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Contents

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

[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.

The titles of all other acts are printed in bold type and preceded by an asterisk.

DECISIONS

[1] Text with EEA relevance.

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2017/1464

of 2 June 2017

amending Council Regulation (EC) No 1215/2009 as regards trade concessions granted to Kosovo * following the entry into force of the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1215/2009 of 30 November 2009 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process ([1]), and in particular Article 7(a) and (b) thereof,

Whereas:

(1) Regulation (EC) No 1215/2009 provided for unlimited duty free access to the Union market for nearly all products originating in the countries and territories benefiting from the Stabilisation and Association process to the extent and until such time as bilateral agreements with those countries and territories were concluded.

(2) The last of such bilateral agreements, the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part, was signed ([2]) and concluded ([3]). It entered into force on 1 April 2016.

(3) The Stabilisation and Association Agreement establishes a contractual trade regime between the Union and Kosovo. The bilateral trade concessions on the Union side are comparable to the unilateral preferences granted by Regulation (EC) No 1215/2009.

(4) Pursuant to Article 7 of Regulation (EC) No 1215/2009 the Commission is empowered to adopt delegated acts to introduce the necessary amendments and technical adjustments to Annexes I and II of that Regulation, following amendments to the Combined Nomenclature codes and to the TARIC subdivisions, as well as the necessary adjustments following the granting of trade preferences under other arrangements between the Union and the countries and territories referred to in that Regulation.

(5) The continuation of the unilateral preference granted to all the Western Balkan countries and territories in the form of the suspension of all duties for products covered by Chapters 7 and 8 of the Combined Nomenclature and their access to the global wine tariff rate quota of 30 000 hl should be ensured. Moreover, since the baby-beef tariff-rate quota granted to Kosovo is included in the Stabilisation and Association Agreement with Kosovo, Regulation (EC) No 1215/2009 should be amended accordingly.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

([1]) OJ L 328, 15.12.2009, p. 1. Regulation as last amended by Regulation (EU) 2015/2423 (OJ L 341, 24.12.2015, p. 18).

([2]) OJ L 290, 6.11.2015, p. 4.

([3]) OJ L 71, 16.3.2016, p. 1.

(6) In addition, since Commission Implementing Regulation (EU) 2016/1821 ([1]) made changes to the Combined Nomenclature for certain fishery and wine products covered by Regulation (EC) No 1215/2009, Annex I to that Regulation should be amended and adjusted accordingly, for reasons of clarity.

(7) Regulation (EC) No 1215/2009 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1215/2009 is amended as follows:

(1) Article 1 is replaced by the following:

'*Article 1*

Preferential arrangements

1. The products originating in Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, the customs territory of Kosovo, Montenegro, and in Serbia covered by Chapters 7 and 8 of the Combined Nomenclature shall be admitted for import into the Union without quantitative restrictions or measures having equivalent effect and with exemption from custom duties and charges having equivalent effect.

2. Products originating in Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, the customs territory of Kosovo, Montenegro and in Serbia shall continue to benefit from the provisions of this Regulation where so indicated. Such products shall also benefit from any concession provided for in this Regulation which is more favourable than that provided for under bilateral agreements between the Union and those countries.';

(2) in Article 3, in the first subparagraph of paragraph 2, '475 tonnes' is replaced by '0 tonnes';

(3) Annex I is replaced by the text in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the third 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, 2 June 2017.

For the Commission

The President

Jean-Claude JUNCKER

([1]) Commission Implementing Regulation (EU) 2016/1821 of 6 October 2016 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 294, 28.10.2016, p. 1).

ANNEX

'ANNEX I

CONCERNING THE TARIFF QUOTAS REFERRED TO IN ARTICLE 3(1)

Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording for the description of the products is deemed to be indicative only, and the preferential scheme is determined, within the context of this Annex, by the coverage of the CN codes. Where ex CN codes are indicated, the preferential scheme is to be determined by the combined application of the CN code and the corresponding description.

Order No	CN Code	Description	Quota volume per year (1)	Beneficiaries	Rate of duty
09.1571	0301 91 00 0302 11 00 0303 14 00 0304 42 00 ex 0304 52 00 0304 82 00 ex 0304 99 21 ex 0305 10 00 ex 0305 39 90 0305 43 00 ex 0305 59 85 ex 0305 69 80	Trout (*Salmo trutta, Oncorhynchus mykiss, Oncorhynchus clarki, Oncorhynchus aguabonita, Oncorhynchus gilae, Oncorhynchus apache* and *Oncorhynchus chrysogaster*): live; fresh or chilled; frozen; dried, salted or in brine, smoked; fillets and other fish meat; flours, meals and pellets, fit for human consumption	0 tonne	Customs territory of Kosovo (2)	0 %
09.1573	0301 93 00 0302 73 00 0303 25 00 ex 0304 39 00 ex 0304 51 00 ex 0304 69 00 ex 0304 93 90 ex 0305 10 00 ex 0305 31 00 ex 0305 44 90 ex 0305 52 00 ex 0305 64 00	Carp (*Cyprinus* spp., *Carassius* spp., *Ctenopharyngodon idellus, Hypophthalmichthys* spp., *Cirrhinus* spp., *Mylopharyngodon piceus, Catla catla, Labeo* spp., *Osteochilus hasselti, Leptobarbus hoeveni, Megalobrama* spp.): live; fresh or chilled; frozen; dried, salted or in brine, smoked; fillets and other fish meat; flours, meals and pellets, fit for human consumption	0 tonne	Customs territory of Kosovo (2)	0 %
09.1575	ex 0301 99 85 0302 85 10 0303 89 50 ex 0304 49 90 ex 0304 59 90 ex 0304 89 90 ex 0304 99 99 ex 0305 10 00 ex 0305 39 90 ex 0305 49 80 ex 0305 59 85 ex 0305 69 80	Sea bream (*Dentex dentex* and *Pagellus* spp.): live; fresh or chilled; frozen; dried, salted or in brine, smoked; fillets and other fish meat; flours, meals and pellets, fit for human consumption	0 tonne	Customs territory of Kosovo (2)	0 %
09.1577	ex 0301 99 85 0302 84 10 0303 84 10 ex 0304 49 90 ex 0304 59 90 ex 0304 89 90 ex 0304 99 99 ex 0305 10 00 ex 0305 39 90 ex 0305 49 80 ex 0305 59 85 ex 0305 69 80	European sea bass (*Dicentrarchus labrax*): live; fresh or chilled; frozen; dried; salted or in brine, smoked; fillets and other fish meat; flours, meals and pellets, fit for human consumption	0 tonne	Customs territory of Kosovo (2)	0 %

Order No	CN Code	Description	Quota volume per year (1)	Beneficiaries	Rate of duty
09.1530	ex 2204 21 93 ex 2204 21 94 ex 2204 21 95 ex 2204 21 96 ex 2204 21 97 ex 2204 21 98 ex 2204 22 93 ex 2204 22 94 ex 2204 22 95 ex 2204 22 96 ex 2204 22 97 ex 2204 22 98 ex 2204 29 93 ex 2204 29 94 ex 2204 29 95 ex 2204 29 96 ex 2204 29 97 ex 2204 29 98	Wine of fresh grapes, of an actual alcoholic strength by volume not exceeding 15 % vol, other than sparkling wine	30 000 hl	Albania (3), Bosnia and Herzegovina (4), Customs territory of Kosovo (5), the former Yugoslav Republic of Macedonia (6), Montenegro (7), Serbia (8).	Exemption
09.1560	ex 2204 21 93 ex 2204 21 94 ex 2204 21 95 ex 2204 21 96 ex 2204 21 97 ex 2204 21 98 ex 2204 22 93 ex 2204 22 94 ex 2204 22 95 ex 2204 22 96 ex 2204 22 97 ex 2204 22 98 ex 2204 29 93 ex 2204 29 94 ex 2204 29 95 ex 2204 29 96 ex 2204 29 97 ex 2204 29 98	Wine of fresh grapes, of an actual alcoholic strength by volume not exceeding 15 % vol, other than sparkling wine	0 hl	Customs territory of Kosovo (2)	0 %

(1) One global volume per tariff quota accessible to imports originating in the beneficiaries.

(2) Subject to import restrictions specified under Annex IV or Protocol II of the Stabilisation and Association Agreement between the European Union, of the one part, and Kosovo (this designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence), of the other part

(3) Access for wine originating in Albania to the global tariff quota is subject to the prior exhaustion of the individual tariff quota provided for in the Protocol on wine concluded with Albania. That individual quota is opened under order No 09.1512 and 09.1513.

(4) Access for wine originating in Bosnia and Herzegovina to the global tariff quota is subject to the prior exhaustion of both individual tariff quotas provided for in the Protocol on wine concluded with Bosnia and Herzegovina. Those individual quotas are opened under order Nos 09.1528 and 09.1529.

(5) Access for wine originating in Kosovo to the global tariff quota is subject to the prior exhaustion of both individual tariff quotas provided for in the Protocol on wine concluded with Kosovo. Those individual quotas are opened under order Nos 09.1570 and 09.1572.

(6) Access for wine originating in the former Yugoslav Republic of Macedonia to the global tariff quota is subject to the prior exhaustion of both individual tariff quotas provided for in the Additional Protocol on wine concluded with the former Yugoslav Republic of Macedonia. Those individual quotas are opened under order Nos 09.1558 and 09.1559.

(7) Access for wine originating in Montenegro to the global tariff quota, insofar as it concerns products of CN code 2204 21, is subject to the prior exhaustion of the individual tariff quota provided for in the Protocol on wine concluded with Montenegro. That individual tariff quota is opened under order No 09.1514.

(8) Access for wine originating in Serbia to the global tariff quota is subject to the prior exhaustion of both individual tariff quotas provided for in the Protocol on wine concluded with Serbia. Those individual quotas are opened under order Nos 09.1526 and 09.1527.'

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1465

of 9 August 2017

concerning the classification of certain goods in the Combined Nomenclature

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ([1]), and in particular Article 57(4) and Article 58(2) thereof,

Whereas:

(1) In order to ensure uniform application of the Combined Nomenclature annexed to Council Regulation (EEC) No 2658/87 ([2]), it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.

(2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific provisions of the Union, with a view to the application of tariff and other measures relating to trade in goods.

(3) Pursuant to those general rules, the goods described in column (1) of the table set out in the Annex should be classified under the CN code indicated in column (2), by virtue of the reasons set out in column (3) of that table.

(4) It is appropriate to provide that binding tariff information issued in respect of the goods concerned by this Regulation which does not conform to this Regulation may, for a certain period, continue to be invoked by the holder in accordance with Article 34(9) of Regulation (EU) No 952/2013. That period should be set at three months.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column (1) of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column (2) of that table.

Article 2

Binding tariff information which does not conform to this Regulation may continue to be invoked in accordance with Article 34(9) of Regulation (EU) No 952/2013 for a period of three months from the date of entry into force of this Regulation.

Article 3

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

([1]) OJ L 269, 10.10.2013, p. 1.
([2]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

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

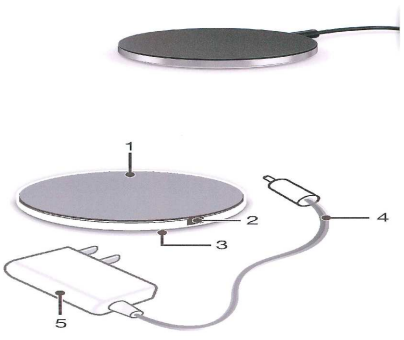
Done at Brussels, 9 August 2017.

For the Commission,
On behalf of the President,
Stephen QUEST
Director-General
Directorate-General for Taxation and Customs Union

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
A device (so-called 'wireless charging plate') consisting of an adapter with a cable of a length of approximately 180 cm and a charging plate. The cable has a connector to connect to the charging plate. The plate is circular shaped with a height of approximately 8 mm, a diameter of approximately 80 mm and a weight of 51 g. The adapter converts (rectifies) alternating current (AC — 240V) into direct current (DC — 12V) and transfers this to the plate. In the plate this DC is converted (inverted) into AC and then that AC is converted into an electromagnetic field. The device is designed to charge apparatus wirelessly. Both the plate and the apparatus being charged are equipped with 'Qi' technology, which is the standard for the wireless charging of apparatus. Wireless charging is performed via an electromagnetic field. See image (*)	8504 40 90	Classification is determined by general rules (GIR) 1, 3(c) and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 8504, 8504 40 and 8504 40 90. The functions of the device (current rectifying, inverting, and converting into an electromagnetic field) are covered by subheading 8504 40. Classification under subheading 8504 50 is thus excluded. Classification under CN code 8504 40 30 as static converters of a kind used with telecommunication apparatus, automatic data-processing machines and units thereof is excluded as the AC/DC adapter is designed to provide current to a variety of electrical apparatus. As neither current rectifying, inversion nor conversion into an electromagnetic field gives the device its essential character it has to be classified applying GIR 3(c). Consequently, the device is to be classified under CN code 8504 40 90 as other static converters.

(*) The image is purely for information.



COMMISSION IMPLEMENTING REGULATION (EU) 2017/1466

of 11 August 2017

on opening and providing for the administration of Union tariff quotas for wines originating in Kosovo *

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]), and in particular Article 187 thereof,

Whereas:

(1) The Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo *, of the other part ([2]) ('the SAA') was signed on 27 October 2015 and entered into force on 1 April 2016.

(2) Protocol II to the SAA lays down the arrangements applicable to the wines and spirit drinks mentioned therein and provides in Annex I thereto for an Agreement on reciprocal preferential trade concessions for certain wines originating in Kosovo. That agreement applies from 1 April 2016.

(3) Council Regulation (EC) No 1215/2009 ([3]) provides for an annual import tariff quota for certain products originating in the customs territory of Kosovo. Following the entry into force of the SAA, these autonomous trade measures are adjusted by Commission Delegated Regulation (EU) 2017/1464 ([4]). In particular, specific wine tariff rate quotas for Kosovo are no longer applicable under the autonomous regime provided for by Regulation (EC) No 1215/2009 since these concessions have been included in the SAA regime.

(4) In accordance with Annex I to Protocol II to the SAA, imports into the Union of wines originating in Kosovo are to be subject to quotas benefitting from total exemption from import duties. These quotas consist of 40 000 hl for wine of fresh grapes falling within CN codes ex 2204 21 and ex 2204 29 and 10 000 hl for quality sparkling wines and wine of fresh grapes falling within CN codes ex 2204 10 and ex 2204 21. This Protocol applies as from 1 April 2016, therefore the volumes of the new tariff quotas are calculated for 2016 as a pro rata of the basic annual volumes specified in the Protocol.

(5) In order to implement the Union tariff quotas provided for in Annex I to Protocol II to the SAA, it is necessary to open tariff quotas for 2016 and for the following years based on the quantities granted in the SAA, specifying the conditions for their acceptance. The tariff quota volume shall be reduced by the quantity imported in 2016 and 2017, under the tariff quota 09.1560, to take account of imports into the Union of Kosovar wines under the autonomous trade measures established by Regulation (EC) No 1215/2009.

(6) Commission Implementing Regulation (EU) 2015/2447 ([5]) has established the management rules for tariff quotas designed to be used following the chronological order of dates of acceptance of customs declarations.

(7) Since Protocol II to the SAA applies from 1 April 2016, this Regulation should apply from the same date.

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* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

([1]) OJ L 347, 20.12.2013, p. 671.

([2]) OJ L 71, 16.3.2016, p. 3.

([3]) Council Regulation (EC) No 1215/2009 of 30 November 2009 introducing exceptional measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process (OJ L 328, 15.12.2009, p. 1).

([4]) Commission Delegated Regulation (EU) 2017/1464 of 2 June 2017 amending Council Regulation (EC) No 1215/2009 as regards trade concessions granted to Kosovo * following the entry into force of the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part (see page 1 of this Official Journal).

([5]) Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343 29.12.2015, p. 558).

(8) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities of wine which may be imported from Kosovo into the Union under total exemption from import duties for 2016 and as from 2017 are laid down in the Annex.

Article 2

The zero-rate duty shall be applied subject to the following conditions:

(a) the imported wines shall be accompanied by a proof of origin as provided for in Protocol II to the SAA;

(b) the imported wines do not benefit from export subsidies.

Article 3

The tariff quota referred to in Article 1 of this Regulation shall be administered by the Commission in accordance with Articles 49 to 54 of Implementing Regulation (EU) 2015/2447.

Article 4

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

It shall apply from 1 April 2016.

