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[1] Text with EEA relevance

EN

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

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II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2015/159

of 27 January 2015

amending Regulation (EC) No 2532/98 concerning the powers of the European Central Bank to impose sanctions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 132(3) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 34.3 thereof,

Having regard to the Recommendation of the European Central Bank ([1]),

Having regard to the opinion of the European Parliament ([2]),

Having regard to the opinion of the European Commission ([3]),

Acting in accordance with the procedure laid down in Article 129(4) of the Treaty and in Article 41 of the Statute of the European System of Central Banks and of the European Central Bank,

Whereas:

(1) Regulation (EC) No 2532/98 ([4]) is founded on Article 132(3) TFEU and Article 34.3 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute') that empower the Council to establish the limits and the conditions for the European Central Bank (hereinafter the 'ECB') to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions. The content of Regulation (EC) No 2532/98 should therefore be confined to the infringements of regulations and decisions adopted by the ECB. For infringements of directly applicable Union law, other than regulations and decisions adopted by the ECB, the relevant provisions laid down by Regulation (EU) No 1024/2013 ([5]) should apply.

(2) The ECB has applied Regulation (EC) No 2532/98 to impose sanctions in its various fields of competence, including in particular the implementation of the monetary policy of the Union, the operation of payment systems and the collection of statistical information.

(3) Regulation (EU) No 1024/2013 vested the ECB with some supervisory tasks and entitled the latter to impose on the credit institutions it supervises: (a) administrative pecuniary penalties when these institutions breach a requirement under directly applicable Union law in relation to which administrative pecuniary sanctions shall be

([1]) OJ C 144, 14.5.2014, p. 2.
([2]) Opinion delivered on 26 November 2014 (not yet published in the Official Journal).
([3]) Opinion delivered on 18 December 2014 (not yet published in the Official Journal).
([4]) Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions (OJ L 318, 27.11.1998, p. 4).
([5]) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

made available to competent authorities under the relevant Union law; and (b) sanctions in accordance with Regulation (EC) No 2532/98 in case of a breach of ECB regulations or decisions (hereinafter jointly referred to as 'administrative penalties').

(4) Article 18(7) of Regulation (EU) No 1024/2013 provides that for the purposes of carrying out the tasks conferred on it by that Regulation in case of breach of ECB regulations and decisions, the ECB may impose sanctions in accordance with Regulation (EC) No 2532/98.

(5) In this regard, certain provisions of Regulation (EC) No 2532/98 are not coherent with a wide range of provisions contained in Regulation (EU) No 1024/2013 that are directly relevant to the ECB's powers to impose sanctions in case of a breach of ECB regulations and decisions. It is therefore necessary to identify the rules laid down in Regulation (EC) No 2532/98 that should be amended when referring to the imposition of sanctions by the ECB in case of a breach of ECB regulations or decisions relating to its supervisory tasks.

(6) On the basis of its power to implement the supervisory tasks allocated to it by the Treaties, laid down under Article 34 of the Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank, the ECB has adopted Regulation (EU) No 468/2014 ([1]). In order to organise the ECB task of ensuring compliance with the rules contained under the directly applicable Union law, Regulation (EU) No 468/2014 further specifies, in accordance with Article 4(3) of Regulation (EU) No 1024/2013 and in accordance with the fundamental rights and principles laid down in the Charter of Fundamental Rights of the European Union, the framework for administrative penalties laid down in Article 18 of Regulation (EU) No 1024/2013. It also establishes rules concerning the imposition of administrative penalties in case of a breach of an ECB regulation or decision. Regulation (EU) No 468/2014 is an instrument implementing secondary legislation. Accordingly, in case of conflict between the provisions laid down in that Regulation and the provisions of Regulation (EC) No 2532/98, Regulation (EC) No 2532/98 will prevail.

(7) The ECB should publish decisions imposing sanctions in case of a breach of an ECB regulation or decision in the supervisory field, unless such publication would jeopardise the stability of financial markets or would cause, in so far as it can be determined, disproportionate damage to the undertaking involved.

(8) The upper limit of a fine that the ECB may impose on an undertaking for failure to comply with an ECB regulation or decision in the supervisory field should not differ from the upper limit of a fine that the ECB may impose on an undertaking for a breach of directly applicable Union law, in order to ensure consistency in the treatment of equally serious infringements. All fines imposed by the ECB in the exercise of its supervisory tasks should therefore be subject to the same upper limits.

(9) The ECB should be able to impose periodic penalty payments on undertakings in order to compel them to comply with ECB regulations or decisions in the supervisory field, or to put an end to a continued infringement thereof. The upper limit of periodic penalty payments should be commensurate with the upper limit of fines applicable in the supervisory field.

(10) Article 25 of Regulation (EU) No 1024/2013 lays down the principle of separation, whereby the ECB carries out the tasks conferred on it by Regulation (EU) No 1024/2013 without prejudice to and separately from its tasks relating to monetary policy and any other tasks. This principle is to be followed without restriction in all tasks carried out by the ECB. In order to strengthen this principle of separation, a Supervisory Board has been established pursuant to Article 26 of Regulation (EU) No 1024/2013, which, inter alia, is responsible for preparing complete draft decisions for the Governing Council of the ECB in the supervisory field. In addition, the decisions taken by the Governing Council of the ECB are subject to review by the Administrative Board of Review, under the conditions laid down in Article 24 of Regulation (EU) No 1024/2013. Taking account of the principle of separation and the establishment of the Supervisory Board and the Administrative Board of Review, two distinct procedures should apply: (a) where the ECB contemplates the imposition of administrative penalties in the exercise of its supervisory tasks, decisions to this effect are taken by the Governing Council of the ECB based on a complete draft decision from the Supervisory Board and subject to review by the Administrative

([1]) Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

Board of Review; and (b) where the ECB contemplates the imposition of sanctions in the exercise of its non-supervisory tasks, decisions to this effect are taken by the Executive Board of the ECB and subject to review by the Governing Council of the ECB.

(11) Due to the complexity of the investigation of infringements in the supervisory field, the power to impose and enforce sanctions relating to the supervisory tasks of the ECB should be subject to longer time limits than those provided for sanctions relating to the non-supervisory tasks of the ECB. The suspension and interruption of these time limits should be regulated accordingly, also taking into account that infringement procedures in the supervisory field may overlap with criminal investigations and criminal proceedings that are based on the same facts.

(12) Regulation (EC) No 2532/98 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments

Regulation (EC) No 2532/98 is amended as follows:

(1) Article 1 is amended as follows:

(a) point 6 is replaced by the following:

'6. "periodic penalty payments" shall mean amounts of money which, in the case of a continued infringement, an undertaking is obliged to pay either as a punishment, or with a view to forcing the persons concerned to comply with the ECB supervisory regulations and decisions. Periodic penalty payments shall be calculated for each complete day of continued infringement:

(a) following notification of the undertaking of a decision requiring the termination of such an infringement in accordance with the procedure laid down in the second subparagraph of Article 3(1); or

(b) when the continued infringement falls under the scope of Article 18(7) of Council Regulation (EU) No 1024/2013 (*) in accordance with the procedure laid down in Article 4b of this Regulation;

(*) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).';

(b) point 7 is replaced by the following:

'7. "sanctions" shall mean fines and periodic penalty payments.';

(2) the following Article is inserted:

'*Article 1a*

General principles and scope

1. This Regulation shall apply to the imposition by the ECB of sanctions on undertakings for failure to comply with obligations arising from ECB decisions or regulations.

2. The rules applying to the imposition by the ECB, in the exercise of its supervisory tasks, of sanctions in case of a breach of an ECB regulation or decision shall derogate from the rules laid down in Articles 2 to 4 to the extent laid down in Articles 4a to 4c.

3. The ECB shall publish any decision imposing sanctions on an undertaking in case of a breach of an ECB regulation or decision, in the supervisory field, whether or not such decision has been appealed.

The ECB shall carry out such a publication on its website without undue delay, and after the decision has been notified to the undertaking concerned. The publication shall include information on the type and nature of the breach and the identity of the undertaking concerned, unless publication in this manner would either:

(a) jeopardise the stability of the financial markets or an ongoing criminal investigation; or

(b) cause, in so far as can be determined, disproportionate damage to the undertaking concerned.

In these circumstances, decisions regarding sanctions shall be published on an anonymised basis. Alternatively, where such circumstances are likely to cease within a reasonable period of time, publication under this paragraph may be postponed for such period of time.

If an appeal to the Court of Justice in respect of a decision imposing a sanction is pending, the ECB shall, without undue delay, also publish information on the status of the appeal in question and the outcome thereof on its official website.

The ECB shall ensure that information published under this paragraph remains on its official website for at least five years.';

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

'4. Whenever the infringement consists of a failure to perform a duty, the application of a sanction shall not exempt the undertaking from its performance, unless the decision adopted in accordance with Article 3(4) or Article 4b explicitly states the contrary.';

(4) Article 3 is amended as follows:

(a) the first sentence of paragraph 1 is replaced by the following:

'1. The decision on whether to initiate an infringement procedure shall be taken by the ECB, acting on its own initiative or on the basis of a motion to that effect addressed to it by the national central bank of the Member State in whose jurisdiction the alleged infringement has occurred.';

(b) paragraph 10 is replaced by the following:

'10. If an infringement relates exclusively to a task entrusted to the ESCB or the ECB under the Treaty and the Statute, an infringement procedure may be initiated only on the basis of this Regulation, irrespective of the existence of any national law or regulation which may provide for a separate procedure. If an infringement also relates to one or more areas outside the competence of the ESCB or the ECB, the right to initiate an infringement procedure on the basis of this Regulation shall be independent of any right of a competent national authority to initiate separate procedures in relation to such areas outside the competence of the ESCB or the ECB. This provision shall be without prejudice to the application of criminal law and of national law relating to prudential supervisory competencies in participating Member States, in accordance with Regulation (EU) No 1024/2013.';

(5) the following Articles are inserted:

'*Article 4a*

Specific rules regarding the upper limits of sanctions imposed by the ECB in the exercise of its supervisory tasks

1. By way of derogation from Article 2(1), in the case of infringements relating to decisions and regulations adopted by the ECB in the exercise of its supervisory tasks, the limits within which the ECB may impose fines and periodic penalty payments shall be as follows:

(a) for fines, the upper limit shall be twice the amount of the profits gained or losses avoided because of the infringement where these can be determined, or 10 % of the total annual turnover of the undertaking;

(b) for periodic penalty payments, the upper limit shall be 5 % of the average daily turnover per day of infringement. Periodic penalty payments may be imposed in respect of a maximum period of six months from the date stipulated in the decision imposing the periodic penalty payment.

2. For the purposes of paragraph 1:

(a) "annual turnover" means the annual turnover of the undertaking concerned in the preceding business year, as defined in relevant Union law, and where this is not available, according to the most recently available annual financial accounts of such person. Where the undertaking concerned is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the most recently available consolidated annual financial accounts in the preceding business year, and where this is not available, according to the most recently available annual financial accounts of such person;

(b) "average daily turnover" means the annual turnover, as defined under point (a), divided by 365.

Article 4b

Specific procedural rules for sanctions imposed by the ECB in the exercise of its supervisory tasks

1. By way of derogation from Article 3(1) to (8) of this Regulation, the rules laid down in this Article shall apply to infringements relating to decisions and regulations adopted by the ECB in the exercise of its supervisory tasks.

2. Where the ECB, in carrying out its tasks under Regulation (EU) No 1024/2013, considers that there is reason to suspect that one or more breaches of an ECB regulation or decision as referred to in Article 18(7) of Regulation (EU) No 1024/2013 are being or have been committed by an undertaking having its head office in an euro area Member State, the ECB shall exercise the relevant investigations in accordance with the following provisions.

3. On completion of an investigation and before a proposal for a complete draft decision is prepared and submitted to the Supervisory Board, the ECB, in its capacity to investigate breaches in the field of supervision, shall notify the undertaking concerned in writing of the findings under the investigation carried out and of any objections raised thereto.

In the notification referred to in the first subparagraph, the ECB, in its capacity to investigate breaches in the field of supervision, shall inform the undertaking concerned of its right to make submissions in writing to the ECB on the factual results and the objections raised against the entity as set out therein, including the individual provisions which have been allegedly infringed, and it shall set a reasonable time limit for making such submissions. The ECB shall not be obliged to take into account written submissions made after the time limit set by the ECB in its capacity to investigate breaches in the field of supervision has expired.

The ECB, in its capacity to investigate breaches in the field of supervision may also, following notification in accordance with the first subparagraph, invite the undertaking concerned to attend an oral hearing. The parties subject to investigation may be represented and/or assisted by lawyers or other qualified persons at the hearing. Oral hearings shall not be held in public.

The right of access to the file by the undertaking concerned under investigation shall be guaranteed. It shall not extend to confidential information.

4. The Supervisory Board shall propose a complete draft decision to the Governing Council, determining whether or not the undertaking concerned has committed a breach and specifying the sanctions to be imposed, if any, in accordance with the procedure under Article 26(8) of Regulation (EU) No 1024/2013.

5. The undertaking concerned shall have the right to request a review by the Administrative Board of Review of the decision taken by the Governing Council pursuant to paragraph 4, in accordance with the procedure laid down in Article 24 of Regulation (EU) No 1024/2013.

Article 4c

Specific time limits for sanctions imposed by the ECB in the exercise of its supervisory tasks

1. By way of derogation from Article 4, the right to take a decision to impose a sanction in case of a breach of an ECB decision or regulation relating to its supervisory tasks, shall expire five years after the infringement occurred or, in the case of a continued infringement, five years after the infringement ceased.

2. Any action taken by the ECB for the purposes of the investigation or proceedings with respect to an infringement shall cause the time limit laid down in paragraph 1 to be interrupted. The limitation period shall be interrupted with effect from the date on which the action is notified to the supervised entity concerned. Each interruption shall cause the time limit to recommence. However, the time limit shall not exceed a period of 10 years after the infringement occurred or, in the case of a continued infringement, 10 years after the infringement ceased.

3. The time limits described in the preceding paragraphs can be extended if:

(a) a decision of the Governing Council is subject to review before the Administrative Board of Review or appeal proceedings before the Court of Justice of the European Union; or

(b) criminal proceedings are pending against the concerned undertaking in connection with the same facts. In such a case, the time limits described in the previous paragraphs shall be extended for the period of time it takes for the Administrative Board of Review or the Court of Justice to review the decision or until conclusion of the criminal proceedings against the concerned undertaking.

4. The right of the ECB to enforce a decision to impose a sanction shall expire five years after such decision has been taken. Any action of the ECB designed to enforce payment or payment terms and conditions under the imposed sanction shall cause the limitation period for the enforcement to be interrupted.

5. The limitation period for the enforcement of sanctions shall be suspended:

(a) until the deadline for payment of the imposed sanction has passed;

(b) if enforcement of payment of the imposed sanction is suspended pursuant to a decision of the Governing Council or of the Court of Justice.'.

