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[1] Text with EEA relevance

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2014/104/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 November 2014

on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union

(Text with EEA relevance)

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 Articles 103 and 114 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]),

Acting in accordance with the ordinary legislative procedure ([2]),

Whereas:

(1) Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) are a matter of public policy and should be applied effectively throughout the Union in order to ensure that competition in the internal market is not distorted.

(2) The public enforcement of Articles 101 and 102 TFEU is carried out by the Commission using the powers provided by Council Regulation (EC) No 1/2003 ([3]). Upon the entry into force of the Treaty of Lisbon on 1 December 2009, Articles 81 and 82 of the Treaty establishing the European Community became Articles 101 and 102 TFEU, and they remain identical in substance. Public enforcement is also carried out by national competition authorities, which may take the decisions listed in Article 5 of Regulation (EC) No 1/2003. In accordance with that Regulation, Member States should be able to designate administrative as well as judicial authorities to apply Articles 101 and 102 TFEU as public enforcers and to carry out the various functions conferred upon competition authorities by that Regulation.

(3) Articles 101 and 102 TFEU produce direct effects in relations between individuals and create, for the individuals concerned, rights and obligations which national courts must enforce. National courts thus have an equally essential part to play in applying the competition rules (private enforcement). When ruling on disputes between private individuals, they protect subjective rights under Union law, for example by awarding damages to the victims of infringements. The full effectiveness of Articles 101 and 102 TFEU, and in particular the practical effect of the prohibitions laid down therein, requires that anyone — be they an individual, including consumers

([1]) OJ C 67, 6.3.2014, p. 83.
([2]) Position of the European Parliament of 17 April 2014 (not yet published in the Official Journal) and decision of the Council of 10 November 2014.
([3]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules of competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

and undertakings, or a public authority — can claim compensation before national courts for the harm caused to them by an infringement of those provisions. The right to compensation in Union law applies equally to infringements of Articles 101 and 102 TFEU by public undertakings and by undertakings entrusted with special or exclusive rights by Member States within the meaning of Article 106 TFEU.

(4) The right in Union law to compensation for harm resulting from infringements of Union and national competition law requires each Member State to have procedural rules ensuring the effective exercise of that right. The need for effective procedural remedies also follows from the right to effective judicial protection as laid down in the second subparagraph of Article 19(1) of the Treaty on European Union (TEU) and in the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union. Member States should ensure effective legal protection in the fields covered by Union law.

(5) Actions for damages are only one element of an effective system of private enforcement of infringements of competition law and are complemented by alternative avenues of redress, such as consensual dispute resolution and public enforcement decisions that give parties an incentive to provide compensation.

(6) To ensure effective private enforcement actions under civil law and effective public enforcement by competition authorities, both tools are required to interact to ensure maximum effectiveness of the competition rules. It is necessary to regulate the coordination of those two forms of enforcement in a coherent manner, for instance in relation to the arrangements for access to documents held by competition authorities. Such coordination at Union level will also avoid the divergence of applicable rules, which could jeopardise the proper functioning of the internal market.

(7) In accordance with Article 26(2) TFEU, the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. There are marked differences between the rules in the Member States governing actions for damages for infringements of Union or national competition law. Those differences lead to uncertainty concerning the conditions under which injured parties can exercise the right to compensation they derive from the TFEU and affect the substantive effectiveness of such right. As injured parties often choose their Member State of establishment as the forum in which to claim damages, the discrepancies between the national rules lead to an uneven playing field as regards actions for damages and may thus affect competition on the markets on which those injured parties, as well as the infringing undertakings, operate.

(8) Undertakings established and operating in various Member States are subject to differing procedural rules that significantly affect the extent to which they can be held liable for infringements of competition law. This uneven enforcement of the right to compensation in Union law may result not only in a competitive advantage for some undertakings which have infringed Article 101 or 102 TFEU but also in a disincentive to the exercise of the rights of establishment and provision of goods or services in those Member States where the right to compensation is enforced more effectively. As the differences in the liability regimes applicable in the Member States may negatively affect both competition and the proper functioning of the internal market, it is appropriate to base this Directive on the dual legal bases of Articles 103 and 114 TFEU.

(9) It is necessary, bearing in mind that large-scale infringements of competition law often have a cross-border element, to ensure a more level playing field for undertakings operating in the internal market and to improve the conditions for consumers to exercise the rights that they derive from the internal market. It is appropriate to increase legal certainty and to reduce the differences between the Member States as to the national rules governing actions for damages for infringements of both Union competition law and national competition law where that is applied in parallel with Union competition law. An approximation of those rules will help to prevent the increase of differences between the Member States' rules governing actions for damages in competition cases.

(10) Article 3(1) of Regulation (EC) No 1/2003 provides that '[w]here the competition authorities of the Member States or national courts apply national competition law to agreements, decisions by associations of undertakings or concerted practices within the meaning of Article [101(1) TFEU] which may affect trade between Member States within the meaning of that provision, they shall also apply Article [101 TFEU] to such agreements, decisions or concerted practices. Where the competition authorities of the Member States or national courts apply national competition law to any abuse prohibited by Article [102 TFEU], they shall also apply Article [102 TFEU].' In the interests of the proper functioning of the internal market and with a view to greater legal certainty and a more level playing field for undertakings and consumers, it is appropriate that the scope of this Directive extend to actions for damages based on the infringement of national competition law where it is applied pursuant to Article 3(1) of Regulation (EC) No 1/2003. Applying differing rules on civil liability in respect of infringements of Article 101 or 102 TFEU and in respect of infringements of rules of national competition law which must be applied in the same cases in parallel to Union competition law would otherwise adversely affect the position of

claimants in the same case and the scope of their claims, and would constitute an obstacle to the proper functioning of the internal market. This Directive should not affect actions for damages in respect of infringements of national competition law which do not affect trade between Member States within the meaning of Article 101 or 102 TFEU.

(11) In the absence of Union law, actions for damages are governed by the national rules and procedures of the Member States. According to the case-law of the Court of Justice of the European Union (Court of Justice), any person can claim compensation for harm suffered where there is a causal relationship between that harm and an infringement of competition law. All national rules governing the exercise of the right to compensation for harm resulting from an infringement of Article 101 or 102 TFEU, including those concerning aspects not dealt with in this Directive such as the notion of causal relationship between the infringement and the harm, must observe the principles of effectiveness and equivalence. This means that they should not be formulated or applied in a way that makes it excessively difficult or practically impossible to exercise the right to compensation guaranteed by the TFEU or less favourably than those applicable to similar domestic actions. Where Member States provide other conditions for compensation under national law, such as imputability, adequacy or culpability, they should be able to maintain such conditions in so far as they comply with the case-law of the Court of Justice, the principles of effectiveness and equivalence, and this Directive.

(12) This Directive reaffirms the *acquis communautaire* on the right to compensation for harm caused by infringements of Union competition law, particularly regarding standing and the definition of damage, as stated in the case-law of the Court of Justice, and does not pre-empt any further development thereof. Anyone who has suffered harm caused by such an infringement can claim compensation for actual loss (*damnum emergens*), for gain of which that person has been deprived (loss of profit or *lucrum cessans*), plus interest, irrespective of whether those categories are established separately or in combination in national law. The payment of interest is an essential component of compensation to make good the damage sustained by taking into account the effluxion of time and should be due from the time when the harm occurred until the time when compensation is paid, without prejudice to the qualification of such interest as compensatory or default interest under national law and to whether effluxion of time is taken into account as a separate category (interest) or as a constituent part of actual loss or loss of profit. It is incumbent on the Member States to lay down the rules to be applied for that purpose.

(13) The right to compensation is recognised for any natural or legal person — consumers, undertakings and public authorities alike — irrespective of the existence of a direct contractual relationship with the infringing undertaking, and regardless of whether or not there has been a prior finding of an infringement by a competition authority. This Directive should not require Member States to introduce collective redress mechanisms for the enforcement of Articles 101 and 102 TFEU. Without prejudice to compensation for loss of opportunity, full compensation under this Directive should not lead to overcompensation, whether by means of punitive, multiple or other damages.

(14) Actions for damages for infringements of Union or national competition law typically require a complex factual and economic analysis. The evidence necessary to prove a claim for damages is often held exclusively by the opposing party or by third parties, and is not sufficiently known by, or accessible to, the claimant. In such circumstances, strict legal requirements for claimants to assert in detail all the facts of their case at the beginning of an action and to proffer precisely specified items of supporting evidence can unduly impede the effective exercise of the right to compensation guaranteed by the TFEU.

(15) Evidence is an important element for bringing actions for damages for infringement of Union or national competition law. However, as competition law litigation is characterised by an information asymmetry, it is appropriate to ensure that claimants are afforded the right to obtain the disclosure of evidence relevant to their claim, without it being necessary for them to specify individual items of evidence. In order to ensure equality of arms, those means should also be available to defendants in actions for damages, so that they can request the disclosure of evidence by those claimants. National courts should also be able to order that evidence be disclosed by third parties, including public authorities. Where a national court wishes to order disclosure of evidence by the Commission, the principle in Article 4(3) TEU of sincere cooperation between the Union and the Member States and Article 15(1) of Regulation (EC) No 1/2003 as regards requests for information apply. Where national courts order public authorities to disclose evidence, the principles of legal and administrative cooperation under Union or national law apply.

(16) National courts should be able, under their strict control, especially as regards the necessity and proportionality of disclosure measures, to order the disclosure of specified items of evidence or categories of evidence upon request of a party. It follows from the requirement of proportionality that disclosure can be ordered only where a claimant has made a plausible assertion, on the basis of facts which are reasonably available to that claimant, that the claimant has suffered harm that was caused by the defendant. Where a request for disclosure aims to obtain a category of evidence, that category should be identified by reference to common features of its constitutive elements such as the nature, object or content of the documents the disclosure of which is requested, the time during which they were drawn up, or other criteria, provided that the evidence falling within the category is relevant within the meaning of this Directive. Such categories should be defined as precisely and narrowly as possible on the basis of reasonably available facts.

(17) Where a court in one Member State requests a competent court in another Member State to take evidence or requests that evidence be taken directly in another Member State, the provisions of Council Regulation (EC) No 1206/2001 ([1]) apply.

(18) While relevant evidence containing business secrets or otherwise confidential information should, in principle, be available in actions for damages, such confidential information needs to be protected appropriately. National courts should therefore have at their disposal a range of measures to protect such confidential information from being disclosed during the proceedings. Those measures could include the possibility of redacting sensitive passages in documents, conducting hearings in camera, restricting the persons allowed to see the evidence, and instructing experts to produce summaries of the information in an aggregated or otherwise non-confidential form. Measures protecting business secrets and other confidential information should, nevertheless, not impede the exercise of the right to compensation.

(19) This Directive affects neither the possibility under the laws of the Member States to appeal disclosure orders, nor the conditions for bringing such appeals.

(20) Regulation (EC) No 1049/2001 of the European Parliament and of the Council ([2]) governs public access to European Parliament, Council and Commission documents, and is designed to confer on the public as wide a right of access as possible to documents of those institutions. That right is nonetheless subject to certain limits based on reasons of public or private interest. It follows that the system of exceptions laid down in Article 4 of that Regulation is based on a balancing of the opposing interests in a given situation, namely, the interests which would be favoured by the disclosure of the documents in question and those which would be jeopardised by such disclosure. This Directive should be without prejudice to such rules and practices under Regulation (EC) No 1049/2001.

(21) The effectiveness and consistency of the application of Articles 101 and 102 TFEU by the Commission and the national competition authorities require a common approach across the Union on the disclosure of evidence that is included in the file of a competition authority. Disclosure of evidence should not unduly detract from the effectiveness of the enforcement of competition law by a competition authority. This Directive does not cover the disclosure of internal documents of, or correspondence between, competition authorities.

(22) In order to ensure the effective protection of the right to compensation, it is not necessary that every document relating to proceedings under Article 101 or 102 TFEU be disclosed to a claimant merely on the grounds of the claimant's intended action for damages since it is highly unlikely that the action for damages will need to be based on all the evidence in the file relating to those proceedings.

(23) The requirement of proportionality should be carefully assessed when disclosure risks unravelling the investigation strategy of a competition authority by revealing which documents are part of the file or risks having a negative effect on the way in which undertakings cooperate with the competition authorities. Particular attention should be paid to preventing 'fishing expeditions', i.e. non-specific or overly broad searches for information that is unlikely to be of relevance for the parties to the proceedings. Disclosure requests should therefore not be deemed to be proportionate where they refer to the generic disclosure of documents in the file of a competition authority relating to a certain case, or the generic disclosure of documents submitted by a party in the context of a particular case. Such wide disclosure requests would not be compatible with the requesting party's duty to specify the items of evidence or the categories of evidence as precisely and narrowly as possible.

([1]) Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1).

([2]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

(24) This Directive does not affect the right of courts to consider, under Union or national law, the interests of the effective public enforcement of competition law when ordering the disclosure of any type of evidence with the exception of leniency statements and settlement submissions.

(25) An exemption should apply in respect of any disclosure that, if granted, would unduly interfere with an ongoing investigation by a competition authority concerning an infringement of Union or national competition law. Information that was prepared by a competition authority in the course of its proceedings for the enforcement of Union or national competition law and sent to the parties to those proceedings (such as a 'Statement of Objections') or prepared by a party thereto (such as replies to requests for information of the competition authority or witness statements) should therefore be disclosable in actions for damages only after the competition authority has closed its proceedings, for instance by adopting a decision under Article 5 or under Chapter III of Regulation (EC) No 1/2003, with the exception of decisions on interim measures.

(26) Leniency programmes and settlement procedures are important tools for the public enforcement of Union competition law as they contribute to the detection and efficient prosecution of, and the imposition of penalties for, the most serious infringements of competition law. Furthermore, as many decisions of competition authorities in cartel cases are based on a leniency application, and damages actions in cartel cases generally follow on from those decisions, leniency programmes are also important for the effectiveness of actions for damages in cartel cases. Undertakings might be deterred from cooperating with competition authorities under leniency programmes and settlement procedures if self-incriminating statements such as leniency statements and settlement submissions, which are produced for the sole purpose of cooperating with the competition authorities, were to be disclosed. Such disclosure would pose a risk of exposing cooperating undertakings or their managing staff to civil or criminal liability under conditions worse than those of co-infringers not cooperating with the competition authorities. To ensure undertakings' continued willingness to approach competition authorities voluntarily with leniency statements or settlement submissions, such documents should be exempted from the disclosure of evidence. That exemption should also apply to verbatim quotations from leniency statements or settlement submissions included in other documents. Those limitations on the disclosure of evidence should not prevent competition authorities from publishing their decisions in accordance with the applicable Union or national law. In order to ensure that that exemption does not unduly interfere with injured parties' rights to compensation, it should be limited to those voluntary and self-incriminating leniency statements and settlement submissions.

(27) The rules in this Directive on the disclosure of documents other than leniency statements and settlement submissions ensure that injured parties retain sufficient alternative means by which to obtain access to the relevant evidence that they need in order to prepare their actions for damages. National courts should themselves be able, upon request by a claimant, to access documents in respect of which the exemption is invoked in order to verify whether the contents thereof fall outside the definitions of leniency statements and settlement submissions laid down in this Directive. Any content falling outside those definitions should be disclosable under the relevant conditions.

(28) National courts should be able, at any time, to order, in the context of an action for damages, the disclosure of evidence that exists independently of the proceedings of a competition authority ('pre-existing information').

(29) The disclosure of evidence should be ordered from a competition authority only when that evidence cannot reasonably be obtained from another party or from a third party.

(30) Pursuant to Article 15(3) of Regulation (EC) No 1/2003, competition authorities, acting upon their own initiative, can submit written observations to national courts on issues relating to the application of Article 101 or 102 TFEU. In order to preserve the contribution made by public enforcement to the application of those Articles, competition authorities should likewise be able, acting upon their own initiative, to submit their observations to a national court for the purpose of assessing the proportionality of a disclosure of evidence included in the authorities' files, in light of the impact that such disclosure would have on the effectiveness of the public enforcement of competition law. Member States should be able to set up a system whereby a competition authority is informed of requests for disclosure of information when the person requesting disclosure or the person from whom disclosure is sought is involved in that competition authority's investigation into the alleged infringement, without prejudice to national law providing for *ex parte* proceedings.

(31) Any natural or legal person that obtains evidence through access to the file of a competition authority should be able to use that evidence for the purposes of an action for damages to which it is a party. Such use should also be allowed on the part of any natural or legal person that succeeded in its rights and obligations, including through the acquisition of its claim. Where the evidence was obtained by a legal person forming part of a corporate group constituting one undertaking for the application of Articles 101 and 102 TFEU, other legal persons belonging to the same undertaking should also be able to use that evidence.

(32) However, the use of evidence obtained through access to the file of a competition authority should not unduly detract from the effective enforcement of competition law by a competition authority. In order to ensure that the limitations on disclosure laid down in this Directive are not undermined, the use of evidence of the types referred to in recitals 24 and 25 which is obtained solely through access to the file of a competition authority should be limited under the same circumstances. The limitation should take the form of inadmissibility in actions for damages or the form of any other protection under applicable national rules capable of ensuring the full effect of the limits on the disclosure of those types of evidence. Moreover, evidence obtained from a competition authority should not become an object of trade. The possibility of using evidence that was obtained solely through access to the file of a competition authority should therefore be limited to the natural or legal person that was originally granted access and to its legal successors. That limitation to avoid trading of evidence does not, however, prevent a national court from ordering the disclosure of that evidence under the conditions provided for in this Directive.

(33) The fact that a claim for damages is initiated, or that an investigation by a competition authority is started, entails a risk that persons concerned may destroy or hide evidence that would be useful in substantiating an injured party's claim for damages. To prevent the destruction of relevant evidence and to ensure that court orders as to disclosure are complied with, national courts should be able to impose sufficiently deterrent penalties. In so far as parties to the proceedings are concerned, the risk of adverse inferences being drawn in the proceedings for damages can be a particularly effective penalty, and can help avoid delays. Penalties should also be available for non-compliance with obligations to protect confidential information and for the abusive use of information obtained through disclosure. Similarly, penalties should be available if information obtained through access to the file of a competition authority is used abusively in actions for damages.

