Official Journal of the European Union

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English edition

Legislation

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Contents

[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

III *Other acts*

EUROPEAN ECONOMIC AREA

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) 2017/1942

of 25 October 2017

implementing Article 15(3) of Regulation (EU) No 747/2014 concerning restrictive measures in view of the situation in Sudan

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) No 747/2014 of 10 July 2014 concerning restrictive measures in view of the situation in Sudan and repealing Regulations (EC) No 131/2004 and (EC) No 1184/2005 [1], and in particular Article 15(3) thereof,

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

Whereas:

(1) On 10 July 2014, the Council adopted Regulation (EU) No 747/2014.

(2) On 17 October 2017, the United Nations Security Council Committee established pursuant to United Nations Security Council Resolution 1591 (2005) updated the information relating to one person subject to restrictive measures.

(3) Annex I to Regulation (EU) No 747/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EU) No 747/2014 is hereby amended as set out in the Annex to this Regulation.

Article 2

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

[1] OJ L 203, 11.7.2014, p. 1.

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

Done at Brussels, 25 October 2017.

For the Council
The President
M. MAASIKAS

ANNEX

The entry concerning '**ALNSIEM**, Musa Hilal Abdalla' is replaced by the following entry:

'2. **ALNSIEM**, Musa Hilal Abdalla

Alias: a) Sheikh Musa Hilal; b) Abd Allah; c) Abdallah; d) AlNasim; e) Al Nasim; f) AlNaseem; g) Al Naseem; h) AlNasseem; i) Al Nasseem

Designation: a) formerly Member of the National Assembly of Sudan from Al-Waha district; b) formerly special adviser to the Ministry of Federal Affairs; c) Paramount Chief of the Mahamid Tribe in North Darfur

Date of birth: a) 01 Jan. 1964; b) 1959

Place of birth: Kutum

Nationality: Sudan

Address: a) Kabkabiya, Sudan; b) Kutum, Sudan (Resides in Kabkabiya and the city of Kutum, Northern Darfur and has resided in Khartoum).

Passport: a) Diplomatic Passport D014433, issued on 21 Feb. 2013 (Expired on 21 Feb. 2015); b) Diplomatic Passport D009889, issued on 17 Feb. 2011 (Expired on 17 Feb. 2013).

Identification: Certificate of Nationality A0680623.

Date of UN designation: 25 April 2006.

Other information: INTERPOL-UN Security Council Special Notice web link: https://www.interpol.int/en/notice/search/un/5795065

Information from the narrative summary of reasons for listing provided by the Sanctions Committee:

Alnsiem was listed on 25 April 2006 by paragraph 1 of resolution 1672 (2006) as "Paramount Chief of the Jalul Tribe in North Darfur".

Report from Human Rights Watch states they have a memo dated 13 February 2004 from a local government office in North Darfur ordering "security units in the locality" to "allow the activities of the mujahideen and the volunteers under the command of the Sheikh Musa Hilal to proceed in the areas of [North Darfur] and to secure their vital needs". On 28 September 2005, 400 Arab militia attacked the villages of Aro Sharrow (including its IDP camp), Acho, and Gozmena in West Darfur. We also believe that Musa Hilal was present during the attack on Aro Sharrow IDP camp: his son had been killed during the SLA attack on Shareia, so he was now involved in a personal blood feud. There are reasonable grounds to believe that as the Paramount Chief he had direct responsibility for these actions and is responsible for violations of international humanitarian and human rights law and other atrocities.'

COMMISSION DELEGATED REGULATION (EU) 2017/1943

of 14 July 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on information and requirements for the authorisation of investment firms

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU [1], and in particular Article 7(4) thereof,

Whereas:

(1) In order to enable competent authorities to carry out a thorough assessment as part of the process for granting and refusing requests for authorisation of investment firms, an applicant should be required to submit to the competent authority precise information at the time of the initial request for authorisation. The competent authority should retain the right to request additional information from the applicant during the assessment process in accordance with the criteria and timelines set out in Directive 2014/65/EU.

(2) In order to ensure that the competent authority's assessment is based on accurate information, it is essential that an applicant provide copies of its corporate documents, including a certified copy of the instrument of incorporation, by-laws and the articles of association and a copy of registration of the company in the national register of companies.

(3) Information on the sources of capital available, including the means used for transferring financial resources when raising capital, should be submitted by an applicant in order to enable competent authorities to assess that all relevant requirements in the field of financial crime have been complied with.

(4) Newly established entities, when submitting an application, may only be in a position to provide information on how capital will be raised and the types and amount of capital that will be raised. However, evidence of paid-up share capital and other types of capital raised, together with information on the sources of capital, should be provided to the competent authorities, in view of obtaining authorisation, before authorisation is granted. Such evidence may include copies of relevant capital instruments and corresponding bank statements.

(5) In order to enable competent authorities to assess the reputation of any person who will direct the business of the investment firm, of the proposed shareholders and members with qualifying holdings it is important to require an applicant to provide information on these persons.

(6) In order to assess the experience of any person who will direct the business of the investment firm, competent authorities should be presented by an applicant with information on the relevant education and professional training, and professional experience of the members of the management body and persons effectively directing the business and their related powers and any proxies.

(7) Financial information concerning the investment firm should be submitted by an applicant to the competent authorities so that these may assess the financial soundness of that investment firm.

(8) Since, at time of the application, newly established firms might not be in the position to provide information on the auditors; those applicants should be exempted from providing this information to the competent authority unless the auditors have already been appointed.

[1] OJ L 173, 12.6.2014, p. 349.

(9) Information relevant to the assessment of the organisational structure of the investment firm should include details on the internal control system, on the measures to detect conflicts of interests, and on client assets safeguarding arrangements, in order to allow the competent authority to assess whether that investment firm will be able to comply with its obligations under Article 16 of Directive 2014/65/EU.

(10) National competent authorities may authorise as investment firm a natural person or a legal person managed by a single natural person. It is therefore appropriate to set out authorisation requirements applicable to the management of investment firms that are natural persons or legal persons managed by a single natural person.

(11) In order to provide legal certainty, clarity and predictability with regards to the authorisation process, it is appropriate that the criteria against which competent authorities appraise the suitability of the shareholders or members with qualifying holdings, when authorising an investment firm, are the same criteria set out by Article 13 of Directive 2014/65/EU for the assessment of a proposed acquisition. In particular, competent authorities should appraise the suitability of the shareholders or members with qualifying holdings and the financial soundness of the firm taking into account criteria relating to the reputation, experience of the persons directing the business of the investment firm and the financial soundness of the firm.

(12) In order to identify obstacles that could prevent effective exercise of the supervisory functions, competent authorities should consider the complexity and transparency of group structure of investment firm, the geographical location of the entities of the group and the activities the group entities perform.

(13) Directive 95/46/EC of the European Parliament and of the Council [1] applies to the processing of personal data by the Member States in the application of this Regulation.

(14) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.

(15) This Regulation is based on the draft regulatory technical standards submitted by European Securities and Markets Authority (ESMA) to the Commission.

(16) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [2], ESMA has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

General information

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU shall submit to the competent authority an application that includes the following general information:

(a) its name (including its legal name and any other trading name to be used); legal structure (including information on whether it will be a legal person or, where allowed by national legislation, a natural person), address of the head office and, for existing companies, registered office; contact details; its national identification number, where available; as well as:

  (i) for domestic branches: information on where the branches will operate;

  (ii) for domestic tied agents: details on its intention to use tied agents;

[1] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

[2] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

(b) the list of investment services and activities, ancillary services and financial instruments to be provided, and whether clients' financial instruments and funds will be held (even on a temporary basis).

(c) copies of corporate documents and evidence of registration with the national register of companies, where applicable.

Article 2

Information on capital

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU shall provide to the competent authority information and, where available, evidence on the sources of capital available to it. The information shall include:

(a) details on the use of private financial resources including the origin and availability of those funds;

(b) details on access to capital sources and financial markets including details of financial instruments issued or to be issued;

(c) any relevant agreements and contracts regarding the capital raised;

(d) information on the use or expected use of borrowed funds including the name of relevant lenders and details of the facilities granted or expected to be granted, including maturities, terms, pledges and guarantees, along with information on the origin of the borrowed funds (or funds expected to be borrowed) where the lender is not a supervised financial institution;

(e) details on the means of transferring financial resources to the firm including the network used to transfer such funds.

For the purposes of point (b), information on types of capital raised shall refer, where relevant, to the types of capital specified under Regulation (EU) No 575/2013, specifically whether the capital comprises Common Equity Tier 1 items, Additional Tier 1 items or Tier 2 items.

Article 3

Information on shareholders

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its shareholders:

(a) the list of persons with a direct or indirect qualifying holding in the investment firm, and the amount of these holdings and, for indirect holdings, the name of the person through which the stake is held and the name of the final holder;

(b) for persons with a qualifying holding (direct or indirect) in the investment firm the documentation required from proposed acquirers for the acquisition and increases in qualifying holdings in investment firms in accordance with Articles 3, 4 and 5 of Commission Delegated Regulation 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm ([1]);

(c) for corporate shareholders that are members of a group, an organisational chart of the group indicating the main activities of each firm within the group, identification of any regulated entities within the group and the names of the relevant supervisory authorities as well as the relationship between the financial entities of the group and other non-financial group entities.

(d) For the purposes of point (b), where the holder of a qualifying holding is not a natural person, the documentation shall also relate to all members of the management body and the general manager, or any other person performing equivalent duties.

([1]) See page 32 of this Official Journal.

Article 4

Information on the management body and persons who direct the business

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU shall provide to the competent authority the following information:

(a) in respect of members of the management body and persons effectively directing the business and their related powers and any proxies:

(i) personal details comprising the person's name, date and place of birth, personal national identification number, where available, address and contact details;

(ii) the position for which the person is/will be appointed;

(iii) a curriculum vitae stating relevant education and professional training, professional experience, including the names of all organisations for which the person has worked and nature and duration of the functions performed, in particular for any activities within the scope of the position sought; for positions held in the previous 10 years, when describing those activities, details shall be included on all delegated powers and internal decision-making powers held and the areas of operations under control;

(iv) documentation relating to person's reputation and experience, in particular a list of reference persons including contact information, letters of recommendation;

(v) criminal records and information on criminal investigations and proceedings relevant civil and administrative cases, and disciplinary actions opened against them (including disqualification as a company director, bankruptcy, insolvency and similar procedures), notably through an official certificate (if and so far as it is available from the relevant Member State or third country), or through another equivalent document; for ongoing investigations, the information may be provided through a declaration of honour;

(vi) information on refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;

(vii) information on dismissal from employment or a position of trust, fiduciary relationship, or similar situation;

(viii) information on whether an assessment of reputation and experience as an acquirer or as a person who directs the business has already been conducted (including the date of the assessment, the identity of that authority and evidence of the outcome of this assessment);

(ix) description of any financial and non-financial interests or relationships of the person and his/her close relatives to members of the management body and key function holders in the same institution, the parent institution and subsidiaries and shareholders;

(x) details of the result of any assessment of the suitability of the members of the management body, performed by the applicant itself;

(xi) information on the minimum time that will be devoted to the performance of the person's functions within the firm (annual and monthly indications);

(xii) information on human and financial resources devoted to the induction and training of the members (annual indications);

(xiii) the list of executive and non-executive directorships currently held by the person.

For the purposes of point (ix) of point (a), financial interests include interests such as credit operations, guarantees and pledge, whereas non-financial interests may include interests such as family or close relationships.

(b) The staff of the internal management and control bodies.

Article 5

Financial information

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its financial situation:

(a) forecast information at an individual and, where applicable, at consolidated group and sub-consolidated levels, including:

  (i) forecast accounting plans for the first three business years including:

    — forecast balance sheets;

    — forecast profit and loss accounts or income statements;

  (ii) planning assumptions for the above forecasts as well as explanations of the figures, including expected number and type of customers, expected volume of transactions/orders, expected assets under management;

  (iii) where applicable, forecast calculations of the firm's capital requirements and liquidity requirements under Regulation (EU) No 575/2013 of the European Parliament and of the Council [1] and forecast solvency ratio for the first year;

(b) for companies that are already active, statutory financial statements, at an individual and, where applicable, at consolidated group and sub-consolidated levels for the last three financial periods, approved, where the financial statements are audited, by the external auditor, including:

  (i) the balance sheet;

  (ii) the profit and loss accounts or income statements;

  (iii) the annual reports and financial annexes and any other documents registered with the relevant registry or authority in the particular territory relevant to the company financial statements and, where applicable, a report by the company's auditor of the last three years or since the beginning of the activity;

(c) an analysis of the scope of consolidated supervision under Regulation (EU) No 575/2013, including details on which group entities will be included in the scope of consolidated supervision requirements post-authorisation and at which level within the group these requirements will apply on a full or sub-consolidated basis.

Article 6

Information on the organisation of the firm

An applicant seeking authorisation as an investment firm in accordance to Title II of Directive2014/65/EU shall provide to the competent authority the following information on its organisation:

(a) a programme of initial operations for the following three years, including information on planned regulated and unregulated activities detailed information on the geographical distribution and activities to be carried out by the investment firm. Relevant information in the programme of operations shall include:

  (i) the domicile of prospective customers and targeted investors;

  (ii) the marketing and promotional activity and arrangements, including languages of the offering and promotional documents; identification of the Member States where advertisements are most visible and frequent; type of promotional documents (in order to assess where effective marketing will be mostly developed);

  (iii) the identity of direct marketers, financial investment advisers and distributors, geographical localisation of their activity;

(b) details of the firm's auditors, when available at time of application for authorisation;

(c) the organisational structure and internal control systems of the company, comprising:

  (i) the personal details of the heads of internal functions (management and supervisory), including a detailed curriculum vitae, stating relevant education and professional training, professional experience;

  (ii) the description of the resources (in particular human and technical) allocated to the various planned activities;

[1] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

(iii) in relation to holding client financial instruments and funds, information, specifying any client asset safeguarding arrangements (in particular, where financial instruments and funds are held in a custodian, the name of the custodian, and related contracts);

(iv) an explanation of how the firm will satisfy its prudential and conduct requirements.

(d) information on the status of the application undertaken by the investment firm to become a member of the investor compensation scheme of the Home Member State or evidence of membership to the investor compensation scheme, where available;

(e) a list of the outsourced functions, services or activities (or those intended to be outsourced) and a list of the contracts concluded or foreseen with external providers and resources (in particular, human and technical, and the internal control system) allocated to the control of the outsourced functions, services or activities;

(f) measures to identify and to prevent or manage conflicts of interest that arise in the course of providing investment and ancillary services and a description of product governance arrangements;

(g) a description of systems for monitoring the activities of the firm, including back–up systems, where available, and systems and risk controls where the firm wishes to engage in algorithmic trading and/or provide direct electronic access;

(h) information on the compliance, internal control, and, risk management systems (a monitoring system, internal audits and the advice and assistance functions).

(i) details on the systems for assessing and managing the risks of money laundering and terrorist financing;

(j) business continuity plans, including systems and human resources (key personnel);

(k) record management, record-keeping and record retention policies;

(l) a description of the firm's manual of procedures.

Article 7

General requirements

1. The information to be provided to the competent authority of the home Member State, as set out in Articles 1 and 6, shall refer to both the head office of the firm and its branches and tied agents.

2. The information to be provided to the competent authority of the home Member State, as set out in Articles 2 to 5, shall refer to the head office of the firm.

Article 8

Requirements applicable to the management of investment firms that are natural persons or investment firms that are legal persons managed by a single natural person

1. The competent authority shall only authorise as investment firm an applicant natural person or a legal person managed by a single natural person where:

(a) the natural person is easily contactable at short notice by the competent authorities;

(b) the natural person has sufficient time dedicated to this function;

(c) the governing bodies or bylaws of the investment firm empower a person to substitute the manager immediately and perform all his duties if the latter is unable to perform them;

(d) the person empowered pursuant to the previous point shall be of sufficiently good repute and have sufficient experience to substitute the manager for the time of absence, or until a new manager is appointed, so as to ensure sound and prudent management of the investment firm. The person empowered for investment firms that are natural persons, shall be also available to assist insolvency practitioners and relevant authorities in the liquidation of the firm. This person shall have the necessary availability for this function.

2. As part of its authorisation process, an applicant investment firm which is a natural person, or a legal person managed by a single natural person, shall provide to the competent authority the information listed in Article 4(1)(a), (c), (d), (e) and (f) in relation to the person empowered under paragraph 1(d) of this Article.

Article 9

Requirements applicable to shareholders and members with qualifying holdings

The competent authority shall verify that the request of an applicant for authorisation as an investment firm, in accordance to Title II of Directive 2014/65/EU, offers sufficient guarantees for a sound and prudent management of the entity by assessing the suitability of proposed shareholders and members with qualifying holdings, having regard to the likely influence on the investment firm of each proposed shareholder or member with qualifying holdings, against all of the following criteria:

(a) the reputation and experience of any person who will direct the business of the investment firm;

(b) the reputation of the proposed shareholders and members with qualifying holdings;

(c) the financial soundness of the proposed shareholders and members with qualifying holding, in particular in relation to the type of business pursued and envisaged in the investment firm;

(d) whether the investment firm will be able to comply and continue to comply with the prudential requirements set out in Article 15 of Directive 2014/65/EU and, where applicable, Directives 2002/87/EC ([1]) and 2013/36/EU ([2]) of the European Parliament and of the Council and in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;

(e) whether there are reasonable grounds to suspect that, in connection with the authorisation of the investment firm, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council ([3]) is being or has been committed or attempted, or that the authorisation of the investment firm could increase the risk thereof.

Article 10

Effective exercise of supervisory functions

A group structure within which the investment firm will operate shall be considered to be an obstacle to the exercise of the supervisory function of the competent authority for the purposes of Article 10(1) and (2) of Directive 2014/65/EU in any of the following cases:

(a) it is complex and not sufficiently transparent;

(b) it has a geographical location of group entities;

(c) it includes activities performed by the group entities that may prevent the competent authority to effectively appraise the suitability of the shareholders or members with qualifying holdings or the influence of close links with the investment firm.

Article 11

Entry into force and application

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

It shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

([1]) Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

([2]) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

([3]) Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

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

Done at Brussels, 14 July 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1944

of 13 June 2017

laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC ([1]), and in particular the sixth subparagraph of Article 10a(8) thereof,

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ([2]), and in particular Article 12(9) thereof,

Whereas:

(1) It is appropriate to set out common standard forms, templates and procedures to ensure the accurate assessment by Member States' competent authorities of notifications of proposed acquisitions or increases of qualifying holdings in an investment firm. In those cases, the relevant competent authorities should consult and provide each other with any essential or relevant information.

(2) To facilitate the cooperation between them and ensure efficiency in their exchange of information, competent authorities designated in accordance with Article 48 of Directive 2004/39/EC should designate contact persons specifically for the purpose of the consultation process provided for in Article 10(4) of Directive 2004/39/EC and a centralised list of those contact persons should be maintained by the European Securities and Markets Authority (ESMA).

(3) Consultation procedures containing clear timing constraints should be set up in order to ensure the timely and efficient cooperation between competent authorities. A clear cooperation procedure should include a preliminary notice to be sent by the requesting authority to the requested authority, to inform the requested authority of the ongoing assessment.

(4) The procedures should also aim at ensuring that competent authorities cooperate and work towards the improvement of the process by promoting the exchange of feedback on the quality and relevance of the information received.

(5) Any exchange or transmission of information between competent authorities, other authorities, bodies or persons should be in accordance with the rules on personal data as laid down in Directive 95/46/EC of the European Parliament and of the Council ([3]).

(6) Regulation (EC) No 45/2001 of the European Parliament and of the Council ([4]) applies to the processing of personal data by ESMA in the application of this Regulation.

([1]) OJ L 145, 30.4.2004, p. 1.
([2]) OJ L 173, 12.6.2014, p. 349.
([3]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).
([4]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

(7) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission.