Article 2

Entry into force

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 27 January 2015.

For the Council

The President

J. REIRS

COMMISSION DELEGATED REGULATION (EU) 2015/160

of 28 November 2014

amending Delegated Regulation (EU) No 907/2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 ([1]), and in particular Articles 40 and 53(3) thereof,

Whereas:

(1) Article 5 of Commission Delegated Regulation (EU) No 907/2014 ([2]) lays down the conditions under which, in accordance with the principle of proportionality, expenditure effected after the payment deadlines is considered eligible for Union payments.

(2) For reasons of legal certainty and clarity, it is necessary to add to the provisions already laid down in Article 5 of Delegated Regulation (EU) No 907/2014 the conditions which should apply to direct payments made in financial year 2015 as provided for in Council Regulation (EC) No 73/2009 ([3]). For that purpose, it is necessary to refer in particular to the appropriate ceilings fixed for Member States in respect of calendar year 2014 in Regulation (EC) No 73/2009, distinguishing between those Member States which apply the Single Payment Scheme and those which apply the Single Area Payment Scheme. Moreover to address the specific situation with regard to the application of financial discipline, reference should be made to the provisions of Article 11 of Regulation (EC) No 73/2009 as regards the payments in respect of calendar year 2013 and to the provisions of Article 26 of Regulation (EU) No 1306/2013 as regards the payments in respect of calendar year 2014.

(3) It is necessary to clarify paragraph 8 of Article 12 of Delegated Regulation (EU) No 907/2014 as its wording could inadvertently lead the Commission to apply a level of flat rate correction which is lower than the risk to the Union budget. Paragraph 8 of Article 12 of that Regulation should therefore be reworded so as to indicate clearly that, where objective elements demonstrate that the maximum loss for the funds is lower than the loss which would derive from the application of a flat rate lower than that proposed by the Commission, the Commission is to apply that lower flat rate in deciding on the amounts to be excluded from Union financing.

(4) Delegated Regulation (EU) No 907/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 907/2014 is amended as follows:

(1) In Article 5, the following paragraph 3a is added:

'3a. By way of derogation from paragraph 2, during financial year 2015, in the case of direct payments listed in Annex I to Council Regulation (EC) No 73/2009, the following conditions shall apply:

(a) where the threshold referred to in the first subparagraph of paragraph 2 has not been used in full for payments made in respect of calendar year 2014 no later than 15 October 2015 and the remainder of the threshold exceeds 2 %, that remainder shall be reduced to 2 %;

([1]) OJ L 347, 20.12.2013, p. 549.

([2]) Commission Delegated Regulation (EU) No 907/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ L 255, 28.8.2014, p. 18).

([3]) Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ L 30, 31.1.2009, p. 16).

(b) in the case of Member States applying the Single Payment Scheme in accordance with Chapter 3 of Title III of Regulation (EC) No 73/2009, direct payments, other than payments provided for in Regulation (EU) No 228/2013 of the European Parliament and of the Council (*) and in Regulation (EU) No 229/2013 of the European Parliament and of the Council (**), in respect of calendar years 2013 or earlier made after the payment deadline will only be eligible for financing by the EAGF if the total amount of direct payments made within financial year 2015, where applicable corrected to amounts before the adjustment provided for in Article 11 of Regulation (EC) No 73/2009 or in Article 26 of Regulation (EU) No 1306/2013, does not exceed the ceiling set out in Annex VIII to Regulation (EC) No 73/2009 in respect of calendar year 2014 and taking into account the amounts resulting from the application of Article 136b of Regulation (EC) No 73/2009 for calendar year 2014 as set out in Annex VIIIa to that Regulation;

(c) in the case of Member States applying the Single Area Payment Scheme as laid down by Article 122 of Regulation (EC) No 73/2009, direct payments in respect of calendar years 2013 or earlier made after the payment deadline will only be eligible for financing by the EAGF if the total amount of direct payments made within financial year 2015, where applicable corrected to amounts before the adjustment provided for in Article 11 of Regulation (EC) No 73/2009 or in Article 26 of Regulation (EU) No 1306/2013, does not exceed the sum of individual ceilings laid down for direct payments in respect of calendar year 2014 for the Member State concerned;

(d) expenditure exceeding the limits referred to in point (a), (b) or (c) shall be reduced by 100 %.

The amounts of the reimbursements referred to in Article 26(5) of Regulation (EU) No 1306/2013 shall not be taken into account to check whether the condition laid down in point (b) or (c) of the first subparagraph of this paragraph is fulfilled.

(*) Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in the outermost regions of the Union and repealing Council Regulation (EC) No 247/2006 (OJ L 78, 20.3.2013, p. 23).

(**) Regulation (EU) No 229/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in favour of the smaller Aegean islands and repealing Council Regulation (EC) No 1405/2006 (OJ L 78, 20.3.2013, p. 41).'

(2) In Article 12, paragraph 8 is replaced by the following:

'8. Where a Member State submits objective elements, which do not fulfil the requirements laid down in paragraphs 2 and 3 of this Article, but which demonstrate that the maximum loss for the funds is lower than what would derive from the application of a flat rate lower than the one proposed, the Commission shall use that lower flat rate to decide on the amounts to be excluded from Union financing pursuant to Article 52 of Regulation (EU) No 1306/2013.'

Article 2

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

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

Done at Brussels, 28 November 2014.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2015/161

of 2 February 2015

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, 2 February 2015.

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	EG	344,0
	IL	135,3
	MA	85,5
	SN	316,2
	TR	123,5
	ZZ	200,9
0707 00 05	JO	229,9
	TR	189,4
	ZZ	209,7
0709 91 00	EG	113,1
	ZZ	113,1
0709 93 10	EG	165,4
	MA	218,7
	TR	242,7
	ZZ	208,9
0805 10 20	EG	46,3
	IL	78,7
	MA	56,3
	TN	54,2
	TR	65,0
	ZZ	60,1
0805 20 10	IL	133,9
	MA	84,6
	ZZ	109,3
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	56,6
	EG	87,6
	IL	127,4
	MA	118,3
	TR	85,3
	ZZ	95,0
0805 50 10	TR	57,4
	ZZ	57,4
0808 10 80	BR	64,0
	CL	89,6
	US	159,3
	ZZ	104,3

(EUR/100 kg)

CN code	Third country code [1]	Standard import value
0808 30 90	CL	316,1
	US	130,9
	ZA	87,0
	ZZ	178,0

[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'.

DECISIONS

COMMISSION DECISION (EU) 2015/162

of 9 July 2014

on the State aid SA.36612 (2014/C) (ex 2013/NN) implemented by Latvia for Parex

(notified under document C(2014) 4550)

(Only the English text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having called on interested parties to submit their comments pursuant to the provision(s) cited above ([1]),

Whereas:

1. PROCEDURE

1.1. Previous measures in favour of Parex

(1) On 10 November 2008 Latvia notified to the Commission a package of State aid measures in favour of AS Parex banka ('Parex banka'), designed to support the stability of the financial system. The Commission temporarily approved those measures on 24 November 2008 ([2]) ('first rescue Decision') based on Latvia's commitment to submit a restructuring plan for Parex banka within six months.

(2) Following requests from Latvia, the Commission approved two sets of changes to the aid measures concerning Parex banka by decisions of 11 February 2009 ([3]) ('second rescue Decision') and 11 May 2009 ([4]) ('third rescue Decision').

(3) On 11 May 2009 Latvia notified a restructuring plan for Parex banka. By decision of 29 June 2009 ([5]) the Commission came to the preliminary conclusion that the notified restructuring measures constituted State aid to Parex banka and expressed doubts that such aid could be found compatible with the internal market. As a result the Commission decided to initiate the procedure laid down in Article 108(2) of the Treaty and required Latvia to provide information needed for the assessment of the compatibility of the aid.

(4) Between 11 May 2009 and 15 September 2010, several information exchanges and discussions occurred between Latvia and the Commission concerning the restructuring of Parex banka. During that period Latvia updated the restructuring plan of Parex banka several times.

(5) The restructuring plan envisaged a split of Parex banka into a newly established so-called 'good bank' named AS Citadele banka ('Citadele'), which would take over all core assets and some non-core assets ([6]), and a so-called 'bad bank' ('Reverta' ([7])) which kept the remaining non-core and non-performing assets. That split was implemented on 1 August 2010.

([1]) Commission Decision SA.36612 — 2014/C (ex 2013/NN) (OJ C 147, 16.5.2014, p. 11).
([2]) Commission Decision NN 68/08 (OJ C 147, 27.6.2009, p. 1).
([3]) Commission Decision NN 3/09 (OJ C 147, 27.6.2009, p. 2).
([4]) Commission Decision N 189/09 (OJ C 176, 29.7.2009, p. 3).
([5]) Commission Decision C 26/09 (ex N 289/09) (OJ C 239, 6.10.2009, p. 11).
([6]) In particular, performing loans to borrowers located in the Commonwealth of Independent States ('CIS'), the Lithuanian subsidiary, branches in Sweden and Germany and the wealth management business, with the latter including the Swiss subsidiary.
([7]) The bad bank initially kept the name of Parex banka after the split that took place on 1 August 2010, but in May 2012 it changed its corporate name into 'AS Reverta'.

(6) By decision of 15 September 2010 ([8]) ('the Parex Final Decision'), the Commission approved the restructuring plan of Parex banka, based on commitments undertaken by Latvia authorities submitted on 3 September 2010.

(7) By decision of 10 August 2012 ('the Amendment Decision') ([9]), the Commission approved amendments to three commitments included in the Parex Final Decision, following a request of Latvia. Those amendments: (1) extended the disposal deadline for the CIS loans ([10]) until 31 December 2014; (2) increased the limit of minimum capital adequacy requirements allowed for Citadele at the level of the bank and the group; and (3) allowed carry-over of previous years' unused caps on lending, whilst respecting the initial market share caps.

(8) The Commission notes that on 5 June 2014 Latvia has exceptionally accepted this Decision to be adopted in the English language.

1.2. The formal investigation procedure

(9) On 1 October 2013 Latvia notified a request for a further amendment to the Parex Final Decision, asking for the postponement of the deadline to divest the Wealth Management Business of Citadele ([11]). In the course of the assessment of that amendment request, the Commission found out that Latvia had granted State aid to Parex and Citadele over and beyond the aid measures approved by the Commission.

(10) Between […] (*) and 4 March 2014, several information exchanges took place between Latvia and the Commission with regard to those additional aid measures. Latvia submitted information and documents on 30 October 2013, 31 January 2014 and 4 March 2014 (including a revised restructuring plan for Parex banka).

(11) Since 11 November 2013, the Commission has also received monthly updates regarding Latvia's progress in selling Citadele, a process that had started in October 2013.

(12) By decision of 16 April 2014 ('the Opening Decision') ([12]) the Commission informed Latvia that, having examined the information supplied by the Latvian authorities, it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('the Treaty'). In the Opening Decision the Commission also invited interested parties to submit their comments on the aid, in response to which it received one submission on 23 May 2014.

(13) Latvia has informed the Commission that for reasons of urgency they exceptionally accept that the present Decision is adopted in the English language.

2. DESCRIPTION

2.1. The undertaking concerned

(14) Parex banka was the second-largest bank in Latvia, with total assets of LVL 3,4 billion (EUR 4,9 billion), as of 31 December 2008. Parex banka had been founded in 1992. In November 2008 Latvia acquired 84,83 % of the bank's share capital from the two largest shareholders at a symbolic total purchase price of LVL 2 (approx. EUR 3), a State aid measure approved by the Commission through the first and second rescue Decisions. After the recapitalisation approved through the rescue Decisions, Latvia further increased its participation in Parex banka to about 95 % through the injection of an additional LVL 140,75 million which took place on May 2009, a measure which was approved by the Commission through the third rescue Decision.

(15) In April 2009, the European Bank for Reconstruction and Development ('EBRD') acquired 25 % of the share capital of Parex banka plus one share. Following the split of Parex banka into a good bank and a bad bank in 2010 along with subsequent changes in the shareholding structure, the shareholders of Citadele are now Latvia (75 %) and the EBRD (25 %), while the shareholders of Reverta are Latvia (84,15 %), the EBRD (12,74 %) and others (3,11 %).

([8]) Commission Decision 2011/364/EU (OJ L 163, 23.6.2011, p. 28).
([9]) Commission Decision SA.34747 (OJ C 273, 21.9.2013, p. 1).
([10]) Meaning loans to borrowers located in the CIS.
([11]) The Wealth Management Business consists of the private capital management sector of Citadele, asset management subsidiaries and AP Anlage & Privatbank AG, Switzerland.
(*) Business secret.
([12]) See footnote 1.

(16) A detailed description of Parex banka up to the time of the Parex Final Decision can be found in recitals 11 to 15 of that Decision.

2.2. **The aid measures approved for Citadele and Reverta**

(17) Parex banka was authorised to receive a series of aid measures, approved by the Commission in the first, second and third rescue Decisions (the 'Rescue Decisions') as well as in the Parex Final Decision.

(18) The restructuring plan approved by the Commission in the Parex Final Decision provided that the rescue aid previously approved by the Commission was to be extended until the end of the restructuring period and split between Citadele and Reverta. The Parex Final Decision also approved additional restructuring aid for Reverta and Citadele. It also laid down a utilisation mechanism for the aid which had been provisionally approved through the Rescue Decisions after Parex banka was split, in regard to:

(a) liquidity support in the form of State deposits for both Citadele and Reverta ([13]);

(b) State guarantees on liabilities of Citadele and Reverta ([14]);

(c) a State recapitalisation for Reverta and Citadele ([15]); and

(d) an asset relief measure for Citadele ([16]).

3. **GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE**

3.1. **The additional measures implemented by Latvia for Parex banka, Citadele and Reverta.**

(19) Based on the report submitted on 29 August 2013 by the Monitoring Trustee ([17]) and documents and information submitted by Latvia since October 2013, it appeared that Latvia had put into effect the following measures without prior notification to the Commission:

(a) on 22 May 2009, Latvia granted to Parex banka a subordinated loan of LVL 50,27 million (qualifying as Tier 2 capital) with a maturity of seven years, i.e. until 21 May 2016 (the 'First Measure'). The maturity of that subordinated loan exceeds the maximum five-year maturity set in first rescue Decision and confirmed in the Parex Final Decision;

(b) On 27 June 2013, Latvia granted Citadele an additional 18-month extension of the maturity (the 'Second Measure') of LVL 37 million of subordinated loans (out of a total of LVL 45 million held by Latvia at that time) ([18]). Latvia did not notify the extension of the maturity of the subordinated loans to the Commission.

([13]) Recitals 55-57 of the Parex Final Decision.

([14]) Recitals 58-61 of the Parex Final Decision.

([15]) Recitals 62-68 of the Parex Final Decision.

([16]) Recitals 69-70 of the Parex Final Decision.

