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Contents

[1] Text with EEA relevance.

EN

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

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

[1] Text with EEA relevance.

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Information on the date of signature and provisional application of the EU-Western Balkans Transport Community Treaty

Between 12 July and 9 October 2017, the European Union and six Western Balkan partners signed the Treaty establishing the Transport Community ([1]). Following notifications in this respect, the Treaty applies provisionally among the European Union, the Republic of Albania, Bosnia and Herzegovina and Kosovo ([2]) since 9 October 2017, and among these parties and the Republic of Serbia since 29 November 2017, in accordance with Article 41(3) of the Treaty.

([1]) Text of the Treaty: OJ L 278, 27.10.2017, p. 3.

([2]) This designation is without prejudice to positions on status, and is in line with the United Nations Security Council Resolution 1244(1999) and the International Court of Justice opinion on Kosovo`s declaration of independence.

Information relating to the entry into force of the Agreement between the European Union and the Independent State of Samoa on the short-stay visa waiver

The Agreement between the European Union and the Independent State of Samoa on the short-stay visa waiver will enter into force on 1 March 2018, the procedure provided for in Article 8(1) of the Agreement having been completed on 9 January 2018.

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2018/92

of 18 October 2017

amending Regulation (EU) No 658/2014 of the European Parliament and of the Council as regards the adjustment to the inflation rate of the amounts of the fees payable to the European Medicines Agency for the conduct of pharmacovigilance activities in respect of medicinal products for human use

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 658/2014 of the European Parliament and of the Council of 15 May 2014 on fees payable to the European Medicines Agency for the conduct of pharmacovigilance activities in respect of medicinal products for human use ([1]), and in particular Article 15(6) thereof,

Whereas:

(1) In accordance with Article 67(3) of Regulation (EC) No 726/2004 of the European Parliament and of the Council ([2]), the revenue of the European Medicines Agency consists of a contribution from the Union and fees paid by undertakings for obtaining and maintaining Union marketing authorisations and for other services provided by the Agency, or by the coordination group as regards the fulfilment of its tasks in accordance with Articles 107c, 107e, 107g, 107k and 107q of Directive 2001/83/EC of the European Parliament and of the Council ([3]).

(2) The inflation rate of the Union, as published by the Statistical Office of the European Union, was 0,2 % for 2015 and 1,2 % for 2016. Taking into consideration the very low inflation rate in 2015, it was not considered justified to adjust, in accordance with Article 15(6) of Regulation (EU) No 658/2014, the amounts of the fees payable to the European Medicines Agency for the conduct of pharmacovigilance activities in respect of medicinal products for human use. In view of the inflation rate of the Union for 2016, it is considered justified to adjust those amounts. A cumulative adjustment taking into account the inflation rates for 2015 and for 2016 should be applied.

(3) For the sake of simplicity, the adjusted amounts should be rounded to the nearest EUR 10, with the exception of the annual fee for information technology systems and literature monitoring where the adjusted level should be rounded to the nearest EUR 1.

(4) Fees laid down in Regulation (EU) No 658/2014 are due either at the date of the start of the respective procedure or, in the case of the annual fee for information technology systems and literature monitoring, on 1 July of every year. Consequently, the applicable amount will be determined by the due date of the fee and there is no need to set specific transitional provisions for pending procedures.

(5) According to Article 15(6) of Regulation (EU) No 658/2014, where a delegated act adjusting the amounts of the fees laid down in Parts I to IV of the Annex to that Regulation enters into force before 1 July, the adjustments are to take effect as from 1 July, whereas where it enters into force after 30 June, the adjustments are to take effect from the date of entry into force of the delegated act.

(6) The Annex to Regulation (EU) No 658/2014 should therefore be amended accordingly,

([1]) OJ L 189, 27.6.2014, p. 112.
([2]) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ L 136, 30.4.2004, p. 1).
([3]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67).

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EU) No 658/2014 is amended as follows:

(1) in Part I, point 1 is amended as follows:

(a) 'EUR 19 500' is replaced by 'EUR 19 770';

(b) 'EUR 13 100' is replaced by '13 290';

(2) in Part II, point 1 is amended as follows:

(a) in the introductory sentence, 'EUR 43 000' is replaced by 'EUR 43 600';

(b) point (a) is amended as follows:

(i) 'EUR 17 200' is replaced by 'EUR 17 440';

(ii) 'EUR 7 280' is replaced by 'EUR 7 380';

(c) point (b) is amended as follows:

(i) 'EUR 25 800' is replaced by 'EUR 26 160';

(ii) 'EUR 10 920' is replaced by '11 070';

(3) in Part III, point 1 is amended as follows:

(a) the first subparagraph is amended as follows:

(i) 'EUR 179 000' is replaced by 'EUR 181 510';

(ii) 'EUR 38 800' is replaced by 'EUR 39 350';

(iii) 'EUR 295 400' is replaced by 'EUR 299 560';

(b) the second subparagraph is amended as follows:

(i) in point (a), 'EUR 119 333' is replaced by 'EUR 121 000';

(ii) in point (b), 'EUR 145 200' is replaced by 'EUR 147 240';

(iii) in point (c), 'EUR 171 066' is replaced by 'EUR 173 470';

(iv) in point (d), 'EUR 196 933' is replaced by 'EUR 199 700';

(c) in the fourth subparagraph, point (b) is amended as follows:

(i) 'EUR 1 000' is replaced by 'EUR 1 010';

(ii) 'EUR 2 000' is replaced by 'EUR 2 020';

(iii) 'EUR 3 000' is replaced by 'EUR 3 050';

(4) in point 1 of Part IV, 'EUR 67' is replaced by 'EUR 68'.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. It shall apply from 12 February 2018.

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

Done at Brussels, 18 October 2017.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2018/93

of 16 November 2017

on the increase of the percentage of the budgetary resources allocated to projects supported by way of action grants under the sub-programme for Environment dedicated to projects supporting the conservation of nature and biodiversity according to Article 9(4) of Regulation (EU) No 1293/2013 of the European Parliament and of the Council on the establishment of a Programme for the Environment and Climate Action (LIFE) and repealing Regulation (EC) No 614/2007

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to the Regulation (EU) No 1293/2013 of the European Parliament and of the Council of 11 December 2013 on the establishment of a Programme for the Environment and Climate Action (LIFE) and repealing Regulation (EC) No 614/2007 ([1]), and in particular Article 9(4) thereof,

Whereas:

(1) The conditions for an increase of the percentage of the budgetary resources dedicated to projects supporting the conservation of nature and biodiversity referred to in Article 9(3) of the LIFE Regulation by a maximum of 10 % are fulfilled, since the total funds requested over 2 consecutive years by way of proposals that fall under the priority area of Nature and Biodiversity and that meet minimum quality requirements exceed by more than 20 % the corresponding amount calculated for the 2 years preceding those years.

(2) In view of the Nature Directives Fitness Check ([2]) conclusions concerning the need to increase funding availability to enhance the Directives implementation and Action 8 of the Commission's Action Plan for nature, people and the economy ([3]), the Commission decided to increase the 55 % budgetary resources allocated to projects supported by way of action grants under the sub-programme for Environment that fall under the priority area of Nature and Biodiversity.

(3) The increase of the percentage of the budgetary resources for the priority area Nature and Biodiversity is not expected to reduce the resources devoted to projects funded under the other priority areas of the sub-programme for Environment, due to the planned increase in the annual financial envelope for the implementation of the LIFE Programme in the years 2018-2020 and the decrease of the EU co-funding rate for the majority of action grants under the other priority areas from 60 % to 55 %,

HAS ADOPTED THIS REGULATION:

Article 1

Article 9(3) of the LIFE Regulation is replaced by the following text: 'At least 60,5 % of the budgetary resources allocated to projects supported by way of action grants under the sub- programme for Environment shall be dedicated to projects supporting the conservation of nature and biodiversity.'

Article 2

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

([1]) OJ L 347, 20.12.2013, p. 185, hereinafter referred to as 'the LIFE Regulation'.
([2]) SWD(2016) 472 final (Commission Staff Working Document: Fitness Check of the EU Nature Legislation (Birds and Habitats Directives)).
([3]) COM(2017) 198 final and SWD (2017) 139 final (EU Action Plan for nature, people and the economy).

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

Done at Brussels, 16 November 2017.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2018/94

of 16 November 2017

fixing a flat-rate reduction for the import duty for sorghum in Spain imported from third countries

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ([1]), and in particular Article 185,

Whereas:

(1) Within the context of the agreements concluded under the Uruguay Round of multilateral trade negotiations ([2]), the Union has committed to allowing Spain to import a quantity of 300 000 tonnes of sorghum per year.

(2) Between 1 January 2017 and 7 August 2017, 103 967 tonnes of sorghum were imported into Spain. During that period, the import duty for sorghum was set at EUR 0 per tonne, in accordance with Commission Regulation (EU) No 642/2010 ([3]). Since 8 August 2017, and following the reintroduction of an import duty of more than zero for sorghum in accordance with Regulation (EU) No 642/2010, 26 250 tonnes of sorghum has been imported into Spain.

(3) To ensure that import quotas are fully used, Article 6 of Commission Regulation (EC) No 1296/2008 ([4]) provides that a reduction may be applied to the import duty fixed in accordance with Regulation (EU) No 642/2010.

(4) Taking the conditions of the sorghum market into account, particularly the fact that the price of sorghum on the global market is higher than that of maize, it is necessary to apply a flat-rate reduction of 100 % to the import duty fixed in accordance with Regulation (EU) No 642/2010 as regards the quantities of sorghum to be imported into Spain under the tariff quota opened on 1 January 2017 in accordance with Regulation (EC) No 1296/2008.

(5) Taking into account the time constraints related to the adoption of a delegated act and the need to enable the full use of the import quota, it is appropriate to provide for the application of the flat-rate reduction for a period exceeding the quota year 2017,

HAS ADOPTED THIS REGULATION:

Article 1

A flat-rate reduction of the import duty for sorghum, as referred to in Article 6 of Regulation (EC) No 1296/2008, is established at 100 % of the import duty for sorghum fixed in accordance with Regulation (EU) No 642/2010. This reduction shall apply to the available balance of the quantities of sorghum to be imported into Spain under the tariff quota opened on 1 January 2017 in accordance with Regulation (EC) No 1296/2008.

Article 2

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

It shall expire on 28 February 2018.

([1]) OJ L 347, 20.12.2013, p. 671.
([2]) Council Decision 94/800/EC/of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p. 1).
([3]) Commission Regulation (EU) No 642/2010 of 20 July 2010 on rules of application (cereal sector import duties) for Council Regulation (EC) No 1234/2007 (OJ L 187, 21.7.2010, p. 5).
([4]) Commission Regulation (EC) No 1296/2008 of 18 December 2008 laying down detailed rules for the application of tariff quotas for imports of maize and sorghum into Spain and imports of maize into Portugal (OJ L 340, 19.12.2008, p. 57).

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

Done at Brussels, 16 November 2017.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2018/95

of 9 January 2018

entering a name in the register of protected designations of origin and protected geographical indications ['Slavonski med' (PDO)]

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, Croatia's application to register the name 'Slavonski med' 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 'Slavonski med' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Slavonski med' (PDO) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 1.4. – Other products of animal origin (eggs, honey, various dairy products except butter, etc.), 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, 9 January 2018.

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 292, 2.9.2017, 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 IMPLEMENTING REGULATION (EU) 2018/96

of 9 January 2018

approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications ('Oignon doux des Cévennes' (PDO))

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 the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined France's application for the approval of amendments to the specification for the protected designation of origin 'Oignon doux des Cévennes', registered under Commission Regulation (EC) No 723/2008 ([2]), as amended by Commission Regulation (EU) No 686/2013 ([3]).

(2) Since the amendments in question are not minor within the meaning of Article 53(2) of Regulation (EU) No 1151/2012, the Commission published the amendment application in the *Official Journal of the European Union* ([4]) as required by Article 50(2)(a) of that Regulation.

(3) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the amendments to the specification should be approved,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments to the specification published in the *Official Journal of the European Union* regarding the name 'Oignon doux des Cévennes' (PDO) are hereby approved.

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, 9 January 2018.

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

([1]) OJ L 343, 14.12.2012, p. 1.
([2]) Commission Regulation (EC) No 723/2008 of 25 July 2008 registering certain names in the Register of protected designations of origin and protected geographical indications (Afuega'l Pitu (PDO), Mazapán de Toledo (PGI), Agneau de Lozère (PGI), Oignon doux des Cévennes (PDO), Butelo de Vinhais or Bucho de Vinhais or Chouriço de Ossos de Vinhais (PGI), Chouriça Doce de Vinhais (PGI)) (OJ L 198, 26.7.2008, p. 28).
([3]) Commission Implementing Regulation (EU) No 686/2013 of 16 July 2013 approving minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Oignon doux des Cévennes (PDO)) (OJ L 196, 19.7.2013, p. 4).
([4]) OJ C 294, 5.9.2017, p. 8.

COMMISSION REGULATION (EU) 2018/97

of 22 January 2018

amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the use of sweeteners in fine bakery wares

(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 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives ([1]), and in particular Article 10(3) thereof,

Having regard to Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings ([2]), and in particular Article 7(5) thereof,

Whereas:

(1) Annex II to Regulation (EC) No 1333/2008 lays down a Union list of food additives approved for use in food and their conditions of use.

(2) That list may be updated in accordance with the common procedure referred to in Article 3(1) of Regulation (EC) No 1331/2008, either on the initiative of the Commission or following an application.

(3) On the basis of the information provided by the Member States, the Commission has concluded that Annex II to Regulation (EC) No 1333/2008 should be amended as regards the use of E 950 Acesulfame K, E 951 Aspartame, E 952 Cyclamic acid and its Na and Ca salts, E 954 Saccharin and its Na, K and Ca salts, E 955 Sucralose, E 959 Neohesperidine DC, E 961 Neotame, E 962 Salt of aspartame-acesulfame and E 969 Advantame in 'fine bakery products for special nutritional uses'.

(4) The use of sweeteners in 'fine bakery products for special nutritional uses' was authorised by the European Parliament and Council Directive 94/35/EC ([3]). The food 'fine bakery products for special nutritional uses' covered 'foods for persons suffering from carbohydrate metabolism disorders (diabetes)' regulated by Council Directive 89/398/EEC ([4]). This Directive established a common definition for 'foodstuffs for particular nutritional uses' and provided that specific provisions could be adopted as regards 'food for persons suffering from carbohydrate metabolism disorders (diabetes)', a category of food falling within the definition of foodstuffs for particular nutritional uses.

(5) However, as concluded in the Commission's report ([5]) on foods for persons suffering from diabetes, the scientific basis for setting specific compositional requirements for those foods was lacking. Furthermore, Regulation (EU) No 609/2013 of the European Parliament and of the Council ([6]) has abolished the concept of 'foodstuffs for particular nutritional uses', including that of 'food for persons suffering from carbohydrate metabolism disorders (diabetes)'.

(6) Therefore, the authorisation of those sweeteners in 'fine bakery products for special nutritional uses' in accordance with Article 7(c) of Regulation (EC) No 1333/2008 is no longer justified and those products should not continue to be marketed.

([1]) OJ L 354, 31.12.2008, p. 16.
([2]) OJ L 354, 31.12.2008, p. 1.
([3]) European Parliament and Council Directive 94/35/EC of 30 June 1994 on sweeteners for use in foodstuffs (OJ L 237, 10.9.1994, p. 3).
([4]) Council Directive 89/398/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses (OJ L 186, 30.6.1989, p. 27).
([5]) Report from the Commission to the European Parliament and the Council on foods for persons suffering from carbohydrate metabolism disorders (diabetes) of 1 July 2008 (COM(2008) 392 final).
([6]) 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).

(7) Furthermore, uniform application of the conditions for authorisation of use of sweeteners would ensure clarity and the proper functioning of the internal market.

(8) Therefore, the entries for food additives E 950 Acesulfame K, E 951 Aspartame, E 952 Cyclamic acid and its Na and Ca salts, E 954 Saccharin and its Na, K and Ca salts, E 955 Sucralose, E 959 Neohesperidine DC, E 961 Neotame, E 962 Salt of aspartame-acesulfame and E 969 Advantame referring to the use in 'only fine bakery products for special nutritional uses' in food category 07.2 fine bakery wares should be deleted.

(9) Annex II to Regulation (EC) No 1333/2008 should therefore be amended accordingly.

(10) In order to allow economic operators to adapt to the new rules, it is appropriate to provide for a transitional period during which fine bakery products for special nutritional uses containing any of those sweeteners may continue to be marketed.

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

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 1333/2008 is amended in accordance with the Annex to this Regulation.

Article 2

Fine bakery products for special nutritional uses containing E 950 Acesulfame K, E 951 Aspartame, E 952 Cyclamic acid and its Na and Ca salts, E 954 Saccharin and its Na, K and Ca salts, E 955 Sucralose, E 959 Neohesperidine DC, E 961 Neotame, E 962 Salt of aspartame-acesulfame and/or E 969 Advantame that have been lawfully placed on the market before the entry into force of this Regulation, may continue to be marketed until the stocks are exhausted.

Article 3

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

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

Done at Brussels, 22 January 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Part E of Annex II to Regulation (EC) No 1333/2008 is amended as follows:

1. In food category 07.2 'Fine bakery wares', the entries for the food additives E 950 Acesulfame K, E 951 Aspartame, E 952 Cyclamic acid and its Na and Ca salts, E 954 Saccharin and its Na, K and Ca salts, E 955 Sucralose, E 959 Neohesperidine DC, E 961 Neotame, E 962 Salt of aspartame-acesulfame and E 969 Advantame as regards the use in 'only fine bakery products for special nutritional uses' are deleted.

COMMISSION REGULATION (EU) 2018/98

of 22 January 2018

amending Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council and the Annex to Commission Regulation (EU) No 231/2012 as regards calcium sorbate (E 203)

(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 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives ([1]), and in particular Article 10(3) and Article 14 thereof,

Whereas:

(1) Annex II to Regulation (EC) No 1333/2008 lays down a Union list of food additives approved for use in foods and their conditions of use.