(8) ESMA did not publicly consult or analyse the potential related costs and benefits of introducing the standard forms, templates and procedures for the consultation process between relevant competent authorities, as this was considered disproportionate in relation to their scope and impact.

(9) Directive 2014/65/EU entered into force on 2 July 2014. Article 12(9) of Directive 2014/65/EU replaces Article 10a(8) of Directive 2004/39/EC and contains empowerments to ESMA for the development of implementing technical standards which are identical to those provided for under Article 10a(8) of Directive 2004/39/EC. Furthermore, the content of Articles 10b(4) and Article 10(4) of Directive 2004/39/EC is also identical to the content of Article 13(4) and Article 11(2) of Directive 2014/65/EU. In accordance with Article 94(1) of Directive 2014/65/EU, Directive 2004/39/EC will be repealed with effect from 3 January 2017. The adoption of the technical standards by the Commission in accordance with Article 10a(8) of Directive 2004/39/EC should also be considered in compliance with Article 12(8) of Directive 2014/65/EU with the consequence that the technical standard will continue to apply after 3 January 2018 without the need for further amendment,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down the standard forms, templates and procedures for the exchange of information during the consultation process between the competent authority of the target entity (the 'requesting authority'), and the competent authority of the proposed acquirer or of an authorised entity which is either a subsidiary of or controlled by the proposed acquirer (the 'requested authority').

Article 2

Designated contact persons

1. Competent authorities designated in accordance with Article 48 of Directive 2004/39/EC shall designate contact persons for communication for the purposes of this Regulation and shall notify ESMA of those persons.

2. ESMA shall maintain and update the list of the designated contact persons for the use of the competent authorities as referred to in paragraph 1.

Article 3

Preliminary notice

1. A requesting authority shall send a preliminary notice to the requested authority within three working days of the receipt of a notification by the proposed acquirer in accordance with Article 10(3) of Directive 2004/39/EC.

2. The requesting authority shall send the preliminary notice by completing the template set out in Annex I and shall include all the information set out therein.

Article 4

Consultation notice

1. The requesting authority shall send a consultation notice to the requested authority as soon as possible after receipt of a notification by the proposed acquirer in accordance with Article 10(3) of Directive 2004/39/EC and not later than 20 working days after receipt of such notification.

2. The requesting authority shall send the consultation notice referred to in paragraph 1 in writing by post, facsimile or secure electronic means, and address it to the designated contact person of the requested authority unless otherwise specified by the requested authority in its reply to the preliminary notice referred to in Article 3.

3. The requesting authority shall send the consultation notice referred to in paragraph 1 by completing the template set out in Annex II, identifying in particular issues relating to the confidentiality of information that may be obtained by the requesting authority, and specifying details of the relevant information that the requesting authority asks from the requested authority.

Article 5

Acknowledgement of receipt of a consultation notice

The requested authority shall send an acknowledgement of receipt of a consultation notice, within two working days of receiving it, including any additional contact details of its designated contact person and, where possible, an estimated date of response.

Article 6

Response from a requested authority

1. A response to a consultation notice shall be made in writing by post, facsimile or secure electronic means. It shall be addressed to the designated contact persons unless otherwise specified by the requesting authority.

2. The requested authority shall provide the requesting authority with the following information as soon as possible and not later than 20 working days of receipt of the consultation notice:

(a) the relevant information requested in the consultation notice, including any views or reservations in relation to the acquisition by the proposed acquirer;

(b) any other essential information that may influence the assessment, on its own initiative.

3. Where the requested authority is not able to meet the time limit set out in paragraph 2, it shall inform the requesting authority of this circumstance, indicating the reasons for the delay and an estimated date of response. The requested authority shall provide regular feedback on the progress made to provide the information requested.

4. In providing information in accordance with paragraph 2, the requested authority shall use the template set out in Annex III.

Article 7

Procedures for consultation

1. The requesting authority and the requested authority shall communicate in relation to a consultation notice and the response using the most expedient means from among those set out in Article 4(2) and Article 6(1), taking due account of confidentiality considerations, correspondence times, the volume of material to be communicated and the ease of access to the information by the requesting authority. The requesting authority shall respond promptly to any clarifications requested by the requested authority.

2. Where the information requested is or may be held by an authority of the same Member State other than the requested authority, the requested authority shall collect the information promptly and transmit it to the requesting authority in accordance with Article 6.

3. The requested authority and the requesting authority shall cooperate to resolve any difficulties that may arise in executing a request, including resolving any cost issues if the costs of providing assistance are estimated to be excessive for the requested authority.

4. Where new information or a need for further information arises during the assessment period, the requesting authority and the requested authority shall cooperate to ensure that all additional relevant information is exchanged in accordance with this Regulation.

5. By way of derogation from Article 4(2) and Article 6(1), where information is being exchanged within the last 15 working days before the end of the assessment period referred to in the second subparagraph of Article 10a(1) of Directive 2004/39/EC, it may be provided verbally. In those cases, that information shall subsequently be confirmed in accordance with Article 4(2) and Article 6(1) unless the competent authorities involved agree otherwise.

6. The requested authority and the requesting authority shall provide feedback to each other on the outcome of the assessment in relation to which the consultation occurred and, where appropriate, on the usefulness of information or other assistance received or any problems encountered in providing such assistance or information.

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, 13 June 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Preliminary notice template

(Article 3 of Commission Implementing Regulation (EU) 2017/1944)

Preliminary notice

Reference number: .....

Date: .....

General information

FROM:

Member State:

Requesting Authority:

Legal address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

TO:

Member State:

Requested Authority:

Legal address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

Dear [*insert appropriate name*]

In accordance with Article 3 of Commission Implementing Regulation (EU) 2017/1944 of 13 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council, a preliminary notice is made in relation to the matters set out in further detail below.

Information on the proposed acquisition

Identity of the proposed acquirer:

.....

.....

[*for natural persons, please include the information referred to in Article 3(1)(a) of Commission Delegated Regulation (EU) 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm; for legal persons, please include the information referred to in Article 3(2)(a) of Delegated Regulation (EU) 2017/1946.]*

Name of relevant authorised entity(/ies) in the requested authority's Member State and relationship to proposed acquirer:

.....

.....

.....

[*where the proposed acquirer is an authorised entity as referred to in Article 10(4)(a) of Directive 2004/39/EC, the name of the proposed acquirer is sufficient. Where the proposed acquirer falls under one of the categories defined under Article 10(4)(b) or (c) of Directive 2004/39/EC it is also necessary to explain the relationship of the proposed acquirer to the relevant authorised entity established in the requested authority's Member State*]

Identity of the target entity:

.....

.....

.....

[*please insert the information referred to under Article 7(a) of Commission Delegated Regulation (EU) 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm]*

Size of the current and intended holding of the proposed acquirer in the target entity:

.....

.....

.....

[*please insert the information referred to under Article 7(c)(i), (ii) and (iii) of Commission Delegated Regulation (EU) 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm]*

Please note that the assessment procedure (*) will expire on [insert date]. We will communicate further the consultation notice, which will contain all essential information on the proposed acquisition, and it will include any relevant information that we would like to receive. However, in the meantime, if you are aware of any essential information in relation to the acquisition, or if you have any views or reservations, we would be grateful if you could provide them at the earliest opportunity and at the latest within 20 working days of receipt of the consultation notice that will follow this preliminary notice.

(*) In accordance with second subparagraph of Article 10a(1) of Directive 2004/39/EC.

Yours sincerely,

[*signature*]

ANNEX II

Consultation notice template

(Article 4 of Commission Implementing Regulation (EU) 2017/1944)

Consultation notice

Reference number: .....

Date: .....

General information

FROM:

Member State:

Requesting Authority:

Legal address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

TO:

Member State:

Requested Authority:

Legal address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

Dear [*insert appropriate name*]

In accordance with Article 4 of the Commission Implementing Regulation (EU) 2017/1944 of 13 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council, a consultation notice is made in relation to the matters set out in further detail below.

Please note that the assessment procedure (*) will expire on [insert date], therefore we would be grateful if you could provide the requested information and any other relevant and essential information by [20 working days from receipt of this letter] or, if that is not possible, an indication as to when you anticipate being in a position to provide the assistance which is sought, taking into account the mentioned deadline for the assessment procedure.

(*) In accordance with second subparagraph of Article 10a(1) of Directive 2004/39/EC

Information on the proposed acquisition

Subject matter .....

.....

.....

.....

[*please set out that information here or make reference to the relevant annexes containing the information*]

Details of the proposed acquisition .....

.....

.....

.....

[*please set out that information here or make reference to the relevant annexes containing the information*]

Details of any other supervisory authorities involved .....

.....

.....

.....

[please set out that information here or make reference to the relevant annexes containing the information]

Further to .....

.....

.....

.....

[*if applicable, please insert details of the previous request in order to enable it to be identified*]

Type of assistance request

Information sought [*if any*]:

.....

.....

[*please insert a detailed description of the specific information sought, including any relevant documents requested, with reasons why that information will be of assistance. Examples include:*

— *The shareholding structure of the proposed acquirer or of the relevant authorised entity, and the main characteristics of its shareholders;*

— *The most recent assessment of the suitability (fitness and propriety) of the proposed acquirer or of the relevant authorised entity;*

— *The most recent assessment of the financial soundness of the proposed acquirer or of the relevant authorised entity, with related public or external audit reports (where relevant);*

— *The most recent assessment by the requested authority of the quality of the management structure of the proposed acquirer or of the relevant authorised entity, and its administrative and accounting procedures, internal control systems, corporate governance, group structure etc.*]

Additional information provided by the requesting authority.

.....

.....

[*Whether the requesting authority has been or will be in contact with any other authority or law enforcement agency in the Member State of the requested authority in relation to the subject matter of the request or any other authority which the requesting authority is aware that has an active interest in the subject matter of the request*]

Yours sincerely,

[*signature*]

ANNEX III

Response from requested authority template

(Article 6 of Commission Implementing Regulation (EU) 2017/1944)

Response from requested authority

Reference number: .....

Date: .....

General information

FROM:

Member State:

Requested Authority:

Legal address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

TO:

Member State:

Requesting Authority:

Legal address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

Dear [*insert appropriate name*]

In accordance with Article 6 of the Commission Implementing Regulation (EU) 2017/1944 of 13 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council, your consultation notice dated [dd.mm.yyyy] with reference [insert reference number] has been processed by us.

Where applicable, please explain any doubt you have in relation to the precise information requested or to any other aspect of this assessment:

.....

.....

.....

.....

If the information requested has been gathered, please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information requested:

.....

.....

.....

If there is any other relevant or essential information, please provide that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing that information:

.....

.....

.....

Please provide, on your own initiative, any essential information that could materially influence the assessment, such as group structure or the most recent assessments of the financial soundness of the proposed acquirer or of the relevant authorised entity.

.....

.....

.....

Yours sincerely,

[*signature*]

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1945

of 19 June 2017

laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to Directive 2014/65/EU of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments amending Directive 2002/92/EC and Directive 2011/61/EU ([1]), and in particular the third subparagraph of Article 7(5) thereof,

Whereas:

(1) It is appropriate to set out common standard forms, templates and procedures to ensure a uniform mechanism by which Member States' competent authorities effectively exercise their powers in respect of the authorisation of firms for the provision of investment services, investment activities and, where relevant, of ancillary services.

(2) To facilitate communication between an applicant seeking authorisation as an investment firm in accordance with Title II of Directive 2014/65/EU and the competent authority, competent authorities should designate a contact point specifically for the purpose of the application process and should publish the information on the contact point on their website.

(3) In order to allow competent authorities to assess whether changes to the management body of the firm may pose a threat to the effective, sound and prudent management of the firm, and to adequately take into consideration the interests of its clients and the integrity of the market, clear time limits should be defined for the submission of information on those changes.

(4) Firms should however be exempted from the requirement to submit information on changes to the management body before that change takes effect where the change is due to factors not within the control of the firm, such as in the case of the death of a management body member. Under those circumstances, firms should be allowed to notify the competent authority within 10 working days after the change.

(5) Directive 95/46/EC of the European Parliament and of the Council ([2]) applies to the processing of personal data by the Member States in the application of this Regulation.

(6) This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(7) ESMA has conducted open public consultations, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([3]),

HAS ADOPTED THIS REGULATION:

Article 1

Designation of a contact point

Competent authorities shall designate a contact point for handling all information received from applicants seeking authorisation as an investment firm in accordance to Title II of Directive 2014/65/EU. The contact details on the designated contact point shall be made public and regularly updated on the competent authorities' websites.

([1]) OJ L 173, 12.6.2014, p. 349.
([2]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).
([3]) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Article 2

Submission of the application

1. An applicant seeking authorisation as an investment firm in accordance with Title II of Directive 2014/65/EU shall submit to the competent authority its application by filling in the template set out in Annex I.

2. The applicant shall notify the competent authority of the information on all members of its management body by filling in the template set out in Annex II.

Article 3

Receipt of the application form and acknowledgement of receipt

Within 10 working days from the receipt of the application, the competent authority shall send an acknowledgement of receipt to the applicant, including the contact details of the designated contact point as referred to in Article 1.

Article 4

Request of additional information

Where additional information is required to proceed with the assessment of the application, the competent authority shall send a request to the applicant indicating the information to be provided.

Article 5

Notification of changes to the membership of the management body

1. An investment firm shall notify the competent authority of any change to the membership of its management body before such change takes effect.

Where, for substantiated reasons, it is not possible to make the notification before that change takes effect, it shall be made within 10 working days after the change.

2. The investment firm shall provide the information on the change referred to in paragraph 1 in the format set out in Annex III.

Article 6

Communication of the decision

The competent authority shall inform the applicant of its decision to grant or not the authorisation in paper form, by electronic means or both, within the 6-month period referred to in Article 7(3) of Directive 2014/65/EU.

Article 7

Entry into force and application

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

It shall apply from 3 January 2018.

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

Done at Brussels, 19 June 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Application Form for authorisation as an Investment Firm

Reference number: .....

Date: .....

FROM:

Name of the applicant:

Address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

TO:

Member State:

Competent Authority:

Address:

(Contact details of the designated contact point)

Address:

Telephone:

Email:

Dear [insert appropriate name]

In accordance with Article 2 of the Commission Implementing Regulation (EU) 2017/1945 laying down implementing technical standards with regard to standard forms, templates and procedures for notification or provision of information provided for in Article 7(5) of Directive 2014/65/EU to ensure uniform conditions of application of Article 7(2) of that Directive, kindly find attached the authorisation application.

— Person in charge of preparing the application:

Name:

Status/position:

Telephone:

Fax (if available):

Email:

— Nature of the application (tick the relevant box):

☐ Authorisation

☐ Change to the authorisation already obtained

CONTENT

General information on the applicant firm

.....

[please insert the information referred to under Article 1 of Commission Delegated Regulation (EU) 2017/1943 of the European Parliament and of the Council of 14 July 2016 supplementing Directive 2014/65/EU with regard to regulatory technical standards on information and requirements for the authorisation of investment firms. Please set out that information here or make reference to the relevant annexes containing the information]

Information on the capital

.....

[please insert the information referred to under Article 2 of Delegated Regulation (EU) 2017/1943. Please set out that information here or make reference to the relevant annexes containing the information]

Information on the shareholders

.....

[please insert the information referred to under Article 3 of Delegated Regulation (EU) 2017/1943. Please set out that information here or make reference to the relevant annexes containing the information]

Information on the management body and persons directing the business

.....

[please insert the information referred to under Article 4 of Delegated Regulation (EU) 2017/1943. Please set out that information here or make reference to the relevant annexes containing the information]

Financial information

.....

[please insert the information referred to under Article 5 of Delegated Regulation (EU) 2017/1943. Please set out that information here or make reference to the relevant annexes containing the information]

Information on the organisation

.....

[please insert the information referred to under Article 6 of Delegated Regulation (EU) 2017/1943. Please set out that information here or make reference to the relevant annexes containing the information]

ANNEX II

List of members of the management body

Reference number: .....

Date: .....

FROM:

Name of the applicant:

Address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

TO:

Competent Authority:

Address:

(Contact details of the designated contact point if relevant)

Address:

Telephone:

Email:

Dear [insert appropriate name]

In accordance with Article 2 of Commission Implementing Regulation (EU) 2017/1945 of 19 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for notification or provision of information provided for in Article 7(5) of Directive 2014/65/EU to ensure uniform conditions of application of Article 9(5) of that Directive, kindly find attached the notification request.

— Person in charge of preparing the application:

Name:

Status/position:

Telephone:

Fax (if available):

Email:

Date:

Signature:

List of members of the management body

Member 1

Name .....

Contact details (Telephone, email, address) .....

Position .....

Professional experience and other relevant experience .....

Educational qualification and relevant training .....

List of executive and non-executive directorships in other entities .....

.....

Effective date .....

[Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Member n

Name .....

Contact details (Telephone, email, address) .....

Position .....

Professional experience and other relevant experience .....

Educational qualification and relevant training .....

List of executive and non-executive directorships in other entities .....

.....

Effective date .....

[Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Please provide:

— Minutes of the general meeting acting the nomination of the new member of the management body

— Minutes of the general meeting of the management body acting the nomination of the new members.

ANNEX III

Notification of information on changes to the membership of the management body

Reference number: .....

Date: .....

FROM:

Name of the applicant:

Address:

(Contact details of the designated contact person)

Name:

Telephone:

Email:

TO:

Competent Authority:

Address:

(Contact details of the designated contact point if relevant)

Address:

Telephone:

Email:

Dear [insert appropriate name]

In accordance with Article 4 of the Commission Implementing Regulation (EU) 2017/1945 of 19 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for notification or provision of information provided for in Article 7(5) of Directive 2014/65/EU to ensure uniform conditions of application of Article 9(5) of that Directive, kindly find attached the notification request.

— Person in charge of preparing the application:

  Name:

  Status/position:

  Telephone:

  Fax (if available):

  Email:

Information on member(s) leaving the management body

Member 1

Name .....

Contact details (Telephone, email, address) .....

Position .....

Effective date of departure from management body .....

Reasons for the departure from management body .....

Member 2

Name .....

Contact details (Telephone, email, address) .....

Position .....

Effective date of departure from management body .....

Reasons for the departure from management body .....

Member n

Name .....

Contact details (Telephone, email, address) .....

Position .....

Effective date of departure from management body .....

Reasons for the departure from management body .....

Information on new member(s) of the management body

Member 1

Name .....

Contact details (Telephone, email, address) .....

Position .....

Professional experience and other relevant experience .....

Educational qualification and relevant training .....

List of executive and non-executive directorships in other entities .....

.....

Effective date .....

[Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Member n

Name .....

Contact details (Telephone, email, address) .....

Position .....

Professional experience and other relevant experience .....

Educational qualification and relevant training .....

List of executive and non-executive directorships in other entities .....

.....

Effective date .....

[Please set out that information here or provide an explanation of how it will be provided, or make reference to the relevant annexes containing the information]

Complete updated list of members of the management body

Name	Position	Effective date

Please provide:

— Minutes of the general meeting acting the nomination of the new member of the management body.

— Minutes of the general meeting of the management body acting the nomination of the new member.

COMMISSION DELEGATED REGULATION (EU) 2017/1946

of 11 July 2017

supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC ([1]), and in particular the third subparagraph of Article 10a(8) thereof,

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ([2]), and in particular Article 12(8) thereof,

Whereas:

(1) An exhaustive list of information should be required from a proposed acquirer of a qualifying holding in an investment firm at the time of the initial notification to enable competent authorities to carry out the assessment of the proposed acquisition. Information on the identity of the proposed acquirer and of the persons who will direct the business should be provided by the proposed acquirer irrespective of whether it is a natural or a legal person, in order to enable the competent authority of the target entity to assess the reputation of that proposed acquirer.