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

Done at Brussels, 11 August 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Tariff quotas for wines originating in Kosovo imported into the Union for 2016

Order No	CN code (1)	TARIC extension	Description	Annual quota volume (in hl) (2)	Tariff quota duty
09.1572	2204 10 93		Quality sparkling wine; wine of fresh grapes, in containers holding 2 litres or less	**7 500**	Exemption
	2204 10 94				
	2204 10 96				
	2204 10 98				
	2204 21 06				
	2204 21 07				
	2204 21 08				
	2204 21 09				
	ex 2204 21 93	19, 29, 31, 41 and 51			
	ex 2204 21 94	19, 29, 31, 41 and 51			
	2204 21 95				
	ex 2204 21 96	11, 21, 31, 41 and 51			
	2204 21 97				
	ex 2204 21 98	11, 21, 31, 41 and 51			
09.1570	2204 21 06		Wine of fresh grapes	**30 000** (3)	Exemption
	2204 21 07				
	2204 21 08				
	2204 21 09				
	ex 2204 21 93	19, 29, 31, 41 and 51			
	ex 2204 21 94	19, 29, 31, 41 and 51			
	2204 21 95				
	ex 2204 21 96	11, 21, 31, 41 and 51			
	2204 21 97				
	ex 2204 21 98	11, 21, 31, 41 and 51			
	2204 29 10				
	2204 29 93				
	ex 2204 29 94	11, 21, 31, 41 and 51			
	2204 29 95				

Order No	CN code (1)	TARIC extension	Description	Annual quota volume (in hl) (2)	Tariff quota duty
	ex 2204 29 96	11, 21, 31, 41 and 51			
	2204 29 97				
	ex 2204 29 98	11, 21, 31, 41 and 51			

(1) Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording for the description of the products is to be considered as having no more than an indicative value, the preferential scheme being determined, within the context of this Annex, by the coverage of CN codes. Where ex CN codes are indicated, the preferential scheme is to be determined by application of the CN code and corresponding description taken together.

(2) The V I 1 certificate established according to Article 43 of Commission Regulation (EC) No 555/2008 of 27 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 479/2008 on the common organisation of the market in wine as regards support programmes, trade with third countries, production potential and on controls in the wine sector (OJ L 170, 30.6.2008, p. 1), shall mention compliance with this requirement as follows: 'The products listed on this certificate do not benefit from export subsidies'.

(3) The tariff quota volume shall be reduced by the quantity imported, in 2016, under the tariff quota 09.1560.

Tariff quotas for wines originating in Kosovo imported into the Union as from 2017

Order No	CN code (1)	TARIC extension	Description	Annual quota volume (in hl) (2)	Tariff quota duty
09.1572	2204 10 93		Quality sparkling wine; wine of fresh grapes, in containers holding 2 litres or less	**10 000**	Exemption
	2204 10 94				
	2204 10 96				
	2204 10 98				
	2204 21 06				
	2204 21 07				
	2204 21 08				
	2204 21 09				
	ex 2204 21 93	19, 29, 31, 41 and 51			
	ex 2204 21 94	19, 29, 31, 41 and 51			
	2204 21 95				
	ex 2204 21 96	11, 21, 31, 41 and 51			
	2204 21 97				
	ex 2204 21 98	11, 21, 31, 41 and 51			
09.1570	2204 21 06		Wine of fresh grapes	**40 000** (3)	Exemption
	2204 21 07				
	2204 21 08				
	2204 21 09				
	ex 2204 21 93	19, 29, 31, 41 and 51			

Order No	CN code (1)	TARIC extension	Description	Annual quota volume (in hl) (2)	Tariff quota duty
	ex 2204 21 94	19, 29, 31, 41 and 51			
	2204 21 95				
	ex 2204 21 96	11, 21, 31, 41 and 51			
	2204 21 97				
	ex 2204 21 98	11, 21, 31, 41 and 51			
	2204 22 10				
	2204 22 93				
	ex 2204 22 94	11, 21, 31, 41 and 51			
	2204 22 95				
	ex 2204 22 96	11, 21, 31, 41 and 51			
	2204 22 97				
	ex 2204 22 98	11, 21, 31, 41 and 51			
	2204 29 10				
	2204 29 93				
	ex 2204 29 94	11, 21, 31, 41 and 51			
	2204 29 95				
	ex 2204 29 96	11, 21, 31, 41 and 51			
	2204 29 97				
	ex 2204 29 98	11, 21, 31, 41 and 51			

(1) Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording for the description of the products is to be considered as having no more than an indicative value, the preferential scheme being determined, within the context of this Annex, by the coverage of CN codes. Where ex CN codes are indicated, the preferential scheme is to be determined by application of the CN code and corresponding description taken together.

(2) The V I 1 certificate established according to Article 43 of Commission Regulation (EC) No 555/2008 of 27 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 479/2008 on the common organisation of the market in wine as regards support programmes, trade with third countries, production potential and on controls in the wine sector (OJ L 170, 30.6.2008, p. 1), shall mention compliance with this requirement as follows: 'The products listed on this certificate do not benefit from export subsidies'.

(3) The tariff quota volume shall be reduced by the quantity imported, in 2017, under the tariff quota 09.1560.

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1467

of 11 August 2017

amending Regulation (EU) No 1255/2010 as regards the import tariff quota for 'baby beef' products originating in Kosovo *

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]), and in particular point (b) of the first paragraph of Article 187 thereof,

Whereas:

(1) Commission Regulation (EU) No 1255/2010 ([2]) lays down detailed rules for the management of import tariff quotas for 'baby beef' products.

(2) Council Regulation (EC) No 1215/2009 ([3]) provides for an annual import tariff quota of 475 tonnes for 'baby beef' products originating in the customs territory of Kosovo *.

(3) The Commission adopted Implementing Regulation (EU) No 374/2012 ([4]) which amended Regulation (EU) No 1255/2010 in order to open and provide for the administration of the annual import tariff quota for 'baby beef' products originating in Kosovo *.

(4) The Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo *, of the other part ('the Agreement'), was concluded on behalf of the Union by the Council by Decision (EU) 2016/342 ([5]) and it is the new instrument governing trade relations with Kosovo *. Article 28(3) of the Agreement provides for a tariff quota of 475 tonnes for 'baby beef' products originating in the customs territory of Kosovo *. As a consequence, the tariff quota for 'baby beef' products provided for in the first subparagraph of Article 3(2) of Regulation (EC) No 1215/2009 was set at zero tonnes by Commission Delegated Regulation (EU) 2017/1464 ([6]).

(5) Regulation (EU) No 1255/2010 should therefore be amended accordingly.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

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* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

([1]) OJ L 347, 20.12.2013, p. 671.

([2]) Commission Regulation (EU) No 1255/2010 of 22 December 2010 laying down detailed rules for the application of the import tariff quotas for 'baby beef' products originating in Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo * (OJ L 342, 28.12.2010, p. 1).

([3]) Council Regulation (EC) No 1215/2009 of 30 November 2009 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process (OJ L 328, 15.12.2009, p. 1).

([4]) Commission Implementing Regulation (EU) No 374/2012 of 26 April 2012 amending Regulation (EU) No 1255/2010 laying down detailed rules for the application of the import tariff quotas for 'baby beef' products originating in Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia (OJ L 118, 3.5.2012, p. 1).

([5]) Council Decision (EU) 2016/342 of 12 February 2016 on the conclusion, on behalf of the Union, of the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo *, of the other part (OJ L 71, 16.3.2016, p. 1).

([6]) Commission Delegated Regulation (EU) 2017/1464 of 2 June 2017 amending Council Regulation (EC) No 1215/2009 as regards trade concessions granted to Kosovo * following the entry into force of the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part (see page 1 of this Official Journal).

HAS ADOPTED THIS REGULATION:

Article 1

In Annex VIIa to Regulation (EU) No 1255/2010, box 8 is replaced by the following:

'8. I, the undersigned ....., acting on behalf of the authorised issuing body (box 9) certify that the goods described above were subjected to health inspection at ....., in accordance with the attached veterinary certificate of ....., originate in and come from Kosovo * and correspond exactly to the definition contained in Annex II to the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo *, of the other part (OJ L 71, 16.3.2016, p. 3).'

Article 2

This Regulation shall enter into force on the third 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, 11 August 2017.

For the Commission
The President
Jean-Claude JUNCKER

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1468

of 11 August 2017

amending Regulation (EU) No 354/2011 opening and providing for the management of tariff quotas of the Union for certain fish and fishery products originating in Bosnia and Herzegovina

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ([1]), and in particular Article 58(1) thereof,

Whereas:

(1) By Decision (EU) 2017/75 ([2]) ('the Decision'), the Council authorised the signing, on behalf of the Union and its Member States, of the Protocol ('the Protocol') to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part ('the Agreement'), to take account of the accession of the Republic of Croatia to the European Union. Pursuant to this Decision the Protocol was applied on a provisional basis, from 1 February 2017 ([3]).

(2) In Article 3, the Protocol stipulates that Union concessions for certain fish and fishery products originating in Bosnia-Herzegovina are to be granted according to Annex II to the Protocol. Therefore, the tariff quota volumes for trout, carp and anchovies should be increased by 440, 10 and 20 tonnes accordingly.

(3) The Union tariff quotas should be applied in full for the year 2017, as stipulated in Annex II to the Protocol.

(4) The tariff quotas set out in Annex II to the Protocol should be managed by the Commission on the basis of the chronological order of dates of acceptance of customs declarations for release for free circulation in accordance with Commission Implementing Regulation (EU) 2015/2447 ([4]).

(5) Commission Regulation (EU) No 354/2011 ([5]) should therefore be amended accordingly.

(6) In order to ensure the quota system under the Protocol is applied and managed smoothly, this Regulation should apply from the same date as that of the provisional application of the Protocol.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 354/2011 is amended as follows:

(1) Article 2 is replaced by following:

'*Article 2*

The tariff quotas set out in the Annex shall be managed in accordance with Articles 49 to 54 of Commission Implementing Regulation (EU) 2015/2447 (*).

(*) Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).';

([1]) OJ L 269, 10.10.2013, p. 1.
([2]) Council Decision (EU) 2017/75 of 21 November 2016 on the signing, on behalf of the Union and its Member States, and provisional application of the Protocol to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, to take account of the accession of the Republic of Croatia to the European Union (OJ L 12, 17.1.2017, p. 1).
([3]) OJ L 12, 17.1.2017, p. 22.
([4]) Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).
([5]) Commission Regulation (EU) No 354/2011 of 12 April 2011 opening and providing for the management of tariff quotas of the Union for certain fish and fishery products originating in Bosnia and Herzegovina (OJ L 98, 13.4.2011, p. 1).

(2) the Annex is replaced by the text set out in the Annex to this Regulation.

Article 2

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

It shall apply from 1 February 2017.

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

Done at Brussels, 11 August 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

'*ANNEX*

Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording for the description of the products shall be considered as having no more than an indicative value, the preferential scheme being determined, within the context of this Annex, by the coverage of CN codes. Where ex CN codes are indicated, the preferential scheme shall be determined by application of the CN code and the corresponding description taken together.

FISH AND FISHERY PRODUCTS

Order No	CN Code	TARIC sub-divisions	Description	Annual Tariff Quota volume (in tonnes net weight)	Rate of quota duty
09.1594	0301 91 0302 11 0303 14 0304 42 0304 52 00 0304 82 0304 99 21 0305 10 00 0305 39 90 0305 43 00 0305 59 85 0305 69 80	 10 11, 12, 20 10 10 61 61	Trout (*Salmo trutta*, *Oncorhynchus mykiss*, *Oncorhynchus clarki*, *Oncorhynchus aguabonita*, *Oncorhynchus gilae*, *Oncorhynchus apache* and *Oncorhynchus chrysogaster*): live; fresh or chilled; frozen; dried, salted or in brine, smoked; fillets and other fish meat; flours, meals and pellets, fit for human consumption	500	Free
09.1595	0301 93 00 0302 73 00 0303 25 00 0304 39 00 0304 51 00 0304 69 00 0304 93 90 0305 10 00 0305 31 00 0305 44 90 0305 52 00 0305 64 00	 20 10 20 10 20 10 10 10 10	Carp (*Cyprinus* spp., *Carassius* spp., *Ctenopharyngodon idellus*, *Hypophthalmichthys* spp., *Cirrhinus* spp., *Mylopharyngodon piceus*, *Catla catla*, *Labeo* spp., *Osteochilus hasselti*, *Leptobarbus hoeveni*, *Megalobrama* spp.): live; fresh or chilled; frozen; dried, salted or in brine, smoked; fillets and other fish meat; flours, meals and pellets, fit for human consumption	140	Free
09.1596	0301 99 85 0302 85 10 0303 89 50 0304 49 90 0304 59 90 0304 89 90 0304 99 99	80 60 40 30 20	Sea bream (*Dentex dentex* and *Pagellus* spp.): live; fresh or chilled; frozen; dried, salted or in brine, smoked; fillets and other fish meat; flours, meals and pellets, fit for human consumption	30	Free

Order No	CN Code	TARIC sub-divisions	Description	Annual Tariff Quota volume (in tonnes net weight)	Rate of quota duty
	0305 10 00	30			
	0305 39 90	70			
	0305 49 80	40			
	0305 59 85	65			
	0305 69 80	65			
09.1597	0301 99 85	22	European sea bass (*Dicentrarchus labrax*): live; fresh or chilled; frozen; dried, salted or in brine, smoked; fillets and other fish meat; flours, meals and pellets, fit for human consumption	30	Free
	0302 84 10				
	0303 84 10				
	0304 49 90	70			
	0304 59 90	45			
	0304 89 90	40			
	0304 99 99	70			
	0305 10 00	40			
	0305 39 90	80			
	0305 49 80	50			
	0305 59 85	67			
	0305 69 80	67			
09.1598	1604 13 11		Prepared or preserved sardines	50	6 %
	1604 13 19				
	1604 20 50	10, 19			
09.1599	1604 16 00		Prepared or preserved anchovies	70	12,5 %’
	1604 20 40				

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1469

of 11 August 2017

laying down a standardised presentation format for the insurance product information document

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution ([1]), and in particular Article 20(9) thereof,

Whereas:

(1) Directive (EU) 2016/97 requires manufacturers of non-life insurance products as listed in Annex I to Directive 2009/138/EC of the European Parliament and of the Council ([2]) to draw up a standardised insurance product information document so as to provide customers with the necessary information about non-life insurance products as listed in Annex I of Directive 2009/138/EC in order to allow the customer to make an informed decision.

(2) Article 20(8) of Directive (EU) 2016/97 specifies which information the insurance product information document should contain.

(3) In order to provide customers with product information which is easy to read, understand and compare, a common design, structure and format should be used when presenting the information referred to in Article 20(8) of Directive (EU) 2016/97 in the standardised insurance product information document referred to in Article 20(5) of that Directive, including by way of the use of icons or symbols. Equally, information about add-ons and optional covers, if any, should not be preceded by ticks, crosses or exclamation marks and the information to be included in the insurance product information document should normally be set out on two sides of A4 paper, but should not in any event exceed three sides of A4 paper.

(4) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority (EIOPA) to the Commission.

(5) In accordance with Article 20(9) of Directive (EU) 2016/97, EIOPA has conducted consumer testing of the standardised insurance product information document and consulted national authorities. EIOPA has also conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits, and requested the opinion of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council ([3]),

HAS ADOPTED THIS REGULATION:

Article 1

Name and company logo of the manufacturer

1. The name of the manufacturer of the non-life insurance product, the Member State where that manufacturer is registered, its regulatory status, and, where relevant, its authorisation number shall immediately follow the title 'insurance product information document' at the top of the first page.

2. The manufacturer may insert its company logo to the right of the title.

([1]) OJ L 26, 2.2.2016, p. 19.
([2]) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).
([3]) Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

Article 2

Reference to complete pre-contractual and contractual information

The insurance product information document shall state prominently that complete pre-contractual and contractual information about the non-life insurance product is provided to the customer in other documents. That statement shall be placed immediately below the name of the manufacturer of the non-life insurance product.

Article 3

Length

The insurance product information document shall be set out on two sides of A4-sized paper when printed. Exceptionally, if more space is needed, the insurance product information document may be set out on a maximum of three sides of A4-sized paper when printed. Where a manufacturer uses three sides of A4-sized paper, it shall, upon request by the competent authority, be able to demonstrate that more space was needed.

Article 4

Presentation and order of content

1. The information of the insurance product information document listed in in Article 20(8) of Directive (EU) 2016/97 shall be presented in different sections and in accordance with the structure, lay-out, headings and sequence as set out in the standardised presentation format in the Annex to this Regulation, using a font size with an x-height of at least 1,2 mm.