([17]) The Monitoring Trustee was appointed through a Mandate signed by Reverta, Citadele and the Latvian authorities on 28 February 2011. The Monitoring Trustee has submitted bi-annual monitoring reports covering the preceding semester, starting with the one ending 31 December 2010.

([18]) Following the split of Parex banka, Citadele was established on 1 August 2010. The Parex Final Decision approved the transfer to Citadele of all of the subordinated loans previously granted to Parex banka. No Tier 2 capital was provided to Parex banka by Latvia at the time of the split or could have been provided by Latvia after the split, as further detailed in recital 21 of the Opening Decision.

On 3 September 2009 the EBRD agreed to refinance part of the subordinated loan previously granted by Latvia to Parex banka. As of 31 December 2009 the subordinated loans granted by Latvia to Parex banka amounted to LVL 37 million, while the subordinated loan refinanced by the EBRD amounted to LVL 13 million.

At the time of the split Latvia took over LVL 8 million out of the LVL 13 million subordinated loan held by the EBRD. As of 1 August 2010, the total amount of subordinated loans held by Latvia was LVL 45 million (with different maturities), while that held by the EBRD was LVL 5 million.

(c) In addition, since 2011 Latvia has provided Reverta with liquidity support in excess of the maximum limits approved by the Commission in the Parex Final Decision (the 'Third Measure'), both for the base case and for the worst case scenarios ([19]).

(20) Based on the information available to the Commission at the time of the Opening Decision, in regard to the First and Second Measures, the Commission had serious doubts that they could be qualified as compatible with the internal market, considering that:

(a) in the original assessment of the compatibility of the subordinated loans granted by Latvia, a five-year maturity of the loans was deemed the minimum necessary and therefore could be found compatible on that basis and

(b) no new arguments had been presented to justify why a longer maturity was in fact the strict minimum necessary.

(21) Similarly, no sufficient arguments had been brought forward at the time of the Opening Decision to demonstrate the compatibility of the Third Measure.

(22) On those grounds, the Commission initiated the formal investigation procedure pursuant to Articles 13(1) and 4 (4) of Council Regulation (EC) No 659/1999 ([20]), in regard to the unlawful aid granted through the First, Second and Third Measures described in recital 19.

3.2. **The breach of the commitment to divest the Wealth Management Business of Citadele**

(23) Latvia has also failed to comply with its commitment which is recorded in the Parex Final Decision to divest the Wealth Management Business of Citadele by 30 June 2013 without a Divestiture Trustee, or by 31 December 2013 with a Divestiture Trustee (the 'Fourth Measure') ([21]). Therefore that commitment to divest the Wealth Management Business of Citadele by those deadlines has been breached.

(24) In the Opening Decision, the Commission concluded that the breach of the commitment described in recital 21 constitutes misuse of aid. Therefore, the Commission decided to open the formal investigation procedure for misuse of aid pursuant to Article 16 of Regulation (EC) No 659/1999.

4. **COMMENTS FROM INTERESTED PARTIES**

(25) Following the Opening Decision the Commission received comments from one individual that did not provide elements demonstrating that he qualifies as an interested party, i.e. a party whose *own* interests might be affected by the measure (for example competitors or trade associations ([22])), or that he acted on behalf of an interested party.

(26) The comments received were related to alleged illegalities involving Parex banka and were not related to the First, Second and Third Measures implemented by Latvia for Parex banka, Citadele and Reverta nor to the Fourth Measure. They essentially relate to facts and information not directly relevant for the enforcement of State aid rules in the case at stake. Therefore, for the assessment carried out in the present decision they have been registered and considered as generic market information.

5. **COMMENTS FROM LATVIA ON THE FORMAL INVESTIGATION PROCEDURE**

(27) Following the Opening Decision, on 26 May 2014 Latvia submitted comments intended to address the doubts raised by the Commission in regard to the compatibility of the First, Second and Third Measures, as well as the to the breach of the commitment to divest the Wealth Management Business of Citadele.

([19]) Further detailed in recital 21 of the Opening Decision.
([20]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 83, 27.3.1999, p. 1).
([21]) See recital 73 of the Parex Final Decision.
([22]) See Article 1(h) of Regulation (EC) No 659/1999.

(28) On 30 May 2014 Latvia also submitted an updated restructuring plan, in which the information and compensatory measures presented in sections 5.1 to 5.5 of this Decision were included.

(29) After an information request from the Commission, on 23 June 2014 Latvia submitted additional elements regarding the Second Measure.

5.1. **On the initial maturity of the subordinated loans exceeding the terms of the Rescue Decisions and the Parex Final Decision (the First Measure)**

(30) In its comments of 26 May 2014, Latvia argues that the adoption of the First Measure was necessary to allow Parex banka to comply with the applicable regulatory solvency requirements and so prevent an irremediable collapse of the fragile, largely interconnected and interdependent Latvian banking system.

(31) Latvia submits that at the time of the adoption of the first rescue Decision the Latvian authorities had limited information on the actual financial situation of Parex banka and the quality of its assets. Therefore, in its initial request to the Commission for the approval of the State aid measures, Latvia undertook to grant subordinated loans with five years maturity, as that maturity was the minimum required for subordinated loans to qualify as Tier 2 capital pursuant to the relevant provisions of Latvian law.

(32) Latvia further states that, in order to better evaluate the financial position of Parex banka, it instructed PricewaterhouseCoopers to perform a due diligence of Parex banka, which was completed on 26 January 2009, after the adoption of the first rescue Decision.

(33) At the same time, Latvia underlines the fact that the market situation in 2008-09 was very dynamic and the quality of loans was deteriorating faster than expected. That worsening situation was reflected by and resulted in the adoption by the Commission of three rescue decisions for Parex banka and the submission by Latvia of several versions of the restructuring plan for Parex banka, the latest being that notified on 11 May 2009 (the '2009 Restructuring Plan').

(34) In that context, Latvia explains that the assumptions and projections contained in the Rescue Decisions became quickly outdated, due to the rapid changes in the economic environment mainly driven by the global financial crisis and the decrease of market confidence in Parex banka. Latvia thus concluded that a maturity of five years for the subordinated loans granted by Latvia to Parex banka would no longer be sufficient for the purpose of stabilizing the fragile Latvian banking system. Indeed it turned out that Parex banka, a systemic bank at that time, needed to receive subordinated loans with maturity of more than five years to fulfil its solvency requirements and in particular to meet applicable capital adequacy requirements.

(35) Under the regulatory framework (based on Basel II standards ([23])) applicable to Parex banka at the time of the issuance of the subordinated loans only 80 % of the five-year loans of LVL 50,27 million (i.e. only LVL 40,22 million) would have qualified as Tier 2 capital. In particular, for regulatory purposes a cumulative discount (or amortization) factor had to be applied annually to the amount of subordinated loans to reflect the diminishing value of those instruments as positive components of the regulatory capital. As a result, a five-year loan at inception is only eligible for 80 % of its amount for capital adequacy purposes; for 60 % at the beginning of year two; and so on.

(36) That submission is further substantiated by Latvia through comparative calculations showing that, if the subordinated loans had been granted by Latvia for a term of five years only, they would not have been fully eligible as Tier 2 capital since their inception.

(37) Setting the maturity of subordinated loans granted by Latvia to Parex banka at seven years turned out to be necessary to allow the whole amount of LVL 50,27 million subordinated loans granted by the State to qualify as Tier 2 capital over the period 2009-10 as so to allow Parex banka to meet its target capital adequacy ratio. Table 1 illustrates the amounts of eligible Tier 2 capital held by Parex banka at the end of each year based on the term of subordinated loan of LVL 50,27 million issued in May 2009.

([23]) Basel II is the common name of the 'International Convergence of Capital Measurement and Capital Standards: a Revised Framework', a framework defining a set of standards for establishing minimum capital requirements for banking organisations, prepared by the Basel Committee on Banking Supervision, a group of central banks and bank supervisory authorities in the Group of Ten (G10), which developed the first standard in 1988.

Table 1

The term of subordinated loan issued in May 2009 and its qualification as Tier 2 (LVL millions)

Maturity Term	2009	2010	2011
5-year loan	40,22	30,16	20,11
6-year loan	50,27	40,22	30,16
7-year loan	**50,27**	**50,27**	**40,22**
8-year loan	50,27	50,27	50,27

(38) Latvia explains that on 9 June 2009 Nomura International (appointed by Latvia in March 2009 to organise the sale of Parex banka) presented to the Latvian authorities a sale strategy for Parex banka with a very aggressive timetable, planning for the sale process to be completed in 2010. Therefore, it was necessary for Parex banka to remain fully compliant with applicable capital requirements at least until the end of 2010.

(39) Finally, Latvia argues that, if the maturity of the subordinated loan had been five years only, the 2009 Restructuring Plan should have included other measures aimed at strengthening otherwise the capital adequacy of Parex banka (e.g. injections of fresh equity, immediate extension of the subordinated loans etc.). In the absence of such measures depositors would have been left unprotected and the stability of the Latvian financial system would have been significantly threatened.

5.2. **On the un-notified maturity extension of the subordinated loans (the Second Measure)**

(40) In regard to the Second Measure, Latvia submits that the further extension of the subordinated loan maturity was necessary due to regulatory changes which occurred in 2013. In particular, on 1 March 2013, Citadele was informed by the Latvia's Financial and Capital Market Commission ('FCMC') that the Group's capital adequacy ratio was required to reach 10 % minimum in absolute terms by the end of 2013, whereas the recommended ratio for addressing existing and potential risks was […]. Prior to March 2013, the minimum required capital adequacy ratio had been 8,4 %.

(41) Latvia submits that the Second Measure was adopted in good faith, as the Latvian authorities considered that Measure as being in line with the market economy investor principle, and as it does not result in pecuniary losses of the State.

(42) Latvia further declares that at the time of the adoption of the Second Measure, it along with Citadele considered in good faith that the possibility of the maturity extension of the subordinated loan in question had been provided for under the relevant Commission Decisions and the Restructuring Plan.

(43) Latvia argues that any market investor, being in the position of the majority shareholder of Citadele, would have made its best efforts to maintain, to the extent possible, the value of its investment and would have been inclined to adopt and implement the measures necessary in order to prevent the book value of its shareholding from being diminished as a result of the bank failing to meet its capital requirements. Had Citadele failed to comply with the more stringent capital adequacy requirements imposed by the FCMC at that time, the bank's stability, viability and marketability would have been jeopardized, ultimately affecting possibility of a sale in good financial conditions.

(44) Latvia also presents a counterfactual scenario, in which the Second Measure had not been granted. In that counterfactual scenario the recommended capital ratio would have not been met, as the capital adequacy ratio would have been below 9,3 % at 31 December 2013 compared to the minimum required of 10 %.

(45) Latvia also argues that alternative measures to strengthen the capital adequacy of Citadele (i.e. a capital increase or issuance of new subordinated loans) were not feasible. More specifically, it states that it would have been impossible for Citadele to obtain subordinated loans from third party investors in 2013 given the commitment of the Latvian authorities to divest Citadele within a short timeframe (i.e. by 31 December 2014). Uncertainty regarding the potential acquirer and its future strategy would have prompted subordinated loan providers to demand a put option on any subordinated loan granted by them to Citadele (change of control clause) ([24]). It effectively would have meant that the actual maturity of such subordinated loans at issuance would have been considered of less than five years and hence the loans would have not qualified as Tier 2 capital.

(46) In response to an information request from the Commission as to whether Latvia had approached the EBRD regarding a possible extension by it of the maturity of subordinated loans regarding Citadele, the Latvian authorities provided a submission on 23 June 2014. In it, they confirm that before they granted the Second Measure they did not approach the EBRD to propose to the latter to extend the maturity of subordinated loans it held. In that context, they reiterate that the Second Measure had to be adopted in order to prevent Citadele's impending breach of the new, more stringent, capital requirements.

(47) Latvia argues that it had to proceed with the extension of the maturity term of the subordinated debt it held in Citadele without delay and did not negotiate a comparable extension in relation to the subordinated debt also held by the EBRD.

(48) Latvia submits that its decision in that regard was shaped by the following three points.

(a) The necessity of addressing effectively the impending breach of the new capital requirements: Citadele had calculated its needs for qualifying Tier 2 capital and had concluded that, in contrast to the adoption of the Second Measure which would involve a maturity prolongation of 18 months, any potential maturity change to the subordinated debt in which the EBRD was also a party would have required a considerably longer extension. That difference was due to the fact that the principal of that loan was lower and consequently its impact on the capital position of Citadele would have been significantly lower. Latvia also states that an extension of the subordinated debt held by the EBRD would have presupposed negotiating with the EBRD in that respect. Furthermore, in view of differences as to the governing law and of the overall requisite legal structure that would have to be put in place extending the subordinated loan to which the EBRD was also a party while at the same time extending a part of the subordinated debt held by Latvia alone would have required convoluted legal arrangements.

(b) Latvia underlines that at the time of the extension, it also considered that a maturity extension of the subordinated debt held by the EBRD would render the divestment of Citadele more burdensome, as more interrelated contracts on the subordinated debt would exist at the time of the sale. It considered that such a possibility would complicate the sale of Citadele as it could have repercussions on the relevant closing conditions and could probably increase the relevant transactional costs.

(c) Furthermore, Latvia notes that the EBRD's status vis-à-vis Citadele could have made it a more complex decision for the EBRD to consent to the extension. It states in its submission of 23 June 2014 that it firmly believed that, in principle, the EBRD would have been inclined to agree to the maturity prolongation of the relevant instrument. However, it also acknowledges that the EBRD's position differed from Latvia's in that the latter was the majority shareholder of Citadele and in that capacity it could exercise decisive influence over the sale process and could negotiate various options with respect to the payment of the subordinated loans with the bidders. Therefore, Latvia recognized that the EBRD's lack of control over the sale of Citadele could have constituted a disincentive for extending the maturity term of the respective loan or in any event lead to lengthy negotiations.

5.3. **Regarding the un-notified liquidity support granted to Reverta (the Third Measure)**

(49) Latvia and Reverta recognize that since December 2010 the liquidity support granted by Latvia to Parex banka (and then to Reverta) has exceeded the authorized liquidity cap set forth in recital 55 of the Final Parex Decision. The Opening Decision indicated that the outstanding liquidity support to Reverta as of 31 December 2013 was LVL 362,52 million, which exceeded by LVL 55,52 million the LVL 307 million liquidity cap set forth for the 'worst case' scenario.

([24]) I.e. an option giving the holder of the subordinated debt the right to require the bank to re-purchase its debt in case the controlling shareholders of the bank would change from the time of debt issuance.

(50) Latvia contends that the Commission had originally authorized in the Final Parex Decision the conversion into capital of LVL 218,7 million liquidity support to Parex banka. That amount to be converted was later reduced in the Amended Decision to LVL 118,7 million. Had LVL 118,7 million of liquidity support been converted into capital, then the liquidity support would have been reduced and would have complied with the authorized limits. However, only LVL 49,5 million out of LVL 118,7 million of liquidity support were actually converted into capital. That factor is brought forward by Latvia as the main cause for the excessive level of liquidity.