(2) Information on the identity of the beneficial owners and on the reputation and experience of the persons who effectively direct the business of the proposed acquirer is also necessary where the proposed acquirer is a legal person. Similarly, where the proposed acquirer is or is intended to be a trust structure, it is necessary for the competent authority of the target entity to obtain information on both the identity of the trustees who will manage the assets of the trust, and the identity of the beneficial owners of those assets to be able to assess the reputation and experience of these persons.

(3) Where the proposed acquirer is a natural person, it is necessary to obtain information both in relation to the proposed acquirer and in relation to any undertaking formally directed or controlled by the proposed acquirer in order to provide the competent authority of the target entity with full information relevant to the assessment of reputation. Where the proposed acquirer is a legal person it is necessary to obtain this information in relation to any person who effectively directs the business of the proposed acquirer, any undertaking under the proposed acquirer's control, and any shareholder exerting significant influence on the proposed acquirer in order to provide the competent authority with full information relevant to the assessment of reputation.

(4) The information relevant to the assessment of reputation should include details of criminal proceedings, historical or ongoing, as well as civil or administrative cases. Similarly, information should be provided in relation to all open investigations and proceedings, sanctions or other enforcement decisions against the proposed acquirer, as well as other information such as refusal of registration or dismissal from employment or a position of trust which is deemed relevant in order to assess the reputation of the proposed acquirer.

(5) Information on whether an assessment of reputation as an acquirer, or as a person who directs the business of a credit institution, assurance, insurance or re-insurance undertaking, investment firm or any other entity has

([1]) OJ L 145, 30.4.2004, p. 1.
([2]) OJ L 173, 12.6.2014, p. 349.

already been conducted by another competent authority or other authority and, if so, the outcome of such assessment, should be provided by the proposed acquirer in order to ensure that the outcome of investigations run by other authorities are duly considered by the competent authority of the target entity when assessing the proposed acquirer.

(6) Financial information concerning the proposed acquirer should be provided in order to assess the financial soundness of that proposed acquirer.

(7) Information on the financial and non-financial interests or relationships of the proposed acquirer with any shareholders or directors or members of senior management of the target entity or person entitled to exercise voting rights in the target entity, or with the target entity itself or its group, should be provided in order to allow the competent authority of the target entity to assess whether the existence of any potential conflict of interests will not affect the financial soundness of the proposed acquirer.

(8) Certain additional information, including information on the shareholding owned or contemplated to be owned before and after the proposed acquisition, is necessary when the proposed acquirer is a legal person in order to allow the competent authority of the target entity to complete the assessment of the proposed acquisition as in such cases the legal and group structures involved may be complex and may necessitate detailed review in relation to reputation, close links, a potential action in concert with other parties, and the ability of the competent authority of the target entity to continue effective supervision of the target entity.

(9) Where the proposed acquirer is an entity established in a third country or is part of a group established outside the Union, additional information should be provided so that the competent authority of the target entity can assess whether there are obstacles to the effective supervision of the target entity posed by the legal regime of the third country, and can also ascertain the proposed acquirer's reputation in that third country.

(10) Where the proposed acquirer is a sovereign wealth fund, information should be provided by the proposed acquirer to ascertain the controllers of the fund and its investment policy. This is relevant for the competent authority of the target entity both for the assessment of reputation and for assessing whether there is any impact on the effective supervision of the target entity.

(11) Specific information enabling an assessment as to whether the proposed acquisition will impact on the ability of the competent authority of the target entity to carry out effective supervision of the target entity should be required. This should include an assessment of whether the close links of the proposed acquirer will impact on the ability of the target entity to continue to provide timely and accurate information to its supervisor. For legal persons, it is also necessary to assess the impact of the proposed acquisition on the consolidated supervision of the target entity and the group it would belong to after the acquisition.

(12) Information on the financing of the proposed acquisition, including information concerning all means and sources of financing, should be provided by the proposed acquirer who should be able to present evidence about the original source of all funds and assets in order for the competent authority of the target entity to assess whether there is a risk of money laundering activities.

(13) Proposed acquirers holding a qualifying holding of between 20 % and up to 50 % in the target entity should provide information on strategy to the competent authority of the target entity in order to ensure a comprehensive assessment of the proposed acquisition. Similarly, proposed acquirers holding a qualifying holding of less than 20 % in the target entity but exercising an equivalent influence over it through other means such as the relationships between the proposed acquirer and the existing shareholders, the existence of shareholders' agreements, the distribution of shares, participating interests and voting rights across shareholders or the proposed acquirer's position within the group structure of the target entity should also provide that information to ensure a high degree of homogeneity in assessing proposed acquisitions.

(14) Where there is a proposed change in control of the target entity, the proposed acquirer should, as a general rule, submit a full business plan. However, where there is no proposed change in the control of the target entity, it is sufficient to be in possession of certain information on the entity's future strategy and the proposed acquirer's intentions for the target entity in order to assess whether this will not affect the financial soundness of the proposed acquirer.

(15) It is proportionate that, in certain cases, the proposed acquirer should only produce limited information. In particular, where the proposed acquirer has been assessed by the competent authority of the target entity within the previous two years, or where the target entity is a small investment firm and the proposed acquirer is an entity authorised and supervised within the Union, it should only be necessary to provide certain reduced information to the competent authority of the target entity.

(16) Any exchange or transmission of information between competent authorities, other authorities, bodies or persons should be carried out in accordance with the rules on personal data as laid down in Directive 95/46/EC of the European Parliament and of the Council ([1]).

(17) Regulation (EC) No 45/2001 of the European Parliament and of the Council ([2]) applies to the processing of personal data by the European Securities and Markets Authority (ESMA) in the application of this Regulation.

(18) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the European Commission.

(19) ESMA has conducted an open public consultation on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([3]).

(20) Directive 2014/65/EU entered into force on 2 July 2014. Article 12(8) of that Directive replaces Article 10a(8) of Directive 2004/39/EC and contains empowerments to ESMA for the development of regulatory technical standards which are identical to those provided for under Article 10a(8) of Directive 2004/39/EC. Furthermore, the content of Articles 10b(4) and Article 10(4) of Directive 2004/39/EC is also identical to the content of Article 13(4) and Article 11(2) of Directive 2014/65/EU. In accordance with Article 94(1) of Directive 2014/65/EU, Directive 2004/39/EC will be repealed with effect from 3 January 2018. The adoption of the technical standards by the Commission in accordance with Article 10a(8) of Directive 2004/39/EC should also be considered in compliance with Article 12(8) of Directive 2014/65/EU with the consequence that the technical standard will continue to apply after 3 January 2018 without the need for further amendment,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation sets out rules on the information to be included by a proposed acquirer in the notification of a proposed acquisition to the competent authorities of the investment firm in which the acquirer is seeking to acquire or increase a qualifying holding ('target entity') for the assessment of the proposed acquisition.

Article 2

Information to be provided by the proposed acquirer

A proposed acquirer shall provide to the competent authority of the target entity the information set out in Articles 3 to 12, where applicable, depending on whether the information relates to a natural person or a legal person or a trust.

([1]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

([2]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

([3]) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Article 3

General information relating to the identity of the proposed acquirer

1. Where the proposed acquirer is a natural person, the proposed acquirer shall provide the competent authority of the target entity with the following identification information:

(a) personal details including the person's name, date and place of birth, address, and contact details and, where available, the personal national identification number;

(b) a detailed curriculum vitae or equivalent document, stating relevant education and training, previous professional experience, and any professional activities or other relevant functions currently performed.

2. Where the proposed acquirer is a legal person, it shall provide the competent authority of the target entity with the following information:

(a) documents certifying the business name and registered address of its head office, and postal address if different, contact details and, where available, its national identification number;

(b) registration of legal form in accordance with relevant national legislation;

(c) an up-to-date overview of the entrepreneurial business of the legal person;

(d) a complete list of persons who effectively direct the business, their name, date and place of birth, address, contact details, their national identification number where available, their detailed curriculum vitae stating relevant education and training, their previous professional experience, and their professional activities or other relevant functions currently performed;

(e) the identity of all persons who may be considered to be beneficial owners of the legal person, their name, date and place of birth, address, contact details, and, where available, their national identification number.

3. Where the proposed acquirer is or is intended to be a trust, the proposed acquirer shall provide the competent authority of the target entity with the following information:

(a) the identity of all trustees who manage assets under the terms of the trust document;

(b) the identity of all persons who are beneficial owners of the trust assets and their respective shares in the distribution of income;

(c) the identity of all persons who are settlors of the trust.

Article 4

Additional information relating to the proposed acquirer that is a natural person

The proposed acquirer that is a natural person shall also provide the competent authority of the target entity with the following:

(a) in respect of the proposed acquirer and of any undertaking directed or controlled by the proposed acquirer, over the past 10 years:

  (1) criminal records, or criminal investigations or proceedings, relevant civil and administrative cases, and disciplinary actions, including disqualification as a company director or bankruptcy, insolvency or similar procedures, notably through an official certificate or through another equivalent document;

  (2) information on open investigations, enforcement proceedings, sanctions, or other enforcement decisions against the proposed acquirer, which may be provided through a declaration of honour;

  (3) refusal of registration, authorisation, membership or licence to carry out trade, business or a profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or a professional body or association;

  (4) dismissal from employment or a position of trust, fiduciary relationship, or similar situation;

(b) information as to whether an assessment of reputation of the acquirer has already been conducted by another supervisory authority, the identity of that authority, and evidence of the outcome of the assessment;

(c) information regarding the current financial position of the proposed acquirer, including details concerning sources of revenues, assets and liabilities, pledges and guarantees, granted or received;

(d) a description of the business activities of the proposed acquirer;

(e) financial information including credit ratings and publicly available reports on the undertakings controlled or directed by the proposed acquirer and, if applicable, on the proposed acquirer;

(f) a description of the financial and non-financial interests or relationships of the proposed acquirer with:

(1) any other current shareholder of the target entity;

(2) any person entitled to exercise voting rights of the target entity in any one or more of the following cases:

— voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the target entity in question,

— voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question,

— voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them,

— voting rights attaching to shares in which that person or entity has a life interest,

— voting rights which are held, or may be exercised within the meaning of the first four items of point (f)(ii), by an undertaking controlled by that person or entity,

— voting rights attaching to shares deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the shareholders,

— voting rights held by a third party in its own name on behalf of that person or entity,

— voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;

(3) any member of the administrative, management or supervisory body, in accordance with relevant national legislation, or of the senior management of the target entity;

(4) the target entity itself and its group;

(g) information on any other interests or activities of the proposed acquirer that may be in conflict with those of the target entity and possible solutions for managing those conflicts of interest.

For the purposes of point (f), credit operations, guarantees and pledges shall be deemed to be part of the financial interests, whereas family or close relationships shall be deemed to be part of the non-financial interests.

Article 5

Additional information relating to the proposed acquirer that is a legal person

1. The proposed acquirer that is a legal person shall also provide the competent authority of the target entity with the following:

(a) information regarding the proposed acquirer, any person who effectively directs the business of the proposed acquirer, any undertaking under the proposed acquirer's control, and any shareholder exerting significant influence on the proposed acquirer as identified in point (e). That information shall include the following:

(1) criminal records, criminal investigations or proceedings, relevant civil and administrative cases, or disciplinary actions, including disqualification as company director or bankruptcy, insolvency or similar procedures, through an official certificate or through another equivalent document;

(2) information on open investigations, enforcement proceedings, sanctions, or other enforcement decisions against the proposed acquirer, which may be provided through a declaration of honour;

(3) refusal of registration, authorisation, membership, or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;

(4) dismissal from employment or a position of trust, fiduciary relationship, or similar situation of any person who effectively directs the business of the proposed acquirer and of any shareholder exerting significant influence on the proposed acquirer;

(b) information as to whether an assessment of reputation of the acquirer or of the person who directs the business of the acquirer has already been conducted by another supervisory authority, the identity of that authority and evidence of the outcome of the assessment;

(c) a description of financial interests, and non-financial interests or relationships of the proposed acquirer, or, where applicable, the group to which the proposed acquirer belongs, as well as the persons who effectively direct its business with:

(1) any other current shareholders of the target entity;

(2) any person entitled to exercise voting rights of the target entity in any of the following cases or a combination of them:

— voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the target entity in question,

— voting rights held by a third party under an agreement concluded with that person or entity providing for the temporary transfer for consideration of the voting rights in question,

— voting rights attaching to shares which are lodged as collateral with that person or entity, provided the person or entity controls the voting rights and declares its intention of exercising them,

— voting rights attaching to shares in which that person or entity has a life interest,

— voting rights which are held, or may be exercised within the meaning of the first four items of point (c)(ii), by an undertaking controlled by that person or entity,

— voting rights attaching to shares deposited with that person or entity which the person or entity can exercise at its discretion in the absence of specific instructions from the shareholders,

— voting rights held by a third party in its own name on behalf of that person or entity,

— voting rights which that person or entity may exercise as a proxy where the person or entity can exercise the voting rights at its discretion in the absence of specific instructions from the shareholders;

(3) any member of the administrative, management or supervisory body, or of the senior management of the target entity;

(4) the target entity itself and the group to which it belongs;

(d) information on any other interests or activities of the proposed acquirer that may be in conflict with those of the target entity and possible solutions for managing those conflicts of interest;

(e) the shareholding structure of the proposed acquirer, with the identity of all shareholders exerting significant influence and their respective share of capital and voting rights including information on any shareholders agreements;

(f) if the proposed acquirer is part of a group, as a subsidiary or as the parent undertaking, a detailed organisational chart of the entire corporate structure and information on the share of capital and voting rights of shareholders with significant influence of the entities of the group and on the activities currently performed by the entities of the group;

(g) if the proposed acquirer is part of a group as a subsidiary or as the parent company, information on the relationships between the financial and the non-financial entities of the group;

(h) identification of any credit institution; assurance, insurance or re-insurance undertaking; collective investment undertakings and their managers or investment firm within the group, and the names of the relevant supervisory authorities;

(i) statutory financial statements, at an individual and, where available, at consolidated and sub-consolidated group levels,, for the last three financial periods. Where those financial statements are audited externally, the proposed acquirer shall provide them approved by the external auditor. The statutory financial statements shall include:

(1) the balance sheet;

(2) the profit and loss accounts or income statement;

(3) the annual reports and financial annexes and any other documents registered with the relevant registry or authority in the particular territory relevant to the proposed acquirer;

(j) where available, information about the credit rating of the proposed acquirer and the overall rating of its group.

For the purposes of point (c), credit operations, guarantees and pledges shall be deemed to be part of financial interests, whereas family or close relationships shall be deemed to be part of non-financial interests.

For the purposes of point (i), where the proposed acquirer is a newly established entity, instead of the statutory financial statements, the proposed acquirer shall provide to the competent authority of the target entity the forecast balance sheets and forecast profit and loss accounts or income statements for the first three business years, including planning assumptions used.

2. Where the proposed acquirer is a legal person which has its head office registered in a third country, the proposed acquirer shall provide to the competent authority of the target entity the following additional information:

(a) a certificate of good-standing or equivalent document from the relevant foreign competent authorities in relation to the proposed acquirer;

(b) a declaration by the relevant foreign competent authorities that there are no obstacles or limitations to the provision of information necessary for the supervision of the target entity;

(c) general information on the regulatory regime of that third country as applicable to the proposed acquirer.

3. Where the proposed acquirer is a sovereign wealth fund, the proposed acquirer shall provide to the competent authority of the target entity the following additional information:

(a) the name of the ministry or government department in charge of defining the investment policy of the fund;

(b) details of the investment policy and any restrictions on investment;

(c) the name and position of the individuals responsible for taking the investment decisions for the fund, as well as the details of qualifying holdings or the influence as referred to in Article 11(2) exerted by the identified ministry or government department on the day-to-day operations of the fund and the target entity.

Article 6

Information on the persons that will effectively direct the business of the target entity

The proposed acquirer shall provide the competent authority of the target entity with the following information relating to the reputation and experience of any person who will effectively direct the business of the target entity as a result of the proposed acquisition:

(a) personal details including the person's name, date and place of birth, address and contact details and, where available, the personal national identification number;

(b) the position for which the person is or will be appointed;

(c) a detailed curriculum vitae stating relevant education and professional training, professional experience, including the names of all organisations for which the person has worked and nature and duration of the functions performed, in particular for any activities within the scope of the position sought, and documentation relating to person's experience such as a list of reference persons including contact information and letters of recommendation. For positions held in the past 10 years, when describing these activities, the person shall specify their delegated powers, internal decision-making powers and the areas of operations under their control. If the curriculum vitae includes other relevant experiences, including management body representation, this shall be stated;

(d) information on the following:

(1) criminal records, criminal investigations or proceedings, relevant civil and administrative cases, or disciplinary actions, including disqualification as a company director, bankruptcy, insolvency and similar procedures, through an official certificate or through another equivalent document;

(2) open investigations, enforcement proceedings, sanctions or other enforcement decision against the person which may be provided through a declaration of honour;

(3) refusal of registration, authorisation, membership or licence to carry out a trade, business or profession; or the withdrawal, revocation or termination of such a registration, authorisation, membership or licence; or expulsion by a regulatory or government body or by a professional body or association;

(4) dismissal from employment or a position of trust, fiduciary relationship, or similar situation;

(e) information as to whether an assessment of reputation as a person who directs the business has already been conducted by another supervisory authority, the identity of that authority and evidence of the outcome of this assessment;

(f) a description of financial interests, and non-financial interests or relationships of the person and that person's close relatives to members of the management body and key function holders in the same institution, the parent institution and subsidiaries and shareholders;

(g) the minimum time, in annual and monthly indications, that will be devoted to the performance of the person's functions within the target entity;

(h) the list of executive and non-executive directorships currently held by the person.

For the purposes of point (f), credit operations, shareholdings, guarantees and pledges shall be deemed to be part of financial interests, whereas family or close relationships shall be deemed to be part of non-financial interests.

Article 7

Information relating to the proposed acquisition

The following information relating to the proposed acquisition shall be provided by the proposed acquirer to the competent authority of the target entity:

(a) identification of the target entity;

(b) details of the proposed acquirer's intentions with respect to the proposed acquisition, including the strategic investment or portfolio investment;

(c) information on the shares of the target entity owned, or contemplated to be owned, by the proposed acquirer before and after the proposed acquisition, including:

(1) the number and type of shares, and the nominal value of such shares;

(2) the percentage of the overall capital of the target entity that the shares owned, or intended to be acquired, by the proposed acquirer represent before and after the proposed acquisition;

(3) the share of the overall voting rights of the target entity that the shares owned, or contemplated to be owned, by the proposed acquirer represent before and after the proposed acquisition, if different from the share of capital of the target entity;

(4) the market value, in euro and in local currency, of the shares of the target entity owned, or intended to be acquired, by the proposed acquirer before and after the proposed acquisition;

(d) a description of any action in concert with other parties, including the contribution of those other parties to the financing of the proposed acquisition, the means of participation in the financial arrangements in relation to the proposed acquisition and future organisational arrangements of the proposed acquisition;

(e) the content of intended shareholder's agreements with other shareholders in relation to the target entity;

(f) the proposed acquisition price and the criteria used when determining such price and, where there is a difference between the market value and the proposed acquisition price, an explanation as to why that is the case.

Article 8

Information on the new proposed group structure and its impact on supervision

1. Where the proposed acquirer is a legal person, it shall provide the competent authority of the target entity with an analysis of the scope of consolidated supervision of the group which the target entity would belong to after the proposed acquisition. That analysis shall include information about which group entities would be included in the scope of consolidated supervision requirements after the proposed acquisition and at which levels within the group those requirements would apply on a full or sub-consolidated basis.

2. The proposed acquirer shall also provide the competent authority of the target entity with an analysis of the impact of the proposed acquisition on the ability of the target entity to continue to provide timely and accurate information to its supervisor, including as a result of close links of the proposed acquirer with the target entity.

