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[1] Text with EEA relevance.

EN

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

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

[1] Text with EEA relevance.

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2017/2360

of 11 December 2017

fixing for 2018 the fishing opportunities for certain fish stocks and groups of fish stocks in the Black Sea

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 43(3) of the Treaty provides that the Council, on a proposal from the Commission, is to adopt measures on the fixing and allocation of fishing opportunities.

(2) Regulation (EU) No 1380/2013 of the European Parliament and of the Council [1] requires conservation measures to be adopted which take into account available scientific, technical and economic advice, including, where relevant, reports drawn up by the Scientific, Technical and Economic Committee for Fisheries (STECF).

(3) It is incumbent upon the Council to adopt measures on the fixing and allocation of fishing opportunities by fishery or group of fisheries in the Black Sea including, as appropriate, certain conditions functionally linked thereto. In accordance with Article 16(1) and (4) of Regulation (EU) No 1380/2013, fishing opportunities are to be distributed among Member States in such a way as to ensure the relative stability of the fishing activities of each Member State for each fish stock or fishery, and in accordance with the objectives of the common fisheries policy established in Article 2(2) of that Regulation.

(4) At its 41st Annual Meeting in 2017, the General Fisheries Commission for the Mediterranean (GFCM) adopted Recommendation GFCM/40/2017/4 on a multiannual management plan for turbot fisheries in geographical sub-area 29 (Black Sea). The recommendation establishes a total allowable catch (TAC) for turbot for 2 years (2018-2019) with a temporary allocation of quotas. That measure should be implemented into the law of the Union.

(5) The fishing opportunities should be established on the basis of the available scientific advice, taking into account biological and socioeconomic aspects whilst ensuring fair treatment between fishing sectors, as well as in the light of the opinions expressed during the consultation of stakeholders.

(6) In accordance with the available scientific advice of STECF, it is necessary to maintain the current level of fishing mortality to ensure the sustainaibility of sprat stocks in the Black Sea.

(7) For sprat fisheries, the landing obligation referred to in Article 15(1) of Regulation (EU) No 1380/2013 applies from 1 January 2015. For turbot fisheries the landing obligation referred to in that Article applies from 1 January 2017.

[1] Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

(8) The use of fishing opportunities set out in this Regulation is subject to Council Regulation (EC) No 1224/2009 ([1]) and in particular to Articles 33 and 34 thereof concerning the recording of catches and the notification of data on the exhaustion of fishing opportunities. It is therefore necessary to specify the codes to be used by Member States when sending data to the Commission relating to landings of stocks subject to this Regulation.

(9) In accordance with Article 2 of Council Regulation (EC) No 847/96 ([2]), the stocks that are subject to the various measures referred to therein must be identified.

(10) As regards turbot stocks, further remedial measures should be taken. Maintaining the currently applicable 2 months' closure period, from 15 April to 15 June, would continue to provide protection for those stocks during the spawning season of turbot. Managing the fishing effort and limiting the fishing days to 180 per year would have a positive conservation impact on turbot stocks.

(11) Fishing opportunities should be used in full compliance with the applicable law of the Union.

(12) In order to avoid interruption of fishing activities and to ensure the livelihood of Union fishermen, it is important to open the fisheries concerned in the Black Sea on 1 January 2018. For reasons of urgency, this Regulation should enter into force immediately after its publication,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Regulation fixes the fishing opportunities by Union fishing vessels flying the flag of Bulgaria and of Romania for 2018 for certain fish stocks in the Black Sea:

(a) turbot (*Psetta maxima*);

(b) sprat (*Sprattus sprattus*).

Article 2

Scope

This Regulation shall apply to Union fishing vessels operating in the Black Sea.

Article 3

Definitions

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

(a) 'GFCM' means General Fisheries Commission for the Mediterranean;

(b) 'Black Sea' means the geographical sub-area 29 as defined in Annex I to Regulation (EU) No 1343/2011 of the European Parliament and the Council ([3]);

(c) 'fishing vessel' means any vessel equipped for commercial exploitation of marine biological resources;

([1]) Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

([2]) Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas (OJ L 115, 9.5.1996, p. 3).

([3]) Regulation (EU) No 1343/2011 of the European Parliament and of the Council of 13 December 2011 on certain provisions for fishing in the GFCM (General Fisheries Commission for the Mediterranean) Agreement area and amending Council Regulation (EC) No 1967/2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea (OJ L 347, 30.12.2011, p. 44).

(d) 'Union fishing vessel' means a fishing vessel flying the flag of a Member State and registered in the Union;

(e) 'stock' means a marine biological resource that occurs in a given management area;

(f) 'Union autonomous quota' means a limit of the catches autonomously allocated to Union fishing vessels in the absence of an agreed TAC;

(g) 'analytical quota' means a Union autonomous quota for which an analytical assessment is available.

CHAPTER II

FISHING OPPORTUNITIES

Article 4

Allocation of fishing opportunities

1. The Union autonomous quota for sprat, the allocation of such quota among Member States, and the conditions functionally linked thereto, where appropriate, are set out in the Annex.

2. The TAC for turbot, applicable in Union waters and for Union fishing vessels and the allocation of such TAC among Member States and the conditions functionally linked thereto, where appropriate, are set out in the Annex.

Article 5

Special provisions on allocations

The allocation of fishing opportunities among Member States as set out in this Regulation shall be without prejudice to:

(a) exchanges made pursuant to Article 16(8) of Regulation (EU) No 1380/2013;

(b) deductions and reallocations made pursuant to Article 37 of Regulation (EC) No 1224/2009;

(c) deductions made pursuant to Articles 105 and 107 of Regulation (EC) No 1224/2009.

Article 6

Management of the fisheries effort for turbot

Union fishing vessels authorised to fish for turbot in the Black Sea, irrespective of the vessels' length overall, shall not exceed 180 fishing days per year.

CHAPTER III

FINAL PROVISIONS

Article 7

Data transmission

When, pursuant to Articles 33 and 34 of Regulation (EC) No 1224/2009, Member States send the Commission data relating to landings of quantities of stocks caught, they shall use the stock codes set out in the Annex to this Regulation.

Article 8

Entry into force

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

It shall apply from 1 January 2018.

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

Done at Brussels, 11 December 2017.

For the Council
The President
S. KIISLER

ANNEX

Species:	Turbot *Psetta maxima*	**Zone:**	Union waters in the Black Sea (TUR/F3742C)
Bulgaria	57		
Romania	57		
Union	114 (*)		
TAC	644	Analytical TAC Article 3 of Regulation (EC) No 847/96 shall not apply. Article 4 of Regulation (EC) No 847/96 shall not apply.	

(*) No fishing activity, including transhipment, taking on board, landing and first sale, shall be permitted from 15 April to 15 June 2018.

Species:	Sprat *Sprattus sprattus*	**Zone:**	Union waters in the Black Sea (SPR/F3742C)
Bulgaria	8 032,50		
Romania	3 442,50		
Union	11 475		
TAC	Not relevant/Not agreed	Analytical quota Article 3 of Regulation (EC) No 847/96 shall not apply. Article 4 of Regulation (EC) No 847/96 shall not apply.	

COMMISSION DELEGATED REGULATION (EU) 2017/2361

of 14 September 2017

on the final system of contributions to the administrative expenditures of the Single Resolution Board

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 ([1]), and in particular Article 65(5) thereof,

Whereas:

(1) The provisional system of instalments on contributions to the administrative expenditures of the Board, laid down in Commission Delegated Regulation (EU) No 1310/2014 ([2]), was based on a simplified methodology and covered only a limited subset of entities, namely the entities which are considered significant by the European Central Bank (ECB) ('significant entities'). That provisional system was introduced in order to ensure sufficient funding for the establishment of the Board while minimising the administrative burden for the Board, which at the time had only a limited structure and operational capacity. The provisional system was intended to apply until the Commission would adopt a final system for the determination and raising of the contributions to administrative expenditures.

(2) As the Board has acquired a more stable structure and operational capacity, it is now appropriate to establish the final system of annual contributions to the administrative expenditures of the Board. A final system should replace the provisional system laid down in Delegated Regulation (EU) No 1310/2014.

(3) Such a final system should provide for the determination and raising of administrative contributions not only for significant entities, but for all entities that are subject to the Single Resolution Mechanism. The contributions should be calculated at the highest level of consolidation of those entities within the participating Member States, since all subsidiaries of a group inside the perimeter of consolidation fall within the scope of the decision-making powers of the Board when adopting group resolution plans, carrying out the assessment of resolvability of groups and adopting resolution decisions for groups. The exercise of those tasks implies expenditures for the Board for collecting and analysing information and data related to each subsidiary included in the perimeter of consolidation. Since those are expenditures related to the services provided by the Board to the entities that are subject to the Single Resolution Mechanism, they should be paid by those entities and therefore the administrative contributions should be calculated on the basis of their consolidated accounts at the highest level of consolidation within the participating Member States and only one contribution per group should be calculated.

(4) Pursuant to Article 65(3) of Regulation (EU) No 806/2014 the Board is to determine and raise contributions as well as to ensure that they are fully and timely paid. In order to enable the Board to meet those requirements, an efficient system for raising the administrative contributions from the institutions and entities referred to in Article 2 of Regulation (EU) No 806/2014 should be ensured. Those institutions and entities are already subject to numerous reporting obligations set out in Union legislation. More specifically, pursuant to Regulation (EU) No 1163/2014 of the European Central Bank ([3]), the ECB collects data on total assets and total risk exposure for the purposes of calculating supervisory fees. The data collected in accordance with Regulation (EU) No 1163/2014 can be meaningfully used for the calculation of the administrative contributions to the Board. Pursuant to Article 30(2) of Regulation (EU) No 806/2014, the Board and the ECB are to cooperate closely in the exercise of their respective responsibilities under that Regulation and, in particular, provide each other with all the information necessary for the performance of their tasks. It is more efficient to request the ECB to transmit data it received and verified in the exercise of its tasks and powers conferred on it by Council Regulation (EU) No 1024/2013 ([4]) to the Board, than to duplicate the reporting burden for the institutions and entities

([1]) OJ L 225, 30.7.2014, p. 1.
([2]) Commission Delegated Regulation (EU) No 1310/2014 of 8 October 2014 on the provisional system of instalments on contributions to cover the administrative expenditures of the Single Resolution Board during the provisional period (OJ L 354, 11.12.2014, p. 1).
([3]) Regulation (EU) No 1163/2014 of the European Central Bank of 22 October 2014 on supervisory fees (ECB/2014/41) (OJ L 311, 31.10.2014, p. 23).
([4]) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

concerned. Data sharing between the ECB and the Board would also allow avoiding duplication of the data verification process by the Board and builds on the obligation of the Board and the ECB to cooperate closely in the exercise of their respective responsibilities under Regulation (EU) No 806/2014. Any duplication of the data reporting and verification processes would inevitably require more time for the calculation and raising of contributions and would lead to a less efficient system. It follows that, as a part of the cooperation obligation, the ECB should be required to transmit to the Board the data received from the institutions and entities concerned for the purpose of calculating contributions to the Board. The Board should rely to the greatest extent possible on the data collected by the ECB. The Board should have access to the aforementioned data to the extent necessary for the fulfilment of its tasks under this Regulation.

(5) The allocation of contributions should reflect the difference in the workload and related expenditures for the entities under the Board's direct responsibility as opposed to those under the responsibility of national resolution authorities. Therefore, this Regulation should determine how the contributions should be split between those two groups of entities. Within those two groups, the final system established by this Regulation should require entities to contribute in proportion to the resource requirements that they individually place on the Board, as approximated by observable data.

(6) In order to provide certainty, both to the Board and to the entities concerned, on how individual annual contributions are to be adjusted in the case of an error in the calculation or changes to the underlying data, this Regulation should lay down specific rules in that respect. Where the Board makes an error in the calculation of the annual contribution, it should be required to rectify that error. Such a requirement should apply as regards errors that occur because the Board applies incorrectly the methodology for calculating the individual annual contributions. In such cases, all contributions should be amended. On the contrary, cases where the input data used in the calculation of individual annual contributions is not correct or is subject to a change after the calculation was performed should not be considered errors in the calculation and should therefore be treated differently. In such cases, only the contributions of the entities whose data was not correct or was subject to a change should be amended.

(7) In accordance with Article 3 of Council Regulation No 1 ([1]) the contribution notice and any further communications by the Board should be in the language of the Member State in which the recipient institution is established.

(8) The payments of the annual contributions should be enforceable and interest on late payment should apply in the event of partial payment, non-payment or non-compliance with the conditions for payment specified in the contribution notice, in order to ensure the full and timely payment of the contributions.

(9) The contributions of significant entities covered by the provisional system should be reassessed to take into account the amounts paid by them under that provisional system. Any difference between the instalments paid on the basis of the provisional system and the contributions calculated in accordance with the final system should be settled in the calculation of the contributions to the administrative expenditures of the Board for the year following the end of the provisional period.

(10) Since this Regulation introduces the final system of contributions to the administrative expenditures of the Board, the Regulation on the provisional system is no longer necessary and should be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down rules to determine:

(1) the final system for the calculation of the contributions to the administrative expenditures of the Single Resolution Board ('the Board') due by the entities referred to in Article 2 of Regulation (EU) No 806/2014;

(2) the way in which the contributions are to be paid;

([1]) Council Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

(3) the registration, accounting, reporting and other rules necessary to ensure that the contributions are paid fully and in a timely manner;

(4) the methodology for the recalculation and adjustment of the contributions due for the provisional period.

Article 2

Definitions

For the purposes of this Regulation, the definitions set out in Regulation (EU) No 1163/2014 shall apply. The following definitions shall also apply:

(1) 'administrative expenditures of the Board' means the expenditure of Part I of the budget of the Board, as referred to in Article 59(2) of Regulation (EU) No 806/2014;

(2) 'annual contribution' means the contribution to be collected by the Board for a given financial year in accordance with this Regulation in order to cover the administrative expenditures of the Board;

(3) 'contribution debtor' means the fee debtor determined in accordance with Article 4 of Regulation (EU) No 1163/2014 for the purposes of collecting the supervisory fee and falling under the scope of Article 2 of Regulation (EU) No 806/2014;

(4) 'provisional period' means the period beginning on 19 August 2014 and ending on 31 December 2017.

Article 3

Determination of total amount of annual contributions to be raised

The total amount of annual contributions to be raised for a given financial year shall be calculated on the basis of Part I of the budget adopted by the Board for that financial year in accordance with Article 61 of Regulation (EU) No 806/2014, adjusted by the result of the budget of the latest financial year for which the final accounts have been published in accordance with Article 63(7) of that Regulation.

The Board shall determine the total amount of annual contributions so that Part I of the budget of the Board is balanced.

Article 4

Allocation of total amount of annual contributions

1. The total amount to be raised in accordance with Article 3 shall be allocated as follows:

(a) 95 % to the following entities and groups:

(i) entities and groups referred to in Article 7(2) of Regulation (EU) No 806/2014;

(ii) entities and groups with regard to which the Board has decided to exercise powers under Regulation (EU) No 806/2014 pursuant to Article 7(4)(b) of that Regulation;

(iii) entities and groups in relation to which participating Member States have decided in accordance with Article 7(5) of Regulation (EU) No 806/2014 that the Board exercise powers and responsibilities conferred to it by that Regulation;

(b) 5 % to entities and groups referred to in Article 7(3) of Regulation (EU) No 806/2014.

2. Without prejudice to Article 7, the Board shall assign entities and groups to one of the two categories laid down in paragraph 1 based on the data which the ECB provides to the Board in accordance with Article 6(1) or Article 11, as applicable.

3. Where an entity falls under the scope of paragraph 1(a), all the entities that are part of the same group shall be assigned to the same category.

4. The Board shall report yearly to the Commission on the appropriateness of the allocation laid down in paragraph 1, in the light of the changing composition of the two categories of entities and groups.

Article 5

Calculation of the individual annual contributions

1. The Board shall calculate the individual annual contributions due for each financial year on the basis of the data received in accordance with Article 6 and the total amount of annual contributions as determined in accordance with Article 3.

2. For the purposes of calculating the individual annual contributions, the Board shall apply the provisions laid down in Article 10(1), (2) and (3) and Article 10(6)(a), (b) and (c) of Regulation (EU) No 1163/2014.

3. For the purpose of applying the provisions referred to in paragraph 2:

(a) 'annual supervisory fee' means individual annual contribution;

(b) 'significant supervised entity' or 'significant supervised group' means an entity or group as referred to in Article 4(1)(a);

(c) 'less significant supervised entity' or 'less significant supervised group' means an entity or group as referred to in Article 4(1)(b);

(d) 'supervised entity' or 'supervised group' means any entity or group;

(e) 'fee debtor' means contribution debtor.

4. The annual contribution due by the entities referred to in Article 2 of Regulation (EU) No 806/2014 that are members of the same group shall be calculated as a single contribution.

5. Where the Board makes an error in the calculation of an individual annual contribution, it shall rectify the error by recalculating the individual annual contribution of each affected entity. The Board shall settle any difference between the individual annual contribution paid and the recalculated amount by increasing or decreasing the individual annual contribution calculated in the financial year following the recalculation.

However, no recalculation shall be performed where the Board becomes aware of an error more than 5 years after the end of the financial year in which the error occurred.

Article 6

Data necessary for the calculation of individual annual contributions

1. Each year, within 5 working days of the issuance of fee notices in accordance with Article 12(1) of Regulation (EU) No 1163/2014, and in any case no later than 31 December of the year for which the fee notices are issued, the ECB shall provide the Board with data on each contribution debtor as collected by the ECB in that year and used to determine the supervisory fees in accordance with Regulation (EU) No 1163/2014.

2. The data shall contain at least the following elements:

(a) the identity and contact details of each contribution debtor as determined in accordance with Article 4 of Regulation (EU) No 1163/2014 for the purpose of the supervisory fees;

(b) the fee factors determined in accordance with Article 10 of Regulation (EU) No 1163/2014;

(c) whether a contribution debtor is significant in accordance with Article 6(4) of Regulation (EU) No 1024/2013 or is an entity or group in relation to which the ECB has decided in accordance with Article 6(5)(b) of Regulation (EU) No 1024/2013 to exercise directly all of the relevant powers;

(d) any data that the ECB has determined in the absence of reporting from a contribution debtor, in accordance with Article 10(5) of Regulation (EU) No 1163/2014;

(e) the validity date underlying the fee calculation of each contribution debtor determining the duration the contribution debtor was subject to the supervisory fee and any change of status in accordance with Article 7(2) of Regulation (EU) No 1163/2014 in the given fee period.

3. For the purposes of point (a) of paragraph 2, the identity and contact details of each contribution debtor shall include any personal data within the meaning of Regulation (EC) No 45/2001 [1] that is collected by the ECB for the purposes of carrying out its tasks under Regulation (EU) No 1163/2014 and that is necessary for the fulfilment of the tasks under this Regulation by the Board.

4. Where, for the purposes of this Regulation, the Board needs to identify whether an entity is part of the group that has nominated a given contribution debtor, the ECB, national resolution authorities and national competent authorities shall assist the Board with all relevant information.

5. In case the ECB issues additional invoices or recalculates the annual supervisory fee in accordance with Article 7 of Regulation (EU) No 1163/2014, the ECB shall communicate to the Board the new data within 5 days of the issuance of fee notices.

6. For the calculation of the individual annual contributions to be collected in a given financial year, the Board shall use the data collected by the ECB in the previous financial year in accordance with Regulation (EU) No 1163/2014 and provided to the Board in accordance with this Article or Article 11, as applicable.

7. Where the ECB, in a given financial year, has not provided the Board within the periods laid down in this Article with the data necessary for the calculation of the annual contributions, the Board may use the latest available data provided to it by the ECB for the purposes of that calculation.

8. In case no data provided by the ECB is available, the relevant national competent authority shall upon request provide the Board with the data at its disposal.

9. In case no data provided by the national competent authority is available, the contribution debtor shall upon request provide the Board with the necessary data within a deadline set by the Board. In the absence of a reply by the contribution debtor within the deadline set by the Board, the Board may determine the data on the basis of reasonable assumptions.

10. The Board shall use the data specified in this Article only for the purposes of and in accordance with this Regulation.

Article 7

Change in scope, status or other data

1. Where an entity or a group falls under the scope of Article 2 of Regulation (EU) No 806/2014 only for part of the financial year, its individual annual contribution for that financial year shall be calculated by reference to the number of full months during which it falls under the scope of that Article.

2. Where the status of an entity or a group changes between the categories specified in Article 4(1) during a financial year, its individual annual contribution for that financial year shall be calculated on the basis of the number of months for which the entity or a group fell under the respective category at the last day of the month.

3. Where other changes to the data of an entity or a group that were used to calculate its individual annual contribution for a financial year occur, the individual annual contribution of that entity or group for that financial year shall be calculated on the basis of the updated data.

[1] 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).

4. Where a change as referred to in paragraphs 1 and 2 has been reported by the ECB or a change as referred to in paragraph 3 occurred, the Board shall recalculate only the individual annual contribution of that entity or group for the financial years concerned. Where changes as referred to in paragraph 1, 2 or 3 have occurred in relation to several entities or groups during the same financial year, the Board shall only take into account the changes concerning an individual entity or group for the purposes of recalculating the individual annual contribution of that entity or group.

5. Where the amount of an individual annual contribution paid is higher than the amount recalculated in accordance with paragraph 4, the Board shall refund the difference to the entity or group concerned. Where the amount of an individual annual contribution paid is lower than the amount recalculated in accordance with paragraph 4, the entity or group concerned shall pay the difference to the Board. For the purposes of refunding or collecting an amount due in accordance with this paragraph, the Board shall decrease or increase the individual annual contribution of the entity or group concerned in the financial year following the recalculation pursuant to paragraph 4.

6. The individual annual contributions of entities or groups that are not subject to changes as referred to in paragraph 1, 2 or 3 shall not be adjusted.

7. The Board shall apply the aggregate surplus or deficit resulting from all the adjustments made in accordance with paragraph 5 to the total amount of annual contributions to be determined in accordance with Article 3 for the financial year following the financial year in which the adjustments are applied.

8. In line with the principle of sound management of its budget, the Board shall take any decisions deemed necessary in order to implement the provisions laid down in this Article, including as regards the timing of the refunds by the Board and of the additional payments to be collected from the entities.

Article 8

Contribution notice, communications, payments and interest for late payment

1. A contribution notice shall be issued by the Board to the contribution debtors.

2. The Board shall notify the contribution notice through any of the following means:

(a) electronically or by other comparable means of communication;

(b) by fax;

(c) by express courier service;

(d) by registered mail with a form for acknowledgement of receipt;

(e) by service or delivery by hand.

The contribution notice shall be valid without signature.

3. The contribution notice shall specify the amount of the annual contribution and the way in which the annual contribution shall be paid. It shall be duly reasoned with regard to the factual and legal aspects of the individual contribution decision.

4. The Board shall address any other communication with regard to the annual contribution, including any settlement decision in accordance with Article 10(8), to the contribution debtor.