(34) Ensuring the effective and consistent application of Articles 101 and 102 TFEU by the Commission and the national competition authorities necessitates a common approach across the Union on the effect of national competition authorities' final infringement decisions on subsequent actions for damages. Such decisions are adopted only after the Commission has been informed of the decision envisaged or, in the absence thereof, of any other document indicating the proposed course of action pursuant to Article 11(4) of Regulation (EC) No 1/2003, and if the Commission has not relieved the national competition authority of its competence by initiating proceedings pursuant to Article 11(6) of that Regulation. The Commission should ensure the consistent application of Union competition law by providing, bilaterally and within the framework of the European Competition Network, guidance to the national competition authorities. To enhance legal certainty, to avoid inconsistency in the application of Articles 101 and 102 TFEU, to increase the effectiveness and procedural efficiency of actions for damages and to foster the functioning of the internal market for undertakings and consumers, the finding of an infringement of Article 101 or 102 TFEU in a final decision by a national competition authority or a review court should not be relitigated in subsequent actions for damages. Therefore, such a finding should be deemed to be irrefutably established in actions for damages brought in the Member State of the national competition authority or review court relating to that infringement. The effect of the finding should, however, cover only the nature of the infringement and its material, personal, temporal and territorial scope as determined by the competition authority or review court in the exercise of its jurisdiction. Where a decision has found that provisions of national competition law are infringed in cases where Union and national competition law are applied in the same case and in parallel, that infringement should also be deemed to be irrefutably established.

(35) Where an action for damages is brought in a Member State other than the Member State of a national competition authority or a review court that found the infringement of Article 101 or 102 TFEU to which the action relates, it should be possible to present that finding in a final decision by the national competition authority or the review court to a national court as at least prima facie evidence of the fact that an infringement of competition law has occurred. The finding can be assessed as appropriate, along with any other evidence adduced by the parties. The effects of decisions by national competition authorities and review courts finding an infringement of the competition rules are without prejudice to the rights and obligations of national courts under Article 267 TFEU.

(36) National rules on the beginning, duration, suspension or interruption of limitation periods should not unduly hamper the bringing of actions for damages. This is particularly important in respect of actions that build upon a finding by a competition authority or a review court of an infringement. To that end, it should be possible to bring an action for damages after proceedings by a competition authority, with a view to enforcing national and Union competition law. The limitation period should not begin to run before the infringement ceases and before a claimant knows, or can reasonably be expected to know, the behaviour constituting the infringement, the fact that the infringement caused the claimant harm and the identity of the infringer. Member States should be able to maintain or introduce absolute limitation periods that are of general application, provided that the duration of such absolute limitation periods does not render practically impossible or excessively difficult the exercise of the right to full compensation.

(37) Where several undertakings infringe the competition rules jointly, as in the case of a cartel, it is appropriate to make provision for those co-infringers to be held jointly and severally liable for the entire harm caused by the infringement. A co-infringer should have the right to obtain a contribution from other co-infringers if it has paid more compensation than its share. The determination of that share as the relative responsibility of a given infringer, and the relevant criteria such as turnover, market share, or role in the cartel, is a matter for the applicable national law, while respecting the principles of effectiveness and equivalence.

(38) Undertakings which cooperate with competition authorities under a leniency programme play a key role in exposing secret cartel infringements and in bringing them to an end, thereby often mitigating the harm which could have been caused had the infringement continued. It is therefore appropriate to make provision for undertakings which have received immunity from fines from a competition authority under a leniency programme to be protected from undue exposure to damages claims, bearing in mind that the decision of the competition authority finding the infringement may become final for the immunity recipient before it becomes final for other undertakings which have not received immunity, thus potentially making the immunity recipient the preferential target of litigation. It is therefore appropriate that the immunity recipient be relieved in principle from joint and several liability for the entire harm and that any contribution it must make vis-à-vis co-infringers not exceed the amount of harm caused to its own direct or indirect purchasers or, in the case of a buying cartel, its direct or indirect providers. To the extent that a cartel has caused harm to those other than the customers or providers of the infringers, the contribution of the immunity recipient should not exceed its relative responsibility for the harm caused by the cartel. That share should be determined in accordance with the same rules used to determine the contributions between infringers. The immunity recipient should remain fully liable to the injured parties other than its direct or indirect purchasers or providers only where they are unable to obtain full compensation from the other infringers.

(39) Harm in the form of actual loss can result from the price difference between what was actually paid and what would otherwise have been paid in the absence of the infringement. When an injured party has reduced its actual loss by passing it on, entirely or in part, to its own purchasers, the loss which has been passed on no longer constitutes harm for which the party that passed it on needs to be compensated. It is therefore in principle appropriate to allow an infringer to invoke the passing-on of actual loss as a defence against a claim for damages. It is appropriate to provide that the infringer, in so far as it invokes the passing-on defence, must prove the existence and extent of pass-on of the overcharge. This burden of proof should not affect the possibility for the infringer to use evidence other than that in its possession, such as evidence already acquired in the proceedings or evidence held by other parties or third parties.

(40) In situations where the passing-on resulted in reduced sales and thus harm in the form of a loss of profit, the right to claim compensation for such loss of profit should remain unaffected.

(41) Depending on the conditions under which undertakings are operating, it may be commercial practice to pass on price increases down the supply chain. Consumers or undertakings to whom actual loss has thus been passed on have suffered harm caused by an infringement of Union or national competition law. While such harm should be compensated for by the infringer, it may be particularly difficult for consumers or undertakings that did not themselves make any purchase from the infringer to prove the extent of that harm. It is therefore appropriate to provide that, where the existence of a claim for damages or the amount of damages to be awarded depends on whether or to what degree an overcharge paid by a direct purchaser from the infringer has been passed on to an indirect purchaser, the latter is regarded as having proven that an overcharge paid by that direct purchaser has

been passed on to its level where it is able to show prima facie that such passing-on has occurred. This rebuttable presumption applies unless the infringer can credibly demonstrate to the satisfaction of the court that the actual loss has not or not entirely been passed on to the indirect purchaser. It is furthermore appropriate to define under what conditions the indirect purchaser is to be regarded as having established such prima facie proof. As regards the quantification of passing-on, national courts should have the power to estimate which share of the overcharge has been passed on to the level of indirect purchasers in disputes pending before them.

(42) The Commission should issue clear, simple and comprehensive guidelines for national courts on how to estimate the share of the overcharge passed on to indirect purchasers.

(43) Infringements of competition law often concern the conditions and the price under which goods or services are sold, and lead to an overcharge and other harm for the customers of the infringers. The infringement may also concern supplies to the infringer (for example in the case of a buyers' cartel). In such cases, the actual loss could result from a lower price paid by infringers to their suppliers. This Directive and in particular the rules on passing-on should apply accordingly to those cases.

(44) Actions for damages can be brought both by those who purchased goods or services from the infringer and by purchasers further down the supply chain. In the interest of consistency between judgments resulting from related proceedings and hence to avoid the harm caused by the infringement of Union or national competition law not being fully compensated or the infringer being required to pay damages to compensate for harm that has not been suffered, national courts should have the power to estimate the proportion of any overcharge which was suffered by the direct or indirect purchasers in disputes pending before them. In this context, national courts should be able to take due account, by procedural or substantive means available under Union and national law, of any related action and of the resulting judgment, particularly where it finds that passing-on has been proven. National courts should have at their disposal appropriate procedural means, such as joinder of claims, to ensure that compensation for actual loss paid at any level of the supply chain does not exceed the overcharge harm caused at that level. Such means should also be available in cross-border cases. This possibility to take due account of judgments should be without prejudice to the fundamental rights of the defence and the rights to an effective remedy and a fair trial of those who were not parties to the judicial proceedings, and without prejudice to the rules on the evidenciary value of judgments rendered in that context. It is possible for actions pending before the courts of different Member States to be considered as related within the meaning of Article 30 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council ([1]). Under that Article, national courts other than that first seized may stay proceedings or, under certain circumstances, may decline jurisdiction. This Directive is without prejudice to the rights and obligations of national courts under that Regulation.

(45) An injured party who has proven having suffered harm as a result of a competition law infringement still needs to prove the extent of the harm in order to obtain damages. Quantifying harm in competition law cases is a very fact-intensive process and may require the application of complex economic models. This is often very costly, and claimants have difficulties in obtaining the data necessary to substantiate their claims. The quantification of harm in competition law cases can thus constitute a substantial barrier preventing effective claims for compensation.

(46) In the absence of Union rules on the quantification of harm caused by a competition law infringement, it is for the domestic legal system of each Member State to determine its own rules on quantifying harm, and for the Member States and for the national courts to determine what requirements the claimant has to meet when proving the amount of the harm suffered, the methods that can be used in quantifying the amount, and the consequences of not being able to fully meet those requirements. However, the requirements of national law regarding the quantification of harm in competition law cases should not be less favourable than those governing similar domestic actions (principle of equivalence), nor should they render the exercise of the Union right to damages practically impossible or excessively difficult (principle of effectiveness). Regard should be had to any information asymmetries between the parties and to the fact that quantifying the harm means assessing how the market in question would have evolved had there been no infringement. This assessment implies a comparison with a situation which is by definition hypothetical and can thus never be made with complete accuracy. It is therefore appropriate to ensure that national courts have the power to estimate the amount of the harm caused

([1]) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

by the competition law infringement. Member States should ensure that, where requested, national competition authorities may provide guidance on quantum. In order to ensure coherence and predictability, the Commission should provide general guidance at Union level.

(47) To remedy the information asymmetry and some of the difficulties associated with quantifying harm in competition law cases, and to ensure the effectiveness of claims for damages, it is appropriate to presume that cartel infringements result in harm, in particular via an effect on prices. Depending on the facts of the case, cartels result in a rise in prices, or prevent a lowering of prices which would otherwise have occurred but for the cartel. This presumption should not cover the concrete amount of harm. Infringers should be allowed to rebut the presumption. It is appropriate to limit this rebuttable presumption to cartels, given their secret nature, which increases the information asymmetry and makes it more difficult for claimants to obtain the evidence necessary to prove the harm.

(48) Achieving a 'once-and-for-all' settlement for defendants is desirable in order to reduce uncertainty for infringers and injured parties. Therefore, infringers and injured parties should be encouraged to agree on compensating for the harm caused by a competition law infringement through consensual dispute resolution mechanisms, such as out-of-court settlements (including those where a judge can declare a settlement binding), arbitration, mediation or conciliation. Such consensual dispute resolution should cover as many injured parties and infringers as legally possible. The provisions in this Directive on consensual dispute resolution are therefore meant to facilitate the use of such mechanisms and increase their effectiveness.

(49) Limitation periods for bringing an action for damages could be such that they prevent injured parties and infringers from having sufficient time to come to an agreement on the compensation to be paid. In order to provide both sides with a genuine opportunity to engage in consensual dispute resolution before bringing proceedings before national courts, limitation periods need to be suspended for the duration of the consensual dispute resolution process.

(50) Furthermore, when parties decide to engage in consensual dispute resolution after an action for damages for the same claim has been brought before a national court, that court should be able to suspend the proceedings before it for the duration of the consensual dispute resolution process. When considering whether to suspend the proceedings, the national court should take into account the advantages of an expeditious procedure.

(51) To encourage consensual settlements, an infringer that pays damages through consensual dispute resolution should not be placed in a worse position vis-à-vis its co-infringers than it would otherwise be without the consensual settlement. That might happen if a settling infringer, even after a consensual settlement, continued to be fully jointly and severally liable for the harm caused by the infringement. A settling infringer should in principle therefore not contribute to its non-settling co-infringers when the latter have paid damages to an injured party with whom the first infringer had previously settled. The corollary to this non-contribution rule is that the claim of the injured party should be reduced by the settling infringer's share of the harm caused to it, regardless of whether the amount of the settlement equals or is different from the relative share of the harm that the settling co-infringer inflicted upon the settling injured party. That relative share should be determined in accordance with the rules otherwise used to determine the contributions among infringers. Without such a reduction, non-settling infringers would be unduly affected by settlements to which they were not a party. However, in order to ensure the right to full compensation, settling co-infringers should still have to pay damages where that is the only possibility for the settling injured party to obtain compensation for the remaining claim. The remaining claim refers to the claim of the settling injured party reduced by the settling co-infringer's share of the harm that the infringement inflicted upon the settling injured party. The latter possibility to claim damages from the settling co-infringer exists unless it is expressly excluded under the terms of the consensual settlement.

(52) Situations should be avoided in which settling co-infringers, by paying contribution to non-settling co-infringers for damages they paid to non-settling injured parties, pay a total amount of compensation exceeding their relative responsibility for the harm caused by the infringement. Therefore, when settling co-infringers are asked to contribute to damages subsequently paid by non-settling co-infringers to non-settling injured parties, national courts should take account of the damages already paid under the consensual settlement, bearing in mind that not all co-infringers are necessarily equally involved in the full substantive, temporal and geographical scope of the infringement.

(53) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union.

(54) Since the objectives of this Directive, namely to establish rules concerning actions for damages for infringements of Union competition law in order to ensure the full effect of Articles 101 and 102 TFEU, and the proper functioning of the internal market for undertakings and consumers, cannot be sufficiently achieved by the Member States, but can rather, by reason of the requisite effectiveness and consistency in the application of Articles 101 and 102 TFEU, 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 does not go beyond what is necessary in order to achieve those objectives.

(55) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ([1]), 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.

(56) It is appropriate to provide rules for the temporal application of this Directive,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1. This Directive sets out certain rules necessary to ensure that anyone who has suffered harm caused by an infringement of competition law by an undertaking or by an association of undertakings can effectively exercise the right to claim full compensation for that harm from that undertaking or association. It sets out rules fostering undistorted competition in the internal market and removing obstacles to its proper functioning, by ensuring equivalent protection throughout the Union for anyone who has suffered such harm.

2. This Directive sets out rules coordinating the enforcement of the competition rules by competition authorities and the enforcement of those rules in damages actions before national courts.

Article 2

Definitions

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

(1) 'infringement of competition law' means an infringement of Article 101 or 102 TFEU, or of national competition law;

(2) 'infringer' means an undertaking or association of undertakings which has committed an infringement of competition law;

(3) 'national competition law' means provisions of national law that predominantly pursue the same objective as Articles 101 and 102 TFEU and that are applied to the same case and in parallel to Union competition law pursuant to Article 3(1) of Regulation (EC) No 1/2003, excluding provisions of national law which impose criminal penalties on natural persons, except to the extent that such criminal penalties are the means whereby competition rules applying to undertakings are enforced;

(4) 'action for damages' means an action under national law by which a claim for damages is brought before a national court by an alleged injured party, or by someone acting on behalf of one or more alleged injured parties where Union or national law provides for that possibility, or by a natural or legal person that succeeded in the right of the alleged injured party, including the person that acquired the claim;

(5) 'claim for damages' means a claim for compensation for harm caused by an infringement of competition law;

(6) 'injured party' means a person that has suffered harm caused by an infringement of competition law;

([1]) OJ C 369, 17.12.2011, p. 14.

(7) 'national competition authority' means an authority designated by a Member State pursuant to Article 35 of Regulation (EC) No 1/2003, as being responsible for the application of Articles 101 and 102 TFEU;

(8) 'competition authority' means the Commission or a national competition authority or both, as the context may require;

(9) 'national court' means a court or tribunal of a Member State within the meaning of Article 267 TFEU;

(10) 'review court' means a national court that is empowered by ordinary means of appeal to review decisions of a national competition authority or to review judgments pronouncing on those decisions, irrespective of whether that court itself has the power to find an infringement of competition law;

(11) 'infringement decision' means a decision of a competition authority or review court that finds an infringement of competition law;

(12) 'final infringement decision' means an infringement decision that cannot be, or that can no longer be, appealed by ordinary means;

(13) 'evidence' means all types of means of proof admissible before the national court seized, in particular documents and all other objects containing information, irrespective of the medium on which the information is stored;

(14) 'cartel' means an agreement or concerted practice between two or more competitors aimed at coordinating their competitive behaviour on the market or influencing the relevant parameters of competition through practices such as, but not limited to, the fixing or coordination of purchase or selling prices or other trading conditions, including in relation to intellectual property rights, the allocation of production or sales quotas, the sharing of markets and customers, including bid-rigging, restrictions of imports or exports or anti-competitive actions against other competitors;

(15) 'leniency programme' means a programme concerning the application of Article 101 TFEU or a corresponding provision under national law on the basis of which a participant in a secret cartel, independently of the other undertakings involved in the cartel, cooperates with an investigation of the competition authority, by voluntarily providing presentations regarding that participant's knowledge of, and role in, the cartel in return for which that participant receives, by decision or by a discontinuation of proceedings, immunity from, or a reduction in, fines for its involvement in the cartel;

(16) 'leniency statement' means an oral or written presentation voluntarily provided by, or on behalf of, an undertaking or a natural person to a competition authority or a record thereof, describing the knowledge of that undertaking or natural person of a cartel and describing its role therein, which presentation was drawn up specifically for submission to the competition authority with a view to obtaining immunity or a reduction of fines under a leniency programme, not including pre-existing information;

(17) 'pre-existing information' means evidence that exists irrespective of the proceedings of a competition authority, whether or not such information is in the file of a competition authority;

(18) 'settlement submission' means a voluntary presentation by, or on behalf of, an undertaking to a competition authority describing the undertaking's acknowledgement of, or its renunciation to dispute, its participation in an infringement of competition law and its responsibility for that infringement of competition law, which was drawn up specifically to enable the competition authority to apply a simplified or expedited procedure;

(19) 'immunity recipient' means an undertaking which, or a natural person who, has been granted immunity from fines by a competition authority under a leniency programme;

(20) 'overcharge' means the difference between the price actually paid and the price that would otherwise have prevailed in the absence of an infringement of competition law;

(21) 'consensual dispute resolution' means any mechanism enabling parties to reach the out-of-court resolution of a dispute concerning a claim for damages;

(22) 'consensual settlement' means an agreement reached through consensual dispute resolution.

(23) 'direct purchaser' means a natural or legal person who acquired, directly from an infringer, products or services that were the object of an infringement of competition law;

(24) 'indirect purchaser' means a natural or legal person who acquired, not directly from an infringer, but from a direct purchaser or a subsequent purchaser, products or services that were the object of an infringement of competition law, or products or services containing them or derived therefrom.