(2) Annex III to Regulation (EC) No 1333/2008 lays down a Union list of food additives approved for use in food additives, food enzymes, food flavourings, nutrients and their conditions of use.

(3) Commission Regulation (EU) No 231/2012 ([2]) lays down specifications for food additives that are listed in Annexes II and III to Regulation (EC) No 1333/2008.

(4) Calcium sorbate (E 203) is a substance authorised as a preservative in a variety of foods, as well as in food colour preparations and food flavourings, in accordance with Annexes II and III to Regulation (EC) No 1333/2008.

(5) Article 32(1) of Regulation (EC) No 1333/2008 provides that all food additives that were already permitted in the Union before 20 January 2009 are subject to a new risk assessment by the European Food Safety Authority ('the Authority').

(6) For that purpose, a program for the re-evaluation of food additives is laid down in the Commission Regulation (EU) No 257/2010 ([3]). Pursuant to Regulation (EU) No 257/2010 the re-evaluation of preservatives had to be completed by 31 December 2015.

(7) On 30 June 2015 the Authority delivered a Scientific Opinion on the re-evaluation of sorbic acid (E 200), potassium sorbate (E 202) and calcium sorbate (E 203) as food additives ([4]). The opinion stated that there was a lack of genotoxicity data on calcium sorbate. Consequently the Authority was not able to confirm the safety of calcium sorbate as a food additive and concluded that it should be excluded from the group Acceptable Daily Intake (ADI) defined for sorbic acid (E 200) and potassium sorbate (E 202). The opinion stated that genotoxicity studies on calcium sorbate need to be performed in order to consider including calcium sorbate in that group ADI.

(8) On 10 June 2016 the Commission launched a public call for scientific and technological data on sorbic acid (E 200), potassium sorbate (E 202) and calcium sorbate (E 203) ([5]), targeting the data needs identified in the Scientific Opinion on the re-evaluation of those substances as food additives. However, no business operator committed to providing the requested genotoxicity data for calcium sorbate (E 203). Without those data the Authority cannot complete the re-evaluation of the safety of calcium sorbate as a food additive and consequently it cannot be determined whether that substance still fulfils the conditions pursuant to Article 6(1) of Regulation (EC) No 1333/2008 for inclusion in the Union list of approved food additives.

([1]) OJ L 354, 31.12.2008, p. 16.
([2]) Commission Regulation (EU) No 231/2012 of 9 March 2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council (OJ L 83, 22.3.2012, p. 1).
([3]) Commission Regulation (EU) No 257/2010 of 25 March 2010 setting up the program for the re-evaluation of approved food additives in accordance with Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives (OJ L 80, 26.3.2010, p. 19).
([4]) *EFSA Journal* 2015;13(6):4144.
([5]) http://ec.europa.eu/food/safety/food_improvement_agents/additives/re-evaluation_en

(9) It is therefore appropriate to remove calcium sorbate (E 203) from the Union list of approved food additives.

(10) Pursuant to Article 10(3) of Regulation (EC) No 1333/2008, the Union list of approved food additives shall be amended in accordance with the procedure referred to in Regulation (EC) No 1331/2008 of the European Parliament and of the Council [1].

(11) Article 3(1) of Regulation (EC) No 1331/2008 provides that the Union list of food additives may be updated either on the initiative of the Commission or following an application.

(12) Therefore, Annexes II and III to Regulation (EC) No 1333/2008 and the Annex to Regulation (EU) No 231/2012 should be amended by deleting calcium sorbate (E 203) from the Union list of authorised food additives since due to the absence of appropriate genotoxicity data its inclusion in the list can no longer be justified.

(13) In order to enable food business operators to adapt to the new requirements or to find alternatives to calcium sorbate (E 203), this Regulation should apply 6 months after its entry into force.

(14) 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

Annexes II and III to Regulation (EC) No 1333/2008 are amended in accordance with the Annex to this Regulation.

Article 2

In the Annex to Regulation (EU) No 231/2012, the entry for food additive E 203 calcium sorbate is deleted.

Article 3

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

It shall apply from 12 August 2018.

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

Done at Brussels, 22 January 2018.

For the Commission
The President
Jean-Claude JUNCKER

[1] Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings (OJ L 354, 31.12.2008, p. 1).

ANNEX

(1) Annex II to Regulation (EC) No 1333/2008 is amended as follows:

(a) in Part B, in Table 3: Additives other than colours and sweeteners, the entry for the food additive E 203 calcium sorbate is deleted;

(b) Part C, Table 5: Other additives that may be regulated combined, is amended as follows:

(i) point (a) 'E 200 – 203: Sorbic acid – sorbates (SA)' is replaced by the following:

'(a) E 200 – 202: Sorbic acid – potassium sorbate (SA)

E-number	Name
E 200	Sorbic acid
E 202	Potassium sorbate'

(ii) in point (c) 'E 200 – 213: Sorbic acid – sorbates; Benzoic acid – benzoates (SA + BA)', the entry for the food additive E 203 calcium sorbate is deleted;

(iii) in point (d) 'E 200 – 219: Sorbic acid – sorbates; Benzoic acid – benzoates; p-hydroxybenzoates (SA + BA + PHB)', the entry for the food additive E 203 calcium sorbate is deleted;

(iv) point (e) 'E 200 – 203; 214 – 219: Sorbic acid – sorbates; p-hydroxybenzoates (SA + PHB)' is replaced by the following:

'(e) E 200 – 202; 214 – 219: Sorbic acid – potassium sorbate; p-hydroxybenzoates (SA + PHB)

E-number	Name
E 200	Sorbic acid
E 202	Potassium sorbate
E 214	Ethyl-p-hydroxybenzoate
E 215	Sodium ethyl p-hydroxybenzoate
E 218	Methyl p-hydroxybenzoate
E 219	Sodium methyl p-hydroxybenzoate'

(c) Part E is amended as follows:

1. In category 01.3 (Unflavoured fermented milk products, heat-treated after fermentation), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	1 000	(1) (2)	only curdled milk'

2. In category 01.4 (Flavoured fermented milk products including heat-treated products), the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	300	(1) (2)	only non-heat-treated dairy based desserts'

3. In category 01.7.1 (Unripened cheese excluding products falling in category 16), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	1 000	(1) (2)'	

4. In category 01.7.2 (Ripened cheese), the entries concerning food additives E 200 – 203 (Sorbic acid – sorbates) are replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	1 000	(1) (2)	only cheese, pre-packed, sliced and cut; layered cheese and cheese with added foods
	E 200 – 202	Sorbic acid – potassium sorbate	*quantum satis*		only ripened products surface treatment'

5. In category 01.7.4 (Whey cheese), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	1 000	(1) (2)	only cheese, pre-packed, sliced; layered cheese and cheese with added foods'

6. In category 01.7.5 (Processed cheese), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	2 000	(1) (2)'	

7. In category 01.7.6 (Cheese products (excluding products falling in category 16)), the entries concerning food additives E 200 – 203 (Sorbic acid – sorbates) are replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	1 000	(1) (2)	only unripened products; ripened products, pre-packed, sliced; layered ripened products and ripened products with added foods
	E 200 – 202	Sorbic acid – potassium sorbate	*quantum satis*		only ripened products surface treatment'

8. In category 01.8 (Dairy analogues, including beverage whiteners), the entries concerning food additives E 200 – 203 (Sorbic acid – sorbates) are replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	2 000	(1) (2)	only analogues of cheese based on protein
	E 200 – 202	Sorbic acid – potassium sorbate	*quantum satis*	(1) (2)	only cheese analogues (surface treatment only)'

9. In category 02.2.2 (Other fat and oil emulsions including spreads as defined by Council Regulation (EC) No 1234/2007 and liquid emulsions), the entries concerning food additives E 200 – 203 (Sorbic acid – sorbates) are replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	1 000	(1) (2)	only fat emulsions (excluding butter) with a fat content of 60 % or more
	E 200 – 202	Sorbic acid – potassium sorbate	2 000	(1) (2)	only fat emulsions with a fat content less than 60 %'

10. In category 04.1.1 (Entire fresh fruit and vegetables), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	20		only surface treatment of unpeeled fresh citrus fruit'

11. In category 04.2.1 (Dried fruit and vegetables), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	1 000	(1) (2)	only dried fruit'

12. Category 04.2.2 (Fruit and vegetables in vinegar, oil, or brine) is amended as follows:

(i) the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	2 000	(1) (2)	only vegetables (excluding olives)'

(ii) the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	1 000	(1) (2)	only olives and olive-based preparations'

(iii) the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	1 000	(1) (2)	only olives and olive-based preparations'

13. Category 04.2.4.1 (Fruit and vegetable preparations excluding compote) is amended as follows:

(i) the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	1 000	(1) (2)	only fruit and vegetable preparations including seaweed-based preparations, fruit-based sauces, aspic, excluding purée, mousse, compote, salads and similar products, canned or bottled'

(ii) the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	1 000	(1) (2)	only olive-based preparations'

14. In category 04.2.5.1 (Extra jam and extra jelly as defined by Directive 2001/113/EC), the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	1 000	(1) (2)	only low-sugar and similar low calorie or sugar-free products, *mermeladas*'

15. In category 04.2.5.2 (Jam, jellies and marmalades and sweetened chestnut puree as defined by Directive 2001/113/EC), the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	1 000	(1) (2)	only low-sugar and similar low calorie or sugar-free products, spreads, *mermeladas*'

16. In category 04.2.5.3 (Other similar fruit or vegetable spreads), the entries concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) are replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	1 000	(1) (2)	other fruit-based spreads, *mermeladas*
	E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	1 500	(1) (2)	only *marmelada*'

17. In category 04.2.6 (Processed potato products), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	2 000	(1) (2)	only potato dough and pre-fried potato slices'

18. Category 05.2 (Other confectionery including breath refreshening microsweets) is amended as follows:

(i) the entry concerning food additives E 200 – 219 (Sorbic acid – sorbates; Benzoic acid – benzoates; p-hydroxybenzoates) is replaced by the following:

	'E 200 – 219	Sorbic acid – potassium sorbate; Benzoic acid – benzoates; p-hydroxybenzoates	1 500	(1) (2) (5)	except candied, crystallized or glacé fruit and vegetables'

(ii) the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	1 000	(1) (2)	only candied, crystallized or glacé fruit and vegetables'

19. In category 05.3 (Chewing gum), the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	1 500	(1) (2)'	

20. Category 05.4 (Decorations, coatings and fillings, except fruit based fillings covered by category 4.2.4) is amended as follows:

(i) the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	1 000	(1) (2)	only toppings (syrups for pancakes, flavoured syrups for milkshakes and ice cream; similar products)'

(ii) the entry concerning food additives E 200 – 219 (Sorbic acid – sorbates; Benzoic acid – benzoates; p-hydroxybenzoates) is replaced by the following:

	'E 200 – 219	Sorbic acid – potassium sorbate; Benzoic acid – benzoates; p-hydroxybenzoates	1 500	(1) (2) (5)'	

21. In category 06.4.4 (Potato Gnocchi), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	1 000	(1)'	

22. In category 06.4.5 (Fillings of stuffed pasta (ravioli and similar)), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	1 000	(1) (2)'	

23. In category 06.6 (Batters), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	2 000	(1) (2)'	

24. In category 06.7 (Precooked or processed cereals), the entries concerning food additives E 200 – 203 (Sorbic acid – sorbates) are replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	200	(1) (2)	only *polenta*
	E 200 – 202	Sorbic acid – potassium sorbate	2 000	(1) (2)	only *Semmelknödelteig*'

25. In category 07.1 (Bread and rolls), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	2 000	(1) (2)	only prepacked sliced bread and rye-bread, partially baked, prepacked bakery wares intended for retail sale and energy-reduced bread intended for retail sale'

26. In category 07.2 (Fine bakery wares), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	2 000	(1) (2)	only with a water activity of more than 0,65'

27. In category 08.3.1 (Non-heat–treated meat products), the entry concerning food additives E 200 – 219 (Sorbic acid – sorbates; Benzoic acid – benzoates; p-hydroxybenzoates) is replaced by the following:

	'E 200 – 219	Sorbic acid – potassium sorbate; Benzoic acid – benzoates; p-hydroxybenzoates	*quantum satis*	(1) (2)	only surface treatment of dried meat products'

28. Category 08.3.2 (Heat–treated meat products) is amended as follows:

(i) the entry concerning food additives E 200 – 203; 214 – 219 (Sorbic acid – sorbates; p-hydroxybenzoates) is replaced by the following:

	'E 200 – 202; 214 – 219	Sorbic acid – potassium sorbate; p-hydroxybenzoates	1 000	(1) (2)	only pâté'

(ii) the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	1 000	(1) (2)	only aspic'

(iii) the entry concerning food additives E 200 – 219 (Sorbic acid – sorbates, Benzoic acid – benzoates; p-hydroxybenzoates) is replaced by the following:

	'E 200 – 219	Sorbic acid – potassium sorbate, Benzoic acid – benzoates; p-hydroxybenzoates	*quantum satis*	(1) (2)	only surface treatment of dried meat products'

29. Category 08.3.3 (Casings and coatings and decorations for meat) is amended as follows:

(i) the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	*quantum satis*		only collagen-based casings with water activity greater than 0,6'

(ii) the entry concerning food additives E 200 – 203; 214 – 219 (Sorbic acid – sorbates; p-hydroxybenzoates) is replaced by the following:

	'E 200 – 202; 214 – 219	Sorbic acid – potassium sorbate; p-hydroxybenzoates	1 000	(1) (2)	only jelly coatings of meat products (cooked, cured or dried)'

30. Category 09.2 (Processed fish and fishery products including molluscs and crustaceans) is amended as follows:

(i) the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	1 000	(1) (2)	aspic'

(ii) the entries concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) are replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	200	(1) (2)	only salted, dried fish
	E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	2 000	(1) (2)	only semi-preserved fish and fisheries products including crustaceans, molluscs, surimi and fish/crustacean paste; cooked crustaceans and molluscs
	E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	6 000	(1) (2)	only cooked *Crangon crangon* and *Crangon vulgaris*'

31. In category 09.3 (Fish roe), the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	2 000	(1) (2)	only semi-preserved fish products including fish roe products'

32. Category 10.2 (Processed eggs and egg products) is amended as follows:

(i) the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	1 000	(1) (2)	only dehydrated and concentrated frozen and deep-frozen egg products'

(ii) the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	5 000	(1) (2)	only liquid egg (white, yolk or whole egg)'

33. In category 11.4.1 (Table-Top Sweeteners in liquid form), the entry concerning food additives E 200 – 219 (Sorbic acid – sorbates; Benzoic acid – benzoates; p-hydroxybenzoates) is replaced by the following:

	'E 200 – 219	Sorbic acid – potassium sorbate; Benzoic acid – benzoates; p-hydroxybenzoates	500	(1) (2)	only if the water content higher than 75 %'

34. In category 12.2.2 (Seasonings and condiments), the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	1 000	(1) (2)'	

35. In category 12.4 (Mustard), the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	1 000	(1) (2)'	

36. In category 12.5 (Soups and broths), the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	500	(1) (2)	only liquid soups and broths (excluding canned)'

37. Category 12.6 (Sauces) is amended as follows:

(i) the entries concerning food additives E 200 – 203 (Sorbic acid – sorbates) are replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	1 000	(1) (2)	only emulsified sauces with a fat content of 60 % or more
	E 200 – 202	Sorbic acid – potassium sorbate	2 000	(1) (2)	only emulsified sauces with a fat content of less than 60 %'

(ii) the entries concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) are replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	1 000	(1) (2)	only emulsified sauces with a fat content of 60 % or more; non emulsified sauces
	E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	2 000	(1) (2)	only emulsified sauces with a fat content of less than 60 %'

38. In category 12.7 (Salads and savoury based sandwich spreads), the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	1 500	(1) (2)'	

39. In category 12.9 (Protein products, excluding products covered in category 1.8), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	2 000	(1) (2)	only analogues of meat, fish, crustaceans and cephalopods and cheese based on protein'

40. In category 13.2 (Dietary foods for special medical purposes defined in Directive 1999/21/EC (excluding products from food category 13.1.5)), the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	1 500	(1) (2)'	

41. In category 13.3 (Dietary foods for weight control diets intended to replace total daily food intake or an individual meal (the whole or part of the total daily diet)), the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	1 500	(1) (2)'	

42. Category 14.1.2 (Fruit juices as defined by Directive 2001/112/EC and vegetable juices) is amended as follows:

(i) the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	500	(1) (2)	only Sød … saft and sødet … saft'

(ii) the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	2 000	(1) (2)	only grape juice, unfermented, for sacramental use'

43. In category 14.1.3 (Fruit nectars as defined by Directive 2001/112/EC and vegetable nectars and similar products), the entries concerning food additives E 200 – 203 (Sorbic acid – sorbates) are replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	250	(1) (2)	only traditional Swedish fruit syrups, maximum applies if E 210 – 213, benzoic acid – benzoates, have also been used
	E 200 – 202	Sorbic acid – potassium sorbate	300	(1) (2)	only traditional Swedish and Finnish fruit syrups'

44. In category 14.1.4 (Flavoured drinks), the entries concerning food additives E 200 – 203 (Sorbic acid – sorbates) are replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	250	(1) (2)	maximum applies if E 210 – 213, benzoic acid – benzoates, have also been used
	E 200 – 202	Sorbic acid – potassium sorbate	300	(1) (2)	excluding dairy-based drinks'

45. In category 14.1.5.2 (Other), the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	600	(1) (2)	only liquid tea concentrates and liquid fruit and herbal infusion concentrates'

46. In category 14.2.1 (Beer and malt beverages), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	200	(1) (2)	only beer in kegs containing more than 0,5 % added fermentable sugar and/or fruit juices or concentrates'