5. The contribution shall be payable in euros.

6. The contribution debtor shall pay the amount of the annual contribution within 35 calendar days of the issuance of the contribution notice. The contribution debtor shall comply with the requirements set out in the contribution notice with respect to the payment of the annual contribution. The date of payment shall be the date on which the Board's account is credited.

7. The annual contribution due by the entities referred to in Article 2 of Regulation (EU) No 806/2014 that are members of the same group shall be collected from the contribution debtor of that group.

8. Without prejudice to any other remedy available to the Board, in the event of partial payment, non-payment or non-compliance with the conditions for payment specified in the contribution notice, interest shall accrue on a daily basis on the outstanding amount of the annual contribution at an interest rate of the ECB's main refinancing rate plus 8 percentage points from the date on which the payment was due.

9. In the event of any partial payment, non-payment or non-compliance with the conditions for payment specified in the contribution notice by the contribution debtor, the Board shall inform the national resolution authority of the participating Member State in which the contribution debtor is established.

Article 9

Enforcement

1. The payments of the annual contributions due and any interest for late payment pursuant to Article 8(8) shall be enforceable.

2. Enforcement shall be governed by the procedural rules applicable in the participating Member State in whose territory it is carried out.

3. The government of each participating Member State shall designate and notify to the Board and to the Court of Justice of the European Union an authority for the purposes of verifying the authenticity of individual contribution decisions.

4. An order for enforcement shall be appended to each individual contribution decision. The enforcement shall not be subject to any formality other than the verification of the authenticity of the decision by the authority designated pursuant to paragraph 3.

5. National resolution authorities shall assist the Board in the enforcement procedure governed by the applicable procedural rules in the participating Member State.

Article 10

Recalculation and settlement of contributions due for the provisional period

1. For the purposes of the recalculation and settlement of contributions due for the provisional period, the months of November and December 2014 shall be considered part of the financial year 2015.

2. The Board shall recalculate, in accordance with the provisions laid down in this Regulation, the amount of contributions due by each entity referred to in Article 2 of Regulation (EU) No 806/2014 to cover the administrative expenditures of the Board during the provisional period.

3. Without prejudice to Article 6(4), for the recalculation of the amount of contributions due by each entity in the financial years belonging to the provisional period, the Board shall use the data collected by the ECB in those financial years in accordance with Regulation (EU) No 1163/2014 and provided to the Board in accordance with Article 11.

4. Any difference between the instalments paid by significant entities on the basis of the provisional system laid down in Delegated Regulation (EU) No 1310/2014 and the contributions referred to in paragraph 2 shall be settled in the calculation of the annual contributions due for the financial year which follows the end of the provisional period. That settlement shall be made by decreasing or increasing the annual contributions due for that financial year.

5. Entities referred to in Article 2 of Regulation (EU) No 806/2014 for which the calculation and collection of contributions was deferred in the provisional period shall pay contributions calculated in accordance with paragraph 2 for the years belonging to the provisional period. Those contributions shall increase the annual contributions due for the financial year which follows the end of the provisional period.

6. For the purposes of paragraph 4 'significant entities' shall mean the entities that have been notified by the ECB, at the highest level of consolidation within the participating Member States, of the ECB's decision to consider them

significant within the meaning of Article 6(4) of Regulation (EU) No 1024/2013 and in accordance with Article 147(1) of Regulation (EU) No 468/2014 [1], and which are mentioned in the list published on the ECB's website on 4 September 2014, but excluding those significant entities, which are subsidiaries of a group, that is already taken into account in this definition, and branches, which are established in participating Member States, of credit institutions established in non-participating Member States.

7. Where the difference referred to in paragraph 4 or the contributions for the years belonging to the provisional period referred to in paragraph 5 are higher than the contributions due for the financial year which follows the end of the provisional period, the adjustment shall continue in the subsequent financial years.

8. Where two or more entities within a group are subject to settlements pursuant to paragraph 4 or 5, the Board may set off contributions due against reimbursements with respect to entities of that group.

Article 11

Data necessary for the purposes of recalculating the contributions for financial years belonging to the provisional period

Within 30 days of the entry into force of this Regulation, the ECB shall provide the Board with the data as specified in Article 6 and collected by the ECB in accordance with Regulation (EU) No 1163/2014 in financial years belonging to the provisional period.

Article 12

Outsourcing

1. The Board may decide on the full or partial outsourcing of specific tasks provided for in this Regulation.

2. The Board shall restrict any outsourcing to technical tasks which are related to the raising of contributions and do not involve the exercise of its powers as regards the determination of contributions.

3. Any mandate given to a service provider for the purposes of outsourcing tasks shall clearly state the duration of the mandate and the specific tasks that are outsourced and establish a framework for regular reporting by the service provider to the Board.

4. Any contract between the Board and a service provider for the purposes of outsourcing tasks in accordance with paragraph 1 shall include clauses governing the Board's cancellation rights, rights relating to further subcontracting and non-performance by the service provider.

5. Where the Board fully or partially outsources tasks in accordance with paragraph 1, it shall remain fully responsible for discharging all of its obligations under Regulation (EU) No 806/2014 and this Regulation.

6. Where the Board fully or partially outsources tasks in accordance with paragraph 1, it shall ensure at all times that:

(a) any contract concluded for the purposes of the outsourcing does not provide for the delegation of the Board's responsibility;

(b) any contract concluded for the purposes of the outsourcing does not provide for an exclusion of the Board's accountability under Article 45 and Article 46(1) of Regulation (EU) No 806/2014, or of its independence under Article 47 of that Regulation;

(c) the outsourcing does not result in depriving the Board from the necessary systems and controls to manage the risks it faces;

(d) the service provider implements business continuity arrangements equivalent to those of the Board;

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

(e) the Board retains the necessary expertise and resources to evaluate the quality of the services provided and the organisational adequacy of the service provider; the Board supervises the outsourced functions effectively and manages the risks associated with the outsourcing on an ongoing basis;

(f) the Board has direct access to the relevant information allowing it to exercise the necessary control on the outsourced tasks.

7. Where the Board fully or partially outsources tasks in accordance with paragraph 1, it shall ensure that the service provider is obliged to comply with the Board's internal legal requirements and principles concerning security and confidentiality. Any confidential information relating to the Board and accessible to the service provider shall be used only to the extent necessary for the fulfilment of the mandate conferred by the Board.

8. Before taking any decision on outsourcing, the Board shall obtain the consent of the ECB to share the data provided by the ECB with a service provider, in accordance with applicable confidentiality provisions.

Article 13

Assistance by national resolution authorities

The Board may request the national resolution authorities to assist in the process of raising annual contributions where such request is justified by the circumstances of the individual case.

Article 14

Repeal

Delegated Regulation (EU) No 1310/2014 is repealed.

Article 15

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, 14 September 2017.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2017/2362

of 5 December 2017

entering a name in the register of protected designations of origin and protected geographical indications ('Lenticchia di Altamura' (PGI))

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ([1]), and in particular Article 52(2) thereof,

Whereas:

(1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Italy's application to register the name 'Lenticchia di Altamura' was published in the *Official Journal of the European Union* ([2]).

(2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Lenticchia di Altamura' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Lenticchia di Altamura' (PGI) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 1.6. Fruit, vegetables and cereals, fresh or processed as listed in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ([3]).

Article 2

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

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

Done at Brussels, 5 December 2017.

For the Commission,
On behalf of the President,
Phil HOGAN
Member of the Commission

([1]) OJ L 343, 14.12.2012, p. 1.
([2]) OJ C 280, 24.8.2017, p. 4.
([3]) Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

COMMISSION IMPLEMENTING REGULATION (EU) 2017/2363

of 6 December 2017

entering a name in the register of protected designations of origin and protected geographical indications ('Μελεκούνι' (Melekouni) (PGI))

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ([1]), and in particular Article 52(2) thereof,

Whereas:

(1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Greece's application to register the name 'Μελεκούνι' (Melekouni) was published in the *Official Journal of the European Union* ([2]).

(2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Μελεκούνι' (Melekouni) should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Μελεκούνι' (Melekouni) (PGI) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 2.3. Bread, pastry, cakes, confectionery, biscuits or other baker's wares as listed in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ([3]).

Article 2

This Regulation shall enter into force on the twentieth day following 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, 6 December 2017.

For the Commission,
On behalf of the President,
Phil HOGAN
Member of the Commission

([1]) OJ L 343, 14.12.2012, p. 1.
([2]) OJ C 280, 24.8.2017, p. 7.
([3]) Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

COMMISSION DELEGATED REGULATION (EU) 2017/2364

of 18 December 2017

amending Directive 2014/25/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC ([1]), and in particular the second subparagraph of Article 17(4) thereof,

Whereas:

(1) By Decision 2014/115/EU ([2]), the Council approved the Protocol amending the Agreement on Government Procurement ('the Agreement') ([3]) concluded in the framework of the World Trade Organisation. The Agreement is a plurilateral instrument and its purpose is to mutually open government procurement markets among its parties. It applies to any procurement contract with a value that reaches or exceeds the amounts ('thresholds') set in it and expressed as special drawing rights.

(2) One of the objectives of Directive 2014/25/EU is to allow the contracting entities which apply that Directive to comply at the same time with the obligations laid down in the Agreement. To achieve that, the thresholds laid down by that Directive for public contracts which are also covered by the Agreement should be aligned in order to ensure that they correspond to the euro equivalents, rounded down to the nearest thousand, of the thresholds set out in the Agreement.

(3) For reasons of coherence, it is appropriate to align also the thresholds laid down in Directive 2014/25/EU which are not covered by the Agreement.

(4) Directive 2014/25/EU should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Article 15 of Directive 2014/25/EU is amended as follows:

(1) in point (a), the amount 'EUR 418 000' is replaced by 'EUR 443 000';

(2) in point (b), the amount 'EUR 5 225 000' is replaced by 'EUR 5 548 000'.

Article 2

This Regulation shall enter into force on 1 January 2018.

([1]) OJ L 94, 28.3.2014, p. 243.
([2]) Council Decision 2014/115/EU of 2 December 2013 on the conclusion of the Protocol Amending the Agreement on Government Procurement (OJ L 68, 7.3.2014, p. 1).
([3]) OJ L 68, 7.3.2014, p. 4.

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

Done at Brussels, 18 December 2017.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2017/2365

of 18 December 2017

amending Directive 2014/24/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC ([1]), and in particular the second subparagraph of Article 6(5) thereof,

Whereas:

(1) By Decision 2014/115/EU ([2]), the Council approved the Protocol amending the Agreement on Government Procurement ('the Agreement') ([3]) concluded in the framework of the World Trade Organization. The Agreement is a plurilateral instrument and its purpose is to mutually open government procurement markets among its parties. It applies to any procurement contract with a value that reaches or exceeds the amounts ('thresholds') set in it and expressed as special drawing rights.

(2) One of the objectives of Directive 2014/24/EU is to allow the contracting authorities which apply that Directive to comply at the same time with the obligations laid down in the Agreement. To achieve that, the thresholds laid down by that Directive for public contracts which are also covered by the Agreement should be aligned in order to ensure that they correspond to the euro equivalents, rounded down to the nearest thousand, of the thresholds set out in the Agreement.

(3) For reasons of coherence, it is appropriate to align also the thresholds laid down in Directive 2014/24/EU which are not covered by the Agreement.

(4) Directive 2014/24/EU should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Directive 2014/24/EU is amended as follows:

(1) Article 4 is amended as follows:

(a) in point (a), the amount 'EUR 5 225 000' is replaced by 'EUR 5 548 000';

(b) in point (b), the amount 'EUR 135 000' is replaced by 'EUR 144 000';

(c) in point (c), the amount 'EUR 209 000' is replaced by 'EUR 221 000';

(2) the first paragraph of Article 13 is amended as follows:

(a) in point (a), the amount 'EUR 5 225 000' is replaced by 'EUR 5 548 000';

(b) in point (b), the amount 'EUR 209 000' is replaced by 'EUR 221 000'.

([1]) OJ L 94, 28.3.2014, p. 65.
([2]) Council Decision 2014/115/EU of 2 December 2013 on the conclusion of the Protocol Amending the Agreement on Government Procurement (OJ L 68, 7.3.2014, p. 1).
([3]) OJ L 68, 7.3.2014, p. 4.

Article 2

This Regulation shall enter into force on 1 January 2018.

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

Done at Brussels, 18 December 2017.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2017/2366

of 18 December 2017

amending Directive 2014/23/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts ([1]), and in particular the second subparagraph of Article 9(4) thereof,

Whereas:

(1) By Decision 2014/115/EU ([2]), the Council approved the Protocol amending the Agreement on Government Procurement ('the Agreement') ([3]) concluded in the framework of the World Trade Organization. The Agreement is a plurilateral instrument and its purpose is to mutually open government procurement markets among its parties. It applies to any procurement contract with a value that reaches or exceeds the amounts ('thresholds') set in it and expressed as special drawing rights.

(2) One of the objectives of Directive 2014/23/EU is to allow the contracting entities and the contracting authorities which apply that Directive to comply at the same time with the obligations laid down in the Agreement. To achieve that, the thresholds laid down by that Directive for public contracts which are also covered by the Agreement should be aligned in order to ensure that they correspond to the euro equivalents, rounded down to the nearest thousand, of the thresholds set out in the Agreement.

(3) For reasons of coherence, it is appropriate to align also the thresholds laid down in Directive 2014/23/EU which are not covered by the Agreement.

(4) Directive 2014/23/EU should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 8(1) of Directive 2014/23/EU, the amount 'EUR 5 225 000' is replaced by 'EUR 5 548 000'.

Article 2

This Regulation shall enter into force on 1 January 2018.

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

Done at Brussels, 18 December 2017.

For the Commission

The President

Jean-Claude JUNCKER

([1]) OJ L 94, 28.3.2014, p. 1.

([2]) Council Decision 2014/115/EU of 2 December 2013 on the conclusion of the Protocol Amending the Agreement on Government Procurement (OJ L 68, 7.3.2014, p. 1).

([3]) OJ L 68, 7.3.2014, p. 4.

COMMISSION REGULATION (EU) 2017/2367

of 18 December 2017

amending Directive 2009/81/EC of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC ([1]), and in particular Article 68 thereof,

Whereas:

(1) By Decision 2014/115/EU ([2]), the Council approved the Protocol amending the Agreement on Government Procurement ('the Agreement') ([3]) concluded in the framework of the World Trade Organization. The Agreement is a plurilateral instrument and its purpose is to mutually open government procurement markets among its parties. It applies to any procurement contract with a value that reaches or exceeds the amounts ('thresholds') set in it and expressed as special drawing rights.

(2) One of the objectives of Directive 2009/81/EC is to allow the contracting entities and the contracting authorities which apply that Directive to comply at the same time with the obligations laid down in the Agreement. To achieve that, the thresholds laid down by that Directive for public contracts which are also covered by the Agreement should be aligned in order to ensure that they correspond to the euro equivalents, rounded down to the nearest thousand, of the thresholds set out in the Agreement.

(3) For reasons of coherence, the thresholds laid down in Directive 2009/81/EC should be aligned to the revised thresholds laid down in Directive 2014/25/EU of the European Parliament and of the Council ([4]). Directive 2009/81/EC should therefore be amended accordingly.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Advisory Committee for Public Contracts,

HAS ADOPTED THIS REGULATION:

Article 1

Article 8 of Directive 2009/81/EC is amended as follows:

(1) in point (a), the amount 'EUR 418 000' is replaced by 'EUR 443 000';

(2) in point (b), the amount 'EUR 5 225 000' is replaced by 'EUR 5 548 000'.

Article 2

This Regulation shall enter into force on 1 January 2018.

([1]) OJ L 216, 20.8.2009, p. 76.
([2]) Council Decision 2014/115/EU of 2 December 2013 on the conclusion of the Protocol Amending the Agreement on Government Procurement (OJ L 68, 7.3.2014, p. 1).
([3]) OJ L 68, 7.3.2014, p. 4.
([4]) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

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

Done at Brussels, 18 December 2017.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2017/2368

of 18 December 2017

amending Implementing Regulation (EU) 2017/325 imposing a definitive anti-dumping duty on imports of high tenacity yarns of polyesters originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union [1] and in particular Article 9(4) thereof,

Whereas:

(1) By Implementing Regulation (EU) 2017/325 [2], the Commission imposed a definitive anti-dumping duty on imports of high tenacity yarns of polyesters originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036.

(2) However, Implementing Regulation (EU) 2017/325 did not provide for the possibility of companies who did not export the high tenacity yarns of polyesters during the original investigation period to request a review to determine whether they could also be made subject to the duty rate imposed on the cooperating companies not part of the sample.

(3) Such a review could be carried out if sufficient evidence is brought to the Commission by a new exporter or producer in the exporting country in question that it (1) has not exported the product during the period of investigation on which the measures were based; (2) is not related to an exporter or producer subject to the measures imposed; and (3) has either actually exported the goods concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

(4) It is therefore appropriate to amend Implementing Regulation (EU) 2017/325 accordingly to allow new exporters the possibility to request such review.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036.

(6) In view of the above, Article 1 of Implementing Regulation (EU) 2017/325 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 of Implementing Regulation (EU) 2017/325 the following paragraph 5 is added:

'5. Where any party from the People's Republic of China provides sufficient evidence to the Commission that:

(a) it did not export the goods described in paragraph 1 originating in the People's Republic of China during the period of the original investigation (1 July 2008 – 30 June 2009);

(b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and

[1] OJ L 176, 30.6.2016, p. 21.

[2] Commission Implementing Regulation (EU) 2017/325 of 24 February 2017 imposing definitive anti-dumping duties on imports of high tenacity yarns of polyesters originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 49, 25.2.2017, p. 6).

(c) it has either actually exported the goods described in paragraph 1 or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of the original investigation;

the Commission may amend Annex I in order to attribute to that party the duty applicable to cooperating producers not included in the sample, i.e. 5,3 %.'

Article 2

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

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

Done at Brussels, 18 December 2017.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2017/2369

of 18 December 2017

amending Implementing Regulation (EU) No 743/2013 introducing protective measures on imports of bivalve molluscs from Turkey intended for human consumption, as regards its period of application

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries ([1]), and in particular Article 22(6) thereof,

Whereas:

(1) Commission Implementing Regulation (EU) No 743/2013 ([2]) was adopted as audits of the Commission's audit service identified deficiencies in Turkey in the implementation of official controls of the production of bivalve molluscs intended for export to the Union, and as Member States reported non-compliant consignments of bivalve molluscs originating in Turkey which were not fulfilling Union microbiological standards.

(2) The last audit of the Commission's audit service, which took place in September 2015, found significant deficiencies in the control system for bivalve molluscs intended for export to the Union still existed. The Turkish competent authorities presented information regarding the corrective measures initiated to address those deficiencies. However, some of those deficiencies, notably in the performance of laboratories, still exist.

(3) Due to the nature of the products involved, the application of Implementing Regulation (EU) No 743/2013 should therefore be extended until sufficient guarantees have been obtained, tests carried out by Member States demonstrate the compliance of consignments and a follow-up audit confirms that a lifting of the measures is possible.

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

HAS ADOPTED THIS REGULATION:

Article 1

In the second paragraph of Article 5 of Implementing Regulation (EU) No 743/2013, the date '31 December 2017' is replaced by the date '31 December 2021'.

Article 2

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

([1]) OJ L 24, 30.1.1998, p. 9.
([2]) Commission Implementing Regulation (EU) No 743/2013 of 31 July 2013 on introducing protective measures on imports of bivalve molluscs from Turkey intended for human consumption (OJ L 205, 1.8.2013, p. 1).

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

Done at Brussels, 18 December 2017.

For the Commission
The President
Jean-Claude JUNCKER

DECISIONS

COUNCIL DECISION (CFSP) 2017/2370

of 18 December 2017

in support of the Hague Code of Conduct and ballistic missile non-proliferation in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 28(1) thereof,

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

Whereas:

(1) On 12 December 2003, the European Council adopted the EU Strategy against the Proliferation of Weapons of Mass Destruction ('the Strategy'), Chapter III of which contains a list of measures that need to be taken both within the Union and in third countries to combat such proliferation.

(2) The Union is actively implementing the Strategy and giving effect to the measures listed in Chapter III thereof, in particular by releasing financial resources to support specific projects aimed at enhancing the multilateral non-proliferation system and multilateral confidence-building measures. The Hague Code of Conduct against ballistic missile proliferation (the 'Code') is an integral part of that multilateral non-proliferation system.

(3) On 17 November 2003, the Council adopted Common Position 2003/805/CFSP ([1]). That Common Position calls on the Union to, inter alia, convince as many countries as possible to subscribe to the Code, especially those with ballistic missile capabilities, as well as for the further development and implementation of the Code, especially its confidence-building measures, and for the promotion of a closer relationship between the Code and the United Nations (UN) multilateral non-proliferation system.

(4) On 8 December 2008, the Council adopted its conclusions and a document entitled 'New lines for action by the European Union in combating the proliferation of weapons of mass destruction and their delivery systems'. The document states, inter alia, that proliferation of weapons of mass destruction (WMD) and their delivery systems continue to constitute one of the greatest security challenges and that non-proliferation policy constitutes an essential part of the Common Foreign and Security Policy.

(5) On 18 December 2008, the Council adopted Decision 2008/974/CFSP ([2]) in support of the Code in the framework of the implementation of the Strategy.

(6) On 23 July 2012, the Council adopted Decision 2012/423/CFSP ([3]). That Decision has allowed the successful promotion of the universality of the Code and compliance with its principles.

([1]) Council Common Position 2003/805/CFSP of 17 November 2003 on the universalisation and reinforcement of multilateral agreements in the field of non-proliferation of weapons of mass destruction and means of delivery (OJ L 302, 20.11.2003, p. 34).

([2]) Council Decision 2008/974/CFSP of 18 December 2008 in support of the Hague Code of Conduct against Ballistic Missile Proliferation in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction (OJ L 345, 23.12.2008, p. 91).

([3]) Council Decision 2012/423/CFSP of 23 July 2012 in support of ballistic missile non-proliferation in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction and of the Council Common Position 2003/805/CFSP (OJ L 196, 24.7.2012, p. 74).

(7) On 15 December 2014, the Council adopted Decision 2014/913/CFSP [1]. That Decision has helped raise the profile of the Code and thereby facilitated the subscription of new Members to the Code. It is a priority of the Union to continue the dialogue among subscribing and non-subscribing States with the aim of further promoting the universality of the Code as well as its better implementation and enhancement. This Decision should contribute to that process.

(8) More generally, the continued proliferation of ballistic missiles capable of delivering WMD constitutes a cause of growing concern for the international community, in particular ongoing missiles programmes in the Middle-East, North-East Asia and South-East Asia.