(51) In addition, Latvia contends that the excess support was also caused by delays in cash generation compared to rates of cash generation envisaged at the time of the Parex Final Decision. Bad debtors have delayed payments and hence cash recovery has been delayed by about two years. Latvia considers that phenomenon to be temporary and expects the excessive liquidity support to cease in the years 2015-16.

(52) Nevertheless, Latvia and Reverta recognize the deviation from the authorized aid amounts resulting from the difficulties they encountered in appropriately allocating the State support between the authorized liquidity support and capital contributions following the adoption of the Amendment Decision.

(53) Further the Latvian authorities explain that had the banking license of Parex banka (now Reverta) been maintained, Latvia would have had to inject more capital into Parex banka than was originally envisaged (indeed the minimum level of capital required under the solvency rules was more than the maximum capital support of LVL 218,7 million authorized by the Final Parex Decision). On the basis of the original restructuring plan submitted to the Commission, the economic value realized from asset disposals and the conversion of LVL 218,7 million would have been insufficient for Parex banka (Reverta) to comply with the regulatory capital adequacy requirements.

(54) Therefore, had the licence been maintained, Parex banka (Reverta) would have needed additional capital. Following the withdrawal of the banking license, the level of additional aid was limited to the amount necessary for the winding down process.

(55) According to Latvia, it was no longer necessary to convert further liquidity support into capital after 31 December 2011 because the banking licence of Reverta had been withdrawn. Latvia had communicated its plan not to convert liquidity support into capital to the Commission after 31 December 2011 during exchanges preceding the adoption of the Amendment Decision, though it did not confirm its intention to actually do so and did not expressly identify and share with the Commission the technical consequences of the non-conversion. In particular, Latvia did not mention that as a result of their 'non-conversion' into capital the funds that had already been granted as liquidity support would not fall as fast as they were required to do by the Final Parex Decision.

(56) Since only LVL 49,5 million of liquidity support had been actually converted into capital by 31 December 2011 and LVL 69,2 million of liquidity support was not converted into capital, the level of liquidity support remained higher than approved by approximately the same amount.

(57) According to Latvia, keeping the liquidity support and avoiding converting it into capital was therefore the least onerous measure for the Latvian authorities and in fact reduces the State aid to the minimum necessary.

(58) Latvia and Reverta confirm than Reverta no longer needs 'fresh money'. Given the lower amount of liquidity support converted into capital, Latvia expects that Reverta will retain LVL [300-350] million in liquidity support at the end of 2014, LVL [250-300] million at the end of 2015, and LVL [200-250] million at the end of 2016 and 2017 (upon liquidation of Reverta). According to Latvia that liquidity support will therefore exceed the originally authorized cap, because: (i) less liquidity support has been converted into capital; and (ii) the running off of Reverta is expected to yield fewer cash proceeds than initially planned.

(59) Following the new cash projection reflecting the difficulties in the assets recovery Latvia expects Reverta to have a negative capital position of LVL [250-300] million at the end of the liquidation process (31 December 2017).

5.4. **On the commitment to divest the Wealth Management Business (the Fourth measure)**

(60) Latvia started the sale process of Citadele in 2011, to respect the commitments it had undertaken which were recorded in the Final Parex Decision. The first sale attempt was undertaken with Nomura International as advisor but due to significant turmoil in the Eurozone caused by the economic and financial crisis in Greece, as well as collapse of Snoras and Krajbanka in Lithuania and Latvia, that attempt was not successful.

(61) In addition, in February 2013 Latvia ordered a specific study by an independent expert […] on, inter alia, the impact of the sale of the Wealth Management Business at the date specified in the commitments. The expert demonstrated that the value of the two single entities (Wealth Management Business and the remaining part of Citadele) was worth less than the value of Citadele as a whole. As a consequence, depriving Citadele of its Wealth Management Business would diminish the book value of the bank and would thus impair shareholders' value. Through different projections the expert demonstrated that without the Wealth Management Business the bank's 'operating profit would tumble, […]' and that its […] would have deteriorated.

(62) According to Latvia, on the basis of the expert's study, the divestment of the Wealth Management Business separately from the rest of Citadele within 2013 would have impaired the viability of Citadele, and consequently, its marketability. It would have significantly reduced the bank's ability to attract private players to invest in Citadele at a reasonable price. Therefore, a second sales process for the whole Citadele commenced in 2013 with the assistance of Société Générale and Linklaters LLP as external advisors. The two sale methods currently being contemplated are a Merger & Acquisition ('M&A') or an Initial Public Offering ('IPO').

5.5. **Compensatory measures proposed by Latvia**

(63) In order to ensure the compatibility with the internal market under the Union State aid rules of the additional aid measures granted by Latvia to Parex banka, Citadele and Reverta through the First, Second and Third Measures, as well as the failure to divest the Wealth Management Business of Citadele by the committed deadline (the Fourth Measure), Latvia has proposed a series of commitments which are set out in recitals 64 to 73.

5.5.1. *Deadline for the sale of Citadele and for the divestment of the Wealth Management Business*

(64) Latvia and Citadele undertake to apply their best efforts to obtain as soon as possible and in any event before […] binding bids for the sale of the entire stake of the Republic of Latvia in Citadele (including the Wealth Management Business). The sale shall be completed by […]at the latest. It shall be let to the discretion of the Republic of Latvia (and its advisor) to decide what the appropriate structure and modalities of the sale transaction are (e.g. a trade sale or IPO), as long as the Republic of Latvia eventually divests its entire stake in Citadele by […] at the latest. In case of an IPO, the Republic of Latvia commits to agree on a binding prospectus with the FCMC by […].

(65) Latvia and Citadele also commit that a divestiture trustee will be appointed if, by […], no binding bids have been received or, in case of an IPO, having the same objective, no prospectus has been agreed with the FCMC. In such case the Republic of Latvia will take the necessary steps so as to ensure that the divestiture trustee is appointed and is operational as of […]. It is understood that the financial advisor for the sale of Citadele could also be appointed as divestiture trustee as of […]. If a divestiture trustee is appointed, Latvia and Citadele commit to receive binding and irrevocable for all parties bids by […]and enter into a binding and irrevocable agreement for the sale of the full stake of the Republic of Latvia in Citadele by […], to be closed by […]at the latest.

(66) Further Latvia and Citadele commit that as of […] Citadele will […] new business and the remaining business of Citadele will […], if the Republic of Latvia has not entered by […]into a binding and irrevocable agreement, providing for the closing of the sale by […] of the full stake of the Republic of Latvia in Citadele, or if the IPO does not allow for the Republic of Latvia to sell its entire stake in Citadele by […].

(67) Latvia and Citadele commit to close the sale and purchase transaction for the sale of the full stake in Citadele of the Republic of Latvia by […]. If the sale of that stake has not been completed by […], they commit that Citadele will […] new business and the remaining business of Citadele will be […].

(68) If Citadele is […] in any of the events mentioned in recitals 64 to 67, any parts of the business of Citadele, for which there is an interest of third parties, can be sold and transferred by the Republic of Latvia and/or Citadele to such a third party (without prejudice to the principles […] and no new State aid).

5.5.2. *Further reduction of the amount of the authorized capital contributions*

(69) As regards Reverta, the Amendment Decision authorized the conversion into capital of State deposits and interest (the liquidity support) for the total amount of LVL 118,7 million. Because until now only LVL 49,5 million of liquidity support has been converted into capital, Latvia proposes to immediately and permanently reduce the maximum total amount of capital that can be provided to Reverta by Latvia to LVL 49,5 million, from LVL 118,7 million previously.

5.5.3. *Commitment to enhance burden-sharing measures by preventing any cash outflows to Reverta's Legacy Subordinated Creditors*

(70) Latvia acknowledges that enhanced burden-sharing measures are necessary to ensure the compatibility of the First, Second and Third Measures with the internal market. Such measures would ensure, inter alia, that no third parties unduly benefit from the additional State aid provided to Reverta and Citadele.

(71) For that purpose Latvia commits to enhance previous burden-sharing commitments by bailing-in the former majority shareholders of Parex banka, their affiliates, and other creditors (the 'Legacy Subordinated Creditors') that had granted subordinated loans (the 'Legacy Subordinated Loans').

(72) Reverta has exceeded the liquidity amounts authorized by the Final Parex Decision in part due to the payment of interest on the Legacy Subordinated Loans. Had Reverta not paid such interest or had the Legacy Subordinated Loans been written down immediately following the Parex Final Decision, Latvia might not have had to implement the First, Second and Third Measures to the extent they were actually undertaken.

(73) In light of the foregoing, Latvia offers to clarify and strengthen its commitments as regards the principal and interest due in respect of the Legacy Subordinated Loans as follows:

(a) Citadele and Reverta (formerly Parex banka) as well as their affiliated undertakings shall not pay any interest, dividends or coupons on existing capital instruments (including preference shares, B shares, and upper and lower tier-2 instruments) (either due or accrued) or exercise any call rights in relation to the same, to any subordinated debtholders or shareholders, who are not strictly the Latvian State or the EBRD, until and unless the State aid to Reverta and/or Citadele has been fully repaid and unless there is a legal obligation to do so. To the extent such legal obligations exist, Latvia undertakes to remove them as soon as possible (and in any event by 30 April 2015 at the latest).

(b) Latvia also commits not to repay any outstanding debt (principal) of the Legacy Subordinated Loans (unless and until all State aid to Reverta/Citadele is fully repaid), which will be either:

i. subject to a binding order that no payments under the Legacy Subordinated Loans shall become due and payable; or

ii. converted into non-voting Tier 1 capital; or

iii. written down;

to the extent necessary to cover the negative net asset value of Reverta, and provided a legal base is available.

c) Latvia will undertake all necessary measures to ensure that any legal provisions needed to comply with the commitments above are put in place by 30 April 2015 at the latest.

5.6. **Reaction of Latvia to the third party comments**

(74) On 6 June 2014, Latvia submitted its response in relation to the third party comments received by the Commission. Latvia asserts that the allegations brought forward by the comments are unsubstantiated and of no relevance in relation to the Opening Decision. Latvia rejects the allegations of the third party and requests that they are disregarded by the Commission.

6. **ASSESSMENT**

6.1. **Existence of State aid following the new measures**

(75) According to Article 107(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market

(76) The qualification of a measure as State aid requires the following conditions to be met cumulatively: (a) the measure must be financed through State resources; (b) it must grant a selective advantage liable to favour certain undertakings or the production of certain goods; (c) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States.

6.1.1. *The First Measure*

(77) The fact that the granting by Latvia of subordinated loans to Parex banka entailed State aid was established in the first rescue Decision, when the Commission approved the issuance of subordinated debt with a five-year maturity as a compatible aid measure. The Commission decided at that time that a market economy investor would not have granted subordinated debt with a five-year maturity ([25]).

(78) The subordinated loans which were in fact granted by Latvia in favour of Parex banka were identical to the measure which had been approved by the Commission except for the fact that they had a longer maturity, which generated an additional advantage for Parex banka.

(79) Subordinated debt with a seven-year maturity would give the borrower a greater advantage than subordinated debt with five-year maturity since the risk for an investor of any given investment increases as the maturity of the investment is extended. When the subordinated debt with a seven-year maturity was granted, it would have been even less likely for a market economy investor to grant the subordinated debt under those extended terms than it would have been for it to have done so for five years. For that reason, the longer maturity of the subordinated debt represented an additional advantage for Parex banka compared to the form of the subordinated debt that was approved in the Rescue Decisions and the Parex Final Decision. Since all the other requirements for State aid to be present had already been established in the first rescue Decision, the First Measure represents additional State aid.

6.1.2. *The Second Measure*

(80) On 27 June 2013 Latvia granted an additional 18-month extension of the maturity of LVL 37 million of subordinated loans to Citadele (out of the total of LVL 45 million held by Latvia at that time).

(81) In the Opening Decision, in absence of further arguments, the Commission assessed that such a maturity extension would not have been granted by a market economy investor, as it presented additional risks compared to the previously existing form of the subordinated loans. Therefore, the Commission considered that the longer maturity of the subordinated debt represented an additional advantage granted by the State to Citadele compared to the form of the subordinated debt that was approved in the Rescue Decisions and the Parex Final Decision, and thus additional aid.

(82) Latvia has submitted that a market investor would have rationally opted to take specific measures to maintain the capital adequacy of the bank to preserve the value of its investment. It therefore contends in essence that the Second Measure conferred no advantage on Citadele because the provision of additional support was in line with the market economy operator principle.

(83) The Commission does not contest that the market economy operator principle is applicable to a transaction such as the Second Measure. However, it recalls that the Union Courts have underlined that if a Member State relies on that test during the administrative procedure, it must, where there is doubt, establish unequivocally and on the basis of objective and verifiable evidence that the measure implemented falls to be ascribed to the State acting

([25]) Recital 40 of the first rescue Decision.

as shareholder and that, in that regard, it may be necessary to produce evidence showing that the decision is based on economic evaluations comparable to those which, in the circumstances, a rational private investor in a situation as close as possible to that of the Member State would have had carried out, before making the investment, in order to determine its future profitability ([26]).

(84) Against that background, the Commission considers that the claim of Latvia to have acted in line with the market economy operator principle has not been substantiated with underlying arguments and with a detailed analysis.

(85) In the first place, no evidence has been provided to the Commission that Latvia carried out a valuation of its investment in Citadele contemporaneously with its decision to implement the Second Measure. A market investor acting as a shareholder would have assessed the value of Citadele to establish the present value of its investment in that bank before (and so without) and after the implementation of the Second Measure and would have compared those two values. The Commission considers that a profit-guided market investor would have started by establishing the present value of its investment in the bank and then would have ascertained if the current value of that investment would be protected by the additional maturity extension of the subordinated loans. If the result of that examination showed that the value could have been protected or even increased, then, as a second step, a profit-driven market investor would have compared the opportunity cost of safeguarding (or even increasing) the value and the difference in value.

(86) If Latvia had engaged in such analysis, Latvia should have demonstrated that the granting of the prolonged maturity was an effective measure to at least safeguard the value of the investment and then should have demonstrated that the opportunity cost of providing such measure was less than the increase of value. Only if the opportunity costs of providing the additional maturity were less than the value preservation resulting from the Second Measure could the Commission can accept that Latvia has acted in line with the market economy operator principle. However, Latvia has provided neither a contemporaneous assessment of the value of the investment nor an analysis demonstrating that the opportunity costs of providing the additional maturity were less than the value preservation resulting from the implementation of the Second Measure.

(87) For that reason, the Commission considers that the Second Measure cannot be considered to be in line with the behaviour of a market economy operator finding itself in a comparable position to that of Latvia in June 2013.