Article 9

Information relating to the financing of the proposed acquisition

The proposed acquirer shall provide the competent authority of the target entity a detailed explanation of the specific sources of funding for the proposed acquisition, including:

(a) details on the use of private financial resources and the origin and availability of the funds, including any relevant documentary support to provide evidence to the competent authority that no money laundering is attempted through the proposed acquisition;

(b) details on the means of payment of the proposed acquisition and the network used to transfer funds;

(c) details on access to capital sources and financial markets including details of financial instruments to be issued;

(d) information on the use of borrowed funds including the name of relevant lenders and details of the facilities granted, including maturities, terms, pledges and guarantees, as well as information on the source of revenue to be used to repay such borrowings and the origin of the borrowed funds where the lender is not a supervised financial institution;

(e) information on any financial arrangement with other shareholders of the target entity;

(f) information on assets of the proposed acquirer or the target entity which are to be sold in order to help finance the proposed acquisition, as well as the conditions of the sale, including price, appraisal, details regarding the characteristics of the assets and information on when and how the assets have been acquired.

Article 10

Additional information for qualifying holdings of up to 20 %

Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20 %, the proposed acquirer shall provide a document on strategy to the competent authority of the target entity containing the following information:

(a) the period for which the proposed acquirer intends to hold its shareholding after the proposed acquisition and any intention of the proposed acquirer to increase, reduce or maintain the level of their shareholding in the foreseeable future;

(b) an indication of the intentions of the proposed acquirer in relation to the target entity, including whether or not it intends to exercise any form of control over the target entity, and the rationale for that action;

(c) information on the financial position of the proposed acquirer and its willingness to support the target entity with additional own funds if needed for the development of its activities or in case of financial difficulties.

Article 11

Additional requirements for qualifying holdings between 20 % and 50 %

1. Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity between 20 % and 50 %, the proposed acquirer shall provide a document on strategy to the competent authority of the target entity containing the following information:

(a) all the information set out in Article 10;

(b) details on the influence that the proposed acquirer intends to exercise on the financial position in relation to target entity including dividend policy, the strategic development, and the allocation of resources of the target entity;

(c) a description of the proposed acquirer's intentions and expectations in relation to the target entity in the medium term, covering all the elements referred to in Article 12(2) and (3).

2. By way of derogation from paragraph 1, the information referred to in that paragraph shall also be provided to the competent authority of the target entity by any proposed acquirer referred to in Article 10 where the influence exercised by the shareholding of that proposed acquirer, based on a comprehensive assessment of the shareholding's structure of the target entity, would be equivalent to the influence exercised by shareholdings between 20 % and 50 %.

Article 12

Additional requirements for qualifying holdings of 50 % or more

1. Where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of 50 % or more, or in the target entity becoming its subsidiary, the proposed acquirer shall provide a business plan to the competent authority of the target entity which shall comprise a strategic development plan, estimated financial statements of the target entity, and the impact of the acquisition on the corporate governance and general organisational structure of the target entity.

2. The strategic development plan referred to in paragraph 1 shall indicate, in general terms, the main goals of the proposed acquisition and the main ways for achieving them, including:

(a) the overall aim of the proposed acquisition;

(b) medium-term financial goals which may be stated in terms of return on equity, cost-benefit ratio, earnings per share, or in other terms as appropriate;

(c) the possible redirection of activities, products, targeted customers and the possible reallocation of funds or resources expected to impact on the target entity;

(d) general processes for including and integrating the target entity in the group structure of the proposed acquirer, including a description of the main interactions to be pursued with other companies in the group, as well as a description of the policies governing intra-group relations.

3. Where the proposed acquirer is an entity authorised and supervised in the Union, information about the particular departments within the group structure which are affected by the proposed acquisition shall be sufficient for the purposes of the information referred to in point (d)

4. The estimated financial statements of the target entity referred to in paragraph 1 shall, on both an individual and a consolidated basis, include the following for a reference period of three years:

(a) a forecast balance sheet and income statement;

(b) a forecast prudential capital requirements and solvency ratio;

(c) information on the level of risk exposures including credit, market and operational risks as well as other relevant risks;

(d) a forecast of intra-group transactions.

5. The impact of the acquisition on the corporate governance and general organisational structure of the target entity referred to in paragraph 1 shall include the impact on:

(a) the composition and duties of the administrative, management or supervisory body, and the main committees created by such decision-taking body including the management committee, risk committee, audit committee, remuneration committee, and including information concerning the persons who will be appointed to direct the business;

(b) administrative and accounting procedures and internal controls, including changes in procedures and systems relating to accounting, internal audit, compliance with anti-money laundering and risk management, and the appointment of key functions of internal auditor, compliance officer and risk manager;

(c) the overall IT systems and organisation including any changes concerning the IT outsourcing policy, the data flowchart, the in-house and external software used and the essential data and systems security procedures and tools such as back-up, continuity plans and audit trails;

(d) the policies governing outsourcing, including information on the areas concerned, the selection of service providers, and the respective rights and obligations of the parties to the outsourcing contract such as audit arrangements and the quality of service expected from the provider;

(e) any other relevant information pertaining to the impact of the acquisition on the corporate governance and general organisational structure of the target entity, including any modification regarding the voting rights of the shareholders.

Article 13

Reduced information requirements

1. By way of derogation from Article 2, where the proposed acquirer is an entity authorised and supervised within the Union and the target entity meets the criteria set out in paragraph 2, the proposed acquirer shall submit the following information to the competent authority of the target entity:

(a) where the proposed acquirer is a natural person:

(1) the information set out in Article 3(1);

(2) the information set out in points (c) to (g) of Article 4;

(3) the information set out in Articles 6, 7 and 9;

(4) the information set out in Article 8(1);

(5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20 %, a document on strategy as set out in Article 10;

(6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity between 20 % and 50 %, a document on strategy as set out in Article 11;

(b) where the proposed acquirer is a legal person:

(1) the information set out in Article 3(2)

(2) the information set out in points (c) to (j) of Article 5(1) and, where relevant, the information set out in Article 5(3);

(3) the information set out in Articles 6, 7 and 9;

(4) the information set out in Article 8(1);

(5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20 %, a document on strategy as set out in Article 10;

(6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity between 20 % and 50 %, a document on strategy as set out in Article 11;

(c) where the proposed acquirer is a trust:

(1) the information set out in Article 3(3)

(2) where relevant, the information set out in Article 5(3)

(3) the information set out in Articles 6, 7 and 9;

(4) the information set out in Article 8(1);

(5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20 %, a document on strategy as set out in Article 10;

(6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity between 20 % and 50 %, a document on strategy as set out in Article 11.

2. The target entity referred to in paragraph 1 shall meet the following criteria:

(a) it does not hold assets of its clients;

(b) it is not authorised for the investment services and activities 'Dealing on own account' or 'Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis' referred to in points (3) and (6) of Section A of Annex I of Directive 2004/39/EC;

(c) where it is authorised for the investment service of 'Portfolio management' as referred to in point (4) of Section A of Annex I of Directive 2004/39/EC, the assets under management by the firm are below EUR 500 million.

3. Where the proposed acquirer referred to in paragraph 1 has been assessed by the competent authority of the target entity within the previous two years regarding the information referred to in Articles 4 and 5, that proposed acquirer shall only provide those pieces of information that have changed since the previous assessment.

Where the proposed acquirer only provides those pieces of information that have changed since the previous assessment in accordance with the first subparagraph, the proposed acquirer shall sign a declaration informing the competent authority of the target entity that there is no need to update the rest of information.

Article 14

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 July 2017.

For the Commission

The President

Jean-Claude JUNCKER

DECISIONS

COUNCIL DECISION (EU) 2017/1947

of 23 October 2017

establishing the position to be taken on behalf of the European Union within the Joint Committee set up under the Agreement between the European Union and the Republic of Armenia on the facilitation of the issuance of visas, with regard to the adoption of common guidelines for the implementation of that Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (a) of Article 77(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 12 of the Agreement between the European Union and Armenia on the facilitation of the issuance of visas ([1]) ('the Agreement') sets up a Joint Committee (the 'Joint Committee'). It provides that the Joint Committee is, in particular, to monitor the implementation of the Agreement.

(2) Regulation (EC) No 810/2009 of the European Parliament and of the Council ([2]) provides for the procedures and conditions for issuing visas for transit through, or intended stays on, the territory of the Member States not exceeding 90 days in any 180-day period.

(3) Common guidelines are required to ensure a fully harmonised implementation of the Agreement by the diplomatic missions and consular posts of the Member States and to clarify the relationship between the provisions of the Agreement and the provisions of the legislation of the Parties to the Agreement that continue to apply to visa issues not covered by the Agreement.

(4) It is appropriate to establish the position to be taken on the Union's behalf within the Joint Committee with regard to the adoption of common guidelines for the implementation of the Agreement.

(5) This Decision constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC ([3]); the United Kingdom is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(6) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ([4]); Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(7) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

([1]) OJ L 289, 31.10.2013, p. 2.
([2]) Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).
([3]) Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (OJ L 131, 1.6.2000, p. 43).
([4]) Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the behalf of the European Union within the Joint Committee set up under Article 12 of the Agreement between the European Union and the Republic of Armenia on the facilitation of the issuance of visas, with regard to the adoption of common guidelines for the implementation of that Agreement, shall be based on the draft Decision of the Joint Committee attached to this Decision.

Article 2

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

Done at Luxembourg, 23 October 2017.

For the Council
The President
K. IVA

DRAFT

DECISION No …/… OF THE JOINT COMMITTEE SET UP UNDER THE AGREEMENT BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF ARMENIA ON THE FACILITATION OF THE ISSUANCE OF VISAS

of …

with regard to the adoption of common guidelines for the implementation of that Agreement

THE JOINT COMMITTEE,

Having regard to the Agreement between the European Union and the Republic of Armenia on facilitating the issue of visas ([1]) ('the Agreement'), and in particular Article 12 thereof,

Whereas the Agreement entered into force on 1 January 2014,

HAS ADOPTED THIS DECISION:

Article 1

The common guidelines for the implementation of the Agreement between the European Union and the Republic of Armenia on the facilitation the issuance of visas are set out in the Annex to this Decision.

Article 2

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

Done at …,

For the European Union *For the Republic of Armenia*

([1]) OJ L 289, 31.10.2013, p. 2.

ANNEX

COMMON GUIDELINES FOR THE IMPLEMENTATION OF THE AGREEMENT BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF ARMENIA ON THE FACILITATION OF THE ISSUANCE OF VISAS

The purpose of the Agreement between the European Union and the Republic of Armenia on the facilitation of the issuance of visas (the 'Agreement'), which entered into force on 1 January 2014, is to facilitate, on the basis of reciprocity, the procedures for issuing visas for an intended stay of no more than 90 days per period of 180 days to the citizens of Armenia.

The Agreement establishes, on the basis of reciprocity, legally binding rights and obligations for the purpose of simplifying the procedures for the issuing of visas to the citizens of Armenia.

These Guidelines, adopted by the Joint Committee set up under Article 12 of the Agreement (the 'Joint Committee'), aim at ensuring a harmonised implementation of the Agreement by the diplomatic missions and consular posts of the Member States of the Union ('Member States'). These Guidelines are not part of the Agreement and are therefore not legally binding. However, it is highly recommended that diplomatic and consular staff consistently follow them when implementing the Agreement.

These Guidelines are intended to be updated in light of the experience gained in the implementation of the Agreement under the responsibility of the Joint Committee.

In order to ensure the continued and harmonised implementation of the Agreement and in conformity with the rules of procedure of the Joint Committee, the Parties agreed to undertake informal contacts between the formal meetings of the Joint Committee, in order to deal with urgent issues. Detailed reports about these issues and the informal contacts will be submitted at the subsequent Joint Committee meeting.

I. GENERAL ISSUES

1.1. Purpose and scope of application

Article 1(1) of the Agreement provides that:

'1. The purpose of this Agreement is to facilitate the issuance of visas for an intended stay of no more than 90 days per period of 180 days to the citizens of Armenia.'.

The Agreement applies to all citizens of Armenia who apply for a short-stay visa, whichever country they reside in.

The Agreement does not apply to stateless persons holding a residence permit issued by Armenia. The rules of the Union visa *acquis* apply to that category of persons.

As from 10 January 2013, all citizens of the Union and citizens of the Schengen associated countries are exempted from the visa requirement when travelling to Armenia for a period of time not exceeding 90 days or when transiting through the territory of Armenia.

Article 1(2) of the Agreement provides that:

'2. If Armenia reintroduces the visa requirements for the citizens of the Union or certain categories of them, the same facilitations granted under this Agreement to the citizens of Armenia would automatically, on the basis of reciprocity, apply to the citizens of the Union concerned.'.

1.2. Scope of the Agreement

Article 2 of the Agreement provides that:

'1. The visa facilitations provided in this Agreement shall apply to citizens of Armenia only insofar as they are not exempted from the visa requirement by the laws and regulations of the Union or the Member States, this Agreement or other international agreements.

2. The national law of Armenia or of the Member States or the Union law shall apply to issues not covered by the provisions of this Agreement, such as the refusal to issue a visa, recognition of travel documents, proof of sufficient means of subsistence and the refusal of entry and expulsion measures.'.

The Agreement, without prejudice to Article 10 thereof, does not affect the existing rules on visa obligations and visa exemptions. For instance, Article 4 of Council Regulation (EC) No 539/2001 ([1]) allows Member States to exempt from the visa requirement, among other categories of persons, civilian air and sea crews.

In that context, it should be added that in accordance with Article 21 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders ([2]), all Schengen Member States must recognise long-stay visas and residence permits issued by each other as valid for short stays on each other's territories. All Schengen Member States accept residence permits, D visas and short-stay visas of Schengen associated countries for entry and short stay and vice versa.

Regulation (EC) No 810/2009 of the European Parliament and of the Council ([3]) (the 'Visa Code') applies to all issues not covered by the Agreement, such as the determination of the Schengen Member State responsible for processing a visa application, the motivation of a refusal to issue a visa, the right to appeal against a negative decision and the general rule of the personal interview with the visa applicant and providing all relevant information in relation to the visa application. Furthermore, Schengen rules (i.e. the refusal of entry in the territory, proof of sufficient means of subsistence etc.) and national law (i.e. the recognition of travel documents, expulsion measures etc.) continue also to apply to issues which are not covered by the Agreement.

Even if the conditions provided for in the Agreement are met, for example, proof of documentary evidence regarding the purpose of the journey for the categories provided for in Article 4 is provided by the visa applicant, the issuance of the visa can still be refused if the conditions laid down in Article 6 of Regulation (EU) 2016/399 of the European Parliament and of the Council ([4]) ('Schengen Borders Code') are not fulfilled, i.e. the person is not in possession of a valid travel document, an alert in the Schengen Information System (SIS) has been issued, the person is considered to be a threat to public policy, internal security, etc.

Other flexibilities in the issuing of visas provided for by the Visa Code continue to apply. For instance, multiple-entry visas for a long period of validity — up to five years — can be issued to categories of persons other than those mentioned in Article 5 of the Agreement, if the conditions provided for in Article 24 of the Visa Code are met. In the same way, the provisions contained in Article 16(5) and (6) of the Visa Code allowing waiver or reduction of the visa fee will continue to apply.

1.3. Types of visas falling within the scope of the Agreement

Point (d) of Article 3 of the Agreement defines a 'visa' as 'an authorisation issued by a Member State with a view to transiting through or an intended stay of a duration of no more than 90 days in any 180-day period in the territory of Member States;'.

The facilitations provided by the Agreement apply both to uniform visas and to visas with limited territorial validity.

1.4. Calculation of the length of stay authorised by a visa

Regulation (EU) No 610/2013 of the European Parliament and of the Council ([5]) has re-defined the notion of short-stay. The current definition of short-stay reads as follows: 'no more than 90 days in any 180-day period, which entails considering the 180-day period preceding each day of stay'. That definition entered into force on 18 October 2013 and is contained in the Schengen Borders Code.

([1]) Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1).
([2]) OJ L 239, 22.9.2000, p. 19.
([3]) Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).
([4]) Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).
([5]) Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) No 1683/95 and (EC) No 539/2001 and Regulations (EC) No 767/2008 and (EC) No 810/2009 of the European Parliament and of the Council (OJ L 182, 29.6.2013, p. 1).

The day of entry will be calculated as the first day of stay in the territory of the Member States and the day of exit will be calculated as the last day of stay in the territory of the Member States. The notion of 'any' implies the application of a 'moving' 180-day reference period, on each day of the stay looking back to the last 180-day period, in order to verify if the 90/180-day requirement continues to be fulfilled. That means that an absence from the territory of the Member States for an uninterrupted period of 90 days allows for a new stay of up to 90 days.

A short-stay calculator, which can be used for calculating the period of allowed stay under the new rules, can be found on-line at the following address: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/border-crossing/index_en.htm.

Example of calculation of stay on the basis of the current definition:

A person holding a multiple-entry visa for 1 year (18 April 2014 – 18 April 2015) enters for the first time on 19 April 2014 and stays for three days. Then the same person enters again on 18 June 2014 and stays for 86 days. What is the situation on specific dates? When will that person be allowed to enter again?

On 11 September 2014: over the last 180 days (16 March 2014 – 11 September 2014) the person had stayed for three days (19-21 April 2014) plus 86 days (18 June 2014 – 11 September 2014) = 89 days = no overstay. The person may still stay for up to one day.

As of 16 October 2014: the person might enter for a stay of three additional days. On 16 October 2014 the stay on 19 April 2014 becomes irrelevant (outside the 180-day period); on 17 October 2014 the stay on 20 April 2014 becomes irrelevant (outside the 180-day period; etc.).

As of 15 December 2014: the person might enter for 86 additional days. On 15 December 2014 the stay on 18 June 2014 becomes irrelevant (outside the 180-day period); on 16 December 2014 the stay on 19 June 2014 becomes irrelevant, etc.).

1.5. Situation regarding the Member States that do not yet fully apply the Schengen *acquis*, Member States that do not participate in the Union common visa policy and associated countries

Member States that joined the Union in 2004 (the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia), 2007 (Bulgaria and Romania), and 2013 (Croatia) are bound by the Agreement as from its entry into force.

Bulgaria, Croatia, Cyprus and Romania do not yet fully implement the Schengen *acquis*. They will continue issuing national visas with a validity limited to their own national territory. Once those Member States fully implement the Schengen *acquis*, they will apply the Agreement in full.

National law continues to apply to all issues not covered by the Agreement until the date of full implementation of the Schengen *acquis* by those Member States. As from that date, Schengen rules and/or national law shall apply to issues not covered by the Agreement.

Bulgaria, Croatia, Cyprus and Romania are authorised to recognise residence permits, D visas and short-stay visas issued by all Schengen Member States and associated countries for short stays on their territory. ([1])

The Agreement does not apply to Denmark, Ireland and the United Kingdom but includes joint declarations about the desirability of those Member States to conclude bilateral agreements on visa facilitation with Armenia.

Although associated to Schengen, Iceland, Liechtenstein, Norway and Switzerland, are not bound by the Agreement. However, the Agreement includes a Joint Declaration about the desirability of those Schengen associated countries to conclude, without delay, bilateral agreements on the facilitation of the issuance of short-stay visas with Armenia.

([1]) Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC (OJ L 157, 27.5.2014, p. 23).

1.6. The Agreement and bilateral agreements

Article 13 of the Agreement provides that:

'As from its entry into force, this Agreement shall take precedence over provisions of any bilateral or multilateral agreements or arrangements concluded between individual Member States and Armenia, in so far as the provisions of the latter agreements or arrangements cover issues dealt with by this Agreement.'.

As from the date of entry into force of the Agreement, provisions of the bilateral agreements in force between Member States and Armenia on issues covered by the Agreement ceased to apply. In accordance with Union law, Member States have to take the necessary measures to eliminate the incompatibilities between their bilateral agreements and the Agreement.

