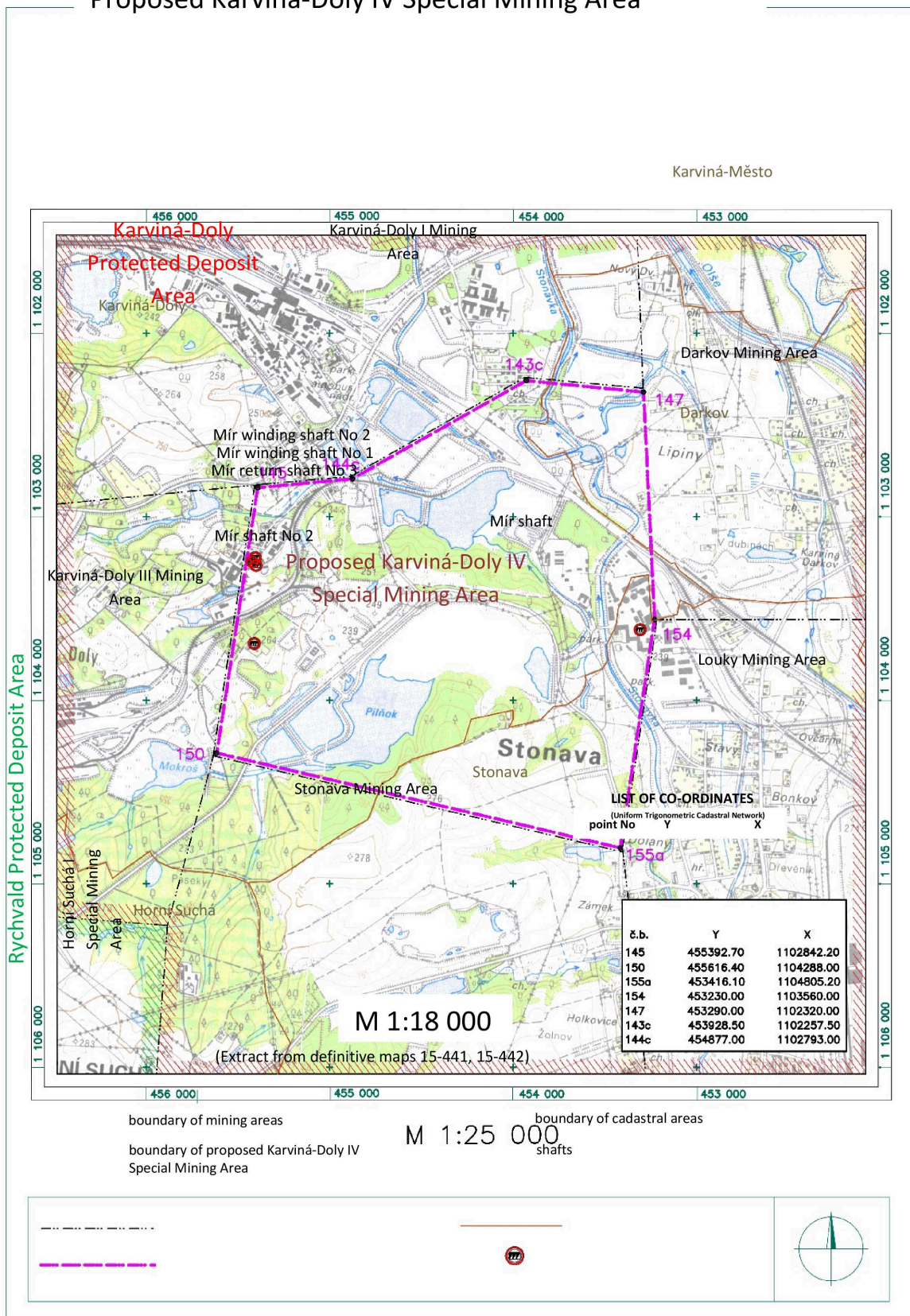
Applications may be submitted during the 90 days following publication of this notice in the *Official Journal of the European Union* and should be sent to the Ministry of the Environment at the following address:

RNDr. Martin Holý
ředitel odboru geologie
Ministerstvo životního prostředí
Vršovická 65
100 10 Praha 10
CZECH REPUBLIC

Applications received after the expiry of this period will not be considered. A decision on the applications will be taken no later than 12 months after this period has expired. Further information is available on request from the geology department of the Ministry via the email address martin.holy@mzp.cz.

