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⁽¹⁾ Text with EEA relevance

EN

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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 10 July 2012

establishing the position to be adopted on behalf of the European Union with regard to the amendments to Annexes II and III to the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean of the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, adopted by the seventeenth meeting of the Contracting Parties (Paris, France, 8-10 February 2012)

(2012/510/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Union is a Contracting Party to the Convention for the Protection of the Mediterranean Sea against Pollution, subsequently renamed Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean⁽¹⁾ ('the Barcelona Convention') and a Party to the Protocol concerning specially protected areas and biological diversity in the Mediterranean and the annexes thereto⁽²⁾ ('the Protocol'). Annex II to the Protocol contains the list of endangered and threatened species and Annex III to the Protocol contains the list of species whose exploitation is regulated.
- (2) In accordance with Article 18 of the Barcelona Convention, the meeting of the Contracting Parties is

the decision-making body of the Convention, and the powers conferred upon it include the capacity to amend the annexes to the Convention and to its protocols, as required. In accordance with Article 23(2) of the Barcelona Convention and Article 14(1) of the Protocol, an amendment to the Annexes to the Protocol shall become effective for all Contracting Parties to the Protocol on the expiry of a period determined by the respective Contracting Parties when adopting the amendment, except for those that have notified in writing the Depositary that they are unable to approve the amendment within this period of time.

- (3) On 8 February 2012, the Commission transmitted to the Council a Proposal for a Council Decision establishing the position to be adopted on behalf of the European Union with regard to the proposals for amending Annexes II and III to the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean of the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean at the seventeenth meeting of the Contracting Parties (Paris, 8-10 February 2012). Due to the timing of the arrival of the Commission proposal, the Council was not able to consider it or act upon it prior to the Meeting of the Contracting Parties and hence the Union position and interests could not be expressed or defended in a timely and appropriate manner.
- (4) The seventeenth meeting of the Contracting Parties to the Barcelona Convention and its Protocols adopted amendments to Annexes II and III to the Protocol by Decision IG.20/5 to provide for greater protection to ten shark species.
- (5) In accordance with Article 23(2)(vi) of the Barcelona Convention, an amendment to the Annexes becomes effective for all Contracting Parties on the expiry of a period determined by the Contracting Parties concerned when adopting the amendment, except for those

⁽¹⁾ Council Decision 77/585/EEC of 25 July 1977 concluding the Convention for the protection of the Mediterranean Sea against pollution and the Protocol for the prevention of the pollution of the Mediterranean Sea by dumping from ships and aircraft (OJ L 240, 19.9.1977, p. 1). The amendments to the Convention were accepted by Council Decision 1999/802/EC of 22 October 1999 on the acceptance of amendments to the Convention for the Protection of the Mediterranean Sea against Pollution and to the Protocol for the Prevention of Pollution by Dumping from Ships and Aircraft (OJ L 322, 14.12.1999, p. 32).

⁽²⁾ Council Decision 1999/800/EC of 22 October 1999 on concluding the Protocol concerning specially protected areas and biological diversity in the Mediterranean, and on accepting the annexes to that Protocol (Barcelona Convention) (OJ L 322, 14.12.1999, p. 1).

Contracting Parties which notify the Depository that they are unable to approve the amendment. The seventeenth meeting of the Contracting Parties determined this period to be 180 days; the deadline for submitting a notification expires on 8 August 2012. The Union should therefore communicate to the Depository of the Protocol the amendments it does not approve within that deadline.