Should a Member State have concluded a bilateral agreement or arrangement with Armenia on issues not covered by the Agreement, such agreement or arrangement would continue to apply after the entry into force of the Agreement.

II. SPECIFIC PROVISIONS

2.1. Rules that apply to all visa applicants

It is recalled that the facilitations mentioned below, with regard to the visa fee, the length of procedures for processing visa applications, departure in case documents are lost or stolen, and the extension of visa in exceptional circumstances, apply to all Armenian visa applicants and visa holders, including tourists.

2.1.1. Fees for processing visa applications

Article 6(1) of the Agreement provides that:

'1. The fee for processing visa applications shall amount to EUR 35.'.

In accordance with Article 6(1) of the Agreement, the fee for processing a visa application is EUR 35. That fee applies to all Armenian visa applicants (including tourists) and concerns short-stay visas, irrespective of the number of entries.

Article 6(2) of the Agreement provides that (NB: any implementing arrangements follow the category):

'2. Without prejudice to paragraph 3 of this Article, fees for processing the visa application are waived for the following categories of persons:

(a) pensioners;'.

In order to benefit from the fee waiver for this category, visa applicants must present a proof of their pensioner status, i.e. pension book or certificate on receiving pension. The fee waiver is not justified in cases where the purpose of the journey is paid activity.

'(b) children under the age of 12;'.

In order to benefit from the fee waiver for this category, visa applicants must present evidence proving their age.

'(c) members of national and regional governments and of Constitutional and Supreme courts, in case they are not exempted from the visa requirement by this Agreement;'.

Members of regional governments will be understood as members of territorial administration, i.e. Governors of the regions (*marzpet*) and their deputies, as well as the Mayor of Yerevan and his/her deputy. In order to benefit from the fee waiver for this category, visa applicants must present evidence from the Armenian authorities proving their position.

'(d) persons with disabilities and the persons accompanying them, if necessary;'.

In order to benefit from the fee waiver, evidence should be provided that both visa applicants fall under this category. In case of disability, visa applicants have to present an extract from the medical certificate attesting the disability. In cases where the disability of the visa applicants is obvious (blind persons, people missing limbs) the visual recognition at the consular post is acceptable.

In justified cases the visa application may be submitted by a representative or the guardian of the disabled person.

'(e) close relatives — spouse, children (including adopted), parents (including custodians), grandparents or grandchildren — of citizens of Armenia legally residing in the territory of the Member States, or citizens of the Union residing in the territory of the Member State of which they are nationals;

(f) members of official delegations, including permanent members of official delegations, who, following an official invitation addressed to Armenia, shall participate in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of one of the Member States by intergovernmental organisations;

(g) pupils, students, post-graduate students and accompanying teachers who undertake trips for the purposes of study or educational training, including exchange programmes as well as other school-related activities;

(h) journalists and technical crew accompanying them in a professional capacity;'.

In order to benefit from the fee waiver for this category, visa applicants must present proof of being members of professional journalistic or media organisations.

'(i) participants in international sport events and persons accompanying them in a professional capacity;'.

Supporters will not be considered as accompanying persons.

'(j) representatives of civil society organisations and persons invited by Armenian community non-profit organisations registered in the Member States when undertaking trips for the purposes of educational training, seminars, conferences, including in the framework of exchange programmes or Pan-Armenian and community support programmes;'.

In order to benefit from the fee waiver for this category, visa applicants must present proof of being members of civil society organisations or non-profit organisations.

'(k) persons participating in scientific, academic, cultural or artistic activities, including university and other exchange programmes;

(l) persons who have presented documents proving the necessity of their travel on humanitarian grounds, including to receive urgent medical treatment and the person accompanying such person, or to attend a funeral of a close relative or to visit a seriously ill close relative.'.

The fee is waived for the above-mentioned categories of persons. In addition, the fee is also waived, in accordance with Article 16(4) of the Visa Code, for the following categories of persons:

— researchers from third countries travelling within the European Union for the purpose of carrying out scientific research as defined in Recommendation 2005/761/EC of the European Parliament and of the Council ([1]);

— representatives of non-profit organisations aged 25 years or less participating in seminars, conferences, sports, cultural or educational events organised by non-profit organisations.

Article 16(6) of the Visa Code provides that:

'6. In individual cases, the amount of the visa fee to be charged may be waived or reduced when to do so serves to promote cultural or sporting interests as well as interests in the field of foreign policy, development policy and other areas of vital public interest or for humanitarian reasons.'.

([1]) Recommendation 2005/761/EC of the European Parliament and of the Council of 28 September 2005 to facilitate the issue by the Member States of uniform short-stay visas for researchers from third countries travelling within the Community for the purpose of carrying out scientific research (OJ L 289, 3.11.2005, p. 23).

Article 16(7) of the Visa Code provides that the visa fee is to be charged in euro, in the national currency of the third country or in the currency usually used in the third country where the application is lodged, and is not refundable except in the case of an inadmissible application or if the consulate is not competent.

In order to avoid discrepancies which could lead to visa shopping, diplomatic missions and consular posts of the Member States in Armenia should ensure similar visa fees for all Armenian visa applicants when charged in foreign currencies.

Armenian visa applicants will be given a receipt for the visa fee paid in accordance with Article 16(8) of the Visa Code.

Article 6(3) of the Agreement provides that:

'3. If a Member State cooperates with an external service provider in view of issuing a visa the external service provider may charge a service fee. This fee shall be proportionate to the costs incurred by the external service provider while performing its tasks and shall not exceed EUR 30. The Member States shall maintain the possibility for all applicants to lodge their applications directly at their consulates.'.

With regard to the modalities of the cooperation with external services providers, Article 43 of the Visa Code provides detailed information concerning their tasks.

2.1.2. Length of procedures for processing visa applications

Article 7 of the Agreement provides that:

'1. Diplomatic missions and consular posts of the Member States shall take a decision on the request to issue a visa within 10 calendar days of the date of the receipt of the application and documents required for issuing the visa.

2. The period of time for taking a decision on a visa application may be extended up to 30 calendar days in individual cases, notably when further scrutiny of the application is needed.

3. The period of time for taking a decision on a visa application may be reduced to 2 working days or less in urgent cases.'.

A decision on the visa application will be taken, in principle, within 10 calendar days of the date of the lodging of an admissible visa application.

That period may be extended up to 30 calendar days in individual cases, notably when further scrutiny of the application is needed or, in case of representation, where the authorities of the represented Member State are consulted.

All those deadlines start running only when the visa application file is complete, i.e. as from the date of receipt of the visa application and supporting documents.

As a principle, for diplomatic missions and consular posts of the Member States that have an appointment system, the waiting time to get an appointment is not included in the processing time. The general rules set out in Article 9 of the Visa Code are applicable to this issue as well as to other practical arrangements for lodging a visa application.

As provided for in Article 7(4) of the Agreement, where an appointment is required for the lodging of an application, it 'shall, as a rule, take place within a period of two weeks from the date the appointment was requested.'.

'In justified cases of urgency' (where the visa application could not have been lodged earlier for reasons that could not have been foreseen by the applicant), 'the consulate may allow applicants to lodge their applications either without appointment, or an appointment shall be given immediately.'.

When setting the appointment, the possible urgency claimed by the visa applicant should be taken into account. The decision on reducing the time for taking a decision on a visa application as provided for in Article 7(3) of the Agreement is taken by the consular officer.

2.1.3. Extension of visa in exceptional circumstances

Article 9 of the Agreement provides that:

'Citizens of Armenia who are not able to leave the territory of the Member States by the time stated in their visas for reasons of force majeure or humanitarian reasons shall have the term of their visas extended free of charge in accordance with the legislation applied by the receiving Member State for the period required for their return to the State of their residence'.

With regard to extending the validity of the visa in cases of justified personal reasons, where the holder of the visa is unable to leave the territory of the Member State by the date indicated on the visa sticker, the provisions of Article 33 of the Visa Code shall apply as long as they are compatible with the Agreement. However, under the Agreement the extension of the visa is carried out free of charge in case of *force majeure* or humanitarian reasons.

2.2. Rules that apply to certain categories of visa applicants

2.2.1. Documentary evidence regarding the purpose of the journey

For the categories of persons listed in Article 4(1) of the Agreement, only the indicated documentary evidence proving the purpose of the journey will be required. As provided for in Article 4(3) of the Agreement, no other justification, invitation or validation concerning the purpose of the journey will be required. However, this does not mean a waiver of the requirement to appear in person in order to submit the visa application or to provide supporting documents with regard to, for example, the means of subsistence.

If in individual cases doubts remain regarding the authenticity of the document proving the purpose of the journey, under Article 21(8) of the Visa Code the visa applicant may be called for an additional in-depth interview to the embassy and/or the consulate where that applicant can be questioned regarding the actual purpose of the visit or the applicant's intention to return. In such individual cases, additional documents can be provided by the visa applicant or exceptionally requested by the consular officer. The Joint Committee will closely monitor that issue.

For the categories of persons not mentioned in Article 4(1) of the Agreement (for example tourists), the general rules regarding documentation proving the purpose of the journey continue to apply. The same applies to documents regarding parental consent for travel of children under 18 years of age.

Schengen rules and national law shall apply to issues not covered by the Agreement, such as the recognition of travel documents, guarantees regarding return and sufficient means of subsistence.

In principle, the original of the document required by Article 4(1) of the Agreement will be submitted with the visa application. However, the consulate can start processing the visa application based on the facsimile or copies of the document. Nevertheless, the consulate may ask for the original document in case of the first time visa application and will ask for it in individual cases where there are doubts.

Article 4(1) of the Agreement provides that:

'1. For the following categories of citizens of Armenia, the following documents are sufficient for justifying the purpose of the journey to the other Party:

(a) for close relatives — spouses, children (including adopted), parents (including custodians), grandparents, grandchildren visiting citizens of Armenia legally residing in the Member States, or citizens of the European Union residing in the territory of the Member State of which they are nationals:

— a written request from the host person;'.

Point (a) of Article 4(1) of the Agreement regulates the situation of Armenian close relatives travelling to the Member States to visit citizens of Armenia legally residing in territory of the Member States or citizens of the Union residing in the territory of the Member State of which they are nationals.

The authenticity of the signature of the inviting person must be confirmed by the competent authority according to the national legislation of the country of residence. The invitation should be validated by competent authorities. In the case of diplomats, technical and administrative staff and other officials posted by the Government of the Republic of Armenia to the Member States, the authenticity of the signature must be confirmed by a letter or a *note verbale* issued by the head of diplomatic mission or consular post.

'(b) for members of official delegations including permanent members of such delegations who, following an official invitation addressed to Armenia, shall participate in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of one of the Member States by intergovernmental organisations:

— a letter issued by a competent authority of Armenia confirming that the applicant is a member of its delegation, respectively a permanent member of its delegation, travelling to the territory of the other Party to participate in the aforementioned events, accompanied by a copy of the official invitation;'.

The name of the visa applicant must be stated in the letter issued by the competent authority confirming that the person is part of the delegation travelling to the territory of the other Party to participate in the official meeting. The name of the visa applicant does not need to be stated in the official invitation to participate in the meeting, although this might be necessary when the official invitation is addressed to a specific person.

That provision applies to members of official delegations regardless of the type of passport they hold.

'(c) for pupils, students, post-graduate persons and accompanying teachers who undertake trips for the purposes of study or educational training, including in the framework of exchange programmes as well as other school-related activities:

— a written request or a certificate of enrolment from the host university, college or school or student cards or certificates of the courses to be attended;'.

A student card is only accepted to justify the purpose of the journey if it has been issued by the host university, college or school where the studies or educational training are going to take place.

'(d) for persons travelling for medical reasons and necessary accompanying persons:

— an official document of the medical institution confirming necessity of medical care in this institution, the necessity of being accompanied and proof of sufficient financial means to pay for the medical treatment.'.

The document from the medical institution confirming the three elements (the necessity of medical care in that institution, the necessity of being accompanied and the proof of sufficient financial means to pay for the medical treatment, e.g. proof of prepayment) must be submitted.

'(e) for journalists and technical crew accompanying them in a professional capacity:

— a certificate or other document issued by a professional organisation or the applicant's employer proving that the person concerned is a qualified journalist and stating that the purpose of the journey is to carry out journalistic work or proving that he/she is a member of the technical crew accompanying the journalist in a professional capacity;'.

This category does not cover freelance journalists and their assistants.

The certificate or document proving that the visa applicant is a professional journalist or an accompanying person in a professional capacity and the original document issued by that person's employer stating that the purpose of the journey is to carry out journalistic work or assist in such work must be presented.

A number of professional organisations exist in Armenia, which represent the interests of journalists or accompanying persons in a professional capacity and could issue certificates proving that the person is a professional journalist or an accompanying person in a professional capacity in a specific area. In order to assess the professional status of those organisations, consulates may consult www.e-register.am. Consulates may also accept a certificate issued by the applicant's employer.

'(f) for participants in international sport events and persons accompanying them in a professional capacity:

— a written request from the host organisation, competent authorities, national sport federations or national Olympic committees of the Member State;'.

The list of accompanying persons in the case of international sports events will be limited to those attending in a professional capacity: coaches, masseurs, managers, medical staff and head of the sports club. Therefore, supporters will not be considered as accompanying persons.

'(g) for business people and representatives of business organisations:

— a written request from the host legal person or company, organisation or an office or a branch of such legal person or company, state or local authorities of the Member States or organising committees or trade and industrial exhibitions, conferences and symposia held in the territories of one of the Member States, endorsed by the competent authorities in accordance with the national legislation;'.

In order to verify the existence of the business organisation the consulates may consult www.e-register.am.

'(h) for members of the professions participating in international exhibitions, conferences, symposia, seminars or other similar events:

— a written request from the host organisation confirming that the person concerned is participating in the event;.

(i) for representatives of civil society organisations and persons invited by Armenian community non-profit organisations registered in the Member States when undertaking trips for the purposes of educational training, seminars, conferences, including in the framework of exchange programmes or Pan-Armenian and community support programmes:

— a written request issued by the host organisation, a confirmation that the person is representing the civil society organisation or participating in Pan-Armenian or community support activities and the certificate on establishment of such organisation from the relevant register issued by a state authority in accordance with the national legislation;'.

A document from the civil society organisation confirming that the visa applicant is representing that organisation must be presented.

The competent Armenian state authority issuing the certificate on establishment of a civil society organisation is the Ministry of Justice.

The register in which the certificates on establishment of civil society organisations are registered is the State Registry of Legal Persons. The Ministry of Justice administers the electronic data base of NGOs, which is available via the website /https://www.e-register.am/ of the Ministry of Justice.

Individual members of the civil society organisations are not covered by the Agreement.

'(j) for persons participating in scientific, academic, cultural or artistic activities, including university and other exchange programmes:

— a written request from the host organisation to participate in the activities;'

'(k) for drivers conducting international cargo and passenger transportation services to the territories of the Member States in vehicles registered in Armenia:

— a written request from the national association (union) of carriers of Armenia providing for international road transportation, stating the purpose, itinerary, duration and frequency of the trips;'.

The Armenian national association of carriers competent for providing the written request to professional drivers is the Association of International Road Carriers of Armenia (AIRCA).

'(l) for participants of the official exchange programmes organised by twin cities and other municipal entities:

— a written request of the Head of Administration/Mayor of these cities or municipal authorities;'.

The Head of Administration/Mayor of the city or other locality competent to issue the written request is the Head of Administration/Mayor of the host city or other locality where the twinning activity is going to take place. That category only covers official twinning.

'(m) for visiting military and civil burial grounds:

— an official document confirming the existence and preservation of the grave as well as family or other relationship between the applicant and the buried.'.

The Agreement does not specify whether the above-mentioned official document should be issued by the authorities of the country where the burial ground is located or those of the country in which the person who wants to visit the burial ground resides. It should be accepted that the competent authorities of either country may issue such an official document.

The above-mentioned official document confirming the existence and preservation of the grave as well as of the family or other relationship between the visa applicant and the buried must be presented.

The Agreement does not create any new liability rules for the natural or legal persons issuing the written requests. The respective Union and/or national law applies in the case of false issuance of such requests.

2.2.2. Issuance of multiple-entry visas

In cases where the visa applicant needs to travel frequently to the territory of the Member States, short-stay visas may be issued for several visits, provided that the total length of those visits does not exceed 90 days per period of 180 days.

Article 5 of the Agreement provides that:

'1. Diplomatic missions and consular posts of the Member States shall issue multiple-entry visas with a term of validity of 5 years to the following categories of persons:

(a) spouses, children (including adopted), who are under the age of 21 or are dependent and parents (including custodians), visiting citizens of Armenia legally residing in the Member States, or citizens of the European Union residing in the territory of the Member State of which they are nationals;

(b) members of national and regional governments and of Constitutional and Supreme courts if they are not exempted from the visa requirement by the present Agreement, in the exercise of their duties;

(c) permanent members of official delegations who, following an official invitation addressed to Armenia, are to participate regularly in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of the Member States by intergovernmental organisations;

By way of derogation, where the need or the intention to travel frequently or regularly is manifestly limited to a shorter period, the term of validity of the multiple-entry visa shall be limited to that period, in particular where:

— in the case of the persons referred to in point a), the period of validity of the authorisation for legal residence of citizens of Armenia legally residing in the European Union,

— in case of the persons referred to in point b), the term of office,

— in the case of the persons referred to in point c), the term of the validity of the status as a permanent member of an official delegation,

is less than five years.'.

Taking into account the professional status of those categories of persons, or their family relationship with a citizen of Armenia who is legally residing in the territory of the Member States or with a Union citizen residing in a Member State whose nationality that person holds, it is justified to grant them a multiple-entry visa with a term of validity of five years, or limited to the term of office or to their legal residence if they are less than five years.

Persons falling under point (a) of Article 5(1) of the Agreement, must present proof of the legal residence of the host person.

With regard to persons falling under point (b) of Article 5(1) of the Agreement, confirmation should be given regarding their professional status and the duration of their term of office.

That provision does not apply to persons falling under point (b) of Article 5(1) of the Agreement if they are exempted from the visa requirement by the Agreement, i.e. if they are holders of a diplomatic passport.

Persons falling under point (c) of Article 5(1) of the Agreement must present proof of their permanent status as a member of the official delegation and the need to participate regularly in meetings, consultations, negotiations or exchange programmes.

In cases where the need or the intention to travel frequently or regularly is manifestly limited to a shorter period, the validity of the multiple-entry visa will be limited to that period.

'2. Diplomatic missions and consular posts of the Member States shall issue multiple-entry visas with the term of validity of one year to the following categories of persons, provided that during the previous year they have obtained at least one visa and have made use of it in accordance with the laws on entry and stay of the visited State:

(a) members of official delegations who, following an official invitation addressed to Armenia, shall participate regularly in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of the Member States by intergovernmental organisations;

(b) representatives of civil society organisations and persons invited by Armenian community non-profit organisations registered in the Member States when undertaking trips to the Member States for the purposes of educational training, seminars, conferences, including in the framework of exchange programmes or Pan-Armenian and community support programmes;

(c) members of the professions participating in international exhibitions, conferences, symposia, seminars or other similar events who regularly travel to the Member States;

(d) persons participating in scientific, cultural or artistic activities, including university and other exchange programmes, who regularly travel to the Member States;

(e) students and post-graduate persons who regularly travel for the purposes of study or educational training, including in the framework of exchange programmes;

(f) participants of the official exchange programmes organised by twin cities and other municipal entities;

(g) persons needing to visit regularly for medical reasons and necessary accompanying persons;

(h) journalists and technical crew accompanying them in a professional capacity;

(i) business people and representatives of business organisations who regularly travel to the Member States;

(j) participants in international sports events and persons accompanying them in a professional capacity;

(k) drivers conducting international cargo and passenger transportation services to the territories of the Member States in vehicles registered in Armenia.