(88) In the second place and in any event, established principles for the application of the market economy operator principle require the comparison with the behaviour of a rational private investor to be made in a situation which is as close as possible to that of the Member State ([27]). In consequence, when assessing the value of its investment in Citadele, Latvia should have taken into consideration the commitments recorded in the Parex Final Decision relating to the sale of Citadele. In June 2013, at the time the Second Measure was implemented, those commitments included obligations to divest Citadele by 31 December 2014 and also to divest Citadele without the Wealth Management Business (since the Wealth Management Business had to be divested separately if it had not been sold by 30 June 2013). Considering that on 27 June 2013, when the maturity extension was granted, no buyer had been found for the Wealth Management Business, a private investor's conclusion would have been that it was not possible to sell the Wealth Management Business together with Citadele by the deadline of 30 June 2013 established by the Parex Final Decision, and therefore the two entities had to be sold separately.

(89) Moreover, a private shareholder of the bank in a situation as close as possible to that of the Member State would have had no grounds to assume that the fulfilment of those commitments would be waived or postponed, since any such modifications were subject to the Commission's approval. Therefore, when establishing the value of the investment in June 2013, there could be no expectation that those obligations would be irrelevant as it could not be assumed that the Commission would approve any modification of either obligation prior to the period within which Latvia had committed to execute them.

(90) In consequence, for the purpose of deciding whether or not to grant the prolonged maturity, the parameters for assessing the value of Latvia's investment in Citadele in June 2013 must include the commitments that are recorded in the Parex Final Decision. Latvia has failed to provide evidence that it took all those parameters into consideration or that the value of its investment at that moment which would result from taking them into consideration is more than the opportunity cost of providing the maturity extension. For that reason also,

([26]) Judgment in *Commission* v *EDF*, C-124/10 P, ECLI: EU: C: 2012:318, paragraphs 82 and 84.
([27]) See, to that effect, paragraph 20 of the judgment in *Italy* v *Commission*, 303/88, ECLI: EU: C: 1991:136.

the Commission considers that the Second Measure cannot be considered to be in line with the behaviour of a market economy operator finding itself in a comparable position to that of Latvia in June 2013.

(91) In the third place, even if Latvia had carried out a sufficiently detailed analysis of the Second Measure as a means of preserving the value of its investment in Citadele as of June 2013 and even if it had factored into such an analysis the constraints which a market economy operator would have taken into account arising from the impending sale of Citadele and the separate divestment of the Wealth Management Business, the assertions of Latvia as to the costs of the Second Measure and the level of value of the investment in Citadele supposedly preserved by that measure are not plausible.

(92) On the one hand, while Latvia submits that the Second Measure did not involve any costs for the State, that claim is not supported by any further details or by evidence regarding the cost assessment performed by Latvia at the time the Second Measure was granted. Such an analysis of the opportunity costs and any other type of costs linked to the Second Measure would have been a prerequisite for a private investor seeking to make a rational decision on whether to extend the maturity of the subordinated loan. The absence of a cost evaluation leads the Commission to conclude that a private investor would not have been able to assess the desirability of the Second Measure in terms of profit maximisation.

(93) On the other hand, while Latvia submits that the Second Measure preserved the value of Latvia's investment in Citadele, that claim is not borne out by the characteristics of the investment in Citadele held by the Member State as of June 2013. The Commission notes that for a profit-driven investor the current value of an investment is dependent on the prospect of future income streams from that investment (in the form of, for example, dividends) in combination with the capital value of that investment at that moment in time (which can be derived, for example, from the price which a purchaser would pay for the shareholder's investment at that moment or from the time-discounted value of the price which a purchaser would pay for the shareholder's investment in the future). All of the indices available to the Commission point to the value of Latvia's investment in Citadele in June 2013 having been low, if it had a positive value at all.

(94) As regards possible future income streams from Latvia's investment in Citadele, no evidence has been provided indicating that in June 2013 shareholders could expect any dividends from Citadele at any point in the foreseeable future. Any assessment by a private shareholder of the bank in a situation as close as possible to that of the Member State of expected revenues from dividends distribution would have been linked to the obligation to divest Citadele by 31 December 2014. Moreover, the study described in recital 61 established that Citadele without the Wealth Management Business would become loss making, a conclusion which further reduced the prospect of benefit from any dividends distribution given that as of 27 June 2013 a market economy operator would have had to assume that Citadele and the Wealth Management Business would be divested separately.

(95) As such, when the maturity extension was provided, there was no evidence that Citadele would be able (considering its expected profits and capital ratio) to distribute dividends before 31 December 2014, since the 10,3 % capital ratio planned to be achieved for 31 December 2013 would only barely exceed the required minimum capital ratio of 10 % and would be far below the […] % capital ratio recommended by the FCMC to address existing and potential risks for Citadele. Therefore, a private investor would have taken into consideration that as of June 2013 there was a low probability that shareholders could have expected any dividends distribution from Citadele in the foreseeable future.

(96) As regards the capital value of Latvia's investment in Citadele in June 2013, the study submitted by the Latvian authorities which is described in recital 61 and which was drawn up in February 2013 shows that Citadele would have been negatively affected by the separate divestment of the Wealth Management Business. A private investor in a situation which is as close as possible to that of Latvia in June 2013 would have taken into account the fact that about four months earlier an independent expert had established that the sale value of Citadele without the Wealth Management Business would be lower than that of the two entities combined. As a result, such a private investor would have needed compelling reasons in terms of risk-adjusted return maximisation to take additional risks by granting the extension of the maturity of the subordinated loans. However, Latvia has provided no evidence of such compelling reasons for a market economy operator to assume those additional risks at that time. As such, even if the maturity extension was provided, there was no evidence that Citadele without the

Wealth Management Business could be sold at […] which leads the Commission to conclude that in June 2013 Latvia did not have […] in its investment to be preserved which was […] for providing the Second Measure.

(97) Those further reasons also lead the Commission to consider that the Second Measure cannot be considered to be in line with the behaviour of a market economy operator finding itself in a comparable position to that of Latvia in June 2013.

(98) In the fourth and final place, the Commission also notes that the EBRD, which in June 2013 was the only other shareholder of Citadele apart from the Latvian State, did not prolong the maturity of its outstanding subordinated loan to Citadele and that Latvia never approached the EBRD to discuss the latter's participation in the Second Measure, as explained in recitals 46 to 48. That absence of any attempt to discuss sharing the burden of the cost of the Second Measure if that measure was to be a means to preserve the value of investments in Citadele is an additional indication that the Second Measure was not in line with the requirements of the market economy operator principle.

(99) In that regard, the Commission first recalls that according to the letter of the FCMC, Citadele had 10 months (1 March to 31 December 2013) to comply with the new capital adequacy ratio. In that context, the Commission considers that a majority shareholder would have exploited the entire 10-month period in order identify an adequate solution to meet the new capital requirement which minimised its own costs. As such, Latvia's argument regarding the facilitation of the sale of Citadele does not explain why the Second Measure was adopted without any approach to the minority shareholder of Citadele within 4 months of the FCMC letter rather exploiting more of the period of up to 10 months that could have been taken.

(100) Furthermore, even if the participation of the EBRD in a maturity extension would have involved a measure with characteristics different from those of the Second Measure, Latvia does not provide any evidence that such a different measure including the EBRD would have been less effective than the Second Measure or that it would have been more costly to the majority shareholder compared with the costs of the Second Measure itself.

(101) As for Latvia's argument that an extension by the EBRD of the maturity of its subordinated loan would have led to additional burdens at the time of the sale of Citadele, the Latvian authorities have not produced any element to show that such an extension would in fact have created such additional costs. No specific study of the costs of divestment of Citadele after the Second Measure compared with the costs of a hypothetical sale of Citadele after an extension in which the EBRD participated has been carried out to justify Latvia's assertion that there would have been additional burdens. The Commission considers that any private operator considering how to preserve the value of its investment in Citadele would at least be able to point to a contemporaneous evaluation of what were in relation to a subsequent sale those alternate costs of having the minority shareholder in Citadele extend the duration of its subordinated loans to that bank.

(102) Finally, as noted in recital 48(c), Latvia explains that it believed that the EBRD would have been willing to extend the maturity of its loans to Citadele. In that situation, even if the EBRD's involvement would have led to more complexity, the Commission considers that a private majority shareholder which was contemplating extending the maturity of its own existing subordinated debt in favour of Citadele would have at least made an approach to the minority shareholder which was also a holder of subordinated debt of Citadele to see if the latter would have either: (i) shared the costs of the additional support to Citadele by extending its own loans' maturity date; or (ii) entered into some alternative arrangement directly with the majority shareholder to defray the costs of the Second Measure to the majority shareholder. Within the application of the market economy operator principle the Commission cannot accept that a majority shareholder of a company would have accepted all of the cost of protecting the value of all investments in that company and thereby have protected the value of the investment of a minority shareholder without even approaching the latter to seek a contribution from it.

(103) In view of each of those factors, the absence of any approach to the EBRD in the period between 1 March 2013 and 27 June 2013 is a further indication that the Second Measure was not conducted in compliance with the requirements of the market economy operator principle.

(104) For each of the four reasons set out in recitals 85 to 103, it has not been established unequivocally and on the basis of objective and verifiable evidence that the Second Measure is to be ascribed to the Member State acting as private shareholder. In those circumstances, the Commission cannot accept that Citadele could, in circumstances which correspond to normal market conditions, obtain the same advantage as that which has been made available to it through State resources in the form of the Second Measure.

(105) Latvia has implemented the Second Measure for Citadele which is and will be active on markets open to international competition. Therefore any advantage from State resources would affect competition in the banking sector and have an impact on intra-Union trade. Furthermore, that measure is selective as it solely benefits Citadele. It is financed through State resources. In June 2013 as explained by Latvia in recital 45 a third-party market economy operator would not have granted a measure similar to the Second Measure on comparable terms. The Commission therefore confirms its previously provisional assessment from the Opening Decision that the Second Measure represents additional State aid.

6.1.3. *The Third Measure*

(106) With regard to the liquidity support granted to Reverta, it was initially approved as part of the compatible State aid measures approved in the first rescue Decision, in the form of State deposits. At that time, the Commission noted that Parex banka lacked liquid collateral and that Latvia had deposited the funds, taking into account the bank's liquidity needs, when no market investor was willing to provide liquidity in view of the fragile situation of Parex banka ([28]).

(107) Following the Parex Final Decision (and the split into a good and a bad bank) the liquidity aid was subsequently transferred to Citadele and Reverta. The former has already repaid in full its share of the liquidity support. Reverta was required to limit the amounts of liquidity support it received, as set out in recital 19(c). However, the amount of liquidity support actually granted to Reverta exceeds even the levels foreseen for the worst case scenario which was approved in the Parex Final Decision. That additional liquidity support provides a supplementary advantage for Reverta compared to the aid approved by the Rescue Decisions and Parex Final Decision. Latvia has not claimed that it operated as a market lender in providing such liquidity nor has it presented any elements which would allow the Commission to conclude that Reverta could, in circumstances which correspond to normal market conditions, obtain the same advantage as that which has been made available to it through State resources in the form of the Third Measure. None of the other features of the liquidity support apart from its quantity have been altered and so the Commission concludes that the measure constitutes State aid.

(108) On the basis of recitals 106 and 107, as the increased liquidity support clearly represents an additional advantage compared to the approved aid measures, it therefore represents additional aid (as all of the other criteria under Article 107(1) of the Treaty are still in place).

6.2. **Legal basis for the compatibility of the new additional aid**

(109) Article 107(3)(b) of the Treaty empowers the Commission to find that aid is compatible with the internal market if it serves 'to remedy a serious disturbance in the economy of a Member State'.

(110) Given the systemic importance of Parex banka (which was a leading bank in Latvia) and the significance of its lending activities for the Latvian economy at the time of the approval of the aid measures, the Commission accepted that the failure to address the bank's difficulties would have entailed serious consequences for the Latvian economy.

(111) In the Rescue Decisions and the Parex Final Decision, the aid measures approved for Parex banka were therefore assessed under Article 107(3)(b) of the Treaty, as well as on the basis of the Communications ([29]) adopted in the context of the financial crisis that were in force at the time the aid was granted.

([28]) Recital 41 of the first rescue Decision.

([29]) Communication from the Commission — Application of the State Aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis ('2008 Banking Communication') (OJ C 270, 25.10.2008, p. 8); Communication from the Commission — Recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition ('Recapitalisation Communication') (OJ C 10, 15.1.2009, p. 2); Communication from the Commission on the Treatment of Impaired Assets in the Community banking sector ('Impaired Assets Communication') (OJ C 72, 26.3.2009, p. 1); and Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules ('Restructuring Communication') (OJ C 195, 19.8.2009, p. 9).

(112) The Commission considers that the same legal basis applies to the additional aid granted thought the First and Second Measures, based on the timing of their implementation and their similar characteristics to the approved aid measures.

(113) As regards the Third Measure, the Commission's compatibility assessment has to be conducted on the basis of the updated criteria set out in the 2013 Banking Communication ([30]). Indeed, any aid wholly or partially granted without the Commission's authorisation (and therefore in breach of Article 108(3) of the Treaty) after the publication in the *Official Journal of the European Union* of the 2013 Banking Communication has to be examined on the basis of that Communication. Since the Third Measure has been applied continuously starting 2011 and until the present time, it can be concluded that the aid was partially granted after 1 August 2013, the publication date in the *Official Journal of the European Union* of the 2013 Banking Communication.

6.3. **Compatibility of the aid with the internal market**

6.3.1. *Regarding the First Measure*

(114) The subordinated loan granted by Latvia to Parex banka had since its issuance date (22 May 2009) a maturity of seven years (i.e. until 21 May 2016) and so exceeded the maximum five-year maturity which was set forth in first rescue Decision and later confirmed in the Parex Final Decision. The measure was not notified to the Commission.

(115) In respect to that additional aid measure, represented by a maturity of the subordinated loans in excess of the terms of the Decisions, the Commission had doubts that it was kept at minimum necessary, and therefore could not conclude that all the criteria for compatibility were met.

(116) In the Opening Decision, the Commission thus recalled that the subordinated loan approved for Parex banka with a five-year maturity had been assessed in the Rescue Decisions as being limited to the minimum necessary in amount and maturity. Based on that conclusion, the five-year subordinated loan had been therefore qualified as compatible by the Rescue Decisions and the Parex Final Decision.

(117) On the basis of the arguments presented in the Rescue Decisions and the Parex Final Decision, and in absence of new arguments, the Commission expressed doubts on the compatibility of the extended maturity of subordinated loans issued with a maturity of seven years instead of five years as initially approved.

(118) In light of the new arguments brought forward by Latvia following the Opening Decision, and reported in section 5.1, the Commission is in a position to re-assess if the subordinated loans with a seven-year maturity granted by Latvia to Parex banka meet the compatibility requirement of State aid being limited to the minimum necessary.

(119) According to the 2008 Banking Communication, an aid measure must, in its amount and form, be necessary to achieve the objective pursued. It means that the capital injection must be of the minimum amount necessary to achieve the objective. The objective of granting a subordinated loan qualifying as Tier 2 capital to Parex banka was to enable the latter to continue to satisfy the capital adequacy ratio and to ensure that it is sufficiently capitalised so as to better withstand potential losses, in order to avoid a serious disturbance in the Latvian economy.