(9) The United Nations Security Council (UNSC) emphasised in Resolution (UNSCR) 1540 (2004), and recalled in UNSCR 1977 (2011) and 2325 (2016), that the proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constituted a threat to international peace and security and obliged States, inter alia, to refrain from supporting by any means non-State actors from developing, acquiring, manufacturing, possessing, transporting, transferring or using nuclear, chemical or biological weapons and their means of delivery. The threat caused by nuclear, chemical and biological weapons and their means of delivery to international peace and security was reaffirmed in UNSCR 1887 (2009) on nuclear non-proliferation and nuclear disarmament,

HAS ADOPTED THIS DECISION:

Article 1

1. In accordance with the EU Strategy against the Proliferation of Weapons of Mass Destruction ('the Strategy'), which sets the objective of upholding, implementing and strengthening the multilateral disarmament and non-proliferation treaties and agreements, the Union shall further support the universalisation, full implementation and enhancement of the Hague Code of Conduct against ballistic missile proliferation (the 'Code').

2. The activities in support of the Code, corresponding to measures in line with the Strategy, shall consist of regional and sub-regional workshops, conferences, expert visits, research, information and communication as well as side events in the margins of international conferences.

3. The aim of the activities shall be:

(a) promoting the subscription to the Code by an ever larger number of States and ultimately its universality;

(b) supporting the full implementation of the Code;

(c) promoting dialogue among subscribing and non-subscribing States with the aim of helping to build confidence and transparency, encouraging restraint and creating more stability and security for all;

(d) reinforcing the Code's visibility and raising public awareness about the risks and threats posed by ballistic missile proliferation;

(e) exploring, in particular through academic studies, possibilities of enhancing the Code and of promoting cooperation between the Code and other relevant multilateral instruments, such as the Missile Technology Control Regime, UNSCR 1540 (2004) and the United Nations Register of Objects Launched in Outer Space.

4. A detailed description of the projects is set out in the Annex.

Article 2

1. The High Representative (HR) shall be responsible for the implementation of this Decision.

2. The technical implementation of the projects referred to in Article 1(2) shall be carried out by the *Fondation pour la recherche stratégique* (FRS). The FRS shall perform this task under the responsibility of the HR. For that purpose, the HR shall enter into the necessary arrangements with the FRS.

[1] Council Decision 2014/913/CFSP of 15 December 2014 in support of the Hague Code of Conduct and ballistic missile non-proliferation in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction (OJ L 360, 17.12.2014, p. 44).

Article 3

1. The financial reference amount for the implementation of the projects referred to in Article 1(2) shall be EUR 1 878 120,05.

2. The expenditure financed by the amount set out in paragraph 1 shall be managed in accordance with the procedures and rules applicable to the general budget of the Union.

3. The Commission shall supervise the proper management of the expenditure referred to in paragraph 2. For that purpose, it shall conclude a grant agreement with the FRS for the reference amount upon adoption of this Decision. The rules on grants provided for in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ([1]) shall apply to this grant agreement. The agreement shall stipulate that the FRS is to ensure visibility of the Union's contribution, appropriate to its size.

4. The Commission shall endeavour to conclude the grant agreement referred to in paragraph 3 as soon as possible after the entry into force of this Decision. It shall inform the Council of any difficulties in that process and of the date of conclusion of the grant agreement.

Article 4

1. The HR shall report to the Council on the implementation of this Decision on the basis of regular reports prepared by the FRS. Those reports shall form the basis for the evaluation carried out by the Council.

2. The Commission shall provide information on the financial aspects of the projects referred to in Article 1(2).

Article 5

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

2. This Decision shall expire 40 months after the date of the conclusion of the grant agreement referred to in Article 3(3). However, it shall expire six months after its entry into force if no grant agreement has been concluded by that time.

Done at Brussels, 18 December 2017.

For the Council
The President
K. SIMSON

([1]) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

ANNEX

1. **OBJECTIVE**

The main objective of this Decision is to promote through specific measures the universality, the full implementation and the enhancement of the Hague Code of Conduct against Ballistic Missile Proliferation (the 'Code'), in line with the EU strategy against the proliferation of weapons of mass destruction.

This Decision will complement the Union's diplomatic engagement with subscribing States and non-subscribing States to the Code. In this regard, relevant Union messages are:

(a) for subscribing States:

(i) importance of full implementation of the Code, notably through the annual declarations and pre-launch notifications provided for in the Code;

(ii) encouragement to fully use the Code as a means to promote transparency and confidence, both regionally and internationally, and to help curbing and preventing the proliferation of ballistic missiles capable of delivering weapons of mass destruction (WMD);

(b) for non-subscribing States:

(i) encouragement to subscribe to the Code and thereby contribute to the wider multilateral efforts to prevent the proliferation of WMD and their means of delivery;

(ii) taking advantage of the Code's provisions to help reduce regional tensions and to build confidence, thereby promoting more security for all.

In addition, this Decision shall be used to help financing a limited number of research papers on synergies between the Code and other relevant multilateral instruments, such as the Missile Technology Control Regime (MTCR), UNSCR 1540 (2004) and the United Nations Register for Objects Launched in Outer Space.

Finally, this Decision aims at supporting the ongoing policy dialogue of the international community on security and sustainability in outer space, notably through providing a limited financial contribution for the annual space conferences, organised by the United Nations Institute for Disarmament Research (UNIDIR) in Geneva.

2. **MEASURES**

2.1. Objectives of the measures

(a) promoting the subscription to the Code by an ever larger number of States and ultimately its universality;

(b) supporting the full implementation of the Code by subscribing States;

(c) promoting dialogue among subscribing and non-subscribing States with the aim of helping to build confidence and transparency, encouraging restraint and creating more stability and security for all;

(d) reinforcing the Code's visibility and raising public awareness about the risks and threats posed by ballistic missile proliferation;

(e) exploring, in particular through academic studies, possibilities of enhancing the Code and of promoting cooperation between the Code and other relevant multilateral instruments, such as the MTCR and UNSCR 1540 (2004).

2.2. Description of the measures

(a) FRS will organise outreach activities in the form of regional and/or sub-regional seminars and expert missions designed to:

(i) increase awareness about the risks and challenges of ballistic missile proliferation;

(ii) provide a platform for relevant experts to exchange informally ('Chatham House rules') on strategic issues and thereby help building confidence among States; and

(iii) promote the Union objectives of universality, full implementation and enhancement of the Code.

FRS will organise up to nine regional and/or sub-regional events, including in Latin America and the Caribbean, in the Middle East/Africa and in South-East Asia, as well as up to six country-specific expert missions to non-subscribing States. All such events shall be carried out in close collaboration with the authorities of the respective host governments and, as appropriate, other relevant academia;

(b) FRS will organise up to six side-events dedicated to the Code, in the margins of international conferences, notably the Code Annual Regular Meeting in Vienna and the session of the UN General Assembly's First Committee in New York. Such side-events will be designed to help deepen the relationship between the Code and the UN, in conformity with Resolution 71/33, adopted by the UN General Assembly on 5 December 2016;

(c) FRS will organise, in close collaboration with the relevant authorities, a visit by an international group of experts to a space launching site, in accordance with the third indent of subpoint ii) of point (a) of Article 4 of the Code;

(d) FRS will transfer, from the grant allocated by the Union, three times the amount of EUR 29 240,00 to UNIDIR in order to help finance the UNIDIR annual conferences on space security issues and thereby to assist the overarching goal of support to the Code. FRS and UNIDIR will ensure Union visibility at these conferences, appropriate to the size of the Union's contribution;

(e) FRS will commission and publish at least four research papers on issues related to the Code, including one or more research papers on the relationship between the Code and other relevant multilateral instruments, such as the MTCR and the UNSCR 1540 (2004). To that end, FRS will solicit contributions from all research institutes that are part of or associated with the EU NPD Consortium. The topics of the research papers will be agreed between the FRS and the relevant services of the European External Action Service (EEAS);

(f) FRS will undertake communication and information activities with the double objective of enhancing the visibility of the Code and the Union's contribution to it. FRS will elaborate a detailed communication and information plan, for approval by the EEAS and the Commission.

2.3. Results of the measures

(a) an increase in the number of subscribing States to the Code;

(b) improved implementation of the Code by subscribing States;

(c) enhanced awareness among policy makers, regulators, experts and the public at large of the importance for States to subscribe to and to implement the Code;

(d) enhanced visibility for the Union's efforts in promoting the universality, full implementation and enhancement of the Code.

3. PARTNERS FOR THE MEASURES

FRS, acting in close liaison with the EEAS, will continue developing effective partnerships with interested regional and sub-regional organisations, State authorities, research institutes and other relevant bodies.

FRS will cooperate closely with UNIDIR regarding the measure set out in point 2.2. (e).

4. INTERACTION WITH UNION EFFORTS

Based on the regular feedback from FRS on its activities, the Union may decide to complement those efforts through targeted diplomatic action aimed at raising awareness of the importance for States to subscribe to and to implement the Code.

5. BENEFICIARIES OF THE MEASURES

(a) states, both subscribing and non-subscribing States to the Code;

(b) government officials, policymakers, regulators, experts;

(c) international, regional and sub-regional organisations;

(d) academia and civil society;

(e) the Code Chair.

6. **VENUE**

FRS will select, in consultation with the relevant services of the EEAS, potential venues for the meetings, workshops and other events. The criteria used for choosing the venues will include the willingness and commitment of a relevant State or intergovernmental organisation in a particular region to host the event. Specific locations of country visits or country-specific activities will depend on invitations from interested States or intergovernmental organisations.

7. **DURATION**

The total estimated duration of the action is 36 months.

COUNCIL DECISION (CFSP) 2017/2371

of 18 December 2017

amending Decision 2014/486/CFSP on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article 28, Article 42(4) and Article 43(2) thereof,

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

Whereas:

(1) On 22 July 2014, the Council adopted Decision 2014/486/CFSP ([1]) on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine).

(2) On 20 November 2017, the Council adopted Decision (CFSP) 2017/2161 ([2]) amending Decision 2014/486/CFSP, extending the mandate until 31 May 2019 and providing EUAM Ukraine with a financial reference amount for the same period.

(3) Following a recommendation by the Civilian Operation Commander, the Political and Security Committee agreed on 13 December 2017 to open a regional presence in Odessa.

(4) A revised financial reference amount for the period until 31 May 2019 should therefore be provided for, and Decision 2014/486/CFSP should be amended accordingly.

(5) EUAM Ukraine will be conducted in the context of a situation which may deteriorate and could impede the achievement of the objectives of the Union's external action as set out in Article 21 of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

In Article 14(1) of Decision 2014/486/CFSP, the fifth and sixth subparagraphs are replaced by the following:

'The financial reference amount intended to cover the expenditure related to EUAM Ukraine for the period from 1 December 2017 to 31 May 2019 shall be EUR 33 843 302,49.'.

Article 2

Entry into force

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

Done at Brussels, 18 December 2017.

For the Council
The President
K. SIMSON

([1]) Council Decision 2014/486/CFSP of 22 July 2014 on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine) (OJ L 217, 23.7.2014, p. 42).

([2]) Council Decision (CFSP) 2017/2161 of 20 November 2017 amending Decision 2014/486/CFSP on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine) (OJ L 304, 21.11.2017, p. 48).

COMMISSION DECISION (EU) 2017/2372

of 16 June 2017

on the State aid SA.31250 — 2011/C (ex 2011/N) planned to be implemented by Bulgaria in favour of BDZ Holding EAD SA, BDZ Passenger EOOD and BDZ Cargo EOOD and other measures

(notified under document C(2017) 4051)

(Only the English text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

1. PROCEDURE

(1) By letter dated 18 May 2011 Bulgaria notified the Commission of certain measures in favour of BDZ Holding EAD SA ([2]) ('BDZ Holding') and its subsidiaries, BDZ Passenger EOOD ('BDZ Passenger') and BDZ Cargo EOOD ('BDZ Cargo').

(2) By letter dated 20 May 2011, Bulgaria provided the Commission with further information. By letters dated 15 July 2011 and 28 September 2011, the Commission requested further information. Bulgaria provided the Commission with further information by letters dated 5 September 2011 and 7 October 2011.

(3) By letter dated 9 November 2011, the Commission informed Bulgaria that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty in respect of the measures ('Opening Decision'). By letter dated 12 January 2012, Bulgaria provided comments on the Opening Decision.

(4) The Opening Decision was published in the *Official Journal of the European Union* ([3]). The Commission called on interested parties to submit their comments.

(5) The Commission received comments from one interested party. It forwarded them to Bulgaria by letter dated 16 May 2012 and Bulgaria was given the opportunity to react. Bulgaria's comments were received by letter dated 13 June 2012. By letter of 10 December 2012, the Commission informed the interested party that the non-confidential version of its observations had been transmitted to Bulgaria.

(6) By letters dated 12 April 2012, 24 July 2012, 10 December 2012, 7 May 2013, 5 November 2013, 6 May 2014, 6 June 2014, 29 July 2014, 29 April 2015, 14 December 2015, 26 April 2016, 15 September 2016, 20 October 2016 and 3 April 2017, the Commission requested further information from Bulgaria.

(7) Bulgaria provided the Commission with further information by letters dated 7 June 2012, 28 September 2012, 31 January 2013, 1 February 2013, 30 May 2013, 2 October 2013, 15 October 2013, 2 December 2013, 3 January 2014, 6 February 2014, 22 April 2014, 14 May 2014, 23 June 2014, 4 August 2014, 20 August 2014, 1 September 2014, 13 September 2014, 23 September 2014, 1 June 2015, 9 December 2015, 20 January 2016, 31 May 2016, 12 October 2016, 7 November 2016.

([1]) OJ C 10, 12.1.2012, p. 9.
([2]) Hereafter in this decision the term 'BDZ Holding' is used to mean both 'BDZ EAD' prior to the change of the business name on 22 October 2011 and 'BDZ Holding EAD SA' thereafter. See footnote 4.
([3]) See footnote 2.

(8) By letters dated 22 April 2014 and 12 October 2016, Bulgaria withdrew its notification regarding the restructuring aid to BDZ Holding, which was part of the measures referred to in recital 1. By letter dated 5 April 2017, Bulgaria modified its notification by reducing the amount of debt that it planned to cancel through the debt cancellation measure which was part of the measures referred to in recital 1.

(9) By letter dated 7 November 2016, Bulgaria agreed exceptionally to have this Decision adopted and notified in English only.

2. **DESCRIPTION OF THE MEASURES**

2.1. *THE BENEFICIARY*

(10) The beneficiary of the measures is BDZ Holding and its subsidiaries, BDZ Passenger and BDZ Cargo, 100 % State-owned companies, providing passenger and freight rail transport services against remuneration in Bulgaria.

(11) BDZ Holding ([4]), a joint stock company, was created in 2001, when the Bulgarian National State Railways were split into a railway infrastructure company, National Railway Infrastructure Company ('NRIC') and a transport service provider ('BDZ Holding').

(12) In 2007, BDZ Holding was reorganised into a holding structure and it set up three subsidiaries active in freight transport, passenger transport and traction services. The parent company BDZ Holding owned passenger and freight wagons, and locomotives, which it leased to its subsidiaries. The latter were responsible for the maintenance of the rolling stock. BDZ Holding was also responsible for servicing debts incurred prior to the reorganisation. As this structure turned out to be inefficient, in 2010, the traction services were merged into BDZ Holding.

(13) In 2011 the ownership of the passenger and cargo wagons and locomotives was transferred from BDZ Holding to the subsidiaries BDZ Passengers and BDZ Cargo. BDZ Holding remained the owner of all non-operating assets.

(14) BDZ Holding has its registered office in Sofia, Bulgaria, and operates its freight and passenger services throughout the territory of Bulgaria, which is entirely eligible for regional aid pursuant to Article 107(3)(a) of the Treaty.

(15) BDZ Cargo, a limited liability company, is active in the international and national freight rail transport market. Bulgaria liberalised the freight rail market in 2007. Since then, several private operators have entered the market. In 2016, BDZ Cargo's market share (in net-tonne kilometres) amounted to 43 % and its main competitors were Bulgarian Railway Company (25 %), DB Schenker Rail Bulgaria (18 %), Bulmarket (6 %) and Rail Cargo (4 %).

(16) BDZ Passenger, a limited liability company, is the only provider of national passenger transport services in Bulgaria. BDZ Passenger discharges a public service obligation ('PSO') amounting to approximately 90 % of the passenger rail transport market. BDZ Passenger's PSO Contract was signed in 2009 with duration of 15 years (2010-2025).

2.2. *DESCRIPTION OF THE MEASURES AND GROUNDS FOR INITIATING THE PROCEDURE*

(17) In the Opening Decision, the Commission identified four measures as potentially constituting State aid to BDZ Holding and its subsidiaries, BDZ Passenger and BDZ Cargo:

(a) Measure 1: Restructuring aid consisting of six capital increases into BDZ Holding amounting to BGN 550 million (EUR 281 million ([5]));

(b) Measure 2: Cancellation of the debts incurred prior to 2007;

(c) Measure 3: Non-payment by BDZ Holding of overdue debts towards the infrastructure manager (NRIC);

(d) Measure 4: Reimbursement of the value added tax ('VAT') by the State to BDZ Holding.

([4]) By Protocol decision No 151 of 22 October 2011 issued by the Minister of Transport, information technology and communications, the company's name was changed from BDZ EAD to Holding Bulgarian State Railways (BDZ) EAD ('BDZ Holding').

([5]) Exchange rate used in this decision is EUR 1 = BGN 1,9558 (OJ C 304, 20.8.2016, p. 2).

2.2.1. MEASURE 1: RESTRUCTURING AID

(18) Bulgaria envisaged granting restructuring aid in the form of six capital increases in BDZ Holding amounting to BGN 550 million (EUR 281 million) in the years 2011-2016 and notified that restructuring aid to the Commission in 2011. However, to date, the relevant public authorities have not taken a definitive decision to grant the aid and the funds have not been paid to BDZ Holding.

(19) In the Opening Decision, the Commission considered that the restructuring aid would constitute State aid within the meaning of Article 107(1) of the Treaty and expressed doubts as to whether that aid would be compatible with the internal market.

2.2.2. MEASURE 2: CANCELLATION OF THE DEBTS INCURRED PRIOR TO 2007

(20) According to the information submitted by Bulgaria, prior to Bulgaria's accession to the Union on 1 January 2007, BDZ Holding and its subsidiaries had outstanding liabilities and provisions amounting to BGN 806 729 558 (EUR 412 million) on 31 December 2006.

(21) The liabilities and provisions of BDZ Holding concerned: (i) loans from financial institutions such as Kreditanstalt für Wiederaufbau ('KfW'), European Bank for Reconstruction and Development ('EBRD') and International Bank for Reconstruction and Development ('IBRD'), the purpose of which was mainly the rehabilitation of rolling stock; but also (ii) trade-related obligations, including towards the Bulgarian rail infrastructure operator NRIC, provisions and obligations towards staff and insurance providers as well as other liabilities, including the liabilities resulting from an agreement for the purchase of rolling stock concluded between BDZ Holding, Siemens and KfW in 2005. The amounts of those liabilities and provisions are broken down as follows in Table 1.

Table 1

Overview of liabilities and provisions of BDZ Holding and its subsidiaries on 31 December 2006

(in BGN million)

	Total liabilities of BDZ Holding and its subsidiaries on 31 December 2006
Liabilities towards financial institutions	201,1
SIEMENS/KfW Agreement	307,5
Trade obligations	244,5
Obligations towards staff and insurance providers	26,4
Other liabilities, including tax and provisions	27,2
Total liabilities	**806,7**

(22) Bulgaria envisaged taking over part or all of the liabilities incurred before 1 January 2007 by BDZ Holding and its subsidiaries.

(23) In the Opening Decision, the Commission considered that the cancellation of liabilities would constitute State aid within the meaning of Article 107(1) of the Treaty and expressed doubts as to whether that aid would be compatible with the internal market. Bulgaria did not invoke the application or justify whether the measure was in line with the relevant requirements Railway Guidelines ([6]). The Commission was therefore unable to take a position on the compatibility of this aid with the internal market.

([6]) Community Guidelines on State aid for railway undertakings (OJ C 184, 22.7.2008, p. 13).

2.2.3. MEASURE 3: NON-PAYMENT BY BDZ HOLDING AND ITS SUBSIDIARIES OF OVERDUE DEBTS TOWARDS THE INFRASTRUCTURE MANAGER (NRIC)

(24) According to the information provided by Bulgaria, BDZ Holding and its subsidiaries had not been paying all the infrastructure charges due to NRIC. As a consequence, the Opening Decision recorded outstanding trade liabilities owed to NRIC amounting to BGN 45 million.

(25) Since Bulgaria did not clarify the origin and evolution of those trade liabilities, the Commission considered in the Opening Decision that the non-enforcement of those debts could potentially involve State aid within the meaning of Article 107(1) of the Treaty. In this regard, the Commission noted that according to the case law, the non-enforcement of liabilities by public undertakings ([7]) might involve State aid if a hypothetical market economy operator in the same position would not have behaved in the way the public undertakings did and would have enforced them ([8]). However, the Commission did not possess precise factual indications that NRIC had not taken the steps that a diligent creditor in the same situation would have taken. Therefore, the Commission invited Bulgaria to provide information as to whether and how NRIC had tried to enforce the outstanding liabilities.

(26) To the extent that the measure was found to involve State aid, the Commission also expressed doubts as to its compatibility with the internal market in the context of the then notified restructuring aid and accompanying restructuring plan. In that respect, the Commission invited Bulgaria to complement the restructuring plan by providing information as to how these debts with NRIC would be settled.

2.2.4. MEASURE 4: REIMBURSEMENT OF WRONGFULLY CHARGED VAT BY THE STATE TO BDZ HOLDING

(27) According to the information provided by Bulgaria, Bulgaria had reimbursed value added tax ('VAT') amounting to BGN 72 million (EUR 36,7 million) to BDZ Holding in the past.

(28) Since at the stage of the Opening Decision Bulgaria did not clarify the reasons for the VAT reimbursement and whether it complied with Council Directive 2006/112/EC ([9]), the Commission considered that the VAT reimbursement could potentially involve State aid within the meaning of Article 107(1) of the Treaty. In this regard, the Commission noted that according to case law, the concept of aid embraces not only positive benefits, but also measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking. Therefore, the Commission invited Bulgaria to provide further information on the reasons for the reimbursement of VAT to BDZ Holding.

3. **COMMENTS FROM AN INTERESTED PARTY**

(29) A competitor of BDZ Cargo active in the provision of rail freight services, which did not want to have its identity disclosed, submitted observations on two measures identified in the Opening Decision.

(30) With regard to the planned restructuring aid (Measure 1), the competitor suggested that unused locomotives of BDZ Holding and its subsidiaries, BDZ Passenger and BDZ Cargo should be sold as a compensatory measure. The competitor stated that BDZ Holding was not granting access to its unused fleet to the competitors, who had no other available source from which to acquire or lease locomotives.

(31) With regard to non-payment by BDZ Holding and its subsidiaries of overdue debts towards NRIC (Measure 3), the competitor stated that although all freight transport carriers are obliged to pay the same fees, the non-enforcement of the accumulated liabilities towards NRIC generates a competitive advantage to BDZ Holding and its subsidiaries. In addition, the competitor requested that compensatory measures under the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty and the Railway Guidelines be imposed on BDZ and that BDZ Cargo be privatised on market terms.