ANNEX

Proposed Karviná-Doly IV Special Mining Area



V

(Announcements)

ADMINISTRATIVE PROCEDURES

EUROPEAN COMMISSION

NOTICE PURSUANT TO ARTICLE 29(2) OF THE STAFF REGULATIONS

Publication of a vacancy for three functions of Director 'Resources' (Grade AD 14) in the Directorates-General for:

International Partnerships (INTPA)

Health and Food Safety (SANTE)

Trade (TRADE)

COM/2022/10419

(2022/C 433/20)

The European Commission has published a vacancy notice (reference COM/2022/10419) for three functions of Director 'Resources' (Grade AD 14) in the Directorates-General for International Partnership (INTPA), Health and Food Safety (SANTE) and Trade (TRADE).

To consult the text of the vacancy notice in 24 languages and to submit your application, please visit this dedicated webpage on the European Commission's website: <https://europa.eu/!RNhCDw>

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

Prior notification of a concentration

(Case M.10943 – ENEL / CVC CAPITAL PARTNERS / GRIDSPERTISE)

Candidate case for simplified procedure

(Text with EEA relevance)

(2022/C 433/21)

1. On 3 November 2022, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ⁽¹⁾.

This notification concerns the following undertakings:

- Enel S.p.A. ('Enel', Italy),
- CVC Capital Partners SICAV-FIS S.A. ('CVC Capital Partners', Luxembourg),
- Gridspertise S.r.l. ('Gridspertise', Italy), currently controlled by Enel.

Enel and CVC Capital Partners will acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of Gridspertise.

The concentration is accomplished by way of purchase of shares.

2. The business activities of the undertakings concerned are the following:

- Enel: an integrated global player active in electricity generation and gas distribution and supply,
- CVC Capital Partners: a provider of advice to and management of investment funds with interests in a number of companies active in a variety of industries around the world,
- Gridspertise: a supplier of smart grid equipment for distributor system operators and grid users.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved.

Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 ⁽²⁾ it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. The following reference should always be specified:

M.10943 – ENEL / CVC CAPITAL PARTNERS / GRIDSPERTISE

⁽¹⁾ OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').

⁽²⁾ OJ C 366, 14.12.2013, p. 5.

Observations can be sent to the Commission by email, by fax, or by post. Please use the contact details below:

Email: COMP-MERGER-REGISTRY@ec.europa.eu

Fax +32 22964301

Postal address:

European Commission
Directorate-General for Competition
Merger Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Prior notification of a concentration**(Case M.10927 – ACTION LOGEMENT / AG2R LA MONDIALE / BNP PARIBAS / JV)****Candidate case for simplified procedure****(Text with EEA relevance)**

(2022/C 433/22)

1. On 7 November 2022, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ⁽¹⁾.

This notification concerns the following undertakings:

- In'li (France), controlled by the Action Logement (France) group,
- AGLM Immo (France), controlled by the AG2R La Mondiale (France) group,
- Pierre Impact (France), controlled by BNP Paribas (France),
- JV ('Target', France).

In'li, AGLM Immo and Pierre Impact will acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of Target, a fully-fledged joint venture.

The concentration is accomplished by way of purchase of shares in a newly created company constituting a joint venture.