- (6) The amendments to the Protocol would not require any change in Union law.
- (7) The amendments on the addition of ten species to Annex II and their corresponding deletion from Annex III, adopted by the seventeenth meeting of the Contracting Parties, are scientifically sound, consistent with Union legislation and with the Union's commitment to international cooperation for the protection of biodiversity, and in accordance with both Article 5 of the UN Convention on Biological Diversity⁽¹⁾ and the target agreed at the Conference of the Parties to that Convention in 2010 to significantly reduce the current rate of biodiversity loss by 2020. The Union should therefore approve these amendments,

HAS ADOPTED THIS DECISION:

Article 1

The Union shall approve the amendments to add the following species to Annex II to the Protocol and to delete them from Annex III:

- (a) *Galeorhinus galeus* (Linnaeus, 1758);
- (b) *Isurus oxyrinchus* (Rafinesque, 1810);
- (c) *Lamna nasus* (Bonnaterre, 1788);

- (d) *Leucoraja circularis* (Couch, 1838);
- (e) *Leucoraja melitensis* (Clark, 1926);
- (f) *Rhinobatos cemiculus* (Saint-Hilaire, 1817);
- (g) *Rhinobatos rhinobatos* (Linnaeus, 1758);
- (h) *Sphyrna lewini* (Griffith & Smith, 1834);
- (i) *Sphyrna mokarran* (Rüppell, 1837);
- (j) *Sphyrna zygaena* (Linnaeus, 1758).

Article 2

The Commission is hereby authorised to notify the Depository of the Protocol, in writing, that the Union approves the amendments specified in Article 1, in accordance with Article 23(2)(iv) of the Barcelona Convention. It shall do so before the expiry of the 180-day period from the adoption of the amendments by the seventeenth meeting of the Contracting Parties.

Article 3

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

Done at Brussels, 10 July 2012.

For the Council
The President
V. SHIARLY

⁽¹⁾ Council Decision 93/626/EEC of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity (OJ L 309, 13.12.1993, p. 1).

COUNCIL DECISION**of 23 July 2012****on the signing, on behalf of the European Union, of the Food Assistance Convention**

(2012/511/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 214(4), in conjunction with Article 218(5), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Union is a party to the Food Aid Convention 1999 ⁽¹⁾ ('FAC 1999'), which should no longer be in force as from 1 July 2012.
- (2) On 17 November 2010, the Council authorised the Commission to conduct negotiations with a view to agreeing upon a Food Assistance Convention ('the Convention') which was to incorporate and reflect a modernised approach to food assistance, and which was to replace the FAC 1999.
- (3) The negotiations were successfully concluded on 25 April 2012.
- (4) It is in the interest of the Union to sign the Convention as the latter would help to achieve the humanitarian aid objectives referred to in Article 214(1) of the Treaty on the Functioning of the European Union.

(5) The Convention is open for signature until 31 December 2012.

(6) The Convention should be signed on behalf of the European Union, subject to its conclusion,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Food Assistance Convention ('the Convention') is hereby authorised on behalf of the Union, subject to the conclusion of the said Convention ⁽²⁾.

Article 2

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

Article 3

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

Done at Brussels, 23 July 2012.

For the Council
The President
C. ASHTON

⁽¹⁾ OJ L 222, 24.8.1999, p. 40.

⁽²⁾ The text of the Agreement will be published together with the decision on its conclusion.

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) No 862/2012

of 4 June 2012

amending Regulation (EC) No 809/2004 as regards information on the consent to use of the prospectus, information on underlying indexes and the requirement for a report prepared by independent accountants or auditors

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC⁽¹⁾, and in particular Article 5(5) and Article 7(1) thereof,

Whereas:

- (1) Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements⁽²⁾ sets out the minimum information to be included in a prospectus for different kinds of securities in order to comply with Article 5(5) and Article 7(1) of Directive 2003/71/EC.
- (2) Directive 2003/71/EC was amended by Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market⁽³⁾ in order to enhance investor protection, reduce administrative burdens for companies when raising capital in the securities markets in the Union and increase efficiency in the prospectus regime. Regulation (EC) No 809/2004 should therefore be amended regarding the consent of the issuer or the

person responsible for drawing up the prospectus to the use of the prospectus by financial intermediaries and the information to be included in the prospectus relating to underlying indexes and profit forecasts and estimates.