([7]) Commission Directive 2006/111/EC of 16 November 2006 on transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17).

([8]) Judgment of the Court of Justice of 29 June 1999, *Déménagements-Manutention Transport SA (DMT)*, C-256/97, ECLI:EU:C:1999:332, paragraphs 25-28.

([9]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

4. COMMENTS FROM BULGARIA

(32) In its reply to the Opening Decision and subsequent information, Bulgaria provided comments and further clarifications on the facts referred to in the Opening Decision.

4.1. *MEASURE 1: RESTRUCTURING AID — WITHDRAWAL OF THE NOTIFICATION*

(33) By letter dated 22 April 2014, Bulgaria withdrew the notification of the restructuring aid. However, the restructuring aid was mentioned in subsequent submissions and was finally withdrawn by letter dated 7 November 2016.

(34) Bulgaria indicated that, instead of granting the restructuring aid to BDZ Holding, it intended to refinance BDZ Holding's liabilities by cancelling part of the debts incurred and outstanding prior to Bulgaria's accession.

4.2. *MEASURE 2: CANCELLATION OF THE DEBTS INCURRED PRIOR TO 2007*

(35) Bulgaria explained that, on 31 December 2006, 1 day before its accession to the Union, the total amount of liabilities and provisions of BDZ Holding amounted to BGN 806,7 million (EUR 412 million), as shown in Table 1. Whilst taking into account the liabilities repaid by BDZ Holding and its financial needs, Bulgaria envisaged cancelling liabilities of BDZ Holding amounting to BGN 601,9 million (EUR 307,1 million). However, by letter dated 5 April 2017, Bulgaria modified its notification and requested the Commission to approve a debt cancellation amounting to BGN 223,45 million (EUR 114,25 million). Following the amendment of the notification, the debts planned to be cancelled, including penalty interest, concern: (i) still outstanding pre-accession debt towards KfW IPEX Bank; and (ii) debts incurred towards bond holders related to bond issue ISIN BG2100032072 from 19 November 2007 and towards the Ministry of Finance in order refinance pre-accession debts towards KfW IPEX Bank, EBRD, IBRD NRIC and NEC AD. Bulgaria provided the Commission with the outstanding amounts still due and explanations, as follows (see Table 2).

Table 2

Liabilities of BDZ Holding on 31 December 2006 envisaged to be cancelled

Creditor category/Amounts in BGN as of 31 March 2017	Amount of BDZ's debts in BGN outstanding on 31 December 2006 (pre-accession debts)			Loan or other debt instrument through which the pre-accession debts was refinanced
	Outstanding pre-accession debts	Outstanding debts refinancing BDZ's pre-accession debts	Penalty interest	
(a) **International financial creditors**	**30 967 919**	**105 642 950**	**24 901 981**	
KfW IPEX Bank 80 % DMU	0	76 529 380		Second bond issue with ISIN: BG2100032072, in accordance with Debt tender offer from October 2007
EBRD	0	20 980 115		Activated state guarantee for debt repayment which caused BDZ to incur debt to the Ministry of Finance.
IBRD	0	8 133 455		Activated state guarantee for debt repayment which caused BDZ to incur debt to the Ministry of Finance.
KfW IPEX Bank 85 % EMU	30 967 919	0		

Creditor category/Amounts in BGN as of 31 March 2017	Amount of BDZ's debts in BGN outstanding on 31 December 2006 (pre-accession debts)			Loan or other debt instrument through which the pre-accession debts was refinanced
	Outstanding pre-accession debts	Outstanding debts refinancing BDZ's pre-accession debts	Penalty interest	
(b) **Suppliers**	**0**	**53 884 257**	**8 051 694**	
NRIC	0	26 292 761	3 928 815	Second bond issue with ISIN: BG2100032072, in accordance with Debt tender offer from October 2007
NEC AD	0	27 591 496	4 122 879	Second bond issue with ISIN: BG2100032072, in accordance with Debt tender offer from October 2007
Total	**30 967 919**	**159 527 207**	**32 953 675**	

Source: Submission of Bulgaria dated 5 April 2017

(36) Regarding the liabilities towards IBRD and EBRD, Bulgaria explained that these loans contracted in 1995 were secured by a 100 % State guarantee. Since BDZ Holding defaulted on due payments, the State guarantee was activated and the Ministry of Finance had to service the debts. Consequently, pursuant to the Government debt Act ([10]), as from the date of payments under the State guarantee, the Government acceded to the creditor's rights vested in the loan agreements vis-à-vis BDZ Holding up to the amount of payments made. BDZ Holding is obliged to reimburse in full the amounts paid to IBRD and EBRD by the State, including penalty interest. Regarding the other debts refinanced through the bond issue ISIN BG2100032072 from 19 November 2007, Bulgaria provided evidence of the debt payments made to KfW IPEX Bank, NRIC and NEC AD.

(37) Bulgaria does not contest that the debt cancellation would involve State aid to the benefit of BDZ Holding. However, Bulgaria considers that the cancellation of debts would be compatible with the internal market, pursuant to points 56 to 60 of the Railway Guidelines, as follows.

(38) First, all the liabilities were clearly determined and individualised and were incurred prior to the accession of Bulgaria to the Union. They were either recorded in the Consolidated Financial Statement of BDZ Holding before the accession date and/or stemmed from contracts irrevocably concluded before that date.

(39) Secondly, all the liabilities, for which the cancellation is envisaged, were directly linked to the activity of passenger and freight rail transport and mainly incurred as loans for the purchase of diesel and electric multiple units and for the repair and modernisation of cargo wagons owned by the company and to cover outstanding obligations related to the provision of railway services, such as obligations towards NRIC.

(40) Thirdly, in 2016, BDZ Holding was over-indebted and fulfilled all the criteria laid down in Bulgarian legislation to initiate insolvency proceedings against it. The excessive indebtedness has been preventing the company from operating on a stable financial basis. The company has not been able to meet its capital needs from its own operations due to the accumulated overdue liabilities. The international creditors of the company refused to accept a rescheduling of the debts without a State guarantee, which according to Bulgaria, was likely to raise additional State aid concerns. BDZ Holding's business plan shows that the cancellation of the debts incurred prior to accession would be necessary to improve its financial indicators.

(41) Fourthly, the sole objective of the debt cancellation is to relieve BDZ Holding from debts incurred prior to the accession of Bulgaria to the Union and to normalise the financial situation of the company. The cancellation of those debts does not exceed what is reasonably needed to restore the financial viability of the company.

([10]) Bulgarian Gazette No 93/2002.

(42) Fifthly, the cancellation of the liabilities would not give BDZ Holding a competitive advantage preventing the development of effective competition on the market. It would neither increase the capacity of BDZ Holding nor change its market position or enable it to enter new markets in other Member States. In addition, new operators were not deterred from entering the market since eight operators, in addition to BDZ Cargo, are currently active on the Bulgarian rail transport market ([11]).

(43) Furthermore, Bulgaria explained that the difficult financial situation of the company limited its possibilities for investment. Due to the lack of resources, only essential (either routine or emergency) repairs have been carried out and major repairs have been postponed. 94 % of passenger coaches are older than 15 years and 90 % of freight wagons are older than 29 years. 90 % of diesel multiple units and 45 % of electric multiple units are older than 30 years. The productivity of the rolling stock and the locomotives that belong to the company are considerably lower than the Union average. The limited repairs have resulted in a steady deterioration of rail services and the cancellation of trains.

(44) Bulgaria also pointed out that BDZ Holding was threatened by coercive recovery action such as the sale of its assets or suspension of its bank accounts by the international creditors after the High Court of Justice in London ordered the payment of their claims.

4.3. *MEASURE 3: NON-PAYMENT BY BDZ HOLDING AND ITS SUBSIDIARIES OF OVERDUE DEBTS TOWARDS THE INFRASTRUCTURE MANAGER (NRIC)*

Overview of BDZ Holding's debts to NRIC

(45) In response to the invitation in the Opening Decision to provide information as to whether and how NRIC had enforced past debts and intended to recover or enforce outstanding debts, Bulgaria asserted that BDZ Holding and its subsidiaries had been and were still serving their debts towards NRIC on a regular basis. To support its contention, Bulgaria provided information on the development of the amounts due by BDZ Holding and its subsidiaries to NRIC for infrastructure charges, electricity supply and other accompanying services, as calculated on the basis of NRIC's schedule of charges which was applied to all railway operators.

(46) Bulgaria noted that, after the Opening Decision, between November 2011 and August 2016, BDZ Holding has paid a total amount of BGN 503,2 million (EUR 257 million) to NRIC. The payment was made by bank transfers, offsetting of NRIC's debts towards BDZ Holding and debt-to-asset swaps.

Actions taken by NRIC to enforce and/or recover debts from BDZ Holding

(47) Bulgaria asserts that NRIC has taken all the necessary steps to collect the overdue obligations from BDZ Holding and its subsidiaries, but without initiating legal proceedings. Bulgaria notes that meetings between NRIC and BDZ Holding had been regularly held to discuss the payment of the outstanding obligations. Likewise, NRIC has regularly sent letters, including a notarised notice ([12]), to BDZ Holding requesting the payment of the outstanding obligations and requesting the payment of interest for the overdue obligations ([13]).

(48) NRIC has charged late payment interest on the overdue liabilities in accordance with Decree No 100 on the calculation of statutory interest for late payments in national and foreign currency ([14]) ('Decree No 100') of the Council of Ministers of 29 September 2012. Bulgaria stated that according to Decree No 100, the annual statutory interest rate for late payment of liabilities in BGN consists of the basis interest rate of the Bulgarian National Bank in force since 1 January or 1 July of the respective year plus a risk premium of 10 %. As of September 2016, the interest charges due amount to BGN 23,3 million (EUR 12 million).

(49) Bulgaria alleges that NRIC acted as a market economy creditor, since it was more economically sensible to collect outstanding liabilities recognised by both parties instead of initiating a bankruptcy procedure and risking the

([11]) For example DB Schenker Rail Bulgaria received a license in May 2010, Port Rail in April 2012.
([12]) According to Article 569(3) of the Code of Civil Procedure the notarised notices constitute means of voluntary, out of court, settlement of financial relations between two parties before these are resolved by the court.
([13]) For example Minutes of NRIC's management board meeting No 109 of 25 September 2009 or Minutes of NRIC's management board meeting No 145 of 3 June 2010.
([14]) Bulgarian Gazette No 42/2012.

activity of the debtor ceasing. Bulgaria stated that NRIC would have to bear the costs of legal proceedings amounting to 4 % of the claimed amount in stamp duty. Moreover, if legal proceedings had been initiated, NRIC would have been unable to fully enforce its claim, because BDZ Holding and its subsidiaries would have had to repay all its liabilities without preference for a particular creditor. According to Bulgaria, since BDZ Holding and its subsidiaries are NRIC's major clients as evidenced by the fact that 77 % of NRIC's revenue could be attributed to BDZ Holding and its subsidiaries in 2015, the bankruptcy of BDZ Holding would have had a negative impact on NRIC's profitability and its ability to adequately maintain the national rail network.

Debts owed by NRIC to BDZ Holding

(50) NRIC owed monies to BDZ Holding for services provided relating, inter alia, to free and reduced travel passes and tickets for NRIC's employees and their families, the rental of outdoor and indoor facilities and premises that were the property of BDZ Holding, supply of traction power, transport of goods by rail, transhipment and servicing of work trains. Bulgaria stated that, during the period 2008 to 2011, NRIC had incurred debts towards BDZ Holding and its subsidiaries for services provided amounting in total to BGN 45 532 415 (EUR 23,8 million) as summarised in Table 3. As of August 2016 the outstanding receivables of NRIC towards BDZ Holding were BGN 1 094 367 (EUR 0,6 million).

Table 3

Debts owed by NRIC to BDZ Holding 2008-2011

Receivables from NRIC in BGN	2008	2009	2010	2011	Total
BDZ Holding	15 695 566	4 364 383	12 907 606	13 564 860	46 532 415

Debt-to-asset swaps

(51) In response to the invitation in the opening decision to provide information as to whether and how NRIC intended to recover or enforce outstanding debts, Bulgaria stated NRIC and BDZ Holding entered into agreements on 1 December 2012 and 31 May 2013 according to which NRIC and BDZ Holding recognised certain reciprocal claims and decided to partially repay outstanding liabilities through a debt-to-asset swap transaction. The objective of the debt-to-asset swap was to extinguish recognised obligations of BDZ Holding and its subsidiaries towards NRIC through the provision of assets that would be useful for NRIC and which had a good level of liquidity. That operation was allowed under the national legislation, in particular Article 65, paragraph 2 of the Contracts and Obligations Act and its legal basis were the decisions of the Council of Ministers.

(52) Bulgaria stressed in its submission dated 7 November 2016 that, in the period 2013-2016, the total amount of swapped assets, including VAT, was BGN 25,9 million (EUR 13,3 million). The first stage of the swap, amounting to BGN 23 million (EUR 11,8 million), was implemented in December 2013 on the basis of decision No 481/12.08.2013 of the Council of Ministers. In addition, in December 2015 and August 2016, on the basis of decisions No 965/10.12.2015 and No 626/29.07.2016 of the Council of Ministers, properties for the amounts of BGN 1,1 million (EUR 0,58 million) and BGN 1,8 million (EUR 0,9 million) respectively were swapped. The specific assets subject to the swaps had been specified in advance depending on the needs of the parties for their subsequent use. Bulgaria stated that on this basis NRIC had acquired 16 properties, among which were facilities at Varna Ferry Boat Complex and the office building in Stara Zagora.

(53) Bulgaria also stated that NRIC independently decided on the assets which had commercial interest for it. To support this claim, Bulgaria noted that in August 2016 NRIC rejected a proposed debt-to-equity swap in relation to certain assets, and therefore BDZ swapped assets of BGN 1,8 million (EUR 0,9 million) instead of BGN 10 million (EUR 5,1 million). The process was transparent. The swapped assets were subject to evaluation by independent evaluators holding certificates issued by the Chamber of Independent Appraisers in Bulgaria. The determination of the value of the assets was based on market principles and methods in accordance with international and European valuation standards laid down in Bulgarian legislation. According to Bulgaria, those assets can be sold on the real estate market at the indicative price established by the independent evaluators. The final prices agreed by BDZ Holding and NRIC were of a similar magnitude to those in the evaluations.

(54) Consequently, Bulgaria considers that NRIC has acted as a market economy creditor and the debt-to-asset swaps had been agreed and were implemented under normal market conditions.

4.4. *MEASURE 4: REIMBURSEMENT OF ERRONEOUSLY CHARGED VAT BY THE STATE TO BDZ HOLDING*

(55) Bulgaria submits that, due to an incorrect interpretation and application of the national legislation in force by BDZ Holding, the company had erroneously paid VAT of BGN 72 million (EUR 36,8 million) on the amount of PSO compensations for the period 1 December 2004 to 29 February 2008. The error was detected in the audit report performed by the National Revenue Agency in 2009. Bulgaria explains that BDZ Holding took the necessary legal action under the Tax Insurance Procedure Code ('DOPK') for the recovery of the unduly paid VAT through reimbursement. The amount of unduly paid tax was determined by acts issued by the national revenue and tax administration.

(56) Bulgaria further states that the company was entrusted with a PSO through a PSO contract of 29 June 2004, signed in September 2004, between the Bulgarian Ministry of Transport and Communication and BDZ Holding. The PSO compensation under the PSO contract was granted to cover losses incurred in providing transport services. In addition, according to the terms of the contract, the provision of the service and the compensation were subject to compliance with conditions related to the number of trains, seats and hours. Moreover, the compensation could be reduced if the specified requirements regarding kilometres, seats and hours were not met.

(57) Bulgaria explains that, according to Article 29 of the Value Added Tax Act ('ZDDS') in place until 31 December 2006, the taxable amount on the supply of services also includes all financial means received and absorbed by the supplier of the services and directly related to the supply of those services, including subsidies. Bulgaria further explained that according to Article 20(6) of the ZDDS, all financial means (for example, subsidies) directly linked to the supply of goods or services are to be considered to be grants from the State budget or other entity, constituting an additional payment for goods or services. On the basis of statements from the National Revenue Agency ([15]) Bulgaria submitted that the subsidies received to cover the losses, the costs or the acquisition of assets are outside the scope of the ZDDS, which is the case with the PSO contract. In this context, Bulgaria clarified that national provisions allowed VAT to be refunded on the basis of a VAT assessment issued by the revenue authorities following an *ex-post* verification and revision. Furthermore, Bulgaria asserted that before Bulgaria's accession to the Union it was not obliged to fully harmonise its VAT law.

(58) According to Bulgaria, since 1 January 2007, when the new ZDDS entered into force, the Bulgarian VAT law provisions have been fully harmonised with Directive 2006/112/EC. Bulgaria stated further that according to Article 26(3) of the new ZDDS the taxable amount on the supply of services also includes all financial means (for example, subsidies) received and absorbed by the supplier of the services and directly related to the supply of those services. Bulgaria further explained that according to the new ZDDS, all financial means (for example, subsidies) directly linked to the supply of goods or services shall be considered to be grants from the State budget or other entity, constituting an additional payment for goods or services. According to Bulgaria, however the subsidies received to cover the losses or expenses, including the acquisition or the liquidation of assets are outside the scope of the new ZDDS.

(59) According to Bulgaria, the error, consisting in incorrectly charging VAT on revenue from the provision of the PSO services for the period 1 December 2004 to 29 February 2008, had been detected by the relevant tax authorities in the course of an inspection. In this regard, Bulgaria explained that those findings of the relevant tax authorities resulted in decisions ordering the reimbursement and a tax audit report number 29010038 of 7 February 2011 in accordance with the Bulgarian Tax Insurance Procedure Code ([16]). Bulgaria further explained that the VAT reimbursement procedures were set out in Articles 128 and 129 of the Bulgarian Tax Insurance Procedure Code.

([15]) Letter from the National Revenue Agency with reference number 24-34-350/20.07.2007 and 24-00-39/17.08.2007.

([16]) Tax reimbursement decision number 100337 of 12 August 2010 and tax decision number 290100380 of February 2011 amounting to BGN 36 877 000 for the period December 2004 to April 2007; tax reimbursement decision number 2900180 of 14 January 2009 amounting to BGN 19 167 000 for the period May 2007 to February 2008; tax reimbursement decision number 290900153 of 8 July 2009 amounting to BGN 16 000 000 for the period March 2008 to October 2008.

(60) Therefore, according to Bulgaria, the reimbursement of the wrongfully charged VAT did not constitute State aid.

5. **WITHDRAWAL OF THE NOTIFICATION**

(61) As stated in recitals 32 and 34, Bulgaria withdrew its notification concerning the restructuring aid to BDZ Holding (Measure 1). Bulgaria indicated that it intended instead to cancel debts incurred by BDZ Holdings prior to Bulgaria's accession to the Union on 1 January 2007 (Measure 2).

(62) According to Article 10 of Council Regulation (EU) 2015/1589, the Member State concerned may withdraw the notification in due time before the Commission has taken a decision on the aid. According to Article 10(2) of Regulation (EU) 2015/1589, in cases where the Commission has already initiated the formal investigation procedure when a notification is withdrawn, the Commission must close the procedure.

(63) The Commission notes that the restructuring aid has not yet been granted. Since Bulgaria has withdrawn its notification and will not grant the restructuring aid of BGN 550 million to BDZ Holding, the formal investigation procedure under Article 108(2) of the Treaty should be closed in respect of the notified restructuring aid measure.

6. **ASSESSMENT OF THE MEASURES**

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

(65) The criteria in Article 107(1) of the Treaty are cumulative. Therefore, in order to determine whether a State measure constitutes aid within the meaning of Article 107(1) of the Treaty all of the following conditions need to be fulfilled:

(a) the beneficiary is an undertaking within the meaning of Article 107(1) of the Treaty, which implies that it engages in an economic activity;

(b) the measure is financed by State resources and is imputable to the State;

(c) it confers an economic advantage;

(d) this advantage is selective;

(e) the measure in question distorts or threatens to distort competition and may affect trade between Member States.

6.1. *MEASURE 2: CANCELLATION OF THE DEBTS INCURRED PRIOR TO 2007*

6.1.1. EXISTENCE OF AID WITHIN THE MEANING OF ARTICLE 107(1) OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (THE 'TREATY')

6.1.1.1. ***Economic activity and notion of undertaking within the meaning of Article 107(1) of the Treaty***

(66) According to settled case law, the Commission must first establish who will be the beneficiary(ies) of Measure 2. Article 107(1) of the Treaty refers to the concept of undertaking in defining the beneficiary of the aid. As confirmed by the Union Courts, an undertaking for the purposes of that provision does not have to be a single legal entity, but may encompass a group of companies ([17]). The key criterion in determining whether there is an undertaking within the meaning of that provision is whether an 'economic unit' is involved. An economic unit may be composed of several legal persons. That economic unit is then considered to be the relevant undertaking. In this respect, the Union Courts consider the existence of a controlling share and other functional, economic and organic links to be relevant ([18]).

([17]) Judgment of the Court of Justice of 14 November 1984, *Intermills/Commission*, C-323/82, ECLI:EU:C:1984:345, paragraphs 11 et seq.
([18]) Judgment of the Court of Justice of 16 December 2010, *AceaElectrabel Produzione SpA* v *Commission*, C-480/09 P, ECLI:EU:C:2010:787, paragraphs 47 to 55; Judgment of the Court of Justice of 10 January 2006, Cassa di Risparmio di Firenze SpA and Others, C-222/04, ECLI: EU:C:2006:8, paragraph 112.

(67) In the case at hand, Bulgaria stated that BZD Holding is the legal entity whose debts incurred prior to 2007 will be cancelled. In fact, as stated in recitals 34, 35 and 36, Bulgaria considers that BDZ Holding is the sole beneficiary of Measure 2. However, several elements indicate that the relevant undertaking is not confined to the legal person of BDZ Holding alone.

(68) First, in terms of ownership relations, it has to be noted that BDZ Holding holds 100 % of the shares of both BDZ Passenger and BDZ Cargo. BDZ Holding therefore controls all business activities of BDZ Passenger and BDZ Cargo, formulates a common management policy and sets targets for both subsidiaries.

(69) Secondly, the main purpose of the initial loans was the purchase and repair of assets used by both BDZ Cargo and BDZ Passenger, such as locomotives, freight wagons and passenger coaches. The cancellation of debts relates, therefore, to rail transport services provided by both subsidiaries. While after the 2007 reorganisation, BDZ Holding owned the rolling stock and rented it out to BDZ Cargo and BDZ Passenger, following the 2011 reorganisation the rolling stock was transferred to the subsidiaries BDZ Cargo and BDZ Passenger (see recitals 12 and 13). Therefore, Measure 2, which was granted for the cancellation of debts financing the rolling stock, effectively benefits BDZ Cargo and BDZ Passenger.