Article 3

Right to full compensation

1. Member States shall ensure that any natural or legal person who has suffered harm caused by an infringement of competition law is able to claim and to obtain full compensation for that harm.

2. Full compensation shall place a person who has suffered harm in the position in which that person would have been had the infringement of competition law not been committed. It shall therefore cover the right to compensation for actual loss and for loss of profit, plus the payment of interest.

3. Full compensation under this Directive shall not lead to overcompensation, whether by means of punitive, multiple or other types of damages.

Article 4

Principles of effectiveness and equivalence

In accordance with the principle of effectiveness, Member States shall ensure that all national rules and procedures relating to the exercise of claims for damages are designed and applied in such a way that they do not render practically impossible or excessively difficult the exercise of the Union right to full compensation for harm caused by an infringement of competition law. In accordance with the principle of equivalence, national rules and procedures relating to actions for damages resulting from infringements of Article 101 or 102 TFEU shall not be less favourable to the alleged injured parties than those governing similar actions for damages resulting from infringements of national law.

CHAPTER II

DISCLOSURE OF EVIDENCE

Article 5

Disclosure of evidence

1. Member States shall ensure that in proceedings relating to an action for damages in the Union, upon request of a claimant who has presented a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of its claim for damages, national courts are able to order the defendant or a third party to disclose relevant evidence which lies in their control, subject to the conditions set out in this Chapter. Member States shall ensure that national courts are able, upon request of the defendant, to order the claimant or a third party to disclose relevant evidence.

This paragraph is without prejudice to the rights and obligations of national courts under Regulation (EC) No 1206/2001.

2. Member States shall ensure that national courts are able to order the disclosure of specified items of evidence or relevant categories of evidence circumscribed as precisely and as narrowly as possible on the basis of reasonably available facts in the reasoned justification.

3. Member States shall ensure that national courts limit the disclosure of evidence to that which is proportionate. In determining whether any disclosure requested by a party is proportionate, national courts shall consider the legitimate interests of all parties and third parties concerned. They shall, in particular, consider:

(a) the extent to which the claim or defence is supported by available facts and evidence justifying the request to disclose evidence;

(b) the scope and cost of disclosure, especially for any third parties concerned, including preventing non-specific searches for information which is unlikely to be of relevance for the parties in the procedure;

(c) whether the evidence the disclosure of which is sought contains confidential information, especially concerning any third parties, and what arrangements are in place for protecting such confidential information.

4. Member States shall ensure that national courts have the power to order the disclosure of evidence containing confidential information where they consider it relevant to the action for damages. Member States shall ensure that, when ordering the disclosure of such information, national courts have at their disposal effective measures to protect such information.

5. The interest of undertakings to avoid actions for damages following an infringement of competition law shall not constitute an interest that warrants protection.

6. Member States shall ensure that national courts give full effect to applicable legal professional privilege under Union or national law when ordering the disclosure of evidence.

7. Member States shall ensure that those from whom disclosure is sought are provided with an opportunity to be heard before a national court orders disclosure under this Article.

8. Without prejudice to paragraphs 4 and 7 and to Article 6, this Article shall not prevent Member States from maintaining or introducing rules which would lead to wider disclosure of evidence.

Article 6

Disclosure of evidence included in the file of a competition authority

1. Member States shall ensure that, for the purpose of actions for damages, where national courts order the disclosure of evidence included in the file of a competition authority, this Article applies in addition to Article 5.

2. This Article is without prejudice to the rules and practices on public access to documents under Regulation (EC) No 1049/2001.

3. This Article is without prejudice to the rules and practices under Union or national law on the protection of internal documents of competition authorities and of correspondence between competition authorities.

4. When assessing, in accordance with Article 5(3), the proportionality of an order to disclose information, national courts shall, in addition, consider the following:

(a) whether the request has been formulated specifically with regard to the nature, subject matter or contents of documents submitted to a competition authority or held in the file thereof, rather than by a non-specific application concerning documents submitted to a competition authority;

(b) whether the party requesting disclosure is doing so in relation to an action for damages before a national court; and

(c) in relation to paragraphs 5 and 10, or upon request of a competition authority pursuant to paragraph 11, the need to safeguard the effectiveness of the public enforcement of competition law.

5. National courts may order the disclosure of the following categories of evidence only after a competition authority, by adopting a decision or otherwise, has closed its proceedings:

(a) information that was prepared by a natural or legal person specifically for the proceedings of a competition authority;

(b) information that the competition authority has drawn up and sent to the parties in the course of its proceedings; and

(c) settlement submissions that have been withdrawn.

6. Member States shall ensure that, for the purpose of actions for damages, national courts cannot at any time order a party or a third party to disclose any of the following categories of evidence:

(a) leniency statements; and

(b) settlement submissions.

7. A claimant may present a reasoned request that a national court access the evidence referred to in point (a) or (b) of paragraph 6 for the sole purpose of ensuring that their contents correspond to the definitions in points (16) and (18) of Article 2. In that assessment, national courts may request assistance only from the competent competition authority. The authors of the evidence in question may also have the possibility to be heard. In no case shall the national court permit other parties or third parties access to that evidence.

8. If only parts of the evidence requested are covered by paragraph 6, the remaining parts thereof shall, depending on the category under which they fall, be released in accordance with the relevant paragraphs of this Article.

9. The disclosure of evidence in the file of a competition authority that does not fall into any of the categories listed in this Article may be ordered in actions for damages at any time, without prejudice to this Article.

10. Member States shall ensure that national courts request the disclosure from a competition authority of evidence included in its file only where no party or third party is reasonably able to provide that evidence.

11. To the extent that a competition authority is willing to state its views on the proportionality of disclosure requests, it may, acting on its own initiative, submit observations to the national court before which a disclosure order is sought.

Article 7

Limits on the use of evidence obtained solely through access to the file of a competition authority

1. Member States shall ensure that evidence in the categories listed in Article 6(6) which is obtained by a natural or legal person solely through access to the file of a competition authority is either deemed to be inadmissible in actions for damages or is otherwise protected under the applicable national rules to ensure the full effect of the limits on the disclosure of evidence set out in Article 6.

2. Member States shall ensure that, until a competition authority has closed its proceedings by adopting a decision or otherwise, evidence in the categories listed in Article 6(5) which is obtained by a natural or legal person solely through access to the file of that competition authority is either deemed to be inadmissible in actions for damages or is otherwise protected under the applicable national rules to ensure the full effect of the limits on the disclosure of evidence set out in Article 6.

3. Member States shall ensure that evidence which is obtained by a natural or legal person solely through access to the file of a competition authority and which does not fall under paragraph 1 or 2, can be used in an action for damages only by that person or by a natural or legal person that succeeded to that person's rights, including a person that acquired that person's claim.

Article 8

Penalties

1. Member States shall ensure that national courts are able effectively to impose penalties on parties, third parties and their legal representatives in the event of any of the following:

(a) their failure or refusal to comply with the disclosure order of any national court;

(b) their destruction of relevant evidence;

(c) their failure or refusal to comply with the obligations imposed by a national court order protecting confidential information;

(d) their breach of the limits on the use of evidence provided for in this Chapter.

2. Member States shall ensure that the penalties that can be imposed by national courts are effective, proportionate and dissuasive. The penalties available to national courts shall include, with regard to the behaviour of a party to proceedings for an action for damages, the possibility to draw adverse inferences, such as presuming the relevant issue to be proven or dismissing claims and defences in whole or in part, and the possibility to order the payment of costs.

CHAPTER III

EFFECT OF NATIONAL DECISIONS, LIMITATION PERIODS, JOINT AND SEVERAL LIABILITY

Article 9

Effect of national decisions

1. Member States shall ensure that an infringement of competition law found by a final decision of a national competition authority or by a review court is deemed to be irrefutably established for the purposes of an action for damages brought before their national courts under Article 101 or 102 TFEU or under national competition law.

2. Member States shall ensure that where a final decision referred to in paragraph 1 is taken in another Member State, that final decision may, in accordance with national law, be presented before their national courts as at least prima facie evidence that an infringement of competition law has occurred and, as appropriate, may be assessed along with any other evidence adduced by the parties.

3. This Article is without prejudice to the rights and obligations of national courts under Article 267 TFEU.

Article 10

Limitation periods

1. Member States shall, in accordance with this Article, lay down rules applicable to limitation periods for bringing actions for damages. Those rules shall determine when the limitation period begins to run, the duration thereof and the circumstances under which it is interrupted or suspended.

2. Limitation periods shall not begin to run before the infringement of competition law has ceased and the claimant knows, or can reasonably be expected to know:

(a) of the behaviour and the fact that it constitutes an infringement of competition law;

(b) of the fact that the infringement of competition law caused harm to it; and

(c) the identity of the infringer.

3. Member States shall ensure that the limitation periods for bringing actions for damages are at least five years.

4. Member States shall ensure that a limitation period is suspended or, depending on national law, interrupted, if a competition authority takes action for the purpose of the investigation or its proceedings in respect of an infringement of competition law to which the action for damages relates. The suspension shall end at the earliest one year after the infringement decision has become final or after the proceedings are otherwise terminated.

Article 11

Joint and several liability

1. Member States shall ensure that undertakings which have infringed competition law through joint behaviour are jointly and severally liable for the harm caused by the infringement of competition law; with the effect that each of those undertakings is bound to compensate for the harm in full, and the injured party has the right to require full compensation from any of them until he has been fully compensated.

2. By way of derogation from paragraph 1, Member States shall ensure that, without prejudice to the right of full compensation as laid down in Article 3, where the infringer is a small or medium-sized enterprise (SME) as defined in Commission Recommendation 2003/361/EC [1], the infringer is liable only to its own direct and indirect purchasers where:

(a) its market share in the relevant market was below 5 % at any time during the infringement of competition law; and

(b) the application of the normal rules of joint and several liability would irretrievably jeopardise its economic viability and cause its assets to lose all their value.

3. The derogation laid down in paragraph 2 shall not apply where:

(a) the SME has led the infringement of competition law or has coerced other undertakings to participate therein; or

(b) the SME has previously been found to have infringed competition law.

4. By way of derogation from paragraph 1, Member States shall ensure that an immunity recipient is jointly and severally liable as follows:

(a) to its direct or indirect purchasers or providers; and

(b) to other injured parties only where full compensation cannot be obtained from the other undertakings that were involved in the same infringement of competition law.

Member States shall ensure that any limitation period applicable to cases under this paragraph is reasonable and sufficient to allow injured parties to bring such actions.

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[1] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

5. Member States shall ensure that an infringer may recover a contribution from any other infringer, the amount of which shall be determined in the light of their relative responsibility for the harm caused by the infringement of competition law. The amount of contribution of an infringer which has been granted immunity from fines under a leniency programme shall not exceed the amount of the harm it caused to its own direct or indirect purchasers or providers.

6. Member States shall ensure that, to the extent the infringement of competition law caused harm to injured parties other than the direct or indirect purchasers or providers of the infringers, the amount of any contribution from an immunity recipient to other infringers shall be determined in the light of its relative responsibility for that harm.

CHAPTER IV

THE PASSING-ON OF OVERCHARGES

Article 12

Passing-on of overcharges and the right to full compensation

1. To ensure the full effectiveness of the right to full compensation as laid down in Article 3, Member States shall ensure that, in accordance with the rules laid down in this Chapter, compensation of harm can be claimed by anyone who suffered it, irrespective of whether they are direct or indirect purchasers from an infringer, and that compensation of harm exceeding that caused by the infringement of competition law to the claimant, as well as the absence of liability of the infringer, are avoided.

2. In order to avoid overcompensation, Member States shall lay down procedural rules appropriate to ensure that compensation for actual loss at any level of the supply chain does not exceed the overcharge harm suffered at that level.

3. This Chapter shall be without prejudice to the right of an injured party to claim and obtain compensation for loss of profits due to a full or partial passing-on of the overcharge.

4. Member States shall ensure that the rules laid down in this Chapter apply accordingly where the infringement of competition law relates to a supply to the infringer.

5. Member States shall ensure that the national courts have the power to estimate, in accordance with national procedures, the share of any overcharge that was passed on.

Article 13

Passing-on defence

Member States shall ensure that the defendant in an action for damages can invoke as a defence against a claim for damages the fact that the claimant passed on the whole or part of the overcharge resulting from the infringement of competition law. The burden of proving that the overcharge was passed on shall be on the defendant, who may reasonably require disclosure from the claimant or from third parties.

Article 14

Indirect purchasers

1. Member States shall ensure that, where in an action for damages the existence of a claim for damages or the amount of compensation to be awarded depends on whether, or to what degree, an overcharge was passed on to the claimant, taking into account the commercial practice that price increases are passed on down the supply chain, the burden of proving the existence and scope of such a passing-on shall rest with the claimant, who may reasonably require disclosure from the defendant or from third parties.

2. In the situation referred to in paragraph 1, the indirect purchaser shall be deemed to have proven that a passing-on to that indirect purchaser occurred where that indirect purchaser has shown that:

(a) the defendant has committed an infringement of competition law;

(b) the infringement of competition law has resulted in an overcharge for the direct purchaser of the defendant; and

(c) the indirect purchaser has purchased the goods or services that were the object of the infringement of competition law, or has purchased goods or services derived from or containing them.

This paragraph shall not apply where the defendant can demonstrate credibly to the satisfaction of the court that the overcharge was not, or was not entirely, passed on to the indirect purchaser.

Article 15

Actions for damages by claimants from different levels in the supply chain

1. To avoid that actions for damages by claimants from different levels in the supply chain lead to a multiple liability or to an absence of liability of the infringer, Member States shall ensure that in assessing whether the burden of proof resulting from the application of Articles 13 and 14 is satisfied, national courts seized of an action for damages are able, by means available under Union or national law, to take due account of any of the following:

(a) actions for damages that are related to the same infringement of competition law, but that are brought by claimants from other levels in the supply chain;

(b) judgments resulting from actions for damages as referred to in point (a);

(c) relevant information in the public domain resulting from the public enforcement of competition law.

2. This Article shall be without prejudice to the rights and obligations of national courts under Article 30 of Regulation (EU) No 1215/2012.

Article 16

Guidelines for national courts

The Commission shall issue guidelines for national courts on how to estimate the share of the overcharge which was passed on to the indirect purchaser.

CHAPTER V

QUANTIFICATION OF HARM

Article 17

Quantification of harm

1. Member States shall ensure that neither the burden nor the standard of proof required for the quantification of harm renders the exercise of the right to damages practically impossible or excessively difficult. Member States shall ensure that the national courts are empowered, in accordance with national procedures, to estimate the amount of harm if it is established that a claimant suffered harm but it is practically impossible or excessively difficult precisely to quantify the harm suffered on the basis of the evidence available.

2. It shall be presumed that cartel infringements cause harm. The infringer shall have the right to rebut that presumption.

3. Member States shall ensure that, in proceedings relating to an action for damages, a national competition authority may, upon request of a national court, assist that national court with respect to the determination of the quantum of damages where that national competition authority considers such assistance to be appropriate.

CHAPTER VI

CONSENSUAL DISPUTE RESOLUTION

Article 18

Suspensive and other effects of consensual dispute resolution

1. Member States shall ensure that the limitation period for bringing an action for damages is suspended for the duration of any consensual dispute resolution process. The suspension of the limitation period shall apply only with regard to those parties that are or that were involved or represented in the consensual dispute resolution.

2. Without prejudice to provisions of national law in matters of arbitration, Member States shall ensure that national courts seized of an action for damages may suspend their proceedings for up to two years where the parties thereto are involved in consensual dispute resolution concerning the claim covered by that action for damages.

3. A competition authority may consider compensation paid as a result of a consensual settlement and prior to its decision imposing a fine to be a mitigating factor.

Article 19

Effect of consensual settlements on subsequent actions for damages

1. Member States shall ensure that, following a consensual settlement, the claim of the settling injured party is reduced by the settling co-infringer's share of the harm that the infringement of competition law inflicted upon the injured party.

2. Any remaining claim of the settling injured party shall be exercised only against non-settling co-infringers. Non-settling co-infringers shall not be permitted to recover contribution for the remaining claim from the settling co-infringer.

3. By way of derogation from paragraph 2, Member States shall ensure that where the non-settling co-infringers cannot pay the damages that correspond to the remaining claim of the settling injured party, the settling injured party may exercise the remaining claim against the settling co-infringer.

The derogation referred to in the first subparagraph may be expressly excluded under the terms of the consensual settlement.

4. When determining the amount of contribution that a co-infringer may recover from any other co-infringer in accordance with their relative responsibility for the harm caused by the infringement of competition law, national courts shall take due account of any damages paid pursuant to a prior consensual settlement involving the relevant co-infringer.

CHAPTER VII

FINAL PROVISIONS

Article 20

Review

1. The Commission shall review this Directive and shall submit a report thereon to the European Parliament and the Council by 27 December 2020.

2. The report referred to in paragraph 1 shall, inter alia, include information on all of the following:

(a) the possible impact of financial constraints flowing from the payment of fines imposed by a competition authority for an infringement of competition law on the possibility for injured parties to obtain full compensation for the harm caused by that infringement of competition law;

(b) the extent to which claimants for damages caused by an infringement of competition law established in an infringement decision adopted by a competition authority of a Member State are able to prove before the national court of another Member State that such an infringement of competition law has occurred;

(c) the extent to which compensation for actual loss exceeds the overcharge harm caused by the infringement of competition law or suffered at any level of the supply chain.

3. If appropriate, the report referred to in paragraph 1 shall be accompanied by a legislative proposal.

Article 21

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 27 December 2016. They shall forthwith communicate to the Commission the text thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. 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 22

Temporal application

1. Member States shall ensure that the national measures adopted pursuant to Article 21 in order to comply with substantive provisions of this Directive do not apply retroactively.

2. Member States shall ensure that any national measures adopted pursuant to Article 21, other than those referred to in paragraph 1, do not apply to actions for damages of which a national court was seized prior to 26 December 2014.