2. The business activities of the undertakings concerned:

- In'li: a real estate company, subsidiary of the Action Logement group, active in France in the social and intermediate housing sector,
- AGLM Immo: a subsidiary of the AG2R La Mondiale group, incorporated to facilitate the ownership of all the real estate assets of all the companies in AG2R La Mondiale, which is an insurance group active in France and Luxembourg, specialising in personal insurance (pensions, health, life provident, savings, social welfare),
- Pierre Impact: a management company offering various multi-product real-estate services in France and in several EEA countries,
- Target: a fully-fledged joint venture that will carry out real estate activities in France in the residential sector.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved.

Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 ⁽²⁾, it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

⁽¹⁾ OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').

⁽²⁾ OJ C 366, 14.12.2013, p. 5.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. The following reference should always be specified:

M.10927 – ACTION LOGEMENT / AG2R LA MONDIALE / BNP PARIBAS / JV

Observations can be sent to the Commission by email, by fax, or by post. Please use the contact details below:

Email: COMP-MERGER-REGISTRY@ec.europa.eu

Fax +32 229-64301

Postal address:

European Commission
Directorate-General for Competition
Merger Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

OTHER ACTS

EUROPEAN COMMISSION

Publication of an application for registration of a name pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs

(2022/C 433/23)

This publication confers the right to oppose the application pursuant to Article 51 of Regulation (EU) No 1151/2012 of the European Parliament and of the Council ⁽¹⁾ within three months from the date of this publication.

SINGLE DOCUMENT

‘Cebolla de la Mancha’

EU No: PGI-ES-02631 – 7.9.2020

PDO () PGI (X)

1. Name of PGI

‘Cebolla de la Mancha’

2. Member State or third country

Spain

3. Description of the agricultural product or foodstuff

3.1. Type of product

Class 1.6. Fruit, vegetables and cereals, fresh or processed

3.2. Description of product to which the name in (1) applies

Onions (bulbs of the species *Allium cepa* L.), of the ‘Recas’ type, to be sold fresh and whole.

The Protected Geographical Indication will apply only to onions with a dry matter content of between 5 % and 10 %, a unit weight between 165 and 1 000 grams, diameter ranging between 50 and 120 mm and a minimum sugar content of 3,5 °Brix (± 0,5 %).

The dry matter content of ‘Cebolla de La Mancha’ is what gives these onions their crunchy, fleshy texture, while the minimum sugar content is what gives them their mild, slightly pungent taste.

‘Cebolla de la Mancha’ onions are spherical in shape, with up to 10 % deformation in the polar and equatorial diameters being tolerable.

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

There must be at least two of the skins or tunicae that determine the outer colour of the 'Cebolla de la Mancha' and they must be copper or dark bronze in colour. The inner bulb must be white in colour.

3.3. Feed (for products of animal origin only) and raw materials (for processed products only)

—

3.4. Specific steps in production that must take place in the defined geographical area

'Cebolla de La Mancha' onions must be produced in the geographical area described in point 4.

3.5. Specific rules concerning slicing, grating, packaging, etc. of the product the registered name refers to

Packaging plants must be equipped with systems allowing onions covered by the Protected Geographical Indication to be packaged separately from other onions.

3.6. Specific rules concerning labelling of the product the registered name refers to

As well as featuring the name under which the product is sold, onion package labels must include the logo of the 'Cebolla de La Mancha' brand with the words 'Indicación Geográfica Protegida' [Protected Geographical Indication]. This logo must be made available to all operators that request it and are compliant with the specification. The labels may optionally include the conformity mark issued by the product certification entity.



4. Concise definition of the geographical area

The area where the Protected Geographical Indication is produced corresponds to the municipalities belonging to the following districts: Almansa, Centro, Hellín, Mancha and Manchuela (province of Albacete); Campo de Calatrava, Campos de Montiel and Mancha (province of Ciudad Real); Mancha Alta, Mancha Baja and Manchuela (province of Cuenca) and La Mancha, La Sagra, Talavera (Talavera municipality only) and Torrijos (province of Toledo).