- (3) For the purposes of the third subparagraph of Article 3(2) of Directive 2003/71/EC, Regulation (EC) No 809/2004 should specify what information is to be provided where the issuer or the person responsible for drawing up the prospectus consents by means of a written agreement to its use by financial intermediaries.
- (4) In order to take account of technical developments on financial markets, and notably the increase in the use of indexes as underlying of structured securities, certain requirements of Regulation (EC) No 809/2004 should be reviewed and clarified. By conferring the responsibility to compose the index on another entity of the group, issuers could circumvent the requirement to include in the prospectus a description of the index composed by the issuer (item 4.2.2 of Annex XII) and thus avoid liability where the description is inaccurate. Accordingly, that requirement should also be extended to indexes composed by an entity belonging to the same group as the issuer.
- (5) With a view to increasing efficiency and reducing administrative burdens, this Regulation should also lay down conditions under which a description of the index within the prospectus is not required when the index is composed by entities acting in association with or on behalf of the issuer. Moreover, as item 2.10 of Annex XV only refers to broadly based and recognised published index, a statement in the prospectus specifying where the information about the index can be found should be sufficient without a description of the composition of the index being necessary.
- (6) In order to reduce the administrative costs for issuers when raising capital, this Regulation should lay down conditions under which the report prepared by independent accountants or auditors accompanying profit forecasts and estimates is not required, notably where

⁽¹⁾ OJ L 345, 31.12.2003, p. 64.

⁽²⁾ OJ L 149, 30.4.2004, p. 1.

⁽³⁾ OJ L 327, 11.12.2010, p. 1.

independent accountants or auditors are not able to sign the audit report because the complete set of documents constitutive of annual financial statements are not available to them.

(7) Directive 2010/73/EU replaced the term 'key information' by the term 'essential information' in a number of provisions of Directive 2003/71/EC. The Annexes to Regulation (EC) No 809/2004 should therefore be adapted.

(8) In order to avoid any further inconsistent application of Directive 2003/71/EC, in particular for the purposes of the third subparagraph of Article 3(2) thereof, and to avoid additional delays in ensuring enhanced investor protection and reduction of administrative burdens for companies when raising capital in the securities markets in the Union it is essential to provide for an entry into force on the day of its publication in the *Official Journal of the European Union*.

(9) Regulation (EC) No 809/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 809/2004

Regulation (EC) No 809/2004 is amended as follows:

(1) the second paragraph of Article 3 is replaced by the following:

'A prospectus shall contain the information items required in Annexes I to XVII and Annexes XX to XXX depending on the type of issuer or issues and securities involved. Subject to Article 4a(1), a competent authority shall not require that a prospectus contains information items which are not included in Annexes I to XVII or Annexes XX to XXX.;

(2) the following Article 20a is inserted:

Article 20a

Additional information building block for consent given in accordance with Article 3(2) of Directive 2003/71/EC

1. For the purposes of the third subparagraph of Article 3(2) of Directive 2003/71/EC, the prospectus shall contain the following:

(a) the additional information set out in Sections 1 and 2A of Annex XXX where the consent is given to one or more specified financial intermediaries;

(b) the additional information set out in Sections 1 and 2B of Annex XXX where the issuer or the person responsible for drawing up the prospectus chooses to give its consent to all financial intermediaries.

2. Where a financial intermediary does not comply with the conditions attached to consent as disclosed in the prospectus, a new prospectus shall be required in accordance with the second paragraph of Article 3(2) of Directive 2003/71/EC.;

(3) the second subparagraph of Article 22(1) is replaced by the following:

'A base prospectus shall contain the information items required in Annexes I to XVII, Annex XX and Annexes XXIII to XXX depending on the type of issuer and securities involved. Competent authorities shall not require that a base prospectus contains information items which are not included in Annexes I to XVII, Annex XX or Annexes XXIII to XXX.;

(4) the Annexes are amended in accordance with the Annex to this Regulation.

Article 2

Transitional provision

1. This Regulation shall not apply to the approval of a supplement to a prospectus or base prospectus where the prospectus or base prospectus was approved before the date referred to in Article 3.