Article 23

Entry into force

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

Article 24

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 26 November 2014.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	S. GOZI

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) No 1290/2014

of 4 December 2014

amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, and amending Regulation (EU) No 960/2014 amending Regulation (EU) No 833/2014

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Decision 2014/872/CFSP of 4 December 2014 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, and Decision 2014/659/CFSP amending Decision 2014/512/CFSP ([1]),

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

Whereas:

(1) On 31 July 2014, the Council adopted Regulation (EU) No 833/2014 ([2]) concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

(2) On 8 September 2014, the Council adopted Regulation (EU) No 960/2014 ([3]) amending Regulation (EU) No 833/2014.

(3) On 4 December 2014 the Council adopted Decision 2014/872/CFSP.

(4) These measures fall within the scope of the Treaty and, therefore, particularly with a view to ensuring its uniform application in all Member States, regulatory action at the level of the Union is necessary, following the adoption of Decision 2014/872/CFSP.

(5) Regulations (EU) No 833/2014 and (EU) No 960/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 833/2014 is amended as follows:

(1) in Article 2(2), the second subparagraph is replaced by the following:

'The competent authorities may, however, grant an authorisation where the export concerns the execution of an obligation arising from a contract concluded before 1 August 2014, or ancillary contracts necessary for the execution of such a contract.';

([1]) See page 59 of this Official Journal.
([2]) Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).
([3]) Council Regulation (EU) No 960/2014 of 8 September 2014 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 271, 12.9.2014, p. 3).

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

'3. The prohibitions in paragraphs 1 and 2 shall be without prejudice to the execution of contracts concluded before 12 September 2014, or ancillary contracts necessary for the execution of such contracts, and to the provision of assistance necessary for the maintenance and safety of existing capabilities within the EU.';

(3) in Article 3, paragraphs 1 to 5 are replaced by the following:

'1. A prior authorisation shall be required for the sale, supply, transfer or export, directly or indirectly, of items as listed in Annex II, whether or not originating in the Union, to any natural or legal person, entity or body in Russia, including its Exclusive Economic Zone and Continental Shelf or in any other State, if such items are for use in Russia, including its Exclusive Economic Zone and Continental Shelf.

2. For all sales, supplies, transfers or exports for which an authorisation is required under this Article, such authorisation shall be granted by the competent authorities of the Member State where the exporter is established and shall be in accordance with the detailed rules laid down in Article 11 of Regulation (EC) No 428/2009. The authorisation shall be valid throughout the Union.

3. Annex II shall include certain items suited to the following categories of exploration and production projects in Russia, including its Exclusive Economic Zone and Continental Shelf:

(a) oil exploration and production in waters deeper than 150 metres;

(b) oil exploration and production in the offshore area north of the Arctic Circle; or

(c) projects that have the potential to produce oil from resources located in shale formations by way of hydraulic fracturing; it does not apply to exploration and production through shale formations to locate or extract oil from non-shale reservoirs.

4. Exporters shall supply the competent authorities with all relevant information required for their application for an export authorisation.

5. The competent authorities shall not grant any authorisation for any sale, supply, transfer or export of the items included in Annex II, if they have reasonable grounds to determine that the sale, supply, transfer or export of the items are destined for any of the categories of exploration and production projects referred to in paragraph 3.

The competent authorities may, however, grant an authorisation where the sale, supply, transfer or export concerns the execution of an obligation arising from a contract concluded before 1 August 2014, or ancillary contracts necessary for the execution of such a contract.

The competent authorities may also grant an authorisation where the sale, supply, transfer or export of the items is necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment. In duly justified cases of emergency, the sale, supply, transfer or export may proceed without prior authorisation, provided that the exporter notifies the competent authority within five working days after the sale, supply, transfer or export has taken place, providing detail about the relevant justification for the sale, supply, transfer or export without prior authorisation.';

(4) in Article 3a, paragraphs 1, 2 and 3 are replaced by the following:

'1. It shall be prohibited to provide, directly or indirectly, associated services necessary for the following categories of exploration and production projects in Russia, including its Exclusive Economic Zone and Continental Shelf:

(a) oil exploration and production in waters deeper than 150 metres;

(b) oil exploration and production in the offshore area north of the Arctic Circle; or

(c) projects that have the potential to produce oil from resources located in shale formations by way of hydraulic fracturing; it does not apply to exploration and production through shale formations to locate or extract oil from non-shale reservoirs.

For the purpose of this paragraph, associated services shall mean:

(i) drilling;

(ii) well testing;

(iii) logging and completion services;

(iv) supply of specialised floating vessels.

2. The prohibitions in paragraph 1 shall be without prejudice to the execution of an obligation arising from a contract or a framework agreement concluded before 12 September 2014 or ancillary contracts necessary for the execution of such a contract.

3. The prohibitions in paragraph 1 shall not apply where the services in question are necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment.

The service provider shall notify the competent authority within five working days of any activity undertaken pursuant to this paragraph, providing detail about the relevant justification for the sale, supply, transfer or export.';

(5) in Article 4, paragraphs 2 and 3 are replaced by the following:

'2. The prohibitions in paragraph 1 shall be without prejudice to the execution of contracts concluded before 1 August 2014, or ancillary contracts necessary for the execution of such contracts, and to the provision of assistance necessary for the maintenance and safety of existing capabilities within the EU.

3. The provision of the following shall be subject to an authorisation from the competent authority concerned:

(a) technical assistance or brokering services related to items listed in Annex II and to the provision, manufacture, maintenance and use of those items, directly or indirectly, to any natural or legal person, entity or body in Russia, including its Exclusive Economic Zone and Continental Shelf or, if such assistance concerns items for use in Russia, including its Exclusive Economic Zone and Continental Shelf, to any person, entity or body in any other State;

(b) financing or financial assistance related to items referred to in Annex II, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of those items, or for any provision of related technical assistance, directly or indirectly, to any natural or legal person, entity or body in Russia, including its Exclusive Economic Zone and Continental Shelf or, if such assistance concerns items for use in Russia, including its Exclusive Economic Zone and Continental Shelf, to any person, entity or body in any other State.

In duly justified cases of emergency referred to in Article 3(5), the provision of services referred to in this paragraph may proceed without prior authorisation, on condition that the provider notifies the competent authority within five working days after the provision of services.';

(6) in Article 5, paragraph 3 is replaced by the following:

'3. It shall be prohibited to directly or indirectly make or be part of any arrangement to make new loans or credit with a maturity exceeding 30 days to any legal person, entity or body referred to in paragraph 1 or 2, after 12 September 2014.

The prohibition shall not apply to:

(a) loans or credit that have a specific and documented objective to provide financing for non-prohibited imports or exports of goods and non-financial services between the Union and any third State, including the expenditure for goods and services from another third State that is necessary for executing the export or import contracts; or

(b) loans that have a specific and documented objective to provide emergency funding to meet solvency and liquidity criteria for legal persons established in the Union, whose proprietary rights are owned for more than 50 % by any entity referred to in Annex III.';

(7) in Article 5, the following paragraph is added:

'4. The prohibition in paragraph 3 shall not apply to drawdown or disbursements made under a contract concluded before 12 September 2014 provided that the following conditions are met:

(a) all the terms and conditions of such drawdown or disbursements:

(i) were agreed before 12 September 2014; and

(ii) have not been modified on or after that date; and

(b) before 12 September 2014 a contractual maturity date has been fixed for the repayment in full of all funds made available and for the cancellation of all the commitments, rights and obligations under the contract.

The terms and conditions of drawdowns and disbursements referred to in point (a) include provisions concerning the length of the repayment period for each drawdown or disbursement, the interest rate applied or the interest rate calculation method, and the maximum amount.';

(8) Annex II is amended as follows:

(a) in the heading, the reference 'List of technologies referred to in Article 3' is replaced by 'List of items referred to in Article 3';

(b) the entries for CN codes 8413 50, 8413 60, ex 8431 39 00, ex 8431 43 00, ex 8431 49 are replaced by the following:

'ex 8413 50	Reciprocating positive displacement pumps for liquids, power-driven with a maximum flow-rate greater than 18 m^3/hour and a maximum outlet pressure greater than 40 bar, specially designed to pump drilling muds and/or cement into oil wells
ex 8413 60	Rotary positive displacement pumps for liquids, power-driven with a maximum flow-rate greater than 18 m^3/hour and a maximum outlet pressure greater than 40 bar, specially designed to pump drilling muds and/or cement into oil wells
ex 8431 39 00	Parts suitable for use solely or principally with the oil field machinery of heading 8428
ex 8431 43 00	Parts suitable for use solely or principally with the oil field machinery of subheadings 8430 41 or 8430 49
ex 8431 49	Parts suitable for use solely or principally with the oil field machinery of heading 8426, 8429 and 8430';

(9) Annex IV is replaced by the Annex to this Regulation.

Article 2

Recital 6 of Regulation (EU) No 960/2014 is replaced by the following:

'(6) In order to put pressure on the Russian Government, it is also appropriate to apply further restrictions on access to the capital market for certain financial institutions, excluding Russia-based institutions with international status established by intergovernmental agreements with Russia as one of the shareholders; restrictions on legal persons, entities or bodies established in Russia in the defence sector, with the exception of those mainly active in the space and nuclear energy industry; and restrictions on legal persons, entities or bodies established in Russia whose main activities relate to the sale or transportation of crude oil or petroleum products. Financial services other than those referred to in Article 5 of Regulation (EU) No 833/2014, such as deposit services, payment services, insurance services, loans from the institutions referred to in Article 5(1) and (2) of that Regulation and derivatives used for hedging purposes in the energy market are not covered by these restrictions.'.

Article 3

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, 4 December 2014.

For the Council
The President
S. GOZI

ANNEX

'ANNEX IV

List of natural or legal persons, entities or bodies, referred to in Article 2a

JSC Sirius
OJSC Stankoinstrument
OAO JSC Chemcomposite
JSC Kalashnikov
JSC Tula Arms Plant
NPK Technologii Maschinostrojenija
OAO Wysokototschnye Kompleksi
OAO Almaz Antey
OAO NPO Bazalt'.

COMMISSION DELEGATED REGULATION (EU) No 1291/2014

of 16 July 2014

on the conditions for classification, without testing, of wood-based panels under EN 13986 and solid wood panelling and cladding under EN 14915 with regard to their fire protection ability, when used for wall and ceiling covering

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC ([1]), and in particular Article 27(5) thereof,

Whereas:

(1) A system for classifying the performance of construction products, construction works and parts thereof with regard to their resistance to fire was adopted in Commission Decision 2000/367/EC ([2]). Wood-based panels covered by the harmonised standard EN 13986, as well as solid wood panelling and cladding covered by the harmonised standard EN 14915 are among the construction products to which that Decision applies.

(2) Tests have shown those products to have a stable and predictable performance concerning fire protection ability when used for wall and ceiling covering provided that the products meet certain conditions regarding the density of the wood and the thickness of the panels, panelling and cladding.

(3) Wood-based panels covered by the harmonised standard EN 13986 and solid wood panelling and cladding covered by the harmonised standard EN 14915 should therefore be deemed to satisfy the classes of performance for fire protection ability established in Decision 2000/367/EC on those conditions without further testing being required,

HAS ADOPTED THIS REGULATION:

Article 1

Wood-based panels covered by the harmonised standard EN 13986 and solid wood panelling and cladding covered by the harmonised standard EN 14915 which fulfil the conditions set out in the Annex shall be deemed to satisfy the classes of performance indicated in the Annex without testing, when they are used for wall and ceiling covering.

Article 2

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

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

Done at Brussels, 16 July 2014.

For the Commission

The President

José Manuel BARROSO

([1]) OJ L 88, 4.4.2011, p. 5.

([2]) Commission Decision 2000/367/EC of 3 May 2000 implementing Council Directive 89/106/EEC as regards the classification of the resistance to fire performance of construction products, construction works and parts thereof (OJ L 133, 6.6.2000, p. 26).

ANNEX

Product (1)	EN product standard	Product detail (2)	Minimum mean density (kg/m³)	Minimum thickness (mm)	K Class (3)
Hardboard	EN 13986	With and without tongue and groove (5)	800	9	K_2 10 (4)
OSB	EN 13986	With and without tongue and groove (6)	600	10	K_2 10 (4)
Particleboard	EN 13986	With tongue and groove (7)	600	10	K_2 10 (4)
Particleboard	EN 13986	With and without tongue and groove (6)	600	12	K_2 10 (4)
Plywood	EN 13986	With and without tongue and groove (6)	450	12	K_2 10 (4)
Solid wood panels	EN 13986	With and without tongue and groove (6)	450	12	K_2 10 (4)
Particleboard	EN 13986	With tongue and groove (8)	600	25	K_2 30
OSB	EN 13986	With tongue and groove (8)	600	30	K_2 30
Plywood	EN 13986	With tongue and groove (8)	450	26	K_2 30
Solid wood panels	EN 13986	With tongue and groove (8)	450	26	K_2 30
Solid wood panels	EN 13986	With tongue and groove (9)	450	53	K_2 60
Solid wood panelling and cladding	EN 14915	With tongue and groove (10)	450	15	K_2 10 (4)
Solid wood panelling and cladding	EN 14915	With tongue and groove (10)	450	27	K_2 30
Solid wood panelling and cladding	EN 14915	With tongue and groove (11)	450	2 × 27 (12)	K_2 60

(1) Mounted directly on any substrate without an air gap.
(2) Joints with square edges or tongue and groove profile and with the same thickness as the product and without gaps.
(3) Class as set out in Decision 2000/367/EC.
(4) K_1 10 for substrates ≥ 300 kg/m³
(5) Brad length minimum 40 mm and spacing maximum 100 mm
(6) Screw length minimum 30 mm and spacing maximum 200 mm
(7) Screw length minimum 30 mm and spacing maximum 150 mm
(8) Screw length minimum 50 mm and spacing maximum 200 mm
(9) Screw length minimum 75 mm and spacing maximum 200 mm
(10) Nail length minimum 60 mm and spacing maximum 600 mm
(11) Nail length minimum 50 mm (in each layer) and spacing maximum 600 mm
(12) The two layers are mounted with the longitudinal direction of the layers perpendicular to each other.

COMMISSION DELEGATED REGULATION (EU) No 1292/2014

of 17 July 2014

on the conditions for classification, without testing, of certain uncoated wood floorings under EN 14342 with regard to their reaction to fire

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonized conditions for the marketing of construction products and repealing Council Directive 89/106/EEC ([1]), and in particular Article 27(5) thereof,

Whereas:

(1) A system for classifying the performance of construction products, with regard to their reaction to fire was adopted in Commission Decision 2000/147/EC ([2]). Wood floorings are among the construction products to which that Decision applies.

(2) Tests have shown wood floorings covered by the harmonised standard EN 14342 to have a stable and predictable performance concerning reaction to fire provided that they meet certain conditions regarding the density of the wood, the thickness of the flooring and the end use of the product.

(3) Wood floorings covered by the harmonised standard EN 14342 should therefore be deemed to satisfy the classes of performance for reaction to fire established in Decision 2000/147/EC on those conditions without further testing being required,

HAS ADOPTED THIS REGULATION:

Article 1

Wood floorings covered by the harmonised standard EN 14342 which fulfil the conditions set out in the Annex shall be deemed to satisfy the classes of performance indicated in the Annex without testing.

Article 2

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

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

Done at Brussels, 17 July 2014.

For the Commission

The President

José Manuel BARROSO

([1]) OJ L 88, 4.4.2011, p. 5.

([2]) Commission Decision 2000/147/EC of 8 February 2000 implementing Council Directive 89/106/EEC as regards the classification of the reaction to fire performance of construction products (OJ L 50, 23.2.2000, p. 14).

ANNEX

Product (1) (7)	Product detail (4)	Minimum mean density (5) (kg/m³)	Minimum overall thickness (mm)	End use condition	Class for floorings (3)
Wood flooring	Solid wood flooring of pine or spruce	Pine: 480 Spruce: 400	14	Without air gap underneath	D_{fl}-s1
Wood flooring	Solid flooring of beech, oak, pine or spruce	Beech: 700 Oak: 700 Pine: 430 Spruce: 400	20	With or without air gap underneath	D_{fl}-s1
Wood parquet	Solid wood (one layer) parquet of walnut	650	8	Glued to substrate (6)	D_{fl}-s1
Wood parquet	Solid (one layer) parquet of oak, maple or ash	Ash: 650 Maple: 650 Oak: 720	8	Glued to substrate (6)	D_{fl}-s1
Wood parquet	Multilayer parquet with oak top layer, at least 3,5 mm	550	15 (2)	Without air gap underneath	D_{fl}-s1
Wood flooring and parquet	Solid wood flooring and parquet not specified above	400	6	All	E_{fl}

(1) Mounted in accordance with EN ISO 9239-1, on a substrate of at least Class D-s2, d0 with minimum density of 400 kg/m³ or with an air gap (minimum height 30 mm) underneath.
(2) An interlayer of at least Class E_{fl} and with maximum thickness 3 mm and minimum density of 280 kg/m³ may be included.
(3) Class as set out in Table 2 of the Annex to Decision 2000/147/EC.
(4) Without surface coatings.
(5) Conditioned in accordance with EN 13238 (50 % RH, 23 °C).
(6) Substrate at least Class D-s2, d0.
(7) Applies also to steps of stairs.

COMMISSION DELEGATED REGULATION (EU) No 1293/2014

of 17 July 2014

on the conditions for classification, without testing, of metal lath and beads for internal plastering covered by the harmonised standard EN 13658-1, metal lath and beads for external rendering covered by the harmonised standard EN 13658-2 and metal beads and feature profiles covered by the harmonised standard EN 14353, with regard to their reaction to fire

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonized conditions for the marketing of construction products and repealing Council Directive 89/106/EEC ([1]), and in particular Article 27(5) thereof,

Whereas:

(1) A system for classifying the performance of construction products with regard to their reaction to fire was adopted in Commission Decision 2000/147/EC ([2]). Metal lath and beads for internal plastering covered by the harmonised standard EN 13658-1, metal lath and beads for external rendering covered by the harmonised standard EN 13658-2 and metal beads and feature profiles covered by the harmonised standard EN 14353, with an exposed surface containing organic material, are among the construction products to which that Decision applies.

(2) Those products have proved to have a stable and predictable performance concerning reaction to fire when they are used with gypsum plasterboards to form corners in walls as only an insignificant part of their surface risks being exposed to fire.