5. Link with the geographical area

The application for 'Cebolla de la Mancha' to be registered as a PGI is based on the characteristics of the onions: of the 'Recas' type, spherical in shape, with 5 %-10 % dry matter content, at least two outer skins or tunicae that must be copper or dark bronze in colour, white on the inside, minimum sugar content of 3,5 °Brix, unit weight of between 165 and 1 000 grams, diameter between 50 and 120 mm. These characteristics are assured by the geographical area in which they are produced and by how the crops are managed.

5.1. *Specificity of the geographical area*

a) *Relief*

La Mancha receives run-off water from the surrounding hills and mountain ranges and this landscape configuration has led to the development of fertile, well-irrigated plains along the banks of its rivers. Together with underground water wells, this has allowed onion-growing to develop in quite specific soil and climate conditions, resulting in the distinctive organoleptic characteristics of crunchy, fleshy texture and mild, slightly pungent taste.

b) *Climate*

Temperatures in Castile La Mancha are very extreme due to the continental effect. There are major differences (up to 18 to 20 degrees) between night-time and daytime temperatures.

Rainfall is very low, with an average of 392,83 mm/m² per year in the defined area for the Protected Geographical Indication, with high sun exposure levels (2 777 hours of sunshine per year on average) and evapotranspiration in summer. In addition, relative humidity levels are low (annual average 64 %) and wind circulation is almost constant, with an average wind run of 216 km/day (rising to 344 km/day on average at the Albacete weather station).

c) *Soils*

Soils are most frequently loam or sandy-loam in texture, very permeable and with a high mineral content. The B horizon is calcareous and the soils are stony, porous and easy to till. The soil has less than 20 % clay. Soil pH is alkaline, with values ranging between 7,5 and 8,5. Organic matter content tends to be low, around 1,5 %. The onions are grown on shallow plots in low-fertility arable soils about 35-40 cm deep. The amount of plant-available phosphorus in the soil is usually medium to insufficient but potassium, magnesium and calcium are readily available.

5.2. *Specificity of the product*

'Cebolla de la Mancha' onions have the following characteristics:

Onions of the 'Recas' type.

Spherical in shape.

Dry matter ranging between 5 % and 10 %, which is what gives the onions their crunchy, fleshy texture.

At least two dry skins or tunicae which must be copper or dark bronze in colour.

White in colour on the inside.

Minimum sugar content of 3,5 °Brix, which is what gives the onions their mild, slightly pungent taste.

Unit weight ranging between 165 and 1 000 grams

Diameter ranging between 50 and 120 mm.

5.3. *Causal link between the geographical area and the quality or characteristics of the product (for PDO) or a given quality, the reputation or other characteristic of the product (for PGI)*

The combination of the soil and climate conditions and the growing practices in the production area have led to the selection of the 'Recas' type of onion, which is perfectly adapted to this production area. It is in such high demand for its specific characteristics in terms of colour, size, texture and taste, that Castile-La Mancha is the most important producer region in Spain, accounting for over half the national onion harvest.

Apart from the genetic make-up of the 'Recas' varieties, the characteristic colour of the skin is directly linked to the number of hours of sunshine in the area, with an annual average of 2 777 hours of sunshine resulting in at least two outer layers or tunicae that are copper or dark bronze in colour.

The night-to-day temperature variation ranges between 18 and 20 degrees. Average night-time temperatures in the summer months are below 20 °C, meaning the onion plants consume less of their reserves during the nocturnal respiration process and net photosynthesis is higher. This leads to larger bulb sizes in the 'Recas' type onions grown in the area of influence for the PGI. Bulbs are medium to large, spherical in shape with a diameter ranging between 50 and 120 mm and a unit weight ranging between 165 and 1 000 grams.

The availability of potassium, magnesium and calcium in the soils in the production area accounts for the characteristically sweet taste of 'Cebolla de la Mancha' onions. Their minimum sugar content of 3,5 °Brix is what gives these onions their mild, slightly pungent taste.

Rainfall in the area is very low, between 300 and 400 mm/ year. The high levels of sunshine and evapotranspiration in summer, combined with the warm nights and low levels of relative humidity, result in dry matter content of between 5 % and 10 %, which is what gives these onions their crunchy, fleshy texture.