(120) In the first recue Decision, the minimum requirements for the subordinated loans to be eligible as Tier 2 capital of Parex banka taken into account by the Commission were based on the applicable Latvian legislation as communicated by Latvia ([31]). It was thus established that the minimum maturity for the subordinated loan to qualify as Tier 2 capital was of five years. That assessment was not altered by the subsequent decisions.

(121) Having reviewed the additional information provided by Latvia and reflected in recitals 30 to 39, the Commission acknowledges that additional constraints modified the characteristics of the subordinated loans required for them to fully qualify as Tier 2 until 2010.

([30]) Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('Banking Communication') (OJ C 216, 30.7.2013, p. 1).
([31]) Recital 55 of the first rescue Decision.

(122) In particular, the Commission notes that the impact of the criteria of the Basel II framework on the amount of subordinated loans received by Parex banka in 2009 being eligible as Tier 2 capital represented a fundamental element for defining the minimum initial maturity of the subordinated loans. The proper consideration of the Basel II amortization factor was necessary to achieve the ultimate objective of the aid measure, namely to ensure sufficient capitalisation of Parex banka and avoiding a serious disturbance in the Latvian economy at the time when the initial subordinated loan was granted.

(123) The Commission considers that, if the assumptions and projections presented by Latvia at the time of the Rescue Decisions had adequately and completely reflected the subordinated debt amortization under Basel II rules as reflected in recital 37, they would have led to a different assessment of the maturity of the subordinated loans, concluding seven years was the minimum necessary and not five years.

(124) The Commission also recalls that the compatibility assessment of the aid in third rescue Decision relied, inter alia, on the Latvian authorities' commitment that they would sell their shares in Parex banka as soon as possible, but not later than a period of three years after the first rescue measures were provided to Parex banka ([32]), i.e. not later than 2011.

(125) In light of these circumstances, the Commission considers that setting the initial maturity at seven years can be considered the minimum necessary to allow the subordinated loans provided by Latvia to fully qualify as Tier 2 capital and ensure that Parex banka achieved the target capital adequacy ratio, for reasons of preserving the stability within the Latvian banking system, as well as of complying with the commitment to sell the bank.

6.3.2. *Regarding the un-notified maturity extension of the subordinated loans (the Second Measure)*

(126) In the Opening Decision, the Commission expressed doubts that the additional aid represented by the 18-month extension of maturity of the subordinated loans could be considered compatible, because the existing assessment was that a five-year maturity of the subordinated debt was what ensured limitation to the minimum necessary and no new arguments had been presented for justification of compatibility.

(127) In view of the information presented by Latvia after the Opening Decision, the Commission notes that regulatory changes occurred in 2013 ([33]) with respect to the minimum capital requirements.

(128) In that regard, the Commission has been presented with the letter of 1 March 2013 of the FCMC to Citadele. The letter represents a reaction of the banking regulator to an internal capital adequacy assessment report that Citadele had submitted to the FCMC in respect to its financial situation of 30 June 2012.

(129) The letter of 1 March 2013 first draws attention to the fact that according to the FCMC's policy documents, all banks have to maintain their capital adequacy ratio above 10 %. It then clearly states that 'if the capital adequacy ratio of a bank and consolidation group falls below 10 %, the bank and consolidation group are considered an insufficiently capitalised and the FCMC may impose corrective measures, e.g. restrict the operations of the bank'. In the case of Citadele and its consolidation group, the letter adds that in order to cover existing and potential risks arising from Citadele's operations, by the end of 2013 the group's capital adequacy ratio had to reach […] %.

(130) Based on that letter, the Commission accepts that Citadele had to have its capital adequacy ratio at least above 10 % at the end of 2013 in order for its operations to continue in full.

(131) The Commission recalls that the ultimate objective of granting State aid in the form of subordinated loans, as defined in the Rescue Decisions and the Parex Final Decision, was to ensure sufficient capitalisation of Parex banka (Citadele after 2010) in order to avoid a serious disturbance in the Latvian economy.

([32]) Described in recital 21 of the Third Rescue Decision.
([33]) Described in recital 40.

(132) Therefore, the Commission agrees that in June 2013 Latvia had to take corrective actions in order to avoid the risks which would have stemmed from a failure of Citadele to comply with the unexpected increase of the supervisory requirements. To address the potential capital shortfall compared to the new requirements, the only possible options would have been to:

(a) inject additional funds — either as Tier 1 capital or Tier 2 capital (e.g. grant new subordinated loans)

(b) extend the maturity of existing subordinated loans in order to modify their amortization rate and allow for a higher percentage of the loans to contribute to the capital of the bank.

(133) Table 2 reflects a comparative scenario between situations where, all other parameters being equal, the subordinated maturity is extended in 2013 (as was done through the Second Measure) or is maintained on the same conditions under which the loans were originally issued. Based on the calculation, the Commission finds that maintaining the maturity of the subordinated loans would have led, considering all other factors as equal, to a failure of Citadele to reach a capital adequacy ratio of 10 % at the end of 2013.

Table 2

Comparison of capital adequacy ratio level with or without the maturity extension:

Capital adequacy ratio in %	31 December 2013
Financial forecasts before the 18 months maturity extension (established in June 2013)	9,75
Actual figures as of 31 December 2013 including the maturity extension	10,30 [1]
Pro forma of the actual situation without the 18 months maturity extension	9,30

(1) Information disclosed in Citadele's 2013 annual report p. 75: http://west.citadele.lv/common/img/uploaded/doc/reports/annual_report_2013_en.pdf

(134) Given that:

(a) the new capital requirement had to be meet by 31 December 2013,

(b) the Wealth Management Business had to be divested by 31 December 2013, and

(c) the amortisation of subordinated debt directly affects the capital ratio,

the Commission agrees the Second Measure represented an effective and efficient solution to meet the new capital adequacy requirements for Citadele and that the extension granted was the minimum necessary to achieve that goal. That solution did not call for any transfer of new cash (although it required Latvia to refrain from recovering funds which would otherwise have been due to be repaid to them) while it addressed the supervisory request based on the need to safeguarding financial stability.

(135) The Commission also positively notes that as of 31 December 2013 Citadele's capital adequacy ratio was slightly above the minimum required of 10 % [34] which confirms its view that the 18-month extension granted was limited to the minimum necessary.

6.3.3. *Regarding the un-notified liquidity support granted to Reverta (the Third Measure)*

(136) Since 2011 Latvia has provided Reverta with liquidity support in excess of the maximum limits approved by the Commission in the Parex Final Decision, both for the base case and for the worst case scenario. Those limits are recalled in Table 3 [35]. The actual amounts of liquidity support from which Reverta has benefited (communicated by Latvia in the revised restructuring plan submitted in January 2014), as reported in Table 4, have constantly exceeded those laid out in the Parex Final Decision:

(34) See Table 2.
(35) That information is included in Table 6 of the Parex Final Decision.

Table 3

Liquidity caps for Reverta as reflected in the Parex Final Decision

LVL million	1.8.10	31.12.10	31.12.11	31.12.12	31.12.13
Base case	458	446	419	349	315
Best case	458	446	419	356	322
Worst case	458	446	419	344	307

Table 4

Actual amounts of liquidity from which Reverta has benefited

LVL million	1.8.10	31.12.10	31.12.11	31.12.12	31.12.13
Outstanding of liquidity support	446	446	428	385	363

(137) The liquidity support granted to Reverta was initially approved as part of the compatible State aid measures covered by the first rescue Decision, in the form of State deposits.

(138) Following the Parex Final Decision (and the split of Parex banka into a good and a bad bank) the liquidity aid was subsequently transferred to Citadele and Reverta. Citadele has already repaid in full its share of the liquidity support, whereas Reverta had to limit the amounts of liquidity support it received. However, the amount of liquidity support actually granted to Reverta exceeds all levels approved within the Parex Final Decision.

(139) The assessment of the restructuring plan in the Parex Final Decision was based on assumptions presented at that time regarding the expected inflows of liquidity into Reverta, which would allow it to start repaying the liquidity support granted in the form of State deposits up to the levels predefined in the Parex Final Decision ([36]).

(140) The amounts expected to remain unpaid, as described in the Parex Final Decision, ranged from LVL [0-100] million (the base case scenario) to LVL [100-200] million (the worst case scenario). However, following the latest cash flow projections presented by Latvia, the liquidity support provided is planned to exceed the limit set in the Parex Final Decision until 2017, as reflected in Table 5:

Table 5

Excess amounts of liquidity for Reverta vs 2010 Restructuring Plan

LVL million	31.12.14	31.12.15	31.12.16	31.12.17
Worst case (initial restructuring plan)	[250-300]	[250-300]	[200-250]	[150-200]
Estimated liquidity support (2014 update)	[300-350]	[250-300]	[250-300]	[250-300]
Difference	[…]	[…]	[…]	[…]

([36]) Recital 55 of the Parex Final Decision.

(141) The Commission understands that, given the following difficulties:

(a) Lower asset quality and value compared to what have been planned in the restructuring plan, and

(b) Slower recoveries of collateral and litigation with debtors,

a delay of two years occurred in the cash recovery (as mentioned in recital 45) compared to what was planned at the time of the adoption of the Parex Final Decision. That delay called for an increase of State support.

(142) Therefore, the additional need for liquidity support was triggered by the worsening of the financial shape of Reverta compared to what had been projected in Parex Final Decision. The Commission observes that the liquidity support provided has increased progressively over recent years in line with Reverta's difficulties in recovering assets.

(143) As presented in recital 56, Latvia claims that since only LVL 49,5 million of the LVL 118,7 million of liquidity support had been converted into capital, the remaining LVL 69,2 million of liquidity support generated an excessive level of liquidity support by approximately the same amount.

(144) However, the Commission recalls that, as set out in recital 63(b) of the Parex Final Decision, only State deposits can be converted into capital. Therefore, the Commission considers that a lower level of liquidity converted into capital did not automatically lead to an excess of liquidity support.

(145) The Commission further notes that the banking licence of Reverta had been withdrawn in 2011 which avoided the need to convert further liquidity into capital to satisfy regulatory solvency ratio. The Commission thus acknowledges that the cessation of capital requirements ([37]) permitted Latvia to grant a lower amount of recapitalisation aid to Reverta than the maximum amount of recapitalisation approved through the Decisions.

(146) Based on the difficulties encountered by Reverta in the recovery of assets and the limited amount of capitalisation required following the withdrawal of the banking licence, the Commission concludes that the liquidity support received by Reverta has been limited to the minimum necessary for the orderly management of the wind-down process.

(147) The Commission also concludes that the additional liquidity support complies with the burden-sharing requirement set out in the 2013 Banking Communication. In particular, the Commission notes that, in accordance with point 77 of the 2013 Banking Communication, the equity of former shareholders of Parex banka has been written-down in full and that Latvia has now committed to prevent additional aid being provided to the benefit of subordinated debt holders.

6.3.4. *Regarding the breach of the commitment to divest the Wealth Management Business of Citadele (the Fourth Measure)*

(148) The Latvian authorities state that, given the current challenging market conditions, Latvia has been unable to find interested buyers for the Wealth Management Business of Citadele within the prescribed deadline and would be unable to do so even within a foreseeable time horizon.

(149) The Latvian authorities recall that the sale of Citadele was identified, amongst other commitments, as a key measure to address distortion of competition that the aid measures had created. But given a worsening of Citadele's financial shape compared to what had been envisaged at the time of the Parex Final Decision, the divestment of Citadele could not be achieved within the foreseen time horizon.

(150) Latvia further submits that combining the sale of the Wealth Management Business with Citadele will improve the market's interest in Citadele and that an extension of the divestment period is more likely to allow the reprivatisation of Citadele.

([37]) As explained in recitals 53 to 57.

(151) The Commission accepts that the financial shape of Citadele is worse than it was expected to be in the initial restructuring plan. That evaluation is also confirmed by the Monitoring Trustee ([38]) and is reflected in the indicators set out in Table 6:

Table 6

Comparison of main financial indicators compared to the Restructuring Plan

	31.12.2013	
	Restructuring Plan	Actual
Operating expenses/total income	[50-60]	57,0 %
Impairments/net loans	[0-5]	2,0 %
Net Income (Loss), in LVL million	[20-30]	10,8
ROE %	[20-30]	8,1 %
Equity/total assets	[5-10]	6,9 %
Capital adequacy ratio	[10-20]	11,7 %

Given the lower level of profitability of Citadele compared to the initial Restructuring Plan the Commission understands the difficulties of divesting of Citadele under a tight timeline.

(152) The Commission recalls that the commitment regarding the sale of the Wealth Management Business, along with the commitment to sell Citadele itself, was included in the Parex Final Decision to limit distortions of competition, as they gave competitors the possibility to bid for those businesses ([39]).

(153) The Commission positively notes that following the Parex Final Decision Citadele started a sale process to test the interest of the market and also appointed an independent expert to design the best sale strategy, as mentioned in recitals 61 and 62, therefore attempting in good faith to comply with those commitments.

(154) The Commission takes note that Latvia now seeks a prolongation of the deadline to complete the sale of the Wealth Management Business compared to the deadlines with which they committed to comply with in 2009. Latvia seeks an amendment to the Parex Final Decision to postpone the initial divestment deadline of the Wealth Management Business, in order to sell it together with Citadele, based on the additional commitments laid out in recitals 64 to 68.

6.3.5. *Compensatory measures mitigating distortions of competition and strengthening the burden-sharing*

(155) For the Commission to approve amendments to its final decisions, changes have to be based on new commitments which can be considered equivalent to those originally provided ([40]). In that case, the aid measures would remain compatible on the basis of Article 107(3)(b) of the Treaty only if the overall balance of the original decision remains intact. In order to preserve the original balance, the altered commitments should not negatively affect the viability of the aid beneficiary, with the overall set of commitments remaining at least equivalent in terms of burden-sharing and compensatory measures taking into account the requirements of the applicable Commission's Communications.

([38]) Monitoring Trustee report for 31 December 2013 communicated on 9 May 2014.
([39]) Recital 152 of the Parex Final Decision.
([40]) For other similar decisions see, for instance, SA.29833 KBC — Extension of the target date of certain divestments by KBC and Amendment of restructuring commitments (OJ C 135, 9.5.2012, p. 5); SA.29833 KBC — Accelerated phasing-out of the State Protection measure and amendments to the KBC restructuring plan (OJ C 163, 8.6.2013, p. 1); SA.34539 Commerzbank — Amendment to the restructuring plan of Commerzbank (OJ C 177, 20.6.2012, p. 20).

(156) In that respect the Commission views positively the set of commitments brought forward by Latvia and presented in recitals 64 to 73, as they contribute to addressing potential distortions of competition stemming from the First, Second, Third and Fourth Measures and to ensuring adequate burden-sharing from the stakeholders of the beneficiaries.