(3) Metal lath and beads for internal plastering covered by the harmonised standard EN 13658-1, metal lath and beads for external rendering covered by the harmonised standard EN 13658-2 and metal beads and feature profiles covered by the harmonised standard EN 14353, with an exposed surface containing organic material, should therefore be deemed to satisfy class E of performance for reaction to fire without the need for any testing,

HAS ADOPTED THIS REGULATION:

Article 1

Metal lath and beads for internal plastering covered by the harmonised standard EN 13658-1, metal lath and beads for external rendering covered by the harmonised standard EN 13658-2 and metal beads and feature profiles covered by the harmonised standard EN 14353 shall be deemed to satisfy the class E set out in Table 1 of the Annex to Decision 2000/147/EC, without testing, where they have an exposed surface containing organic material.

Article 2

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

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

Done at Brussels, 17 July 2014.

For the Commission

The President

José Manuel BARROSO

([1]) OJ L 88, 4.4.2011, p. 5.

([2]) Commission Decision 2000/147/EC of 8 February 2000 implementing Council Directive 89/106/EEC as regards the classification of the reaction to fire performance of construction products (OJ L 50, 23.2.2000, p. 14).

COMMISSION IMPLEMENTING REGULATION (EU) No 1294/2014

of 4 December 2014

amending Regulation (EC) No 1238/95 as regards the level of the application fee and of the examination fee payable to the Community Plant Variety Office

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights ([1]), and in particular Article 113 thereof,

After consulting the Administrative Council of the Community Plant Variety Office,

Whereas:

(1) Article 7 of Commission Regulation (EC) No 1238/95 ([2]) sets out provisions concerning the level of the application fee payable to the Community Plant Variety Office ('the Office') for the processing of applications for grant of a Community plant variety right.

(2) Based on the experience gained by the Office concerning the cost linked with the processing of applications for grant of Community plant variety rights which are not valid, it is appropriate to reduce the amount of the application fee retained by the Office.

(3) Article 8(1) of Regulation (EC) No 1238/95 and Annex I thereto set out the level of the fees for arranging and carrying out the technical examination of a variety being the subject of an application for a Community Plant Variety right payable to the Office, 'the examination fee'.

(4) As regards the technical examination of varieties for which material with specific components has to be used repeatedly for the production of material, experience has shown that the cost for that examination may greatly vary from one case to another. The fee for the technical examination should cover the cost for the technical examination of the variety and for each specific component of the variety. No maximum amount should therefore be fixed as regards the fee for the technical examination in such cases.

(5) The experience gathered concerning the technical examination further shows that the total amount of the examination fees charged by the Office does not cover the total amount of the fees to be paid by the Office to the Examination Offices. The fees charged by the Office should, however, in principle cover the fees paid by it. The fees set out in Annex I to Regulation (EC) No 1238/95 should therefore be raised. At the same time the cost groups set out in that Annex should be simplified.

(6) Regulation (EC) No 1238/95 should therefore be amended accordingly.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Community Plant Variety Rights,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1238/95 is amended as follows:

(1) In Article 7, paragraph 7 is replaced by the following:

'7. Where the application fee is received but the application is not valid under Article 50 of the basic Regulation, the Office shall retain EUR 200 of the application fee and refund the remainder when notifying the applicant of the deficiencies found in the application.'

([1]) OJ L 227, 1.9.1994, p. 1.

([2]) Commission Regulation (EC) No 1238/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards the fees payable to the Community Plant Variety Office (OJ L 121, 1.6.1995, p. 31).

(2) In Article 8, paragraph 1 is replaced by the following:

'1. Fees for arranging and carrying out the technical examination of a variety being the subject of an application for a Community plant variety right (examination fee) shall be paid in accordance with Annex I for each growing period started. In the case of varieties for which material with specific components has to be used repeatedly for the production of material, the examination fee laid down in Annex I shall be due in respect of such variety and in respect of each of the components for which an official description is not available and which must also be examined.'

(3) Annex I is amended in accordance with the Annex to this Regulation.

Article 2

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

It shall apply from 1 January 2015.

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

Done at Brussels, 4 December 2014.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Annex I to Regulation (EC) No 1238/95 is replaced by the following:

'ANNEX I

Fees relating to technical examination as referred to in Article 8

The fee to be paid for the technical examination of a variety pursuant to Article 8 shall be determined in accordance with the table:

(in EUR)

	Cost group	Fee
Agricultural group		
1	Potato	1 960
2	Oilseed rape	1 860
3	Grasses	2 210
4	Other agricultural species	1 430
Fruit group		
5	Apple	3 210
6	Strawberry	2 740
7	Other fruit species	2 550
Ornamental group		
8	Ornamental living greenhouse	2 140
9	Ornamental living outdoor	1 960
10	Ornamental non-living greenhouse	1 770
11	Ornamental non-living outdoor	1 570
12	Ornamental special	3 040
Vegetable group		
13	Vegetable greenhouse	2 150
14	Vegetable outdoor	1 960'

COMMISSION IMPLEMENTING REGULATION (EU) No 1295/2014

of 4 December 2014

amending Annex I to Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules ([1]), and in particular Article 15(5) thereof,

Whereas:

(1) Commission Regulation (EC) No 669/2009 ([2]) lays down rules concerning the increased level of official controls to be carried out on imports of feed and food of non-animal origin listed in Annex I thereto ('the list'), at the points of entry into the territories referred to in Annex I to Regulation (EC) No 882/2004.

(2) Article 2 of Regulation (EC) No 669/2009 provides that the list is to be reviewed on a regular basis, and at least quarterly, taking into account at least the sources of information referred to in that Article.

(3) The occurrence and relevance of recent food incidents notified through the Rapid Alert System for Food and Feed, the findings of audits to third countries carried out by the Food and Veterinary Office, as well as the quarterly reports on consignments of feed and food of non-animal origin submitted by Member States to the Commission in accordance with Article 15 of Regulation (EC) No 669/2009 indicate that the list should be amended.

(4) In particular, the list should be amended by deleting the entries for commodities for which the available information indicates an overall satisfactory degree of compliance with the relevant safety requirements provided for in Union legislation and for which an increased level of official controls is therefore no longer justified. The entries in the list concerning oranges from Egypt and coriander leaves, basil and mint from Thailand should therefore be deleted.

(5) In addition, the list should be amended by increasing the frequency of official controls for the commodities for which the same sources of information show a higher degree of non-compliance with the relevant Union legislation, thereby warranting an increased level of official controls. The entries in the list concerning dried spices from India, betel leaves from India and Thailand and vine leaves from Turkey should therefore be amended accordingly.

(6) In order to ensure consistency and clarity, it is appropriate to replace Annex I to Regulation (EC) No 669/2009 by the text set out in the Annex to this Regulation.

(7) Regulation (EC) No 669/2009 should therefore be amended accordingly.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 669/2009 is replaced by the text set out in the Annex to this Regulation.

([1]) OJ L 165, 30.4.2004, p. 1.

([2]) Commission Regulation (EC) No 669/2009 of 24 July 2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC (OJ L 194, 25.7.2009, p. 11).

Article 2

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

It shall apply from 1 January 2015.

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

Done at Brussels, 4 December 2014.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

'ANNEX I

Feed and food of non-animal origin subject to an increased level of official controls at the designated point of entry

Feed and food (intended use)	CN code (1)	TARIC sub-division	Country of origin	Hazard	Frequency of physical and identity checks (%)
Dried grapes (vine fruit) *(Food)*	0806 20		Afghanistan (AF)	Ochratoxin A	50
— Groundnuts (peanuts), in shell — Groundnuts (peanuts), shelled — Peanut butter — Groundnuts (peanuts), otherwise prepared or preserved *(Feed and food)*	— 1202 41 00 — 1202 42 00 — 2008 11 10 — 2008 11 91; 2008 11 96; 2008 11 98		Brazil (BR)	Aflatoxins	10
— Yardlong beans (*Vigna unguiculata* spp. *sesquipedalis*) — Aubergines *(Food — fresh, chilled or frozen vegetables)*	— ex 0708 20 00; ex 0710 22 00 — 0709 30 00; ex 0710 80 95	10 10 72	Cambodia (KH)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (2)	50
Chinese celery (*Apium graveolens*) *(Food — fresh or chilled herb)*	ex 0709 40 00	20	Cambodia (KH)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (3)	50
Brassica oleracea (other edible Brassica, "Chinese Broccoli") (4) *(Food — fresh or chilled)*	ex 0704 90 90	40	China (CN)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (5)	50
Tea, whether or not flavoured *(Food)*	0902		China (CN)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (6)	10

Feed and food (intended use)	CN code (1)	TARIC sub-division	Country of origin	Hazard	Frequency of physical and identity checks (%)
— Aubergines	— 0709 30 00; ex 0710 80 95	72	Dominican Republic (DO)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (7)	10
— Bitter melon *(Momordica charantia)*	— ex 0709 99 90; ex 0710 80 95	70 70			
(Food — fresh, chilled or frozen vegetables)					
— Yardlong beans (*Vigna unguiculata* spp. *sesquipedalis*)	— ex 0708 20 00; ex 0710 22 00	10 10	Dominican Republic (DO)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (7)	20
— Peppers (sweet and other than sweet) (*Capsicum* spp.)	— 0709 60 10; ex 0709 60 99	20			
(Food — fresh, chilled or frozen vegetables)	— 0710 80 51; ex 0710 80 59	20			
Strawberries (fresh) *(Food)*	0810 10 00		Egypt (EG)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (8)	10
Peppers (sweet and other than sweet) (*Capsicum* spp.) *(Food — fresh, chilled or frozen)*	0709 60 10; ex 0709 60 99; 0710 80 51; ex 0710 80 59	20 20	Egypt (EG)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (9)	10
Betel leaves (*Piper betle* L.) *(Food)*	ex 1404 90 00	10	India (IN)	Salmonella (10)	50
Sesamum seeds *(Food — fresh or chilled)*	1207 40 90		India (IN)	Salmonella (10)	20
— *Capsicum annuum*, whole	— 0904 21 10		India (IN)	Aflatoxins	20
— *Capsicum annuum*, crushed or ground	— ex 0904 22 00	10			
— Dried fruit of the genus *Capsicum*, whole, other than sweet peppers *(Capsicum annuum)*	— 0904 21 90				
— Nutmeg *(Myristica fragrans)*	— 0908 11 00; 0908 12 00				
(Food — dried spices)					

Feed and food (intended use)	CN code (1)	TARIC sub-division	Country of origin	Hazard	Frequency of physical and identity checks (%)
Enzymes;prepared enzymes *(Feed and food)*	3507		India (IN)	Chloramphenicol	50
— Nutmeg *(Myristica fragrans)* *(Food — dried spices)*	— 0908 11 00; 0908 12 00		Indonesia (ID)	Aflatoxins	20
— Peas with pods (unshelled) — Beans with pods (unshelled) *(Food — fresh or chilled)*	— ex 0708 10 00 — ex 0708 20 00	40 40	Kenya (KE)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (11)	10
Mint *(Food — fresh or chilled herb)*	ex 1211 90 86	30	Morocco (MA)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (12)	10
Dried beans *(Food)*	0713 39 00		Nigeria (NG)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (13)	50
Table grapes *(Food — fresh)*	0806 10 10		Peru (PE)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (14)	10
Watermelon *(Egusi, Citrullus lanatus)* seeds and derived products *(Food)*	ex 1207 70 00; ex 1106 30 90; ex 2008 99 99	10 30 50	Sierra Leone (SL)	Aflatoxins	50
— Groundnuts (peanuts), in shell — Groundnuts (peanuts), shelled — Peanut butter — Groundnuts (peanuts), otherwise prepared or preserved *(Feed and food)*	— 1202 41 00 — 1202 42 00 — 2008 11 10 — 2008 11 91; 2008 11 96; 2008 11 98		Sudan (SD)	Aflatoxins	50

Feed and food (intended use)	CN code (1)	TARIC sub-division	Country of origin	Hazard	Frequency of physical and identity checks (%)
Peppers (other than sweet) (*Capsicum* spp.) *(Food — fresh or chilled)*	ex 0709 60 99	20	Thailand (TH)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (15)	10
Betel leaves (*Piper betle* L.) *(Food)*	ex 1404 90 00	10	Thailand (TH)	Salmonella (10)	50
— Yardlong beans (*Vigna unguiculata* spp. *sesquipedalis*) — Aubergines *(Food — fresh, chilled or frozen vegetables)*	— ex 0708 20 00; ex 0710 22 00 — 0709 30 00; ex 0710 80 95	10 10 72	Thailand (TH)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (16)	20
Dried apricots *(Food)*	0813 10 00		Turkey (TR)	Sulphites (17)	10
— Sweet Peppers *(Capsicum annuum)* *(Food — fresh, chilled or frozen vegetables)*	— 0709 60 10; 0710 80 51		Turkey (TR)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (18)	10
Vine leaves *(Food)*	ex 2008 99 99	11; 19	Turkey (TR)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (19)	20
Dried grapes (vine fruit) *(Food)*	0806 20		Uzbekistan (UZ)	Ochratoxin A	50
— Coriander leaves — Basil (holy, sweet) — Mint — Parsley *(Food — fresh or chilled herbs)*	— ex 0709 99 90 — ex 1211 90 86 — ex 1211 90 86 — ex 0709 99 90	72 20 30 40	Viet Nam (VN)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (20)	20

Feed and food (intended use)	CN code (1)	TARIC sub-division	Country of origin	Hazard	Frequency of physical and identity checks (%)
— Pitahaya (dragon fruit) — Okra — Peppers (other than sweet)(*Capsicum* spp.) *(Food — fresh or chilled)*	— ex 0810 90 20 — ex 0709 99 90 — ex 0709 60 99	10 20 20	Viet Nam (VN)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods (20)	20

(1) Where only certain products under any CN code are required to be examined and no specific subdivision under that code exists, the CN code is marked "ex".

(2) In particular, residues of: Carbofuran (sum of carbofuran and 3-hydroxy-carbofuran expressed as carbofuran), Chlorbufam, Dimethoate (sum of dimethoate and omethoate expressed as dimethoate).

(3) In particular, residues of: Carbofuran (sum of carbofuran and 3-hydroxy-carbofuran expressed as carbofuran), Hexaconazole, Phenthoate, Triadimefon and Triadimenol (sum of triadimefon and triadimenol).

(4) Species of *Brassica oleracea* L. convar. Botrytis (L) Alef var.Italica Plenck, cultivar alboglabra. Also known as "Kai Lan", "Gai Lan", "Gailan", "Kailan", "Chinese bare Jielan".

(5) In particular, residues of: Chlorfenapyr, Fipronil (sum fipronil + sulfone metabolite (MB46136) expressed as fipronil), Carbendazim and benomyl (sum of benomyl and carbendazim expressed as carbendazim), Acetamiprid, Dimethomorph and Propiconazole.

(6) In particular, residues of: Buprofezin; Imidacloprid; Fenvalerate and Esfenvalerate (Sum of RS & SR isomers); Profenofos; Trifluralin; Triazophos; Triadimefon and Triadimenol (sum of triadimefon and triadimenol), Cypermethrin (cypermethrin including other mixtures of constituent isomers (sum of isomers)).

(7) In particular, residues of: Amitraz (amitraz including the metabolites containing the 2,4-dimethylaniline moiety expressed as amitraz), Acephate, Aldicarb (sum of aldicarb, its sulfoxide and its sulfone, expressed as aldicarb), Carbendazim and benomyl (sum of benomyl and carbendazim expressed as carbendazim), Chlorfenapyr, Chlorpyrifos, Dithiocarbamates (dithiocarbamates expressed as CS2, including maneb, mancozeb, metiram, propineb, thiram and ziram), Diafenthiuron, Diazinon, Dichlorvos, Dicofol (sum of p, p′ and o,p′ isomers), Dimethoate (sum of dimethoate and omethoate expressed as dimethoate), Endosulfan (sum of alpha- and beta-isomers and endosulfan-sulphate expresses as endosulfan), Fenamidone, Imidacloprid, Malathion (sum of malathion and malaoxon expressed as malathion), Methamidophos, Methiocarb (sum of methiocarb and methiocarb sulfoxide and sulfone, expressed as methiocarb), Methomyl and Thiodicarb (sum of methomyl and thiodicarb expressed as methomyl), Monocrotophos, Oxamyl, Profenofos, Propiconazole, Thiabendazole, Thiacloprid.

(8) In particular, residues of: Carbendazim and benomyl (sum of benomyl and carbendazim expressed as carbendazim), Cyfluthrin (cyfluthrin including other mixtures of constituent isomers (sum of isomers)) Cyprodinil, Diazinon, Dimethoate (sum of dimethoate and omethoate expressed as dimethoate), Ethion, Fenitrothion, Fenpropathrin, Fludioxonil, Hexaflumuron, Lambda-cyhalothrin, Methiocarb (sum of methiocarb and methiocarb sulfoxide and sulfone, expressed as methiocarb), Methomyl and Thiodicarb (sum of methomyl and thiodicarb expressed as methomyl), Oxamyl, Phenthoate, Thiophanate-methyl.

(9) In particular, residues of: Carbofuran (sum of carbofuran and 3-hydroxy-carbofuran expressed as carbofuran), Chlorpyrifos, Cypermethrin (cypermethrin including other mixtures of constituent isomers (sum of isomers)), Cyproconazole, Dicofol (sum of p, p′ and o,p′ isomers), Difenoconazole, Dinotefuran, Ethion, Flusilazole, Folpet, Prochloraz (sum of prochloraz and its metabolites containing the 2,4,6-Trichlorophenol moiety expressed as prochloraz), Profenofos, Propiconazole, Thiophanate-methyl and Triforine.

(10) Reference method EN/ISO 6579 or a method validated against it as referred to in Article 5 of Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs (OJ L 338, 22.12.2005, p. 1).

(11) In particular, residues of: Dimethoate (sum of dimethoate and omethoate expressed as dimethoate), Chlorpyrifos, Acephate, Methamidophos, Methomyl and Thiodicarb (sum of methomyl and thiodicarb expressed as methomyl), Diafenthiuron, Indoxacarb as sum of the isomers S and R.