Growing practices typically aim for good neck closure in the onions as they near the end of the growing process (achieved when the number of hours of sunshine and the temperatures are still high, relative humidity is low, wind circulation is almost constant and evapotranspiration is high). Combined with the climate conditions in the area, low temperatures and low relative humidity during the months that the onions are in storage, this enables high quality throughout their long shelf life.

Reference to publication of the specification

http://pagina.jccm.es/agricul/paginas/comercial-industrial/consejos_new/pliegos/PC_IGP_CEBOLLA_DE_LA_MANCHA-20191202.pdf

Publication of an application for registration of a name pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs

(2022/C 433/24)

This publication confers the right to oppose the application pursuant to Article 51 of Regulation (EU) No 1151/2012 of the European Parliament and of the Council ⁽¹⁾ within three months from the date of this publication.

SINGLE DOCUMENT

‘Antakya Künefesi’

EU No: PGI-TR-02451 - 14/03/2019

PDO () PGI (X)

1. Name(s) [of PDO or PGI]

‘Antakya Künefesi’

2. Member State or Third Country

Republic of Turkey

3. Description of the agricultural product or foodstuff

3.1. Type of product

Class 2.3. Bread, pastry, cakes, confectionery, biscuits and other baker’s wares

3.2. Description of the product to which the name in (1) applies

‘Antakya Künefesi’ is one of the few desserts that contain cheese in Turkey. In production, künefelik kadayıf (lightly baked thread like dough for künefe), fresh Antakya künefelik cheese (cheese for künefe), butter and syrup are used. It is obtained by baking künefelik cheese between the two layers of künefelik kadayıf mixed with butter in a flat tray and spreading syrup in the desired sweetness before consumption. The size of the tray depends on the number of servings to be consumed. ‘Antakya Künefesi’ is consumed hot. During the consumption, the cheese is expected to stretch forming the fibers.

‘Antakya Künefesi’ is disk shape dessert with a height of 1-2 cm. The diameter of the dessert depends on the number of portions. It can range from 10 cm up to 50 cm. When baked, upper and lower layers made of mixture of künefelik kadayıf + butter turn to brown colour owing to maillard reaction and forming a crispy crust. In the meantime, the Antakya künefelik cheese in the middle softens and becomes creamy. After addition of syrup it tastes sweet. ‘Antakya Künefesi’ is served when it is still hot right after addition of syrup. In a raw state (uncooked form), it can be frozen and kept at -18 °C for transportation and distribution.

3.3. Feed (for products of animal origin only) and raw materials (for processed products only)

Milk for the production of Antakya künefelik cheese should be obtained from Hatay province. Antakya künefelik cheese acquires its flavor from the milk of cows grazing on rich flora of Hatay regions.

3.4. Specific steps in production that must take place in the identified geographical area

The production of ‘künefelik kadayıf’, ‘Antakya künefelik cheese’ and ‘Antakya Künefesi’ must be produced in the geographical area specified in point 4.

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

3.5. *Specific rules concerning slicing, grating, packaging, etc. of the product the registered name refers to*

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3.6. *Specific rules concerning labelling of the product the registered name refers to*

The following information must be written or printed legibly and in an indelible manner on the packages of 'Antakya Künefesî'.

- trade name and address, short name and address, or registered trade mark of the company,
- lot number,
- name of the good – 'Antakya Künefesî',
- net weight,
- shelf life of unbaked product (one week at refrigerated temperature or six months at -18 °C),
- must be baked and consumed hot just after syrup is added,
- following logo:



4. **Concise definition of the geographical area**

The production region of 'Antakya Künefesî' is a Hatay province and its districts (Antakya, Altınözü, Kumlu, Belen, İskenderun, Arsuz, Kırıkhan, Payas, Dört Yol, Hassa, Erzin, Samandağ, Yayladağ, Defne, Reyhanlı). Hatay is a settlement center in the southernmost point of Turkey. It is surrounded by the Mediterranean sea from the west, Syria from the south and east, Adana from the northwest, Osmaniye from the north and Gaziantep from the northeast.