(70) In the light of these considerations, in addition to BDZ Holding, its subsidiaries BDZ Passenger and BDZ Cargo must also be regarded as beneficiaries of the debt cancellation. It follows from the description of the activities of BDZ Passenger and BDZ Cargo set out in section 2.1 that both companies are a single economic unit under control of BDZ Holding and both provide services against remuneration in Bulgaria. The Commission thus considers that by providing passenger and freight transport services, as well as management and coordination of those activities, BDZ Holding and its subsidiaries BDZ Passenger and BDZ Cargo are performing an economic activity and therefore constitute undertakings within the meaning of Article 107(1) of the Treaty.

6.1.1.2. ***State resources and imputability to the State***

(71) In order to constitute State aid, the measure in question has to be financed from State resources and the decision to grant the measure must be imputable to the State ([19]).

(72) The debt cancellation will be financed directly from the Bulgarian State budget and will be granted by the central authorities of that Member State.

(73) Therefore, the debt cancellation involves the use of State resources, which is also decided by and imputable to the State.

6.1.1.3. ***Economic advantage***

(74) An advantage within the meaning of Article 107(1) of the Treaty is any economic benefit which an undertaking would not have obtained under normal market conditions, that is to say, in the absence of State intervention ([20]). Only the effect of the measure on the undertaking is relevant, not the cause nor the objective of the State intervention ([21]).

(75) In this case, Bulgaria will cancel BGN 223,45 million (EUR 114,25 million) of debts directly related to railway activities of BDZ Holding. No reasonable market economy operator would cancel liabilities of such a magnitude without any remuneration. In addition, the measure will relieve BDZ Holding from its debt payment obligations, thus freeing funds which BDZ Holding and its subsidiaries can use to develop their operations and improving their financial indicators.

(76) Therefore, it is concluded that Bulgaria's decision to cancel BDZ Holding's liabilities will confer an economic advantage on BDZ Holding, BDZ Passenger and BDZ Cargo which they would not have obtained under normal market conditions.

([19]) Judgment of the Court of Justice of 16 May 2002, *France* v *Commission* ('Stardust Marine'), C-482/99, ECLI:EU:C:2002:294.

([20]) Judgment of the Court of Justice of 11 July 1996, *Syndicat français de l'Express international (SFEI) and others* v *La Poste and others*, C-39/94, ECLI:EU:C:1996:285, paragraph 60; judgment of the Court of Justice of 29 April 1999, *Kingdom of Spain* v *Commission of the European Communities*, C-342/96, ECLI:EU:C:1999:210, paragraph 41; judgment of the Court of Justice of 16 May 2002, *France* v *Commission* ('Stardust Marine'), C-482/99, ECLI:EU:C:2002:294, paragraph 69.

([21]) Judgment of the Court of 2 July 1974, *Italian Republic* v *Commission of the European Communities*, C-173/73, ECLI:EU:C:1974:71, paragraph 13.

6.1.1.4. ***Selectivity***

(77) To fall within the scope of Article 107(1) of the Treaty, a State measure must favour 'certain undertakings or the production of certain goods'. Hence, only those measures favouring undertakings which grant an advantage in a selective way fall under the notion of State aid. The debt cancellation will benefit only BDZ Holding and its subsidiaries and is, therefore, selective within the meaning of Article 107(1) of the Treaty.

Conclusion

(78) It is concluded that the planned debt cancellation will provide a selective economic advantage to BDZ Holding and its subsidiaries BDZ Passenger and BDZ Cargo.

6.1.1.5. ***Distortion of competition and effect on trade***

Distortion of competition

(79) There is an assumption that there is a distortion of competition within the meaning of Article 107(1) of the Treaty whenever the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition ([22]).

(80) In this respect, Bulgaria opened the market for rail freight transport to other domestic operators established in Bulgaria, in 2002. The Union rail freight market was first opened to competition on the trans-European rail freight network on 15 March 2003 by the first railway package ([23]). The second railway package liberalised all international freight transport on 1 January 2006, and national rail freight from 1 January 2007 ([24]). However, several Member States had unilaterally liberalised their national markets prior to that date.

(81) BDZ Cargo's market share on the Bulgarian rail freight market amounted to 43 % in 2016. BDZ Cargo directly competes with other rail freight operators on that market, as noted in recital 15.

(82) With regard to passenger transport, from 1 January 2010, the third railway package opened the market for international passenger transport ([25]). While this only concerns international services, it does include the activities of the beneficiaries on those lines. At any rate, as established by the Court in the *Altmark Trans* judgment, the fact that a transport company is active only in one Member State does not exclude the possibility of aid distorting on

([22]) Judgment of the General Court of 15 June 2000, *Alzetta and others* v *Commission*, T-298/97, ECLI:EU:T:2000:151, paragraphs 141 to 147.

([23]) Directive 2001/12/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 91/440/EEC on the development of the Community's railways (OJ L 75, 15.3.2001, p. 1), Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 amending Council Directive 95/18/EC on the licensing of railway undertakings (OJ L 75, 15.3.2001, p. 26), Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L 75, 15.3.2001, p. 29).

([24]) Regulation (EC) No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (OJ L 164, 30.4.2004, p. 1), Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ L 164, 30.4.2004, p. 44), Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system (OJ L 164, 30.4.2004, p. 114) and Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community's railways (OJ L 164, 30.4.2004, p. 164).

([25]) A third package was adopted in 2007 comprising Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No 1191/69 and (EEC) No 1107/70 (OJ L 315, 3.12.2007, p. 1), Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (OJ L 315, 3.12.2007, p. 14), Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007 amending Council Directive 91/440/EEC on the development of the Communities railways, and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure (OJ L 315, 3.12.2007, p. 44) and Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community (OJ L 315, 3.12.2007, p. 51).

intra-Union trade ([26]). In this respect, it must be noted that since 1995 several Member States have unilaterally opened their rail passenger transport and that any advantage granted to a rail transport company in one Member State may reduce the possibility for a competitor from another Member State to trade on that geographic market.

(83) The Commission therefore concludes that the measure will distort or will threaten to distort competition in the internal market.

Effect on trade between Member States

(84) When aid granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid ([27]). It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition ([28]).

(85) In this case, the beneficiary provides services in competition with other undertakings providing transport services in the internal market and some of those services are cross-border. Therefore, the selective economic advantage granted through the planned debt cancellation to BDZ Holding and its subsidiaries strengthens its economic position, as it will relieve the railway operator from debts incurred prior to 2007. Consequently BDZ Holding and its subsidiaries will be providing railway transport services in the internal market without bearing all of the investment and operating costs they incurred.

(86) Therefore, the Commission concludes that the planned debt cancellation is liable to affect trade between Member States.

6.1.1.6. ***Conclusion***

(87) In the light of the foregoing, the Commission considers that the debt cancellation that Bulgaria plans to implement constitutes State aid within the meaning of Article 107(1) of the Treaty.

6.1.2. LAWFULNESS OF THE AID

(88) Pursuant to Article 108(3) of the Treaty, Member States must notify any plans to grant or alter aid, and must not put the proposed measures into effect until the notification procedure has resulted in a final decision.

(89) Since the debt cancellation in favour of BDZ Holding and its subsidiaries has not yet been implemented, the Commission considers that Bulgaria has respected the obligations flowing from Article 108(3) of the Treaty ([29]).

6.1.3. COMPATIBILITY OF THE AID

(90) Since the debt cancellation constitutes State aid within the meaning of Article 107(1) of the Treaty, the Commission must assess whether that aid can be found compatible with the internal market.

(91) Article 107(3) of the Treaty provides for certain exemptions to the general rule set out in Article 107(1) of the Treaty that State aid is not compatible with the internal market. Article 107(3)(c) of the Treaty stipulates that: 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest', may be considered to be compatible with the internal market.

(92) In this regard, Section 4 of the Railway guidelines provides a framework for assessing whether the Commission should declare aid to railway undertakings for the cancellation of debts compatible with the internal market pursuant to Article 107(3)(c) of the Treaty.

([26]) Judgment of the Court of Justice of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdenburg*, C-280/00, ECLI:EU:C:2003:415, paragraphs 77-81.
([27]) See, in particular, Judgment of the Court of 17 September 1980, *Philip Morris* v *Commission*, C-730/79, ECLI:EU:C:1980:209, paragraph 11; Judgment of the Court of Justice of 22 November 2001, *Ferring*, C-53/00, ECLI:EU:C:2001:627, paragraph 21; Judgment of the Court of Justice of 29 April 2004, *Italy* v *Commission*, C-372/97, ECLI:EU:C:2004:234, paragraph 44.
([28]) Judgment of the General Court of 30 April 1998, *Het Vlaamse Gewest* v *Commission*, T-214/95, ECLI:EU:T:1998:77.
([29]) Judgment of the General Court of 14 January 2004, *Fleuren Compost* v *Commission*, T-109/01, ECLI:EU:T:2004:4.

(93) The Commission agrees with Bulgaria as regards the applicability of Section 4 of the Railway Guidelines for assessing the compatibility of the debt cancellation. Indeed, according to point 54 of the Railway Guidelines, 'In the light of Article 9 of [Council] Directive 91/440/EEC ([30]), the Commission also considers that, under certain circumstances, it should be possible to authorise [State] aid without financial restructuring if the cancellation concerns old debts incurred prior to the entry into force of Directive 2001/12/EC, which lays down the conditions for opening up the sector to competition.' According to point 56 of the Railway Guidelines, in the case of Member States which acceded to the Union after the entry into force of Directive 2001/12/EC, the date of accession should be considered as the date from which that Directive applies to those Member States. The relevant date for the purposes of determining which pre-accession debt can be cancelled in compliance with the Railway Guidelines is, therefore, 1 January 2007.

(94) Bulgaria claims that the planned debt cancellation complies with all the compatibility conditions laid down in the Railway Guidelines. Consequently, the Commission has to assess this claim. Indeed, according to points 55 to 61 of the Railway Guidelines, aid to cancel debts incurred prior to Bulgaria's accession to the Union can be regarded as compatible with the internal market pursuant to Article 107(3)(c) of the Treaty if the following five cumulative conditions are met:

(a) Firstly, the aid must serve to offset clearly determined and individualised debts incurred prior to 15 March 2001, the date on which Directive 2001/12/EC entered into force. Under no circumstances may the aid exceed the amount of these debts. In cases where the Member States joined the Union after 15 March 2001, the relevant date is that of accession to the Union. The logic of Article 9 of Directive 91/440/EEC, repeated in subsequent Directives, was to address a level of debt accumulated at a time when a decision to open the market at Community level had yet to be taken.

(b) Secondly, the debts concerned must be directly linked to the activity of rail transport or the activities of management, construction or use of railway infrastructure. […]

(c) Thirdly, the cancellation of debts must be in favour of undertakings facing an excessive level of indebtedness which is hindering their sound financial management. The aid must be necessary to remedy this situation, insofar as the likely development of competition on the market would not allow them to rectify their financial situation within a foreseeable future. […]

(d) Fourthly, the aid must not go beyond what is necessary for the purpose. […]

(e) Fifthly, cancellation of its debts must not give an undertaking a competitive advantage such that it prevents the development of effective competition on the market, for example by deterring outside undertakings or new players from entering certain national or regional markets.

(a) **The aid must serve to offset clearly determined and individualised debts incurred prior to the accession of Bulgaria to the Union**

(95) The Railway Guidelines require that the debt(s) to be cancelled be clearly determined, individualised and, in the case of Bulgaria, incurred before its accession to the EU. It follows from the Railway Guidelines that aggregate or undetermined debt cannot be offset. Offsetting would not be permitted, for instance, if generic items of debt, e.g. 'debt to all suppliers' were planned to be cancelled. Likewise, offsetting would not be permitted either if aggregate items of debt towards a single creditor, e.g. 'total liabilities vis-à-vis a particular bank' stemming from various components such as overdrafts, guarantees or long term loans were planned to be cancelled altogether without distinction.

(96) Bulgaria envisages cancelling BGN 223,45 million (EUR 114,25 million) of BDZ Holding's debt. As described in recital 35 and Table 2, the amount of BGN 223,45 million subject to cancellation stems from financial obligations incurred prior to the accession of Bulgaria to the Union and which were outstanding at the date of accession or from subsequent debt incurred by BDZ Holding which substituted or refinanced debt incurred prior to the accession of Bulgaria to the Union, as documented by the Consolidated financial Statement of BDZ Holding for 2006, and/or information on the relevant loan payments. Each of the debts which are planned to be cancelled can be individualised as stemming from loan contracts (financial creditors KfW IPEX Bank, EBRD, IBRD) or from regular contractual relations with specific suppliers of rail infrastructure services (NRIC) or electricity services (NEC AD) prior to accession.

([30]) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ L 237, 24.8.1991, p. 25).

(97) The same is true as regards BDZ Holding's individualised debt obligations towards bond holders of the bond issue ISIN BG2100032072 from 19 November 2007 and the Ministry of Finance, when the latter became creditor of BDZ Holding (see recitals 35 and 36 and Table 2). Both debts are well individualised and also the proceeds were used to refinance well specified pre-accession debt which BDZ Holding could not meet and settle with its own resources. It follows that the amounts currently outstanding constitute, in economic terms, a mere carry-over of the past legacy debt.

(98) Finally, since the amount of BGN 223,45 million debt planned to be cancelled stems from clearly determined and individualised debts incurred prior to the accession of Bulgaria to the EU, it is not necessary to take position on whether other debts including provisions and trade obligations of BDZ Holding also identified by Bulgaria as pre-accession debt (Table 1 and recitals 35 and 20), and which amount to the difference between BGN 806,7 million and BGN 223,45 million, could also be lawfully cancelled under the Railway Guidelines. The debt amounting to that difference is excluded from the scope of the present decision.

(99) It is therefore concluded that the measure at stake aims at cancelling BGN 223,45 million of clearly determined and individualised debts incurred prior to the accession of Bulgaria to the Union.

(b) **The debts concerned must be directly linked to the activity of rail transport or the activities of management, construction or use of railway infrastructure.**

(100) Bulgaria stated that all the debts incurred by BDZ Holding were directly linked to the activity of passenger and freight rail transport (see recital 39).

(101) The Commission observes that the debts to be cancelled were indeed incurred to finance the renewal and repair of rolling stock, such as the purchase of diesel and electric multiple units or modernisation of cargo wagons owned by the company. Alternatively, the debts such as the outstanding obligations towards NRIC also financed the provision of BDZ Holding's railway services. Those activities are the core business of BDZ Holding and its subsidiaries and are directly linked to the activity of rail transport.

(102) Therefore, the Commission considers that the debts concerned are directly linked to the activity of rail transport.

(c) **The cancellation of debts must be in favour of undertakings facing an excessive level of indebtedness which is hindering their sound financial management. The aid must be necessary to remedy this situation, insofar as the likely development of competition on the market would not allow them to rectify their financial situation within a foreseeable future.**

Excessive indebtedness of BDZ Holding, which is hindering its sound financial management

(103) Bulgaria asserted that BDZ Holding qualified as insolvent and over-indebted according to the applicable Bulgarian legislation and fulfilled all the criteria laid down in Bulgarian legislation to initiate insolvency proceedings against it. This is a valid indication of excessive indebtedness. Furthermore, Bulgaria stated that the company had not been able to meet its financial obligations because of its indebtedness.

(104) The total debts of BDZ Holding amounted to BGN 806,7 million on 31 December 2006 and accounted for 78 % of BDZ Holding's total capital (equity and debts), with a Debt-to-Equity Ratio of 4. The financial situation of BDZ Holding deteriorated considerably since 2007. As from 2011, BDZ Holding's Debt-to-Equity Ratio increased above 7,5 (9), to reach 14 in 2012, 15 in 2013, – 209 in 2014 and – 33 in October 2015 ([31]). Moreover, in October 2015, BDZ Holding's outstanding obligations, namely BGN 499,1 million (EUR 255 million) represented 86 % of the book value of the assets amounting to BGN 582,4 million (EUR 298 million).

([31]) According to point 20(d) of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, the debt-to-equity ratio higher than 7,5 for 2 consecutive years is one of the indicators showing that the undertaking is in difficulty.

(105) The Commission further observes that despite the fact that BDZ Holding repaid BGN 724 million (EUR 370 million) of outstanding debts during the period from 1 January 2007 until 28 September 2016, the company has not been able to fully meet its financial obligations. Due to its overdue obligations towards international creditors, on 20 July 2015, the High Court of Justice in London ordered BDZ to pay EUR 66,7 million (BGN 30,4 million) with 8 % per annum in late payment interest ([32]).

(106) Moreover, considering the excessive level of indebtedness of BDZ Holding, without the debt cancellation, the company would have serious difficulties in meeting its obligations and could eventually be liquidated.

(107) On the basis of the foregoing, the Commission considers that BDZ Holding is facing an excessive level of indebtedness which is hindering its sound financial management.

Necessity of the aid

(108) In addition, the aid must be necessary to remedy the situation of excessive indebtedness, insofar as the likely development of competition on the market would not allow BDZ Holding and its subsidiaries to rectify their financial situation within a reasonable period.

(109) Due to its indebtedness, BDZ Holding has not been able to meet all its financial obligations and has a backlog in investments into modernisation of its rolling stock. Due to the backlog in investments into the modernisation of the rolling stock and maintenance, the fleet of the company is over-aged and partially obsolete. In this regard, the Commission observes that 82 % of BDZ Passenger's carriages are older than 20 years and 74 % of its locomotives are older than 25 years. In 2015, approximately 50 % of BDZ Cargo's locomotives were either under repair or not operational. Similarly, approximately 51 % of the freight wagons of BDZ Cargo were not operational and required repair in 2015.

(110) Without the aid, BDZ Holding would not be able to repay the still outstanding debts incurred prior to Bulgaria's accession to the Union, nor would it be able to use its own resources to invest into the modernisation of its rolling stock.

(111) By way of illustration, based on the company's reported earnings in 2016 (BGN 336,2 million), a one-off price and/or tariff increase of 66 % on average would be needed, other things being equal, to generate the BGN 223,45 million operating revenue in the short term which is necessary to repay the debt planned to be cancelled. However, in the meantime, BDZ Holding's subsidiaries only operate on a geographic area which is entirely eligible for regional aid pursuant to Article 107(3)(a) of the Treaty. Sizeable tariff increases in such geographic areas may have stronger negative social effects than in wealthier areas of the Union. Accordingly, hypothetical tariff increases aimed at boosting BDZ Holding's revenues and alleviating its debt to the extent needed, if at all legally possible as concerns passenger services subject to PSO and commercially sustainable in a competitive environment as concerns freight services, could have disproportionate social impacts on Bulgarian rail passengers or companies using BDZ's cargo services.

(112) Consequently, no other credible hypothetical policy measure than the planned debt cancellation would allow the company to continue its operation. It follows that the measure at stake is necessary to remedy BDZ Holdings' indebtedness, insofar as the likely development of competition on the market would not allow BDZ Holding and its subsidiaries to rectify their financial situation within a foreseeable future.

(d) **The aid must not go beyond what is necessary for the purpose**

(113) The Commission notes that in view of the financial situation of BDZ Holding, the amount of the debt cancellation is the minimum necessary to ensure the survival of the company and is a pre-condition for its financial sustainability. The amount is essentially needed for the outstanding payments towards the creditors — international financial institutions and NRIC. BDZ Holding and its subsidiaries have still outstanding liabilities incurred before 1 January 2007 which, if not paid, would put the beneficiary at risk of liquidation. The financial indicators show that the payments cannot be made from own resources at present and it would be unrealistic to expect that the company could increase significantly its tariffs or prices to generate increased revenues in the short term.

([32]) Orders of 20 July 2015, CL-2015-000309 FMS Wertmanagement AöR vs BDZ Holding; CL-2015-000214 Dexia Credit Local vs BDZ Holding; CL-2015-000090 KA Finanz AG vs BDZ Holding.

(114) Furthermore, the Commission notes that during the period since accession, BDZ Holding has repaid BGN 166 million of liabilities incurred before 1 January 2007 from its own resources stemming mainly from sales of assets. As those amounts were potentially eligible for cancellation, it is reasonable to consider that BDZ Holding could have used those resources for the development and the modernisation of the rolling stock and the services provided. The company was lagging behind the development of the railway sector as regards technical characteristics and information systems. Therefore, insofar as BDZ Holding has also relied on its own resources to repay part of the pre-accession debt, the debt cancellation cannot be considered as going beyond what is necessary even if it frees it from repayment obligations and allows financial room to invest in future modernisations or repair activities.

(115) In view of these considerations, the Commission finds that the implementation of the debt cancellation cannot be considered to place BDZ Holding in a situation more favourable than that of an average well-managed undertaking with the same activity profile.

(e) **The cancellation of its debts must not give an undertaking a competitive advantage such that it prevents the development of effective competition on the market, for example by deterring outside undertakings or new players from entering certain national or regional markets.**

(116) The proposed debt cancellation will only allow BDZ Holding to normalise financing of the company's operating activities and will not allow BDZ Holding or of its subsidiaries to expand or enter new markets. In that sense, the aid will not prevent the development of effective competition on the market. It will not affect the competitors' market position and they will be able to continue competing with BDZ Holding under the same conditions.

(117) The Commission also considers that the cancellation of debts will not unduly distort competition and trade between Member States, because it will only allow BDZ Holding to stabilise its financial situation, which was hindered by liabilities incurred prior to liberalisation of the market. Furthermore, the Commission finds that the new market players are not deterred from entering the Bulgarian transport market. As described in recitals 15 and 42, in addition to BDZ Cargo, eight cargo operators are currently active on the Bulgarian rail transport market. There is no evidence that the debt cancellation measure will modify this competitive situation.

Conclusion

(118) In view of the foregoing, the Commission concludes that the State aid in the form of debt cancellation (Measure 2) amounting to BGN 223,45 million (EUR 114,25 million) which Bulgaria plans to implement satisfies the conditions for compatibility with the internal market set out in chapter IV of the Railway Guidelines.

6.2. *MEASURE 3: NON-PAYMENT BY BDZ HOLDING AND ITS SUBSIDIARIES OF OVERDUE DEBTS TOWARDS THE INFRASTRUCTURE MANAGER (NRIC)*

(119) Since Bulgaria did not clarify the origin and evolution of BDZ Holding's outstanding liabilities towards NRIC before the Opening Decision, the non-enforcement of those overdue liabilities has been considered to potentially involve State aid according to Article 107(1) of the Treaty.

(120) According to the information provided by Bulgaria (see Section 4.3), part of BDZ Holding's outstanding liabilities towards NRIC constituted liabilities incurred by the company prior to Bulgaria's accession to the Union. A portion of this pre-accession debt (up to BGN 26,3 million) was subsequently refinanced with proceeds from a bond issue of 19 November 2007, which is still outstanding debt and, therefore, subject to assessment under 'Measure 2: Cancellation of the debts incurred prior to 2007' in Section 6.1. In other words, NRIC was paid.

(121) In addition, and with a view to explaining the situation in relation to the remaining outstanding liabilities, Bulgaria provided further information on the enforcement arrangements and steps undertaken by NRIC (see Section 4.3). According to Bulgaria, NRIC had undertaken all the necessary steps to collect the overdue obligations from BDZ Holding and its subsidiaries to maximise the recovery of the amounts due, but without initiating legal proceedings.