2. The length of the sections may vary, depending on the amount of information that is to be included in each section. Information about add-ons and optional covers shall not be preceded by ticks, crosses or exclamation marks.

3. Where the insurance product information document is presented using a durable medium other than paper, the size of the components in the layout may be changed, provided that the layout, headings and sequence of the standardised presentation format, as well as the relative prominence and size of the different elements, are retained.

4. Where the dimensions of the durable medium other than paper are such that a layout using two columns is not feasible, a presentation using a single column may be used, provided that the sequence of the sections is as follows:

(a) 'What is this type of insurance?'

(b) 'What is insured?'

(c) 'What is not insured?'

(d) 'Are there any restrictions on cover?'

(e) 'Where am I covered?'

(f) 'What are my obligations?'

(g) 'When and how do I pay?'

(h) 'When does the cover start and end?'

(i) 'How do I cancel the contract?'.

5. The use of digital tools, including layering and pop-ups shall be permitted, provided that all the information referred to in Article 20(8) of Directive (EU) 2016/97 is provided in the main body of the insurance product information document and that the use of such tools does not distract the customer's attention from the content of the main document.

Information provided through layering and pop-ups shall not include marketing or advertising material.

Article 5

Plain language

The insurance product information document shall be drafted in plain language, facilitating the customer's understanding of the content of that document, and shall focus on key information which the customer needs to make an informed decision. Jargon shall be avoided.

Article 6

Headings and information thereunder

1. The sections of the insurance product information document shall have the following headings and the following information thereunder:

(a) the information on the type of insurance referred to in Article 20(8)(a) of Directive (EU) 2016/97 shall be included under the heading 'What is this type of insurance?', at the top of the document;

(b) the information on the main risks insured referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading 'What is insured?'. Each piece of information listed in this section shall be preceded by a green 'tick' symbol;

(c) the information on the insured sum referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading 'What is insured?';

(d) the information on geographical scope, where applicable, referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading 'Where am I covered?'. Each piece of information listed in this section shall be preceded by a blue 'tick' symbol;

(e) the information on a summary of the excluded risks referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading 'What is not insured?'. Each piece of information in this section shall be preceded by a red 'X' symbol;

(f) the information on the main exclusions referred to in Article 20(8)(d) of Directive (EU) 2016/97 shall be included under the heading 'Are there any restrictions on cover?'. Each piece of information listed in this section shall be preceded by an orange exclamation mark symbol;

(g) the information on the relevant obligations referred to in points (e), (f) and (g) of Article 20(8) of Directive (EU) 2016/97 shall be included under the heading 'What are my obligations?';

(h) the information on the means and duration of payment of premiums referred to in Article 20(8)(c) of Directive (EU) 2016/97 shall be included under the heading 'When and how do I pay?';

(i) the information on the term of the contract referred to in Article 20(8)(h) of Directive (EU) 2016/97 shall be included under the heading 'When does the cover start and end?';

(j) the information on the means of terminating the contract referred to in Article 20(8)(i) of Directive (EU) 2016/97 shall be included under the heading 'How do I cancel the contract?'.

2. The use of sub-headings is permitted, where necessary.

Article 7

Use of icons

1. Each section shall further be headed by icons that visually represent the content of the respective section heading, as follows:

(a) the information on the main risks insured referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed by an icon of an umbrella, which shall be white on a green background or green on a white background;

(b) the information on the geographical scope of the insurance cover referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed by an icon of a globe, which shall be white on a blue background or blue on a white background;

(c) the information on excluded risks referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed by an icon of an X symbol within a triangle, which shall be white on a red background or red on a white background;

(d) the information on the main exclusions referred to in Article 20(8)(d) of Directive (EU) 2016/97 shall be headed by an exclamation mark ('!') within a triangle, which shall be white on an orange background or orange on a white background;

(e) the information on the obligations at the start of the contract, during the term of the contract and in the event that a claim is made, referred to in points (e), (f) and (g) of 20(8) of Directive (EU) 2016/97, respectively, shall be headed by an icon of a handshake, which shall be white on a green background or green on a white background;

(f) the information on the means and duration of payments referred to in Article 20(8)(c) of Directive (EU) 2016/97 shall be headed by an icon of coins, which shall be white on a yellow background or yellow on a white background;

(g) the information on the term of the contract referred to in Article 20(8)(h) of Directive (EU) 2016/97 shall be headed by an icon of an hourglass, which shall be white on a blue background or blue on a white background;

(h) the information on the means of terminating the contract referred to in Article 20(8)(i) of Directive (EU) 2016/97 shall be headed by an icon of a hand with an open palm on a shield, which shall be white on a black background, or black on a white background.

2. All icons shall be displayed in a manner consistent with the standardised presentation format in the Annex.

3. The icons referred to in paragraphs 1 and 2 may be presented in black and white where the insurance product information document is printed or photocopied in black and white.

Article 8

Entry into force

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

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

Done at Brussels, 11 August 2017.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

Xxxxx Insurance

Insurance Product Information Document

Company: <Name> Insurance Company **Product: <Name> Policy**

[Statement that complete pre-contractual and contractual information on the product is provided in other documents]

What is this type of insurance?

[Description of Insurance]

What is insured?

- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx

What is not insured?

- ✗ Xxxxx
- ✗ Xxxxx
- ✗ Xxxxx
- ✗ Xxxxx
- ✗ Xxxxx

Are there any restrictions on cover?

- ! Xxxxx
- ! Xxxxx
- ! Xxxxx
- ! Xxxxx
- ! Xxxxx

Where am I covered?

- ✓ Xxxxxx

What are my obligations?

- — Xxxxxx
- — Xxxxxx
- — Xxxxxx
- — Xxxxxx

When and how do I pay?

Xxxxxx

When does the cover start and end?

Xxxxxx

How do I cancel the contract?

Xxxxxx

DECISIONS

COMMISSION DECISION (EU) 2017/1470

of 2 February 2017

on State aid schemes SA.26763 2014/C (ex 2012/NN) implemented by France in favour of bus transport undertakings in the Île-de-France Region

(notified under document C(2017) 439)

(Only the French 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 regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to those articles ([1]), and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter of 7 October 2008, received on 17 October 2008, a complainant who wished to remain anonymous ('the complainant') lodged a complaint with the Commission against the Île-de-France Region ('the Region') for having had in place since 1994 an aid and subsidy scheme for certain transport undertakings in the region.

(2) By letter of 25 November 2008, the Commission sent the French authorities a request for information relating to the complaint.

(3) By letter of 13 January 2009, the French authorities asked the Commission to allow them extra time in which to reply to the Commission's questions. The Commission agreed to their request by letter of 14 January 2009. The time limit for replying was extended to 18 February 2009.

(4) The French authorities replied to the Commission's request for information on 26 February 2009.

(5) By letters of 20 April, 2 September and 17 November 2010, the complainant sent the Commission further information regarding the measures awarded by the Region.

(6) Having received no request for further information, the French authorities, by letter of 31 May 2011, asked the Commission for written confirmation that the investigation procedure had been closed.

(7) By letter of 8 June 2011, the Commission asked the French authorities to comment on the additional information supplied by the complainant.

([1]) OJ C 141, 9.5.2014, p. 38.

(8) The Commission sent reminders by letter on 14 November 2011 and 29 February 2012 and by email on 22 September and 8 December 2011, but did not receive any response.

(9) A further request for information was sent to the French authorities on 17 July 2012.

(10) In the absence of a reply from the French authorities by the deadline, a reminder was sent to them by letter on 25 September 2012. No reply was received to this letter either.

(11) On 14 December 2012, the Commission issued an information injunction. France gave an incomplete reply on 22 January 2013 but undertook in the reply to come back to the Commission as soon as possible with a view to responding in full to the questions raised in the injunction decision. By the date of its decision to initiate the formal investigation procedure, the Commission had not received any further information.

(12) On 11 March 2014, and without ever having received the said information, the Commission therefore initiated the formal investigation procedure provided for in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU'). The decision to initiate the procedure ('the opening decision') was published in the *Official Journal of the European Union* ([2]) and in it the Commission called on third parties to submit their comments on the measures in question.

(13) France submitted its comments on 30 April 2014. The Commission also received comments from seven interested third parties. The Commission forwarded them to France, giving France the opportunity to comment on them. By letter of 3 September 2014, France informed the Commission that it had no comment to make.

(14) On 21 June 2016, outside the deadline, the Commission received a joint note from four of the seven interested third parties. The purpose of this note was primarily to set out the position of the third parties concerned following the judgment by the Court in *European Commission* v *Jørgen Andersen* ('the *Jørgen Andersen* judgment') ([3]).

(15) Lastly, the Region added to its comments by sending a supplementary note on 9 November 2016.

2. **BACKGROUND AND DESCRIPTION OF THE MEASURES**

(16) Île-de-France, with more than 12 million inhabitants, alone accounts for 18,8 % of the population of France, which makes it the most heavily and the most densely populated region of the country (996 inhabitants per sq. km). According to the Institut d'Aménagement et d'Urbanisme d'Île-de-France ([4]), Île-de-France holds the European records for traffic volumes, with an average of more than 240 000 vehicles per day on five of its sections of road (three sections of the ring road, one section of the A1 and one of the A4), which greatly exceeds the load on the busiest stretches of the motorways in London, Berlin or Milan. But even apart from the atypical situation on certain sections, the whole of the main network carries exceptionally high levels of traffic. One in two counting stations on the network run by the Île-de-France Road Directorate exceeds a figure of 18 000 vehicles per day and per carriageway, although this level of traffic is considered characteristic of a very serious situation on the major national motorways in the rest of France.

(17) 23 million motorised journeys are made in Île-de-France (representing two thirds of journeys made). More than half of these journeys are made using private vehicles (there are more than four million cars in the region) or utility vehicles. The remainder are made using public transport. A sign of the over-use of the main network in Île-de-France is also the consistently heavy traffic: the hourly flow often stays at maximum level from 6 am to 9 pm, with daily throughput virtually stable throughout the year. At such levels of use, slight variations in vehicle numbers can lead to widely differing speeds and quickly result in congestion. The negative externalities associated with such levels of congestion are plain: air pollution, time wasted, increased numbers of accidents, a fall in the attractiveness of the area, etc. In this situation, it is essential to develop and provide forms of public transport which attract users if sustainable mobility is to be achieved.

([2]) See footnote 1.
([3]) Judgment of 6 October 2015 in Case C-303/13P *Commission* v *Jørgen Andersen*, ECLI:EU:C:2015:647.
([4]) Report by the Institut d'Aménagement et d'Urbanisme d'Île-de-France published in March 2013 and accessible on line: www.omnil.fr/IMG/pdf/la_circulation_routiere_en_idf_en_2010.pdf.

(18) The Commission's in-depth investigation focused on a support system for investment in undertakings providing scheduled public transport services by road under public-service contracts, in the specific circumstances in Île-de-France, which should be taken into account. This system has developed over time depending on the arrangements for organising scheduled public transport by road in Île-de-France, which prompted the Commission to draw a distinction between two periods:

(a) the period from 1994 to 2008, during which the Region granted investment subsidies in return for the signing of a rider to operating agreements already reached between a transport undertaking and a public authority;

(b) the period from 2008 to 2016, during which subsidies were awarded by the Syndicat des Transports d'Île-de-France (Île-de-France Transport Authority) ('STIF') as part of the new system of organising transport in Île-de-France in place since 2007. This period itself subdivides into two subperiods, corresponding to the two types of public-service contract set up successively by STIF.

2.1. **Measures implemented by the Region**

(19) On 20 October 1994, the Region adopted a decision ([5]) aimed at renewing a set of measures introduced in 1979 ([6]) for the benefit of undertakings operating scheduled public transport services by road in the Île-de-France region. Before the 1994 decision, there had already been two decisions amending the original 1979 mechanism, one in 1984 (CF 84-07) and one in 1987 (CR 87-07). Two other decisions came after it, in 1998 (CR 44-98) and in 2001 (CR 47-01), until the mechanism was finally repealed in 2008.

(20) Under these decisions, the Region was able to grant financial aid to public authorities which had either signed a contract for scheduled bus services with a private undertaking or were operating them directly under local authority control. The public authorities paid this aid over to the transport undertaking where the latter was the owner of the subsidised investment.

(21) The subsidies granted were mainly intended to be used for the acquisition of new vehicles in return for a quantitative improvement in the service (increased frequencies or capacity, extension of routes or creation of new routes), a qualitative improvement in the service (adherence to a quality charter, buses with lowered decks), the installation of new equipment on board the vehicles (audio or visual stop announcement systems), the introduction of systems to issue and validate tickets, the upgrading of bus-stops and signs, or the carrying out of studies.

(22) The local authorities had to send their applications for subsidies to the Region.

(23) The rate of subsidy varied between 25 % and 60 % of costs excluding tax. There were ceilings on the amount of subsidy depending on the type of costs involved.

(24) Recipients of the aid had to undertake to maintain the quantitative and qualitative improvements in the service supplied, the vehicles and the equipment for at least five years from the date on which they were brought into service. For those five years, vehicles benefiting from the subsidies had to be used essentially and as a matter of priority on the routes concerned.

(25) Lastly, the local authorities acting as contractors and the undertakings were required to sign a rider to their operating agreements, countersigned by the chairman of the Regional Council, which regulated the use of the aid and listed the obligations imposed on the undertaking receiving the aid in terms of quantitative and qualitative improvements in the service provided.

(26) According to the French authorities, 135 undertakings received aid under that measure between 1994 and 2008, out of a total of 150 in the Île-de-France region.

2.1.1. *Proceedings before the national administrative court*

(27) In May 2004, the independent union of passenger carriers (Syndicat autonome des transporteurs de voyageurs, 'SATV') asked the chairman of the Regional Council to rescind the three decisions mentioned above. As the chairman refused to so, on 17 June 2004 SATV filed an application with the Paris Administrative Court for annulment of the decision refusing their request.

([5]) Decision CR 34-94 of 20 October 1994 on aid for the improvement of public road transport services operated by private undertakings or undertakings under local authority control.
([6]) Decision CR 79-21 of 10 July 1979.

(28) In its judgment of 10 July 2008 ([7]), the Administrative Court granted SATV's application for annulment and ordered the Region to submit a new decision to the Regional Council on the grounds that the establishment of the aid system concerned had not been preceded by notification to the European Commission. The Administrative Court also ordered the Region to rescind the three decisions.

(29) The Region, while appealing against this judgment, rescinded the decisions in dispute by Decision CR80-08 of 16 October 2008.

(30) On 12 July 2010 ([8]), the Administrative Appeal Court (Cour administrative d'appel, 'the CAA') of Paris confirmed the judgment of the Administrative Court. The Region appealed against that ruling to the Council of State. The Council of State rejected the appeal in a judgment of 23 July 2012 ([9]).

(31) Four interested third parties lodged an appeal in third party proceedings against the Paris CAA judgment. On 27 November 2015, following the rejection of that appeal by the CAA, the interested third parties lodged an appeal which is still pending.

(32) Following a fresh application filed by SATV on 27 October 2008, the Paris Administrative Court, by its judgment of 4 June 2013 ([10]), ordered the Region to issue writs of execution for the recovery of the aid, on the basis of the decisions annulled by judgment No 0417015 of 10 July 2008. The Region appealed against that judgment. On 31 December 2013, the Paris CAA turned down the application ([11]). The Region lodged a final appeal against that judgment with the Council of State. That appeal is still pending.

2.2. **Measures implemented by STIF**

(33) STIF is a public administrative establishment governed by Decree No 2005-664 of 10 June 2005. It organises, coordinates and finances the public passenger transport services in Île-de-France provided by the Régie autonome des transports parisiens ('RATP'), the Société nationale des chemins de fer français ('SNCF'), Transilien and private bus undertakings belonging to the network of the Organisation professionnelle des transports d'Île-de-France ('OPTILE').

(34) By Decision No 2006/1161 of 13 December 2006, STIF laid down a new system of contractual organisation for all scheduled public transport routes by road. The aim was to strengthen its role as an organising authority in defining the supply and the level of service, and as regards the transport undertakings' performance and financial transparency.

(35) The new organisational system is based on a regional specification, the principles of which are laid down in two successive contracts concluded for a total period of 10 years:

(a) the first of these, a Type 1 contract ('CT1'), was concluded for a maximum period of four years (2007-2010, or 2011 in the case of the latest contracts);

(b) the second, a Type 2 contract ('CT2'), was concluded following bilateral negotiations with each private undertaking for transport networks covering the greater Paris area for the remaining period up to 31 December 2016.