5. **Link with the geographical area**

The link between 'Antakya Künefesî' and its geographical area is based on the product reputations, recipe, production skills of künefelik kadayıf, Antakya künefelik cheese and 'Antakya Künefesî'. The recipe and production skills have been transferred from one generation to next generation based on master-apprenticeship relationship. There are some crucial points to maintain a certain quality of the product. For instance, adjusting the thickness of künefelik kadayıf and its texture during rapid baking on a rotating tray requires some certain skills. Also, the creeping properties of Antakya künefelik cheese is determined during cheese production. These skills are acquired after a certain level of experience/mastership is reached under the watch of a master. Two ingredients künefelik kadayıf and Antakya künefelik cheese must be produced in the defined region.

Antakya künefelik cheese acquires its flavor from the milk of cows grazing on rich flora of Hatay regions. There are approximately 2 000 plants, 300 of which are recorded as endemic. The endemic plants of the regions, particularly zahter (wild thyme), is believed to be contributing to künefelik cheese flavor. In order to preserve and display this richness Hatay governor built a museum, Museum of Aromatic and Endemic Plants, in 2017.

The cheese used in the production of 'Antakya Künefesi' is very unique in that it is a cheese produced exclusively for the künefe and known as künefelik cheese. The most distinctive features of Antakya künefelik cheese are that it is produced from raw cow's milk, has an elastic texture and so-called 'chicken breast' structure with a pH of 4,9-5,2. It has creep properties at the temperatures above 65 °C. The distinctive and functional characteristic of the cheese is that it stretches inside Antakya Künefe and exhibits a fibrous structure when heated.

There are documents dating back to 18th century Islamic Records indicating the presence of künefe making (at that time only the word of künefe was used) was classified as a profession in Antakya (Gül, 2008.117). From 18th century to 20th century, there have been information on künefe and künefe pricing, classification as a professional group, items used for künefe and their inheritance mentioned in the documents in different years. For example, in Antakya, Islamic Records no. 50 (1898-1901), Künefe tray is counted among some of the goods, clothes and household goods in Antakya.

Information about the establishment of Künefeciler Square in 1930s, was once mentioned in the book by Boyacı, H. titled 'From Antakya to Hatay 1870-1976'. There the two brothers selling Antakya Künefesi who served the people of Antakya in the place known as Köprübaşı between 1935-1960. Since their skin is black, they were renowned for their nickname 'Arab'. Again, Antakya Künefesi Seller Hacı Arab is a very famous künefe master between 1940-1950 in the shop no. 153 located in Uzun Çarşı, which is a bakery today (Nakim, B. 2012).

In a newspaper column dated 27 September 1973, Süleyman Okay, who is known as Abbuş Usta, gives the definition of Antakya Künefe with cheese in detail (Okay, 2009).

In Kemal Karaömeroğlu's 'Hatay Tourism Guide' published in 1971 (p. 29-31), steak tartar balls, eel, and ground meat and burghul burger and künefe as dessert are among the dishes of Antakya Cuisine. In the 50th anniversary of the Republic in 1973, Hatay was named 'Antakya Künefesi' in the province yearbook. 'Antakya Künefesi' is mentioned on the page 129 of 'Economic and Social Tourism Activities in Antakya' published by İnayet İnel in 1976.

Each year Antakya festival is organized by Hatay Metropolitan Municipality due to the year of Hatay's accession to the homeland, the longest 'Antakya Künefesi' is prepared during the festival and it is made 1 meter longer each year. In 2019, 'Antakya Künefesi' reached the length of 81 metres.

Reference to publication of the specification

CORRIGENDA**Corrigendum to Non-opposition to a notified concentration (Case M.10763 – NORDEA / TOPDANMARK LIV HOLDING)**

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