(122) In order to verify whether NRIC unduly favoured BDZ Holding as regards the delay and the arrangements for the payment of overdue liabilities, the Commission has to assess whether it could have benefited from such arrangements under normal market conditions ([33]). To that effect, the Commission has to assess whether a hypothetical market economy creditor in a situation similar to NRIC, seeking to obtain the maximum payment of the amounts owned to it, would have accepted the delay and entered into the renegotiation of the payment of overdue liabilities on similar terms and conditions ([34]). In other words, the Commission has to assess whether NRIC acted with the same due diligence as a market economy creditor, before choosing between an individual and amicable enforcement of its claims or the initiation of a collective recovery procedure leading eventually to the bankruptcy of BDZ Holding and its subsidiaries.

(123) The Commission notes that in order to identify the most advantageous alternative a diligent market economy creditor would assess the advantages and the disadvantages of each of the alternatives, taking into account, inter alia, the recoverable amounts, its prior economic exposure, the duration of the recovery process and the costs ([35]).

(124) The Commission first observes that the debts towards NRIC arose in the context of a regular and long-term commercial relationship between (State-owned) undertakings: BDZ Holding and its subsidiaries were key customers of NRIC and generated more than 70 % of its operating revenue. The origin of BGN 46,5 million of debt owed by NRIC to BDZ Holding accumulated between 2008 and 2011 for various services provided to NRIC (Table 3) also provides additional evidence that there is continuous interaction and interdependence between NRIC and BDZ Holding. A possible market exit of BDZ Holding and its subsidiaries resulting from collective insolvency proceedings would therefore have had a serious immediate negative impact on NRIC's financial situation. In turn, the bankruptcy of BDZ Holding would have reduced NRIC's profits and its ability to adequately maintain the national rail network, thus risking further decreases of commercial revenues accruing from other clients, in addition to BDZ Holding's subsidiaries.

(125) It follows that a market creditor engaged like NRIC in a similar commercial relationship with its debtor(s) like BDZ Holding would thus have approached with circumspection any hypothetical enforcement action leading to its main client disappearing from the market, unlike a creditor having one-off debt claims and not commercially and financially dependent on its debtor remaining active on the market after enforcement of its claims.

(126) Second, NRIC's claims towards BDZ Holding and its subsidiaries could not have been enforced as preferential claims under hypothetical collective insolvency proceedings, in which no particular preference for repayment of NRIC among other creditors could have been implemented (see recital 49). Moreover, the debt identified in the Opening Decision as owing to NRIC (BGN 45 million) was smaller than the debt owed to other creditors (see Table 1). What is more, the book value of BDZ Holding's assets would need to be reduced by a liquidation discount in a forced sale under the collective insolvency proceedings. Depending on the type of the assets, the liquidation discount can amount to up to 75 % of the asset value. Therefore, it is very likely that the liquidation value of BDZ Holding's assets would not have been sufficient to cover the liquidation costs, the salaries of its employees and all its outstanding liabilities Taking 2011 as an example, liquidation costs, salaries of employees and all outstanding liabilities amounted to BGN 778 million whereas the book value of BDZ Holding's assets was BGN 933 million. Consequently, NRIC could realistically expect to recover only a minor fraction of its outstanding claims, if collective insolvency proceedings had been initiated.

(127) Furthermore, the Commission considers, in line with settled case-law, that the costs, together with the length of court proceedings, may influence a creditor's decision whether to proceed with the liquidation of a company ([36]). In this context, the Commission agrees that NRIC had a particular interest in continuing its cooperation with BDZ Holding and its subsidiaries, not only on account of future commercial revenues generated by BDZ Holding but also with the aim of maximising the recovery of the outstanding non-preferential liabilities accumulated until November 2011 instead of initiating the liquidation of the company. The Commission concludes that the

([33]) Judgment of the Court of Justice of 11 July 1996, SFEI and Others, C-39/94, ECLI:EU:C:1996:285, paragraph 60; Judgment of the Court of Justice of 29 April 1999, *Spain* v *Commission*, C-342/96, ECLI:EU:C:1999:210, paragraph 41.

([34]) Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (2016/C 262/01), point 74; Judgment of the Court of Justice of 22 November 2007, *Spain* v *Commission*, C-525/04 P, ECLI:EU:C:2007:698; Judgment of the Court of Justice of 24 January 2013, *Frucona* v *Commission*, C-73/11 P, ECLI:EU:C:2013:32, paragraph 78; Judgment of the Court of Justice of 29 June 1999, DMTransport, C-256/97, ECLI:EU:C:1999:332; Judgment of 30 April 1998,Cityflyer, T-16/96, ECLI:EU:T:1998:78, paragraph 51; Judgment of the Court of Justice of 21 March 2013, *Commission* v *Buczek Automotive and Poland*, C-405/2011, ECLI:EU:C:2013:186, paragraphs 54-60.

([35]) *Frucona* v *Commission*, C-73/11 P, paragraph 78, ECLI:EU:C:2013:32; *Commission* v *Buczek Automotive and Poland*, C-405/2011, ECLI:EU:C:2013:186, paragraph 54-60; Case C-124/10P *European Commission* v *Électricité de France (EDF)*, ECLI:EU:C:2012:318, paragraph 85.

([36]) Judgment of the Court the Justice of 21 March 2013, *Commission* v *Buczek Automotive*, C-405/11 P, ECLI:EU:C:2013:186, paragraph 59.

initiation of lengthy collective insolvency proceedings leading to a forced liquidation of the group with an uncertain and low recovery rate would not have been a valid and realistic option for NRIC with a view to maximising the recovery of its debt claims.

(128) Indeed, the Commission observes that BDZ Holding and its subsidiaries have been regularly serving their debts towards NRIC and NRIC has not been treated differently from other private creditors of the group. Where late payments occurred, BDZ Holding has not been advantaged by the postponement of repayment since late payments to NRIC have attracted a sizeable margin of 1 000 basis points on top of the basis interest rate of the Bulgarian National Bank (see recital 48). By way of illustration, the Commission considers that 1 000 basis points is a proxy of market-conform interest margin on a loan with low quality collateral to a company in financial difficulties, such as BDZ Holding ([37]). Overdue liabilities were repaid through regular direct bank transfers, offsetting of liabilities of NRIC towards BDZ Holding and its subsidiaries and debt-to-asset swaps. For example, between 2011 and 2016 BDZ Holding and its subsidiaries paid an amount of BGN 503 million (EUR 257 million) for services provided by NRIC. Compared with a low likelihood of recuperating a proportion, minor if at all, of NRIC's claims if BDZ Holding had been liquidated, the amount of debt repaid to NRIC since 2011 confirms *a posteriori* that the choice made by NRIC not to enforce its claims was the most rational one.

(129) Moreover, although information is not specific to the pre-accession debt mentioned in the Opening Decision, the Commission notes, for example, with regard to the payment of the liabilities through the debt-to-asset swaps implemented after the Opening Decision, NRIC entered into agreements with BDZ Holding and its subsidiaries on an arm's length basis, as described in recitals 51, 52 and 53, which recognised the overdue debts and thus facilitated their reimbursement.

(130) On the basis of the additional information and supporting evidence provided by Bulgaria and in view of the foregoing, the Commission considers that NRIC has acted as a market economy creditor, and therefore, the postponement of repayment of debts and the arrangements agreed between NRIC and BDZ Holding and its subsidiaries, have not provided the latter with any undue economic advantage, from which they would not have benefited under normal market conditions.

(131) Consequently, the Commission concludes that the manner in which BDZ Holding and its subsidiaries dealt with their overdue debts towards the infrastructure manager (NRIC) before November 2011 did not constitute State aid within the meaning of Article 107(1) of the Treaty.

(132) Since the necessary conditions determining the existence of State aid within the meaning of Article 107(1) of the Treaty are cumulative, its provisions do not apply if one of them is not met. There is therefore no need to assess whether the non-payment by BDZ Holding and its subsidiaries of overdue debts towards NRIC in the past meets the other conditions of Article 107(1) of the Treaty.

6.3. *MEASURE 4: REIMBURSEMENT OF VAT BY THE STATE TO BDZ HOLDING EAD*

(133) The Commission initiated the investigation into Measure 4 because Bulgaria did not clarify the reasons for the reimbursement of VAT and whether it complied with Directive 2006/112/EC. Thus, the Commission considered that the VAT reimbursement could potentially involve State aid according to Article 107(1) of the Treaty. Therefore, the Commission invited Bulgaria to provide further information on the reasons for the VAT reimbursement to BDZ Holding.

(134) After the Opening Decision Bulgaria clarified that Measure 4 concerned the reimbursement of unduly charged and paid VAT amounting to BGN 72 million (EUR 36,7 million) on PSO compensations received from the Ministry of Transport for the period 1 December 2004 to 29 February 2008 (see recitals 55 to 59). Bulgaria clarified further that the administrative error was detected during a revision by the competent national tax authorities in compliance with the applicable provisions of the national legislation. The error was corrected by tax reimbursement decisions number 2900180 of 14 January 2009, 290900153 of 8 July 2009, 100337 of 12 August 2010 and 290100380 of February 2011.

([37]) Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

(135) The Commission notes that not only the granting of positive economic advantages is relevant for the notion of State aid. Relief from economic burdens, such as tax advantages, can also constitute an advantage. It must therefore be examined whether the reimbursement of the VAT on PSO compensations received from the Ministry of Transport provided an economic advantage to BDZ Holding through mitigation of charges normally included in the budget of an undertaking ([38]), or whether the VAT on the PSO compensation was indeed unduly levied. There is no advantage in the case of reimbursement of illegally levied taxes ([39]).

(136) According to Article 73 of Directive 2006/112/EC, the supply of services, including passenger transport services, is subject to VAT and the taxable amount includes everything which constitutes consideration obtained or to be obtained by the supplier, in return for the service provided, either from the customer or a third party, including compensation or subsidies directly linked to the price of the supply. Furthermore, according to Article 132 of that Directive, undertakings entrusted with a PSO do not fall under the exemptions from the VAT.

(137) Therefore, it needs to be assessed whether the PSO compensation received by BDZ Holding was directly linked to the price of the services provided. The PSO compensation was aimed at compensating losses stemming from the provision of the passenger transport service under specific conditions, such as train kilometres, seats, frequencies and other qualitative criteria. In particular, the PSO compensation would be reduced in case of deviations in, inter alia, the kilometres, seats and hours and other qualitative criteria which were determined for the services provided. Therefore, the PSO compensation cannot be regarded as directly linked with the price for the provision of the transport services, but rather as compensation for losses stemming from the discharging of a PSO.

(138) Moreover, the Bulgarian VAT legislation does not provide for PSO compensation related to the coverage of the losses to be subject to VAT. The error was detected by the relevant tax authorities in the wake of an inspection and culminated in several decisions of the tax authorities (see recital 59), which are in accordance with Bulgarian Tax Insurance Procedure Code.

(139) Consequently, the VAT was unduly charged on BDZ Holding's PSO compensation for the period from 1 December 2004 to 29 February 2008. Therefore, the Commission considers that the reimbursement of the unduly levied VAT does not provide an economic advantage to BDZ Holding.

(140) In view of the fact that the necessary conditions determining the existence of State aid within the meaning of Article 107(1) of the Treaty are cumulative, the absence of any one of them is decisive. There is therefore no need to assess whether Measure 4 meets the other conditions of Article 107(1) of the Treaty.

(141) Therefore, the Commission concludes that Measure 4 does not constitute State aid within the meaning of Article 107(1) of the Treaty.

7. **CONCLUSION**

(142) In the light of the withdrawal of the notification regarding the restructuring aid to BDZ Holding (see Measure 1, Section 5), the formal investigation procedure under Article 108(2) of the Treaty in respect of the notified restructuring aid measure should be closed.

(143) With regard to the cancellation of debts of BDZ Holding and its subsidiaries amounting to BGN 223,45 million (EUR 114,25 million) (Measure 2, Section 6.1) constitutes State aid within the meaning of Article 107(1) of the Treaty and satisfies the compatibility conditions in the Railway Guidelines. Therefore, Measure 2 should be declared compatible with the internal market on the basis of Article 107(3)(c) of the Treaty.

([38]) Judgment of the Court of Justice of 15 March 1994, Banco Exterior de España, C-387/92, ECLI:EU:C:1994:100, paragraph 13; Judgment of the Court of Justice of 19 September 2000, *Germany* v *Commission*, C-156/98, ECLI:EU:C:2000:467, paragraph 25; Judgment of the Court of Justice of 19 May 1999, *Italy* v *Commission*, C-6/97, ECLI:EU:C:1999:251, paragraph 15; Judgment of the Court of Justice of 3 March 2005, Heiser, C-172/03, ECLI:EU:C:2005:130, paragraph 36.

([39]) Judgment of the Court of Justice of 27 March 1980, Amministrazione delle finanze dello Stato, 61/79, ECLI:EU:C:1980:100, paragraphs 29 to 32.

(144) With regard to the non-payment of BGN 45 million in overdue debts towards NRIC (Measure 3, Section 6.2), NRIC acted as a market economy creditor. Measure 3 therefore does not constitute State aid.

(145) With regard to the reimbursement of the wrongfully paid VAT (Measure 4, Section 6.3), since the VAT was unduly charged, its reimbursement does not constitute State aid,

HAS ADOPTED THIS DECISION:

Article 1

Following the withdrawal of the notification of restructuring aid by Bulgaria, the formal investigation procedure under Article 108(2) of the Treaty with respect to the notified planned restructuring aid in favour of BDZ Holding EAD SA has become without object and is hereby closed.

Article 2

1. The State aid in favour of BDZ Holding EAD SA in the form of a cancellation of debts amounting to BGN 223 448 801, which Bulgaria is planning to implement, is compatible with the internal market on the basis of Article 107(3) c) of the Treaty. The implementation of the cancellation of debts is accordingly authorised.

2. The manner in which the National Railway Infrastructure Company treated, before November 2011, BGN 45 million in overdue debts owed by BDZ Holding EAD SA, BDZ Passenger EOOD and BDZ Cargo EOOD does not constitute State aid within the meaning of Article 107(1) of the Treaty.

3. The reimbursement of BGN 72 million erroneously paid value added tax does not constitute State aid within the meaning of Article 107(1) of the Treaty.

Article 3

This Decision is addressed to the Republic of Bulgaria.

Done at Brussels, 16 June 2017.

For the Commission
Margrethe VESTAGER
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2017/2373

of 14 December 2017

authorising the placing on the market of hydroxytyrosol as a novel food ingredient under Regulation (EC) No 258/97 of the European Parliament and of the Council

(notified under document number C(2017) 8423)

(Only the Spanish text is authentic)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients ([1]), and in particular Article 7 thereof,

Whereas:

(1) On 12 June 2014, the company Seprox Biotech made a request to the competent authority of Spain to place synthetic hydroxytyrosol ('hydroxytyrosol') on the Union market as a novel food ingredient within the meaning of point (c) of Article 1(2) of Regulation (EC) No 258/97. The target population is the general population excluding children under the age of three years, pregnant women, and lactating women.

(2) On 2 March 2015, the competent authority of Spain issued its initial assessment report. In that report it came to the conclusion that hydroxytyrosol meets the criteria for novel food ingredient set out in Article 3(1) of Regulation (EC) No 258/97.

(3) On 10 April 2015, the Commission forwarded the initial assessment report to the other Member States.

(4) Reasoned objections were raised by other Member States within the 60-day period laid down in the first subparagraph of Article 6(4) of Regulation (EC) No 258/97.

(5) On 19 November 2015, the Commission consulted the European Food Safety Authority (EFSA) asking it to carry out an additional assessment for hydroxytyrosol as novel food ingredient in accordance with Regulation (EC) No 258/97.

(6) On 31 January 2017, EFSA in its 'Scientific Opinion on the safety of hydroxytyrosol as a novel food pursuant to Regulation (EC) No 258/97' ([2]) concluded that hydroxytyrosol is safe for the proposed uses and use levels.

(7) That opinion gives sufficient grounds to establish that hydroxytyrosol in the proposed uses and use levels complies with the criteria laid down in Article 3(1) of Regulation (EC) No 258/97.

(8) Taking into account that the request for authorisation excludes certain groups of population and imposes certain conditions for the technical performance of foods containing hydroxytyrosol when heated, food products containing hydroxytyrosol should be appropriately labelled.

(9) Regulation (EC) No 1925/2006 of the European Parliament and of the Council ([3]) lays down requirements on the addition of vitamins and minerals and of certain other substances to foods. The use of hydroxytyrosol should be authorised without prejudice to that Regulation.

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

([1]) OJ L 43, 14.2.1997, p. 1.
([2]) EFSA Journal 2017;15(3):4728.
([3]) Regulation (EC) No 1925/2006 of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods (OJ L 404, 30.12.2006, p. 26).

HAS ADOPTED THIS DECISION:

Article 1

Without prejudice to Regulation (EC) No 1925/2006, hydroxytyrosol as specified in Annex I to this Decision may be placed on the Union market as a novel food ingredient intended for the general population, excluding children under the age of three years, pregnant women, and lactating women, for the uses defined and at the maximum levels established in Annex II to this Decision.

Article 2

1. The designation of hydroxytyrosol authorised by this Decision for the labelling of the food products shall be 'hydroxytyrosol'.

2. The labelling of the food products containing hydroxytyrosol shall bear the following statements:

(a) 'This food product should not be consumed by children under the age of three years, pregnant women, and lactating women;

(b) This food product should not be used for cooking, baking or frying'.

Article 3

This Decision is addressed to Seprox Biotech, Centro Empresarial Ingenia N-8, Parque Tecnológico Fuente Álamo, 30320 Fuente Álamo, Murcia, Spain.

Done at Brussels, 14 December 2017.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX I

SPECIFICATIONS OF HYDROXYTYROSOL

Definition:

Chemical name	IUPAC name: 4-(2-hydroxyethyl)-benzene-1,2-diol Synonyms: 3-Hydroxytyrosol 3,4-dihydroxyphenylethanol Dihydroxyphenylethanol 2-(3,4-Di-hydroxyphenyl)-ethanol
Chemical formula	$C_8H_{10}O_3$
Molecular mass	154,16 Da
CAS No.	10597-60-1

Description: Hydroxytyrosol is a pale-yellow viscous liquid.

Specifications:

Parameter	Specifications
Description	Slightly yellow viscous liquid
Moisture	≤ 4,0 %
Odour	Characteristic
Taste	Slightly bitter
Solubility (water)	Miscible with water
pH	3,5-4,5
Refractive Index (25 °C)	1,571-1,575
Hydroxytyrosol and organic by-products of the chemical synthesis	
Hydroxytyrosol	≥ 99,0 %
Acetic acid	≤ 0,4 %
Hydroxytyrosol acetate	≤ 0,3 %
Sum of homovanillic alcohol, iso-homovanillic alcohol, and 3-methoxy-4-hydroxyphenylglycol	≤ 0,3 %
Heavy Metals	
Lead	≤ 0,03 mg/kg
Cadmium	≤ 0,01 mg/kg
Mercury	≤ 0,01 mg/kg
Residual solvents	
Ethyl acetate	≤ 25,0 mg/kg
Isopropanol	≤ 2,50 mg/kg
Methanol	≤ 2,00 mg/kg
Tetrahydrofuran	≤ 0,01 mg/kg

ANNEX II

Authorised uses of hydroxytyrosol

Food category	Maximum level
Fish and vegetable oils, (except olive oils and olive pomace oils as defined in Part VIII of Annex VII of Regulation (EU) No 1308/2013 ([1])), placed as such on the market	0,215 g/kg
Spreadable fats as defined in Part VII of Annex VII of Regulation (EU) No 1308/2013, placed as such on the market	0,175 g/kg

([1]) Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulation (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) 1234/2007 (OJ L 347, 20.12.2013, p. 671).

COMMISSION IMPLEMENTING DECISION (EU) 2017/2374

of 15 December 2017

setting out conditions for movement, storage and processing of certain fruits and their hybrids originating in third countries to prevent the introduction into the Union of certain harmful organisms

(notified under document C(2017) 8395)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ([1]), and in particular points 16.2(e) and 16.4(e) of Section I of Part A of Annex IV thereto,

Whereas:

(1) Annex IV to Directive 2000/29/EC determines the special requirements which must be complied with for the introduction and movement of plants and plant products into and within all Member States.

(2) Commission Implementing Directive (EU) 2017/1279 ([2]) introduced points 16.2(e) and 16.4(e) in Section I of Part A of Annex IV to Directive 2000/29/EC. Those points lay down such special requirements in respect of certain fruits (fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf., *Microcitrus* Swingle, *Naringi* Adans., *Swinglea* Merr., and their hybrids) destined for industrial processing (hereinafter: 'the specified fruits'). Pursuant to those points, the Commission is to adopt conditions for the movement within the Union, storage and processing of those fruits.

(3) In order to allow the responsible official bodies and the professional operators to comply with the conditions applicable to the specified fruits, it is appropriate to require the notification of details of the specified fruits before those fruits may be moved within the Union.

(4) The movement of the specified fruits within the Union should be subject to the supervision of the responsible official bodies to ensure effective control over the compliance with the relevant conditions.

(5) Specific conditions should be established for the industrial processing of the specified fruits to ensure the phytosanitary protection of the Union territory from harmful organisms. Those conditions should include provisions on the premises, waste and by-products and record keeping.

(6) In order to ensure the phytosanitary protection of the Union and control, if needed, of the storage activity, the specified fruits should be stored in a registered facility approved for that purpose by the Member State where the facility is situated and in a way which prevents any potential risk of spreading of the specified organisms. Specific conditions should be established concerning storage, to ensure effective traceability of those products, control of that activity and phytosanitary protection of the Union territory.

(7) Since Member States are to apply their national provisions necessary to comply with Directive (EU) 2017/1279 from 1 January 2018, this Decision should start to apply on the same date.

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

([1]) OJ L 169, 10.7.2000, p. 1.

([2]) Commission Implementing Directive (EU) 2017/1279 of 14 July 2017 amending Annexes I to V to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ L 184, 15.7.2017, p. 33).

HAS ADOPTED THIS DECISION:

Article 1

Subject matter

This Decision lays down conditions for the movement, storage and processing of fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf., *Microcitrus* Swingle, *Naringi* Adans. and *Swinglea* Merr. and their hybrids, originating in third countries for the purposes of points 16.2(e) and 16.4(e) of Section I of Part A of Annex IV to Directive 2000/29/EC.

Article 2

Definitions

For the purpose of this Decision, the following definitions shall apply:

(a) 'specified organisms' means *Phyllosticta citricarpa* (McAlpine) Van der Aa, *Xanthomonas citri* pv. *citri*, and *Xanthomonas citri* pv. *aurantifolii*;

(b) 'specified fruits' means fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf., *Microcitrus* Swingle, *Naringi* Adans. and *Swinglea* Merr. and their hybrids, originating in third countries.