2. Where in accordance with Article 18 of Directive 2003/71/EC the competent authority of the home Member State notifies the competent authority of the host Member State with a certificate of approval in relation to a prospectus or a base prospectus approved before the date referred to in Article 3, the competent authority of the home Member State shall clearly and explicitly indicate in the certificate that the prospectus or base prospectus was approved before the date referred to in Article 3.

Article 3

Entry into force

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

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

Done at Brussels, 4 June 2012.

For the Commission

The President

José Manuel BARROSO

ANNEX

The Annexes to Regulation (EC) No 809/2004 are amended as follows:

(1) in Annex I, item 13.2 is replaced by the following:

'13.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

Where financial information relates to the previous financial year and only contains non-misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

- (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;
- (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;
- (c) this financial information has not been audited.;

(2) in Annex III, the heading of Section 3 is replaced by the following:

'3. **ESSENTIAL INFORMATION**;

(3) in Annex IV, item 9.2 is replaced by the following:

'9.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

Where financial information relates to the previous financial year and only contains non-misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

- (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;
- (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;
- (c) this financial information has not been audited.;

(4) in Annex V, the heading of Section 3 is replaced by the following:

'3. **ESSENTIAL INFORMATION**;

(5) Annex X is amended as follows:

(a) item 13.2 is replaced by the following:

'13.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

Where financial information relates to the previous financial year and only contains non-misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

- (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;
- (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;
- (c) this financial information has not been audited.;

(b) the heading of Section 31 is replaced by the following:

'31. ESSENTIAL INFORMATION ABOUT THE ISSUE OF THE DEPOSITORY RECEIPTS';

(6) in Annex XI, item 8.2 is replaced by the following:

'8.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

Where financial information relates to the previous financial year and only contains non-misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

- (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;
- (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;
- (c) this financial information has not been audited.;

(7) Annex XII is amended as follows:

(a) the heading of Section 3 is replaced by the following:

'3. ESSENTIAL INFORMATION';

(b) the third indent of item 4.2.2 is replaced by the following:

— where the underlying is an index:

- the name of the index,
 - a description of the index if it is composed by the issuer or by any legal entity belonging to the same group,
 - a description of the index provided by a legal entity or a natural person acting in association with, or on behalf of, the issuer, unless the prospectus contains the following statements:
 - the complete set of rules of the index and information on the performance of the index are freely accessible on the issuer's or on the index provider's website,
- and
- the governing rules (including methodology of the index for the selection and the re-balancing of the components of the index, description of market disruption events and adjustment rules) are based on predetermined and objective criteria.

If the index is not composed by the issuer, where information about the index can be obtained.;

(8) in Annex XIII, the heading of Section 3 is replaced by the following:

'3. ESSENTIAL INFORMATION';

(9) in Annex XV, item 2.10 is replaced by the following:

'2.10. Point (a) of item 2.2 does not apply to a collective investment undertaking whose investment objective is to track, without material modification, that of a broadly based and recognised published index. A statement setting out details of where information about the index can be obtained shall be included.;

(10) Annex XX is amended as follows:

(a) in the Section entitled 'Annex V', the heading of Section 3 is replaced by the following:

| | | |
|-----|-------------------------|--|
| '3. | ESSENTIAL INFORMATION'; | |
|-----|-------------------------|--|

(b) in the Section entitled 'Annex XII', the heading of Section 3 is replaced by the following:

| | | |
|-----|-------------------------|--|
| '3. | ESSENTIAL INFORMATION'; | |
|-----|-------------------------|--|

(c) in the Section entitled 'Annex XII', point (ii) of item 4.2.2 is replaced by the following:

| | | |
|--|--|-------------|
| | '(ii) where the underlying is an index: <ul style="list-style-type: none"> — the name of the index, — a description of the index if it is composed by the issuer or by any legal entity belonging to the same group, — a description of the index provided by a legal entity or a natural person acting in association with, or on behalf of, the issuer, unless the prospectus contains the following statements: <ul style="list-style-type: none"> — the complete set of rules of the index and information on the performance of the index are freely accessible on the issuer's or on the index provider's website, and <ul style="list-style-type: none"> — the governing rules (including methodology of the index for the selection and the re-balancing of the components of the index, description of market disruption events and adjustment rules) are based on predetermined and objective criteria, — if the index is not composed by the issuer, an indication of where to obtain information about the index. | |
| | | Category C |
| | | Category A |
| | | Category A |
| | | Category C' |