(36) These two types of contract, each in its own way, operate on the principle of subsidising investment made by the transport undertakings.

2.2.1. *Description of the CT1s*

(37) CT1s were signed with 75 private transport undertakings on 13 December 2006 and entered into force on 1 January 2007. They followed on from the previous operating agreements, while at the same time paving the way for the transition to the 'target' form of contract, the CT2.

([7]) Judgment No 0417015/7-1.
([8]) Judgment No 08PA04753.
([9]) Judgment No 343440.
([10]) Judgment No 0817138/2-1.
([11]) Judgment No 13PPA03174.

(38) A CT1 was signed with each undertaking for all the routes it operated. Under Article 2-1 of the CT1, the object of the contract was to lay down 'the terms on which the Undertaking would provide the public scheduled passenger transport service by road which it operates in Île-de-France'. It laid down the practical arrangements for relations between STIF and the service provider with regard to:

(a) consistency and commitments to provide the scheduled public transport service by road as laid down in the Regional Transport Plan and described in the contract;

(b) quality obligations applicable to the supply of services under the contract in compliance with the basic minimum levels laid down in the regional specification;

(c) assets and investments;

(d) the calculation of STIF's contributions in line with the principles laid down in the regional specification;

(e) the specific procedures governing the contractual relationship between STIF and the undertaking in terms of information, supervision, review and end of contract.

(39) By decision of its board of 2 October 2008, STIF amended the CT1s by means of a rider ('Rider No 3') and set up a mechanism of subsidies for investment in rolling stock. The amount of these subsidies was capped by price ceilings to which a maximum rate of participation by STIF applied. The undertakings in receipt of subsidies were required to use the equipment subsidised solely for the purpose of carrying out the public-service activities listed in the STIF transport plan, for a minimum period of eight years.

(40) Thus, under the CT1, 836 vehicles were financed, for a total amount of subsidies paid which came to EUR 61,5 million.

2.2.2. *Description of the CT2s*

(41) The CT2 largely included the same general provisions as the CT1, in particular as regards the objectives of the contract and the procedures for managing relations between STIF and the service provider.

(42) Similarly, the CT2 provides for a contribution by STIF 'in respect of the discharge of its public-service obligations'. This contribution comprises one part, known as C1, linked to the operating costs and one part, known as C2, linked to investment financing.

(43) Contribution C2 under the CT2s is not akin to a traditional subsidy based, as with the Region's system or that of the CT1s, on the application of a price ceiling/subsidy rate pairing. Contribution C2 covers, for each year, all investment costs (net of the effect of any subsidies from elsewhere) which flow from the investment plan validated by STIF and are written into the projected operating account drawn up by the transport undertaking and also validated by STIF.

(44) Contribution C1 covers the operating costs incurred in discharging the public-service obligations ('PSOs'), minus revenue, plus a contractually negotiated profit. These elements are also written into the projected operating account drawn up by the transport undertaking and validated by STIF. As it was not related to investment issues, the Commission did not include contribution C1 in the scope of its in-depth investigation, as defined in the opening decision.

(45) Since April 2012, all the networks have gone over to CT2 contracts, with 143 contracts signed. No award notices were issued in respect of the contracts awarded to OPTILE undertakings, nor was any notice published in the *Official Journal of the European Union*. The award notices for the contracts signed with RATP and SNCF Mobilités were published on 3 December 2015, i.e. on a date subsequent to the award date.

(46) Under the CT2s, and up to the time when STIF submitted its comments, 2 177 vehicles were financed for a total of EUR 796,9 million.

3. SUMMARY OF DOUBTS RAISED IN THE OPENING DECISION

3.1. Existence of aid

(47) As there was no adequately reasoned response from the French authorities during the preliminary investigation, the Commission had a very incomplete grasp of the measures to which the complaint related. The doubts raised in the decision of 11 March 2014 largely reflect this lack of information.

(48) The Commission firstly wondered whether the investment support measures implemented by the Region and then by STIF should properly be classed as subsidies or as compensation linked to the discharge of the PSOs.

(49) Should the French authorities succeed in demonstrating that the arrangements could be treated as compensation, it was not certain that they complied with the criteria set out in the *Altmark* judgment ('*Altmark* criteria') ([12]). The PSOs did not appear to be clearly defined. The Commission also expressed doubts as to the objectivity and transparency of the method of calculating the subsidy percentages and ceilings for the acquisition of equipment and vehicles, and pointed out that the fact that the amounts allocated to the authorities had reportedly been set on a lump-sum basis did not appear to it to be material as a means of preventing any overcompensation. Lastly, it did not have sufficient information to hand to decide whether the fourth *Altmark* criterion, relating to cost analysis, had been met.

3.2. Compatibility

(50) The Commission stated that, owing to the lack of a reply or to the incomplete replies from the French authorities, the question of the legal basis applicable for the purpose of analysing the compatibility of the arrangements referred to in the opening decision had not been addressed. In addition, because of doubts as to the type of aid granted (subsidies or compensation), it appeared premature to choose a legal basis.

(51) If the measures in question were to be considered to be compensation, the Commission was doubtful whether they were compatible with Articles 3, 4 and 6 of Regulation (EC) No 1370/2007 of the European Parliament and of the Council ([13]).

4. COMMENTS BY FRANCE ON THE OPENING DECISION

4.1. Existence of aid

4.1.1. *Measures implemented by the Region*

(52) France maintained that the criteria of selectivity and the effect on trade between Member States were not met.

4.1.1.1. No selectivity

(53) France explained that all operators of scheduled public transport services by road in Île-de-France who so requested had benefited from the measures in question (135 undertakings out of a total of 150). Moreover the measures were awarded on the basis of objective conditions which had been defined in advance in the decision by the Île-de-France Region. So there was no exercise of discretionary power by the public authorities in awarding the measures.

(54) The French competition authority had itself considered that the market in scheduled public transport services by road in Île-de-France was a specific market owing to its particular legal framework. What is more, the equipment used on the coach transport market was not the same as on the scheduled transport market.

4.1.1.2. No effect on trade between Member States

(55) According to France, the case law of the Court of Justice stated explicitly that an aid scheme set up in a market closed to competition did not fall within the scope of Article 107(1) TFEU ([14]).

([12]) Judgment of 24 July 2003 in Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg* v *Nahverkehrsgesellschaft Altmark GmbH*, ECLI:EU:C:2003:415.

([13]) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).

([14]) Judgement of 15 June 2000 in Case T-298/97 *Alzetta Maura* v *Commission*, ECLI:EU:T:2000:151.

(56) In the case in point, the undertakings which benefited from the measures in question were in a monopoly position on each of the routes served.

(57) Therefore, given the closed nature of the market and the monopoly position of the undertakings which benefited, the measures in question were not such as to affect trade between Member States. The fact that a minority of undertakings which benefited were active on the territory of other Member States would not alter that conclusion, since the undertakings concerned were using the regional aid only for public-service tasks.

4.1.2. *Measures implemented by STIF*

(58) According to France, the measures implemented by STIF should be described as public-service compensation. As that compensation met the four *Altmark* criteria, it did not constitute State aid.

4.1.2.1. First *Altmark* criterion

(59) The PSOs which had to be discharged by the operators were clearly defined in Article 4-2 of the CT1 and were, in particular, obligations relating to maintenance, operation, carriage of users, ticket pricing, safety and information. In addition to these obligations, Rider No 3 stipulated, in particular, that the vehicles had to be used on the routes stated in the contract for a period of eight years.

(60) As the CT2 incorporated the PSOs from the CT1 (Article 5-2), while adding tighter qualitative requirements relating to the fleet in circulation (Articles 41 to 43), the PSOs which operators had to discharge were clearly defined there too. They included, for example, obligations relating to investment, maintenance and upkeep for the purpose of guaranteeing that the equipment had a certain life cycle.

4.1.2.2. Second *Altmark* criterion

(61) As regards the CT1, Rider No 3 laid down that the compensation paid for the renewal and expansion of the fleet should be calculated by applying a predefined rate of maximum STIF participation at ceiling prices which were also set in the Rider.

(62) Article 53 of the CT2 provided for two types of contribution linked to the PSOs, contribution 'C1' (Article 53-2) to cover operating costs and contribution 'C2' (Article 53-3) to cover investment costs.

(63) Therefore, according to France, the compensation was calculated in advance in an objective and transparent manner.

4.1.2.3. Third *Altmark* criterion

(64) The public-service contracts (CT1 and CT2) laid down that compensation for investment should be paid only after the vehicles and equipment had been purchased. STIF also carried out consistency checks on parts received to make sure that the rolling stock purchased did actually match the original application. STIF could carry out investigations, audits or checks at any time. The beneficiary undertakings were required to produce annual reports accounting for investment made as compared to their advance planning. Lastly, the contracts included clauses requiring repayment in the event of non-performance of contractual obligations and STIF could apply penalties. According to France, these features meant it could be guaranteed that there was no overcompensation.

4.1.2.4. Fourth *Altmark* criterion

(65) STIF had devised analytical tools with which to carry out cost comparisons on the basis of the data base compiled by all the operators which had a contract with it. This would ensure that the level of compensation was set on the basis of an analysis of the costs of an average well-managed undertaking.

4.2. **Compatibility**

4.2.1. *Measures implemented by the Region*

(66) France stressed that if the Commission were to class the measures as 'public-service compensation', the legal basis for assessing the compatibility of the measures implemented by the Region would be Regulation (EEC) No 1191/69 of the Council ([15]). France considered that the measures met the conditions laid down in Articles 2 and 14 of that Regulation.

(67) Furthermore, according to France, the mechanism put in place by the Region met the cumulative conditions for compatibility of State aid under Article 107(3) TFEU, i.e. contribution to objectives of common interest; market failure; the appropriateness of the choice of the measure as an instrument for action; the existence of an incentive effect; the limitation of the aid to the minimum necessary; limited negative effects; and transparency in the awarding of the aid.

4.2.2. *Measures implemented by STIF*

(68) Should the Commission consider that the measures implemented by STIF constituted State aid, France believed it could demonstrate their compatibility on the grounds of their conformity with Regulation (EC) No 1370/2007. According to the French authorities, the STIF mechanism met the requirements of that Regulation, i.e. that the PSOs be clearly defined, that the parameters for calculating the compensation be established in advance in an objective and transparent manner, and that arrangements be determined for the allocation of costs connected with the provision of services.

(69) The CT1 met these requirements through the obligations listed in recital 64 and through the fact that STIF could carry out checks on the terms of implementation of those obligations.

(70) As regards the CT2, the compensation payments provided for under the obligations were subdivided depending on their purpose (to cover operating costs or investment costs). In the event of failure to renew vehicles as laid down in the vehicle fleet investment plan, the depreciation amounts and the corresponding financial costs were refunded to STIF. The French authorities emphasised that STIF also had the right to carry out audits and extensive checks under the CT2s. It would therefore appear that STIF could satisfy itself that its payments were intended solely to cover costs specific to the CT2, and that they constituted fair compensation for PSOs in a manner compatible with Regulation (EC) No 1370/2007 and with the common market.

5. **COMMENTS FROM INTERESTED PARTIES AND OBSERVATIONS BY FRANCE**

5.1. **The Region**

(71) The Region referred only to the measures it had itself implemented between 1994 and 2008.

(72) The Region pointed out that the organisation of transport in Île-de-France was subject to a system of derogations from the ordinary rules on the grounds of the special circumstances prevailing there (population expansion, urban spread, establishment of international airports, large numbers of stations).

(73) The beneficiaries under the arrangement were local public authorities which had signed a route operating contract with private undertakings or were operating such routes under local authority control. These beneficiaries were active on the market in Île-de-France, which had not been liberalised.

5.1.1. *Existence of aid*

(74) The measures in question did not constitute State aid. According to the Region, the criteria of selectivity and effect on trade between Member States were not met.

5.1.1.1. Selectivity

(75) The measures in question were awarded on the basis of objective, defined conditions whereby any undertaking which met the conditions could benefit from the measures. The undertakings which did not benefit from them had either not applied to do so or were not eligible for them.

([15]) Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ L 156, 28.6.1969, p. 1).

(76) Moreover, the legal system governing the market in public passenger transport in Île-de-France displayed special features which were recognised by the French Competition Authority. As all the undertakings, therefore, were not in a comparable legal and factual position, it could not be concluded that the measures in question were selective.

(77) Furthermore, undertakings operating scheduled public transport services by road and undertakings operating other types of transport services did not use the same rolling stock.

5.1.1.2. Effect on competition and trade between Member States

(78) The Region subscribed to the assessment of this point by France.

5.1.2. *Compatibility*

(79) As the measures could not be classed as aid, the Region did not assess their compatibility.

5.1.3. *Classification as an existing aid scheme*

(80) In its final observations, the Region introduced the argument that the mechanism in force up to 2008 should be treated as an existing aid scheme. According to the Region, this mechanism was set up on the basis of legislation dating back to 1949 and 1959, i.e. to a time (1949) prior to the Treaty of Rome or, if 1959 was taken as the basis, to a time when the market in scheduled public transport services by road in Île-de-France was not open to competition.

5.2. **STIF**

(81) STIF gave its views only on the measures it itself implemented: the CT1s and CT2s.

5.2.1. *Existence of aid*

(82) According to STIF, the measures in question could not be classed as State aid in that they met the four *Altmark* criteria.

5.2.1.1. First *Altmark* criterion

(83) STIF took the view that the first *Altmark* criterion was met since the PSOs imposed on the transport undertakings were effectively set out clearly and precisely, including those corresponding to the investment costs. The aim and effect of the mechanism was to impose on private transport undertakings obligations to operate services and carry passengers, and fare obligations, which were essential in order to ensure the provision of a transport service akin to a PSO.

(84) As regards the CT1s, all the obligations were listed in each contract. As for the CT2s, they followed on from the CT1s, which already laid down the PSOs clearly.

(85) The ability to perform the public-service task and fulfil public-service obligations also depended on the vehicles (quality, equipment, age, etc.), entailing detailed obligations with respect to the vehicles, including the obligation, under the CT2s, to draw up a precise investment plan.

5.2.1.2. Second *Altmark* criterion

(86) As regards the CT1s, STIF considered that the parameters which formed the basis for calculating the public-service compensation were objective and transparent.

(87) The CT2s contained data for calculating the compensation, meaning that the parameters were known in advance and were established objectively and transparently. In the CT2s, there was provision for a financial account for the service contractually agreed between STIF and the undertaking, reflecting the economic balance of the contract and covering all the undertaking's revenues and costs, including the contributions from STIF.

(88) The two types of contract also included mechanisms for monitoring the compensation.

(89) So, according to STIF, the parameters for the compensation granted to operators were established in advance in an objective and transparent manner.

5.2.1.3. Third *Altmark* criterion

(90) STIF argued that the method used to select and compare bids and calibrate the contracts before they were signed made it possible to prevent any risk of overcompensation.

(91) The operating costs were analysed thoroughly before contracts and riders were signed, on the basis of a projected operating account drawn up by the applicant undertaking and setting out technical and economic data. The analysis took account of the following criteria:

(a) the volume of the service offered by route, by period and by time slot, from which the number of hours of driving required to operate each route, depending on the time of year, could be determined;

(b) the appropriate proportion of the vehicle fleet to be allocated to each part of the network;

(c) the level of the contribution, which depended on negotiating the operating costs on the basis of a detailed breakdown by the undertaking; and

(d) a revision formula for transposing the amounts laid down in the contract into euros at current prices.

(92) The method used downstream during performance of the contract would also be a way of obviating any overcompensation. This included:

(a) under the CT1, monitoring of the terms of fulfilment of the PSOs, including in the light of the compensation payments made for the acquisition of vehicles;

(b) under the CT2, refunding of depreciation amounts and financial costs in the event of non-renewal of the vehicles as scheduled in the investment plan.

(93) For both types of contract, STIF checked that the contributions paid were actually utilised.

5.2.1.4. Fourth *Altmark* criterion

(94) There was no public procurement procedure for the award of the public-service task.

(95) However, according to STIF, the level of compensation was determined on the basis of a thorough and detailed analysis of the costs which an average well-run undertaking would have incurred. Having regard to the number of contracts and the range of operators, STIF considered that it had an accurate and complete picture of the real situation on the market, particularly since the contract with each operator was based on a standard model and on detailed individual data.

(96) STIF also had access to sophisticated analytical tools. It called on consultancies to conduct audits or carry out more detailed internal technical analyses, and drew up comparisons of services offered on the Île-de-France market, and services awarded on the basis of competitive tender on passenger transport markets outside Paris.