47. In category 14.2.2 (Wine and other products defined by Regulation (EC) No 1234/2007, and alcohol free counterparts), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	200	(1) (2)	only alcohol-free'

48. In category 14.2.3 (Cider and perry), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	200	(1) (2)'	

49. In category 14.2.4 (Fruit wine and made wine), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	200	(1) (2)'	

50. In category 14.2.5 (Mead), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	200	(1) (2)'	

51. In category 14.2.7.1 (Aromatised wines), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	200	(1) (2)'	

52. In category 14.2.7.2 (Aromatised wine-based drinks), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	200	(1) (2)'	

53. In category 14.2.7.3 (Aromatised wine-product cocktails), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	200	(1) (2)'	

54. In category 14.2.8 (Other alcoholic drinks including mixtures of alcoholic drinks with non-alcoholic drinks and spirits with less than 15 % of alcohol), the entry concerning food additives E 200 – 203 (Sorbic acid – sorbates) is replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	200	(1) (2)	only alcoholic drinks with less than 15 % of alcohol and *nalewka na winie owocowym, aromatyzowana nalewka na winie owocowym, nalewka na winie z soku winogronowego, aromatyzowana nalewka na winie z soku winogronowego, napój winny owocowy lub miodowy, aromatyzowany napój winny owocowy lub miodowy, wino owocowe niskoalkoholowe* and *aromatyzowane wino owocowe niskoalkoholowe*'

55. In category 15.1 (Potato-, cereal-, flour- or starch-based snacks), the entry concerning food additives E 200 – 203; 214 – 219 (Sorbic acid – sorbates; p-hydroxybenzoates) is replaced by the following:

	'E 200 – 202; 214 – 219	Sorbic acid – potassium sorbate; p-hydroxybenzoates	1 000	(1) (2) (5)'	

56. In category 15.2 (Processed nuts), the entry concerning food additives E 200 – 203; 214 – 219 (Sorbic acid – sorbates; p-hydroxybenzoates) is replaced by the following:

	'E 200 – 202; 214 – 219	Sorbic acid – potassium sorbate; p-hydroxybenzoates	1 000	(1) (2) (5)	only coated nuts'

57. Category 16 (Desserts excluding products covered in category 1, 3 and 4) is amended as follows:

(i) the entries concerning food additives E 200 – 203 (Sorbic acid – sorbates) are replaced by the following:

	'E 200 – 202	Sorbic acid – potassium sorbate	1 000	(1) (2)	only *frugtgrød, rote Grütze and pasha*
	E 200 – 202	Sorbic acid – potassium sorbate	2 000	(1) (2)	only *ostkaka*'

(ii) the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	300	(1) (2)	only non-heat-treated dairy-based desserts'

58. In category 17.1 (Food supplements supplied in a solid form including capsules and tablets and similar forms, excluding chewable forms), the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	1 000	(1) (2)	only when supplied in dried form and containing preparations of vitamin A and of combinations of vitamin A and D'

59. In category 17.2 (Food supplements supplied in a liquid form), the entry concerning food additives E 200 – 213 (Sorbic acid – sorbates; Benzoic acid – benzoates) is replaced by the following:

	'E 200 – 213	Sorbic acid – potassium sorbate; Benzoic acid – benzoates	2 000	(1) (2)'	

(2) Annex III to Regulation (EC) No 1333/2008 is amended as follows:

(a) in Part 2 (Food additives other than carriers in food additives), the entries concerning food additives E 200 – 203, E 210, E 211 and E 212 are replaced by the following:

'E 200 – 202	Sorbic acid – potassium sorbate (Table 2 of Part 6)	1 500 mg/kg singly or in combination in the preparation 15 mg/kg in the final product expressed as the free acid	Colour preparations'
E 210	Benzoic acid		
E 211	Sodium benzoate		
E 212	Potassium benzoate		

(b) in Part 4 (Food additives including carriers in food flavourings), the entries concerning food additives E 200 – 203, E 210, E 211, E 212 and E 213 are replaced by the following:

'E 200 – 202	Sorbic acid and potassium sorbate (Table 2 of Part 6)	All flavourings	1 500 mg/kg (singly or in combination expressed as the free acid) in flavourings'
E 210	Benzoic acid		
E 211	Sodium benzoate		
E 212	Potassium benzoate		
E 213	Calcium benzoate		

(c) in Part 6 (Definitions of groups of food additives for the purposes of Parts 1 to 5), Table 2 (Table 2: Sorbic acid – sorbates) is replaced by the following:

'Table 2

Sorbic acid – potassium sorbate

E-number	Name
E 200	Sorbic acid
E 202	Potassium sorbate'

COMMISSION IMPLEMENTING REGULATION (EU) 2018/99

of 22 January 2018

amending Implementing Regulation (EU) 2015/2378 as regards the form and conditions of communication for the yearly assessment of the effectiveness of the automatic exchange of information and the list of statistical data to be provided by Member States for the purposes of evaluating of Council Directive 2011/16/EU

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC [1], and in particular Article 23(3) and (4) thereof,

Whereas:

(1) Article 23(3) of Directive 2011/16/EU provides for a yearly assessment of the effectiveness of the automatic exchange of information to be communicated by the Member States to the Commission.

(2) Article 23(4) of Directive 2011/16/EU provides for a list of statistical data to be provided by the Member States for the purposes of evaluating that Directive.

(3) The list does not include statistical data as regards the mandatory exchange of information pursuant to Article 8a of Directive 2011/16/EU as such data will be gathered by the Commission from the central directory established pursuant to Article 21(5) of Directive 2011/16/EU.

(4) Commission Implementing Regulation (EU) 2015/2378 [2] should therefore be amended accordingly.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Administrative Cooperation for Taxation,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Implementing Regulation (EU) 2015/2378

Implementing Regulation (EU) 2015/2378 is amended as follows:

(1) the following Articles 2c and 2d are inserted:

'*Article 2c*

Form and conditions for the communication of the yearly assessment

1. The form for the communication of the yearly assessment of the effectiveness of the automatic exchange of information and the practical results achieved pursuant to Article 23(3) of Directive 2011/16/EU is set out in Annex VIII to this Regulation.

2. Before 1 April each year, Member States shall communicate to the Commission by electronic means the yearly assessment using the form referred to in paragraph 1. The assessment shall cover the period of the previous calendar year.

[1] OJ L 64, 11.3.2011, p. 1.

[2] Commission Implementing Regulation (EU) 2015/2378 of 15 December 2015 laying down detailed rules for implementing certain provisions of Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Implementing Regulation (EU) No 1156/2012 (OJ L 332, 18.12.2015, p. 19).

Article 2d

List of statistical data

1. The list of statistical data required for all forms of administrative cooperation, other than the mandatory automatic exchange of information, pursuant to Article 23(4) of Directive 2011/16/EU is set out in Annex IX to this Regulation.

The list of statistical data required for the mandatory automatic exchange of information pursuant to Article 8(1) of Directive 2011/16/EU is set out in Annex X to this Regulation.

The list of statistical data required for the mandatory automatic exchange of information pursuant to Article 8(3a) of Directive 2011/16/EU is set out in Annex XI to this Regulation.

The list of statistical data required for the mandatory automatic exchange of information pursuant to Article 8aa of Directive 2011/16/EU is set out in Annex XII to this Regulation.

2. Before 1 April each year, Member States shall communicate by electronic means, to the Commission the statistical data on all forms of administrative cooperation, other than the mandatory automatic exchange of information, in accordance with the list set out in Annex IX, in respect of the previous calendar year.

3. Before 1 November each year Member States shall communicate by electronic means to the Commission the statistical data on mandatory automatic exchange of information in accordance with the list set out in Annex X, Annex XI and Annex XII.'

(2) Annexes VIII, IX, X, XI and XII are added as set out in the Annex to this Regulation.

Article 2

Entry into force and application

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

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

Done at Brussels, 22 January 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

The following Annexes are added to Implementing Regulation (EU) 2015/2378:

'*ANNEX VIII*

Form referred to in Article 2c

The form for the communication pursuant to Article 23(3) of Directive 2011/16/EU covers the following information:

— Identification of the Member State replying to the questionnaire

— Availability of information in the Member State

— Monitoring whether bilateral annual feedbacks as per Article 14(2) were sent

— Effectiveness of the automatic exchange of information:

  — Processing of information received and main overall technical (IT) issues encountered

  — Quality of information received, containing identification of recipients/parties; issues with the content of information received and related suggestions

  — Compliance use and effectiveness, containing usefulness of information in principle; actual and future use of information; use of information by tax area; administrative cooperation encouraged by the use of the information received

  — Practical results achieved, containing total outcome (including special projects); specific outcome from special projects; administrative and other relevant costs for automatic exchange of information (AEOI) development and implementation; administrative costs for recurring AEOI operations; other relevant costs for tax compliance operations; positive and negative experiences; main aspects generating litigation and court proceedings

  — Rate of success as regards the obligation to communicate the country-by-country reports to the Member States concerned (Number of country-by-country reports received from tax authorities of other Member States/Number of country-by-country reports due to be received from tax authorities of other Member States)

  — Rate of compliance of Reporting Entities as regards the obligation to provide the country-by-country reports (Number of country-by-country reports received/Number of country-by-country reports due to be reported)

  — List of any jurisdictions where Ultimate Parent Entities of Union-based Reporting Entities are resident, but full country-by-country reports have not been filed or exchanged.

ANNEX IX

List referred to in Article 2d

The statistical data required for the forms of administrative cooperation other than the mandatory automatic exchange of information referred to in Article 23(4) of Directive 2011/16/EU covers the following information:

— Identification of the Member State

— Year

— Part A: Statistics per Member State on exchange of information

  — on exchange of information on request (Article 5, 6 7 of Directive 2011/16/EU)

    — Number of requests sent

    — Number of replies received

    — Number of full replies received within six months

    — Number of replies for which (part of or the whole) information was received within two months

- Number of requests received
- Number of replies sent
- Number of refusals on the ground of Article 17 of Directive 2011/16/EU

— on spontaneous exchange of information (Article 9 and 10 of Directive 2011/16/EU)

- Number of spontaneous exchanges sent
- Number of spontaneous exchanges received
- Number of cross-border rulings sent
- Number of cross-border rulings received
- Number of unilateral advance pricing arrangements sent
- Number of unilateral advance pricing arrangements received

— Part B: Statistics on other forms of administrative cooperation

— on presence in administrative offices and participation in administrative enquiries (Article 11 of Directive 2011/16/EU)

- Number of incoming presences in administrative offices and participation in administrative enquiries

— on simultaneous controls (Article 12 of Directive 2011/16/EU)

- Number of simultaneous controls which the Member State has initiated
- Number of simultaneous controls in which the Member State has participated

— on requests for notification (Article 13 of Directive 2011/16/EU)

- Number of requests for notification sent
- Number of requests for notification received

— on feedback (Article 14 of Directive 2011/16/EU)

- Number of requests for feedback sent
- Number of feedback received
- Number of requests for feedback received
- Number of feedback sent

— Part C: Statistics on estimated additional revenue or increase in assessed tax due to administrative cooperation. The information under this part is optional

- From exchange of information on request
- From spontaneous exchange of information
- As a result of simultaneous control
- Overall figure and number of cases.

ANNEX X

List referred to in Article 2d

The statistical data required for the mandatory automatic exchange of information pursuant to Article 23(4) of Directive 2011/16/EU on the categories of income and capital referred to in Article 8(1) of that Directive covers the following information:

— For all categories of income and capital referred to in Article 8(1) of Directive 2011/16/EU: statistics on message and taxpayer

— In the case of income from employment and director's fees: statistics on message and recipient, message and payer, recipient and relationship, payer and relationship, recipient and income

— In the case of pensions: statistics on message and recipient, message and payer, recipient, payer, scheme, income

— In the case of life insurance products: statistics on message and policy, policy overall, event

— In the case of ownership of and income from immovable property: statistics on message and party, party overall, property quantity and value, transaction quantity and value, loan event quantity and value, right income quantity and value

— In the case of status messages: statistics on status message, status message error

— In the case of zero data messages: statistics on zero data message.

ANNEX XI

List referred to in Article 2d

The statistical data required for the mandatory automatic exchange of information in accordance with Article 8(3a) of Directive 2011/16/EU, pursuant to Article 23(4) of that Directive covers the following information:

— Per message, statistics on originating country and destination country, total number of records, total payment amounts

— Per originating country, statistics on total number of reporting financial institutions, total payment amounts

— Per unique account, statistics on account holder quantity, payment category, amount per payment category

— Per account, statistics on account holder type, account holder taxpayer identification number or functional equivalent, account holder residence country, natural person as account holder, closed account, dormant account

— Per account holder, statistics on controlling person type, controlling person taxpayer identification number or functional equivalent, controlling person residence country, natural person as controlling person.

ANNEX XII

List referred to in Article 2d

The statistical data required for the mandatory automatic exchange of information in accordance with Article 8aa of Directive 2011/16/EU, pursuant to Article 23(4) of that Directive covers the following information:

— Number of country-by-country reports received from Reporting Entities

— Number of country-by-country reports due to be reported by Reporting Entities but not received or only partial report provided, breakdown per jurisdictions of the Ultimate Parent Entities

— Number of country-by-country reports received from each other Member State.

— Number of country-by-country reports due but not received from each other Member State.

— Number of country-by-country reports sent to each other Member State.'

DIRECTIVES

COMMISSION IMPLEMENTING DIRECTIVE (EU) 2018/100

of 22 January 2018

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

(1) Commission Directives 2003/90/EC ([3]) and 2003/91/EC ([4]) were adopted to ensure that the varieties the Member States include in their national catalogues comply with the protocols established by the Community Plant Variety Office (CPVO) as regards the characteristics to be covered as a minimum by the examination of the various species and the minimum conditions for examining the varieties, as far as such protocols had been established. For the species not covered by CPVO protocols those Directives provide that guidelines of the International Union for Protection of New Varieties of Plants (UPOV) are to apply.

(2) Since the last amendment to Directives 2003/90/EC and 2003/91/EC by Commission Implementing Directive (EU) 2016/1914 ([5]) the CPVO and UPOV have established further protocols and guidelines and have updated existing ones.

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

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

([1]) OJ L 193, 20.7.2002, p. 1.
([2]) OJ L 193, 20.7.2002, p. 33.
([3]) Commission Directive 2003/90/EC of 6 October 2003 setting out implementing measures for the purposes of Article 7 of Council Directive 2002/53/EC as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant species (OJ L 254, 8.10.2003, p. 7).
([4]) Commission Directive 2003/91/EC of 6 October 2003 setting out implementing measures for the purposes of Article 7 of Council Directive 2002/55/EC as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of vegetable species (OJ L 254, 8.10.2003, p. 11).
([5]) Commission Implementing Directive (EU) 2016/1914 of 31 October 2016 amending Directives 2003/90/EC and 2003/91/EC setting out implementing measures for the purposes of Article 7 of Council Directive 2002/53/EC and Article 7 of Council Directive 2002/55/EC respectively, as regards the characteristics to be covered as a minimum by the examination and the minimum conditions for examining certain varieties of agricultural plant species and vegetable species (OJ L 296, 1.11.2016, p. 7).

Article 2

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

Article 3

For examinations started before 1 September 2018 Member States may apply Directives 2003/90/EC and 2003/91/EC in the version applying before their amendment by this Directive.

Article 4

Member States shall adopt and publish, by 31 August 2018 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 September 2018.

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

Article 5

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

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 22 January 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

PART A

'ANNEX I

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

Scientific name	Common name	CPVO protocol
Festuca arundinacea Schreb.	Tall fescue	TP 39/1 of 1.10.2015
Festuca filiformis Pourr.	Fine-leaved sheep's fescue	TP 67/1 of 23.6.2011
Festuca ovina L.	Sheep's fescue	TP 67/1 of 23.6.2011
Festuca pratensis Huds.	Meadow fescue	TP 39/1 of 1.10.2015
Festuca rubra L.	Red fescue	TP 67/1 of 23.6.2011
Festuca trachyphylla (Hack.) Krajina	Hard fescue	TP 67/1 of 23.6.2011
Lolium multiflorum Lam.	Italian ryegrass	TP 4/1 of 23.6.2011
Lolium perenne L.	Perennial ryegrass	TP 4/1 of 23.6.2011
Lolium × *hybridum* Hausskn.	Hybrid ryegrass	TP 4/1 of 23.6.2011
Pisum sativum L.	Field pea	TP 7/2 Rev. 2 of 15.3.2017
Poa pratensis L.	Smooth-stalked meadow grass	TP 33/1 of 15.3.2017
Vicia sativa L.	Common vetch	TP 32/1 of 19.4.2016
Brassica napus L. var. *napobrassica* (L.) Rchb.	Swede	TP 89/1 of 11.3.2015
Raphanus sativus L. var. *oleiformis* Pers.	Fodder radish	TP 178/1 of 15.3.2017
Brassica napus L.	Swede rape	TP 36/2 of 16.11.2011
Cannabis sativa L.	Hemp	TP 276/1 of 28.11.2012
Glycine max (L.) Merr.	Soya bean	TP 80/1 of 15.3.2017
Gossypium spp.	Cotton	TP 88/1 of 19.4.2016
Helianthus annuus L.	Sunflower	TP 81/1 of 31.10.2002
Linum usitatissimum L.	Flax/Linseed	TP 57/2 of 19.3.2014
Sinapis alba L.	White mustard	TP 179/1 of 15.3.2017
Avena nuda L.	Small naked oat, Hulless oat	TP 20/2 of 1.10.2015
Avena sativa L. (includes *A. byzantina* K. Koch)	Oats and Red oat	TP 20/2 of 1.10.2015
Hordeum vulgare L.	Barley	TP 19/4 of 1.10.2015
Oryza sativa L.	Rice	TP 16/3 of 1.10.2015
Secale cereale L.	Rye	TP 58/1 of 31.10.2002
xTriticosecale Wittm. ex A. Camus	Hybrids resulting from the crossing of a species of the genus *Triticum* and a species of the genus *Secale*	TP 121/2 rev. 1 of 16.2.2011
Triticum aestivum L.	Wheat	TP 3/4 rev. 2 of 16.2.2011
Triticum durum Desf.	Durum wheat	TP 120/3 of 19.3.2014
Zea mays L.	Maize	TP 2/3 of 11.3.2010
Solanum tuberosum L.	Potato	TP 23/3 of 15.3.2017

[1] The text of these protocols can be found on the CPVO web site (www.cpvo.europa.eu).