By way of derogation from the first sentence, where the need or the intention to travel frequently or regularly is manifestly limited to a shorter period, the term of validity of the multiple-entry visa shall be limited to that period.'.

In principle, multiple-entry visas with the term of validity of one year will be issued to the above-mentioned categories of visa applicants if during the previous year (12 months) the visa applicant has obtained at least one visa and has made use of it in accordance with the laws on entry and stay in the territory(ies) of the visited Member State(s) (for instance, the person has not overstayed) and if there are reasons for requesting a multiple-entry visa.

In cases where it is not justified to issue a visa valid for one year, for instance if the duration of the exchange programme is of less than one year or the person does not need to travel for a full year, the term of validity of the visa will be of less than one year, provided that the other requirements for issuing the visa are met.

'3. Diplomatic missions and consular posts of the Member States shall issue multiple-entry visas with the term of validity of a minimum of 2 years and a maximum of 5 years to the categories of persons referred to in paragraph 2 of this Article, provided that during the previous 2 years they have made use of the one year multiple-entry visas in accordance with the laws on entry and stay of the visited State unless the need or the intention to travel frequently or regularly is manifestly limited to a shorter period, in which case the term of validity of the multiple-entry visa shall be limited to that period.

4. The total period of stay of persons referred to in paragraphs 1 to 3 of this Article shall not exceed 90 days per period of 180 days in the territory of the Member States.'.

Multiple-entry visas with the term of validity from two to five years will be issued to the categories of visa applicants referred to in Article 5(2) of the Agreement, provided that during the previous two years (24 months) they have made use of the two one year multiple-entry visas in accordance with the laws on entry and stay in the territory(ies) of the visited Member State(s) and that the reasons for requesting a multiple-entry visa are still valid. It has to be noted that a visa with the term of validity from two to five years will only be issued if the visa applicant has been issued two visas valid for at least one year during the previous two years (24 months), and if that person has made use of those visas in accordance with the laws on entry and stay in the territory(ies) of the visited Member State(s). Diplomatic missions and consular posts of the Member States will decide, on the basis of the assessment of each visa application, on the term of validity of those visas, i.e. from two to five years.

There is no obligation to issue a multiple-entry visa if the applicant has not made use of a previously issued visa.

2.2.3. Holders of diplomatic passports.

Article 10 of the Agreement provides that:

'1. Citizens of Armenia who are holders of valid diplomatic passports may enter, leave and transit through the territories of the Member States without visas.

2. Persons mentioned in paragraph 1 of this Article may stay without visas in the territories of the Member States for a period not exceeding 90 days per period of 180 days.'.

The procedures for the posting of diplomats in the Member States are not covered by the Agreement. The usual accreditation procedure applies.

III. COOPERATION ON TRAVEL DOCUMENTS

In a Joint Declaration annexed to the Agreement, the Parties agreed that the Joint Committee should evaluate the impact of the level of security of the respective travel documents on the functioning of the Agreement. To that end, the Parties agreed to regularly inform each other about the measures taken for avoiding the proliferation of travel documents, developing the technical aspects of travel document security as well as regarding the personalisation process of the issuance of travel documents.

IV. STATISTICS

In order to allow the Joint Committee to effectively monitor the implementation of the Agreement, diplomatic missions and consular posts of the Member States shall submit statistics to the Commission every six months. Where possible, those statistics should include, presented in a monthly breakdown:

— the number of each type of visas issued to the different categories covered by the Agreement;

— the number of visa refusals for the different categories covered by the Agreement;

— the number of multiple-entry visas issued;

— the length of validity of multiple-entry visas issued;

— the number of visas issued without fees to the different categories covered by the Agreement.

COUNCIL IMPLEMENTING DECISION (CFSP) 2017/1948

of 25 October 2017

implementing Decision 2014/450/CFSP concerning restrictive measures in view of the situation in Sudan

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(2) thereof,

Having regard to Council Decision 2014/450/CFSP of 10 July 2014 concerning restrictive measures in view of the situation in Sudan and repealing Decision 2011/423/CFSP [1], and in particular Article 6 thereof,

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

Whereas:

(1) On 10 July 2014, the Council adopted Decision 2014/450/CFSP.

(2) On 17 October 2017, the United Nations Security Council Committee established pursuant to United Nations Security Council Resolution 1591 (2005) updated the information relating to one person subject to restrictive measures.

(3) The Annex to Decision 2014/450/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Decision 2014/450/CFSP is hereby amended as set out in the Annex to this Decision.

Article 2

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

Done at Brussels, 25 October 2017.

For the Council
The President
M. MAASIKAS

[1] OJ L 203, 11.7.2014, p. 106.

ANNEX

The entry concerning '**ALNSIEM**, Musa Hilal Abdalla' is replaced by the following entry:

'2. **ALNSIEM**, Musa Hilal Abdalla

Alias: a) Sheikh Musa Hilal; b) Abd Allah; c) Abdallah; d) AlNasim; e) Al Nasim; f) AlNaseem; g) Al Naseem; h) AlNasseem; i) Al Nasseem

Designation: a) formerly Member of the National Assembly of Sudan from Al-Waha district; b) formerly special adviser to the Ministry of Federal Affairs; c) Paramount Chief of the Mahamid Tribe in North Darfur

Date of birth: a) 01 Jan. 1964; b) 1959

Place of birth: Kutum

Nationality: Sudan

Address: a) Kabkabiya, Sudan; b) Kutum, Sudan (Resides in Kabkabiya and the city of Kutum, Northern Darfur and has resided in Khartoum).

Passport: a) Diplomatic Passport D014433, issued on 21 Feb. 2013 (Expired on 21 Feb. 2015); b) Diplomatic Passport D009889, issued on 17 Feb. 2011 (Expired on 17 Feb. 2013).

Identification: Certificate of Nationality A0680623.

Date of UN designation: 25 April 2006.

Other information: INTERPOL-UN Security Council Special Notice web link: https://www.interpol.int/en/notice/search/un/5795065

Information from the narrative summary of reasons for listing provided by the Sanctions Committee:

Alnsiem was listed on 25 April 2006 by paragraph 1 of resolution 1672 (2006) as 'Paramount Chief of the Jalul Tribe in North Darfur'.

Report from Human Rights Watch states they have a memo dated 13 February 2004 from a local government office in North Darfur ordering 'security units in the locality' to 'allow the activities of the mujahideen and the volunteers under the command of the Sheikh Musa Hilal to proceed in the areas of [North Darfur] and to secure their vital needs'. On 28 September 2005, 400 Arab militia attacked the villages of Aro Sharrow (including its IDP camp), Acho, and Gozmena in West Darfur. We also believe that Musa Hilal was present during the attack on Aro Sharrow IDP camp: his son had been killed during the SLA attack on Shareia, so he was now involved in a personal blood feud. There are reasonable grounds to believe that as the Paramount Chief he had direct responsibility for these actions and is responsible for violations of international humanitarian and human rights law and other atrocities.'

COMMISSION IMPLEMENTING DECISION (EU) 2017/1949

of 25 October 2017

repealing Implementing Decision 2014/715/EU identifying Sri Lanka as a third country that the Commission considers as a non-cooperating third country pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 ([1]), and in particular Article 31 thereof,

Whereas:

(1) By Implementing Decision 2014/715/EU ([2]), the Commission identified Sri Lanka as a country that it considers a non-cooperating third country in the fight against illegal, unreported and unregulated ('IUU') fishing, pursuant to Article 31(1) of Regulation (EC) No 1005/2008. In that Decision, the Commission provided the reasons for which it considered that this country failed to discharge its duties under international law, as flag, port, coastal or market State, to take action to prevent, deter and eliminate IUU fishing.

(2) By Implementing Decision (EU) 2015/200 ([3]), the Council included Sri Lanka in the list of non-cooperating countries established by Council Implementing Decision 2014/170/EU ([4]).

(3) Article 18(1)(g) of Regulation (EC) No 1005/2008, precludes the importation into the Union of fishery products accompanied by a catch certificate validated by the authorities of a flag state identified as a non-cooperating third country in the fight against IUU fishing.

(4) Following the identification as a non-cooperating third country, Sri Lanka endeavoured to take concrete measures in order to remedy the identified failures.

(5) On the basis of the information obtained by the Commission, it appears that Sri Lanka has implemented the relevant international law obligations and adopted an adequate legal framework for fighting against IUU fishing. It has established an adequate and efficient monitoring, control and inspection scheme by introducing logbooks to record catch data and radio call signs for fishing vessels, and equipping the entire high seas fleet with a vessel monitoring system (VMS). It has also created a deterrent sanctioning system, revised its fisheries legal framework and ensured the proper implementation of the catch certification scheme. Sri Lanka has furthermore steadily improved its compliance with Regional Fisheries Management Organisations (RFMO) recommendations and resolutions, such as port state control measures. It has transposed RFMO rules into Sri Lankan law and has adopted its own National Plan Of Action against IUU fishing, in line with the International Plan of Action against Illegal, Unreported and Unregulated fishing of the United Nations.

(6) It therefore appears that Sri Lanka has implemented the relevant international law obligations and that the actions undertaken by Sri Lanka as a flag State are sufficient to ensure compliance with the provisions of Articles 94, 117 and 118 of United Nations Convention on the Law of the Sea and Articles 18, 19, 20 and 23 of United Nations Fish Stocks Agreement.

([1]) OJ L 286, 29.10.2008, p. 1.
([2]) Commission Implementing Decision 2014/715/EU of 14 October 2014 identifying a third country that the Commission considers as a non-cooperating third country pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ L 297, 15.10.2014, p. 13).
([3]) Council Implementing Decision (EU) 2015/200 of 26 January 2015 amending Implementing Decision 2014/170/EU establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing as regards Sri Lanka (OJ L 33, 10.2.2015, p. 15).
([4]) Council Implementing Decision 2014/170/EU of 24 March 2014 establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ L 91, 27.3.2014, p. 43).

(7) It may therefore be concluded that the situation that warranted the identification of Sri Lanka as a non-cooperating third country has been rectified and that Sri Lanka has taken concrete measures capable of achieving a lasting improvement of the situation.

(8) As a consequence, the Council adopted Implementing Decision (EU) 2016/992 ([1]) removing Sri Lanka from the list of non-cooperating countries.

(9) In those circumstances Implementing Decision 2014/715/EU should be repealed with effect from the entry into force of Implementing Decision (EU) 2016/992.

(10) This Decision does not preclude any possible future step which may be taken by the Union, in accordance with Regulation (EC) No 1005/2008, in the event that Sri Lanka fails to fulfil the duties incumbent upon it under international law as flag, port, coastal or market State, to take action to prevent, deter and eliminate IUU fishing.

(11) The measures provided for in this Decision are in accordance with the opinion of the Committee for Fisheries and Aquaculture of 28 February 2017,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision 2014/715/EU is repealed.

Article 2

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

It shall apply from 22 June 2016.

Done at Brussels, 25 October 2017.

For the Commission
The President
Jean-Claude JUNCKER

([1]) Council Implementing Decision (EU) 2016/992 of 16 June 2016 amending Implementing Decision 2014/170/EU establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing as regards Sri Lanka (OJ L 162, 21.6.2016, p. 15)

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 204/16/COL

of 23 November 2016

concerning alleged unlawful state aid granted to Íslandsbanki hf. and Arion Bank hf. through loan agreements on allegedly preferential terms (Iceland) [2017/1950]

THE EFTA SURVEILLANCE AUTHORITY ('the Authority'),

HAVING REGARD to the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Article 61 and Protocol 26 thereof,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('the Surveillance and Court Agreement'), in particular to Article 24,

HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'), in particular to Article 7(2) and Article 13 of Part II,

HAVING called on interested parties to submit their comments and having regard to their comments,

Whereas:

I. FACTS

1. *PROCEDURE*

(1) On 23 September 2013, the Authority received a complaint alleging that Íslandsbanki hf. ('ISB') and Arion Bank hf. ('Arion') had been granted unlawful state aid through long-term funding at favourable interest rates by the Central Bank of Iceland ('CBI') ([1]).

(2) By letter dated 23 October 2013, the Authority sent a request for information to the Icelandic authorities ([2]), to which the Icelandic authorities replied on 17 January 2014 ([3]). The case was subsequently discussed at a meeting between representatives of the Authority and of the Icelandic authorities in Reykjavík in May 2014. The discussions were followed up with a letter dated 5 June 2014 ([4]). The case was again discussed at a meeting between representatives of the Authority and of the Icelandic authorities, including a representative from the CBI, in Reykjavík in February 2015. These discussions were followed up with a letter dated 24 February 2015 ([5]), to which the Icelandic authorities replied on 1 April 2015 ([6]).

([1]) Document No 684053.
([2]) Document No 685741.
([3]) The reply from the Icelandic authorities contained letters from the CBI (Document No 696093), ISB (Document No 696092) and Arion (Document No 696089).
([4]) Document No 709261.
([5]) Document No 745267.
([6]) The reply from the Icelandic authorities contained letters from the CBI (Document No 753104) and Arion (Document No 753101).

(3) By Decision No 208/15/COL of 20 May 2015, the Authority initiated the formal investigation procedure into alleged unlawful state aid granted to ISB and Arion through loan conversion agreements on allegedly preferential terms. By letter dated 28 August 2015 ([1]), the Icelandic authorities commented on the Authority's decision. On the same date, the Authority also received comments from one of the two alleged beneficiaries, *i.e.* Arion ([2]).

(4) On 24 September 2015, the decision to initiate the formal investigation procedure was published in the *Official Journal of the European Union* and in the EEA Supplement to it ([3]). By letter dated 5 October 2015, the CBI submitted comments to the opening decision ([4]).

(5) By letter dated 14 June 2016, the Authority requested additional information from the CBI, ISB and Arion ([5]). The Icelandic authorities provided the requested information by letter dated 20 September 2016 ([6]).

2. *DESCRIPTION OF THE MEASURES*

2.1. BACKGROUND

(6) The measures in question are linked to the CBI's collateral and securities lending. As part of its role as a central bank and lender of last resort, and in line with the monetary policy of other central banks, the CBI provides short-term credit facilities to financial undertakings in the form of collateral loans, in accordance with the provisions of CBI rules pertaining thereto. Financial institutions have the option of requesting overnight loans or seven-day loans against collateral considered to be eligible by the CBI.

(7) In 2007 and 2008, collateral lending increased steadily, and the CBI became a major source of liquidity for financial undertakings. Collateral loans peaked on 1 October 2008, just before the collapse of the banks, when the CBI had loaned ISK 520 billion to financial institutions. Thus, at the time of the collapse of the three commercial banks (Landsbankinn, Glitnir and Kaupthing) in October 2008, the CBI had acquired considerable claims against these domestic financial undertakings, which were backed by collateral of various types. At that time, nearly 42 % of the collateral for CBI loan facilities took the form of Treasury guaranteed securities or asset-backed securities, while some 58 % of the underlying collateral consisted of bonds issued by Glitnir, Kaupthing, and Landsbankinn ([7]).

2.2. LOAN AGREEMENT CONCLUDED WITH ISB

(8) With the collapse of Glitnir in 2008, the CBI's claims became due and payable, thus making the CBI a creditor of the failed bank. By decision of the Financial Supervisory Authority ('FME') in October 2008, in principle all domestic assets and liabilities (save for some excluded assets and liabilities) of Glitnir's were transferred to ISB, including Glitnir's outstanding liabilities to the CBI, which amounted to approximately ISK 55,6 billion, as well as indirectly the ownership of the underlying collateral (the mortgage loan portfolio) ([8]).

([1]) Document No 771173.
([2]) Document No 771174.
([3]) EFTA Surveillance Authority Decision No 208/15/COL of 20 May 2015 concerning alleged unlawful state aid granted to Íslandsbanki hf. and Arion banki hf. through loan conversion agreements on allegedly preferential terms ('Decision No 208/15/COL') (OJ C 316, 24.9.2015, p. 6, and EEA Supplement No 57, 24.9.2015, p. 1). Available at: http://www.eftasurv.int/media/esa-docs/physical/208-15-COL.pdf.
([4]) Document No 775870.
([5]) Document No 808042.
([6]) Documents No 819287, 819289, 819291, 819293 and 819295.
([7]) For an overview of developments in collateral loans, see the CBI's Annual Report 2008, p. 9-11, available at http://www.sedlabanki.is/lisalib/getfile.aspx?itemid=7076
([8]) Glitnir had set up a covered bond programme, according to which a mortgage loan portfolio was sold into the Glitni banka (GLB) Fund which in turn guaranteed the Notes (Glitnir's obligations) issued under the covered bond programme. The covered bonds were not sold to investors but used as collateral in repurchase transactions with the CBI. By decision of the FME on 14 October 2008, among other things, all unit shares in the Fund were transferred to ISB. Outstanding covered bonds were held by the CBI as collateral for Glitnir's outstanding debt with the CBI, now appropriated to ISB and amounting to approximately 55 billion ISK at the time of the FME's decision. ISB had to operate the Fund and honor all payments on the original debt in order to protect the assets (the mortgage loan portfolio) and pay fees to all relevant parties to the original debt programme. As there were foreseeable costs and complications involved in operating the Fund and servicing the loans through the Fund, ISB sought to renegotiate the debt with the CBI in order to seek, inter alia, to extend the term of the debt.

(9) As the debt with the CBI consisted of short-term collateralised lending, instant repayment would have had a serious impact on ISB's liquidity position and could have jeopardised the restructuring of the bank. According to the CBI, the alternative would have been for the CBI to collect the debt, which would have left the CBI with the mortgage loan portfolio. This would have been difficult for a central bank to manage. Selling the mortgage loan portfolio at the time was also not considered an option, taking into account the financial crisis and the very few potential purchasers on the market.

(10) Therefore, ISB sought to renegotiate the debt with the CBI, in order to convert it into a long-term debt with a reasonable amortisation profile, to avoid a further negative impact on ISB's liquidity position. Following negotiations between ISB and the CBI, an agreement was reached on 11 September 2009, resulting in ISB issuing a stand-alone bond to the CBI in the amount of ISK 55,6 billion. The bond was asset-backed with the same, or similar, mortgage loan portfolio as the covered bonds that were issued by Glitnir in the past. The bond is over-collateralised with a loan-to-value ('LTV') ratio of 70 % ([1]). The bond's maturity is 10 years, with an interest rate of 4,5 %, CPI linked (*i.e.* consumer price-indexed).

2.3. LOAN AGREEMENT CONCLUDED WITH ARION

(11) In October 2008, it was clear that Kaupthing could no longer be saved and the FME therefore took over the operations of the bank. In line with the Act No 125/2008 on the Authority for Treasury disbursements due to Unusual Financial Market Circumstances etc. (the 'Emergency Act'), which was passed on 6 October 2008, the FME decided to split Kaupthing into an old and a new bank. The new bank, which later became Arion, in principle took over most domestic assets and liabilities. However, the secured liabilities towards the CBI and the respective collateral, including the housing loan portfolio, were not transferred ([2]). The old bank was placed under the supervision of a resolution committee and later became subject to winding-up procedures, with the aim of eventually closing all operations.

(12) Kaupthing, the Government and Arion reached an agreement on 3 September 2009 regarding the capitalisation of Arion and the basis for compensation from Kaupthing to Arion (the 'Kaupthing capitalisation agreement'). According to this agreement, Kaupthing had the option of acquiring control of Arion by subscribing to new share capital and was to pay for the new share capital with the old bank's own assets (*i.e.* the assets that had not been transferred pursuant to the FME decision as described above).