(97) In STIF's view, its service-quality requirements met the criteria of comparability with an average well-managed undertaking. The CT1s contained common objectives with a view to harmonising quality standards on the bus network, and indicators for measuring the standard of service, with a system of financial incentives. The system was taken further in the CT2s.

(98) Consequently, the level of compensation was determined on the basis of the costs which an average well-managed undertaking appropriately equipped with means of transport would have incurred in order to discharge these obligations.

5.2.2. *Compatibility*

(99) Were the Commission none the less to regard the arrangement as State aid, STIF asked it to stipulate the legal basis on which it proposed to assess whether the aid was compatible. STIF had queries regarding the fact that, in its opening decision, the Commission considered that compatibility should be assessed on the basis of Regulation (EC) No 1370/2007. As the measures concerned had been adopted prior to that Regulation, STIF took the view that Regulation (EEC) No 1191/69 should be preferred. However, to be consistent with the Commission's opening decision, STIF's comments were based on Regulation (EC) No 1370/2007.

(100) According to STIF, the CT1s and CT2s fulfilled all the conditions laid down in Regulation (EC) No 1370/2007.

(101) Firstly, the contracts signed with private operators were public-service contracts within the meaning of Regulation (EC) No 1370/2007, with STIF representing the competent authority.

(102) Secondly, the condition that the PSOs must be clearly defined was also fulfilled, with a clear definition of the geographical areas concerned.

(103) Thirdly, the parameters for calculating the compensation were precise and were established in advance in an objective and transparent manner.

(104) Fourthly, the contracts included details of the costs to be borne by the undertaking and by STIF.

(105) Fifthly, on the basis of the reasoning in recitals 90 to 93, there was no risk of overcompensation.

5.3. **OPTILE**

(106) OPTILE is a grouping of 70 undertakings (2012 figure), other than SNCF and RATP, operating scheduled transport services under the Region's transport plan. Its comments related only to the measures implemented by the Region.

5.3.1. *Existence of aid*

(107) Contrary to what the Commission supposed in its opening decision, OPTILE did not regard this aid as coming on top of the compensation already paid by the local authorities and therefore did not class it as an additional payment but as relief on the compensation paid by the local authorities.

(108) Payment of the aid had moreover been made subject to the conclusion of riders to the pre-existing public-service contracts imposing new obligations on the operator.

(109) According to OPTILE, only one of the criteria for a measure to be classed as State aid had therefore been met, namely the existence of public resources. Selectivity, the existence of an economic advantage and effects on competition and trade between Member States were absent, in its view.

5.3.1.1. Economic advantage

(110) Aid paid by the Region was intended for local authorities, not for transport undertakings, the aim being to lighten the financial burden borne by such authorities.

(111) If such aid had not been paid, either the performance of the contracts would have continued without alteration, with the level of supply and the terms and conditions of the service defined in the initial contract remaining unchanged, or the contracting authorities would have had to pay larger amounts of compensation owing to the increased deficit caused by the fact that revenue from fares would have been insufficient to meet the costs of the supply of services as redefined in the riders to the public-service contracts.

(112) The sums made available to undertakings at the time vehicles were acquired were refunded to the contracting authorities over the depreciation period of the equipment, and the financial cost to the undertakings was the same as if they had resorted to a bank loan. It was therefore a matter of transferring a cost between local authorities.

(113) Furthermore, according to OPTILE, aid paid by the Region was akin to public-service compensation. As the four *Altmark* criteria were met, there was no question of there being an economic advantage.

(114) Regarding the first *Altmark* criterion, payment of aid by the Region was subject to the conclusion of a rider to the contracts between the contracting authorities and the undertakings. This rider meant an increase in the service supplied and included obligations designed to bring about a qualitative improvement, with checks to ensure that the obligations were properly discharged.

(115) As regards the second *Altmark* criterion, the parameters for calculating the compensation were established in advance in an objective and transparent manner, and were based on an objective determination of the cost of the service. By way of example, OPTILE gave the rates of participation by the Region in the financing of vehicles (ranging from 25 % to 60 % of the cost of acquisition depending on the characteristics of the vehicles and of the network), which were set in advance, as were the ceilings on eligible costs. The method whereby the subsidy was charged to the compensation paid to the undertaking operating the service was also laid down in the standard rider.

(116) Regarding the third *Altmark* criterion, the compensation paid by the local authorities was determined on the basis of a forward budget, which was itself drawn up on the basis of the costs of operating the service. These costs reflected the impact of the equipment subsidy from the Region and of the revenue determined in accordance with the most recent passenger counts. The agreements entitled the authority to audit the undertaking's accounts.

(117) Regarding the fourth *Altmark* criterion, before the agreements were signed the authorities analysed the undertakings' cost structures. Costs relating to the supply of rolling stock actually accounted for only about 15 %.

5.3.1.2. Selectivity

(118) All the local authorities organising a scheduled public transport network by road in Île-de-France were eligible to receive the aid. The criteria for awarding it were established in advance and were objective. Undertakings which only occasionally provided transport services were not involved.

5.3.1.3. Effect on competition and trade between Member States

(119) Firstly, the market in scheduled public transport services by road in Île-de-France was not open to competition. Secondly, when the mechanism was set up in 1979, transport markets were not yet open to competition in the other Member States.

(120) The possibility highlighted by the Commission that undertakings in Île-de-France might use subsidised equipment to apply for the award of other transport contracts open to competition in France and Europe would not be feasible either contractually or practically. For one thing, the contractual provisions limited the use of vehicles partly subsidised by the Region for other activities and precluded taking advantage of the regional mechanism to operate on another market; for another, the rolling stock used to operate the subsidised service in Île-de-France could not physically be assigned simultaneously to the provision of a similar service on other markets outside Île-de-France.

(121) In any case, vehicles intended for urban transport services carrying passengers most of whom were standing would not, according to OPTILE, be usable for occasional transport services requiring the use of coaches fitted out for the transport of seated passengers.

5.3.2. *Compatibility*

(122) If the mechanism were to be seen as State aid, compatibility should be assessed under the provisions of Regulation (EEC) No 1191/69, not those of Regulation (EC) No 1370/2007, for reasons of legal certainty and legitimate expectations.

(123) In accordance with Regulation (EEC) No 1191/69, the public-service contracts were necessary as a response to population expansion and the desire to provide an adequate scheduled public transport service by road, without making the users bear the cost, while taking account of concerns linked to environmental standards. The contracts complied, in particular, with Article 14 of the Regulation since they included the minimum points required. Lastly, the compensation paid to the undertakings did not exceed what was necessary to ensure the operation of the public service: it was limited to the amount of the difference between the costs of providing the services defined in the contract and the sum of all the revenues therefrom.

(124) Should the mechanism be regarded as State aid, there would therefore be grounds for declaring it compatible on the basis of Regulation (EEC) No 1191/69.

5.4. **Keolis**

(125) Keolis is a group of companies operating in the transport sector and, in particular, scheduled public transport by road in Île-de-France. It is a member of OPTILE. Keolis's comments related only to the measures implemented by the Region.

5.4.1. *Existence of aid and conformity with Regulation (EEC) No 1191/69*

(126) While the Region had provided aid to the local authorities, Keolis stated that the operation was financially neutral for the operators. Without aid, the local authorities would have had either to pay an equivalent subsidy to the operators with whom they had an operating agreement or to agree to a reduction in the service. The operators had not, therefore, received any additional advantage as compared to public financing without the Region's mechanism.

(127) Furthermore, the arrangement in question could not be separated from the operating agreements reached between transport undertakings and local authorities. It was merely an element of the implementation by the local authorities of public-service contracts within the meaning of Article 14 of Regulation (EEC) No 1191/69, with which, according to Keolis, the contracts concerned complied.

(128) Therefore, the arrangement was not in itself a vector for State aid, as operators did not derive any economic advantage from it.

5.4.2. *Classification as an existing aid scheme*

(129) According to Keolis, the arrangement set up by the Region in 1994 was an existing scheme since it applied the provisions of Article 19 of the 1949 decree ([16]), which had been promulgated before the entry into force of the Treaty of Rome. The measures in question therefore had to be considered in the context of Council Regulation (EC) No 659/1999 ([17]), and it would be solely up to the Commission to make proposals to the French authorities, if necessary, for appropriate measures for the future. However, as the mechanism in question had been repealed in 2008, there were no longer any grounds for considering it.

(130) Even if 1994 were taken as the year when the mechanism was set up by the Region, the conclusion would have to be the same. In 1994, the economic sector concerned was closed to competition, as the decisions adopted by the Commission in 1997 and 1998 ([18]) show. The criterion concerning the effects on trade between Member States was therefore not satisfied.

(131) It was true that the common market had evolved since 1994, with certain Member States having unilaterally decided to open up their local passenger transport markets to competition, But even if this evolution were sufficient now to confer the character of State aid on the arrangement set up by the Region, it would then simply have become an existing aid scheme. For the reason stated in recital 129, there were therefore no grounds for looking into it.

5.5. **RATP Dev**

(132) RATP Développement ('RATP Dev') is a subsidiary of RATP, a public body whose main activity is the urban and interurban transport of passengers by road and rail. Its comments related only to the measures set up by the Region and the CT1 contract.

5.5.1. *Existence of aid*

5.5.1.1. Measures implemented by the Region

(133) RATP Dev argued that two of the criteria for classing the measures implemented by the Region as aid were missing, that of selectivity and that of economic advantage.

([16]) Decree No 49-1473 of 14 November 1949 on the coordination and harmonisation of rail and road transport.
([17]) 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) ('the 1999 Procedural Regulation').
([18]) Commission Decision 98/693/EC of 1 July 1998 concerning the Spanish Plan Renove Industrial system of aid for the purchase of commercial vehicles (August 1994 — December 1996) (OJ L 329, 5.12.1998, p. 23); Commission Decision 98/182/EC of 30 July 1997 concerning aid granted by the Friuli-Venezia Giulia Region (Italy) to road haulage companies in the Region (OJ L 66, 6.3.1998, p. 18).

(134) As regards the selectivity criterion, the special legal framework of the market in scheduled public passenger transport by road in Île-de-France made it a separate geographical market, as the French Competition Authority had also pointed out. Within the framework of this market, the mechanism set up by the Region was a general non-discriminatory and non-discretionary measure, as it benefited all the undertakings providing scheduled public passenger transport by road in Île-de-France which had signed an operating agreement with a local authority.

(135) In view of the conditions of geographical selectivity ([19]) and material selectivity ([20]), as defined by EU case law, the arrangement set up by the Region was not State aid but a general measure.

(136) As regards the economic advantage criterion, the subsidies given by the Region had to be treated as being akin to public-service compensation. Such compensation was in conformity with the four *Altmark* criteria; it did not confer any economic advantage.

(137) As regards the first *Altmark* criterion, which required the PSOs to be clearly defined, RATP Dev stressed that, when the forms of compensation tied to the fulfilment of those obligations came from several State sources, they had to be assessed in relation to all the PSOs included in the public-service contract. It would therefore not be correct to consider that the subsidies from the Region were awarded only to compensate for the additional obligations imposed by the Region. On the contrary, they were one component, among others, of the compensation paid to the transport undertakings.

(138) These PSOs were clearly defined in the operating agreements between local authorities and the transport undertakings, with the amendments demanded as a condition of the granting of subsidies from the Region being merely in addition. The obligation to invest in rolling stock was also clearly acknowledged by the Commission, particularly in the Community guidelines on State aid for railway undertakings ([21]), as a PSO which could attract compensation for its discharge.

(139) As regards the second *Altmark* criterion, the rates of subsidy had been clearly set according to the different objectives pursued in acquiring vehicles (from 25 % to 60 % depending on whether it was a matter of expanding the fleet or of investing in renewal) and the subsidy ceilings had been set in advance. The calculation mechanism was regularly reviewed, having regard to the need to readjust in advance, and in a transparent manner, the level of subsidies in order to prevent any overcompensation.

(140) As regards the third and fourth *Altmark* criteria, the financing set-up in the operating agreements laid down that the transport undertaking concerned should each year notify a projected operating account, under strict limits, in which the revenues inherent in subsidies from the Region were incorporated. Participation by the co-contracting local authority was set in line with the deficit recorded in the projected operating account. There were also refund mechanisms to prevent any overcompensation.

5.5.1.2. Measures implemented by STIF under the CT1

(141) According to RATP Dev, the mechanism implemented by STIF did not meet the criteria of selectivity and economic advantage. It could not therefore be described as State aid.

(142) In the case of the selectivity criterion, the same reasoning as that set out in recitals 134 and 135 applied.

(143) In the case of the economic advantage criterion, the subsidies from STIF were akin to public-service compensation. According to RATP Dev, they satisfied the four *Altmark* criteria.

(144) As regards the first *Altmark* criterion, RATP Dev pointed out that the Commission, in its opening decision, did not dispute that the operating costs were designed to compensate for the discharge of clearly defined PSOs.

(145) As regards the second *Altmark* criterion, for each of the routes concerned the co-contracting undertakings submitted dossiers to STIF. These dossiers evaluated the financing needs on the basis of a detailed financial analysis.

([19]) See, for example, judgment of 6 September 2006 in Case C-88/03 *Portugal* v *Commission*, ECLI:EU:C:2006:511, paragraphs 56-58.
([20]) See, for example, judgment of 7 March 2012 in Case T-210/02 *British Aggregates* v *Commission*, ECLI:EU:T:2012:110.
([21]) OJ C 184, 22.7.2008, p. 13.

(146) Lastly, as regards the considerations linked to the third and fourth criteria, RATP Dev explained that legal analysis of the CT1s clearly showed that the principles applying to remuneration were in conformity with the rulings in the *Altmark* judgment, as those contracts also had checking mechanisms which could lead to a refund of the aid.

5.5.2. *Classification as an existing aid scheme*

(147) RATP Dev regarded the mechanisms run by the Region and STIF as existing aid schemes within the meaning of the 1999 Procedural Regulation since they had been set up, according to RATP Dev, before the TFEU entered into force and the relevant scheduled transport markets were still closed markets at that time.

(148) The Region's mechanism was based on a regulatory arrangement that had not changed between 1949 and 2012, while the STIF mechanism was the extension of a scheme set up in 1948.

(149) The Region's and STIF's mechanisms did not constitute State aid when they were implemented, in that they did not hinder intra-Community trade. At the time they were set up, the markets concerned were closed to competition, which ruled out meeting the fourth criterion for qualifying as State aid.

(150) The Commission had no power to call for the recovery of aid paid under these existing aid schemes. It could only lay down corrective measures for the future.

5.5.3. *Compatibility*

(151) If a compatibility assessment were to be required, it would, according to RATP Dev, be necessary to examine the scheme by the yardstick of Regulation (EEC) No 1191/69 with respect to the subsidies paid before 3 December 2009, the date on which Regulation (EC) No 1370/2007 entered into force.

(152) The contracts concluded by RATP Dev undertakings could be regarded as public-service contracts within the meaning of Regulation (EEC) No 1191/69. For the reasons already set out in recital 140, these contracts ensured that no overcompensation would be paid to transport undertakings. As the subsidies from the Region were part of the compensation paid under the contracts in question, they were in conformity with Regulation (EEC) No 1191/69 and thereby compatible with the internal market. The same reasoning, according to RATP Dev, applied to the compensation paid out by STIF before 3 December 2009 under the CT1.

(153) In the case of the subsidies granted after 3 December 2009, RATP Dev considered that Regulation (EC) No 1370/2007 should apply. It provided that compensation paid under public-service contracts was compatible with the internal market and exempt from notification if (i) the contracts included the mandatory content described in Article 4 of the Regulation; and (ii) the compensation did not give rise to any overcompensation. As these two conditions were met, according to RATP Dev, it concluded that the measures were compatible with the internal market.

5.6. **Transdev Île-de-France**

(154) Transdev Île-de-France ('Transdev') is part of the Transdev group and conducts its business in the passenger transport sector in Île-de-France, where it operates passenger road transport services outside the central area served by RATP.

(155) Its comments related only to the measures implemented by the Region, although the examples of contracts used to back up its arguments also cover part of the CT1 and CT2 period.

(156) By way of introduction, Transdev pointed out that there were rules specific to Île-de-France governing scheduled passenger transport services by road, as that sector derogated from the normal rules governing transport.

(157) During the period under consideration, the contracting authority was able to choose the operators of the network by including them in the transport plan without first putting the work out to competitive tender, since, in particular, Regulation (EC) No 1370/2007 had not yet entered into force.