(12) In particular, residues of: Chlorpyrifos, Cypermethrin (cypermethrin including other mixtures of constituent isomers (sum of isomers)), Dimethoate (sum of dimethoate and omethoate expressed as dimethoate), Endosulfan (sum of alpha- and beta-isomers and endosulfan-sulphate expresses as endosulfan), Hexaconazole, Parathion-methyl (sum of Parathion-methyl and paraoxon-methyl expressed as Parathion-methyl), Methomyl and Thiodicarb (sum of methomyl and thiodicarb expressed as methomyl), Flutriafol, Carbendazim and benomyl (sum of benomyl and carbendazim expressed as carbendazim), Flubendiamide, Myclobutanyl, Malathion (sum of malathion and malaoxon expressed as malathion).

(13) In particular, residues of Dichlorvos.

(14) In particular, residues of: Diniconazole, Ethephon and Methomyl and Thiodicarb (sum of methomyl and thiodicarb expressed as methomyl).

(15) In particular, residues of: Carbofuran (sum of carbofuran and 3-hydroxy-carbofuran expressed as carbofuran), Methomyl and Thiodicarb (sum of methomyl and thiodicarb expressed as methomyl), Dimethoate (sum of dimethoate and omethoate expressed as dimethoate), Triazophos, Malathion (sum of malathion and malaoxon expressed as malathion), Profenofos, Prothiofos, Ethion, Carbendazim and benomyl (sum of benomyl and carbendazim expressed as carbendazim), Triforine, Procymidone, Formetanate: Sum of formetanate and its salts expressed as formetanate(hydrochloride).

(16) In particular, residues of: Acephate, Carbaryl, Carbendazim and benomyl (sum of benomyl and carbendazim expressed as carbendazim), Carbofuran (sum of carbofuran and 3-hydroxy-carbofuran expressed as carbofuran), Chlorpyrifos, Chlorpyrifos-methyl, Dimethoate (sum of dimethoate and omethoate expressed as dimethoate), Ethion, Malathion (sum of malathion and malaoxon expressed as malathion), Metalaxyl and metalaxyl-M (metalaxyl including other mixtures of constituent isomers including metalaxyl-M (sum of isomers)), Methamidophos, Methomyl and Thiodicarb (sum of methomyl and thiodicarb expressed as methomyl), Monocrotophos, Profenofos, Prothiofos, Quinalphos, Triadimefon and Triadimenol (sum of triadimefon and triadimenol), Triazophos, Dicrotophos, EPN, Triforine.

(17) Reference methods: EN 1988-1:1998, EN 1988-2:1998 or ISO 5522:1981.

(18) In particular, residues of: Methomyl and Thiodicarb (sum of methomyl and thiodicarb expressed as methomyl), Oxamyl, Carbendazim and benomyl (sum of benomyl and carbendazim expressed as carbendazim), Clofentezine, Diafenthiuron, Dimethoate (sum of dimethoate and omethoate expressed as dimethoate), Formetanate: Sum of formetanate and its salts expressed as formetanate (hydrochloride), Malathion (sum of malathion and malaoxon expressed as malathion), Procymidone, Tetradifon, Thiophanate-methyl.

(19) In particular, residues of: Azoxystrobin, Boscalid, Chlorpyrifos, Dithiocarbamates (dithiocarbamates expressed as CS2, including maneb, mancozeb, metiram, propineb, thiram and ziram), Endosulfan (sum of alpha- and beta-isomers and endosulfan-sulphate expresses as endosulfan), Kresoxim-methyl, Lambda-cyhalothrin, Metalaxyl and metalaxyl-M (metalaxyl including other mixtures of constituent isomers including metalaxyl-M (sum of isomers)), Methoxyfenozide, Metrafenone, Myclobutanil, Penconazole, Pyraclostrobin, Pyrimethanil, Triadimefon and Triadimenol (sum of triadimefon and triadimenol), Trifloxystrobin.

(20) In particular, residues of: Carbofuran (sum of carbofuran and 3-hydroxy-carbofuran expressed as carbofuran), Carbendazim and benomyl (sum of benomyl and carbendazim expressed as carbendazim), Chlorpyrifos, Dithiocarbamates (dithiocarbamates expressed as CS2, including maneb, mancozeb, metiram, propineb, thiram and ziram), Profenofos, Permethrin (sum of isomers), Hexaconazole, Difenoconazole, Propiconazole, Fipronil (sum fipronil + sulfone metabolite (MB46136) expressed as fipronil), Propargite, Flusilazole, Phenthoate, Cypermethrin (cypermethrin including other mixtures of constituent isomers (sum of isomers)), Methomyl and Thiodicarb (sum of methomyl and thiodicarb expressed as methomyl), Quinalphos, Pencycuron, Methidathion, Dimethoate (sum of dimethoate and omethoate expressed as dimethoate), Fenbuconazole'.

COMMISSION IMPLEMENTING REGULATION (EU) No 1296/2014

of 4 December 2014

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

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 [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, 4 December 2014.

For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development

[1] OJ L 347, 20.12.2013, p. 671.
[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	AL	64,0
	IL	114,8
	MA	91,1
	TR	81,4
	ZZ	87,8
0707 00 05	AL	53,8
	JO	258,6
	MA	170,1
	TR	135,4
	ZZ	154,5
0709 93 10	MA	67,9
	TR	128,2
	ZZ	98,1
0805 10 20	AR	35,3
	SZ	34,3
	TR	74,4
	UY	32,9
	ZA	54,7
	ZW	33,1
	ZZ	44,1
0805 20 10	MA	73,2
	ZZ	73,2
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	IL	113,7
	JM	168,3
	TR	76,0
	ZZ	119,3
0805 50 10	AL	64,4
	TR	76,5
	ZZ	70,5
0808 10 80	BA	32,4
	BR	53,8
	CA	134,8
	CL	78,6
	MK	38,0
	NZ	96,9
	US	94,8
	ZZ	75,6

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0808 30 90	CN	81,0
	TR	174,9
	ZZ	128,0

(1) Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

DIRECTIVES

COMMISSION IMPLEMENTING DIRECTIVE 2014/105/EU

of 4 December 2014

amending Directives 2003/90/EC and 2003/91/EC setting out implementing measures for the purposes of Article 7 of Council Directive 2002/53/EC and Article 7 of Council Directive 2002/55/EC respectively, as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant species and vegetable species

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species ([1]), and in particular Article 7(2)(a) and (b) thereof,

Having regard to Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed ([2]), and in particular Article 7(2)(a) and (b) thereof,

Whereas:

(1) Commission Directives 2003/90/EC ([3]) and 2003/91/EC ([4]) were adopted to ensure that the varieties the Member States include in their national catalogues comply with the guidelines established by the Community Plant Variety Office (CPVO) as regards the characteristics to be covered as a minimum by the examination of the various species and the minimum conditions for examining the varieties, as far as such guidelines had been established. For other varieties those Directives provide that guidelines of the International Union for Protection of new Varieties of Plants (UPOV) are to apply.

(2) The CPVO and UPOV have since established further guidelines and have updated existing ones.

(3) Directives 2003/90/EC and 2003/91/EC should therefore be amended accordingly.

(4) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annexes I and II to Directive 2003/90/EC are replaced by the text in part A of the Annex to this Directive.

Article 2

The Annexes to Directive 2003/91/EC are replaced by the text in part B of the Annex to this Directive.

([1]) OJ L 193, 20.7.2002, p. 1.
([2]) OJ L 193, 20.7.2002, p. 33.
([3]) Commission Directive 2003/90/EC of 6 October 2003 setting out implementing measures for the purposes of Article 7 of Council Directive 2002/53/EC as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant species (OJ L 254, 8.10.2003, p. 7).
([4]) Commission Directive 2003/91/EC of 6 October 2003 setting out implementing measures for the purposes of Article 7 of Council Directive 2002/55/EC as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of vegetable species (OJ L 254, 8.10.2003, p. 11).

Article 3

For examinations started before 1 January 2016 Member States may apply Directives 2003/90/EC and 2003/91/EC in the version applying before their amendment by this Directive.

Article 4

Member States shall adopt and publish, by 31 December 2015 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 January 2016.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 5

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

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 4 December 2014.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

PART A

'ANNEX I

List of species referred to in Article 1(2)(a) which are to comply with CPVO test protocols

Scientific name	Common name	CPVO protocol
Festuca filiformis Pourr.	Fine-leaved sheep's fescue	TP 67/1 of 23.6.2011
Festuca ovina L.	Sheep's fescue	TP 67/1 of 23.6.2011
Festuca rubra L.	Red fescue	TP 67/1 of 23.6.2011
Festuca trachyphylla (Hack.) Krajina	Hard fescue	TP 67/1 of 23.6.2011
Lolium multiflorum Lam.	Italian ryegrass	TP 4/1 of 23.6.2011
Lolium perenne L.	Perennial ryegrass	TP 4/1 of 23.6.2011
Lolium × *boucheanum* Kunth	Hybrid ryegrass	TP 4/1 of 23.6.2011
Pisum sativum L.	Field pea	TP 7/2 of 11.3.2010
Brassica napus L.	Swede rape	TP 36/2 of 16.11.2011
Cannabis sativa L.	Hemp	TP 276/1 of 28.11.2012
Helianthus annuus L.	Sunflower	TP 81/1 of 31.10.2002
Linum usitatissimum L.	Flax/Linseed	TP 57/2 of 19.3.2014
Avena nuda L.	Small naked oat, Hulless oat	TP 20/1 of 6.11.2003
Avena sativa L. (includes *A. byzantina* K. Koch)	Oats and Red oat	TP 20/1 of 6.11.2003
Hordeum vulgare L.	Barley	TP 19/3 of 21.3.2012
Oryza sativa L.	Rice	TP 16/2 of 21.3.2012
Secale cereale L.	Rye	TP 58/1 of 31.10.2002
xTriticosecale Wittm. ex A. Camus	Hybrids resulting from the crossing of a species of the genus *Triticum* and a species of the genus *Secale*	TP 121/2 rev. 1 of 16.2.2011
Triticum aestivum L.	Wheat	TP 3/4 rev. 2 of 16.2.2011
Triticum durum Desf.	Durum wheat	TP 120/3 of 19.3.2014
Zea mays L.	Maize	TP 2/3 of 11.3.2010
Solanum tuberosum L.	Potato	TP 23/2 of 1.12.2005

The text of these protocols can be found on the CPVO website (www.cpvo.europa.eu).

ANNEX II

List of species referred to in Article 1(2)(b) which are to comply with UPOV test guidelines

Scientific name	Common name	UPOV guideline
Beta vulgaris L.	Fodder beet	TG/150/3 of 4.11.1994
Agrostis canina L.	Velvet bent	TG/30/6 of 12.10.1990
Agrostis gigantea Roth.	Red top	TG/30/6 of 12.10.1990
Agrostis stolonifera L.	Creeping bent	TG/30/6 of 12.10.1990
Agrostis capillaris L.	Brown top	TG/30/6 of 12.10.1990

Scientific name	Common name	UPOV guideline
Bromus catharticus Vahl	Rescue grass	TG/180/3 of 4.4.2001
Bromus sitchensis Trin.	Alaska brome grass	TG/180/3 of 4.4.2001
Dactylis glomerata L.	Cocksfoot	TG/31/8 of 17.4.2002
Festuca arundinacea Schreb.	Tall fescue	TG/39/8 of 17.4.2002
Festuca pratensis Huds.	Meadow fescue	TG/39/8 of 17.4.2002
xFestulolium Asch. et Graebn.	Hybrids resulting from the crossing of a species of the genus *Festuca* with a species of the genus *Lolium*	TG/243/1 of 9.4.2008
Phleum nodosum L.	Small timothy	TG/34/6 of 7.11.1984
Phleum pratense L.	Timothy	TG/34/6 of 7.11.1984
Poa pratensis L.	Smooth-stalked meadow grass	TG/33/7 of 9.4.2014
Lotus corniculatus L.	Birdsfoot trefoil	TG 193/1 of 9.4.2008
Lupinus albus L.	White lupin	TG/66/4 of 31.3.2004
Lupinus angustifolius L.	Narrow-leaved lupin	TG/66/4 of 31.3.2004
Lupinus luteus L.	Yellow lupin	TG/66/4 of 31.3.2004
Medicago sativa L.	Lucerne	TG/6/5 of 6.4.2005
Medicago x *varia* T. Martyn	Sand lucerne	TG/6/5 of 6.4.2005
Trifolium pratense L.	Red clover	TG/5/7 of 4.4.2001
Trifolium repens L.	White clover	TG/38/7 of 9.4.2003
Vicia faba L.	Field bean	TG/8/6 of 17.4.2002
Vicia sativa L.	Common vetch	TG/32/7 of 20.3.2013
Brassica napus L. var. *napobrassica* (L.) Rchb.	Swede	TG/89/6rev. of 4.4.2001 + 1.4.2009
Raphanus sativus L. var. *oleiformis* Pers.	Fodder radish	TG/178/3 of 4.4.2001
Arachis hypogaea L.	Groundnut/Peanut	TG/93/4 of 9.4.2014
Brassica rapa L. var. *silvestris* (Lam.) Briggs	Turnip rape	TG/185/3 of 17.4.2002
Carthamus tinctorius L.	Safflower	TG/134/3 of 12.10.1990
Gossypium spp.	Cotton	TG/88/6 of 4.4.2001
Papaver somniferum L.	Poppy	TG/166/4 of 9.4.2014
Sinapis alba L.	White mustard	TG/179/3 of 4.4.2001
Glycine max (L.) Merr.	Soya bean	TG/80/6 of 1.4.1998
Sorghum bicolor (L.) Moench	Sorghum	TG/122/3 of 6.10.1989

The text of these guidelines can be found on the UPOV website (www.upov.int).'

PART B

'ANNEX I

List of species referred to in Article 1(2)(a) which are to comply with CPVO test protocols

Scientific name	Common name	CPVO protocol
Allium cepa L. (Cepa group)	Onion and Echalion	TP 46/2 of 1.4.2009
Allium cepa L. (Aggregatum group)	Shallot	TP 46/2 of 1.4.2009
Allium fistulosum L.	Japanese bunching onion or Welsh onion	TP 161/1 of 11.3.2010

Scientific name	Common name	CPVO protocol
Allium porrum L.	Leek	TP 85/2 of 1.4.2009
Allium sativum L.	Garlic	TP 162/1 of 25.3.2004
Allium schoenoprasum L.	Chives	TP 198/1 of 1.4.2009
Apium graveolens L.	Celery	TP 82/1 of 13.3.2008
Apium graveolens L.	Celeriac	TP 74/1 of 13.3.2008
Asparagus officinalis L.	Asparagus	TP 130/2 of 16.2.2011
Beta vulgaris L.	Beetroot including Cheltenham beet	TP 60/1 of 1.4.2009
Brassica oleracea L.	Curly kale	TP 90/1 of 16.2.2011
Brassica oleracea L.	Cauliflower	TP 45/2 of 11.3.2010
Brassica oleracea L.	Sprouting broccoli or Calabrese	TP 151/2 of 21.3.2007
Brassica oleracea L.	Brussels sprouts	TP 54/2 of 1.12.2005
Brassica oleracea L.	Kohlrabi	TP 65/1 of 25.3.2004
Brassica oleracea L.	Savoy cabbage, White cabbage and Red cabbage	TP 48/3 of 16.2.2011
Brassica rapa L.	Chinese cabbage	TP 105/1 of 13.3.2008
Capsicum annuum L.	Chilli or Pepper	TP 76/2 of 21.3.2007
Cichorium endivia L.	Curled-leaved endive and Plain-leaved endive	TP 118/3 of 19.3.2014
Cichorium intybus L.	Industrial chicory	TP 172/2 of 1.12.2005
Cichorium intybus L.	Witloof chicory	TP 173/1 of 25.3.2004
Citrullus lanatus (Thunb.) Matsum. et Nakai	Watermelon	TP 142/2 of 19.3.2014
Cucumis melo L.	Melon	TP 104/2 of 21.3.2007
Cucumis sativus L.	Cucumber and Gherkin	TP 61/2 of 13.3.2008
Cucurbita pepo L.	Marrow or Courgette	TP 119/1rev. of 19.3.2014
Cynara cardunculus L.	Globe artichoke and Cardoon	TP 184/2 of 27.2.2013
Daucus carota L.	Carrot and Fodder carrot	TP 49/3 of 13.3.2008
Foeniculum vulgare Mill.	Fennel	TP 183/1 of 25.3.2004
Lactuca sativa L.	Lettuce	TP 13/5 of 16.2.2011
Solanum lycopersicum L.	Tomato	TP 44/4 rev. of 27.2.2013
Petroselinum crispum (Mill.) Nyman ex A. W. Hill	Parsley	TP 136/1 of 21.3.2007
Phaseolus coccineus L.	Runner bean	TP 9/1 of 21.3.2007
Phaseolus vulgaris L.	Dwarf French bean and Climbing French bean	TP 12/4 of 27.2.2013
Pisum sativum L. (partim)	Wrinkled pea, Round pea and Sugar pea	TP 7/2 of 11.3.2010
Raphanus sativus L.	Radish, Black radish	TP 64/2 of 27.2.2013
Solanum melongena L.	Aubergine or Egg plant	TP 117/1 of 13.3.2008
Spinacia oleracea L.	Spinach	TP 55/5 of 27.2.2013
Valerianella locusta (L.) Laterr.	Corn salad or Lamb's lettuce	TP 75/2 of 21.3.2007
Vicia faba L. (partim)	Broad bean	TP Broadbean/1 of 25.3.2004

Scientific name	Common name	CPVO protocol
Zea mays L. (partim)	Sweet corn and Pop corn	TP 2/3 of 11.3.2010
Solanum lycopersicum L. × *Solanum habrochaites* S. Knapp & D.M. Spooner; *Solanum lycopersicum* L. × *Solanum peruvianum* (L.) Mill.; *Solanum lycopersicum* L. × *Solanum cheesmaniae* (L. Ridley) *Fosberg*	Tomato rootstocks	TP 294/1 of 19.3.2014

The text of these protocols can be found on the CPVO website (www.cpvo.europa.eu).