(13) Before Kaupthing could decide whether it would acquire a majority stake in Arion, an agreement needed to be reached with the CBI on the settlement of the outstanding claims as some of the assets it would need to pay for the new share capital had been placed as collateral against loans provided by the CBI to Kaupthing, including the housing loan portfolio. Therefore, on 30 November 2009, the Ministry of Finance, the CBI and the Kaupthing Resolution Committee entered into an agreement on the settlement of the CBI's claims against Kaupthing (the 'settlement agreement'). The settlement of overnight loans was the subject of Article 3 of the settlement agreement and there the parties agreed that Arion Bank would assume Kaupthing's debt towards the CBI by issuing a bond in the amount of approximately ISK […] (*) billion, in a specific form attached to the agreement as Appendix II, with the CBI in turn assigning the housing loan portfolio to Arion.

(14) On 22 January 2010, Arion and the CBI concluded a loan agreement, which, according to the CBI and Arion, represented the formal completion of Article 3 of the settlement agreement and the capitalisation agreement, i.e. when the creditors of Kaupthing became owners of Arion. The loan agreement replaced the aforementioned bond. The loan agreement essentially reflected the terms of the bond, except that the principal amount of the loan agreement was denominated in EUR, USD and CHF instead of ISK. This change in currency denomination was in line with the terms of the settlement agreement which provided that, despite the denomination of the principal, Arion should pay interest and instalments in foreign currencies to the extent the bank was able to. The settlement agreement also stipulated that if Arion was not able to pay in foreign currencies, and wished instead to pay in ISK, it had to submit a written reasoned application to the CBI.

([1]) The loan-to-value ratio is a financial term used by lenders to express the ratio of a loan to the value of an asset purchased.
([2]) See the Minister of Finance's Report on the restructuring of the commercial banks, pages 13-17. Available online at: http://www.althingi.is/altext/pdf/139/s/1213.pdf.
(*) The information in square brackets is covered by the obligation of professional secrecy.

(15) The loan agreement provided for a seven-year loan, extendable by two three-year terms, for an amount of EUR […] million, USD […] million and CHF […] million. Arion was permitted to change the combination of the currencies in which the loan was to be repaid. The interest payable was EURIBOR/LIBOR + 300 bps. The housing loan portfolio of Arion served as collateral to the CBI.

3. *THE COMPLAINT*

(16) According to the complainant, the loan agreements between ISB, Arion and the CBI were not assessed in the Authority's decisions approving restructuring aid to ISB and Arion ([1]). Since the measures were not addressed in these cases, the complainant considers it important to obtain the opinion of the Authority on (i) the compatibility of these additional alleged aid measures with the EEA Agreement, and (ii) the consequences of the failure by the Icelandic authorities to notify these measures.

(17) The complainant alleges that, at the time the CBI entered into the loan agreements with Arion and ISB, other banks in Iceland were not given the opportunity to receive such financing from the CBI or other government agencies. The complainant therefore argues that the aid was selective as it was granted exclusively to certain financial institutions competing on the Icelandic banking market. According to the complainant, by granting a loan to ISB, the bank was granted aid to avoid enforcement by the CBI on the covered bond issue; and in Arion's case, the loan was granted to secure an appropriate balance on the bank's currency risk. The complainant argues that other financial institutions, which did not receive such aid, were forced to sell off assets in markets that favoured buyers.

(18) According to the complainant, the loan agreements gave ISB and Arion a clear advantage in the form of long-term funding with favourable interest rates below market rates and which were not available to other market participants. According to the complainant, no private investor would have entered into such agreements at this turbulent time on the financial markets. In order to substantiate its claim that the interest rates were below market rates at the time, the complainant submitted credit default swap ('CDS') spreads of the Icelandic government in 2009 and interest rates in 2009 on bond issues HFF150224 and HFF150434 by the Icelandic Housing Financing Fund ('HFF'). The complaint maintains that the measures strengthened ISB and Arion on the banking market and therefore affected the position of other market participants.

(19) Finally, the complainant argues that the restructuring plans of ISB and Arion, implemented by the Icelandic government and which the Authority found compatible aid pursuant to Article 61(3)(b) of the EEA Agreement, were sufficient to remedy the disturbance in the Icelandic economy. According to the complainant, the additional aid measures implemented by way of the abovementioned agreements were not necessary, appropriate or proportionate to restore the Icelandic banking system and therefore entail incompatible state aid.

4. *GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE*

(20) In Decision No 208/15/COL, the Authority preliminarily assessed whether the short-term credit facilities provided by the CBI to Glitnir and Kaupthing, as well as the loan agreements concluded between the CBI and both Arion and ISB, could constitute state aid within the meaning of Article 61(1) of the EEA Agreement; and, if so, whether the state aid could be considered compatible with the functioning of the EEA Agreement.

(21) With regard to CBI's short-term collateral lending to banks and other financial institutions, the Authority found that the conditions set out in the Banking Guidelines ([2]) concerning liquidity assistance and central bank facilities were fulfilled. Accordingly, the Authority concluded that the short-term credit facilities provided by the CBI to Glitnir and Kaupthing did not involve state aid.

([1]) Public version of EFTA Surveillance Authority Decision No 244/12/COL of 27 June 2012 on restructuring aid granted to Íslandsbanki ('ISB restructuring aid decision') (OJ L 144, 15.5.2014, p. 70 and EEA Supplement No 28, 15.5.2014, p. 1); and Public version of EFTA Surveillance Authority Decision No 291/12/COL of 11 July 2012 on restructuring aid to Arion Bank ('Arion restructuring aid decision') (OJ L 144, 15.5.2014, p. 169 and EEA Supplement No 28, 15.5.2014, p. 89), paragraphs 86, 149, 168 and 238.

([2]) Guidelines on the application, from 1 December 2013, of state aid rules to support measures in favour of banks in the context of the financial crisis ('2013 Banking Guidelines') (OJ L 264, 4.9.2014, p. 6 and EEA Supplement No 50, 4.9.2014, p. 1), paragraph 62, which replaced the Guidelines on the application of state aid rules to measures taken in relation to financial institutions ('the 2008 Banking Guidelines') (OJ L 17, 20.1.2011, p. 1 and EEA Supplement No 3, 20.1.2011, p. 1), paragraph 51.

(22) However, with respect to the loan agreements between the CBI and both Arion and ISB on allegedly favourable terms, the Authority came to the preliminary conclusion that it could not be excluded that these constitute state aid within the meaning of Article 61(1) of the EEA Agreement. The following aspects were identified in Decision No 208/15/COL:

(i) The Authority noted that public support granted by a central bank could be regarded as attributable to the State and thus constitutes a transfer of state resources.

(ii) The Authority expressed doubts as to whether the measures under assessment were consistent with the conduct of a private creditor finding himself in a comparable legal and factual situation. Hence, the preliminary assessment of the Authority showed that an economic advantage in favour of ISB and Arion could not be excluded.

(iii) Since no evidence had been provided demonstrating that the allegedly favourable loan agreements were made available to all undertakings in a comparable factual and legal situation as ISB and Arion, it was the Authority's preliminary view that the measures appeared to be selective.

(iv) Finally, the Authority noted that although ISB and Arion today operate mostly on the Icelandic market, they are nevertheless engaged in the provision of financial services, which are fully open to competition and trade within the EEA. Therefore, in the preliminary view of the Authority, the measure was liable to distort competition and affect trade within the EEA.

(23) According to the Authority, further evidence needed to be provided in order to be able to determine whether the lending terms could be regarded as compatible with the functioning of the EEA Agreement.

(24) Consequently, following its preliminary assessment, the Authority had doubts whether the measures in question and the lending terms in particular constituted state aid, and if so, whether they could be found to be compatible with the functioning of the EEA Agreement.

5. *COMMENTS FROM THE CBI*

5.1. GENERAL

(25) The CBI notes that the restructuring of the Icelandic financial system, its legal foundation, and the government's execution of it, have been previously addressed by the Authority, inter alia, in the ISB and Arion restructuring aid decisions. According to the CBI, it is not logical to take the measures under investigation in this case out of their context and to assess them as stand-alone instruments.

(26) According to the CBI, it is unrealistic for a central bank to enforce collateral like the one in question in the case of Kaupthing (Arion) and ISB. In appropriating such collateral, the CBI would have taken on the role of a commercial bank with one of the largest household loan portfolios in Iceland. This would have been inconsistent with its role as a central bank. There was also an important risk of destabilising the operations of Arion and ISB, which would have jeopardised financial stability. The Authority must bear in mind that the CBI has a legal obligation to promote financial stability. If the CBI had collected the claim on ISB, ISB's liquidity would have been rendered too weak to operate as a healthy bank and consequently the CBI would not have been in a position to collect all of its claim.

(27) The CBI notes that the Banking Guidelines unfortunately do not address what happens when claims stemming from monetary policy operations fall into default and a central bank is forced to take steps to collect claims and appropriate collateral assets. The CBI argues that the conversion of the CBI's claims into loan agreements should be considered as a normal continuation of creditors' measures aiming to maximise recoveries of claims stemming from short-term credit facilities and not as new funding provided to Arion and ISB.

5.2. THE PRESENCE OF STATE AID

(28) With respect to whether the loan agreements conferred an advantage on the banks, the CBI first argues that the initial delay in payments did not involve state aid, given the exceptional circumstances prevailing in Iceland after the collapse of the banking system in October 2008. The settlement of payments with ISB in September 2009 and with Kaupthing in November 2009 cannot be considered a delay, according to the CBI, as Iceland was undergoing a comprehensive bank restructuring with the assistance of the IMF and there was a high degree of uncertainty about the valuation of the banks' assets.

(29) The CBI highlights that is has the legal obligation to preserve financial stability and to supervise credit institutions' foreign exchange balances. Therefore, the CBI had a legal obligation to address the severe situation prevailing at the time. Concluding the loan agreements was the best rational economic decision under these circumstances. The CBI points out that not only would it have been inconsistent with the role as a central bank to appropriate the collateral, but it would also ultimately have resulted in the CBI recovering less of the short-term debt.

(30) In addition, according to the CBI, the terms of the loan agreements, *i.e.* the interest rates and collateral, were favourable to the CBI. The CBI refers to available information on issued instruments worldwide and also to the terms of other instruments entered into by the parties at that time (Arion, ISB, the CBI, other domestic financial institutions, and the State) ([1]). Therefore, according to the CBI, the terms of the loan agreements were in both cases fully consistent with normal market terms at the time, and therefore fully in line with the market economy investor principle.

(31) With respect to whether these loan agreements were selective, the CBI argues that all undertakings in a comparable legal and factual situation were treated equally. In this regard, the CBI notes that Straumur, a private Icelandic investment bank, also concluded an agreement with the CBI on the settlement of its short-term debt ([2]). Moreover, according to the CBI, MP Bank was not in a similar factual or legal situation as its short-term debts were not secured with assets comparable to the housing loan portfolio but with public securities such as Treasury instruments and similar secure instruments, *i.e.* easily tradable assets with a set value and no costs involved or associated with appropriation. Therefore, the CBI rejects the assertion that other banks in Iceland were not given the opportunity to receive such financing from the CBI or other government agencies.

(32) Finally, the CBI notes that the Authority must consider that during the period when the loan agreements were concluded, there was *de facto* no competition between Icelandic financial undertakings and other financial undertakings in the EEA. In November 2008, the Icelandic Parliament adopted Act No 134/2008, amending the Foreign Exchange Act No 87/1992, which imposed restrictions on cross-border capital movements and foreign exchange transactions related thereto, thus making it impossible for foreign financial entities to compete on the Icelandic market ([3]). Therefore, the CBI argues that the measures were not liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement.

(33) On the basis of the above, the CBI argues that the conclusion of the loan agreements cannot constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

5.3. COMPATIBILITY

(34) Should the Authority nevertheless consider the measures to constitute state aid, the CBI argues that the measures must be considered compatible with the EEA Agreement on the basis of its Article 61(3)(b), as they formed an integral part of the measures that were necessary, proportionate and appropriate to remedy a serious disturbance in the Icelandic economy and thus were directly linked to the restructuring aid measures approved by the Authority in its Arion and ISB restructuring aid decisions.

6. *COMMENTS BY ARION*

6.1. GENERAL

(35) Arion also argues that the measures under investigation in this case cannot be taken out of their context and assessed as stand-alone instruments. Arion suggests that the Authority has already investigated and approved the restructuring and capitalisation of Arion in its Arion restructuring aid decision.

(36) Arion notes that denominating the loan in foreign currencies instead of ISK was in line with the terms of the settlement agreement, which provided that Arion should pay interest and instalments in foreign currencies to the extent the bank was able to and that it was only allowed to pay in ISK in exceptional circumstances. Arion also notes that Article 4 of the settlement agreement provided that the borrower may, with the permission of the

([1]) Document No 819287.
([2]) See: http://www.almchf.com/new-and-events/nr/121.
([3]) Case E-03/11 *Pálmi Sigmarsson* v *Seðlabanki Íslands* [2011] EFTA Ct. Rep. 430.

lender, change the denomination of the debt in part or full. The terms of the loan agreement are therefore fully in accordance with the terms of the settlement agreement. Arion highlights that the Authority already reviewed and approved the terms of the settlement agreement in its Arion restructuring aid decision ([1]).

(37) According to Arion, the Authority's description in Decision No 208/15/COL that without the housing loan portfolio Arion's position would have been 'slim', is incorrect. According to Arion, the housing loan portfolio was indeed a valued asset as it included loans of some of Arion's core clientele and had also been serviced by Arion. Pursuant to the settlement agreement (and not the FME's decision), Kaupthing was able to transfer the housing loan portfolio to Arion as part of Arion's capitalisation. In the absence of Article 3 of the settlement agreement (and thus in the absence of the transfer of the housing loan portfolio), however, other assets would have replaced the housing loan portfolio in order to fulfil the requirements of capitalisation and restructuring of Arion.

6.2. THE PRESENCE OF STATE AID

(38) According to Arion, the position of the CBI could be qualified as that of a private creditor enforcing claims against Kaupthing, as detailed in the settlement agreement, in accordance with the applicable rules governing winding-up procedures ([2]). The assignment of the housing portfolio pursuant to the settlement agreement and the conclusion of the loan agreement were carried out on terms fully consistent with normal market terms at the time. Consequently, the conduct of the CBI meets the requirements of the private creditor test. The CBI therefore did not confer upon Arion any advantage that could in any way be considered state aid.

(39) According to Arion, the main points that should be taken into consideration when assessing whether a hypothetical private creditor would have entered into the settlement agreement and the loan agreement can be summarised as follows:

(i) It was economically and functionally the only sensible option for the CBI. Appropriating the housing loan portfolio would have resulted in the CBI recovering a lower amount of the short-term debt in the end.

(ii) The CBI as a secured creditor had exhausted all other available options at the time.

(iii) The debtor, Kaupthing, had been put in winding-up proceedings and the short-term debt therefore had to be concluded in accordance with Act No 21/1991 on Bankruptcy Proceedings.

(iv) The measures were in line with the goal of the government to move the domestic part of the old banks to the new banks.

(v) The restructuring and capitalisation of Arion was part of the overall restructuring of the financial sector.

(vi) The terms of the loan agreement, *i.e.* interest rates and security, were favourable to the CBI. This is evident from the available information on issued instruments worldwide but also from the terms of other instruments entered into by the parties at that time (*i.e.* by Arion, the CBI and other domestic financial institution and the State).

(40) Since the Authority, in Decision No 208/15/COL, considered it difficult to determine the appropriate benchmarks for interest rates during the financial crisis, Arion has provided information on covered bond and senior unsecured bond issuances by banks in Europe during the period in question. Since the loan provided by the CBI is secured primarily with mortgages, Arion argues that it is comparable to covered bonds that were issued by European banks during 2009 using residential mortgages as security. According to Arion, the dataset it provided ([3]) demonstrates that funding spreads European banks were paying ranged between 0,1 % and 1,90 % over interbank rates, with a median spread of 0,72 %. The highest rates for covered bonds were paid by the Bank of Ireland in September 2009 (1,9 % over interbank rates) and EBS Mortgage finance from Ireland (1,75 % over

([1]) Arion restructuring aid decision, paragraphs 86, 149, 168 and 238.

([2]) That the financial reorganisation and insolvency of credit institutions, such as Kaupthing, is regulated by the provisions of the Act on Financial Undertakings No 161/2002 which contains a specific set of insolvency rules supplemented by the general provisions of the Bankruptcy Act No 21/1991 applicable to all insolvency cases in Iceland. Winding-up proceedings are in many respects similar to that of bankruptcy proceedings, and in fact many of the provisions of the Bankruptcy Act are incorporated into the former by reference, such as the processing of claims as well as other provisions ensuring equal treatment of creditors.

([3]) See schedules 1 to 3, attached to Arion's letter of 31 March 2015 (Document No 753101).

interbank rates) in November 2009. According to Arion, it is difficult to see how a debt instrument secured with mortgages and other high quality assets, and bearing an interest rate of LIBOR + 3,00 %, could be seen as state aid, while at the same time the highest funding costs of a European bank with mortgage collateral was interbank rates + 1,9 %.

(41) According to Arion, the change made in the loan agreement from the terms of the settlement agreement relating to the denomination of the principal in EUR, USD and CHF, instead of ISK, was favourable to the CBI. Arion notes that stringent limitations on cross-border movement of capital and related foreign exchange transactions were imposed in Iceland since the banking system collapsed in the autumn of 2008. Applying the private creditor test in these circumstances can only result in the conclusion that a private creditor would have preferred a denomination in foreign currencies rather than in ISK. Such a change in denomination would therefore be to the advantage of the creditor, not the debtor.

(42) Arion also draws a comparison with a settlement agreement ('the LBI agreement') that was concluded between the 'new' Landsbankinn ('NBI'), and the 'old' Landsbankinn ('LBI') in December 2009. The LBI agreement entailed the issue of a senior secured bond, denominated in EUR, GBP and USD, in the amount of ISK 247 billion in foreign currency for a term of 10 years by NBI to LBI. In addition, a contingent bond of ISK 92 billion in foreign currency was issued early in 2013. These senior secured bonds were a consideration for the assets and liabilities transferred from LBI on 9 October 2008 with the decision of the FME on the disposal of assets and liabilities from LBI to NBI. These senior secured bonds mature in October 2018 and do not have instalment payments during the first five years. The interest rates are EURIBOR/LIBOR + 175 bps for the first five years and EURIBOR/LIBOR + 290 bps for the remaining five years. They are secured by pools of loans to customers of Landsbankinn ([1]).

(43) According to Arion, the terms of the LBI agreement can be viewed as directly comparable to the terms in the loan agreement. The differences can be summarised as follows:

(i) A margin of 175 bps/290 bps from a private party lender compared to a 300 bps from the CBI under the loan agreement.

(ii) A principal of close to the equivalent of ISK 350 billion from a private party lender compared to ISK […] billion from the CBI under the loan agreement.

(iii) A collateral pool of loans to customers to a private party lender compared to a diversified pool of domestic exposures on sovereign, municipalities and residential mortgages to the CBI under the loan agreement.

(44) The above differences between these two cases are, according to Arion, all favourable to the loan agreement and the CBI, *i.e.* higher interest rate, lower principal amount and stronger collateral pool, in spite of the fact that the lender in this case is a private party. This indicates that the terms of the funding provided to Arion under the loan agreement are in line with prevalent market terms at the time.

(45) In summary, Arion thus argues that the conclusion of the loan agreement between the CBI and Arion cannot constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

6.3. COMPATIBILITY

(46) Should the Authority, despite the arguments presented above, consider that the measures constitute state aid, Arion argues that these measures are compatible with the EEA Agreement on the basis of its Article 61(3)(b).