(158) It also stated that the contracting authority caused structural deficits to arise by administratively setting the fares charged to users, irrespective of the actual cost of providing the service. These deficits were offset financially under public-service contracts.

(159) Lastly, the market in scheduled public transport services by road in Île-de-France was not open to competition.

5.6.1. *Existence of aid*

(160) Transdev commissioned the Microeconomix practice to analyse three agreements and the riders thereto, as well as the financial flows associated with them. It set out the main findings and stated that the expert report clearly showed that the subsidy scheme was neutral and that there was no overcompensation.

(161) According to Transdev, the arrangements governing the regional subsidies meant that the latter were in no way comparable to investment aid. Regional subsidies were in a sense refunded to the local authority acting as contractor, over the period of depreciation of the assets, by the negative impact which they had on the compensation paid by the local authority.

(162) Thus the measure in question only represented a completely neutral method of paying public-service compensation to transport operators holding a public-service contract.

(163) Because of that neutrality, the criteria for classing the measure as State aid were not met.

5.6.1.1. State resources and imputability

(164) In Transdev's view, as the sums paid by the Region ultimately came back to the local authorities, the funds never left the public sphere.

5.6.1.2. Economic advantage

(165) As the funds were not made available on better terms than those available on the banking market, operators derived no advantage. The advantage was granted to the local authorities by the Region, without any effect on competition.

(166) Moreover, Transdev denied that equipment co-financed by the Region could have competed with equipment owned by undertakings which were not eligible for the subsidies.

5.6.1.3. Selectivity

(167) All the undertakings active on the market in scheduled public transport by road in Île-de-France were affected in the same way, so that the measure was not selective within that market.

5.6.1.4. Effect on competition and trade between Member States

(168) As there was no economic advantage or selectivity, Transdev considered that there was no possibility of any distortion of competition or of any effect on trade between Member States.

5.6.2. *Compatibility*

(169) Should the Commission, however, conclude that there was State aid, Transdev considered that the mechanism in question would be compatible with the internal market by virtue of its conformity with Regulation (EEC) No 1191/69.

5.7. **International Association of Public Transport**

(170) The Union internationale des transports publics ('UITP') is the International Association of Public Transport, which covers all modes of public transport and has more than 3 100 members (operators, authorities and suppliers) throughout the world.

(171) UITP did not go into the details of the mechanisms considered in the opening decision. It wished to take the opportunity of recalling certain essential principles relating to the sector concerned.

(172) Firstly, Member States enjoyed a wide margin for discretion in defining the PSOs, which depended, in particular, on the needs of users, in accordance with the principle laid down in Regulation (EC) No 1370/2007.

(173) Secondly, it was a feature of public transport systems in Europe that approximately 50 % of the operating costs on average were covered by revenues from fares (30 % in Paris). It was therefore crucial that PSOs should be properly compensated for by the public authorities.

(174) Lastly, contrary to what appeared to be implied in recital 43 of the Commission's opening decision, the PSOs were not confined to the costs of operating public transport services: their purpose might include an improvement in the quality of the service, the infrastructure or the rolling stock. The measures could be deemed compatible with the internal market if they fulfilled the conditions of the Regulations applicable, i.e. Regulation (EC) No 1370/2007 or Regulation (EEC) No 1191/69.

5.8. **Additional comments by RATP Dev, Transdev, OPTILE and Keolis submitted on 21 June 2016**

(175) Firstly, the four interested third parties who wished to make additional comments drew the Commission's attention to a decision it had taken when examining the compatibility of a State aid scheme set up by the Czech Republic (the 'Autobus pořízení decision') ([22]). The circumstances underlying that decision were, according to the third parties, very similar to those associated with the mechanism set up by the Region (taken over by the CT1). The Commission had examined the Czech system of investment subsidies taking into account the repercussions of the subsidies on operating compensation granted under the operating agreements, and had declared it compatible on the basis of Regulation (EEC) No 1191/69.

(176) The interested parties went on to argue that the *Jørgen Andersen* judgment settled the question of which Regulation relating to public passenger transport applied in the present case: it was Regulation (EEC) No 1191/69 as amended in 1991, not Regulation (EC) No 1370/2007.

(177) The interested parties argued primarily that the regional subsidies paid under the system set up by the Region did not constitute State aid. They arrived at this conclusion by taking into account the fact that the mechanism included an annual interest rate which applied to subsidies for the purchase of rolling stock.

(178) As far as the question of the applicable Regulation was concerned, the interested parties pointed out that the *Jørgen Andersen* judgment laid down temporal rules for applying Regulations (EEC) No 1191/69 and (EC) No 1370/2007. By that judgment, the Court ruled that Regulation (EEC) No 1191/69 applied when assessing:

(a) the lawfulness of the aid payments made before 3 December 2009, since Regulation (EEC) No 1191/69 was an exemption regulation which exempted compensation paid in compliance with those provisions from the notification requirement;

(b) the lawfulness and compatibility of aid paid in performance of the contracts in force at 3 December 2009 and extended for varying periods laid down under Article 8(3) of Regulation (EC) No 1370/2007.

(179) In accordance with the *Jørgen Andersen* judgment, which was binding on the Commission in the case in point, it would have to assess the aid paid before 3 December 2009 under Regulation (EEC) No 1191/69, including compensation paid in the form of prices under the public-service contract system. Furthermore, the procedures for calculating compensation paid in the form of prices had been laid down in case law in the *Danske Busvognmænd* ruling ([23]), which required such compensation to be 'directly and exclusively necessary for the performance of the public transport service per se' ([24]).

(180) In the extraordinary event that the Commission were to refuse to regard Regulation (EEC) No 1191/69 as an exemption regulation, it would, in conformity with its decision-making practice, have to conclude that the regional subsidies deriving from the mechanism set up by the Region were compatible.

(181) If the Commission were to refuse to apply the principles handed down in the *Jørgen Andersen* judgment by applying Regulation (EC) No 1370/2007, it would have to find that the conditions for considering the compatibility of compensation paid in the form of prices were identical to those set out in Regulation (EEC) No 1191/69.

([22]) Commission Decision of 16 April 2008 on State aid N 350/2007 implemented by the Czech Republic in favour of Autobus pořízení.
([23]) Judgment of 16 March 2004 in Case T-157/01 *Danske Busvognmænd* v *Commission*, ECLI:EU:T:2004:76.
([24]) Ibid., paragraph 86.

(182) Lastly, the interested third parties also added to their submissions on the implementation of the existing aid scheme following the Commission decision on *Dublin Bus/Irish Bus* of 15 October 2014 ([25]). By that decision, the Commission considered that an investment subsidy system set up in 1985 and very similar to the mechanism put in place by the Region constituted an existing aid scheme.

6. **ASSESSMENT OF THE MEASURES IN QUESTION BY THE COMMISSION**

(183) The Commission's assessment covers the three investment support mechanisms referred to in the opening decision, namely: (i) the Region's investment subsidy mechanism defined in successive decisions CR 34-94, CR 44-98 and CR 47-01; (ii) the mechanism which succeeded it with the introduction of Rider No 3 to the CT1; and, lastly, (iii) the C2 contribution under the CT2. As regards the CT2, the Commission would point out that its scrutiny is limited to contribution C2 relating to investment problems. The opening decision concerns only measures that could constitute a form of investment support, which de facto excludes the C1 contribution under the CT2.

6.1. **Aid scheme or individual aid**

(184) More than 100 undertakings or state-owned companies have, over the years, benefited from subsidies paid successively by the Region and then by STIF. Before assessing whether there has been aid and whether it is compatible with the internal market, the question which arises is whether the subsidies in question were granted individually, in which case they must be examined individually by the Commission, or in the context of schemes, in which case the Commission may confine itself to studying the key parameters of the schemes concerned.

(185) Council Regulation (EU) 2015/1589 ([26]) ('the Procedural Regulation') defines as an aid scheme 'any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount'. It follows from this definition that, in order to distinguish an aid scheme from a set of individual aid measures, the Commission must give particular attention to evaluating how much margin for discretion the authority providing the aid has on a case by case basis.

(186) As regards the mechanism put in place by the Region, the Commission finds that the Regional Council decision of 1994 defined in a general and abstract manner the undertakings able to claim the subsidies, which in this case were the undertakings or state-owned companies that had signed a contract with a public authority in Île-de-France for the operation of scheduled transport routes by bus. Furthermore, the same decision defined clearly and precisely the types of asset which could be subsidised, the price ceilings on the said assets and the rate of subsidy for each type of asset. The terms for awarding the aid were also set out, in particular, the obligation on the contracting authority and the undertaking to make proposals for the quantitative and qualitative improvement of the transport services supplied. Thus, the exercise of discretionary authority by the Region in awarding the subsidies was strictly regulated by the provisions of the 1994 decision and then by the decisions replacing it in 1998 and 2001. The Commission therefore considers that those decisions constitute the legal basis of a scheme.

(187) As regards the subsidies paid under the CT1, the Commission notes that they fell within the scope of the model contract drawn up and validated by STIF in 2006. Individual variations under that contract could not deviate from the principles and parameters laid down in the model, as was pointed out in the preamble to each CT1: 'this contract is also concluded pursuant to and in compliance with the guidelines and principles described in the Regional Specification adopted by STIF's Board of Directors at its meeting of 13 December 2006 and conforms to the Type 1 model also adopted by the Board'. This comment applies, in particular, to the amendments made by Rider No 3, following the decision by STIF's Board of Directors on 2 October 2008. On the basis of that decision, any transport undertaking holding a Type 1 contract with STIF could apply for the investment subsidies referred to in Rider No 3. Furthermore, the same decision defined clearly and precisely the types of asset which could be subsidised, the price ceilings on those assets and the rate of subsidy for each type of asset. Thus, the exercise of discretionary authority by STIF in awarding the subsidies established by Rider No 3 was strictly regulated by the model which emerged from the 2008 decision. The Commission therefore considers that the decision referred to constitutes the legal basis of a scheme.

([25]) Commission Decision (EU) 2015/635 of 15 October 2014 on State aid SA.20580 (C 31/07) (ex NN 17/07) implemented by Ireland for Córas Iompair Éireann Bus Companies (Dublin Bus and Irish Bus) (OJ L 104, 23.4.2015, p. 17).

([26]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

(188) Similar reasoning applies to the C2 contribution in the CT2. This is calculated by following procedures strictly regulated by the model CT2 ratified by STIF's Board of Directors. Any undertaking holding a CT2 may claim C2 compensation in respect of its investment costs, with no discretionary power left to STIF in the calculating of that compensation.

(189) In the light of the above, the Commission considers that individual scrutiny of each subsidy is not necessary for the purpose of assessing whether there has been aid and whether it is compatible. In the remainder of this Decision, the Commission therefore argues on the basis of the general parameters laid down in the legal basis for each of the three schemes involved.

6.2. **Existence of aid**

(190) According to Article 107(1) TFEU, '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'.

(191) Accordingly, to be classed as State aid, the measures under investigation must (i) be granted by the State, i.e. involve state resources and be imputable to the State; (ii) confer an economic advantage on their beneficiary; (iii) be selective, as opposed to a measure with general effect; and (iv) be likely to distort competition and affect trade between Member States.

6.2.1. *State resources and imputability*

6.2.1.1. Measures implemented by the Region

(192) The subsidies from the Region were awarded on the basis of decisions by the Regional Council and from the budget of the Île-de-France Region.

(193) The Commission therefore concludes that the measures implemented by the Region involve State resources and are therefore imputable to the French State.

6.2.1.2. Measures implemented by STIF

(194) As STIF is a public administrative institution, its decisions are attributable to a public authority and its resources are public.

(195) The Commission therefore concludes that the measures implemented by STIF involve State resources and are imputable to the French State.

6.2.2. *Economic advantage*

(196) As a preliminary remark, the Commission would point out that state-owned companies benefiting from the measures implemented by the Region and by STIF must be regarded as undertakings because, regardless of their legal status, in the case in point they are carrying on an economic activity, namely the supply of transport services by road. Consequently, all beneficiaries of the measures — whether private undertakings or state-owned companies — are involved in an economic activity and must be regarded as undertakings within the meaning of Article 107(1) TFEU.

(197) In its opening decision, the Commission raised the question of the nature of the investment support measures implemented by the Region and then by STIF and whether they constituted investment subsidies or public-service compensation.

(198) In commenting on this point, the French authorities and the interested third parties took the view that the measures implemented by the Region and by STIF were forms of compensation awarded to state-owned companies and private undertakings operating bus transport services in return for the discharge of PSOs and, since, moreover, they complied with the criteria set out in the *Altmark* ruling, they had not conferred an economic advantage on the recipients.

(199) Compensation for costs incurred in supplying a service of general economic interest does not constitute an advantage within the meaning of Article 107(1) TFEU if four cumulative conditions are met ([27]). First, the undertaking receiving compensation must actually be responsible for discharging the PSOs and those obligations must be clearly defined. Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner. Third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the PSOs, taking the associated revenue and a reasonable profit into account. Fourth, where the undertaking that is to discharge PSOs is not chosen following a public procurement procedure to select a tenderer capable of providing these services at the lowest cost to the local authority, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well-run and adequately provided with means to meet the public-service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations. The Commission has further elaborated its understanding of these conditions in its Communication on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest ([28]).

(200) The Commission will therefore analyse the measures in question from the perspective of the *Altmark* precedent.

6.2.2.1. The Region's investment subsidies

(201) The aim of applying the first Altmark criterion is to establish that the payments constitute compensation awarded in exchange for the discharge of clearly defined PSOs.

(202) In the case in point, the Commission finds that only state-owned companies and undertakings supplying transport which were subject to PSOs could apply for subsidies from the Region. The PSOs had been defined in the operating agreements reached between each transport operator and the local authority or authorities acting as contractor(s). These operating agreements provided for compensation for the losses sustained in discharging the PSOs, net of any receipts and subsidies.

(203) The subsidies from the Region were grafted onto this contractual mechanism in order to stimulate investment and, in so doing, to spur a quantitative and qualitative improvement in the supply of transport. The amount of the subsidies was fixed on a flat-rate scale by applying a set percentage to a category of capped costs (e.g. the price of a bus excluding tax).

(204) To be able to apply for the subsidy, the local authorities acting as contractors had to undertake to tighten up the content of the PSOs which they imposed in any case on the transport operators. As is clear from the actual title of the 1994 decision, the object of the scheme was to bring about an 'improvement in public transport services by road'. This does not mean, however, that the subsidies from the Region were awarded in compensation for PSOs. As with a traditional subsidy, their purpose was more simply to encourage investment by the undertakings and state-owned companies operating the transport services. The contracting authorities, on the other hand, remained responsible for compensating transport operators for the full amount of the deficit resulting from the *full range* of obligations they imposed on them (including those that were added so that operators could apply for subsidies from the Region).

(205) The deficit would certainly have been larger without the subsidies from the Region, since it was calculated by deducting receipts and any subsidies from costs. But there is still a conceptual difference between, on the one hand, the system of PSOs and compensation payments which were the responsibility of the contracting authorities (and which are not the subject of this investigation) and, on the other, a system of subsidies designed, in general terms, to encourage investment in the improvement of transport services.

(206) Therefore, notwithstanding the economic link which rightly existed between the subsidies from the Region and the calculation of the public-service compensation, the Commission considers that the subsidies from the Region were not awarded as compensation for clearly defined PSOs. It follows that the first *Altmark* criterion is not met. As the four *Altmark* criteria are cumulative, the test is not passed once one criterion is missing. The mechanism set up by the Region must therefore be analysed more conventionally as a scheme for granting investment subsidies.

(207) By taking responsibility for part of the investment costs normally borne by the transport undertakings, the Region freed up margins for financial manoeuvre for the recipients of the subsidies, who were able to use their own resources for other purposes. The recipients of the subsidies thereby gained an economic advantage.

([27]) Judgment of the Court of Justice of 24 July 2003 in Case C-280/00 *Altmark Trans*, ECLI:EU:C:2003:415, paragraphs 87 to 95.
([28]) OJ C 8, 11.1.2012, p. 4.

(208) Certain interested third parties have emphasised that this advantage was rendered null by the fact that the subsidies, plus the financing cost which the operator avoided, were written off in the public-service compensation also paid by the local authority acting as contractor.

(209) In response to that argument, the Commission finds that the successive decisions setting up the scheme in question did not define the key parameters for that write-off: duration and interest rate. Thus nothing in the legal basis guaranteed with certainty that the subsidies would be properly written off, over a period in keeping with the use made of the equipment and having regard to a financial cost avoided which would be in line with the financial cost seen on the market. An assessment of whether the subsidies were correctly taken into account in the public-service compensation otherwise awarded by the contracting authorities therefore involves analysing, on a case by case basis, the compensation concerned, not the subsidies. The current investigation in fact only concerns the subsidies, not the public-service compensation which was also awarded.