ANNEX II

List of species referred to in Article 1(2)(b) which are to comply with UPOV test guidelines

Scientific name	Common name	UPOV guideline
Beta vulgaris L.	Spinach beet or Chard	TG/106/4 of 31.3.2004
Brassica rapa L.	Turnip	TG/37/10 of 4.4.2001
Cichorium intybus L.	Large-leaved chicory or Italian chicory	TG/154/3 of 18.10.1996
Cucurbita maxima Duchesne	Gourd	TG/155/4rev. of 28.3.2007 + 1.4.2009
Rheum rhabarbarum L.	Rhubarb	TG/62/6 of 24.3.1999
Scorzonera hispanica L.	Scorzonera or Black salsify	TG/116/4 of 24.3.2010

The text of these guidelines can be found on the UPOV website (www.upov.int).'

DECISIONS

COUNCIL DECISION

of 1 December 2014

on the position to be taken, on behalf of the European Union, at the Eighth Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents with regard to the proposal for an amendment of Annex I to that Convention

(2014/871/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 Party to the Convention on the Transboundary Effects of Industrial Accidents done at Helsinki on 17 March 1992 ([1]) ('the Convention').

(2) Annex I to the Convention contains categories and named hazardous substances for the purpose of defining hazardous activities.

(3) In accordance with Article 26(4) of the Convention, any amendment to Annex I to the Convention shall become effective, for those Parties to the Convention which have not notified their objection, 12 months after its communication to the Parties by the Executive Secretary upon its adoption at the Conference of the Parties by a nine-tenths majority of the Parties present and voting at the meeting, provided that at least sixteen Parties have not notified objections.

(4) The text of the proposal for an amendment to Annex I to the Convention was agreed within the Working Group on the Development of the Convention, endorsed by the Bureau of the Convention, and will be proposed for adoption at the Eighth Conference of the Parties taking place in Geneva from 3 to 5 December 2014.

(5) The amendment to Annex I to the Convention would fully align that Annex to Annex I to Directive 2012/18/EU of the European Parliament and of the Council ([2]).

(6) The amendment to Annex I to the Convention should therefore be approved.

(7) At the time of the conclusion of the Convention, the Union made reservations concerning the application of the Convention in accordance with the Community's internal rules. Those reservations were based on discrepancies between Annex I to the Convention and the Union legislation in force. Those discrepancies will no longer exist after Annex I to the Convention has been amended. Those reservations should, therefore, be lifted once the amendment to Annex I to the Convention has become effective,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf at the Eighth Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents shall be to support, in substance, the proposed amendment of Annex I to the Convention including the corrigendum thereto as attached to this Decision.

([1]) OJ L 326, 3.12.1998, p. 5.
([2]) Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (OJ L 197, 24.7.2012, p. 1).

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to withdraw on behalf of the Union the remaining reservations made pursuant to Decision 98/685/EC [1] subject to the amendment to Annex I to the Convention referred to in Article 1 of this Decision becoming effective pursuant to Article 26(4) of the Convention.

Article 3

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

Done at Brussels, 1 December 2014.

For the Council
The President
B. LORENZIN

[1] Council Decision 98/685/EC of 23 March 1998 concerning the conclusion of the Convention on the Transboundary Effects of Industrial Accidents (OJ L 326, 3.12.1998, p. 1).

DRAFT DECISION AMENDING ANNEX I TO THE CONVENTION

Submitted by the Working Group on the Development of the Convention

The Conference of the Parties,

Recognizing the need to update the categories of substances and mixtures and the named substances and their threshold quantities, as contained in annex I to the Convention on the Transboundary Effects of Industrial Accidents, for the purposes of introducing the criteria of the United Nations Globally Harmonized System of Classification and Labelling of Chemicals (ST/SG/AC.10/30/Rev.4) and of maintaining consistency with the corresponding European Union legislation,

Bearing in mind its decision to undertake a revision of the hazardous substances and their quantities as contained in annex I and its decision 2004/4 on establishing the Working Group on the Development of the Convention,

Acknowledging the proposal to amend annex I, drawn up by the Working Group on the basis of a thorough review,

Amends annex I to the Convention on hazardous substances for the purposes of defining hazardous activities by replacing it with the text set out in the annex to this decision.

ANNEX

HAZARDOUS SUBSTANCES FOR THE PURPOSES OF DEFINING HAZARDOUS ACTIVITIES (1)

Where a substance or mixture named in Part II also falls within one or more categories in Part I, the threshold quantity given in Part II shall be used.

For the identification of hazardous activities, Parties shall take into consideration the actual or anticipated hazardous properties and/or quantities of all hazardous substances present or of hazardous substances which it is reasonable to foresee may be generated during loss of control of an activity, including storage activities, within a hazardous activity.

Part I.

Categories of substances and mixtures not specifically named in Part II

	Category in accordance with the United Nations Globally Harmonized System (GHS) of Classification and Labelling of Chemicals	Threshold quantity (metric tons)
1.	Acute toxic, Category 1, all exposure routes (2)	20
2.	Acute toxic: Category 2, all exposure routes (3) Category 3, inhalation exposure route (4)	200
3.	Specific Target Organ Toxicity (STOT) — Single Exposure (SE) STOT, Category 1 (5)	200
4.	Explosives — unstable explosives or explosives, where the substance, mixture or article falls under Division 1.1, 1.2, 1.3, 1.5 or 1.6 of Chapter 2.1.2 of the GHS criteria or substances or mixtures having explosive properties according to Test series 2 of Part I of the UN Recommendations on the Transport of Dangerous Goods: Manual of Tests and Criteria (Manual of Tests and Criteria) and do not belong to the hazard classes Organic peroxides or Self-reactive substances and mixtures (6) (7)	50
5.	Explosives, where the substance, mixture or article falls under Division 1.4 of Chapter 2.1.2 of the GHS (7) (8)	200
6.	Flammable gases, Category 1 or 2 (9)	50
7.	Aerosols (10), Category 1 or 2, containing flammable gases Category 1 or 2 or flammable liquids Category 1	500 (net)
8.	Aerosols, Category 1 or 2, not containing flammable gases Category 1 or 2 nor flammable liquids Category 1 (11)	50 000 (net)
9.	Oxidizing gases, category 1 (12)	200
10.	Flammable liquids: Flammable liquids, Category 1, or Flammable liquids, Category 2 or 3, maintained at a temperature above their boiling point (13), or Other liquids with a flash point ≤ 60 °C, maintained at a temperature above their boiling point (14)	50
11.	Flammable liquids: Flammable liquids, Category 2 or 3, where particular processing conditions, such as high pressure or high temperature, may create industrial accident hazards (15), or Other liquids with a flash point ≤ 60 °C where particular processing conditions, such as high pressure or high temperature, may create industrial accident hazards	200
12.	Flammable liquids, Categories 2 or 3, not covered by 10 and 11 (16)	50 000
13.	Self-reactive substances and mixtures and organic peroxides: Self-reactive substances and mixtures, Type A or B or Organic peroxides, Type A or B (17)	50

	Category in accordance with the United Nations Globally Harmonized System (GHS) of Classification and Labelling of Chemicals	Threshold quantity (metric tons)
14.	Self-reactive substances and mixtures and organic peroxides:	
	Self-reactive substances and mixtures, Type C, D, E or F or Organic peroxides, Type C, D, E, or F ([18])	200
15.	Pyrophoric liquids and solids, Category 1	200
16.	Oxidizing liquids and solids, Category 1, 2 or 3	200
17.	Hazardous to the aquatic environment, Category Acute 1 or Chronic 1 ([19])	200
18.	Hazardous to the aquatic environment, Category Chronic 2 ([20])	500
19.	Substances and mixtures which react violently with water, such as acetyl chloride, titanium tetrachloride	500
20.	Substances and mixtures which in contact with water emit flammable gases, Category 1 ([21])	500
21.	Substances and mixtures which in contact with water liberate toxic gas (substances and mixtures which in contact with water or damp air, evolve gases classified for acute toxicity in category 1, 2 or 3, such as aluminium phosphide, phosphorus pentasulphide)	200

Part II.

Named substances

	Substance	Threshold quantity (metric tons)
1a.	Ammonium nitrate ([22])	10 000
1b.	Ammonium nitrate ([23])	5 000
1c.	Ammonium nitrate ([24])	2 500
1d.	Ammonium nitrate ([25])	50
2a.	Potassium nitrate ([26])	10 000
2b.	Potassium nitrate ([27])	5 000
3.	Arsenic pentoxide, arsenic (V) acid and/or salts	2
4.	Arsenic trioxide, arsenious (III) acid and/or salts	0,1
5.	Bromine	100
6.	Chlorine	25
7.	Nickel compounds in inhalable powder form: nickel monoxide, nickel dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide	1
8.	Ethyleneimine	20
9.	Fluorine	20
10.	Formaldehyde (concentration ≥ 90 %)	50
11.	Hydrogen	50
12.	Hydrogen chloride (liquefied gas)	250
13.	Lead alkyls	50
14.	Liquefied flammable gases, Category 1 or 2 (including liquefied petroleum gas) and natural gas ([28])	200
15.	Acetylene	50
16.	Ethylene oxide	50
17.	Propylene oxide	50
18.	Methanol	5 000
19.	4, 4′-Methylene bis (2-chloraniline) and/or salts, in powder form	0,01

	Substance	Threshold quantity (metric tons)
20.	Methyl isocyanate	0,15
21.	Oxygen	2 000
22.	Toluene diisocyanate (2,4 -Toluene diisocyanate and 2,6 -Toluene diisocyanate)	100
23.	Carbonyl dichloride (phosgene)	0,75
24.	Arsine (arsenic trihydride)	1
25.	Phosphine (phosphorus trihydride)	1
26.	Sulphur dichloride	1
27.	Sulphur trioxide	75
28.	Polychlorodibenzofurans and polychlorodibenzodioxins (including tetrachlorodibenzodioxin (TCDD)), calculated in TCDD equivalent ([29])	0,001
29.	The following carcinogens or the mixtures containing the following carcinogens at concentrations above 5 % by weight: 4-Aminobiphenyl and/or its salts, Benzotrichloride, Benzidine and/or salts, Bis (chloromethyl) ether, Chloromethyl methyl ether, 1,2-Dibromoethane, Diethyl sulphate, Dimethyl sulphate, Dimethylcarbamoyl chloride, 1,2-Dibromo-3-chloropropane, 1,2-Dimethylhydrazine, Dimethylnitrosamine, Hexamethylphosphorictriamide, Hydrazine, 2- Naphthylamine and/or salts, 4-Nitrodiphenyl, and 1,3 Propanesultone	2
30.	Petroleum products and alternative fuels: (a) Gasolines and naphthas; (b) Kerosenes (including jet fuels); (c) Gas oils (including diesel fuels, home heating oils and gas oil blending streams); (d) Heavy fuel oils; (e) Alternative fuels serving the same purposes and with similar properties as regards flammability and environmental hazards as the products referred to in points (a) to (d)	25 000
31.	Anhydrous ammonia	200
32.	Boron trifluoride	20
33.	Hydrogen sulphide	20
34.	Piperidine	200
35.	Bis(2-dimethylaminoethyl) (methyl)amin	200
36.	3-(2-Ethylhexyloxy)propylamin	200
37.	Mixtures of sodium hypochlorite classified as Aquatic Acute Category 1 [H400] containing < than 5 % active chlorine and not classified under any of the other hazard categories in Part 1 of annex I. ([30])	500
38.	Propylamine ([31])	2 000
39.	Tert-butyl acrylate ([31])	500
40.	2-Methyl-3-butenenitrile ([31])	2 000
41.	Tetrahydro-3,5-dimethyl-1,3,5,-thiadiazine-2-thione (dazomet) ([31])	200
42.	Methyl acrylate ([31])	2 000
43.	Methylpyridine ([31])	2 000
44.	Bromo-3-chloropropane ([31])	2 000

Notes:

([1]) Criteria according the United Nations Globally Harmonized System (GHS) of Classification and Labelling of Chemicals (ST/SG/AC.10/30/Rev.4). Parties should use these criteria when classifying substances or mixtures for the purposes of Part I of this annex, unless other legally binding criteria have been adopted in the national legislation. Mixtures shall be treated in the same way as the pure substance, provided they remain within concentration limits set according to their properties in accordance with the GHS unless a percentage composition or other description is specifically given.

(2) According to the criteria in chapters 3.1.2 and 3.1.3 of GHS.

(3) According to the criteria in chapters 3.1.2 and 3.1.3 of GHS.

(4) Substances that fall within acute toxic Category 3 via the oral route shall fall under entry 2 acute toxic in those cases where neither acute inhalation toxicity classification nor acute dermal toxicity classification can be derived, for example due to lack of conclusive inhalation and dermal toxicity data.

(5) Substances that have produced significant toxicity in humans, or that, on the basis of evidence from studies in experimental animals can be presumed to have the potential to produce significant toxicity in humans following single exposure. Further guidance is given in figure 3.8.1. and table 3.8.1 of part 3 of GHS.

(6) Testing for explosive properties of substances and mixtures is only necessary if the screening procedure according to appendix 6, part 3, of the Manual of Tests and Criteria identifies the substance or mixture as potentially having explosive properties.

(7) The hazard class Explosives includes explosive articles. If the quantity of the explosive substance or mixture contained in the article is known, that quantity shall be considered for the purposes of this Convention. If the quantity of the explosive substance or mixture contained in the article is not known, then, for the purposes of this Convention, the whole article shall be treated as explosive.

(8) If Explosives of division 1.4 are unpacked or repacked, they shall be assigned to the entry 4 (Explosive), unless the hazard is shown to still correspond to Division 1.4, in accordance with GHS.

(9) According to the criteria in chapter 2.2.2 of GHS.

(10) Aerosols are classified according to the criteria in Chapter 2.3 of GHS and the Manual of Tests and Criteria, Part III, section 31 referred to therein.

(11) In order to use this entry, it must be documented that the aerosol dispenser does not contain flammable gas Category 1 or 2 nor flammable liquid Category 1.

(12) According to the criteria in chapter 2.4.2 of GHS.

(13) According to the criteria in chapter 2.4.2 of GHS.

(14) Liquids with a flash point of more than 35 °C may be regarded as non-flammable liquids for some regulatory purposes (e.g. transport) if negative results have been obtained in sustained combustibility test L.2, in part III, section 32 of the Manual of Tests and Criteria. This is, however, not valid under elevated conditions such as high temperature or pressure, and therefore such liquids are included in this entry.

(15) According to the criteria in chapter 2.4.2 of GHS.

(16) According to the criteria in chapter 2.4.2 of GHS.

(17) According to the criteria in chapters 2.8.2 and 2.15.2.2 of GHS.

(18) According to the criteria in chapters 2.8.2 and 2.15.2.2 of GHS.

(19) According to the criteria in chapter 4.1.2 of GHS.

(20) According to the criteria in chapter 4.1.2 of GHS.

(21) According to the criteria in chapter 2.12.2 of GHS.

(22) Ammonium nitrate (10 000): fertilizers capable of self-sustaining decomposition.

This applies to ammonium nitrate–based compound/composite fertilizers (compound/composite fertilizers containing ammonium nitrate with phosphate and/or potash), which are capable of self-sustaining decomposition according to the Trough Test (see Manual of Tests and Criteria, part III, subsection 38.2), and in which the nitrogen content as a result of ammonium nitrate is:

(a) between 15,75 % and–24,5 % by weight (15,75 % and 24,5 % nitrogen content by weight as a result of ammonium nitrate correspond to 45 % and 70 % ammonium nitrate, respectively) and which either contain not more 0,4 % total combustible/organic materials or fulfil the requirements of an appropriate test of resistance to detonation (e.g., 4-inch-steel-tube test);
(b) 15,75 % by weight or less and unrestricted combustible materials.

(23) Ammonium nitrate (5 000): fertilizer grade.

This applies to straight ammonium nitrate-based fertilizers and to ammonium nitrate-based compound/composite fertilizers in which the nitrogen content as a result of ammonium nitrate is:

(a) more than 24,5 % by weight, except for mixtures of straight ammonium nitrate-based fertilizers with dolomite, limestone and/or calcium carbonate with a purity of at least 90 %;
(b) more than 15,75 % by weight for mixtures of ammonium nitrate and ammonium sulphate;
(c) more than 28 % (28 % nitrogen content by weight as a result of ammonium nitrate corresponds to 80 % ammonium nitrate) by weight for mixtures of straight ammonium nitrate-based fertilizers with dolomite, limestone and/or calcium carbonate with a purity of at least 90 % and which fulfil the requirements of an appropriate test of resistance to detonation (e.g., 4-inch-steel-tube test).

(24) Ammonium nitrate (2 500): technical grade.

This applies to:

(a) Ammonium nitrate and mixtures of ammonium nitrate in which the nitrogen content as a result of ammonium nitrate is:
  (i) Between 24,5 % and–28 % by weight and which contain not more than 0,4 % combustible substances;
  (ii) More than 28 % by weight, and which contain not more than 0,2 % combustible substances;
(b) Aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 80 % by weight.

([25]) Ammonium nitrate (50): 'off-specs' material and fertilizers not fulfilling the requirements of an appropriate test of resistance to detonation (e.g., 4-inch-steel-tube test).

This applies to:

(a) Material rejected during the manufacturing process and to ammonium nitrate and mixtures of ammonium nitrate, straight ammonium nitrate-based fertilizers and ammonium nitrate-based compound/composite fertilizers referred to in notes 23 and 24 that are being or have been returned from the final user to a manufacturer, temporary storage or reprocessing plant for reworking, recycling or treatment for safe use because they no longer comply with the specifications in notes 23 and 24;

(b) Fertilizers referred to in note 22(a) and note 23 which do not fulfil the requirements of an appropriate test of resistance to detonation (e.g., 4-inch-steel-tube test).

([26]) Potassium nitrate (10 000): composite potassium nitrate-based fertilizers (in prilled/granular form) which have the same properties as pure potassium nitrate.

([27]) Potassium nitrate (5 000): composite potassium nitrate-based fertilizers (in crystalline form) which have the same hazardous properties as pure potassium nitrate.

([28]) Upgraded biogas: for the purpose of the implementation of the Convention, upgraded biogas may be classified under entry 14 of Part 2 of annex I where it has been processed in accordance with applicable standards for purified and upgraded biogas ensuring a quality equivalent to that of natural gas, including the content of methane, and which has a maximum of 1 % oxygen.

([29]) Polychlorodibenzofurans and polychlorodibenzodioxins.