(d) in the Section entitled 'Annex XIII', the heading of Section 3 is replaced by the following:

| | | |
|-----|-------------------------|--|
| '3. | ESSENTIAL INFORMATION'; | |
|-----|-------------------------|--|

(e) the following Section is added:

| | 'Annex XXX | Instructions |
|-----|--|--------------|
| 1. | INFORMATION TO BE PROVIDED REGARDING CONSENT BY THE ISSUER OR PERSON RESPONSIBLE FOR DRAWING UP THE PROSPECTUS | |
| 1.1 | Express consent by the issuer or person responsible for drawing up the prospectus to the use of the prospectus and statement that it accepts responsibility for the content of the prospectus also with respect to subsequent resale or final placement of securities by any financial intermediary which was given consent to use the prospectus. | Category A |
| 1.2 | Indication of the period for which consent to use the prospectus is given. | Category A |
| 1.3 | Indication of the offer period upon which subsequent resale or final placement of securities by financial intermediaries can be made. | Category C |

| | Annex XXX | Instructions |
|------|--|--------------|
| 1.4 | Indication of the Member States in which financial intermediaries may use the prospectus for subsequent resale or final placement of securities. | Category A |
| 1.5 | Any other clear and objective conditions attached to the consent which are relevant for the use of the prospectus. | Category C |
| 1.6 | Notice in bold informing investors that, in the event of an offer being made by a financial intermediary, this financial intermediary will provide information to investors on the terms and conditions of the offer at the time the offer is made. | Category A |
| 2A | ADDITIONAL INFORMATION TO BE PROVIDED WHERE A CONSENT IS GIVEN TO ONE OR MORE SPECIFIED FINANCIAL INTERMEDIARIES | |
| 2A.1 | List and identity (name and address) of the financial intermediary or intermediaries that are allowed to use the prospectus. | Category C |
| 2A.2 | Indication how any new information with respect to financial intermediaries unknown at the time of the approval of the prospectus, the base prospectus or the filing of the final terms, as the case may be, is to be published and where it can be found. | Category A |
| 2B | ADDITIONAL INFORMATION TO BE PROVIDED WHERE A CONSENT IS GIVEN TO ALL FINANCIAL INTERMEDIARIES | |
| 2B.1 | Notice in bold informing investors that any financial intermediary using the prospectus has to state on its website that it uses the prospectus in accordance with the consent and the conditions attached thereto. | Category A' |

(11) in Annex XXII, Section A, the following element A.2 is added:

| 'All | A.2 | |
|------|-----|---|
| | | <ul style="list-style-type: none"> — Consent by the issuer or person responsible for drawing up the prospectus to the use of the prospectus for subsequent resale or final placement of securities by financial intermediaries. — Indication of the offer period within which subsequent resale or final placement of securities by financial intermediaries can be made and for which consent to use the prospectus is given. — Any other clear and objective conditions attached to the consent which are relevant for the use of the prospectus. — Notice in bold informing investors that information on the terms and conditions of the offer by any financial intermediary is to be provided at the time of the offer by the financial intermediary.' |

(12) in Annex XXIII, item 8.2 is replaced by the following:

'8.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

Where financial information relates to the previous financial year and only contains non-misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

- (a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;

(b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;

(c) this financial information has not been audited.;

(13) in Annex XXIV, the heading of Section 3 is replaced by the following:

'3. ESSENTIAL INFORMATION';

(14) in Annex XXV, item 13.2 is replaced by the following:

'13.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

Where financial information relates to the previous financial year and only contains non-misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

(a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;

(b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;

(c) this financial information has not been audited.;

(15) in Annex XXVI, item 9.2 is replaced by the following:

'9.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

Where financial information relates to the previous financial year and only contains non-misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

(a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;

(b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;

(c) this financial information has not been audited.;

(16) Annex XXVIII is amended as follows:

(a) item 13.2 is replaced by the following:

'13.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

Where financial information relates to the previous financial year and only contains non-misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

(a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;

(b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;

(c) this financial information has not been audited.;

(b) the heading of Section 31 is replaced by the following:

‘3. ESSENTIAL INFORMATION ABOUT THE ISSUE OF THE DEPOSITORY RECEIPTS’;

(17) in Annex XXIX, item 8.2 is replaced by the following:

‘8.2. A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated, and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

Where financial information relates to the previous financial year and only contains non-misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:

(a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information;

(b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements;

(c) this financial information has not been audited.;

(18) the following Annex XXX is added:

‘ANNEX XXX

Additional information regarding consent as referred to in Article 20a

(Additional building block)

1 INFORMATION TO BE PROVIDED REGARDING CONSENT BY THE ISSUER OR PERSON RESPONSIBLE FOR DRAWING UP THE PROSPECTUS

1.1 Express consent by the issuer or person responsible for drawing up the prospectus to the use of the prospectus and statement that it accepts responsibility for the content of the prospectus also with respect to subsequent resale or final placement of securities by any financial intermediary which was given consent to use the prospectus.

1.2 Indication of the period for which consent to use the prospectus is given.

1.3 Indication of the offer period upon which subsequent resale or final placement of securities by financial intermediaries can be made.

1.4 Indication of the Member States in which financial intermediaries may use the prospectus for subsequent resale or final placement of securities.

1.5 Any other clear and objective conditions attached to the consent which are relevant for the use of the prospectus.

1.6 Notice in bold informing investors that, in the event of an offer being made by a financial intermediary, the financial intermediary will provide information to investors on the terms and conditions of the offer at the time the offer is made.

2A ADDITIONAL INFORMATION TO BE PROVIDED WHERE A CONSENT IS GIVEN TO ONE OR MORE SPECIFIED FINANCIAL INTERMEDIARIES

2A.1 List and identity (name and address) of the financial intermediary or intermediaries that are allowed to use the prospectus.

2A.2 Indication how any new information with respect to financial intermediaries unknown at the time of the approval of the prospectus, the base prospectus or the filing of the final terms, as the case may be, is to be published and where it can be found.

2B ADDITIONAL INFORMATION TO BE PROVIDED WHERE A CONSENT IS GIVEN TO ALL FINANCIAL INTERMEDIARIES

Notice in bold informing investors that any financial intermediary using the prospectus has to state on its website that it uses the prospectus in accordance with the consent and the conditions attached thereto.

COMMISSION REGULATION (EU) No 863/2012
of 19 September 2012
establishing a prohibition of fishing for common sole in areas VIIIa and VIIIb by vessels flying the flag of Belgium

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) No 43/2012 of 17 January 2012 fixing for 2012 the fishing opportunities available to EU vessels for certain fish stocks and groups of fish stocks which are not subject to international negotiations or agreements ⁽²⁾, lays down quotas for 2012.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2012.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

Article 1

Quota exhaustion

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2012 shall be deemed to be exhausted from the date set out in that Annex.

Article 2

Prohibitions

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

Article 3

Entry into force

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

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

Done at Brussels, 19 September 2012.

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

Lowri EVANS

Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ OJ L 25, 27.1.2012, p. 1.