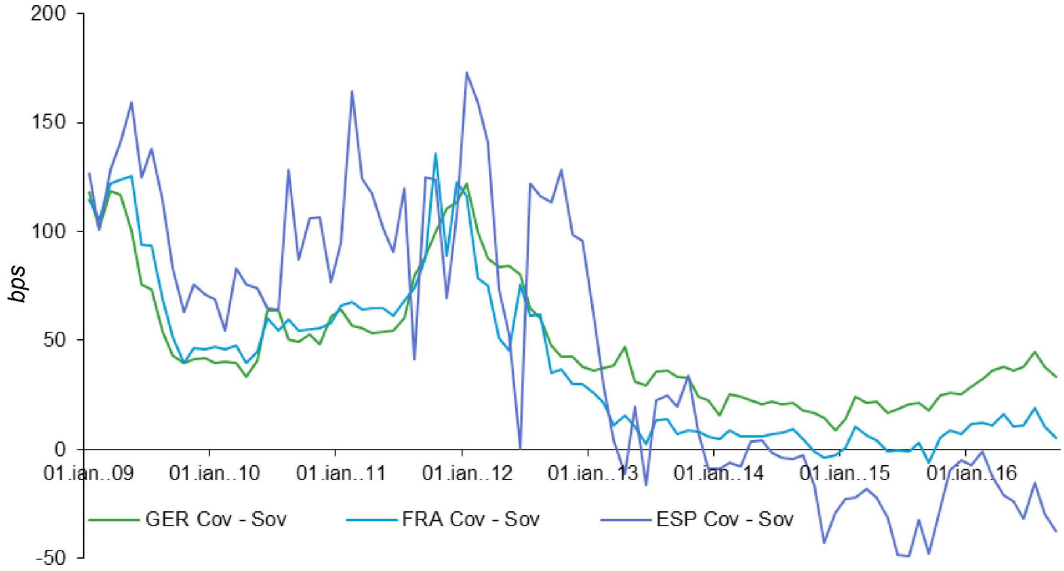
(47) As the measures in question formed an inseparable part of the final capitalisation of Arion and the restructuring plan of Arion submitted to the Authority, Arion argues that these measures cannot be separated from the overall assessment made by the Authority in that case. They are therefore covered by the Authority's Arion restructuring aid decision.

([1]) Document No 696088.

(48) Arion is also of the opinion that, if the Authority considers it possible to revisit a specific part of a transaction that has already been reviewed and approved by the Authority in the Arion restructuring aid decision, then the Authority should take into consideration the full factual and legal situation. The Authority's assessment on the compatibility of the measures in question should thus be in line with the assessment in the Arion restructuring aid decision, and in particular on whether the criteria of the applicable state aid guidelines were met.

7. *COMMENTS BY ISB*

(49) ISB provided information concerning the conditions of similar asset-backed bonds in Europe at the time of the conclusion of the agreement with the CBI. According to ISB, similar asset-backed bonds in Europe were trading at a 40–80 bps premium to state guaranteed papers at the time. ISB provided a graph which shows data from 2009 for three countries, *i.e.* France, Germany and Spain, on the spread difference between covered bond spreads and sovereign spreads. The iBoxx ([1]) covered spreads are a weighted average of all outstanding covered bonds from those respective countries with an average duration of the indices in the range of five to seven years.



(50) As can be seen from the graph, the spread has fluctuated substantially during this period and is *e.g.* currently negative in the case of Spain. In 2009, the spread difference for these three countries was in the range of 40–160 bps.

II. **ASSESSMENT**

1. *THE PRESENCE OF STATE AID*

(51) In the following chapters, the Authority will assess whether the loan agreements concluded between the CBI and both ISB and Arion involve state aid within the meaning of Article 61(1) of the EEA Agreement.

(52) A measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: the measure (i) is granted by the State or through State resources; (ii) confers an economic advantage on an undertaking; (iii) is selective; and (iv) is liable to distort competition and affect trade between Contracting Parties.

(53) As a preliminary point, it should be reminded that there is no blanket exemption of monetary policy from the application of the state aid rules ([2]). Indeed, the exclusion of liquidity assistance from the application of state aid law, as mentioned in paragraph 21 above, is limited to measures fulfilling the conditions enumerated in paragraph 51 of the Authority's 2008 Banking Guidelines and paragraph 62 of the Authority's 2013 Banking Guidelines ([3]). This does not imply that all actions by central banks are excluded from the application of the state

([1]) The iBoxx bond market indices are benchmarks for professional use and comprise liquid investment grade bond issues.
([2]) See judgment in *Hellenic Republic* v *Commission*, C-57/86, EU:C:1988:284, paragraph 9.
([3]) Although the 2008 Banking Guidelines are no longer in effect, they were at the time the contested measures were adopted and therefore the Authority must apply them in this case.

aid rules. In the present case, the Authority considers that the provision of long-term loans by the CBI does not comply with the conditions set out in the aforementioned paragraphs of the 2008 and 2013 Banking Guidelines, since the measures were connected to the restructuring measures provided to the two banks. Therefore, the Authority must assess the measures on the basis of the conditions set out in Article 61(1) of the EEA Agreement.

1.1. PRESENCE OF STATE RESOURCES

(54) According to Article 61(1) of the EEA Agreement, a measure must be granted by the State or through State resources in order to constitute state aid.

(55) The State, for the purpose of Article 61(1) of the EEA Agreement, covers all bodies of the public administration, from the central government to the city level or the lowest administrative level as well as public undertakings and bodies ([1]).

(56) The measures under examination take the form of loan agreements between the CBI and Arion and ISB on allegedly favourable terms.

(57) In order to determine whether the provision of long-term loans by the CBI involves state resources, it needs to be assessed whether measures taken by a central bank can be regarded as imputable to the State. Central banks are in general independent from the central government. However, it is irrelevant whether or not an institution within the public sector is autonomous ([2]). Moreover, it is generally accepted that central banks do perform a public task. The Authority notes that there is well-established case law that financial support provided by an institution serving a public purpose can result in the granting of state aid ([3]). The public support granted by a central bank can thus also be regarded as being imputable to the State and thus qualify as state aid ([4]). Indeed, according to the 2013 Banking Guidelines, funds provided by a central bank to specific credit institutions generally imply the transfer of State resources ([5]).

(58) However, beyond these remarks, the question of whether the loan agreements in question were granted by the State or through state resources can be left open, given the conclusion reached in the following section that the measures did not confer an economic advantage on the banks.

1.2. ADVANTAGE

(59) In order to constitute state aid within the meaning of Article 61(1) of the EEA Agreement, the measures must confer an advantage upon an undertaking.

(60) An advantage, within the meaning of Article 61(1) of the EEA Agreement, is any economic benefit which an undertaking would not have obtained under normal market conditions, thus placing it in a more favourable position than its competitors. Only the effect of the measure on the undertaking is relevant, and not the cause or objective of the State intervention ([6]). For it to constitute aid, the measure can take the form of a positive economic advantage as well as a relief of economic burdens. The latter is a broad category comprising any measure mitigating the charges that would normally be borne from the undertaking's budget. The question of whether the conclusion of the loan agreements could be regarded as granting ISB and Arion an advantage will ultimately depend on whether a private creditor of a comparable size to that of the public body, operating in the same market conditions, would have granted a similar loan on similar conditions.

(61) In order to determine whether a public body has acted like any market economy operator in a similar situation, only the benefits and obligations linked to the role of the State or public body as an economic operator — to the

([1]) Judgment in *Germany* v *Commission*, C-248/84, EU:C:1987:437, paragraph 17.
([2]) Judgment in *Air France* v *Commission*, T-358/94, EU:T:1996:194, paragraphs 58 to 62.
([3]) Judgments in *Italy* v *Commission*, C-173/73, EU:C:1974:71, paragraph 16; *Steinicke and Weinling* v *Germany*, C-78/76, EU:C:1977:52.
([4]) See Commission Decision 2000/600/EC of 10 November 1999 conditionally approving the aid granted by Italy to the public banks *Banco di Sicilia* and *Sicilcassa* (OJ L 256, 10.10.2000, p. 21) at paragraphs 48 and 49, where it is accepted with no further discussion that advances granted by the Banca d'Italia to distressed banks constitute financial assistance provided by the State.
([5]) 2013 Banking Guidelines, paragraph 62.
([6]) Judgment in *Italy* v *Commission*, C-173/73, EU:C:1974:71, paragraph 13.

exclusion of those linked to its role as a public authority — are to be taken into account ([1]). Moreover, in order to determine whether a state intervention is in line with market conditions, it must be examined on an *ex ante* basis, only taking into account the information available at the time the intervention was decided upon. In addition, in the absence of specific market information on a given debt transaction, the debt instrument's compliance with market conditions may be established on the basis of a comparison with comparable market transactions, that is to say through benchmarking.

(62) The private creditor test, developed and refined by the courts of the European Union ([2]), serves to establish whether the conditions under which a public creditor's claim is to be repaid, possibly by rescheduling payments, constitutes state aid. When the State is in the position, not as an investor or a promoter of a project, but as a creditor trying to maximise the recovery of an outstanding debt, lenient treatment alone, in the form of deferral of payment, may not be sufficient to presume favourable treatment in the sense of state aid. In such circumstances the conduct of the public creditor is to be compared with that of a hypothetical private creditor in a comparable factual and legal situation. The crucial question is whether a private creditor would have granted similar treatment to a debtor in similar circumstances.

(63) Prior to assessing the loan agreements, the question arises as to whether the initial delay in settling payments, which is understood to have lasted from around October 2008 until late 2009, may involve state aid. In general, decisions by public bodies to tolerate late payments on a loan may entail an advantage to the debtor and involve state aid. While a temporary deferral of payment would probably correspond to the conduct of a private creditor and thus not involve state aid, such conduct, initially consistent with market conditions, could turn into state aid in cases of protracted delays in payment ([3]).

(64) From the point of view of a private creditor, enforcement of a claim that has become due is the self-evident norm. This also applies if the debtor undertaking is in financial difficulties, as well as in the case of insolvency. Private creditors will not normally be willing in such circumstances to accept further deferral of payment if this does not bring them any clear advantage. On the contrary, once a debtor runs into financial difficulty, further loans would only be granted to the debtor under stricter terms, *e.g.* at a higher interest rate or with more comprehensive securities, as repayment is endangered. Exceptions may be justifiable in individual cases where non-enforcement seems to be the economically more sensible alternative. This would be the case when non-enforcement offers clearly improved prospects of collecting a substantially higher proportion of the claims in comparison with other possible alternatives or if even greater consequential losses can be averted in this way. It can be in the interest of a private creditor to keep the business of the debtor company running instead of liquidating its assets and thus, under certain circumstances, only collecting a part of the debt. When a private creditor accepts to refrain from enforcing his claim in full, he will normally require the debtor to provide additional securities. When this is not possible, for instance in cases of debtors in financial difficulty, the private creditor will seek assurances of maximum compensation should the financial condition of the debtor later improve. If insufficient securities or commitments are made by the debtor, a private creditor would generally not accept to conclude debt rescheduling agreements or provide the debtor with additional loans.

(65) With respect to the initial delay in settling payments, the CBI argues that settling payments with ISB in September 2009 and with Kaupthing in November 2009 cannot be considered a delay given the exceptional circumstances prevailing in Iceland after the collapse of the banking system in October 2008. During the period from the collapse until the settlement of the claims, Iceland was undergoing a comprehensive bank restructuring with the assistance of the IMF and there was considerable uncertainty about the fair valuation of the banks' assets.

([1]) Judgments in *Commission* v *EDF*, C-124/10 P, EU:C:2012:318, paragraphs 79 to 81; *Belgium* v *Commission*, C-234/84, EU:C:1986:302, paragraph 14; *Belgium* v *Commission*, C-40/85, EU:C:1986:305, paragraph 13; *Spain* v *Commission*, Joined Cases C-278/92 to C-280/92, EU:C:1994:325, paragraph 22; and *Germany* v *Commission*, C-334/99, EU:C:2003:55, paragraph 134.

([2]) See judgments in *Spain* v *Commission*, C-342/96, EU:C:1999:210, paragraphs 46 *et seq.*; *SIC* v *Commission*, T-46/97, EU:T:2000:123, paragraph 98 *et seq.*; *DM Transport*, C-256/97, EU:C:1999:332, paragraphs 19 *et seq.*; *Spain* v *Commission*, C-480/98, EU:C:2000:559, paragraphs 19 *et seq.*; *HAMSA* v *Commission*, T-152/99, EU:T:2002:188, paragraph 167; *Spain* v *Commission*,C-276/02, EU:C:2004:521, paragraphs 31 *et seq.*; *Lenzig* v *Commission*, T-36/99, EU:T:2004:312, paragraphs 134 *et seq.*; *Technische Glaswerke Ilmenau* v *Commission*, T-198/01, EU:T:2004:222, paragraphs 97 *et seq.*; *Spain* v *Commission*, C-525/04 P, EU:C:2007:698, paragraphs 43 *et seq.*; *Olympiaki Aeroporia Ypiresies* v *Commission*, T-68/03, EU:T:2007:253; and *Buzek Automotive* v *Commission*, T-1/08, EU:T:2011:216, paragraphs 65 *et seq.*

([3]) See Opinion of Advocate General Jacobs in *DM Transport*, C-256/97, EU:C:1998:436, paragraph 38.

Therefore, the CBI as the creditor of the banks needed time to properly evaluate the assets that served as collateral. The Authority has assessed these arguments and considers that the CBI acted in line with the private creditor test concerning the initial delay.

(66) Further, the Authority needs to assess whether a private creditor holding similar short-term claims on the defaulting banks would have agreed to the transfer of the housing loan portfolios under the conditions set out above and to the subsequent conclusion of loan agreements with the new banks according to the same conditions.

(67) The Authority notes that in the wake of Glitnir's and Kaupthing's collapse in the autumn of 2008, the CBI found itself in a position where it was unrealistic to expect to enforce collateral like the ones in question in the case of Arion and ISB. Taking into account that the loan portfolios constituted a large share of Arion's and ISB's customer base, appropriating such collateral could have jeopardised the financial stability of Arion and ISB and driven these financial undertakings into bankruptcy. Enforcing the collateral would have also entailed additional administrative expenses for the CBI. Moreover, if the loan portfolios had been offered for sale, the CBI would also have had no assurance of acceptable recovery, and it was highly unlikely that investors with sufficient capital strength would have been available to buy the portfolios, given the market situation in Iceland at the time. Therefore, appropriating the housing loan portfolios — either by enforcing the collateral or following bankruptcy — would have resulted in the CBI recovering a lower amount of the short-term debt in the end.

(68) Faced with this situation, the CBI therefore chose to enter into the loan agreements to ensure full payment of its claims, with interest and without having to incur administrative expenses. The loan agreements were thus entered into to achieve maximum possible recovery at that time.

(69) Based on these elements, the Authority considers that the CBI endeavoured to maximise the recovery of its claims when entering into the loan agreements.

(70) The Authority also must assess whether the conditions attached to the loan agreements, and in particular the applicable interest rates, would have been sufficiently valuable to a private creditor to meet the requirement of the private creditor test.

(71) In Decision No 208/15/COL, the Authority noted that it was difficult to determine the appropriate benchmarks for interest rates during the financial crisis. In response to this, ISB, Arion and the CBI have submitted additional information and comments.

(72) ISB argues that the interest rates are in line with the interest rates of similar asset-backed bonds at the time. The ISB bond's maturity is 10 years, with an interest rate of 4,5 %, CPI linked (consumer price-indexed), and is over-collateralised with a LTV ratio of 70 %. The interest rate was set at about 50 bps on top of the state-guaranteed HFF bonds on the date of issue. In comparison, common rates in Europe at the time for similar asset-backed securities were at 40–80 bps above state-guaranteed papers. ISB also provided a graph which shows that the spread differences for France, Germany and Spain were in the range of 40–160 bps in 2009.

(73) Similarly, Arion argues that its loan agreement with the CBI was concluded on market terms. Arion compares it, inter alia, to a comparable agreement concluded between NBI and LBI. Both agreements were concluded around the same time, *i.e.* end of 2009 and the beginning of 2010, and involved similar settlements of claims. The comparison shows that the terms of Arion's loan agreement were more stringent than those in the LBI agreement, involving a private lender. Indeed, it appears that the LBI agreement required lower interest rates, involved a higher principal amount and had weaker and less diversified collateral than the Arion loan agreement.

(74) In its letter of 31 March 2015 ([1]), Arion provided additional information on covered bond and senior unsecured bond issuances by banks in Europe during the period of 1 January 2009 until 31 December 2010. Taking into account that the loan provided by the CBI is primarily secured with mortgages, Arion argues that it is comparable to covered bonds issued by European banks during 2009 using residential mortgages as security. As

([1]) Document No 753101.

mentioned above, according to the dataset provided by Arion, funding spreads European banks were paying ranged from 0,1 % to 1,90 % over interbank rates, with a median spread of 0,72 %. The highest rates for covered bonds were paid by Bank of Ireland in September 2009 (1,9 % over interbank rates) and EBS Mortgage from Ireland (1,75 % over interbank rates) in November 2009.

(75) The CBI also argues that the terms of the loan agreements, *i.e.* the interest rates and collateral, were favourable to the CBI. According to the CBI, this is evident from the available information on issued instruments worldwide (as documented by Arion, see above) and also from the terms of other instruments entered into at the time, including the LBI agreement.

(76) The Authority notes that the loan agreements concluded between the CBI and the banks bear an interest rate of LIBOR + 3,00 % and are collateralised with mortgages and other assets. As the information provided by ISB and Arion shows, this interest rate is well above the average interest rates for comparable debt instruments concluded at the time, and even exceed the highest funding cost of any other European banks at the time that had mortgages as collateral (*i.e.* Bank of Ireland, interbank rates + 1,9 %). The Authority considers that the information concerning comparable debt instruments provided by the banks is reliable and that it presents and accurate picture of market conditions at the time the loan agreements were concluded. Moreover, since these interest rates were agreed to by private parties, the Authority considers that they represent a more appropriate benchmark for determining market rates at the time than the CDS spreads and interest rates on HFF bonds cited by the complainant.

(77) Concerning the loan agreement concluded with Arion, the Authority notes that the loan was denominated in foreign currencies instead of ISK. However, as noted by Arion, this change of denomination was in line with the terms of the settlement agreement, which provided that Arion should pay interest and instalments in foreign currencies to the extent the bank was able to and that Arion could, with the permission of the lender, change the denomination of the debt in part or full. As previously noted, the Authority has already reviewed and approved the terms of the settlement agreement in the Arion restructuring aid decision. Moreover, as noted by Arion, due to the stringent limitations in Iceland on cross-border movement of capital and related foreign exchange transactions, a private creditor would in all likelihood have preferred a denomination in foreign currencies rather than in ISK. Such a change in denomination would therefore be to the advantage of the creditor, not the debtor.

(78) Considering the market parameters at the time and the evidence presented, the Authority concludes that the lending terms in general, and the interest rates in particular, of the loan agreements would have been equally acceptable to a private creditor finding himself in a comparable factual and legal situation.

(79) In light of the above, the Authority concludes that the loan agreements between the CBI and, respectively, ISB and Arion did not confer an economic advantage upon ISB and Arion.

1.3. SELECTIVITY, DISTORTION OF COMPETITION AND EFFECT ON TRADE BETWEEN CONTRACTING PARTIES

(80) In order to qualify as state aid within the meaning of Article 61(1) of the EEA Agreement, the measure must be selective as well as liable to distort competition and affect trade between the Contracting Parties to the Agreement. However, given that the Authority concludes that no economic advantage was granted in the present case, and as the cumulative conditions for the existence of state aid are therefore not fulfilled, the Authority does not have to make any further assessment in this regard.

2. *CONCLUSION*

(81) On the basis of the foregoing assessment, the Authority considers that the loan agreements the CBI concluded with ISB and Arion do not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The loan agreements concluded between the CBI and, respectively, Íslandsbanki hf. and Arion banki hf. do not constitute state aid within the meaning of Article 61(1) of the EEA Agreement. The formal investigation is hereby closed.

Article 2

This Decision is addressed to Iceland.

Article 3

Only the English language version of this decision is authentic.

Done in Brussels, 23 November 2016.

For the EFTA Surveillance Authority

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President

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College Member

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