ANNEX II

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

Scientific name	Common name	UPOV guideline
Beta vulgaris L.	Fodder beet	TG/150/3 of 4.11.1994
Agrostis canina L.	Velvet bent	TG/30/6 of 12.10.1990
Agrostis gigantea Roth.	Red top	TG/30/6 of 12.10.1990
Agrostis stolonifera L.	Creeping bent grass	TG/30/6 of 12.10.1990
Agrostis capillaris L.	Brown top	TG/30/6 of 12.10.1990
Bromus catharticus Vahl	Rescue grass	TG/180/3 of 4.4.2001
Bromus sitchensis Trin.	Alaska brome grass	TG/180/3 of 4.4.2001
Dactylis glomerata L.	Cocksfoot	TG/31/8 of 17.4.2002
xFestulolium Asch. et Graebn.	Hybrids resulting from the crossing of a species of the genus *Festuca* with a species of the genus *Lolium*	TG/243/1 of 9.4.2008
Phleum nodosum L.	Small timothy	TG/34/6 of 7.11.1984
Phleum pratense L.	Timothy	TG/34/6 of 7.11.1984
Lotus corniculatus L.	Birdsfoot trefoil	TG 193/1 of 9.4.2008
Lupinus albus L.	White lupine	TG/66/4 of 31.3.2004
Lupinus angustifolius L.	Narrow-leaved lupine	TG/66/4 of 31.3.2004
Lupinus luteus L.	Yellow lupine	TG/66/4 of 31.3.2004
Medicago doliata Carmign.	Straight-spined medic	TG 228/1 of 5.4.2006
Medicago italica (Mill.) Fiori	Disc medic	TG 228/1 of 5.4.2006
Medicago littoralis Rohde ex Loisel.	Shore medic/Strand medic	TG 228/1 of 5.4.2006
Medicago lupulina L.	Trefoil	TG 228/1 of 5.4.2006
Medicago murex Willd.	Sphere medic	TG 228/1 of 5.4.2006
Medicago polymorpha L.	Bur medic	TG 228/1 of 5.4.2006
Medicago rugosa Desr.	Wrinkled medic/Gama medic	TG 228/1 of 5.4.2006
Medicago sativa L.	Lucerne	TG/6/5 of 6.4.2005
Medicago scutellata (L.) Mill.	Snail medic/Shield medic	TG 228/1 of 5.4.2006
Medicago truncatula Gaertn.	Barrel medic	TG 228/1 of 5.4.2006
Medicago × *varia* T. Martyn	Sand lucerne	TG/6/5 of 6.4.2005
Trifolium pratense L.	Red clover	TG/5/7 of 4.4.2001
Trifolium repens L.	White clover	TG/38/7 of 9.4.2003
Vicia faba L.	Field bean	TG/8/6 of 17.4.2002
Arachis hypogaea L.	Groundnut/Peanut	TG/93/4 of 9.4.2014
Brassica rapa L. var. *silvestris* (Lam.) Briggs	Turnip rape	TG/185/3 of 17.4.2002
Carthamus tinctorius L.	Safflower	TG/134/3 of 12.10.1990
Papaver somniferum L.	Poppy	TG/166/4 of 9.4.2014
Sorghum bicolor (L.) Moench	Sorghum	TG/122/4 of 25.3.2015
Sorghum sudanense (Piper) Stapf.	Sudan grass	TG 122/4 of 25.3.2015
Sorghum bicolor (L.) Moench × *Sorghum sudanense* (Piper) Stapf	Hybrids resulting from the crossing of *Sorghum bicolor* and *Sorghum sudanense*	TG 122/4 of 25.3.2015’

([1]) The text of these guidelines can be found on the UPOV web site (www.upov.int).

PART B

'*ANNEX I*

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

Scientific name	Common name	CPVO protocol
Allium cepa L. (Cepa group)	Onion and Echalion	TP 46/2 of 1.4.2009
Allium cepa L. (Aggregatum group)	Shallot	TP 46/2 of 1.4.2009
Allium fistulosum L.	Japanese bunching onion or Welsh onion	TP 161/1 of 11.3.2010
Allium porrum L.	Leek	TP 85/2 of 1.4.2009
Allium sativum L.	Garlic	TP 162/1 of 25.3.2004
Allium schoenoprasum L.	Chives	TP 198/2 of 11.3.2015
Apium graveolens L.	Celery	TP 82/1 of 13.3.2008
Apium graveolens L.	Celeriac	TP 74/1 of 13.3.2008
Asparagus officinalis L.	Asparagus	TP 130/2 of 16.2.2011
Beta vulgaris L.	Beetroot including Cheltenham beet	TP 60/1 of 1.4.2009
Beta vulgaris L.	Spinach beet or Chard	TP 106/1 of 11.3.2015
Brassica oleracea L.	Curly kale	TP 90/1 of 16.2.2011
Brassica oleracea L.	Cauliflower	TP 45/2 Rev. of 15.3.2017
Brassica oleracea L.	Sprouting broccoli or Calabrese	TP 151/2 Rev. of 15.3.2017
Brassica oleracea L.	Brussels sprouts	TP 54/2 Rev. of 15.3.2017
Brassica oleracea L.	Kohlrabi	TP 65/1 Rev. of 15.3.2017
Brassica oleracea L.	Savoy cabbage, White cabbage and Red cabbage	TP 48/3 Rev. of 15.3.2017
Brassica rapa L.	Chinese cabbage	TP 105/1 of 13.3.2008
Capsicum annuum L.	Chilli or Pepper	TP 76/2 Rev. of 15.3.2017
Cichorium endivia L.	Curled-leaved endive and Plain-leaved endive	TP 118/3 of 19.3.2014
Cichorium intybus L.	Industrial chicory	TP 172/2 of 1.12.2005
Cichorium intybus L.	Witloof chicory	TP 173/1 of 25.3.2004
Citrullus lanatus (Thunb.) Matsum. et Nakai	Watermelon	TP 142/2 of 19.3.2014
Cucumis melo L.	Melon	TP 104/2 of 21.3.2007
Cucumis sativus L.	Cucumber and Gherkin	TP 61/2 of 13.3.2008
Cucurbita maxima Duchesne	Gourd	TP 155/1 of 11.3.2015
Cucurbita pepo L.	Marrow or Courgette	TP 119/1rev. of 19.3.2014
Cynara cardunculus L.	Globe artichoke and Cardoon	TP 184/2 of 27.2.2013
Daucus carota L.	Carrot and Fodder carrot	TP 49/3 of 13.3.2008
Foeniculum vulgare Mill.	Fennel	TP 183/1 of 25.3.2004
Lactuca sativa L.	Lettuce	TP 13/5 Rev. 2 of 15.3.2017
Solanum lycopersicum L.	Tomato	TP 44/4 Rev. 2 of 19.4.2016
Petroselinum crispum (Mill.) Nyman ex A. W. Hill	Parsley	TP 136/1 of 21.3.2007
Phaseolus coccineus L.	Runner bean	TP 9/1 of 21.3.2007

[1] The text of these protocols can be found on the CPVO web site (www.cpvo.europa.eu).

Scientific name	Common name	CPVO protocol
Phaseolus vulgaris L.	Dwarf French bean and Climbing French bean	TP 12/4 of 27.2.2013
Pisum sativum L. (partim)	Wrinkled pea, Round pea and Sugar pea	TP 7/2 Rev. 2 of 15.3.2017
Raphanus sativus L.	Radish, Black radish	TP 64/2 Rev. of 11.3.2015
Rheum rhabarbarum L	Rhubarb	TP 62/1 of 19.4.2016
Scorzonera hispanica L.	Scorzonera or Black salsify	TP 116/1 of 11.3.2015
Solanum melongena L.	Aubergine or Egg plant	TP 117/1 of 13.3.2008
Spinacia oleracea L.	Spinach	TP 55/5 Rev. 2 of 15.3.2017
Valerianella locusta (L.) Laterr.	Corn salad or Lamb's lettuce	TP 75/2 of 21.3.2007
Vicia faba L. (partim)	Broad bean	TP Broadbean/1 of 25.3.2004
Zea mays L. (partim)	Sweet corn and Pop corn	TP 2/3 of 11.3.2010
Solanum lycopersicum L. × *Solanum habrochaites S. Knapp & D.M. Spooner*; *Solanum lycopersicum* L. × *Solanum peruvianum* (L.) *Mill.*; *Solanum lycopersicum* L. × *Solanum cheesmaniae* (L. *Ridley*) *Fosberg*	Tomato rootstocks	TP 294/1 Rev. 2 of 15.3.2017
Cucurbita maxima × *Cucurbita moschata*	Interspecific hybrids of *Cucurbita maxima* Duch. × *Cucurbita moschata* Duch. for use as rootstocks	TP 311/1 of 15.3.2017

ANNEX II

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

Scientific name	Common name	UPOV guideline
Brassica rapa L.	Turnip	TG/37/10 of 4.4.2001
Cichorium intybus L.	Large-leaved chicory or Italian chicory	TG/154/4 of 5.4.2017'

[1] The text of these guidelines can be found on the UPOV web site (www.upov.int).

DECISIONS

COUNCIL DECISION (CFSP) 2018/101

of 22 January 2018

on the promotion of effective arms export controls

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 28(1) and 31(1) thereof,

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

Whereas:

(1) The European Security Strategy adopted by the European Council on 12 December 2003 outlines five key challenges to be addressed by the Union: terrorism, the proliferation of weapons of mass destruction, regional conflicts, state failure, and organised crime. The consequences of the uncontrolled circulation of conventional weapons are central to four of those five challenges. That Strategy underlines the importance of export controls to contain weapons proliferation. The new Global Strategy for the Union's foreign and security policy, titled 'Shared Vision, Common Action: A Stronger Europe', which was presented by the High Representative on 28 June 2016, confirms the Union's support for the universalisation, full implementation and enforcement of multilateral disarmament, non-proliferation and arms control treaties and regimes.

(2) On 5 June 1998, the Union adopted a politically binding Code of Conduct on Arms Exports, which sets common criteria to regulate the legal trade in conventional weapons.

(3) The Union Strategy to combat illicit accumulation and trafficking of small arms and light weapons (SALW) and their ammunition, adopted by the European Council on 15 and 16 December 2005, provides that the Union, at regional and international levels, supports the strengthening of export controls and the promotion of the criteria of the Code of Conduct on Arms Exports by, inter alia, helping third countries to draft relevant national legislation and to promote measures to improve transparency.

(4) The Code of Conduct on Arms Exports was replaced on 8 December 2008 by Council Common Position 2008/944/CFSP ([1]), which establishes eight criteria against which applications for the export of conventional arms are to be assessed. It also includes a notification and consultation mechanism for arms exports denials, and transparency measures such as the yearly publication of an EU annual report on arms exports. A number of third countries have aligned themselves with Common Position 2008/944/CFSP.

(5) Article 11 of Common Position 2008/944/CFSP states that Member States are to use their best endeavours to encourage other States which export military technology or equipment to apply the criteria contained in that Common Position.

(6) The Arms Trade Treaty (ATT) was adopted by the UN General Assembly in April 2013 and entered into force on 24 December 2014. The Treaty aims to strengthen transparency and responsibility in the arms trade. As with Common Position 2008/944/CFSP, the ATT lays down a number of risk assessment criteria against which arms exports have to be assessed. The Union concretely supports the effective implementation and universalisation of the ATT through its dedicated programmes adopted under Council Decision 2013/768/CFSP ([2]) and Council Decision (CFSP) 2017/915 ([3]). Those programmes assist a number of third countries, where they so request, in strengthening their arms transfer control systems in line with the requirements of the Treaty.

([1]) Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ L 335, 13.12.2008, p. 99).

([2]) Council Decision 2013/768/CFSP of 16 December 2013 on EU activities in support of the implementation of the Arms Trade Treaty, in the framework of the European Security Strategy (OJ L 341, 18.12.2013, p. 56).

([3]) Council Decision (CFSP) 2017/915 of 29 May 2017 on Union outreach activities in support of the implementation of the Arms Trade Treaty (OJ L 139, 30.5.2017, p. 38).

(7) It is therefore important to ensure complementarity between the outreach and assistance activities provided for in the present Decision and those provided for in Decision (CFSP) 2017/915.

(8) Union activities to promote effective and transparent arms export controls have developed since 2008 under Joint Action 2008/230/CFSP ([1]) and Council Decisions 2009/1012/CFSP ([2]) and 2012/711/CFSP ([3]) and Council Decision (CFSP) 2015/2309 ([4]). The activities carried out have notably supported further regional cooperation, enhanced transparency and greater responsibility, in line with the principles of Common Position 2008/944/CFSP and the risk assessment criteria enshrined therein. The activities in question have traditionally addressed third countries of the eastern and southern neighbourhoods of the Union.

(9) In recent years, the Union has also provided assistance to improve export controls on dual-use goods in third countries, and effective coordination should be ensured between the arms export control activities covered by this Decision and those activities on export controls of dual-use goods.

(10) The German Federal Office for Economic Affairs and Export Control ('BAFA') has been entrusted by the Council with the technical implementation of Decisions 2009/1012/CFSP and 2012/711/CFSP and Decision (CFSP) 2015/2309. BAFA is also an implementing agency for projects supporting the effective implementation of the ATT under Decision 2013/768/CFSP and Decision (CFSP) 2017/915. BAFA is the competent agency for arms control of an EU Member State, and has developed a large body of knowledge and expertise on outreach activities, in addition to sharing its core competencies with other states,

HAS ADOPTED THIS DECISION:

Article 1

1. For the purpose of promoting peace and security, and in line with the European Security Strategy, the Union shall pursue the following objectives:

(a) promoting effective controls on arms exports by third countries, in accordance with the principles set out in Common Position 2008/944/CFSP and in the ATT, and seeking, where appropriate, complementarity and synergies with Union assistance projects in the field of export controls on dual-use goods;

(b) supporting third countries' efforts at national and regional levels to render trade in conventional weapons more responsible and transparent, and to mitigate the risk of the diversion of arms to unauthorised users.

2. The Union shall pursue the objectives referred to in paragraph 1 through the following project activities:

(a) further promoting, among third countries, the criteria and principles set out in Common Position 2008/944/CFSP and in the ATT, based on the achievements reached through the implementation of Decision (CFSP) 2015/2309, Decisions 2012/711/CFSP and 2009/1012/CFSP, and Joint Action 2008/230/CFSP;

(b) assisting third countries in the drafting, updating and implementing, as appropriate, of relevant legislative and administrative measures which aim to establish an effective system of conventional arms export controls;

(c) assisting beneficiary countries in the training of licensing and enforcement officers to ensure the adequate implementation and enforcement of arms export controls;

(d) assisting beneficiary countries in outreach to their national arms industries to ensure compliance with export control regulations;

(e) promoting transparency and responsibility in the international arms trade, including through support for national and regional measures that promote transparency and appropriate scrutiny in the export of conventional weapons;

([1]) Council Joint Action 2008/230/CFSP of 17 March 2008 on support for EU activities in order to promote the control of arms exports and the principles and criteria of the EU Code of Conduct on Arms Exports among third countries, (OJ L 75, 18.3.2008, p. 81).
([2]) Council Decision 2009/1012/CFSP of 22 December 2009 on support for EU activities in order to promote the control of arms exports and the principles and criteria of Common Position 2008/944/CFSP among third countries (OJ L 348, 29.12.2009, p. 16).
([3]) Council Decision 2012/711/CFSP of 19 November 2012 on support for Union activities in order to promote, among third countries, the control of arms exports and the principles and criteria of Common Position 2008/944/CFSP (OJ L 321, 20.11.2012, p. 62).
([4]) Council Decision (CFSP) 2015/2309 of 10 December 2015 on the promotion of effective arms export controls (OJ L 326, 11.12.2015, p. 56).

(f) encouraging those beneficiary countries that have not taken any steps towards accession to the ATT to join the ATT, and to encourage signatories of the ATT to ratify it;

(g) promoting further consideration of the risks of the diversion of arms and the mitigation thereof, both from the importing and exporting perspectives.

A detailed description of the project activities referred to in this paragraph is set out in the Annex.

Article 2

1. The High Representative of the Union for Foreign Affairs and Security Policy ('High Representative') shall be responsible for the implementation of this Decision.

2. The implementation of the project activities referred to in Article 1(2) shall be carried out by the German Federal Office for Economic Affairs and Export Control ('BAFA'). The selection of BAFA is justified by its proven experience, qualifications and necessary expertise over the full range of relevant Union arms export control activities

3. BAFA shall perform its tasks under the responsibility of the High Representative. For that purpose, the High Representative shall enter into the necessary arrangements with BAFA.

Article 3

1. The financial reference amount for the implementation of the project activities referred to in Article 1(2) shall be EUR 1 304 107,28.

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 Union's budget.

3. The Commission shall supervise the proper management of the financial reference amount referred to in paragraph 1. For that purpose, it shall conclude a financing agreement with BAFA. The financing agreement shall stipulate that BAFA is to ensure the visibility of the Union's contribution, appropriate to its size.

4. The Commission shall endeavour to conclude the financing 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 financing agreement.

Article 4

The High Representative shall report to the Council on the implementation of this Decision on the basis of regular reports prepared by BAFA. Those reports shall form the basis for the evaluation carried out by the Council. The Commission shall report on the financial aspects of the implementation of the project activities as referred to in Article 1(2).

Article 5

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

This Decision shall expire 30 months after the date of the conclusion of the financing agreement referred to in Article 3(3), or 6 months after the date of its adoption if no financing agreement has been concluded within that period.