Article 3

Movement of the specified fruits within the Union

1. The specified fruits may only be moved within the Union if the importer has notified details of each container to the responsible official body in the Member State in which the point of entry is situated and, where applicable, to the responsible official body of the Member State where the industrial processing will take place.

That notification shall include the following information:

(a) the volume of the specified fruits;

(b) the identification numbers of the containers;

(c) the expected date of introduction and the point of entry into the Union;

(d) the names, addresses and the locations of the premises referred to in Article 4.

2. The importers shall inform the responsible official bodies referred to in paragraph 1 of any changes to the information included in that notification, as soon as they are known.

3. Specified fruits may only be moved to a Member State, other than the Member State through which they have been introduced into the Union, if the responsible official bodies of the Member States concerned agree that such movement may take place.

4. The specified fruits shall be directly and without delay transported into the processing premises referred to in Article 4 or to a storage facility as referred to in Article 5. Movements of the specified fruits shall be under the supervision of the responsible official body of the Member State where that movement is taking place.

5. The Member States concerned with the movements shall cooperate to ensure that this Article is complied with.

Article 4

Requirements concerning industrial processing of the specified fruits

1. The specified fruits shall be processed at premises situated in an area where no specified fruit is produced. The premises shall be officially registered and approved for that purpose by the responsible official body of the Member State in which the premises are situated.

2. Waste and by-products of the specified fruits shall be used or destroyed in an area where no specified fruit is produced, located within the Member State where those fruits have been processed.

3. The waste and by-products shall be destroyed by any technically justified method approved by the responsible official body of the Member State where the specified fruits have been processed and under the supervision of that official body, in a way to prevent any potential risk for spreading the specified organisms.

4. The processors shall keep records for at least 3 years of the processed specified fruits and make them available on request to the responsible official body of the Member State where the processing takes place. Those records shall indicate the numbers and distinguishing marks of containers, the volumes of the specified fruits received and the volumes and other detailed information on the use or destruction of waste and by-products.

Article 5

Requirements concerning storage of the specified fruits

1. Where the specified fruits are not processed immediately, they shall be stored at a facility registered and approved for that purpose by the responsible official body of the Member State where the facility is situated.

2. The batches of the specified fruits shall remain separately identifiable.

3. The specified fruits shall be stored in a way which prevents any potential risk of spreading of the specified organisms.

Article 6

Date of application

This Decision shall apply from 1 January 2018.

Article 7

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 15 December 2017.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2017/2375

of 15 December 2017

authorising the placing on the market of *N*-acetyl-D-neuraminic acid as a novel food ingredient under Regulation (EC) No 258/97 of the European Parliament and of the Council

(notified under document C(2017) 8431)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients ([1]), and in particular Article 7 thereof,

Whereas:

(1) On 22 September 2015, the company Glycom A/S made a request to the competent authority of Ireland to place synthetic *N*-acetyl-D-neuraminic acid (*N*-acetyl-D-neuraminic acid (NANA)) on the Union market as a novel food ingredient within the meaning of point (c) of Article 1(2) of Regulation (EC) No 258/97.

(2) On 8 March 2016, the competent authority of Ireland issued its initial assessment report. In that report it came to the conclusion that *N*-acetyl-D-neuraminic acid meets the criteria for novel food ingredient set out in Article 3(1) of Regulation (EC) No 258/97.

(3) On 15 March 2016, the Commission forwarded the initial assessment report to the other Member States.

(4) Reasoned objections were raised by other Member States within the 60-day period laid down in the first sub-paragraph of Article 6(4) of Regulation (EC) No 258/97.

(5) On 14 July 2016, the Commission consulted the European Food Safety Authority (EFSA) asking it to carry out an additional assessment for *N*-acetyl-D-neuraminic acid as a novel food ingredient in accordance with Regulation (EC) No 258/97.

(6) On 28 June 2017, EFSA in its 'Scientific Opinion on the safety of *N*-acetyl-D-neuraminic acid as a novel food pursuant to Regulation (EC) No 258/97' ([2]) concluded that *N*-acetyl-D-neuraminic acid is safe when added to foods other than food supplements at the proposed uses and use levels for the general population. For food supplements EFSA established that N-acetyl-D-neuraminic acid is safe at the proposed uses and use levels for individuals above 10 years of age and is also safe for infants below 10 years of age, provided that the combined exposure from different sources does not exceed 11 mg/kg bw.

(7) Therefore, the EFSA opinion gives sufficient grounds to establish that *N*-acetyl-D-neuraminic acid in the proposed uses and use levels for the general population complies with the criteria laid down in Article 3(1) of Regulation (EC) No 258/97. Furthermore, the opinion also gives sufficient grounds to establish that *N*-acetyl-D-neuraminic acid in the proposed uses and use levels, when used as an ingredient in food supplements, complies with the criteria laid down in Article 3(1) of Regulation (EC) No 258/97 provided that adequate labelling ensures that the threshold of 11 mg/kg bw is not exceeded by combined exposure from different sources for infants below 10 years of age.

([1]) OJ L 43, 14.2.1997, p. 1.
([2]) EFSA Journal 2017;15(7):4918.

(8) Labelling requirements ensuring that consumers of food supplements are informed about a number of particulars are applicable to products containing *N*-acetyl-D-neuraminic acid already by virtue of Directive 2002/46/EC of the European Parliament and of the Council ([1]), Regulation (EU) No 609/2013 of the European Parliament and of the Council ([2]) and Regulation (EU) No 1169/2011 of the European Parliament and of the Council ([3]). In addition, specific provisions on labelling are required to ensure the safety of food supplements containing N-acetyl-D-neuraminic acid when consumed by infants, young children and children under 10 years of age in combination with breast milk or other foods with added N-acetyl-D-neuraminic acid.

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

HAS ADOPTED THIS DECISION:

Article 1

N-acetyl-D-neuraminic acid as specified in Annex I to this Decision may be placed on the Union market as a novel food ingredient for the uses defined and at the maximum levels established in Annex II to this Decision.

Article 2

1. The designation of *N*-acetyl-D-neuraminic acid authorised by this Decision on the labelling of the foodstuffs shall be '*N*-acetyl-D-neuraminic acid'.

2. Food supplements containing *N*-acetyl-D-neuraminic acid shall be labelled in line with the presentation requirements applied under Regulation (EU) No 1169/2011 with a statement that the food supplement should not be given to infants, young children and children under 10 years of age where they consume breast milk or other foods with added *N*-acetyl-D-neuraminic acid within the same twenty four hour period.

Article 3

This Decision is addressed to Glycom A/S, Kogle Allé 4, 2970 Hørsholm, Denmark.

Done at Brussels, 15 December 2017.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

([1]) Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ L 183, 12.7.2002, p. 51).

([2]) Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 (OJ L 181, 29.6.2013, p. 35).

([3]) Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18).

ANNEX I

SPECIFICATIONS OF N-ACETYL-D-NEURAMINIC ACID (DIHYDRATE)

Definition:

Chemical name	IUPAC names: *N*-Acetyl-D-neuraminic acid (dihydrate) 5-Acetamido-3,5-dideoxy-D-glycero-D-galacto-non-2-ulopyranosonic acid (dihydrate), Synonyms: Sialic acid (dihydrate)
Chemical formula	$C_{11}H_{19}NO_9$ (acid) $C_{11}H_{23}NO_{11}$ ($C_{11}H_{19}NO_9$ *$2H_2O$) (dihydrate)
Molecular mass	309,3 Da (acid) 345,3 (309,3 + 36,0) (dihydrate)
CAS No.	131-48-6 (free acid) 50795-27-2 (dihydrate)

Description: *N*-Acetyl-D-neuraminic acid is a white to off-white crystalline powder.

Specifications:

Parameter	Specifications
Description	white to off-white crystalline powder
pH (20 °C, 5 % solution)	1,7 – 2,5
N-Acetyl-D-neuraminic acid (dihydrate)	> 97,0 %
Water (dihydrate calculates to 10,4 %)	≤ 12,5 % (w/w)
Ash, sulfated	< 0,2 % (w/w)
Acetic acid (as free acid and/or sodium acetate)	< 0,5 % (w/w)
Heavy Metals	
Iron	< 20,0 mg/kg
Lead	< 0,1 mg/kg
Residual proteins	< 0,01 % (w/w)
Residual solvents	
2-Propanol	< 0,1 % (w/w)
Acetone	< 0,1 % (w/w)
Ethyl acetate	< 0,1 % (w/w)
Microbiological specifications	
Salmonella	Absent in 25 g
Aerobic mesophilic total count	< 500 CFU/g
Enterobacteriaceae	Absent in 10 g
Cronobacter (*Enterobacter*) *sakazakii*	Absent in 10 g

Parameter	Specifications
Listeria monocytogenes	Absent in 25 g
Bacillus cereus	< 50 CFU/g
Yeasts	< 10 CFU/g
Moulds	< 10 CFU/g
Residual endotoxins	< 10 EU/mg

CFU: Colony Forming Units; EU: Endotoxin Units.

ANNEX II

Authorised uses of N-Acetyl-D-neuraminic acid

Food category	Maximum level
Infant and follow-on formulae as defined by Regulation (EU) No 609/2013	0,05 g/L of reconstituted formula
Processed cereal-based foods and baby foods for infants and young children as defined by Regulation (EU) No 609/2013	0,05 g/kg for solid foods
Foods for special medical purposes for infants and young children as defined by Regulation (EU) No 609/2013	In accordance with the particular nutritional requirements of the infants and young children for whom the products are intended but in any case not higher than the maximum levels specified for the category mentioned in Annex II corresponding to the products,
Total diet replacement foods for weight control as defined by Regulation (EU) No 609/2013	0,2 g/L (drinks) 1,7 g/kg (bars)
Foods bearing statements on the absence or reduced presence of gluten in accordance with the requirements of Commission Implementing Regulation (EU) No 828/2014 [1]	1,25 g/kg
Unflavoured pasteurised and sterilised (including UHT) milk-based products	0,05 g/L
Unflavoured fermented milk-based products, heat treated after fermentation, flavoured fermented milk products including heat-treated products	0,05 g/L (beverages) 0,4 g/kg (solids)
Dairy analogues, including beverage whiteners	0,05 g/L (beverages) 0,25 g/kg (solids)
Cereal bars	0,5 g/kg
Table top sweeteners	8,3 g/kg
Fruit and vegetable-based drinks	0,05 g/L
Flavoured drinks	0,05 g/L
Speciality coffee, tea, herbal and fruit infusions, chicory; tea, herbal and fruit infusions and chicory extracts; tea, plant, fruit and cereal preparations for infusions	0,2 g/kg
Food supplements as defined in Directive 2002/46/EC	300 mg/day for general population older than 10 years 55 mg/day for infants 130 mg/day for young children 250 mg/day for children between 3 to 10 years of age

[1] Commission Implementing Regulation (EU) No 828/2014 of 30 July 2014 on the requirements for the provision of information to consumers on the absence or reduced presence of gluten in food (OJ L 228, 31.7.2014, p. 5).

COMMISSION IMPLEMENTING DECISION (EU) 2017/2376

of 15 December 2017

amending Implementing Decision (EU) 2015/348 as regards the consistency of the revised targets in the key performance area of cost-efficiency included in the amended national or functional airspace block plans submitted by Malta, Bulgaria and Poland

(notified under document C(2017) 8433)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 549/2004 of the European Parliament and the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) ([1]), and in particular Article 11(3)(c) thereof,

Having regard to Commission Implementing Regulation (EU) No 390/2013 of 3 May 2013 laying down a performance scheme for air navigation services and network functions ([2]), and in particular Article 14(2) thereof,

Whereas:

(1) In accordance with Regulation (EC) No 549/2004, the Member States are to adopt national or functional airspace block ('FAB') plans, including binding national targets or targets at the level of FABs, ensuring consistency with the Union-wide performance targets. Regulation (EC) No 549/2004 also provides that the Commission is to assess the consistency of those targets on the basis of the assessment criteria referred to in point (d) of Article 11(6) of that Regulation. Detailed rules in this regard have been set out in Implementing Regulation (EU) No 390/2013.

(2) Following the assessment of the performance plans, the Commission adopted Implementing Decision (EU) 2015/348 ([3]) which established, inter alia, that the targets in the key performance area of cost-efficiency included in the performance plans submitted by Malta, Bulgaria and Poland were consistent with the Union-wide performance targets for the second reference period (2015-2019).

(3) The Commission subsequently adopted Commission Implementing Decision (EU) 2017/1985 ([4]), allowing those Member States, upon their request, to revise their targets in the key performance area of cost-efficiency for the years 2017, 2018 and 2019, in accordance with Article 17(1) of Implementing Regulation (EU) No 390/2013.

(4) On that basis, Malta, Bulgaria and Poland each revised those targets and amended their performance plans accordingly and submitted them to the Commission with the request to allow for the revision in 2016.

(5) The Commission assessed those amended plans and, in particular, the revised targets, in accordance with Article 14 of Implementing Regulation (EU) No 390/2013. The consistency of the targets in the key performance area of cost-efficiency, expressed in *en route* determined unit costs, with the Union-wide targets has been assessed in accordance with the principles laid down in point 5, in conjunction with point 1, of Annex IV to Implementing Regulation (EU) No 390/2013, by taking account of, in particular, the trend of *en route* determined unit costs over the second reference period in relation to the targeted reduction of 3,3 % per year on average and over the combined period of the first and the second reference period (2012-2019) in relation to the targeted reduction of 1,7 % per year on average, as well as the level of *en route* determined unit costs in comparison to Member States having a similar operational and economic environment.

([1]) OJ L 96, 31.3.2004, p. 1.
([2]) OJ L 128, 9.5.2013, p. 1.
([3]) Commission Implementing Decision (EU) 2015/348 of 2 March 2015 concerning the consistency of certain targets included in the national or functional airspace block plans submitted pursuant to Regulation (EC) No 549/2004 of the European Parliament and of the Council with the Union-wide performance targets for the second reference period (OJ L 60, 4.3.2015, p. 55).
([4]) Commission Implementing Decision (EU) 2017/1985 of 31 October 2017 allowing targets in the key performance area of cost-efficiency for the years 2017, 2018 and 2019 for air navigation services of Malta, Bulgaria, and Poland to be revised in accordance with Article 17(1) of Implementing Regulation (EU) No 390/2013 (OJ L 287, 4.11.2017, p. 28).

(6) As regards Malta, the assessment showed that the revised targets are based on a planned reduction of its *en route* determined unit costs over the second reference period by 3 % per year on average. This is marginally below the targeted reduction of the average Union-wide *en route* determined unit costs over that period. However, over the combined period of the first and the second reference period the planned *en route* determined unit costs decrease at a higher rate (– 4,6 %) than the the Union-wide target. Furthermore, Malta's revised target for 2019 is based on planned *en route* determined unit costs that are significantly below (40,4 %) the average *en route* determined unit costs of Member States having a similar operational and economic environment to the one of Malta. The Commission therefore considers that the revised targets of Malta for the years 2017, 2018 and 2019 are consistent with the Union-wide targets in the key performance area of cost-efficiency for the second reference period.

(7) As regards Bulgaria, the assessment showed that the revised targets are based on a planned reduction of its *en route* determined unit costs over the second reference period by 1,1 % per year on average. This is below the targeted reduction of the average Union-wide *en route* determined unit costs over that period. However, over the combined period of the first and the second reference period the planned *en route* determined unit costs decrease at a higher rate (– 2,3 %) than the Union-wide target. Furthermore, Bulgaria's revised target for 2019 is based on planned *en route* determined unit costs that are below (3,0 %) the average *en route* determined unit costs of Member States having a similar operational and economic environment to the one of Bulgaria. The Commission therefore considers that the revised targets of Bulgaria for the years 2017, 2018 and 2019 are consistent with the Union-wide targets in the key performance area of cost-efficiency for the second reference period.

(8) As regards Poland, the assessment showed that the revised targets are based on a planned reduction of its *en route* determined unit costs over the second reference period by 0,1 % per year on average. This is below the targeted reduction of the average Union-wide *en route* determined unit costs over that period. Over the combined period of the first and the second reference period the planned *en route* determined unit costs increase (+ 1,4 % per year on average). However, Poland's revised target for 2019 is based on planned *en route* determined unit costs that are significantly below (14,9 %) the average *en route* determined unit costs of Member States having a similar operational and economic environment to the one of Poland. Considering that favourable level of *en route* determined unit costs, and taking into account the specific circumstances which explain the unfavourable trend of *en route* determined unit costs, notably the taking of necessary measures related to safety, the Commission considers that, on balance, the revised targets of Poland for the years 2017, 2018 and 2019 are consistent with the Union-wide targets in the key performance area of cost-efficiency for the second reference period.

(9) Implementing Decision (EU) 2015/348 should therefore be amended, so as to take account of the revised targets of Bulgaria, Malta and Poland.

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Implementing Decision (EU) 2015/348 is replaced by the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 15 December 2017.

For the Commission
Violeta BULC
Member of the Commission

ANNEX

'*ANNEX*

Performance targets in the key performance areas of safety, environment, capacity and cost-efficiency included in the national or functional airspace block plans submitted pursuant to Regulation (EC) No 549/2004 found to be consistent with the Union-wide performance targets for the second reference period

KEY PERFORMANCE AREA OF SAFETY

Effectiveness of Safety Management (EOSM) and the application of the severity classification based on the Risk Analysis Tool (RAT) methodology

MEMBER STATE	FAB	EOSM			ATM Ground Level % (RAT)						ATM overall Level % (RAT)					
		STATE Level	ANSP Level		2017			2019			2017			2019		
			SC	Other MO	SMI	RI's	ATM-S	SMI	RI's	ATM-S	SMI	RI's	ATM-S	SMI	RI's	ATM-S
Austria	FAB CE	C	D	D	94,17	93,33	80	100	100	100	80	80	80	80	80	100
Croatia																
Czech republic																
Hungary																
Slovak Republic																
Slovenia																
Ireland	UK — IR	C	C	D	80	80	80	100	100	100	80	80	80	80	80	100
United Kingdom																
Belgium/Lux	FAB EC	C	C	D	≥ 80	≥ 80	≥ 80	100	100	100	≥ 80	≥ 80	≥ 80	≥ 80	≥ 80	100
France																
Germany																
The Netherlands																
[Switzerland]																
Poland	Baltic	C	C	D	≥ 80	≥ 80	≥ 80	100	100	100	≥ 80	≥ 80	≥ 80	90	90	100
Lithuania																
Cyprus	Blue Med	C	C	D	80	80	80	100	100	100	80	80	80	95	95	100
Greece																
Italy																
Malta																

MEMBER STATE	FAB	EOSM			ATM Ground Level % (RAT)						ATM overall Level % (RAT)					
		STATE Level	ANSP Level		2017			2019			2017			2019		
			SC	Other MO	SMI	RI's	ATM-S	SMI	RI's	ATM-S	SMI	RI's	ATM-S	SMI	RI's	ATM-S
Bulgaria Romania	Danube	C	C	D	90	90	80	100	100	100	80	85	80	90	90	100
Denmark Sweden	DK — SE	C	C	D	80	80	80	100	100	100	80	80	80	80	80	100
Estonia Finland Latvia *[Norway]*	NEFAB	C	C	D	95	95	85	100	100	100	90	90	85	100	100	100
Portugal Spain	SW	C	D	D	90	90	90	100	100	100	80	80	90	80	80	100

Abbreviations:

"SC": Management objective "safety culture" as referred to in point 1.1(a) of Section 2 of Annex I to Implementing Regulation (EU) No 390/2013

"other MO": Management objectives as listed in point 1.1(a) of Section 2 of Annex I to Implementing Regulation (EU) No 390/2013 other than "safety culture"

"RIs": Runway incursions

"SMI": Separation minima infringements

"ATM-S": ATM-specific occurrences

KEY PERFORMANCE AREA OF ENVIRONMENT

Horizontal *en route* flight efficiency of the actual trajectory

MEMBER STATE	FAB	FAB TARGET ENVIRONMENT (%)
		2019
Austria Croatia Czech Republic Hungary Slovak Republic Slovenia	FAB CE	1,81
Ireland United Kingdom	UK — IR	2,99

MEMBER STATE	FAB	FAB TARGET ENVIRONMENT (%)
		2019
Belgium/Lux	FAB EC	2,96
France		
Germany		
The Netherlands		
[Switzerland]		
Poland	Baltic	1,36
Lithuania		
Cyprus	Blue Med	2,45
Greece		
Italy		
Malta		
Bulgaria	Danube	1,37
Romania		
Denmark	DK — SE	1,19
Sweden		
Estonia	NEFAB	1,22
Finland		
Latvia		
[Norway]		
Portugal	SW	3,28
Spain		

KEY PERFORMANCE AREA OF CAPACITY

***En route* Air Traffic Flow Management (ATFM) delay in min/flight**

MEMBER STATE	FAB	FAB TARGET EN-ROUTE CAPACITY				
		2015	2016	2017	2018	2019
Ireland	UK — IR	0,25	0,26	0,26	0,26	0,26
United Kingdom						
Poland	Baltic	0,21	0,21	0,21	0,22	0,22
Lithuania						

MEMBER STATE	FAB	FAB TARGET EN-ROUTE CAPACITY				
		2015	2016	2017	2018	2019
Denmark	DK — SE	0,10	0,10	0,10	0,09	0,09
Sweden						
Estonia	NEFAB	0,12	0,12	0,13	0,13	0,13
Finland						
Latvia						
[Norway]						

KEY PERFORMANCE AREA OF COST-EFFICIENCY

Legend:

Key	Item	Units
(A)	Total *en route* Determined Costs	(in nominal terms and in national currency)
(B)	Inflation rate	(%)
(C)	Inflation index	(100 = 2009)
(D)	Total *en route* Determined Costs	(in real 2009 prices and in national currency)
(E)	Total *en route* Services Units	(TSUs)
(F)	*En route* Determined Unit Cost (DUC)	(in real 2009 prices and in national currency)

BALTIC FAB

Charging Zone: Lithuania — Currency: EUR

	2015	2016	2017	2018	2019
(A)	23 316 993	23 342 321	24 186 978	25 093 574	25 748 766
(B)	1,7 %	2,2 %	2,5 %	2,2 %	2,2 %
(C)	112,9	115,4	118,4	121,0	123,7
(D)	20 652 919	20 223 855	20 434 886	20 737 566	20 814 037
(E)	490 928	508 601	524 877	541 672	559 548
(F)	**42,07**	**39,76**	**38,93**	**38,28**	**37,20**

Charging Zone: Poland — Currency: PLN

	2015	2016	2017	2018	2019
(A)	658 592 342	687 375 337	807 874 605	840 660 505	795 098 157
(B)	2,4 %	2,5 %	1,1 %	1,9 %	2,4 %

	2015	2016	2017	2018	2019
(C)	115,9	118,7	111,3	113,4	116,1
(D)	568 474 758	578 848 069	725 678 008	741 339 221	685 060 982
(E)	4 362 840	4 544 000	4 299 929	4 419 000	4 560 000
(F)	**130,30**	**127,39**	**168,77**	**167,76**	**150,23**