ANNEX

| | |
|--------------|------------------------------------|
| No | 21/TQ43 |
| Member State | Belgium |
| Stock | SOL/8AB. |
| Species | Common Sole (<i>Solea solea</i>) |
| Zone | VIIIa and VIIIb |
| Date | 10.8.2012 |

COMMISSION REGULATION (EU) No 864/2012**of 19 September 2012****establishing a prohibition of fishing for mackerel in VI, VII, VIIIa, VIIIb, VIIIc and VIIIe; EU and international waters of Vb; international waters of IIa, XII and XIV by vessels flying the flag of Spain**

THE EUROPEAN COMMISSION,

HAS ADOPTED THIS REGULATION:

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

*Article 1***Quota exhaustion**Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2012 shall be deemed to be exhausted from the date set out in that Annex.

Whereas:

*Article 2***Prohibitions**(1) Council Regulation (EU) No 44/2012 of 17 January 2012 fixing for 2012 the fishing opportunities available in EU waters and, to EU vessels, in certain non- EU waters for certain fish stocks and groups of fish stocks which are subject to international negotiations or agreements ⁽²⁾, lays down quotas for 2012.

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2012.

*Article 3***Entry into force**

(3) It is therefore necessary to prohibit fishing activities for that stock,

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

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

Done at Brussels, 19 September 2012.

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

Lowri EVANS

Director-General for Maritime Affairs and Fisheries⁽¹⁾ OJ L 343, 22.12.2009, p. 1.⁽²⁾ OJ L 25, 27.1.2012, p. 55.

ANNEX

| | |
|--------------|---|
| No | 34/TQ44 |
| Member State | Spain |
| Stock | MAC/2CX14- |
| Species | Mackerel (<i>Scomber scombrus</i>) |
| Zone | VI, VII, VIIa, VIIb, VIId and VIIe; EU and international waters of Vb; international waters of IIa, XII and XIV |
| Date | 10.2.2012 |

COMMISSION IMPLEMENTING REGULATION (EU) No 865/2012**of 21 September 2012****amending Regulation (EC) No 867/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards operators' organisations in the olive sector, their work programmes and the financing thereof**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular the third subparagraph of Article 103(2) in conjunction with Article 4 thereof,

Whereas:

- (1) Article 11 of Commission Regulation (EC) No 867/2008 ⁽²⁾ provides that the operators' organisations in the olive sector may receive, subject to the lodging of a security, an advance of a maximum of 90 % of the eligible annual expenditure. To this end, the Member State pays an initial instalment before the end of the month following the month of the beginning of the implementation of each year of the work programme.
- (2) However, because of the economic crisis, this provision, which is intended to allow work to start quickly, has not had the desired effect in Greece. In fact, in the wake of the crisis, some operators' organisations, having been unable to lodge the security referred to in Article 11(4) of Regulation (EC) No 867/2008, were not eligible to receive the advance referred to in paragraph 2 of that Article, and thus could not launch their programmes for the 2012-15 period.
- (3) Under these circumstances, this Member State must be given exceptional permission to pay the initial instalment of the advance referred to in the first subparagraph of

Article 11(2) of Regulation (EC) No 867/2008 until 30 September 2012, which would allow the beneficiaries to reuse the securities lodged for the previous work programmes and released in the meantime, provided that all the relevant conditions are met.

- (4) Regulation (EC) No 867/2008 should be amended accordingly.
- (5) In order to ensure the efficient management of the measure, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

The following subparagraph is added to Article 11(2) of Regulation (EC) No 867/2008:

'By way of derogation from the first subparagraph and for the first year of implementation of the work programmes approved for the 2012-15 period, Greece may pay the operators' organisations concerned, before 30 September 2012, an initial instalment equal to half the amount referred to in paragraph 1.'

*Article 2*This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 21 September 2012.

For the Commission
The President
José Manuel BARROSO

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 237, 4.9.2008, p. 5.

COMMISSION IMPLEMENTING REGULATION (EU) No 866/2012**of 21 September 2012****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

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

Whereas:

(1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the

Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

(2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 21 September 2012.