Done at Brussels, 22 January 2018.

For the Council
The President
F. MOGHERINI

ANNEX

PROJECT ACTIVITIES REFERRED TO IN ARTICLE 1(2)

1. **Objectives**

The objectives of this Decision are to promote improved controls on arms transfers by third countries and to support third countries' efforts, at national and regional levels, to render international trade in conventional weapons more responsible and transparent, and to mitigate the risk of the diversion of arms to unauthorised users. Where relevant, those objectives should include the promotion of the principles and criteria set out in Common Position 2008/944/CFSP and in the ATT. Those objectives should be pursued in seeking, where appropriate, complementarity and synergies with the Union's assistance projects in the field of export controls on dual-use goods.

In order to achieve the above-mentioned objectives, the Union should continue to promote the standards of Common Position 2008/944/CFSP, building on the achievements reached through the implementation of Decision (CFSP) 2015/2309, Decisions 2012/711/CFSP and 2009/1012/CFSP, and Joint Action 2008/230/CFSP. For that purpose, assistance should be provided to beneficiary third countries for the drafting, updating and implementation, as appropriate, of relevant legislative and administrative measures that support an effective system of conventional arms transfer controls. Support should also be provided regarding the assessment and mitigation of the risk of arms diversion.

Support should also be given to the training of licensing and enforcement officers responsible for the implementation and enforcement of arms transfer controls, and to national and regional measures promoting transparency and appropriate scrutiny over exports of conventional weapons. Furthermore, contacts with the private sector and compliance with relevant national legal and administrative provisions that regulate the transfer of arms should be promoted.

2. **Selection of the implementing agency**

The implementation of this Council Decision is entrusted to BAFA. Where appropriate, BAFA will partner with Member States' export control agencies, relevant regional and international organisations, think tanks, research institutes and NGOs.

BAFA has leading experience in the provision of export control assistance and outreach activities. It has developed such experience in all the relevant fields of strategic export control, addressing the CBRN-related, dual-use goods and arms areas. Through those programmes and activities, BAFA has gained in-depth knowledge of the export control systems of most of the countries covered by the present Decision.

With regard to arms export control assistance and outreach, BAFA successfully completed the implementation of Decisions 2009/1012/CFSP and 2012/711/CFSP and Decision (CFSP) 2015/2309. BAFA is also in charge of the technical implementation of the ATT implementation support programme established by Decision 2013/768/CFSP and Decision (CFSP) 2017/915.

The overall effect is that BAFA is uniquely placed to identify the strengths and weaknesses of the export control systems of countries that will be the beneficiaries of the activities provided for in this Decision. It is thus most able to facilitate synergies between the various arms export control assistance and outreach programmes and to avoid duplication.

3. **Coordination with other Union assistance projects in the field of export controls**

Based on the experience of previous Union outreach activities in the field of exports controls covering both dual-use goods and conventional arms, synergy and complementarity should be sought. To that end, the activities referred to in points 5.2.1 to 5.2.3 and 5.2.5 should be carried out, where appropriate, in conjunction with other activities financed through the CFSP budget, in particular those activities provided for under Decision (CFSP) 2017/915, or with other activities relating to dual-use goods export controls financed through Union financial instruments other than the CFSP budget. In particular, back-to-back events should be explored. This should be done in full compliance with the legal and financial limitations set for the use of relevant Union financial instruments.

4. **Coordination with other donors' assistance projects in the field of export controls**

Where appropriate, synergy and complementarity with other donors' assistance projects in the field of export controls should also be sought. As mentioned in point 3, the coordination with other donors should be carried out especially for the activities referred to in points 5.2.1 to 5.2.3 and 5.2.5. The reference in point 3 with regard to back-to-back planning remains valid.

5. **Description of project activities**

5.1. *Project objectives*

The main objective is to provide technical assistance to a number of beneficiary countries which have demonstrated their willingness to develop their standards and practices regarding arms export control. To do so, the activities to be undertaken will take into account the status of the beneficiary countries, in particular regarding:

— the possible membership of, or application for membership of, international export control regimes relating to the transfer of conventional arms and dual-use goods and technologies,

— the candidatures for membership of the Union and whether the beneficiary countries are official candidates or potential candidates,

— the position regarding the ATT.

Where the beneficiary countries addressed are only signatories to the ATT, the activities should — where feasible — seek to ascertain better what the obstacles to ATT ratification are, in particular where those obstacles are of a juridical or regulatory nature and are related to gaps or needs in implementation capacities. Where relevant, possible Union support under Decision (CFSP) 2017/915 should be promoted. Where the countries addressed have taken no steps towards the Treaty (neither signature, ratification, nor accession), the activities should promote accession to the ATT, possibly with the support of other beneficiary countries that have ratified the ATT.

Another complementary objective is to sensitise a number of third countries to arms diversion risk-assessment and diversion mitigation, both from the exporting and importing perspectives.

5.2. *Project description*

5.2.1. Regional workshops

The project will take the form of up to eight 2-day workshops, providing training in relevant areas of conventional arms export controls.

The participants in the workshop (up to 35) would include government officials of the beneficiary countries covered. Representatives from national parliaments and industry and civil society representatives may also be invited, where appropriate.

Training will be conducted by experts from Member States' national administrations (including former officials), representatives of countries that have aligned themselves with Common Position 2008/944/CFSP, and representatives of the private sector and civil society.

The workshops may take place in a beneficiary country or in another location to be determined by the High Representative, in consultation with the Council Working Party on Conventional Arms Exports (COARM).

The regional workshops will be organised as follows:

(a) up to two workshops for the countries in South-Eastern Europe; Eastern European and Caucasian countries of the European Neighbourhood Policy and Turkey will be invited to at least one of the workshops;

(b) up to two workshops for the Eastern European and Caucasian countries of the European Neighbourhood Policy; South-Eastern Europe countries and Turkey will be invited to at least one of those workshops;

(c) up to two workshops for the North African Mediterranean countries of the European Neighbourhood Policy; Southern Neighbourhood countries of the European Neighbourhood Policy will be invited to at least one of the workshops;

(d) up to two workshops for Central Asia; Eastern European and Caucasian countries of the European Neighbourhood Policy will be invited to at least one of the workshops.

This regional breakdown of two workshops per region may not be achieved if circumstances are not propitious (for example if the number of participants is unexpectedly too low, if there is no serious offer to host by any beneficiary country of the region, or if there is duplication with other activities of other outreach providers). In the event that one or more workshop is not implemented, the number of workshops for the other abovementioned region(s) could be increased accordingly, within the global ceiling of eight workshops.

5.2.2. Study visits

The project will take the form of up to four 2-day study visits of government officials to the relevant authorities of Member States.

Study visits should cover between two and four beneficiary countries. Beneficiary countries of the study visits need not necessarily come from the same region.

The project will also take the form of up to three 2-day study visits of government, customs and/or licensing officials of beneficiary countries to the relevant authorities of other beneficiary countries.

5.2.3. Individual assistance to beneficiary countries

The project will take the form of workshops of no more than 10 days' duration in total for individual beneficiary countries which request one, in which state officials from the beneficiary countries, including government, licensing and enforcement officials, will participate. These events will preferably take place in the respective beneficiary countries. Depending on the exact needs and availability of the beneficiary countries' and EU Member States' experts, the overall 10 days available will be allocated with a minimum 2-day format.

Experts from Member States' national administrations (including former officials), representatives of countries that have aligned themselves with Common Position 2008/944/CFSP, and representatives of the private sector and civil society will share their expertise.

Those individual assistance workshops will be mainly held at the request of the beneficiary countries. They are intended to address a specific issue or a specific need raised by the beneficiary country, for example, in the margins of a regional workshop or during regular contacts with EU experts and with BAFA.

5.2.4. Experts' meeting

The project will take the form of a 1-day experts' meeting in Brussels dedicated to government officials, including government, licensing and enforcement officials from beneficiary countries belonging to the SEE region. The meeting will take place in the margins of the meetings of COARM.

5.2.5. Assessment events

In order to provide a mid-term and a final assessment of the activities under this Decision, two experts meetings will be organised in Brussels, ideally back-to-back with a regular COARM meeting.

The mid-term assessment event will take the form of a workshop with the participation of EU Member States, which may last up to 1 day.

The final assessment event will take the form of a 2-day event in Brussels with the participation of beneficiary countries and EU Member States.

Up to two representatives (appropriate government officials) of each beneficiary country will be invited to the final assessment event.

6. **Beneficiaries**

6.1. *Countries beneficiary of activities under this Council Decision*

(i) South Eastern European countries (Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo (under UNSCR/1244/99 ([1]));

(ii) North African Mediterranean countries of the European Neighbourhood Policy (Algeria, Egypt, Morocco and Tunisia);

([1]) This designation is without prejudice to positions on status, and is in line with UNSCR 1244 (1999) and the ICJ Opinion on the Kosovo Declaration of Independence.

(iii) Eastern European and Caucasian countries of the European Neighbourhood Policy (Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine);

(iv) Central Asian countries (Kazakhstan, Tajikistan, Uzbekistan, Kyrgyzstan, Turkmenistan);

(v) Southern Neighbourhood countries of the European Neighbourhood Policy (Jordan and Lebanon);

(vi) Turkey.

6.2. *Amendment to the scope of beneficiary countries*

The COARM Working Party may, upon a proposal from the High Representative, decide to modify the list of beneficiary countries based on an appropriate justification. Modifications should be communicated in a formal manner between BAFA and the EU.

7. **Project results and implementation indicators**

In addition to the final assessment event referred to in 5.2.5, the assessment of the results of the project will take into account the following:

7.1. *Individual assessment of beneficiary countries*

On completion of the activities foreseen, BAFA shall provide the EEAS and the Commission with a progress report on each of the beneficiary countries referred to in 6.1. That report will be prepared in liaison with the EU Delegations in the countries concerned and will recap the activities that took place in the beneficiary country over the duration of the Decision. The report will also assess the beneficiary country's capacity in the area of arms transfer controls. Where the beneficiary country is party to the ATT, the assessment will assess how the capacity in place enables that country to implement the ATT.

7.2. *Impact assessment and implementation indicators*

The impact of activities provided for by this Decision for the beneficiary countries should be assessed after the activities have been carried out. The impact assessment will be carried out by the High Representative, in cooperation with COARM and, as appropriate, with the EU Delegations in the beneficiary countries, as well as with other relevant stakeholders.

For that purpose, the following indicators will be used:

— whether relevant national regulations on arms transfer controls are in place and whether/to which extent they meet the provisions of the Common Position 2008/944/CFSP (inter alia, application of the assessment criteria, implementation of the EU common military list, reporting),

— where available, information on enforcement cases,

— whether the beneficiary countries are able to report arms exports and/or imports (e.g. UN Register, ATT annual reporting, Wassenaar Arrangement, OSCE, national reports),

— whether the beneficiary country has aligned, or intends to officially align, with Common Position 2008/944/CFSP.

The individual assessment reports under 7.1 should refer to those implementation indicators as appropriate.

8. **Promoting the use of the EU outreach web portal** ([1])

The EU P2P web portal provided for in Decision 2012/711/CFSP has been developed as a Union-owned resource. It operates as a joint platform for all the Union outreach programmes (dual-use, arms). The activities listed under 5.2.1 to 5.2.5 are to raise the awareness of the Union outreach web portal and to promote its use. Participants in outreach activities should be informed about the private part of the web portal that offers permanent access to resources, documents and contacts. Likewise, the use of the web portal should be promoted to other officials who are not able to participate directly in assistance and outreach activities. Furthermore, activities should be promoted through the EU P2P Newsletter.

([1]) https://export-control.jrc.ec.europa.eu/

9. **EU visibility**

BAFA shall take all appropriate measures to publicise the fact that the action is funded by the European Union. Such measures will be implemented in accordance with the communication and visibility manual for Union external actions published by the European Commission. BAFA will thus ensure the visibility of the Union contribution with appropriate branding and publicity, highlighting the role of the Union and raising awareness of the reasons for the Decision, as well as Union support for the Decision and the results of that support. Material produced by the project will prominently display the Union flag in accordance with Union relevant guidelines, including the logo 'EU P2P export control programme'. Union Delegations should be involved in events in third countries to enhance political follow-up and visibility.

Given that planned activities vary greatly in scope and character, a range of promotional tools will be used, including traditional media, website, social media, information and promotional materials (including infographics, leaflets, newsletters, press releases and others as appropriate). Publications and public events, procured under the project will be branded accordingly.

10. **Duration**

The total estimated duration of the project will be 24 months.

11. **Reporting**

BAFA shall prepare 6-monthly reports, including after the completion of each of the activities. The reports shall be submitted to the High Representative no later than 6 weeks after the completion of relevant activities.

12. **Estimated total cost of the project and union financial contribution**

The total estimated cost of the project is EUR 1 451 597,28 with co-financing from the Government of the Federal Republic of Germany. The total estimated cost of the EU-financed project is EUR 1 304 107,28.

COMMISSION IMPLEMENTING DECISION (EU) 2018/102

of 19 January 2018

amending Annex II to Decision 93/52/EEC as regards the recognition of the Autonomous Communities of Aragon and Catalonia of Spain as officially brucellosis (*B. melitensis*)-free regions

(notified under document C(2018) 159)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 91/68/EEC of 28 January 1991 on animal health conditions governing intra-Community trade in ovine and caprine animals [1], and in particular Section II of Chapter 1 of Annex A thereto,

Whereas:

(1) Directive 91/68/EEC defines the animal health conditions governing trade in the Union in ovine and caprine animals. It lays down the conditions whereby Member States or regions thereof may be recognised as being officially free of brucellosis (*B. melitensis*).

(2) Commission Decision 93/52/EEC [2] lists, in Annex II thereto, the regions of Member States which are recognised as officially free of brucellosis (*B. melitensis*) in accordance with Directive 91/68/EEC.

(3) Spain has submitted to the Commission documentation demonstrating compliance for the Autonomous Communities of Aragon and Catalonia with the conditions laid down in Directive 91/68/EEC for officially brucellosis (*B. melitensis*)- free status as regards ovine and caprine herds.

(4) Following the evaluation of the documentation submitted by Spain, the Autonomous Communities of Aragon and Catalonia should be recognised as being officially free of brucellosis (*B. melitensis*) as regards ovine and caprine herds.

(5) The entry for Spain in Annex II to Decision 93/52/EEC should therefor be amended accordingly.

(6) 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

Annex II to Decision 93/52/EEC is amended in accordance with the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 19 January 2018.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

[1] OJ L 46, 19.2.1991, p. 19.
[2] Commission Decision 93/52/EEC of 21 December 1992 recording the compliance by certain Member States or regions with the requirements relating to brucellosis (*B. melitensis*) and according them the status of a Member State or region officially free of the disease (OJ L 13, 21.1.1993, p. 14).

ANNEX

In Annex II to Decision 93/52/EEC, the entry for Spain is replaced by the following:

'In Spain:

— Autonomous Community of Aragon,

— Autonomous Community of Asturias,

— Autonomous Community of the Balearic Islands,

— Autonomous Community of the Canary Islands,

— Autonomous Community of Cantabria,

— Autonomous Community of Castilla-La Mancha: Provinces of Albacete, Cuenca and Guadalajara,

— Autonomous Community of Castilla y León,

— Autonomous Community of Catalonia,

— Autonomous Community of Extremadura,

— Autonomous Community of Galicia,

— Autonomous Community of La Rioja,

— Autonomous Community of Navarra,

— Autonomous Community of Pais Vasco,

— Autonomous Community of Valencia.'

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2018/103

of 20 December 2017

regarding the rule of law in Poland complementary to Recommendations (EU) 2016/1374, (EU) 2017/146 and (EU) 2017/1520

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

(1) On 27 July 2016, the Commission adopted a Recommendation regarding the rule of law in Poland ([1]), setting out its concerns on the situation of the Constitutional Tribunal and recommending how these should be addressed. On 21 December 2016 and on 26 July 2017, the Commission adopted complementary Recommendations regarding the rule of law in Poland ([2]).

(2) The Recommendations of the Commission were adopted under the Rule of Law Framework ([3]). The Rule of Law Framework sets out how the Commission will react should clear indications of a threat to the rule of law emerge in a Member State of the Union and explains the principles which the rule of law entails. The Rule of Law Framework provides guidance for a dialogue between the Commission and the Member State in order to prevent the emergence of a systemic threat to the rule of law that could develop into a 'clear risk of a serious breach' which would potentially trigger the use of the 'Article 7 TEU Procedure'. Where there are clear indications of a systemic threat to the rule of law in a Member State, the Commission can initiate a dialogue with that Member State under the Rule of Law Framework.

(3) The European Union is founded on a common set of values enshrined in Article 2 of the Treaty on European Union ('TEU'), which include the respect for the rule of law. The Commission, beyond its task to ensure the respect of EU law, is also responsible, together with the European Parliament, the Member States and the Council, for guaranteeing the common values of the Union.

(4) Case law of the Court of Justice of the European Union and of the European Court of Human Rights, as well as documents drawn up by the Council of Europe, building notably on the expertise of the European Commission for Democracy through Law ('*Venice Commission*'), provides a non-exhaustive list of these principles and hence defines the core meaning of the rule of law as a common value of the Union in accordance with Article 2 TEU. Those principles include legality, which implies a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibition of arbitrariness of the executive powers; independent and impartial courts; effective judicial review including respect for fundamental rights; and equality before the law ([4]). In addition to upholding those principles and values, State institutions also have the duty of loyal cooperation.

(5) In its Recommendation of 27 July 2016, the Commission explained the circumstances in which it decided, on 13 January 2016, to examine the situation under the Rule of Law Framework and in which it adopted, on 1 June 2016, an Opinion concerning the rule of law in Poland. The Recommendation also explained that the exchanges between the Commission and the Polish Government were not able to resolve the concerns of the Commission.

(6) In its Recommendation, the Commission found that there was a systemic threat to the rule of law in Poland and recommended that the Polish authorities take appropriate action to address this threat as a matter of urgency.