BLUE MED FAB

Charging Zone: Cyprus — Currency: EUR

	2015	2016	2017	2018	2019
(A)	52 708 045	53 598 493	55 916 691	57 610 277	59 360 816
(B)	1,6 %	1,7 %	1,7 %	1,8 %	2,0 %
(C)	112,9	114,8	116,8	118,9	121,3
(D)	46 681 639	46 676 772	47 881 610	48 459 560	48 952 987
(E)	1 395 081	1 425 773	1 457 140	1 489 197	1 521 959
(F)	**33,46**	**32,74**	**32,86**	**32,54**	**32,16**

Charging Zone: Greece — Currency: EUR

	2015	2016	2017	2018	2019
(A)	147 841 464	151 226 557	155 317 991	156 939 780	164 629 376
(B)	0,3 %	1,1 %	1,2 %	1,3 %	1,6 %
(C)	107,9	109,1	110,4	111,8	113,6
(D)	136 958 572	138 630 543	140 635 901	140 350 008	144 936 752
(E)	4 231 888	4 318 281	4 404 929	4 492 622	4 599 834
(F)	**32,36**	**32,10**	**31,93**	**31,24**	**31,51**

Charging Zone: Malta — Currency: EUR

	2015	2016	2017	2018	2019
(A)	17 736 060	19 082 057	20 694 940	21 720 523	22 752 314
(B)	1,7 %	1,8 %	1,7 %	1,7 %	1,7 %
(C)	111,9	114,0	115,9	117,9	119,9
(D)	15 844 908	16 745 957	17 857 802	18 429 483	18 982 242
(E)	609 000	621 000	880 000	933 000	990 000
(F)	**26,02**	**26,97**	**20,29**	**19,75**	**19,17**

DANUBE FAB

Charging Zone: Bulgaria — Currency: BGN

	2015	2016	2017	2018	2019
(A)	166 771 377	172 805 739	219 350 068	228 283 095	232 773 544
(B)	0,9 %	1,8 %	1,1 %	1,2 %	1,4 %
(C)	110,1	112,1	106,9	108,1	109,7
(D)	151 495 007	154 219 178	205 254 233	211 080 244	212 260 655
(E)	2 627 000	2 667 000	3 439 000	3 611 824	3 745 039
(F)	**57,67**	**57,82**	**59,68**	**58,44**	**56,68**

Charging Zone: Romania — Currency: RON

	2015	2016	2017	2018	2019
(A)	690 507 397	704 650 329	718 659 958	735 119 853	753 216 461
(B)	3,1 %	3,0 %	2,8 %	2,8 %	2,7 %
(C)	126,9	130,7	134,4	138,2	141,9
(D)	543 963 841	538 937 162	534 681 066	532 030 334	530 795 951
(E)	4 012 887	4 117 019	4 219 063	4 317 155	4 441 542
(F)	**135,55**	**130,90**	**126,73**	**123,24**	**119,51**

DENMARK-SWEDEN FAB

Charging Zone: Denmark — Currency: DKK

	2015	2016	2017	2018	2019
(A)	726 872 134	724 495 393	735 983 926	749 032 040	750 157 741
(B)	1,8 %	2,2 %	2,2 %	2,2 %	2,2 %
(C)	111,6	114,1	116,6	119,1	121,8
(D)	651 263 654	635 160 606	631 342 985	628 704 443	616 095 213
(E)	1 553 000	1 571 000	1 589 000	1 608 000	1 628 000
(F)	**419,36**	**404,30**	**397,32**	**390,99**	**378,44**

Charging Zone: Sweden — Currency: SEK

	2015	2016	2017	2018	2019
(A)	1 951 544 485	1 974 263 091	1 970 314 688	1 964 628 986	1 958 887 595
(B)	1,6 %	2,4 %	2,1 %	2,0 %	2,0 %
(C)	106,1	108,6	110,9	113,1	115,4

	2015	2016	2017	2018	2019
(D)	1 840 204 091	1 817 994 673	1 777 040 937	1 737 169 570	1 698 130 296
(E)	3 257 000	3 303 000	3 341 000	3 383 000	3 425 000
(F)	**565,00**	**550,41**	**531,89**	**513,50**	**495,80**

FAB CE

Charging Zone: Croatia — Currency: HRK

	2015	2016	2017	2018	2019
(A)	670 066 531	687 516 987	691 440 691	687 394 177	674 346 800
(B)	0,2 %	1,0 %	1,5 %	2,5 %	2,5 %
(C)	109,2	110,4	112,0	114,8	117,7
(D)	613 414 184	622 991 131	617 287 272	598 707 050	573 017 597
(E)	1 763 000	1 783 000	1 808 000	1 863 185	1 926 787
(F)	**347,94**	**349,41**	**341,42**	**321,34**	**297,40**

Charging Zone: Czech Republic — Currency: CZK

	2015	2016	2017	2018	2019
(A)	3 022 287 900	3 087 882 700	3 126 037 100	3 149 817 800	3 102 014 900
(B)	1,9 %	2,0 %	2,0 %	2,0 %	2,0 %
(C)	111,5	113,7	116,0	118,3	120,7
(D)	2 710 775 667	2 715 303 433	2 694 955 079	2 662 212 166	2 570 401 338
(E)	2 548 000	2 637 000	2 717 000	2 795 000	2 881 000
(F)	**1 063,88**	**1 029,69**	**991,89**	**952,49**	**892,19**

Charging Zone: Hungary — Currency: HUF

	2015	2016	2017	2018	2019
(A)	28 133 097 383	29 114 984 951	29 632 945 277	30 406 204 408	31 345 254 629
(B)	1,8 %	3,0 %	3,0 %	3,0 %	3,0 %
(C)	119,3	122,8	126,5	130,3	134,2
(D)	23 587 547 923	23 699 795 100	23 418 852 735	23 330 056 076	23 350 067 982
(E)	2 457 201	2 364 165	2 413 812	2 453 639	2 512 526
(F)	**9 599,36**	**10 024,60**	**9 702,02**	**9 508,35**	**9 293,46**

Charging Zone: Slovenia — Currency: EUR

	2015	2016	2017	2018	2019
(A)	32 094 283	33 168 798	33 870 218	34 392 801	35 029 005
(B)	1,6 %	2,1 %	1,9 %	2,0 %	2,0 %
(C)	111,9	114,3	116,5	118,8	121,2
(D)	28 675 840	29 018 678	29 079 819	28 949 500	28 906 876
(E)	481 500	499 637	514 217	529 770	546 470
(F)	**59,56**	**58,08**	**56,55**	**54,65**	**52,90**

NEFAB

Charging Zone: Estonia — Currency: EUR

	2015	2016	2017	2018	2019
(A)	23 098 175	24 757 151	25 985 553	27 073 003	28 182 980
(B)	3,0 %	3,1 %	3,0 %	3,0 %	3,0 %
(C)	123,3	127,1	130,9	134,8	138,9
(D)	18 739 585	19 481 586	19 852 645	20 081 013	20 295 459
(E)	774 641	801 575	827 117	855 350	885 643
(F)	**24,19**	**24,30**	**24,00**	**23,48**	**22,92**

Charging Zone: Finland — Currency: EUR

	2015	2016	2017	2018	2019
(A)	45 050 000	45 596 000	46 064 000	46 321 000	46 468 000
(B)	1,5 %	1,7 %	1,9 %	2,0 %	2,0 %
(C)	114,4	116,4	118,6	121,0	123,4
(D)	39 368 663	39 179 750	38 843 860	38 294 684	37 662 953
(E)	792 600	812 000	827 000	843 000	861 000
(F)	**49,67**	**48,25**	**46,97**	**45,43**	**43,74**

Charging Zone: Latvia — Currency: EUR

	2015	2016	2017	2018	2019
(A)	22 680 662	23 118 000	23 902 000	24 692 818	25 534 000
(B)	2,5 %	2,3 %	2,3 %	2,3 %	2,3 %
(C)	109,7	112,2	114,8	117,4	120,1

	2015	2016	2017	2018	2019
(D)	20 683 885	20 603 685	20 823 477	21 028 777	21 256 247
(E)	802 000	824 000	844 000	867 000	890 000
(F)	**25,79**	**25,00**	**24,67**	**24,25**	**23,88**

SW FAB

Charging Zone: Portugal — Currency: EUR

	2015	2016	2017	2018	2019
(A)	111 331 252	117 112 878	121 117 127	124 427 807	127 871 286
(B)	1,2 %	1,5 %	1,5 %	1,5 %	1,5 %
(C)	110,5	112,2	113,8	115,5	117,3
(D)	100 758 704	104 424 905	106 399 345	107 692 336	109 037 112
(E)	3 095 250	3 104 536	3 122 232	3 147 209	3 171 128
(F)	**32,55**	**33,64**	**34,08**	**34,22**	**34,38**

SPAIN

Charging Zone: Spain Continental — Currency: EUR

	2015	2016	2017	2018	2019
(A)	620 443 569	622 072 583	622 240 962	625 580 952	627 777 294
(B)	0,8 %	0,9 %	1,0 %	1,0 %	1,1 %
(C)	110,6	111,6	112,7	113,9	115,1
(D)	561 172 369	557 638 172	552 025 959	549 379 889	545 563 910
(E)	8 880 000	8 936 000	9 018 000	9 128 000	9 238 000
(F)	**63,20**	**62,40**	**61,21**	**60,19**	**59,06**

Charging Zone: Spain Canarias — Currency: EUR

	2015	2016	2017	2018	2019
(A)	98 528 223	98 750 683	99 003 882	98 495 359	98 326 935
(B)	0,8 %	0,9 %	1,0 %	1,0 %	1,1 %
(C)	110,6	111,6	112,7	113,9	115,1
(D)	89 115 786	88 522 066	87 832 072	86 497 790	85 450 091
(E)	1 531 000	1 528 000	1 531 000	1 537 000	1 543 000
(F)	**58,21**	**57,93**	**57,37**	**56,28**	**55,38**

UK-IR FAB

Charging Zone: Ireland — Currency: EUR

	2015	2016	2017	2018	2019
(A)	118 046 200	121 386 700	125 595 100	129 364 400	130 778 800
(B)	1,1 %	1,2 %	1,4 %	1,7 %	1,7 %
(C)	103,7	105,0	106,4	108,2	110,1
(D)	113 811 728	115 644 664	118 001 964	119 511 684	118 798 780
(E)	4 000 000	4 049 624	4 113 288	4 184 878	4 262 135
(F)	**28,45**	**28,56**	**28,69**	**28,56**	**27,87**

Charging Zone: United Kingdom — Currency: GBP

	2015	2016	2017	2018	2019
(A)	686 348 218	687 119 724	690 004 230	682 569 359	673 089 111
(B)	1,9 %	1,9 %	2,0 %	2,0 %	2,0 %
(C)	118,2	120,5	122,9	125,3	127,8
(D)	580 582 809	570 397 867	561 561 156	544 617 914	526 523 219
(E)	10 244 000	10 435 000	10 583 000	10 758 000	10 940 000
(F)	**56,68**	**54,66**	**53,06**	**50,62**	**48,13**’

COMMISSION IMPLEMENTING DECISION (EU) 2017/2377

of 15 December 2017

on greenhouse gas emissions covered by Decision No 406/2009/EC of the European Parliament and of the Council for the year 2015 for each Member State

(notified under document C(2017) 8476)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC ([1]), and in particular Article 19(6) thereof,

Whereas:

(1) Decision No 406/2009/EC of the European Parliament and of the Council ([2]) lays down annual emission allocations for each Member State for each year of the period 2013 to 2020 and a mechanism to annually assess compliance with those limits. Member States' annual emission allocations expressed in tonnes of CO_2 equivalent are contained in Commission Decision 2013/162/EU ([3]). The adjustments to the annual emission allocations for each Member State are set in Commission Implementing Decision 2013/634/EU ([4]).

(2) Article 19 of Regulation (EU) No 525/2013 provides for a procedure for the review of Member States' greenhouse gas (GHG) emissions inventories for the purpose of assessing compliance with Decision No 406/2009/EC. The annual review referred to in Article 19(2) of Regulation 525/2013/EU was carried out on the basis of the 2015 emissions data reported to the Commission in March 2017 in accordance with the procedures laid down in Chapter III of Commission Implementing Regulation 749/2014/EU ([5]) and Annex XVI to that Regulation.

(3) The total amount of GHG emissions covered by Decision No 406/2009/EC for the year 2015 for each Member State should take into consideration the technical corrections and revised estimates calculated during the annual review as contained in the final review reports drawn up pursuant to Article 35(2) of Regulation 749/2014/EU.

(4) This Decision should enter into force on the day of its publication in order to be aligned with the provisions of Article 19(7) of Regulation (EU) No 525/2013 which sets the date of publication of this Decision as the starting point for the four months period when Member States are allowed to use the flexibility mechanisms under Decision No 406/2009/EC,

HAS ADOPTED THIS DECISION:

Article 1

The total sum of greenhouse gas emissions covered by Decision No 406/2009/EC for each Member State for the year 2015 arising from the corrected inventory data upon completion of the annual review referred to in Article 19(2) of Regulation 525/2013/EU is set out in the Annex to this Decision.

([1]) OJ L 165, 18.6.2013, p. 13.

([2]) Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009, p. 136).

([3]) Commission Decision 2013/162/EU of 26 March 2013 on determining Member States' annual emission allocations for the period from 2013 to 2020 pursuant to Decision No 406/2009/EC of the European Parliament and of the Council (OJ L 90, 28.3.2013, p. 106).

([4]) Commission Implementing Decision 2013/634/EU of 31 October 2013 on the adjustments to Member States' annual emission allocations for the period from 2013 to 2020 pursuant to Decision No 406/2009/EC of the European Parliament and of the Council (OJ L 292, 1.11.2013, p. 19).

([5]) Commission Implementing Regulation (EU) No 749/2014 of 30 June 2014 on structure, format, submission processes and review of information reported by Member States pursuant to Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 203, 11.7.2014, p. 23).

Article 2

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

Done at Brussels, 15 December 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Member State	Greenhouse gas emissions for the year 2015 covered by Decision No 406/2009/EC (tonnes of carbon dioxide equivalent)
Belgium	72 719 520
Bulgaria	25 354 866
Czech Republic	61 282 020
Denmark	32 520 220
Germany	444 080 615
Estonia	6 144 411
Ireland	43 037 173
Greece	45 449 373
Spain	196 153 196
France	353 009 851
Croatia	15 565 304
Italy	273 282 682
Cyprus	4 060 621
Latvia	9 005 121
Lithuania	13 250 961
Luxembourg	8 607 481
Hungary	41 437 586
Malta	1 300 741
Netherlands	101 119 720
Austria	49 295 422
Poland	186 772 424
Portugal	40 614 056
Romania	74 555 379
Slovenia	10 719 610
Slovakia	20 084 623
Finland	29 886 479
Sweden	33 897 178
United Kingdom	326 027 912

COMMISSION IMPLEMENTING DECISION (EU) 2017/2378

of 15 December 2017

on the compliance of unit rates for charging zones for 2017 under Article 17 of Implementing Regulation (EU) No 391/2013

(notified under document C(2017) 8501)

(Only the Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish texts are authentic)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the Single European Sky (the service provision Regulation) ([1]), and in particular Article 15(4) thereof,

Having regard to Commission Implementing Regulation (EU) No 391/2013 of 3 May 2013 laying down a common charging scheme for air navigation services ([2]), and in particular Article 17(1)(d) thereof,

Whereas:

(1) Implementing Regulation (EU) No 391/2013 lays down a common charging scheme for air navigation services. The common charging scheme is an integral element in reaching the objectives of the performance scheme as established under Article 11 of Regulation (EC) No 549/2004 of the European Parliament and of the Council ([3]) and Commission Implementing Regulation (EU) No 390/2013 ([4]).

(2) Commission Implementing Decision 2014/132/EU ([5]) sets the Union-wide performance targets, including a cost-efficiency target for *en route* air navigation services expressed in determined unit costs for the provision of those services, for the second reference period, which covers the years 2015 to 2019 inclusive.

(3) Pursuant to Article 17(1)(b) and (c) of Implementing Regulation (EU) No 391/2013, the Commission is to assess the unit rates for charging zones for 2017 submitted by the Member States to the Commission by 1 June 2016 following the requirements of Article 9(1) and 9(2) of that Regulation. That assessment concerns the compliance of those unit rates with Implementing Regulations (EU) No 390/2013 and (EU) No 391/2013.

(4) The Commission has carried out its assessment of the unit rates with the support of Eurocontrol's Performance Review Unit, using the data and additional information provided by the Member States by 1 November 2016. The Commission assessment also took into account the explanations given and corrections made before the consultation meeting on the unit rates for 2017 for *en route* services that was held on 23 November 2016 in application of Article 9(1) of Implementing Regulation (EU) No 391/2013, as well as the corrections made by Member States to the unit rates following subsequent contacts with the Commission.

(5) On the basis of that assessment, the Commission has found, in accordance with Article 17(1)(d) of Implementing Regulation (EU) No 391/2013, that the unit rates for *en route* charging zones for 2017 submitted by Austria, Belgium, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom are in compliance with Implementing Regulations (EU) No 390/2013 and (EU) No 391/2013.

(6) Pursuant to Article 17(1)(d) of Implementing Regulation (EU) No 391/2013, the Member States concerned should be notified of that finding.

(7) The finding and notification that unit rates for charging zones are in compliance with Implementing Regulations (EU) No 390/2013 and (EU) No 391/2013 is without prejudice to Article 16 of Regulation (EC) No 550/2004.

([1]) OJ L 96, 31.3.2004, p. 10.
([2]) OJ L 128, 9.5.2013, p. 31.
([3]) Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) (OJ L 96, 31.3.2004, p. 1).
([4]) Commission Implementing Regulation (EU) No 390/2013 of 3 May 2013 laying down a performance scheme for air navigation services and network functions (OJ L 128, 9.5.2013, p. 1).
([5]) Commission Implementing Decision 2014/132/EU of 11 March 2014 setting the Union-wide performance targets for the air traffic management network and alert thresholds for the second reference period 2015-19 (OJ L 71, 12.3.2014, p. 20).

HAS ADOPTED THIS DECISION:

Article 1

The unit rates for *en route* charging zones for 2017, set out in the Annex, are in compliance with Implementing Regulations (EU) No 390/2013 and (EU) No 391/2013.

Article 2

This Decision is addressed to the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Kingdom of Spain, the French Republic, Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, the Kingdom of the Netherlands, the Republic of Austria, the Portugese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 15 December 2017.

For the Commission
Violeta BULC
Member of the Commission

ANNEX

	Charging zone	2017 en route unit rate in national currency (*)
1	Austria	72,71
2	Belgium-Luxembourg	67,46
3	Croatia	346,74
4	Cyprus	34,32
5	Czech Republic	1 134,76
6	Denmark	450,23
7	Estonia	28,46
8	Finland	56,23
9	France	67,00
10	Germany	69,36
11	Hungary	10 898,29
12	Ireland	29,54
13	Italy	80,00
14	Latvia	27,46
15	Lithuania	44,42
16	Netherlands	66,26
17	Portugal	40,12
18	Romania	149,21
19	Slovakia	52,54
20	Slovenia	64,60
21	Spain Canarias	58,36
22	Spain Continental	71,69
23	Sweden	580,71
24	United Kingdom	64,54

(*) These unit rates do not include the administrative unit rate referred to in Article 18(1) of Implementing Regulation (EU) No 391/2013 and which applies to States party to Eurocontrol's Multilateral Agreement relating to route charges.

COMMISSION IMPLEMENTING DECISION (EU) 2017/2379

of 18 December 2017

on recognition of the report of Canada including typical greenhouse gas emissions from cultivation of agricultural raw materials pursuant to Directive 2009/28/EC of the European Parliament and of the Council

(notified under document C(2017) 8801)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC [1], and in particular Article 19(4) thereof,

Whereas:

(1) On 14 March 2016, Canada submitted a report presenting the results of calculations of greenhouse gas emissions from the cultivation of canola for regions of Canada similar to the NUTS2 regions in the EU.

(2) After examination of the report submitted by Canada, the Commission considers that it complies with the conditions set out in Directive 2009/28/EC to allow a third country to use typical values for a smaller geographical area (Canadian regions) than that used in the calculation of the default values: the data of this report refer to emissions from cultivation of agricultural raw materials (canola oilseed); the typical greenhouse gas emissions from the cultivation of canola oilseed can be expected to be lower than or equal to the emissions that were assumed in the calculation of the relevant default values; and these typical greenhouse gas emissions have been reported to the Commission.

(3) The measures provided for in this Decision are in accordance with the opinion of the Committee on the Sustainability of Biofuels and Bioliquids.

HAS ADOPTED THIS DECISION:

Article 1

The Commission considers that the report submitted for recognition by Canada on 14 March 2016 contains accurate data for measuring the greenhouse gas emissions associated with the cultivation of canola oilseed produced in the Canadian regions as NUTS 2 equivalent regions for the purposes of Article 17(2) of Directive 2009/28/EC. A summary of the data contained in the report is set out in the Annex.

Article 2

This Decision is valid for a period of 5 years. If the content or circumstances of the report, as submitted for recognition to the Commission on 14 March 2016, change in a way that might affect the conditions required for the recognition made in Article 1, such changes shall be notified to the Commission without delay. The Commission shall assess the notified changes with a view to establishing whether the report is still providing accurate data.

Article 3

The Commission may repeal this Decision if it has been clearly demonstrated that the report does not contain any longer accurate data for the purposes of measuring the greenhouse gas emissions associated with the cultivation of canola oilseed produced in Canada.

[1] OJ L 140, 5.6.2009, p. 16.

Article 4

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

Done at Brussels, 18 December 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

GHG emissions arising from canola cultivation in Canadian regions

Single emissions (kg CO_2eq/dry-ton)						Total emissions	
Region	Seeding	Fertilizer production	N_2O field emissions	Pesticide production	Field operations	(kg CO_2eq/dry-ton)	Kg CO_2eq/MJ FAME
RU 23	2,4	262,5	523,5	4,2	73,1	865,7	33
RU 24	2,2	266,5	510,6	3,7	64,9	847,9	33
RU 28	2,5	212,8	499,5	3,8	71,4	790,0	30
RU 29	2,5	203,1	319,4	3,6	63,4	592,0	23
RU 30	2,2	190,2	206,5	2,8	55,1	456,8	18
RU 34	2,2	170,4	421,2	3,3	57,7	654,8	25
RU 35	1,9	154,2	338,4	2,6	54,9	552,0	21
RU 37	2,1	166,6	198,2	2,8	58,3	428,0	16

Note: A RU is the smallest spatial unit at which activity data from the different sources (Such as AAFC -Agriculture and AgriFood - Canada, Canadian Government and Canadian Forest Service) can be harmonized. RUs are AAFC Reporting Zones subdivided by provincial boundaries. A RU is therefore within a single Province. The RUs in Canada fulfil the administrative and population requirements of the NUTS 2 concept.

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