*For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

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

| (EUR/100 kg) | | |
|--------------|-----------------------------------|-----------------------|
| CN code | Third country code ⁽¹⁾ | Standard import value |
| 0702 00 00 | MK | 65,0 |
| | XS | 55,3 |
| | ZZ | 60,2 |
| 0707 00 05 | MK | 23,1 |
| | TR | 102,3 |
| | ZZ | 62,7 |
| 0709 93 10 | TR | 116,4 |
| | ZZ | 116,4 |
| 0805 50 10 | AR | 96,7 |
| | CL | 97,0 |
| | TR | 95,0 |
| | UY | 114,6 |
| | ZA | 89,6 |
| | ZZ | 98,6 |
| 0806 10 10 | MK | 53,3 |
| | TR | 121,5 |
| | ZZ | 87,4 |
| 0808 10 80 | BR | 89,7 |
| | CL | 143,2 |
| | NZ | 121,9 |
| | US | 181,6 |
| | ZA | 116,6 |
| | ZZ | 130,6 |
| 0808 30 90 | CN | 64,9 |
| | TR | 109,5 |
| | ZA | 144,5 |
| | ZZ | 106,3 |
| 0809 30 | TR | 147,2 |
| | ZZ | 147,2 |
| 0809 40 05 | IL | 60,4 |
| | TR | 107,6 |
| | XS | 74,4 |
| | ZZ | 80,8 |

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

DECISIONS

COMMISSION IMPLEMENTING DECISION

of 21 September 2012

determining the date from which the Visa Information System (VIS) is to start operations in a third region

(2012/512/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) ⁽¹⁾, and in particular Article 48(3) thereof,

Whereas:

- (1) According to Commission Decision 2010/49/EC of 30 November 2009 determining the first regions for the start of operations of the Visa Information System (VIS) ⁽²⁾, the third region where the collection and transmission of data to the VIS for all applications should start comprises Afghanistan, Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates and Yemen.
- (2) The Member States have notified the Commission that they have made the necessary technical and legal arrangements to collect and transmit the data referred to in Article 5(1) of the VIS Regulation to the VIS for all applications in that region, including arrangements for the collection and/or transmission of the data on behalf of another Member State.
- (3) The condition laid down by the first sentence of Article 48(3) of the VIS Regulation thus being fulfilled, it is therefore necessary to determine the date from which the VIS is to start operations in a third region.
- (4) In view of the need to set the date for the start of the VIS in the very near future this Decision should enter into force on the day of its publication in the *Official Journal of the European Union*.

- (5) Given that the VIS Regulation builds upon the Schengen *acquis*, Denmark notified the implementation of the VIS Regulation in its national law in accordance with Article 5 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community. Denmark is therefore bound under international law to implement this Decision.

- (6) This Decision constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ⁽³⁾. The United Kingdom is therefore not bound by it or subject to its application.

- (7) This Decision constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ⁽⁴⁾. Ireland is therefore not bound by it or subject to its application.

- (8) As regards Iceland and Norway, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* ⁽⁵⁾, which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement ⁽⁶⁾.

⁽¹⁾ OJ L 218, 13.8.2008, p. 60.

⁽²⁾ OJ L 23, 27.1.2010, p. 62.

⁽³⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁴⁾ OJ L 64, 7.3.2002, p. 20.

⁽⁵⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁶⁾ OJ L 176, 10.7.1999, p. 31.

- (9) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽¹⁾, which fall within the area referred to in Article 1, point B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC ⁽²⁾.
- (10) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU ⁽³⁾.
- (11) As regards Cyprus, this Decision constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 3(2) of the 2003 Act of Accession.

- (12) As regards Bulgaria and Romania, this Decision constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 4(2) of the 2005 Act of Accession,

HAS ADOPTED THIS DECISION:

Article 1

The Visa Information System shall start operations in the third region determined by Decision 2010/49/EC on 2 October 2012.

Article 2

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

Article 3

This Decision shall apply in accordance with the Treaties.

Done at Brussels, 21 September 2012.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 53, 27.2.2008, p. 52.

⁽²⁾ OJ L 53, 27.2.2008, p. 1.

⁽³⁾ OJ L 160, 18.6.2011, p. 19.

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