(157) Section 4 of the Restructuring Communication calls for the application of effective and proportionate measures limiting distortions of competition.

(158) The Parex Final Decision included several such measures, amongst which the commitment of Latvia to dispose or procure the disposal of Citadele by 31 December 2015 ([41]) was key. The Commission considered as sufficient and adequate to avoid distortions of competition resulting from the State aid granted to Parex banka the commitments to sell Citadele within that timeframe, combined with downsizing and reduction of the market presence of Citadele.

(159) In the Opening Decision, the Commission considered that both the initially longer maturity of the subordinated debt and its 18-month prolongation implemented in 2013 represented additional advantages for Parex banka compared to the form of the subordinated debt approved in the Rescue Decisions and the Parex Final Decision.

(160) In that context, the Commission welcomes the commitment offered by Latvia to bring forward the deadline for completing of the sale of Citadele, from 31 December 2015 to […], as a measure to compensate for the additional advantage stemming from the longer maturity of the subordinated loans. The acceleration of the sale of Citadele contributes to maintaining a level playing field.

(161) In additional, the Commission notes that Latvia has provided a clear commitment to […] if the sale is not achieved within that earlier deadline. That commitment provides an additional safeguard (which was not expressly included in the initial Restructuring Plan) to ensure that distortions of competition will be adequately mitigated, as within less than […] Citadele will […]

(162) The Commission also positively notes that Latvia has committed to a further reduction of the amount of the capital that can be provided to Reverta by the Latvian authorities as presented in recital 69.

(163) Section 3 of the Restructuring Communication provides that banks and their stakeholders should contribute to the restructuring costs as much as possible in order to limit the aid to the minimum, address distortions of competition and moral hazard issues.

(164) In that respect, the Commission takes note of the additional compensatory measures proposed by Latvia to ensure that third parties will not benefit from the additional aid amount received by Reverta, namely the commitment on strengthened burden-sharing arrangements described in recitals 70 to 73.

(165) Latvia commits that Citadele and Reverta (formerly Parex banka), as well as their affiliated undertakings, will not pay any interest, dividends or coupons on existing capital instruments (including preference shares, B shares, and upper and lower tier-2 instruments) (either due or accrued) or exercise any call rights in relation to the same, to any subordinated debtholders or shareholders other than the Latvian State or the EBRD, until and unless the State aid to Reverta and/or Citadele has been fully repaid and unless there is a legal obligation to do so. In that respect Latvia also commits to remove any such legal obligations as soon as possible and by 30 April 2015 at the latest. As a result, holders of existing capital instruments will not receive any payment, since those existing capital instruments do not carry a mandatory coupon and in the course of liquidation of Reverta (which will take place by the end of 2017) they rank after senior debt. Because Reverta has a negative capital, it will be impossible in practical terms for the holders of those capital instruments to receive any payment or reimbursement.

(166) Moreover, in addition to the commitments referred to in recital 165, Latvia also commits not to repay any outstanding debt (principal) of the Legacy Subordinated Loans unless and until all State aid to Reverta/Citadele is fully repaid, to the extent necessary to cover the negative net asset value of Reverta and provided a legal base is available. For that purpose the outstanding debt (principal) of the Legacy Subordinated Loans will be either: (i) subject to a binding order that no payments under the Legacy Subordinated Loans shall become due and payable;

([41]) Recital 76 of the Parex Final Decision.

or (ii) converted into non-voting Tier 1 capital; or (iii) written down. In that respect, considering that national law currently does not provide an appropriate legal base allowing for compliance with that commitment, Latvia further commits to undertake all necessary measures to ensure that any legal provisions needed to comply with that commitment are put in place by 30 April 2015 at the latest.

(167) The Commission welcomes the commitments of Latvia referred to in recitals 165 and 166 as, by aiming at limiting payments of principal and interest due in respect of the Legacy Subordinated Loans and capital instruments of Reverta and Citadele, they provide additional burden-sharing.

(168) As a result, the Commission finds that the proposed compensatory measures mentioned in section 5.5 can be considered as adequate and equivalent (in terms of effectiveness) to those previously proposed by Latvia and approved by the Commission with the Parex Final Decision as amended by the Amendment Decision. Indeed the proposed compensatory measures pursue the same objective of limiting the distortion of competition. They are well targeted as they aim at limiting distortions of competition in markets where Citadele operates.

(169) The Commission accordingly concludes that the amended commitments are equivalent to the original ones in terms of restoration of viability, burden-sharing and mitigation of competition distortions. The replacement of the original commitments by the new commitments does not alter the compatibility of the aid with the internal market as established by the Parex Final Decision as amended by the Amendment Decision.

7. **CONCLUSION**

(170) The Commission regrets that Latvia unlawfully implemented the First, Second and Third Measures in breach of Article 108(3) TFEU, and that it breached the commitment to divest the Wealth Management Business of Citadele within the deadline recorded in the Final Parex Decision (the Fourth Measure).

(171) However, for the reasons set out above and given the additional commitments undertaken by Latvia and Citadele,

HAS ADOPTED THIS DECISION:

Article 1

The following measures constitute State aid within the meaning of Article 107(1) of the Treaty:

(a) the grant to Parex banka of subordinated loans with an initial maturity exceeding the terms of the measure approved in the Rescue Decisions and the Parex Final Decision (the First Measure);

(b) the grant to Citadele of an additional 18-month extension of the maturity of LVL 37 million of subordinated loans (the Second Measure);

(c) the grant to Reverta of liquidity support in excess of the maximum limits approved by the Commission in the Parex Final Decision (the Third Measure).

Article 2

The aid measures referred to in Article 1 are compatible with the internal market pursuant to Article 107(3)(b) of the Treaty in light of the commitments undertaken by Latvia as set out in Annex I.

Article 3

The deadlines to divest the Wealth Management Business (WMB) of Citadele, by 30 June 2013 without a Divestiture Trustee or by 31 December 2013 with a Divestiture Trustee (the Fourth Measure), recorded in recital 73 of Commission Decision C(2010) 6202 final corr. of 15 September 2009 on the State aid C 26/09 (ex N 289/09) which Latvia is planning to implement for the restructuring of AS Parex Banka are amended in line with the commitment provided by Latvia which is set out in Annex II.

Article 4

This Decision is addressed to the Republic of Latvia.

Done at Brussels, 9 July 2014.

For the Commission
Joaquín ALMUNIA
Vice-President

ANNEX I

The Latvian Authorities offer to clarify and strengthen their commitments as regards the principal and interest due in respect of the Legacy Subordinated Loans as follows:

(a) Citadele banka and Reverta (formerly Parex banka), as well as their affiliated undertakings shall not pay any interest, dividends or coupons on existing capital instruments (including preference shares, B shares, and upper and lower tier-2 instruments) (either due or accrued) or exercise any call rights in relation to the same, to any subordinated debtholders or shareholders, who are not strictly the Latvian State or the European Bank for Reconstruction and Development (EBRD), until and unless the State aid to Reverta and/or Citadele has been fully repaid and unless there is a legal obligation to do so. To the extent such legal obligations exist, the Latvian Authorities undertake to remove them as soon as possible (and in any event by 30 April 2015 at the latest).

(b) The Latvian Authorities also commit not to repay any outstanding debt (principal) of the Legacy Subordinated Loans (unless and until all State aid to Reverta/Citadele is fully repaid), which will be either:

   (i) subject to a binding order that no payments under the Legacy Subordinated Loans shall become due and payable; or

   (ii) converted into non-voting Tier 1 capital; or

   (iii) written down;

   to the extent necessary to cover the negative net asset value of Reverta, and provided a legal base is available.

(c) The Latvian Authorities will undertake all necessary measures to ensure that any legal provisions needed to comply with the commitments above are put in place by no later than 30 April 2015.

(d) The maximum total amount of capital provided to Reverta by the Latvian Authorities shall be reduced to LVL 49,5 million, from LVL 118,7 million previously.

ANNEX II

(1) The Latvian Authorities and Citadele undertake to apply their best efforts to obtain as soon as possible and in any event before […] binding bids for the sale of the entire stake of the Republic of Latvia in Citadele (including WMB). The sale shall be completed by […] at the latest. It shall be let to the discretion of the Republic of Latvia (and its advisor) to decide what the appropriate structure and modalities of the sale transaction are (e.g. a trade sale or IPO), as long as the Republic of Latvia eventually divests its entire stake in Citadele by […]at the latest. In case of an IPO, the Republic of Latvia commits to agree on a binding prospectus with the Latvian FCMC by […].

(2) The Latvian Authorities and Citadele also commit that a divestiture trustee will be appointed if, by […], no binding bids have been received or, in case of an IPO, having the same objective, no prospectus has been agreed with the FCMC. In such case the Republic of Latvia will take the necessary steps so as to ensure that the divestiture trustee is appointed and is operational as of […]. It is understood that the financial advisor for the sale of Citadele could also be appointed as divestiture trustee as of […]. If a divestiture trustee is appointed, the Latvian Authorities and Citadele commit to receive binding and irrevocable for all parties bids by […]and enter into a binding and irrevocable agreement for the sale of the full stake of the Republic of Latvia in Citadele by […], to be closed by […] at the latest.

(3) Further the Latvian Authorities and Citadele commit that as of […] Citadele will […] new business and the remaining business of Citadele […], if the Republic of Latvia has not entered by […] into a binding and irrevocable agreement, providing for the closing of the sale by […] of the full stake of the Republic of Latvia in Citadele, or if the IPO does not allow for the Republic of Latvia to sell its entire stake in the New Bank by […].

(4) The Latvian Authorities and Citadele commit to close the sale and purchase transaction for the sale of the full stake in Citadele of the Republic of Latvia by […]. If the sale of that stake has not been completed by […] they commit that Citadele will […] new business and the remaining business of Citadele will be […] from […].

(5) If Citadele business is […] in any of the above mentioned events, any parts of the business of Citadele, for which there is an interest of third parties, can be sold and transferred by the Republic of Latvia and/or Citadele to such a third party (without prejudice to the principle of […] and no new State aid).

COMMISSION DECISION (EU) 2015/163

of 21 November 2014

on the compatibility with Union law of the measures to be taken by Poland pursuant to Article 14 of Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) ([1]), and in particular Article 14(2) thereof,

Having regard to the opinion of the committee established pursuant to Article 29 of Directive 2010/13/EU,

Whereas:

(1) By letter of 19 August 2014, Poland notified to the Commission certain measures to be taken, pursuant to Article 14(1) of Directive 2010/13/EU.

(2) The Commission verified, within a period of 3 months from this notification, the compatibility of those measures with Union law, in particular with regard to the proportionality of the measures and the transparency of the national consultation procedure.

(3) In examining the measures, the Commission took into consideration the available data on the Polish audiovisual market, in particular as regards the impact on the television market.

(4) The list of events of major importance for society was drawn up by Poland in a clear and transparent manner, following a wide consultation.

(5) On the basis of detailed evidence and viewing figures provided by the Polish authorities, the Commission services verified that the list of designated events drawn up in accordance with Article 14(1) of Directive 2010/13/EU met at least two of the following criteria considered to be reliable indicators of the importance of events for society: (i) a special general resonance within the Member State, and not simply a significance to those who ordinarily follow the sport or activity concerned; (ii) a generally recognised, distinct cultural importance for the population in the Member State, in particular as a catalyst of cultural identity; (iii) involvement of the national team in the event concerned in the context of a competition or tournament of international importance; and (iv) the fact that the event has traditionally been broadcast on free television and has commanded large television audiences.

(6) The notified list of events of major importance for society contains both the events which are already on the statutory list foreseen by Article 20b of the Broadcasting Act of 29 December 1992, as modified by Act of 31 March 2000, and other events which are part of the draft regulation of the Broadcasting Council of the list of major events. A number of the designated events are generally considered as events of major importance for society such as the summer and winter Olympic Games, the final and semi-finals of the Football World Cup and the European Football Championship. The list also includes other football matches within those events involving the Polish national team, including qualifying games. As demonstrated by the Polish authorities, these events commanded large television audiences and have traditionally been broadcast on free-to-air television. In addition they have a special general resonance in Poland, as they are particularly popular with the general public, not just with those who usually follow sport events. Moreover, some matches within the Football World Cup and the European Football Championship including qualifying games, involve the Polish national team.

(7) These other football matches in official tournaments and the Champions League and UEFA Cup where the Polish national team or Polish club participate, command large television audiences and traditionally have been broadcast on free-to-air television and have special general resonance in Poland.

([1]) OJ L 95, 15.4.2010, p. 1.

(8) The matches of world and European men's and women's volleyball championships where the Polish national team participates, including the qualifying tournaments and the men's volleyball World League, commanded large television audiences and have traditionally been broadcast on free-to-air television. Additionally, they generate a particular and widespread interest in Poland, even for audiences that do not usually follow this discipline. They also involve a national team in an international tournament of major importance. This interest is reinforced by the fact that Polish participants have earned significant achievements in these tournaments.

(9) The semi-finals and finals of world and European men's handball championships, apart from commanding large television audiences and being traditionally broadcast on free-to air television, generate a particular and widespread interest in Poland, even for audiences that do not usually follow this discipline. Other competitions during semi-finals and finals of world and European men's handball championships where the Polish national team was involved also commanded large television audiences and have traditionally been broadcast on free-to air television. In addition, they generate a particular and widespread interest in Poland even for audiences that do not usually follow this discipline. They also involve a national team in an international tournament of major importance where Polish participants have earned significant achievements.

(10) The Nordic Ski World Championships, Ski Jumping World Cup events and women's Cross-Country Ski World Cup events, apart from commanding large television audiences and being traditionally broadcast on free-to-air television, generate a particular and widespread interest in Poland even for audiences that do not usually follow this discipline. They also involve the Polish national team in an international tournament of major importance where the Polish participants have earned significant achievements.

(11) The World Championship in Athletics commanded large television audiences and have traditionally been broadcast on free-to-air television. Moreover, they have special and wide-spread resonance in Poland, even for audiences that do not usually follow the disciplines represented at this event. Polish competitors have earned significant achievements in pole vault, shot-put and discus throw.

(12) Taking into account the modalities according to which those events of major importance for society will be broadcast, the definition of a 'qualifying broadcaster', the role of the Broadcasting Council in the resolution of disputes mechanism in case of disputes in the course of the implementation of the measures, and the date foreseen for the entry into force of the final Polish measures (12 months after the publication in the *Official Journal of the European Union*), the designated measures do not go beyond what is necessary for the achievement of the aim pursued, namely the protection of the right to information and the wide access of the public to television coverage of national or non-national events of major importance for society. Therefore, it may be concluded that the effects on the right of property, as provided for in Article 17 of the European Charter of Fundamental Rights, do not go beyond those which are intrinsically linked to the inclusion of the events in the list provided for in Article 14(1) of Directive 2010/13/EU.