(210) In the light of the above, the Commission confirms that the subsidies from the Region, considered in isolation, conferred an economic advantage on the beneficiaries.

6.2.2.2. Investment subsidies awarded under the CT1s

(211) The CT1 was a public-service contract which imposed clearly defined PSOs on the operator. Article 4-2 of the CT1 laid down that 'the operator shall run a public passenger transport service'. As such, the undertaking was under an obligation to maintain and operate the routes with which it had been entrusted, and to carry passengers on conditions of carriage and at fares set by STIF. Article 12-1 of the CT1 stated without room for ambiguity: 'fare setting is an exclusive competence of STIF which cannot be delegated'. In exchange, the operator received compensation for the losses incurred in discharging the PSOs, net of any receipts and subsidies.

(212) The subsidies introduced by Rider No 3 to the CT1 were granted alongside this compensation in the same way as, during the preceding period, the system of subsidies from the Region had complemented the compensation provided for by the operating agreements. The main difference was that a single entity (STIF) paid both (i) the public-service compensation properly speaking, the method of calculating which was designed to cover the deficit associated with discharging the PSOs; and (ii) the investment subsidy, which was determined on the combined basis of a price ceiling and a maximum subsidy rate. What is more, as in the preceding period, the legal basis for the award of subsidies, i.e. in this case the standard Rider No 3 to the CT1, also failed to define the key parameters for write-off of the subsidies in the public-service compensation which was also paid.

(213) In view of these similarities, which have also been stressed by most of the interested third parties, the Commission considers that the same reasoning should be applied as for the preceding period. The subsidies paid pursuant to Rider No 3 to the CT1 are therefore 'conventional' investment subsidies, and they conferred an economic advantage on their recipients.

6.2.2.3. The C2 contribution in the CT2s

(214) The CT2 is a public-service contract which expressly imposed clearly defined PSOs on the transport operator, as regards both operation and investment.

(215) Article 5-2 of the CT2 determines the general obligations incumbent on the operator as follows:

— 'to maintain and operate, concepts understood as meaning the obligation upon the undertaking to adopt, in respect of the routes and installations entrusted to it, all proper measures to guarantee a transport service which complies with standards of continuity, regularity, frequency, capacity, safety and quality,

— to transport, referring to the obligation upon the undertaking to accept and carry out all passenger transport at public fares and on conditions of carriage laid down by STIF,

— to apply the system of fares, regarded as the obligation upon the undertaking to sell and accept fare products in accordance with the general conditions of sale and use decided upon by STIF,

— to take part in integrated systems with respect to the provision of information, the issuance of tickets, timetabling and the use of interchange points,

— to contribute to passenger safety and security.'

(216) Article 41 of the CT2 also sets out the operator's obligations with regard to assets, which mainly involve an obligation to use all the assets, an obligation to carry out maintenance and upkeep works on the property earmarked for implementation of the public transport service, and an obligation to draw up a plan of investment in the vehicle fleet for the full term of the contract such as to ensure, particularly for reasons of safety, reliability, availability of the vehicles and optimisation of the maintenance and upkeep costs, that the average age of the fleet does not exceed seven years.

(217) Through the CT2, STIF breaks with the model followed in previous years by introducing a public-service contract which, from the outset and in an integrated manner, sets out obligations in respect of both operation and investment, in particular through a unified 'financial account for the service'. The C2 contribution is explicitly designed to compensate for the costs flowing from the obligations linked to investment. The Commission deduces from this that the C2 contribution is given in exchange for clearly defined PSOs relating to investment, and that the first *Altmark* criterion is therefore met.

(218) Now that it has been established that the C2 contribution satisfies the first *Altmark* criterion, it remains to be assessed whether it satisfies the second, third and fourth *Altmark* criteria. As the criteria are cumulative, the Commission will confine itself to demonstrating that the fourth criterion is not satisfied in order to conclude that the contribution concerned confers an economic advantage.

(219) The object of the fourth *Altmark* criterion is to verify that, where the undertaking which is to discharge PSOs is not chosen following a public procurement procedure to select a tenderer capable of providing these services at the least cost to the public authority, the level of compensation needed must be determined on the basis of an assessment of the costs which a typical undertaking, well-run and adequately equipped to be able to meet the public-service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

(220) In this connection it should be pointed out that STIF carried out a comparative analysis of costs prior to the signing of contracts with operators. This comparative analysis is based on (i) accurate costed figures for each contract; (ii) legal instruments which guarantee that costs and equipment are comparable; (iii) a thorough knowledge of the passenger transport market in Île-de-France; and (iv) a comparison both with the 'trade' figures generally accepted in the sector and with contracts awarded after being put out to tender. Nevertheless, this detailed analysis is mainly concerned with operating variables such as the commercial speed of buses or the number of hours driven per vehicle. A study of these variables is extremely useful when it comes to negotiating the operating costs and fixing the C1 contribution, but it does not make it possible to ensure that the investment costs covered by contribution C2 correspond to those of an average well-managed undertaking. Nor is there anything to show that the sample chosen by STIF is representative of well-managed undertakings. Therefore, although the analysis conducted by STIF certainly constitutes undeniable progress towards sound management of compensation granted to public-service operators, it is not enough to satisfy the fourth *Altmark* criterion as regards the C2 contribution.

(221) As the fourth *Altmark* criterion is not satisfied, the Commission concludes that the C2 contribution awarded under the CT2 confers an economic advantage on the beneficiaries.

6.2.3. *Selectivity*

(222) The Court of Justice has consistently held ([29]) that a measure is ruled to be selective if not all the sectors of the economy to which it applies can take advantage of it. Whether measures implemented by the Region or by STIF are involved, they only concern state-owned companies under public authority control and private undertakings with which such authorities or STIF have signed an operating agreement for a transport route or network in Île-de-France. The measures at issue therefore only concern the scheduled public transport by road sector in Île-de-France.

(223) The Commission also points out that a selection from among the undertakings in that sector is made prior to the award of the subsidies, when the undertakings which are to discharge the PSOs are selected.

([29]) See, for example, judgment of 17 June 1999 in Case C-75/97 *Belgium* v *Commission*, ECLI:EU:C:1999:311, paragraph 32, or judgment of 8 November 2001 in Case C-143/99 *Adria-Wien Pipeline GmbH and Wietersdorfer & Peggauer Zementwerke GmbH* v *Finanzlandesdirektion für Kärnten*, ECLI:EU:C:2001:598, paragraph 48.

(224) As selectivity is applied both at the sector level and within the sector, there is no need to demonstrate the geographical character of the selectivity as well, contrary to what RATP Dev appears to suggest in referring to the *Azores* ruling ([30]). The Commission therefore concludes that the measures implemented by the Region, and by STIF under CT1 and CT2, are selective.

6.2.4. *Effect on competition and trade between Member States*

(225) It is necessary to examine whether the measures are such as to distort competition to the extent that they may have an effect on trade between the Member States.

(226) As regards the mechanism set up by the Region, the Commission, concurring with the Paris Administrative Court ([31]), finds that 'undertakings operating in the scheduled passenger transport sector also operate in the occasional passenger transport sector […] hence, scheduled passenger transport undertakings which have received the above-mentioned subsidies may find themselves in competition with occasional passenger transport undertakings which have not been able to benefit from those subsidies, which are, as has been stated, reserved for undertakings operating scheduled routes'. Thus, during the first five years, the equipment concerned could be assigned, outside the normal periods of utilisation, to other uses, including uses in the occasional transport market. Beyond the fifth year, the Region no longer imposed any obligation on the use of the above-mentioned assets. Furthermore, there was no provision or stipulation prohibiting subsidised undertakings which operated the scheduled passenger transport routes in Île-de-France from bidding for the award of other scheduled or occasional passenger transport contracts that were put out to tender in France or in Europe. The national court which ruled in the administrative dispute described in recitals 27 to 32 arrived at the same finding, which led it to conclude that the subsidised undertakings were 'likely, owing to the savings made when acquiring subsidised vehicles and equipment, to enjoy a competitive advantage over undertakings which did not receive aid' and that, as a consequence, the mechanism in question was 'such as to affect trade between the Member States and to distort or threaten to distort competition' ([32]). The Commission endorses this conclusion and confirms that, from the point at which the regional mechanism was set up, and particularly during the whole of the period under consideration, the investment subsidies from the Region were likely to distort competition and affect trade between the Member States.

(227) In the ensuing period, the assets for which a subsidy had been awarded by STIF under Rider No 3 to the CT1 had to be used exclusively for the purpose of carrying out the public-service activities included in the STIF transport plan for a minimum of eight years ([33]). The Commission notes, however, that the argument set out in recital 226 remains valid after the eighth year of service.

(228) What is more, even supposing that the buses and coaches subsidised by STIF had only been used to perform public-service tasks on the market in scheduled passenger transport by road in Île-de-France, that would not be enough to rule out any possibility that competition had been distorted and trade between Member States had been affected by the measure in question. The assumption of responsibility by a public authority for costs normally borne by an undertaking gives it an advantage over its direct competitors in the various markets in which it is likely to operate, and therefore distorts competition. As observed in the *Altmark* judgment, since 1995 several Member States have started opening certain transport markets up to competition by undertakings established in other Member States. In the case of France, it began opening up its market prior to 1995, as early as 1993 ([34]). Any public subsidy awarded by France to a road transport undertaking after 1993 was therefore likely to affect trade between Member States.

(229) In the light of the above, the Commission concludes that the subsidy mechanism brought in by Rider No 3 to the CT1 was likely to distort competition and affect trade between the Member States.

(230) The argument put forward in recital 228 also applies to the CT2 period, so that aid awarded through the C2 contribution in CT2 is also likely to distort competition and affect trade between the Member States.

([30]) See recital 135 and footnote 21 to this Decision.
([31]) Judgment No 0417015 of the Paris Administrative Court.
([32]) Ruling No 08PA04753 of the Administrative Appeal Court of Paris.
([33]) Comments by STIF, paragraph 40.
([34]) Law No 93-122 of 29 January 1993 on preventing corruption and on transparency in the economy and in public procedures, known as the 'Sapin law'.

6.2.5. *Conclusion on existence of State aid*

(231) The Commission concludes that the investment subsidies and public-service compensation awarded successively by the Region, then under Rider No 3 to the CT1, and finally through contribution C2 in CT2, are State aid within the meaning of Article 107(1) TFEU.

6.2.6. *Lawfulness of the aid*

(232) To start with, the Commission wishes to respond to the arguments put forward by the Region and certain other interested third parties regarding the potential classification of the Region's contentious mechanism as existing State aid. The Commission would make clear that the question of existing aid arises only with respect to the scheme set up by the Region, as the date when the scheme was set up is not as clear as in the case of the later schemes implemented by STIF. In the case of the latter, it is clear, in particular, that the subsidy scheme brought in by Rider No 3 to the CT1 was set up in 2008 and cannot be seen as merely a continuation of the Region's scheme, despite similarities in the spirit of both of these schemes, if only because the authority which awards the subsidies in these two schemes is not the same.

(233) In the case of the Region's scheme, the parties to the procedure, having highlighted its alleged character as an existing aid scheme, have claimed principally that the legal basis which established the Region's subsidy mechanism was Decree No 49-1473 of 14 November 1949 on the coordination and harmonisation of rail and road transport. This decree, which was repealed in September 2012, laid down that 'a local authority may subsidise a road service by signing a contract with an undertaking laying down the obligations imposed on the latter over and above those to which it is subject under its operating rules' (Article 19, first subparagraph). In this case, it would have to be found that the legal basis for the scheme dated from before the Treaty of Rome, which would mean that the mechanism set up by the Region would have to be regarded as an existing aid scheme.

(234) In the alternative, the same parties argue that, if the Commission were to consider that the fact that the mechanism set up by the Region fell within the general framework laid down by the 1949 decree was not sufficient grounds for classifying it as an existing aid scheme, the date on which the mechanism concerned was officially established by the Regional Council would have to be taken into account. The salient date would be the date of publication of Decision CR 84-07 of 14 February 1984 which, still according to the parties, first set up the mechanism in the form in which it operated until 2008. In this case, it would have to be found that the criterion regarding an effect on competition and trade between Member States was not met on the date when the scheme was established, since the French market in scheduled public transport by road was not open to competition. The consequence of this would be that the scheme was not aid at the time it was established.

(235) The Commission cannot accept these two arguments.

(236) As regards the principal argument, the Commission points out that the 1949 decree did not precisely define any of the key parameters of the scheme: duration, budget, definition of the beneficiaries, type of asset eligible for the subsidy, subsidy rates. On its own, that enactment did not establish any entitlement to receive subsidies. Therefore, the 1949 decree cannot be regarded as the legal basis for the aid mechanism set up by the Region, as described in this Decision.

(237) As regards the argument in the alternative, it is clear that the case made by the interested parties is vitiated by error. Even if the 1984 decision were to be taken as the legal basis on which the Region's mechanism was established, the Commission points out that the criterion regarding an effect on competition and trade between Member States was already met by that date, for the reasons stated in recital 226. It should not, therefore, be considered that the mechanism set up by the Region did not constitute aid at the time of its establishment, whatever date is taken as that on which the scheme was established between 1979 and 2008.

(238) If, however, it were to be considered that the establishment of the Region's mechanism dated back to one of the decisions prior to 1994, the question of whether the measures at issue were barred by limitation could arise, since the legal basis for them would date back to more than 10 years prior to the suspension of the limitation, which took effect in May 2004.

(239) On this question, the Commission would reply that, even supposing the scheme had been set up before 1994 (for example, by the 1984 decision), the rules on limitation applying with respect to State aid would not

jeopardise the conclusion that the aid paid by the Region since 1984 was new aid. Limitation, in fact, attaches only to the payments made before the date of the limitation, and not to the scheme in its entirety. The limitation was suspended, however, by the appeal lodged with the national court in May 2004. This suspension of limitation before the national court also applies to the Commission, as the purpose of the powers of the national court is to safeguard the prerogatives granted to the Commission by Article 108(3) TFEU. Any aid paid by the Region after May 1994, even if the legal basis authorising the award of such aid were to be deemed to be prior to that date, must therefore be considered as being new aid in the current proceedings.

(240) Now that the questions relating to existing aid and the possibility of time-barring of the measures at issue have been clarified, the question of the lawfulness of the aid must be addressed.

(241) The investment subsidies awarded by the Region and then by STIF under Rider No 3 to the CT1 were not notified to the Commission. They therefore constitute unlawful aid.

(242) In the case of the C2 contribution under CT2, Article 9 of Regulation (EC) No 1370/2007 provides that compensation awarded in accordance with its principles is exempt from the prior notification requirement referred to in Article 108(3) TFEU. In its judgment in *Dilly's Wellnesshotel* ([35]), the Court of Justice made clear that all the conditions of an exemption regulation, including formal conditions, had to be met in order for exemption from the notification requirement to apply. In the case in point, it will be shown in Section 6.3.2 of this Decision that contribution C2 under CT2 meets the substantive criteria laid down in Regulation (EC) No 1370/2007. The Commission notes, however, that the publication requirements laid down in Article 7(2) of Regulation (EC) No 1370/2007 were not complied with by STIF. The French authorities in fact acknowledged that, as regards the OPTILE undertakings, it was not possible to publish the award notices, despite the requirement to do so in Regulation (EC) No 1370/2007. As regards the contracts with RATP and SNCF Mobilités, the Commission observes that the award notices were published in the *Bulletin officiel des annonces de marché public* (Official Bulletin of Public Procurement Notices) and in the *Official Journal of the European Union* after the award of the contracts and not, as required, at least one year before the direct award date. Consequently, the provisions of Article 7 of Regulation (EC) No 1370/2007 were not complied with and the aid awarded by STIF under CT2 was not covered by the exemption from the notification requirement provided for in Article 9 of the Regulation. As it was not notified, the Commission concludes that it is unlawful aid.

(243) The Commission points out that it is for the national authorities to draw all the necessary conclusions that flow from the unlawfulness of the aid, particularly as regards the recovery of interest in respect of the period of unlawfulness as defined in the *CELF* judgment ([36]).

6.3. **Assessment of the compatibility of the measures with the applicable State aid rules**

6.3.1. *The investment subsidies awarded by the Region and then by STIF under Rider No 3 to the CT1*

(244) Having regard to the great similarity between the subsidies awarded by STIF under Rider No 3 to the CT1 and those awarded by the Region during the preceding period, the same reasoning regarding compatibility with the internal market applies to both mechanisms.