([1]) Commission Recommendation (EU) 2016/1374 of 27 July 2016 regarding the rule of law in Poland (OJ L 217, 12.8.2016, p. 53).

([2]) Commission Recommendation (EU) 2017/146 of 21 December 2016 regarding the rule of law in Poland complementary to Recommendation (EU) 2017/146 (OJ L 22, 27.1.2017, p. 65); and Commission Recommendation (EU) 2017/1520 of 26 July 2017 regarding the rule of law in Poland complementary to Recommendation (EU) 2016/1374 and (EU) 2017/146 (OJ L 228, 2.9.2017, p. 19).

([3]) Communication from the Commission to the European Parliament and the Council of 11 March 2014, '*A new EU Framework to Strengthen the Rule of Law*', COM(2014) 158 final.

([4]) See COM(2014) 158 final, section 2, Annex I.

(7) In its Recommendation of 21 December 2016, the Commission took into account the latest developments in Poland that had occurred since the Commission's Recommendation of 27 July 2016. The Commission found that whereas some of the issues raised in its last Recommendation had been addressed, important issues remained unresolved, and new concerns had arisen in the meantime. The Commission also found that the procedure which had led to the appointment of a new President of the Tribunal raised serious concerns as regards the rule of law. The Commission concluded that there continued to be a systemic threat to the rule of law in Poland. The Commission invited the Polish Government to solve the problems identified as a matter of urgency, within two months, and to inform the Commission of the steps taken to that effect. The Commission noted that it remained ready to pursue a constructive dialogue with the Polish Government on the basis of the Recommendation.

(8) On 26 July 2017, the Commission adopted a third Recommendation regarding the Rule of Law in Poland, complementary to its Recommendations of 27 July and 21 December 2016. In its Recommendation, the Commission took into account the developments that had occurred in Poland since the Commission's Recommendation of 21 December 2016. The concerns of the Commission relates to the lack of an independent and legitimate constitutional review and to the adoption by the Polish Parliament of new legislation relating to the Polish judiciary which raises grave concerns as regards judicial independence and increases significantly the systemic threat to the rule of law in Poland. In its Recommendation, the Commission considers that the situation of a systemic threat to the rule of law in Poland as presented in its Recommendations of 27 July 2016 and 21 December 2016 has seriously deteriorated.

(9) In particular, the Recommendation underlines that the law on the National Council for the Judicary of 15 July 2017 and the law on the Supreme Court of 22 July 2017, should they enter into force, would structurally undermine the independence of the judiciary in Poland and would have an immediate and concrete impact on the independent functioning of the judiciary as a whole. Given that the independence of the judiciary is a key component of the rule of law, these new laws increase significantly the systemic threat to rule of law as identified in the previous Recommendations. The Recommendation underlines that the dismissal of Supreme Court judges, their possible reappointment and other measures contained in the law on the Supreme Court would very seriously aggravate the systemic threat to the rule of law. Among the recommended action, the Commission recommends that the Polish authorities ensure that the two laws on the Supreme Court and on the National Council for the Judiciary do not enter into force and that any justice reform uphold the rule of law and comply with EU law and with European standards on the independence of the judiciary and is prepared in close cooperation with the judiciary and all interested parties. The Commission also asked the Polish authorities not to take any measure to dismiss or force the retirement of the Supreme Courts judges as these measures will very seriously aggravate the systemic threat to the rule of law. The Commission stated that should the Polish authorities take any measure of this kind, it would stand ready to immediately activate Article 7(1) TEU.

(10) The Commission invited the Polish Government to solve the problems identified in this Recommendation within one month of receipt of the Recommendation.

(11) On 31 July 2017, the *Sejm* was formally notified about the decision of the President of the Republic to veto the law amending the Law on National Council for the Judiciary and the Law on the Supreme Court.

(12) On 4 August and on 16 August 2017 the Polish Government wrote to the Commission with a request for clarifications to its Recommendation of 26 July 2017, to which the Commission responded by letters of 8 August and 21 August 2017 respectively.

(13) On 28 August 2017, the Polish Government sent a reply to the Recommendation of 26 July 2017. The reply disagreed with all the issues raised in the Recommendation and did not announce any new action to address the concerns identified by the Commission.

(14) On 30 August 2017, the opinion of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) concluded that the suspended law on the Supreme Court does not comply with international standards on judicial independence ([1]).

([1]) OSCE Office for Democratic Institutions and Human Rights (ODIHR), 30 August 2017, Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland.

(15) On 11 September 2017, the Polish Government initiated a campaign named 'Fair Courts' aimed at gaining social support for the ongoing judicial reform. The National Council for the Judiciary and ordinary courts published several statements rectifying allegations directed against courts, judges and the Council during the campaign.

(16) On 11 September 2017, the Constitutional Tribunal in a panel of five judges declared the unconstitutionality of certain provisions of the Code of Civil Procedure allowing ordinary courts and the Supreme Court to assess the legality of the appointment of the President and the Vice-President of the Tribunal ([1]).

(17) On 13 September 2017, the Minister of Justice started exercising the powers to dismiss court presidents and vice-presidents pursuant to the new law on Ordinary Courts Organisation.

(18) On 15 September and 18 October 2017, the National Council for the Judiciary criticised the Minister of Justice's decisions to dismiss court presidents. The Council indicated that such an arbitrary power of the Minister of Justice violates the constitutional principle of independence of courts and might adversely affect the impartiality of judges.

(19) On 15 September 2017, the *Sejm* appointed a person to an already occupied position of the Constitutional Tribunal, and the President of the Republic accepted the oath on 18 September 2017.

(20) On 15 September 2017 the *Sejm* adopted the law on the National Freedom Institute – Centre for Civil Society Development which centralises the distribution of funds including for civil society organisations.

(21) On 22 September 2017, the United Nations Human Rights Council discussed the reports on Poland submitted within the framework of the third periodic review which contain recommendations on judicial independence and the rule of law.

(22) On 25 September 2017, the Commission informed the Council on the situation of the rule of law in Poland. There was broad agreement on the fact that the Rule of Law is a common interest and a common responsibility and on the need for Poland and the Commission to engage in a dialogue in order to find a solution.

(23) On 26 September 2017, the President of the Republic transmitted to the *Sejm* two new draft laws on the Supreme Court and on the National Council for the Judiciary.

(24) On 3 October 2017, the *Sejm* sent the two presidential draft laws on the Supreme Court and the National Council for Judiciary for consultation to relevant stakeholders, including the Ombudsman, the Supreme Court and the National Council for the Judiciary.

(25) On 6 and 25 October 2017, the Supreme Court published its opinions on the two new draft laws on the Supreme Court and the National Council for the Judiciary. The opinions consider that the draft law on the Supreme Court would substantially curb its independence and that the draft law on the Council for the Judiciary cannot be reconciled with the concept of a democratic state governed by the rule of law.

(26) On 11 October 2017, the Parliamentary Assembly of the Council of Europe adopted a resolution on new threats to the rule of law in Council of Europe member States, expressing concerns also about developments in Poland, which put at risk respect for the rule of law, and, in particular, the independence of the judiciary and the principle of the separation of powers ([2]).

(27) On 13 October 2017, the European Network of Councils for the Judiciary (ENCJ) issued an opinion ([3]) on the new draft law on the National Council for the Judiciary, underlining its inconsistency with European standards on Councils for the Judiciary.

(28) On 23 October 2017, following the third cycle of the Universal Periodic Review of Poland, the UN High Commissioner for Human Rights requested that the Polish authorities accept the UN recommendations on upholding judicial independence.

([1]) K 10/17.
([2]) PACE, 11 October 2017, Resolution 2188 (2017), New threats to the rule of law in Council of Europe member States: selected examples.
([3]) ENCJ, 13 October 2017, Opinion of the ENCJ Executive Board on the request of the Krajowa Rada Sądownictwa (National Council for the Judiciary) of Poland.

(29) On 24 October 2017, the Constitutional Tribunal in a panel including two unlawfully appointed judges declared the unconstitutionality of provisions of the law on the Supreme Court, on the basis of which, inter alia, the current First President of the Supreme Court had been appointed.

(30) On 24 October 2017, the Constitutional Tribunal, in a panel comprising two unlawfully appointed judges, declared the constitutionality of provisions of the three laws on the Constitutional Tribunal of December 2016, including the provisions on the basis of which the two unlawfully appointed judges adjudicating in the case had been allowed to adjudicate in the Constitutional Tribunal. The motion of the Polish Ombudsman on recusal of the two unlawfully appointed judges from this case had been rejected by the Constitutional Tribunal.

(31) On 27 October 2017, the United Nations Special Rapporteur for the Independence of Judges and Lawyers, Mr Diego García-Sayán, presented his preliminary observations ([1]), according to which the two draft laws on the Supreme Court and the National Council for the Judiciary raise a series of concerns as regards judicial independence.

(32) On 31 October 2017, the National Council of the Judiciary adopted an opinion on the new draft law on the National Council for the Judiciary presented by the President of the Republic. The Council observes that the draft law is fundamentally inconsistent with the Polish Constitution by providing the *Sejm* with the power to appoint judges-members of the Council and by prematurely terminating constitutionally protected terms of office of the current judges-members of the Council.

(33) On 10 November 2017, the Consultative Council of European Judges (CCJE) adopted a statement raising concerns on the judicial independence in Poland ([2]).

(34) On 11 November 2017, the Ombudsman sent a letter to the President of the Republic comprising an assessment of the two new draft laws on the Supreme Court and on the National Council for the Judiciary and recommending that they should not be adopted as they would not guarantee that the judicial branch will remain independent from the executive branch and that citizens will be able to exercise their constitutional right to have access to an independent court.

(35) On 13 November 2017, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) adopted an opinion on the new draft law on the Supreme Court asserting that the reviewed provisions are incompatible with international standards on judicial independence ([3]).

(36) On 15 November 2017, the European Parliament adopted a resolution on the situation of the rule of law and democracy in Poland, expressing support for the Rule of Law Recommendations issued by the Commission, as well as for the infringement proceedings, and considering that the current situation in Poland represents a clear risk of a serious breach of the values referred to in Article 2 of the TEU ([4]).

(37) On 24 November 2017, the Council of Bars and Law Societies of Europe (CCBE) called on Polish authorities not to adopt the two draft laws on the Supreme Court and on the National Council for the Judiciary as they could undermine the separation of powers guaranteed by the Polish constitution ([5]). On 29 November 2017, the Organisation of Judges 'Iustitia', the Helsinki Foundation for Human Rights and Amnesty International issued a joint statement criticising the legislative procedure on the two presidential draft laws.

(38) On 5 December 2017 the European Network of Councils for the Judiciary (ENCJ) adopted an opinion criticising the draft law on the National Council for the Judiciary for not respecting the ENCJ's standards ([6]).

([1]) United Nations Special Rapporteur on the independence of judges and lawyers, 27 October 2017, Preliminary observations on the official visit to Poland (23-27 October 2017).
([2]) CCJE(2017)9, 10 November 2017, Statement as regards the Situation on the Independence of the Judiciary in Poland.
([3]) OSCE-ODIHR, 13 November 2017, Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland (as of 26 September 2017).
([4]) European Parliament resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland (2017/2931(RSP).
([5]) CCBE, 24 November 2017, Resolution of the Plenary Session of the Council of Bars and Law Societies of Europe (CCBE).
([6]) ENCJ, 5 December 2017, Opinion of the ENCJ Executive Board on the adoption of the amendments to the law on the National Council for the Judiciary.

(39) On 8 December 2017, the Venice Commission, at the request of the Parliamentary Assembly of the Council of Europe, adopted an opinion on the draft law on the National Council for the judiciary, the draft law on the Supreme Court, and the law on the Ordinary Courts Organisation, as well as opinion on the law on the public prosecutor's office ([1]). The Venice Commission has come to the conclusion that the law and the draft laws, especially taken together and seen in the context of the 2016 law on the public prosecutor's office, enable the legislative and executive powers to interfere in a severe and extensive manner in the administration of justice, and thereby pose a grave threat to the judicial independence as a key element of the rule of law. It calls on the President of the Republic to withdraw his proposals and start a dialogue before the procedure of legislation continues. It also urges the Polish Parliament to reconsider the recent amendments to the law on Ordinary Courts Organisation.

(40) On 8 December 2017, the Council of Europe Commissioner for Human Rights issued a statement regretting the adoption by the *Sejm* of the laws on the Supreme Court and on the National Council for the Judiciary which would further undermine the independence of the judiciary.

(41) On 8 December 2017, the two draft laws were adopted by the *Sejm*. On 15 December 2017, the two laws were approved by the Senate.

HAS ADOPTED THIS RECOMMENDATION:

1. The Republic of Poland should duly take into account the Commission's analysis set out hereafter and take the measures figuring in section 4 of this Recommendation so that the concerns identified are addressed within the time limit set.

1. **SCOPE AND OBJECTIVE OF THE RECOMMENDATION**

2. The present Recommendation complements the Recommendations of 27 July 2016, 21 December 2016 and 26 July 2017. In addition to the concerns raised in these Recommendations, it raises new concerns of the Commission with regard to the rule of law in Poland which have arisen since then. The concerns relate to the following issues:

   (a) the law on the Supreme Court, adopted by the *Sejm* on 8 December 2017;

   (b) the law amending the law on the National Council for the Judiciary and certain other laws ('law on the National Council for the Judiciary'), adopted by the *Sejm* on 8 December 2017.

3. The concerns and the recommended actions set out in the Recommendation of 26 July 2017 relating to the Constitutional Tribunal, the law on Ordinary Court Organisation and the law on the National School of Judiciary ([2]) remain valid.

2. **THE THREATS TO JUDICIAL INDEPENDENCE**

4. The law on the Supreme Court and the law on the National Council for the Judiciary contain a number of provisions which raise grave concerns as regards the principles of judicial independence and separation of powers.

2.1. **The Supreme Court**

2.1.1. *Dismissal and compulsory retirement of current Supreme Court judges*

5. The law on the Supreme Court lowers the general retirement age of Supreme Court judges from 70 to 65 ([3]). This measure applies to all judges currently in office. Judges who attained 65 years of age, or will attain that age within 3 months from the entry into force of the law, will be retired ([4]).

([1]) Opinion 904/2017 CDL(2017)035 of the Venice Commission on the draft act amending the Act on the National Council of the Judiciary, on the draft act amending the Act on the Supreme Court proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts ('CDL(2017)035'), and Opinion 892/2017 CDL(2017)037 of the Venice Commission on the Act on the Public Prosecutor's Office as amended ('CDL(2017)037').

([2]) The law amending the law on the National School of Judiciary and Public Prosecution, the law on Ordinary Courts Organisation and certain other laws ('law on the National School of Judiciary').

([3]) Article 37(1) of the law on the Supreme Court. This provision also applies to Supreme Administrative Court judges since Article 49 of the law of 25 July 2002 on administrative court organisation stipulates that matters related to the Supreme Administrative Court that are not governed by that act (the retirement regime is not) are governed *mutatis mutandis* by the law on the Supreme Court.

([4]) Article 111(1) of the law on the Supreme Court. In addition, according to Article 111(3) of the law on the Supreme Court, all judges of the military chamber (regardless of their age) will be dismissed and retired without the possibility to ask the President of the Republic for prolongation of their active mandate.

6. By lowering the retirement age and applying it to current Supreme Court judges, the law terminates the mandate and potentially retires a significant number of current Supreme Court judges: 31 of the 83 (37 %) according to the Supreme Court. Applying such a lowered retirement age to current judges of the Supreme Court has a particular strong negative impact on this specific Court, which is composed of judges who are by nature at the end of their career. Such compulsory retirement of a significant number of the current Supreme Court judges allows for a far reaching and immediate recomposition of the Supreme Court. That possibility raises particular concerns in relation to the separation of powers, in particular when considered in combination with the simultaneous reforms of the National Council for the Judiciary. In fact: due to the lowering of the retirement age all new judges will be appointed by the President of the Republic on the recommendation of the newly composed National Council for the Judiciary, which will be largely dominated by the political appointees. A forced retirement of current Supreme Court judges also raises concerns as regards the principle of irremovability of judges, which is a key element of the independence of judges as enshrined in the case law of the Court of Justice and of the European Court of Human Rights ([1]), and in European standards ([2]). In its opinion on the draft law on the Supreme Court, the Venice Commission underlines that the early retirement of the currently sitting judges undermines both their security of tenure and the independence of the Court in general ([3]).

7. Judges should be protected against dismissal through the existence of effective safeguards against undue intervention or pressure from other State powers ([4]). Judicial independence requires guarantees sufficient to protect the person of those who have the task of adjudicating in a dispute ([5]). The irremovability of judges during their term of office is a consequence of their independence and thus included in the guarantees of Article 6(1) ECHR ([6]). As a consequence, judges must only be dismissed individually, if this is justified on the basis of a disciplinary procedure concerning their individual activity and presenting all guarantees for the defence in a democratic society. Judges cannot be dismissed as a group and judges cannot be dismissed for general reasons not related to individual behaviour. The above guarantees and safeguards are lacking in the present case and the provisions concerned constitute a flagrant violation of the independence of judges of the Supreme Court and of the separation of powers ([7]), and therefore of the rule of law.

8. In addition, the mandate of six years of the current First President, established in the constitution, will be prematurely terminated (constitutionally it should end in 2020). If the mandate of the First President is terminated, the appointment of an 'acting First President' by the President of the Republic will occur outside the normal procedure ([8]): according to the constitution the First President should be appointed by the President of the Republic from among candidates proposed by the general assembly of the Supreme Court ([9]). Such a premature termination of a constitutionally enshrined mandate constitutes a serious violation of the principle

([1]) ECtHR Case *Campbell and Fell v The United Kingdom*, 28 June 1984, para 80; Case *Henryk Urban and Ryszard Urban v Poland*, 30 November 2011 (final), para 45; Case *Fruni v Slovakia*, 21 June 2011 (final) para 145; and Case *Brudnicka and others v Poland*, 3 March 2005 (final) para 41.