The quantities of polychlorodibenzofurans and polychlorodibenzodioxins are calculated using the following World Health Organization (WHO) human and mammalian toxic equivalency factors for dioxins and dioxin-like compounds (TEF) as re-evaluated in 2005:

WHO 2005 TEF

Dioxins	TEF	Furans	TEF
2,3,7,8-TCDD	1	2,3,7,8-TCDF	0,1
1,2,3,7,8-PeCDD	1	2,3,4,7,8-PeCDF	0,3
1,2,3,4,7,8-HxCDD	0,1	1,2,3,7,8-PeCDF	0,03
1,2,3,6,7,8-HxCDD	0,1	1,2,3,4,7,8-HxCDF	0,1
1,2,3,7,8,9-HxCDD	0,1	1,2,3,7,8,9-HxCDF	0,1
1,2,3,4,6,7,8-HpCDD	0,01	2,3,4,6,7,8-HxCDF	0,1
OCDD	0,0003	1,2,3,7,8,9-HxCDF	0,1
		1,2,3,4,6,7,8-HpCDF	0,01
		1,2,3,4,7,8,9-HpCDF	0,01
		OCDF	0,0003

Abbreviations: Hx = hexa, Hp = hepta, O = octa, P = penta, T = tetra.

Reference: Martin Van den Berg and others, The 2005 World Health Organization Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds, Toxicological Sciences, vol. 93, No 2 (October 2006), pp. 223-241 (2006).

([30]) Provided that the mixture in the absence of sodium hypochlorite would not be classified as aquatic acute, Category 1.

([31]) In cases where this dangerous substance falls within the category 10 flammable liquids or 11 flammable liquids, for the purposes of the Convention the lowest qualifying quantities shall apply.

Corrigendum

1. Annex, Part I, item 8

   For Aerosols read Aerosols ([10])

2. Annex, Part I, item 11, last line

   For industrial accident hazards read industrial accident hazards ([14])

3. Annex, Part II, item 43

   For Methylpyridine ([31]) read 3-Methylpyridine ([31])

4. Annex, Notes 13, 15 and 16

   For chapter 2.4.2 read chapter 2.6.2

COUNCIL DECISION 2014/872/CFSP

of 4 December 2014

amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, and Decision 2014/659/CFSP amending Decision 2014/512/CFSP

THE COUNCIL OF THE EUROPEAN UNION,

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

Whereas:

(1) On 31 July 2014, the Council adopted Decision 2014/512/CFSP ([1]).

(2) On 8 September 2014, the Council adopted Decision 2014/659/CFSP ([2]) in order to impose further restrictive measures.

(3) The Council considers it necessary to clarify certain provisions.

(4) Further action by the Union is needed in order to implement certain measures,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2014/512/CFSP is hereby amended as follows:

(1) Article 1 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. It shall be prohibited to directly or indirectly make or be part of any arrangement to make new loans or credit with a maturity exceeding 30 days to any legal person, entity or body referred to in paragraph 1 or 2, after 12 September 2014 except for loans or credit that have a specific and documented objective to provide financing for non-prohibited direct or indirect imports or exports of goods and non-financial services between the Union and Russia or any other third State, or for loans that have a specific and documented objective to provide emergency funding to meet the solvency and liquidity criteria for legal persons established in the Union, whose proprietary rights are owned for more than 50 % by an entity referred to in Annex I.';

(b) the following paragraph is added:

'4. The prohibition in paragraph 3 shall not apply to drawdown or disbursements made under a contract concluded before 12 September 2014 if:

(a) all the terms and conditions of such drawdown or disbursements:

(i) were agreed before 12 September 2014; and

(ii) have not been modified on or after that date; and

(b) before 12 September 2014, a contractual maturity date had been fixed for the repayment in full of all funds made available and for the cancellation of all the commitments, rights and obligations under the contract.

The terms and conditions of drawdowns and disbursements referred to in this paragraph include provisions concerning the length of the repayment period for each drawdown or disbursement, the interest rate applied or the interest rate calculation method, and the maximum amount.'.

(2) In Article 2, paragraph 4 is replaced by the following:

'4. The prohibition in paragraphs 1, 2 and 3 shall be without prejudice to the execution of contracts concluded before 1 August 2014 or ancillary contracts necessary for the execution of such contracts, and to the provision of spare parts and services necessary for the maintenance and safety of existing capabilities within the Union.'.

([1]) Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 13).

([2]) Council Decision 2014/659/CFSP of 8 September 2014 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 271, 12.9.2014, p. 54).

(3) In Article 3, paragraph 3 is replaced by the following:

'3. The prohibitions in paragraphs 1 and 2 shall be without prejudice to the execution of contracts concluded before 1 August 2014 or ancillary contracts necessary for the execution of such contracts.'.

(4) In Article 3a, paragraph 3 is replaced by the following:

'3. The prohibitions in paragraph 1 and 2 shall be without prejudice to the execution of contracts concluded before 12 September 2014 or ancillary contracts necessary for the execution of such contracts, and to the provision of assistance necessary for the maintenance and safety of existing capabilities within the EU.'.

(5) Article 4 is replaced by the following:

'Article 4

1. The direct or indirect sale, supply, transfer or export of certain equipment suited to the following categories of exploration and production projects in Russia, including its Exclusive Economic Zone and Continental Shelf, by nationals of Member States, or from the territories of Member States, or using vessels or aircraft under the jurisdiction of Member States, shall be subject to prior authorisation by the competent authority of the exporting Member State:

(a) oil exploration and production in waters deeper than 150 metres;

(b) oil exploration and production in the offshore area north of the Arctic Circle;

(c) projects that have the potential to produce oil from resources located in shale formations by way of hydraulic fracturing; it does not apply to exploration and production through shale formations to locate or extract oil from non-shale reservoirs.

The Union shall take the necessary measures in order to determine the relevant items to be covered by this paragraph.

2. The provision of:

(a) technical assistance or other services related to the equipment referred to in paragraph 1;

(b) financing or financial assistance for any sale, supply, transfer or export of the equipment referred to in paragraph 1 or for the provision of related technical assistance or training;

shall also be subject to prior authorisation by the competent authority of the exporting Member State.

3. The competent authorities of the Member States shall not grant any authorisation for any sale, supply, transfer or export of the equipment or the provision of the services, as referred to in paragraphs 1 and 2, if they determine that the sale, supply, transfer or export concerned or the provision of the service concerned is destined for one of the categories of exploration and production referred to in paragraph 1.

4. Paragraph 3 shall be without prejudice to the execution of contracts concluded before 1 August 2014 or ancillary contracts necessary for the execution of such contracts.

5. An authorisation may be granted where the sale, supply, transfer or export of the items or the provision of the services, as referred to in paragraphs 1 and 2, is necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment. In duly justified cases of emergency, the sale, supply, transfer or export or the provision of services, as referred to in paragraphs 1 and 2, may proceed without prior authorisation, provided that the exporter notifies the competent authority within five working days after the sale, supply, transfer or export or the provision of services has taken place, providing detail about the relevant justification for the sale, supply, transfer or export or the provision of services without prior authorisation.'.

(6) In Article 4a, paragraph 1 is replaced by the following:

'1. The direct or indirect provision of associated services necessary for the following categories of exploration and production projects in Russia, including its Exclusive Economic Zone and Continental Shelf, by nationals of Member States, or from the territories of Member States, or using vessels or aircraft under the jurisdiction of Member States shall be prohibited:

(a) oil exploration and production in waters deeper than 150 metres;

(b) oil exploration and production in the offshore area north of the Arctic Circle;

(c) projects that have the potential to produce oil from resources located in shale formations by way of hydraulic fracturing; it does not apply to exploration and production through shale formations to locate or extract oil from non-shale reservoirs.'.

Article 2

Recital 5 of Decision 2014/659/CFSP is replaced by the following:

'(5) In this context, it is appropriate to extend the prohibition in relation to certain financial instruments. Additional restrictions on access to the capital market should be imposed in relation to State-owned Russian financial institutions, certain Russian entities in the defence sector, and certain Russian entities whose main business is the sale or transportation of oil. These prohibitions do not affect the financial services not referred to in Article 1.'.

Article 3

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

Done at Brussels, 4 December 2014.

For the Council
The President
S. GOZI

COMMISSION IMPLEMENTING DECISION

of 3 December 2014

repealing Decision 2002/249/EC concerning certain protective measures with regard to certain fishery and aquaculture products intended for human consumption and imported from Myanmar

(notified under document C(2014) 9057)

(Text with EEA relevance)

(2014/873/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety ([1]), and in particular Article 53(1) thereof,

Having regard to Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries ([2]), and in particular Article 22(1) thereof,

Whereas:

(1) Commission Decision 2002/249/EC ([3]) introduces certain protective measures with regard to certain fishery and aquaculture products intended for human consumption and imported from Myanmar and specifies tests to be carried out by the Member States on shrimps.

(2) Decision 2002/249/EC provides that that Decision is to be reviewed in the light of the guarantees offered by the competent authorities of Myanmar and on the basis of the results of the tests carried out by the Member States.

(3) It is not authorised to import aquaculture products from Myanmar into the EU.

(4) All uses of chloramphenicol and nitrofurans in fishery and aquaculture products are banned in Myanmar since 16 November 2011 by Burmese Directive 6/2011.

(5) The competent authorities in Myanmar have conducted monitoring tests on fishery products since the entry into force of the ban which were negative for the presence of chloramphenicol and nitrofurans.

(6) No test by Member States as referred to in Article 2 of Decision 2002/249/EC on shrimps imported from Myanmar has had a non-satisfactory result since June 2009. It is therefore no longer necessary to test each consignment, in particular, with a view to detecting the presence of chloramphenicol.

(7) Decision 2002/249/EC should therefore be repealed accordingly.

(8) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2002/249/EC is hereby repealed.

([1]) OJ L 31, 1.2.2002, p. 1.
([2]) OJ L 24, 30.1.1998, p. 9.
([3]) Commission Decision 2002/249/EC of 27 March 2002 concerning certain protective measures with regard to certain fishery and aquaculture products intended for human consumption and imported from Myanmar (OJ L 84, 28.3.2002, p. 73).

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 3 December 2014.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

COMMISSION IMPLEMENTING DECISION

of 3 December 2014

amending Decision 2008/866/EC, on emergency measures suspending imports from Peru of certain bivalve molluscs intended for human consumption, as regards its period of application

(notified under document C(2014) 9113)

(Text with EEA relevance)

(2014/874/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety ([1]), and in particular Article 53(1)(b)(i) thereof,

Whereas:

(1) Regulation (EC) No 178/2002 lays down the general principles governing food and feed in general, and food and feed safety in particular, at Union and national level. It provides for emergency measures where there is evidence that food or feed imported from a third country is likely to constitute a serious risk to human health, animal health or the environment, and that such risk cannot be contained satisfactorily by means of measures taken by the Member State(s) concerned.

(2) Commission Decision 2008/866/EC ([2]) was adopted following an outbreak of Hepatitis A in humans related to the consumption of bivalve molluscs imported from Peru that were contaminated with Hepatitis A virus (HAV). That Decision initially applied until 31 March 2009, but this period of application was last extended until 30 November 2014 by Commission Implementing Decision 2013/636/EU ([3]).

(3) The Peruvian Competent Authority was requested to provide satisfactory guarantees to ensure that the shortcomings identified in relation to the monitoring system for virus detection in live bivalve molluscs have been corrected. In particular, the monitoring programme results for Donax clams (*Donax* spp.) should be presented. Despite the fact that Donax clams (*Donax* spp.) caused the outbreaks of Hepatitis A in humans up to date, the results of the monitoring programme for this species have not been provided to the Commission. Therefore, the Commission cannot conclude that the control system and the monitoring plan currently in place in Peru for certain bivalve molluscs is able to deliver the guarantees required by Union law. Consequently, the emergency measures should be mantained.

(4) The limit of application of Decision 2008/866/EC should therefore be amended accordingly.

(5) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

In Article 5 of Decision 2008/866/EC, the date '30 November 2014' is replaced by the date '30 November 2015'.

([1]) OJ L 31, 1.2.2002, p. 1.
([2]) Commission Decision 2008/866/EC of 12 November 2008 on emergency measures suspending imports from Peru of certain bivalve molluscs intended for human consumption (OJ L 307, 18.11.2008, p. 9).
([3]) Commission Implementing Decision 2013/636/EU of 31 October 2013 amending Decision 2008/866/EC, on emegency measures suspending imports from Peru of certain bivalve molluscs intended for human consumption, as regards its period of application (OJ L 293, 5.11.2013, p. 42).

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 3 December 2014.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

COMMISSION IMPLEMENTING DECISION

of 4 December 2014

on the publication of the references of standard EN 15649-2:2009+A2:2013 for floating leisure articles for use on and in the water and of standard EN 957-6:2010+A1:2014 for stationary training equipment in the *Official Journal of the European Union* pursuant to Directive 2001/95/EC of the European Parliament and of the Council

(Text with EEA relevance)

(2014/875/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety ([1]), and in particular the first subparagraph of Article 4(2) thereof,

Whereas:

(1) Article 3(1) of Directive 2001/95/EC requires producers to only place safe products on the market.

(2) Under the second subparagraph of Article 3(2) of Directive 2001/95/EC, a product shall be presumed safe, as far as the risks and risk categories covered by the relevant national standards are concerned, if it meets national standards transposing European standards, the references of which have been published by the Commission in the *Official Journal of the European Union*, in accordance with Article 4(2) of that Directive.

(3) Pursuant to Article 4(1) of Directive 2001/95/EC, European standards are established by European standardisation organisations under mandates drawn up by the Commission.

(4) Pursuant to Article 4(2) of Directive 2001/95/EC, the Commission is to publish the references of such standards.

(5) On 21 April 2005, the Commission adopted Decision 2005/323/EC ([2]) on the safety requirements to be met by the European standards for floating leisure articles for use on or in the water.

(6) On 6 September 2005, the Commission issued mandate M/372 to the European standardisation organisations on drawing up European standards to address the main risks associated with floating leisure articles for use on and in the water, namely drowning and near-drowning accidents, other risks related to the product design, including drifting away, losing hold, falling from a high height, entrapment or entanglement above or below the water surface, sudden loss of buoyancy, capsizing, and temperature shock, risks inherent to their use, such as collision and impact, and risks linked to winds, currents and tides.

(7) The European Committee for Standardisation adopted a series of European standards (EN 15649 parts 1-7) for floating leisure articles in response to the Commission's mandate. On 18 July 2013, the Commission adopted Implementing Decision 2013/390/EU ([3]), which stated that European standards EN 15649 parts 1-7 for floating leisure articles meet the general safety requirement in Directive 2001/95/EC for the risks they cover, and published their references in part C of the *Official Journal of the European Union*.

(8) Since then, the European Committee for Standardisation has revised the European standard EN 15649-2:2009 +A2:2013 for floating leisure articles for use on and in the water.

([1]) OJ L 11, 15.1.2002, p. 4.

([2]) Commission Decision 2005/323/EC of 21 April 2005 on the safety requirements to be met by the European standards for floating leisure articles for use on or in the water pursuant to Directive 2001/95/EC of the European Parliament and of the Council (OJ L 104, 23.4.2005, p. 39).

([3]) Commission Implementing Decision 2013/390/EU of 18 July 2013 on the compliance of European standards series EN 15649 (parts 1-7) for floating leisure articles for use on and in the water with the general safety requirement of Directive 2001/95/EC of the European Parliament and of the Council and publication of the references of those standards in the *Official Journal of the European Union* (OJ L 196, 19.7.2013, p. 22).

(9) European standard EN 15649-2:2009+A2:2013 fulfils the mandate M/372 and complies with the general safety requirement in Directive 2001/95/EC. Its reference should therefore be published in the *Official Journal of the European Union*.

(10) On 27 July 2011, the Commission adopted Decision 2011/476/EU [1] on the safety requirements to be met by European standards for stationary training equipment.

(11) On 5 September 2012, the Commission issued standardisation mandate M/506 to the European standardisation organisations to develop European standards for stationary training equipment. These standards were to follow the principle that during normal reasonable and foreseeable conditions of use, risks of injury or damage to health and safety shall be minimised by the equipment's design or safeguards.

(12) The European Committee for Standardisation adopted European standards (EN 957 parts 2 and 4-10) and a European standard EN ISO 20957 part 1. These fall within the scope of the Commission's mandate.

(13) On 13 June 2014 the Commission adopted Implementing Decision 2014/357/EU [2], which stated that European standards series EN 957 parts 2 and 4-10 and a European standard EN ISO 20957 part 1 for stationary training equipment meet the general safety requirement in Directive 2001/95/EC for the risks they cover, and published their references in part C of the *Official Journal of the European Union*.

(14) Since then, the European Committee for Standardisation has revised the European standard EN 957-6:2010 +A1:2014 for stationary training equipment.

(15) European standard EN 957-6:2010+A1:2014 fulfils the mandate M/506 and complies with the general safety requirement in Directive 2001/95/EC. Its reference should therefore be published in the *Official Journal of the European Union*.

(16) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Directive 2001/95/EC,

HAS ADOPTED THIS DECISION:

Article 1

The references of the following standards shall be published in the part C of the *Official Journal of the European Union*:

(a) EN 15649-2:2009+A2:2013 'Floating leisure articles for use on and in the water — Part 2: Consumer information';

(b) EN 957-6:2010+A1:2014 for 'Stationary training equipment — Part 6: Treadmills, additional specific safety requirements and test methods'.

Article 2

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

Done at Brussels, 4 December 2014.

For the Commission
The President
Jean-Claude JUNCKER

[1] Commission Decision 2011/476/EU of 27 July 2011 on the safety requirements to be met by European standards for stationary training equipment pursuant to Directive 2001/95/EC of the European Parliament and of the Council (OJ L 196, 28.7.2011, p. 16).

[2] Commission Implementing Decision 2014/357/EU of 13 June 2014 on the compliance of European standards series EN 957 (parts 2 and 4-10) and EN ISO 20957 (part 1) for stationary training equipment and of ten European standards for gymnastic equipment with the general safety requirement of Directive 2001/95/EC of the European Parliament and of the Council and publication of the references of those standards in the *Official Journal of the European Union* (OJ L 175, 14.6.2014, p. 40).

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