(245) These investment subsidies did not meet the needs of coordination of transport or represent reimbursement for the discharge of certain obligations inherent in the concept of a public service, as was concluded in recitals 206 and 213. The Commission cannot, therefore, take Article 93 TFEU (or the secondary legislation deriving from it) as a basis for assessing compatibility with the internal market.

(246) However, under Article 107(3) TFEU, aid may be considered to be compatible with the internal market if it is granted to promote the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. This can be the case, in particular, with aid for investment which improves the way in which the economic activity in question is carried on. The French authorities cite the applicability of this provision to the investment aid mechanism put in place by the Île-de-France Region.

([35]) Judgment of the Court of 21 July 2016 in Case C-493/14 *Dilly's Wellnesshotel GmbH* v *Finanzamt Linz*, ECLI:EU:C:2016:577, paragraph 47.

([36]) Judgment of the Court of 12 February 2008 in Case C-199/06 *Centre d'exportation du livre français (CELF) and Ministre de la Culture et de la Communication* v *Société internationale de diffusion et d'édition (SIDE)*, ECLI:EU:C:2008:79, paragraph 55.

(247) The implementation of an investment aid mechanism for equipment to enable quantitative or qualitative improvements to be made to the supply of scheduled public transport by bus, in excess of the level of obligations which the recipients were required to discharge in providing their services before the subsidies were awarded, was such as to enhance the attractiveness of the services supplied as compared to alternative methods involving travelling by private vehicle. In so doing, and having regard to the special circumstances in Île-de-France, as stated in recitals 16 and 17, the mechanisms in question contributed to the attainment of the objective of common interest, as defined by the 2011 White Paper on the single European transport area ([37]), which is modal transfer from the private vehicle to public transport. Without the subsidies, carriers would not have been able to implement those improvements. The subsidised routes were in fact running at a loss and their economic balance already depended on the public-service compensations awarded. The mechanisms in question therefore had an incentive effect.

(248) The Commission notes that the eligible costs and rates for the subsidies were capped, so that only part of the investment costs were taken over directly by the Region and then by STIF. The maximum subsidy rates reached 50 % for ordinary buses and 60 % for ecological buses, in other words the aid percentages were moderate. What is more, the equipment subsidised, very largely buses, could only be marginally assigned to uses or routes other than those for which the subsidy had primarily been granted. Firstly, assignment to uses other than the public passenger service was regulated, or indeed prohibited: under the CT1, and in the regional riders from 1999 onwards, any reassignment was prohibited during the period of write-off of the subsidy; before 1999, that practice was regulated for the first five years. Secondly, vehicles intended for urban transport services carrying passengers most of whom are standing do not lend themselves well to occasional transport requiring the use of coaches fitted out for the transport of seated passengers using seat belts. Lastly, though the possibility of effects on trade between Member States could not be ruled out, for the reasons described in recitals 226 and 228, the effects were very probably limited because the markets in question were local in scale, and it was contractually or materially difficult, not to say impossible, to reassign the subsidised equipment to other geographical areas (in France or in Europe).

(249) In the light of the above, the Commission concludes that trading conditions were not affected to an extent contrary to the common interest, and that the two mechanisms at issue are compatible with the internal market owing to their conformity with Article 107(3) TFEU.

6.3.2. *The C2 contribution in the CT2*

(250) The Commission has already concluded in recital 217 that, unlike the subsidies awarded by the Region up to 2008 or by STIF under Rider No 3 to the CT1, the C2 contribution in the CT2 had to be treated as a public-service compensation.

(251) The compatibility of the aid awarded to reimburse the discharge of certain obligations inherent in the concept of a public service is considered by the yardstick of Article 93 TFEU. With regard to the application of Article 93 TFEU, the Commission takes its inspiration from the broad principles defined in the secondary legislation deriving from Article 93 TFEU, particularly Regulation (EC) No 1370/2007, which has been in force since 3 December 2009. The Commission checks, in particular, that the principles set out in Articles 3, 4 and 6 of the Regulation are complied with.

(252) Article 3(1) of Regulation (EC) No 1370/2007 provides as follows: 'Where a competent authority decides to grant the operator of its choice an exclusive right and/or compensation, of whatever nature, in return for the discharge of public-service obligations, it shall do so within the framework of a public-service contract.'

(253) STIF, under Decree No 2005-664 of 10 June 2005, is the organising body for scheduled passenger transport services in Île-de-France, which makes it a competent awarding authority for public-service compensation. Such compensation, be it component C1 or C2, is awarded in the framework of the CT2, which is a public-service contract. The requirements of Article 3 of Regulation (EC) No 1370/2007 are therefore met.

(254) Article 4 of Regulation (EC) No 1370/2007 sets out the mandatory content of public-service contracts.

(a) Under paragraph 1, public-service contracts must:

— clearly define the PSOs with which the public-service operator is to comply, and the geographical areas concerned,

([37]) http://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:52011DC0144

— establish in advance, in an objective and transparent manner, the parameters on the basis of which the compensation payment is to be calculated, and the nature and extent of any exclusive rights granted, in a way that prevents overcompensation,

— determine the arrangements for the allocation of costs connected with the provision of services.

(b) Under paragraph 2, public-service contracts must determine the arrangements for the allocation of revenue from the sale of tickets.

(c) Paragraph 3 lays down that the duration of public-service contracts for transport by bus may not exceed 10 years.

(d) Paragraph 6 states that, where operators are required to comply with quality standards, these standards shall be clearly included in the contract.

(255) As regards CT2, the Commission finds as follows:

(a) The CT2 contract can be described as a public-service contract insofar as, as demonstrated in recitals 214 and 216, it confers responsibility on an operator for the management and operation of the public passenger transport services subject to PSOs. The contract provides for a C1 contribution and a C2 contribution which are defined, in a transparent and objective manner, in Article 53 of the CT2. The existence of a unified financial account for the service means that the costs of providing the services can be allocated in a detailed manner. The requirements of Article 4(1) of Regulation (EC) No 1370/2007 are therefore met.

(b) The mechanisms for allocating the revenue from ticket sales are very precisely described in Article 50 of the CT2. The requirements of Article 4(2) are therefore met.

(c) The CT2 replaced the CT1, from 2008 onwards, for the remaining period of the term up to 31 December 2016. The requirements of Article 4(3) are therefore met.

(d) The CT2 includes quality standards which are clearly defined in the contract. The requirements of Article 4(6) are therefore met.

(256) Lastly, Article 6 of Regulation (EC) No 1370/2007 and the annex thereto describe the main principles governing the determination of public-service compensation:

(a) method of calculating '*the net financial effect*' of complying with the PSO on the public-service operator's costs and revenues;

(b) accounting separation of activities covered by PSOs and those operated commercially;

(c) definition of the '*reasonable profit*' which can be expected by the operator through payment of public-service compensation;

(d) incentives to maintain or develop effective management capable of providing services of a high standard.

(257) The Commission's scrutiny on this point is confined to contribution C2 in the CT2, as contribution C1 does not fall within the scope of the investigation as defined in the opening decision. It is, nevertheless, necessary to explain the relationship between C1 and C2 in order to be able to rule on contribution C2.

(258) The purpose of contribution C1 is to compensate for the operating deficit, calculated as the sum of the operating costs (excluding elements relating to investment, such as depreciation), plus a contractually negotiated margin, and minus all the revenues and operating subsidies. Contribution C2, in contrast, is calculated as the sum of depreciation and is, therefore, only intended to cover costs incurred by the requirements to invest laid down in the contract. The method of calculating these two contributions is clearly set out in the CT2 and the annexes thereto, in accordance with recital 256(a).

(259) According to the information supplied by STIF, routes for which there is a CT2 all show an operating deficit (even before costs relating to investment have been taken into account), so that the C1 contribution is always positive ([38]). As the revenue and subsidies relating to operation are not enough to cover even a fraction of the annualised investment costs, contribution C2 is in reality equal to the sum of the depreciations (plus the financial costs) recorded in the unified financial account.

([38]) On average, contribution C1 accounts for 61 % of the operating costs and the contractual profit. On average, operating revenue accounts for 31 % of the operating costs and the contractual profit.

(260) This distinction makes clear that the definition of '*reasonable profit*', to use the wording of Article 6 of Regulation (EC) No 1370/2007, depends entirely on contribution C1 and not on contribution C2. Recital 256(c) cannot, therefore, apply to contribution C2 considered in isolation. It can, on the other hand, be established that contribution C2 cannot in any way overcompensate the transport operator, as it only covers investment costs actually recorded and entered as depreciation in the financial account for each route.

(261) As regards recital 256(b), the Commission observes that the existence of this financial account for the service, which is specific to each route for which there is a public-service contract, makes it possible, firstly, to ensure that there is accounting separation from any other activities of the operator and, secondly, to record all the costs and revenue linked to performance of the public service, in line with the principles set out in the Annex to Regulation (EC) No 1370/2007.

(262) Lastly, as regards recital 256(d), Article 49 of the CT2 lays down that 'besides the remuneration it receives, the undertaking is subject to incentives, bonuses or penalties linked to its [operational] performance in performing the reference service'. The public-service compensation, of which contribution C2 is a part, is therefore combined with a system of incentives developed enough to ensure that Regulation (EC) No 1370/2007 is deemed to be complied with.

(263) In the light of the above, the Commission concludes that contribution C2 in the CT2 complies with the main principles defined in Regulation (EC) No 1370/2007 with respect to calculating public-service compensation and hence that it can be declared compatible with the internal market under Article 93 TFEU. This conclusion, which is limited to contribution C2, is without prejudice to the compatibility of the CT2 contributions as a whole (since contribution C1 is not within the scope of application of this Decision).

7. **CONCLUSION**

(264) The investment subsidies awarded by the Île-de-France Region through the successive decisions of 1994, 1998 and 2001 constitute State aid implemented unlawfully, in breach of Article 108(3) TFEU. However, in view of its compliance with Article 107(3) TFEU, the Commission declares this aid to be compatible with the internal market.

(265) The investment subsidies awarded by STIF under Rider No 3 to CT1 constitute State aid implemented unlawfully, in breach of Article 108(3) TFEU. However, in view of its compliance with Article 107(3) TFEU, the Commission declares this aid to be compatible with the internal market.

(266) The public-service compensation awarded by STIF in the form of contribution C2 under the CT2 constitutes State aid which, as it does not satisfy certain formal criteria laid down by Regulation (EC) No 1370/2007, is not covered by the exemption from the notification requirement granted by that Regulation. However, in view of its compliance with Article 93 TFEU, the Commission declares this aid to be compatible with the internal market,

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme unlawfully implemented by France between 1994 and 2008 in the form of investment subsidies awarded by the Île-de-France Region by way of decisions CR 34-94, CR 44-98 and CR 47-01 is compatible with the internal market.

Article 2

The aid scheme unlawfully implemented by France from 2008 onwards in the form of investment subsidies awarded by STIF under Rider No 3 to CT1 is compatible with the internal market.

Article 3

The aid scheme unlawfully implemented by France in the form of C2 contributions awarded by STIF under CT2 is compatible with the internal market.

Article 4

This decision is addressed to the French Republic.

Done at Brussels, 2 February 2017.

For the Commission
Margrethe VESTAGER
Member of the Commission

COMMISSION DECISION (EU) 2017/1471

of 10 August 2017

amending Decision 2013/162/EU to revise Member States' annual emission allocations for the period from 2017 to 2020

(notified under document C(2017) 5556)

THE EUROPEAN COMMISSION,

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

Having regard to Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 ([1]), and in particular the fourth subparagraph of Article 3(2) thereof,

Whereas:

(1) Commission Decision 2013/162/EU ([2]) determines Member States' annual emission allocations (AEAs) for the period from 2013 to 2020 using the data from Member States' greenhouse gas (GHG) inventories determined in accordance with the 1996 Intergovernmental Panel on Climate Change (IPCC) Guidelines for National Greenhouse Gas Inventories, available at the time of its adoption.

(2) After the adoption of Decision 2013/162/EU, Article 6 of Commission Delegated Regulation (EU) No 666/2014 ([3]) required Member States to report greenhouse gas inventories determined in accordance with the 2006 IPCC Guidelines for National Greenhouse Gas Inventories, and the United Nations Framework Convention on Climate Change (UNFCCC) reporting guidelines on annual inventories as set out in Decision 24/CP.19 of the Conference of the Parties to the UNFCCC.

(3) Article 27 of Regulation (EU) No 525/2013 of the European Parliament and of the Council ([4]) requires the Commission to examine the impact of the use of the 2006 IPCC guidelines, or of changes to UNFCCC methodologies used, on the Member State's total greenhouse gas emissions relevant for Article 3 of Decision No 406/2009/EC by December 2016, with a view to ensuring consistency between the methodologies used for the determination of the AEAs and the annual reporting by Member States after the date of that examination.

(4) In accordance with Article 27 of Regulation (EU) No 525/2013 and based on the GHG inventory data as reviewed under Article 19 of that Regulation, the Commission examined the impact of the use of the 2006 IPCC Guidelines, and of changes to UNFCCC methodologies used, on Member State's GHG inventories. The difference in the total greenhouse gas emissions relevant for Article 3 of Decision No 406/2009/EC exceeds 1 % for most Member States. In the light of this examination, all Member States' annual emission allocations for the years 2017 to 2020 contained in Annex II to Decision 2013/162/EU should be revised in order to take into account the updated inventory data reported and reviewed pursuant to Article 19 of Regulation (EU) No 525/2013 in 2016. Such revision should be done using the same methodology as the one used for determining the annual emission allocations by Decision 2013/162/EU.

(5) The revision of AEAs should be limited to those that were allocated for the years 2017 to 2020, since for greenhouse gas emissions for the years 2013 to 2016 Member States can no longer change their policies and measures. However, in the interests of clarity the whole Annex II to Decision 2013/162/EU should be replaced, while keeping the AEAs for the years 2013 to 2016 unchanged.

([1]) OJ L 140, 5.6.2009, p. 136.
([2]) Commission Decision 2013/162/EU of 26 March 2013 on determining Member States' annual emission allocations for the period from 2013 to 2020 pursuant to Decision No 406/2009/EC of the European Parliament and of the Council (OJ L 90, 28.3.2013, p. 106).
([3]) Commission Delegated Regulation (EU) No 666/2014 of 12 March 2014 establishing substantive requirements for a Union inventory system and taking into account changes in the global warming potentials and internationally agreed inventory guidelines pursuant to Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 179, 19.6.2014, p. 26).
([4]) Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13).

(6) Article 2 of Decision 2013/162/EU refers to global warming potential values from the 4th IPCC Assessment Report as adopted by Decision 15/CP.17 of the Conference of the Parties to the UNFCCC. In the meanwhile the Conference of the Parties to the UNFCCC adopted a new Decision 24/CP.19 recalling Decision 15/CP.17 and confirming the values from the 4th IPCC Assessment Report. Article 7 of Delegated Regulation (EU) No 666/2014 requires Member States and the Commission to use the global warming potentials listed in Annex III to Decision 24/CP.19 for the purpose of determining and reporting greenhouse gas inventories pursuant to paragraphs 1 to 5 of Article 7 of Regulation (EU) No 525/2013. In the interests of clarity the reference to Decision 15/CP.17 in Article 2 of Decision 2013/162/EU should therefore be replaced by a reference to Decision 24/CP.19.

(7) The measures provided for in this Decision are in accordance with the opinion of the Climate Change Committee,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2013/162/EU is amended as follows:

(1) In Article 2, 'Decision 15/CP.17' is replaced by 'Decision 24/CP.19';

(2) Annex II is replaced by the text in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 10 August 2017.

For the Commission
Miguel ARIAS CAÑETE
Member of the Commission

ANNEX

'ANNEX II

Member States Annual Emissions Allocation for the year 2013 to 2020 calculated applying global warming potential values from the fourth IPCC assessment report

Member State	Annual Emission Allocation (tonnes of carbon dioxide equivalent)							
	2013	2014	2015	2016	2017	2018	2019	2020
Belgium	82 376 327	80 774 027	79 171 726	77 569 425	76 190 376	74 703 759	73 217 143	71 730 526
Bulgaria	28 661 817	28 897 235	29 132 652	29 368 070	27 481 112	27 670 637	27 860 163	28 049 688
Czech Republic	65 452 506	66 137 845	66 823 185	67 508 524	67 971 770	68 581 207	69 190 644	69 800 080
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