(13) For the same reasons, the Polish measures appear to be proportionate to justify, by the overriding reason of public interest in ensuring wide public access to broadcasts of events of major importance for society, the derogation from the fundamental freedom to provide services laid down in Article 56 of the Treaty on the Functioning of the European Union (TFEU). In addition, the Polish measures do not constitute any discrimination or market foreclosure against other Member States' broadcasters, right holders or other economic operators.

(14) The designated measures are also compatible with Union competition rules in so far as the definition of the qualifying broadcasters for the broadcasting of listed events is based on objective criteria, which allow actual and potential competition for the acquisition of the rights to broadcast these events. In addition, the number of designated events is not disproportionate to an extent that would distort competition on the downstream free television and pay television markets. Therefore, it may be considered that the effects on the freedom of competition do not go beyond those which are intrinsically linked to the inclusion of the events in the list provided for in Article 14(1) of Directive 2010/13/EU.

(15) The Commission communicated the measures to be taken by Poland to the other Member States and presented the results of its verification to the committee established pursuant to Article 29 of Directive 2010/13/EU. The committee adopted a favourable opinion,

HAS DECIDED AS FOLLOWS:

Sole Article

1. The measures to be taken by Poland, pursuant to Article 14(1) of Directive 2010/13/EU, and notified to the Commission pursuant to Article 14(2) of that Directive are compatible with Union law.

2. The measures, as taken by Poland, shall be published in the *Official Journal of the European Union*.

Done at Brussels, 21 November 2014.

For the Commission
Günther OETTINGER
Member of the Commission

ANNEX

Publication pursuant to Article 14 of Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive).

The measures taken by Poland, to be published in accordance with Article 14 of Directive 2010/13/EU, are set out in the following extract from the Broadcasting Act of 29 December 1992 (Journal of Laws No 43/2011, item 226, as amended) and the Regulation of the National Broadcasting Council of 17 November 2014 establishing a list of major events:

'Broadcasting Act of 29 December 1992

Article 20b 1. A television broadcaster may broadcast live coverage of an event of major importance for society, hereinafter referred to as a "major event", only:

(1) on a national channel (programme service), as referred to in this Act or in its broadcasting licence, which may be viewed entirely free of charge except for licence fees as referred to in the Licence Fees Act of 21 April 2005 and basic fees charged by cable network operators, or

(2) if the same event is being transmitted by the broadcaster of a channel meeting the conditions specified in subparagraph 1, under a contract with the broadcaster who has acquired broadcasting rights for the event in question, or with any other authorised party, subject to the provisions of paragraph 6.

2. In view of the high level of public interest, the following events shall, amongst others, be regarded as major events:

(1) the summer and winter Olympic Games;

(2) the semi-finals and finals of the football World Cup and European Championship and any other matches in those events involving the Polish national team, including qualifying matches;

(3) other matches involving the Polish national football team in official tournaments, and Champions League and UEFA Cup matches involving Polish clubs.

3. The National Council may adopt a regulation establishing a list of major events other than those specified in paragraph 2, having regard to the level of public interest in those events and their significance for social, economic and political life.

4. If a major event is to comprise more than one part, each part shall be regarded as a major event.

5. Paragraph 1 shall apply to deferred coverage if the delay in broadcasting a major event does not exceed 24 hours and occurs for important reasons, notably:

(1) if the event concerned is timed to take place between midnight and 06:00 Polish time;

(2) if there are overlaps between major events or parts thereof.

6. Paragraph 1 shall not apply if a broadcaster can demonstrate that no broadcaster of a programme service meeting the conditions specified in paragraph 1(1) was willing to conclude a contract for the provision of coverage in accordance with paragraph 1(2).

7. The National Broadcasting Council may, as provided for in international agreements binding upon Poland, adopt a regulation establishing:

(1) lists of events deemed by other European countries to be major events;

(2) rules governing the exercise of exclusive television broadcasting rights for the events referred to in subparagraph 1 so as to ensure that the exercise of such rights by broadcasters subject to this Act does not deprive viewers in the country concerned of the possibility of receiving coverage of those events under rules laid down by that country in accordance with international law.'

JOURNAL OF LAWS

OF THE REPUBLIC OF POLAND

Warsaw, 3 December 2014

Item 1705

REGULATION

OF THE NATIONAL BROADCASTING COUNCIL

of 17 November 2014

establishing a list of major events

The following provisions are laid down pursuant to Article 20b(3) of the Broadcasting Act of 29 December 1992 (Journal of Laws No 43/2011, item 226, as amended ([1])):

Section 1. This Regulation lays down a list of major events other than those referred to in Article 20b(2) of the Broadcasting Act of 29 December 1992.

Section 2. In view of the level of public interest in these events and their significance in social, economic and political life, the following shall be considered major events:

(1) matches involving Polish national teams in the men's and women's World and European Volleyball Championships, including qualifying matches;

(2) men's Volleyball World League matches played in Poland;

(3) semi-finals and finals of the World and European Men's Handball Championships and any other matches in those events involving the Polish national team, including qualifying matches;

(4) the Nordic World Ski Championships;

(5) Ski Jumping World Cup competitions;

(6) women's Cross-Country World Cup (skiing) competitions;

(7) the World Championships in Athletics.

Section 3. This Regulation shall enter into force 12 months after the date of its publication

Chairman of the National Broadcasting Council: J. DWORAK

([1]) Amendments to this Act were published in Journal of Laws Nos 85/2011, item 459; 112/2011, item 654; 153/2011, item 903; 160/2011, item 963; and Journal of Laws 2012, items 1209 and 1315.

COMMISSION IMPLEMENTING DECISION (EU) 2015/164

of 2 February 2015

on a derogation from the rules of origin set out in Council Decision 2013/755/EU as regards raw cane sugar from Curaçao

THE EUROPEAN COMMISSION,

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

Having regard to Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union ('Overseas Association Decision') [1], and in particular Article 16(1)(c) of Annex VI thereto,

Whereas:

(1) In accordance with of Article 5(1) points (g), (j) and (k) of Annex VI to Decision 2013/755/EU partial or total milling of sugar, sifting and placing in bags are considered to be working or processing operations that are insufficient to confer the status of originating products.

(2) In 2002 the Netherlands requested a derogation from the rule of origin in respect of sugar products falling within CN codes 1701 11 90, 1701 99 10 and 1701 91 00 processed in the Netherlands Antilles for an annual quantity of 3 000 tonnes. That request was granted and the derogation ended on 31 December 2007.

(3) In 2009 the Netherlands submitted a request for extension of the derogation granted in 2002 as well as a request for a new derogation. The request for extension was rejected by Commission Decision 2009/699/EC [2], while the request for the new derogation was granted, within the limits of the quantities for which import licences for sugar were allocated to the Netherlands Antilles in 2009 and in 2010.

(4) In 2010, the Netherlands requested a new derogation in respect of sugar products processed in the Netherlands Antilles for the period from 2011 to 2013. By Commission Decision 2011/47/EU [3] the derogation was granted in accordance with paragraphs 1, 3 and 7 of Article 37 of Annex III to Council Decision 2001/822/EC [4] and under certain conditions which aimed to balance the legitimate interests of the Overseas Countries and Territories (OCTs) operators with the objectives of the Union's common market organisation for sugar.

(5) On 11 February 2013 the Netherlands requested on behalf of the government of Curaçao a new derogation from the rules of origin set out in Annex III to Decision 2001/822/EC for the period from 1 January to 31 December 2013, the date of expiry of Decision 2001/822/EC. The request covered a total annual quantity of 5 500 tonnes of sugar products of CN code 1701 14 90, described as 'bio-sugar', originating in third countries and processed in Curaçao for export to the Union. This request was officially withdrawn by the Netherlands on 17 April 2013 because the processing activities described in the request were no longer carried out in the Netherlands Antilles. On 17 April 2013, the Netherlands submitted a second request for derogation for 5 000 tonnes of sugar products, described as organic raw cane sugar of CN code 1701 14 90, for the period from 1 January to 31 December 2013. This request was rejected by Commission Implementing Decision 2013/460/EU [5].

(6) On 23 June 2014, the government of Curaçao submitted a request for derogation for 7 000 tonnes, yearly, of sugar products described as organic raw cane sugar, conventional raw cane sugar of CN code 1701 13 and sugar mixtures of CN code 1701 99, 1806 10 and 2106 90 for the period from 1 January 2014 to 1 January 2018. On 1 September 2014 the government of Curaçao submitted additional information relating to its request, indicating, inter alia, that the derogation was requested for the period from 1 October 2014 to 1 January 2020.

(7) Curaçao has explained that as of 1 January 2014 the industry has ceased its sugar processing activities, given that Decision 2013/755/EU does not offer the possibility to export to the Union duty-free as the processing activities of the industry are deemed insufficient to confer the status of originating products. However, the industry stands

[1] OJ L 344, 19.12.2013, p. 1.

[2] Commission Decision 2009/699/EC of 9 September 2009 on a derogation from the rules of origin set out in Council Decision 2001/822/EC as regards sugar from the Netherlands Antilles (OJ L 239, 10.9.2009, p. 55).

[3] Commission Decision 2011/47/EU of 20 January 2011 on a derogation from the rules of origin set out in Council Decision 2001/822/EC as regards sugar from the Netherlands Antilles (OJ L 21, 25.1.2011, p. 3).

[4] Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community ('Overseas Association Decision') (OJ L 314, 30.11.2001, p. 1).

[5] Commission Implementing Decision 2013/460/EU of 17 September 2013 refusing to grant a derogation from Council Decision 2001/822/EC, as regards the rules of origin for sugar from Curaçao (OJ L 249, 19.9.2013, p. 6).

ready to invest in processing, packaging and wholesale of dry organic products for export in the region once it has generated the necessary profit to finance these investments. The goal is to start with these new activities in the second half of 2015. As a result of these new activities, the industry expects to increase the number of employees.

(8) According to the information received from Curaçao, at current market prices, a net profit after tax of EUR 25,42 per tonne can be earned from exporting to the Union 2 000 tonnes of third country organic sugar milled in Curaçao, provided that the sugar can be imported under preferential treatment as sugar originating in Curaçao.

(9) The production costs of cane sugar in Brazil, including the administrative costs, are EUR 294 per tonne of raw cane sugar. It appears unlikely that the costs for cleaning, milling and packing of organic cane sugar in Curaçao, as transmitted to the Commission, would be higher than EUR 294 per tonne, even when adding transportation costs to the EU. Instead, these costs have to be considered to contain other overhead components and gains. To ensure a sustainable economic activity, the production costs in Curaçao, where only simple processing is performed, including transportation costs to the Union should be lower or equal to the cost for farming and processing of cane sugar in Brazil. Therefore, when considering EUR 294 per tonne as a realistic cost for cleaning, milling, packing of organic raw cane sugar in Curaçao and transport to the EU, a profit after tax of EUR 192 per tonne can be earned. Generating a profit of only EUR 25,42 per tonne for cane sugar obtained after milling of third country sugar in Curaçao, while granting duty-free access in the Union and exempting payment of EUR 419 import duties per tonne for third country sugar, is considered disproportionate.

(10) The derogation is requested for 7 000 tonnes of sugar products, described as organic cane sugar, conventional cane sugar and mixtures of sugar. However, the request does not mention the price of the pectin, caseinate, powdered milk and cacao powder used in the production of these sugar mixtures necessary to calculate the profit that can be earned. The derogation should therefore be granted only for raw organic cane sugar and raw conventional cane sugar.

(11) Curaçao explains that the derogation would allow the industry to restart its activities and reactivate employment contributing to the export activities while generating foreign exchange. The industry also contributes to government income by fulfilling its tax obligations.

(12) During the period from 2009 to 2013 Curaçao benefitted from derogations granted under Decision 2001/822/EC, helping to generate the necessary turnover to invest in diversification towards the production of products not requiring derogation from the rules of origin. According to the information received, investments were very low in 2009, and no investments at all were made between 2010 and 2012. These derogations, therefore, have only helped to maintain the milling and packing operations without contributing sustainably to the development of an existing industry or the creation of a new one. It is therefore necessary to verify at the end of the validity of the derogation whether the profit generated by the derogation has effectively been invested in new machinery for production of dry organic products and to which extent it has contributed to the creation of new employment. Therefore, the government of Curaçao should submit certified evidence of the investments being made and employment figures to the Union for verification.

(13) The Commission considers a net profit after tax of EUR 192 per tonne as a realistic profit for cleaning, milling and packing of organic raw cane sugar in Curaçao. It should therefore be possible to finance the envisaged investments of EUR 300 000, as communicated by the government of Curaçao, through production of 1 560 tonnes of raw cane sugar. The derogation should thus be granted for a quantity of 780 tonnes for the period from 1 April 2015 to 31 March 2016 and 780 tonnes for the period from 1 April 2016 to 31 March 2017.

(14) By letter of 21 November 2014, the Commission requested Curaçao to take note of the Commission's assessment of the request and to share its views. The deadline for reply was set at 3 December 2014. A reply was received from Curaçao on 3 December 2014.

(15) Subject to those conditions, the derogation is not such as to cause serious injury to an economic sector or an established industry in the Union.

(16) Commission Regulation (EEC) No 2454/93 [1] lays down rules for the management of tariff quotas. Those rules should be applied to the management of the quantity in respect of which the derogation in question is granted.

(17) The Customs Code Committee has not issued an opinion within the time limit set by its Chairman,

[1] Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Annex VI to Decision 2013/755/EU, raw cane sugar, falling within CN code ex 1701 13, which has been obtained from milling non-originating raw cane sugar in Curaçao shall be regarded as originating in Curaçao in accordance with the terms set out in Articles 2 to 5 of this Decision.

Article 2

The derogation provided for in Article 1 shall apply to the quantities set out in the Annex which are imported into the Union from Curaçao during the period from 1 April 2015 to 31 March 2017.

Article 3

Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93 relating to the management of tariff quotas shall apply to the management of the quantity referred to in the Annex hereto.

Article 4

1. The customs authorities of Curaçao shall take the necessary measures to carry out quantitative checks on exports of the products referred to in Article 1.

2. Before the end of the month following each quarter, the competent authorities of Curaçao shall forward to the Commission a quarterly statement of the quantities in respect of which movement certificates EUR.1 have been issued pursuant to this Decision and the serial numbers of those certificates.

3. Movement certificates EUR.1 issued under this Decision shall contain one of the following entries:

— 'Derogation — [Commission Implementing Decision (EU) 2015/164]',

— 'Dérogation — [Décision d'exécution (UE) 2015/164 de la Commission]'.

Article 5

Before 1 October 2016, the government of Curacao shall send to the Commission evidence showing that the profit generated by the industry through the derogation is effectively used for investment in new machinery for production of dry organic products and effectively contributes to the creation of new employment.

Article 6

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

Done at Brussels, 2 February 2015.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

Order No	CN code	Description of goods	Periods	Quantities
09.1960	1701 13	Raw cane sugar	1.4.2015 to 31.3.2016	780 tonnes
			1.4.2016 to 31.3.2017	780 tonnes

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