([2]) Para 49 and 50 of the Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities ('2010 CoE Recommendation').

([3]) CDL(2017)035 para 48.

([4]) Judgement of 31 May 2005 in Case C-53/03 *Syfait and Others*, ECLI:EU:C:2005:333, para 31; Judgement of 4 February 1999 in Case C-103/97 *Köllensperger and Atzwanger*, ECLI:EU:C:1999:52, para 20.

([5]) Judgement of 9 October 2014 in Case C-222/13 *TDC*, ECLI:EU:C:2014:2265, para 29-32; Judgement of 19 September 2006 in Case C-506/04 *Wilson*, ECLI:EU:C:2006:587, para 53; Judgement of 4 February 1999 in Case C-103/97 *Köllensperger and Atzwanger*, ECLI:EU:C:1999:52, para 20-23; Judgement of 17 September 1997 in Case C-54/96 *Dorsch Consult*, ECLI:EU:C:1997:413, para 36; Judgement of 29 November 2001 in Case C-17/00, *De Coster*, ECLI:EU:C:2001:651, para 18-21; Judgement of 13 December 2017 in Case C-403/16, *Hassani*, ECLI:EU:C:2017:960, para 40; ECtHR Case *Baka v. Hungary*, 20261/12, 23 June 2016, para 121.

([6]) ECtHR Case *Campbell and Fell v The United Kingdom*, A80 (1984), 28 June 1984, para 80.

([7]) The new rules contradict the principle of irremovability of judges as a key element of the independence of judges as enshrined in the 2010 CoE Recommendation (para 49). Accordingly, Supreme Court judges should have guaranteed tenure, and their mandates should not be prematurely terminated. Also decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities, and where the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice (para 44-48).

([8]) According to Article 111(4) of the law on the Supreme Court the President of the Republic will entrust heading of the Supreme Court to a Supreme Court judge of his own choosing. Such an 'acting First President' will exercise their functions until the General Assembly of judges presents 5 candidates to the post of the First President of the Supreme Court (Article 12). The General Assembly of Supreme Court judges will be able to at present these candidates no sooner than at least 110 judges of the Supreme Court have been appointed.

([9]) Article 183(3) of the Polish constitution stipulates that the First President of the Supreme Court shall be appointed by the President of the Republic for a 6-year term of office from amongst candidates proposed by the General Assembly of the Judges of the Supreme Court.

of irremovability and security of tenure. The appointment of an acting First President according to an ad hoc procedure without involvement of the judiciary raises serious concerns as regards the principle of separation of powers.

9. According to the explanatory memorandum of the law, the recomposition of the Supreme Court is indispensable because of the way the Supreme Court handled after 1989 the 'decommunisation' cases and because there are still judges in the Court who either worked for, or adjudicated under, the previous regime ([1]). The European Court of Human Rights has clearly underlined that a lustration process must be individualised (e.g. distinctions must be made between different levels of involvement with the former regime) and considers that lustration measures taking place long after the end of the communist regime may be less justified in view of the diminishing risks existing over newly created democracies ([2]). There are other proportionate measures which the state could adopt in order to deal with individual judges having a communist background (which would include transparent proceedings applied in individual cases before impartial organs acting on the basis of criteria pre-established by law) ([3]).

10. In its opinion on the draft law on the Supreme Court, the Venice Commission considers that it is hard to see why a person who was deemed fit to perform official duties for several more years to come would suddenly be considered unfit. The explanatory memorandum of the law may be understood as implying that, as a result of the reform, most senior judges, many of whom have served under the previous regime, would retire. If this reading is correct, such approach is unacceptable: if the authorities doubt the loyalty of individual judges, they should apply the existing disciplinary or lustration procedures, and not change the retirement age.

11. The Venice Commission concludes that the early removal of a large number of justices of the Supreme Court (including the First President) by applying to them, with immediate effect, a lower retirement age violates their individual rights and jeopardises the independence of the judiciary as a whole; they should be allowed to serve until the currently existing retirement age ([4]). The Venice Commission underlines in particular that the early retirement of the currently sitting judges undermines both their security of tenure and the independence of the Court in general ([5]).

12. Finally, these provisions raise constitutionality concerns. As noted by the Supreme Court and the Ombudsman, the dismissal and forced retirement of current Supreme Court judges violate the principle of judicial independence and directly affects the right to an independent court. The Ombudsman notes that the institution of an acting First President of the Supreme Court constitutes a violation of the rule of law by breaching the principle of non-assumption of competences of state powers, the principle of separation and balance of powers, and the principle of judicial independence.

2.1.2. *The power to prolong the mandate of Supreme Court judges*

13. According to the law, Supreme Court judges affected by the lowered retirement age and wishing to prolong their active mandate can make a request to the President of the Republic ([6]).

14. As regards the power of the President of the Republic to decide to prolong the active mandate of Supreme Court judges, there are no criteria, no time-frame for taking a decision and no judicial review provided for in the law. A judge who has asked for the prolongation is 'at the mercy' of the decision of the President of the Republic. In addition, the President of the Republic will be in position to decide *twice* on the prolongation (each time for 3 years). These elements affect the security of tenure and will allow the President of the Republic to exert influence over active Supreme Court judges. The regime is contrary to the 2010 CoE Recommendation which requires that decisions concerning the selection and career of judges should be based on objective criteria pre-established by law and that there should be an independent and competent authority drawn in substantial part

([1]) Page 2 of the explanatory memorandum.
([2]) ECtHR Case *Sõro v. Estonia*, 3 September 2015, para 60-62.
([3]) Para 44-47 and 50 of the 2010 CoE Recommendation.
([4]) Opinion CDL(2017)035 para 130.
([5]) Opinion CDL(2017)035 para 48.
([6]) The request is to be made via the First President of the Supreme Court who provides an opinion on a judge's request. For the prolongation of the First President's mandate, the First President needs to provide to the President of the Republic the opinion of the college of the Supreme Court. In the process of making the decision, the President of the Republic may seek a non-binding opinion of the NCJ (cf. Article 37(2) in conjunction with Article 111(1) of the law on the Supreme Court. It is noted that according to the Supreme Court's opinion, under the constitution such a decision by the President of the Republic would require a countersignature of the Prime Minister, in accordance with Article 144(1) and (2) of the Polish constitution.

from the judiciary authorised to make recommendations or express opinions which the relevant appointing authority follows in practice ([1]). It also requires that judges concerned should have the right to challenge a decision relating to their career ([2]).

15. The new retirement regime adversely impacts the independence of judges ([3]). The new rules create an additional tool through which the President of the Republic can exert influence on individual judges. In particular, the lack of any criteria for prolongation of the mandates allow for undue discretion, undermining the principle of irremovability of judges. While decreasing the retirement age, the law allows judges to have their mandate extended by the President of the Republic for up to 6 years. Also, there is no time-frame for the President of the Republic to make a decision on the extension of the mandate, which allows the President to retain influence over the judges concerned for the remaining time of their judicial mandate. Even before the retirement age is reached, the mere prospect of having to request the President for such a prolongation could exert pressure on the judges concerned.

16. In its opinion on the draft law on the Supreme Court, the Venice Commission underlines that this power of the President of the Republic gives him excessive influence over Supreme Court judges who are *approaching* retirement age. For this reason, the Venice Commission concludes that the President of the Republic as an elected politician should not have the discretionary power to extend the mandate of a Supreme Court judge beyond the retirement age ([4]).

17. The new rules also raise constitutionality concerns. According to the Supreme Court and the Ombudsman's opinions, the new mechanism of prolongation of judicial mandates does not respect the principle of legality and separation of powers.

2.1.3. *The extraordinary appeal*

18. The law introduces a new form of judicial review of final and binding judgements and decisions, the extraordinary appeal ([5]). Within three years ([6]) from the entry into force of the law the Supreme Court will be able to overturn ([7]) completely or in part ([8]) any final judgement delivered by a Polish court in the past 20 years, including judgements delivered by the Supreme Court, subject to some exceptions ([9]). The power to lodge the appeal is vested in, inter alia, the Prosecutor General and the Ombudsman ([10]). The grounds for the appeal are broad: the extraordinary appeal can be lodged if it is necessary to ensure the rule of law and social justice and the ruling cannot be repealed or amended by way of other extraordinary remedies, and either it (1) violates the principles or the rights and freedoms of persons and citizens enshrined in the Constitution; or (2) it is a flagrant breach of the law on the grounds of misinterpretation or misapplication; or (3) there is an obvious contradiction between the court's findings and the evidence collected ([11]).

([1]) Para 46 and 47. This regime would also raise concerns with the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality CM(2016)36 final (at C. ii; '2016 CoE Action Plan') and CCJE benchmarks (Opinion No 1 on Standards concerning the Independence of the Judiciary and the Irremovability of Judges (para 25)).

([2]) Para 48 of the 2010 CoE Recommendation.

([3]) Para 49 of the 2010 CoE Recommendation.

([4]) Cf. Opinion CDL(2017)035 para 51 and 130.

([5]) Article 89(1) of the law on the Supreme Court.

([6]) Article 115 of the law on the Supreme Court. After the three-year period the appeal would need to be lodged within five years from a moment when the judgement concerned became final and lawful and within one year if the cassation appeal has been made, unless extraordinary appeal is brought to the detriment of the defendant, in such a case the appeal can be lodged no later than one year after the ruling becomes final (or, if the cassation has been lodged, no later than six months upon the examination of the cassation; cf. Article 89(4) of the Law on the Supreme Court).

([7]) If five years have elapsed since the contested ruling became final and the ruling has had irreversible legal effects or if warranted by the principles or the rights and freedoms of persons and citizens enshrined in the Constitution, the Supreme Court may confine itself to confirming that the contested ruling is in breach of the law and indicating the circumstances which led it to issue such a decision (Cf. Article 89(4) and Article 115(2) of the law on the Supreme Court).

([8]) Article 91(1) of the law on the Supreme Court.

([9]) Criminal cases cannot be extraordinarily appealed from to the detriment of the defendant more than one year after the ruling becomes final (or, if the cassation has been lodged, no later than six months upon the examination of the cassation); there is also no possibility of appeals against judgements establishing the nullity of a marriage, annulling a marriage or pronouncing a divorce (only in so far as one or both of the parties remarried after the ruling became final) or a decision on adoption. The extraordinary appeal cannot concern petty offences or minor tax offences; cf. Article 89(3) and 90(3) and (4) of the law on the Supreme Court.

([10]) Article 89(2) of the law on the Supreme Court.

([11]) Article 89(1) items 1-3 of the law on the Supreme Court.

19. This new extraordinary appeal procedure raises concerns as regards the principle of legal certainty which is a key component of the rule of law ([1]). As noted by the Court of Justice, attention should be drawn to the importance, both for the EU legal order and national legal systems, of the principle of *res judicata*: 'in order to ensure both stability of the law and legal relations and the sound administration of justice, it is important that judicial decisions which have become definitive after all rights of appeal have been exhausted or after expiry of the time-limits provided for in that connection can no longer be called in question' ([2]). As noted by the European Court of Human Rights, extraordinary review should not be an 'appeal in disguise', and 'the mere possibility of there being two views on the subject is not a ground for re-examination' ([3]).

20. In its opinion on the draft law on the Supreme Court, the Venice Commission underlined that the extraordinary appeal procedure is dangerous for the stability of the Polish legal order. The opinion notes that it will be possible to reopen any case decided in the country in the past 20 years on virtually any ground and the system could lead to a situation in which no judgement will ever be final anymore ([4]).

21. The new extraordinary appeal also raises constitutionality concerns. According to the Supreme Court and the Ombudsman, the law affects the principle of stability of jurisprudence and the finality of judgements ([5]), the principle of protecting trust in the state and law as well as the right to have a case heard within a reasonable time ([6]).

2.1.4. *Other provisions*

22. As underlined in the opinion of the Venice Commission and of other bodies ([7]), a number of other provisions in the Law on the Supreme Court raise concerns as regards the principles of judicial independence and separation of powers.

23. The new law establishes a new disciplinary regime for Supreme Court judges. Two types of disciplinary officers are foreseen: *the disciplinary officer of the Supreme Court* appointed by the College of the Supreme Court for a four-year term of office ([8]), and the *extraordinary disciplinary officer appointed on a case-by-case basis by the President of the Republic* from among Supreme Court judges, ordinary judges, military court judges and prosecutors ([9]). Under Polish law, only disciplinary officers can decide on the initiation of disciplinary proceedings against judges. The appointment of an extraordinary officer by the President of the Republic occurs without involvement of the judiciary and equals to a request to initiate a preliminary investigation. Appointment of an extraordinary disciplinary officer to an ongoing disciplinary proceeding excludes the disciplinary officer of the Supreme Court from that proceeding ([10]). The fact that the President of the Republic (and in some cases also the Minister of Justice ([11])) has the power to exercise influence over disciplinary proceedings against Supreme Court judges by appointing a disciplinary officer who will investigate the case ('disciplinary officer') which will exclude the

([1]) ECtHR Case *Brumărescu v. Romania*, 28 October 1999, para 61; Case *Ryabykh v. Russia*, 3 March 2003, para 54 and 57; Case *Miragall Escolano and others v Spain*, 25 January 2000, para 33; also *Phinikaridou v Cyprus*, 20 December 2007 para 52.

([2]) Judgement of 30 September 2003 in Case C-224/01 *Köbler*, ECLI:EU:C:2003:513, para 38.

([3]) *Moreira Ferreira v. Portugal (No 2)*, 11 July 2017 (final), para 62.

([4]) Opinion CDL(2017)035 para 58, 63 and 130.

([5]) Both principles have been considered to be part of the rule of law by the Constitutional Tribunal; cf. judgements of the Constitutional Tribunal SK 7/06 of 24 October 2007 and SK 77/06 of 1 April 2008.

([6]) Judgement SK 19/05 of 28 November 2006; SK 16/05 of 14 November 2007.

([7]) In particular opinions of the Supreme Court of 6 and 23 October, and 30 November 2017, the opinion of the Ombudsman of 11 November 2017 and the OSCE-ODIHR opinion of 13 November 2017.

([8]) Article 74 of the law on the Supreme Court.

([9]) Article 76(8) of the law on the Supreme Court; the President of the Republic can appoint the extraordinary disciplinary officer from among prosecutors proposed by the State Prosecutor if a disciplinary case concerns disciplinary misconduct that satisfies the criteria of an intentional crime prosecuted by public indictment or of intentional tax crimes.

([10]) Article 76(8) of the law on the Supreme Court.

([11]) According to article 76(9) of the law on the Supreme Court, the Minister of Justice can notify the President of the Republic about the need to appoint an extraordinary disciplinary officer if there is a case of disciplinary misconduct that satisfies the criteria of an intentional crime prosecuted by public indictment or intentional tax crime. It appears that whether a case satisfies these criteria will be determined autonomously by the Minister of Justice and the President of the Republic as their decisions on appointing the extraordinary disciplinary officer cannot be appealed from.

disciplinary officer of the Supreme Court from an on-going proceeding, creates concerns as regards the principle of separation of powers and may affect judicial independence. Such concerns have also been raised in the opinions of the OSCE-ODHIR and of the Supreme Court ([1]).

24. The law also removes a set of procedural guarantees in disciplinary proceedings conducted against ordinary judges ([2]) and Supreme Court judges ([3]): evidence gathered in violation of the law could be used against a judge ([4]); under certain conditions evidence presented by the judge concerned could be disregarded ([5]); the time-barring for disciplinary cases would be suspended for the period of disciplinary proceedings, which means that a judge could be subject to a proceeding for an indefinite duration ([6]); finally, disciplinary proceedings could continue even if the judge concerned was absent (including when the absence was justified) ([7]). The new disciplinary regime also raises concerns as to its compliance with the due process requirements of Art. 6(1) ECHR which are applicable to disciplinary proceedings against judges ([8]).

25. The law modifies the internal structure of the Supreme Court, supplementing it with two new chambers. A new chamber of extraordinary control and public matters will assess cases brought under the new extraordinary appeal procedure ([9]). This new chamber will be composed in majority of new judges ([10]) and will ascertain the validity of general and local elections and examining electoral disputes, including electoral disputes in European Parliament elections ([11]). In addition, a new autonomous ([12]) disciplinary chamber composed solely of new judges ([13]) will be tasked with reviewing in the first and second instance disciplinary cases against Supreme Court judges ([14]). These two new largely autonomous chambers composed with new judges raise concerns as regards the separation of powers. As noted by the Venice Commission, while both chambers are part of the Supreme Court, in practice they are above all other chambers, creating a risk that the whole judicial system will be dominated by these chambers which are composed of new judges elected with a decisive influence of the ruling majority ([15]). Also, the Venice Commission underlines that the law will make the judicial review of electoral disputes particularly vulnerable to political influence, creating a serious risk for the functioning of Polish democracy ([16]).

26. The law introduces lay judges, to be appointed by the Senate of the Republic ([17]), to proceedings before the Supreme Court concerning the extraordinary appeals and disciplinary cases examined by the Supreme Court. As observed by the Venice Commission, introducing lay judges to the two new chambers of the Supreme Court puts the efficiency and quality of justice in danger ([18]).

([1]) OSCE-ODIHR opinion of 13 November 2017; para 119-121; Supreme Court opinion of 6 October, page 34.

([2]) According to Article 108(17)-(19) of the law on the Supreme Court, the Minister of Justice is given the power to set the number of and appoint disciplinary judges for ordinary court judges without consulting the judiciary. Additionally, the Minister of Justice would be able to personally control disciplinary cases conducted against ordinary court judges through disciplinary officers and an extraordinary disciplinary officer of the Minister of Justice appointed by himself (including under certain circumstances also from the prosecutors). Disciplinary officers appointed by the Minister of Justice would be able to reopen closed investigations at request of the Minister of Justice.

([3]) According to the law, provisions enshrined in the Law on Ordinary Court Organisation including those concerning procedural aspects of disciplinary proceedings apply mutatis mutandis to Supreme Court judges; cf. Article 72(1) and Article 108 in conjunction with Article 10(1) of the law on the Supreme Court. The law on the Supreme Court amends in its Article 108 the law on Ordinary Courts Organisation.

([4]) Article 108(23) of the law on the Supreme Court in terms of Article 115c added to the law on Ordinary Courts Organisation.

([5]) If the evidence was presented after time prescribed, cf. Article 108(22) of the law on the Supreme Court.

([6]) Article 108(13) item b of the law on the Supreme Court.

([7]) Article 108(23) of the law on the Supreme Court.

([8]) ECtHR Case *Vilho Eskelinen and others v Finland*, 19 April 2007 para 62;Case *Olujić v Croatia*, 5 February 2009, para 34-43; Case *Harabin v Slovakia*, 20 November 2012 para 118-124; and Case *Baka v Hungary*, 23 June 2016, para 100-119.

([9]) Article 26 and Article 94 of the law on the Supreme Court.

([10]) Article 134 of the law on the Supreme Court; the former chamber of labour, social security and public affairs is split into two chambers, the chamber of labour and social security and the new chamber of extraordinary control and public affairs; this new chamber will be composed by new judges as all current judges are transferred to the chamber of labour and social security; current Supreme Court judges can request a transfer to this new chamber.

([11]) A full list of tasks dealt with by this chamber is found in Article 26.

([12]) The president of the disciplinary chamber is autonomous vis-à-vis the First President of the Supreme Court and budget of that chamber can be substantially increased in comparison to the overall budget of the Supreme Court (cf. Article 7(2) and (4), and Article 20 of the law on the Supreme Court).

([13]) According to Article 131 of the law on the Supreme Court, until all the judges of the Supreme Court in the Disciplinary Chamber have been appointed, other Supreme Court judges cannot be transferred to a post in that Chamber.

([14]) A full list of tasks dealt with by the disciplinary chamber is found in Article 27 of the law on the Supreme Court.

([15]) Opinion CDL(2017)035 para 92.

([16]) Opinion CDL(2017)035 para 43.

([17]) Article 61(2) of the law on the Supreme Court.

([18]) Opinion CDL(2017)035 para 67.

2.2. **The National Council for the Judiciary**

27. According to the Polish Constitution the independence of judges is safeguarded by the National Council for the Judiciary ([1]). The role of the National Council for the Judiciary has a direct impact on the independence of judges in particular as regards their promotion, transfer, disciplinary proceedings, dismissal and early retirement. For example, the promotion of a judge (e.g. from district court to regional court) requires the President of the Republic to once again appoint the judge, and therefore the procedure for judicial assessment and nomination involving the National Council for the Judiciary will have to be followed again. Also assistant judges who are already performing tasks of a judge must be assessed by the National Council for the Judiciary prior to their appointment as judge by the President of the Republic.

28. For this reason, in Member States where a Council for the Judiciary has been established, its independence is particularly important for avoiding undue influence from the Government or the Parliament on the independence of judges ([2]).

29. The law on the National Council for the Judiciary increases the concerns regarding the overall independence of the judiciary by providing the premature termination of the mandate of all judges-members of the National Council for the Judiciary, and by establishing an entirely new regime for the appointment of its judges-members which allows a high degree of political influence.

30. According to Article 6 of the law on the National Council for the Judiciary the mandates of all the current judges-members of the National Council for the Judiciary will be terminated prematurely. This termination decided by the legislative powers raises concerns for the independence of the Council and the separation of powers. The Parliament will gain a decisive influence on the composition of the Council to the detriment of the influence of judges themselves. This recomposition of the National Council for the Judiciary could already occur within one and a half month after the publication of the law ([3]). The premature termination also raises constitutionality concerns, as underlined in the opinion of the National Council for the Judiciary, of the Supreme Court and of the Ombudsman.

31. Also, the new regime for appointing judges-members of the National Council for the Judiciary raises serious concerns. Well established European standards, in particular the 2010 Recommendation of the Committee of Ministers of the Council of Europe, stipulate that 'not less than half the members of [Councils for the Judiciary] should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary' ([4]). It is up to the Member States to organise their justice systems, including whether or not to establish a Council for the Judiciary. However, where such a Council has been established, as it is the case in Poland, its independence must be guaranteed in line with European standards.

32. Until the adoption of the law on the National Council for the Judiciary, the Polish system was fully in line with these standards since the National Council for the Judiciary was composed of a majority of judges chosen by judges. Articles 1(1) and 7 of the law amending the law on the National Council for the Judiciary would radically change this regime by providing that the 15 judges-members of the National Council for the Judiciary will be

([1]) Article 186(1) of the Polish Constitution: 'The National Council of the Judiciary shall safeguard the independence of the courts and judges'.

([2]) For example, in the context of disciplinary proceedings against judges conducted by a Council, the European Court of Human Rights has questioned the level of influence of the legislative or executive authorities given that the Council was composed by a majority of members appointed directly by these authorities; ECtHR Case *Ramos Nunes de Carvalho E Sá v Portugal*, 55391/13, 57728/13 and 74041/13, 21 June 2016, para 77.

([3]) Mandates of current judges-members would expire on the day preceding the beginning of a joint term of office of the new judges-members of the Council, but no later than 90 days from the entry into force of the law. The timeline is as follows: within three days following publication of the law, the Marshal of the *Sejm* announces the start of the nomination procedure. Within 21 days from this announcement candidates to posts of judges-members of the Council are presented to the Marshal of the *Sejm* by the authorized entities (groups of at least 25 judges or 2 000 citizens). Upon the lapse of this 21days term, the Marshal transmits the list of candidates to parliamentary clubs which will have seven days to propose up to nine candidates from that list. Subsequently the appointment procedure according to regular provisions takes place (see below); cf. Article 6 and 7 of the law amending the law on the National Council for the Judiciary and Article 1(1), and (3) in terms of added Articles 11a and 11d of the law amending the law on the National Council for the Judiciary.

([4]) Para 27; see also C item (ii) of the 2016 CoE Action Plan; para 27 of the. CCJE Opinion No 10 on the Council for the Judiciary in the service of society; and para 2.3 of the ENCJ standards in 'Councils for the Judiciary' Report 2010-11.

appointed, and can be re-appointed, by the *Sejm* ([1]). In addition, there is no guarantee that under the new law the *Sejm* will appoint judges-members of the Council endorsed by the judiciary, as candidates to these posts can be presented not only by groups of 25 judges, but also by groups of of at least 2 000 citizens ([2]). Furthermore, the final list of candidates to which the *Sejm* will have to give its approval *en bloc* is pre-established by a committee of the *Sejm* ([3]). The new rules on appointment of judges-members of the National Council for the Judiciary significantly increase the influence of the Parliament over the Council and adversely affect its independence in contradiction with the European standards. The fact that the judges-members will be appointed by the *Sejm* with a three fifths majority does not alleviate this concern, as judges-members will still not be chosen by their peers. In addition, in case such a three fifths majority is not reached, judges-members of the Council will be appointed by the *Sejm* with absolute majority of votes.

33. This situation raises concerns from the point of view of the independence of the judiciary. For example, a district court judge who has to deliver a judgment in a politically sensitive case, while the judge is at the same time applying for a promotion to become a regional court judge, may be inclined to follow the position favoured by the political majority in order not to put his/her chances to obtain the promotion into jeopardy. Even if this risk does not materialise, the new regime does not provide for sufficient guarantees to secure the appearance of independence which is crucial to maintain the confidence which tribunals in a democratic society must inspire in the public ([4]). Also assistant judges will have to be assessed by a politically influenced National Council for the Judiciary prior to their appointment as judge.

34. The Venice Commission concludes that the election of the 15 judicial members of the National Council of the Judiciary by Parliament, in conjunction with the immediate replacement of the currently sitting members, will lead to a far reaching politicisation of this body. The Venice Commission recommends that, instead, judicial members of the National Council for the Judiciary should be elected by their peers, as in the current Act ([5]). It also observed that the law weakens the independence of the Council with regard to the majority in Parliament and contributes to a weakening of the independence of justice as a whole ([6]).

35. In their opinions concerning the draft law, the Supreme Court, the National Council for the Judiciary and the Ombudsman raised a number of concerns as regards the constitutionality of the new regime. In particular, the National Council for the Judiciary notes that under the Polish constitution, the Council serves as a counterweight to the parliament which has been constitutionally authorized to decide on the content of law. The political appointment of judges-members and the premature termination of mandates of the current judges-members of the Council therefore violates the principles of separation of powers and judicial independence. As explained in the previous Recommendations, an effective constitutional review of these provisions is currently not possible.

3. **FINDING OF A SYSTEMIC THREAT TO THE RULE OF LAW**

36. For the reasons set out above, the Commission considers that the concerns expressed in the Rule of Law Recommendation of 26 July 2017 relating to the laws on the Supreme Court and the National Council for the Judiciary have not been addressed by the two new laws on the Supreme Court and the National Council for the Judiciary.

37. Furthermore, the Commission observes that none of the other concerns set out in the Recommendation of 26 July 2017 relating to the Constitutional Tribunal, the law on Ordinary Courts Organisation and the law on the National School of Judiciary have been addressed.

38. Consequently, the Commission considers that the situation of a systemic threat to the rule of law in Poland as presented in its Recommendations of 27 July 2016, 21 December 2016, and 26 July 2017 has seriously deteriorated further. The law on the National Council for the Judiciary and the law on the Supreme Court, also

([1]) The Constitution stipulates that the National Council for the Judiciary is composed of ex officio members (the First President of the Supreme Court, the Minister of Justice, the President of the Supreme Administrative Court and a presidential appointee) and elected members. The elected members consist of four deputies '*chosen by the Sejm*', two senators '*chosen by the Senate*' and 15 judges ('*chosen from amongst*' the common, administrative and military courts and the Supreme Court).

([2]) Article 1(3) of the law on the National Council for the Judiciary adding an Article 11a(2) and (3): it is noted that each group (of judges and of citizens) may lodge more than one nomination for a judge-member of the Council.

([3]) If parliamentary clubs do not present, in total, 15 candidates, the Presidium of the Sejm will choose them in order to create a list of 15 candidates which is then transmitted to the *Sejm* committee (cf. Article 1(3) adding Article 11c and Article 11d(1)-(4)).

([4]) ECtHR Cases *Morice v France*, 29369/10, 23 April 2015, para 78; *Cyprus v. Turkey*, 25781/94, 10 May 2001, para 233.

([5]) Opinion CDL(2017)035 para 130.

([6]) Opinion CDL(2017)035 para 31.

in combination with the law on the National School of Judiciary, and the law on the Ordinary Courts Organisation significantly increase the systemic threat to the rule of law as identified in the previous Recommendations. In particular:

(1) the compulsory retirement of a significant number of the current Supreme Court judges combined with the possibility of prolonging their active judicial mandate, as well as the new disciplinary regime for Supreme Court judges, structurally undermine the independence of the Supreme Court judges, whilst the independence of the judiciary is a key component of the rule of law;

(2) the compulsory retirement of a significant number of the current Supreme Court judges also allows for a far reaching and immediate recomposition of the Supreme Court. That possibility raises concerns in relation to the separation of powers, in particular when considered in combination with the simultaneous reforms of the National Council for the Judiciary. In fact all new Supreme Court judges will be appointed by the President of the Republic on the recommendation of the newly composed National Council for the Judiciary, which will be largely dominated by the political appointees. As a result, the current parliamentary majority will be able to determine, at least indirectly, the future composition of the Supreme Court to a much larger extent than this would be possible in a system where existing rules on the duration of judicial mandates operate normally – whatever that duration is and with whichever state organ the power to decide on judicial appointments lies;

(3) the new extraordinary appeal procedure raises concerns in relation to legal certainty and, when considered in combination with the possibility of a far reaching and immediate recomposition of the Supreme Court, in relation to the separation of powers;

(4) the termination of the mandate of all judges-members of the National Council for the Judiciary as well as the reappointment of its judges-members according to a process which allows a high degree of political influence, equally are a serious case for concern;

(5) the new laws raise serious concerns as regards their compatibility with the Polish Constitution as underlined by a number of opinions, in particular from the Supreme Court, the National Council for the Judiciary and the Ombudsman. However, as explained in the Rule of Law Recommendation of 26 July 2017, an effective constitutional review of these laws is no longer possible.

39. The Commission underlines that whatever the model of the justice system chosen, the rule of law requires to safeguard the independence of the judiciary, separation of powers and legal certainty. It is up to the Member States to organise their justice systems, including whether or not to establish a Council for the Judiciary the role of which is to safeguard judicial independence. However, where such a Council has been established by a Member State, as it is the case in Poland where the Polish Constitution has entrusted explicitly the National Council for the Judiciary with the task of safeguarding judicial independence, the independence of such Council must be guaranteed in line with European standards. It is with great concern that the Commission observes that as a consequence of the new laws referred to above, the legal regime in Poland would no longer comply with these requirements.

40. Moreover, actions and public statements against judges and courts in Poland made by the Polish Government and by members of Parliament from the ruling majority have damaged the trust in the justice system as a whole. The Commission underlines the principle of loyal cooperation between state organs which is, as highlighted in the opinions of the Venice Commission, a constitutional precondition in a democratic state governed by the rule of law.

41. Respect for the rule of law is not only a prerequisite for the protection of all the fundamental values listed in Article 2 TEU. It is also a prerequisite for upholding all rights and obligations deriving from the Treaties and for establishing mutual trust of citizens, businesses and national authorities in the legal systems of all other Member States.

42. The proper functioning of the rule of law is also essential in particular for the seamless operation of the Internal Market because economic operators must know that they will be treated equally under the law. This cannot be assured without an independent judiciary in each Member State.

43. The Commission notes that a wide range of actors at European and international level have expressed their deep concern about the two new laws on the Supreme Court and the National Council for the Judiciary, in particular the Venice Commission, the United Nations Special Rapporteur for the Independence of Judges and Lawyer, the OSCE Office for Democratic Institutions and Human Rights and the representatives of the judiciary across Europe, including the Consultative Council of European Judges, European Network of Councils for the Judiciary and the Council of Bars and Law Societies of Europe.

44. In its resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland, the European Parliament stated that it is deeply concerned at the redrafted legislation relating to the Polish judiciary and called on the Polish President not to sign new laws unless they fully guarantee the independence of the judiciary.

4. **RECOMMENDED ACTION**

45. The Commission recommends that the Polish authorities take appropriate action to address the systemic threat to the rule of law identified in section 2 as a matter of urgency.

46. In particular, the Commission recommends that the Polish authorities take the following actions with regard to the newly adopted laws in order to ensure their compliance with the requirements of safeguarding the independence of the judiciary, of separation of powers and of legal certainty as well as with the Polish Constitution and European standards on judicial independence:

(a) ensure that the law on the Supreme Court is amended so as to:

— not apply a lowered retirement age to the current Supreme Court judges;

— remove the discretionary power of the President of the Republic to prolong the active judicial mandate of the Supreme Court judges;

— remove the extraordinary appeal procedure;

(b) ensure that the law on the National Council for the Judiciary is amended so that the mandate of judges-members of the National Council for the Judiciary is not terminated and the new appointment regime is removed in order to ensure election of judges-members by their peers;

(c) refrain from actions and public statements which could undermine further the legitimacy of the Supreme Court, the ordinary courts, the judges, individually or collectively, or the judiciary as a whole.

47. In addition, the Commission recalls that none of the following actions, recommended in its Recommendation of 26 July 2017, relating to the Constitutional Tribunal, the law on Ordinary Courts Organisation and the law on the National School of Judiciary have been taken and therefore reiterates its recommendation to take the following actions:

(d) restore the independence and legitimacy of the Constitutional Tribunal as guarantor of the Polish Constitution by ensuring that its judges, its President and its Vice-President are lawfully elected and appointed and by implementing fully the judgments of the Constitutional Tribunal of 3 and 9 December 2015 which require that the three judges that were lawfully nominated in October 2015 by the previous legislature can take up their function of judge in the Constitutional Tribunal, and that the three judges nominated by the new legislature without a valid legal basis no longer adjudicate without being validly elected;

(e) publish and implement fully the judgments of the Constitutional Tribunal of 9 March 2016, 11 August 2016 and 7 November 2016;

(f) ensure that the law on Ordinary Courts Organisation and on the National School of Judiciary is withdrawn or amended in order to ensure its compliance with the Constitution and European standards on judicial independence; concretely, the Commission recommends in particular to:

— remove the new retirement regime for judges of ordinary courts, including the discretionary power of the Minister of Justice to prolong their mandate;

— remove the discretionary power of the Minister of Justice to appoint and dismiss presidents of courts and remedy decisions already taken;

(g) ensure that any justice reform upholds the rule of law and complies with EU law and the European standards on judicial independence and is prepared in close cooperation with the judiciary and all interested parties.

48. The Commission underlines that the loyal cooperation which is required amongst the different state institutions in rule of law related matters is essential in order to find a solution in the present situation. The Commission also encourages the Polish authorities to implement the opinions of the Venice Commission on the law on the National Council for the Judiciary, the law on the Ordinary Courts Organisation and the law on the Supreme Court as well as to seek the views of the Venice Commission on any new legislative proposal aiming to reform the justice system in Poland.

49. The Commission invites the Polish Government to solve the problems identified in this Recommendation within three months of receipt of this Recommendation, and to inform the Commission of the steps taken to that effect.

50. The present Recommendation is issued at the same time as the reasoned proposal presented by the Commission in accordance with Article 7(1) TEU regarding the rule of law in Poland. The Commission is ready, in close consultation with the European Parliament and the Council, to reconsider that reasoned proposal, should the Polish authorities implement the recommended actions set out in the present Recommendation within the time prescribed.

51. On the basis of this Recommendation, the Commission is ready to pursue a constructive dialogue with the Polish Government.

Done at Brussels, 20 December 2017.

For the Commission
Frans TIMMERMANS
First Vice-President

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