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⁽¹⁾ Text with EEA relevance.

EN

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

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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION (EU) 2019/131

of 15 October 2018

on the conclusion of an Agreement in the form of an Exchange of Letters between the European Union and the Swiss Confederation on the cumulation of origin between the European Union, the Swiss Confederation, the Kingdom of Norway and the Republic of Turkey in the framework of the Generalised System of Preferences

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), in conjunction with point (a)(v) of the second subparagraph of Article 218(6) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament ⁽¹⁾,

Whereas:

- (1) In accordance with point (b) of Article 41 of Commission Delegated Regulation (EU) 2015/2446 ⁽²⁾, products obtained in Norway, Switzerland or Turkey incorporating materials which have not been wholly obtained there are to be considered as originating in a beneficiary country, provided that such materials have undergone sufficient working or processing within the meaning of Article 45 of that Delegated Regulation.
- (2) Pursuant to Article 54 of Delegated Regulation (EU) 2015/2446, the system of cumulation applies on condition that Switzerland grant, on a reciprocal basis, the same treatment to products originating in beneficiary countries which incorporate materials originating in the Union.
- (3) In so far as Switzerland is concerned, the system of cumulation was initially put in place through an agreement in the form of an Exchange of Letters between the Union and Switzerland. That Exchange of Letters took place on 14 December 2000, after the Council had given its approval by means of Decision 2001/101/EC ⁽³⁾.
- (4) In order to ensure the application of a concept of origin corresponding to that set out in the rules of origin in the Generalised System of Preferences ('GSP') of the Union, Switzerland has modified its GSP rules of origin. Therefore, it is necessary to revise the agreement in the form of an Exchange of Letters between the Union and Switzerland.
- (5) The system of mutual acceptance of replacement certificates of origin Form A by the Union, Norway and Switzerland should continue under the revised Exchange of Letters and be conditionally applied by Turkey, in order to facilitate trade between the Union, Norway, Switzerland and Turkey.

⁽¹⁾ Consent not yet published in the Official Journal.

⁽²⁾ Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

⁽³⁾ Council Decision 2001/101/EC of 5 December 2000 concerning the approval of an Agreement in the form of an Exchange of Letters between the Community and each of the EFTA countries that grants tariff preferences under the Generalised System of Preferences (Norway and Switzerland), providing that goods with content of Norwegian or Swiss origin shall be treated on their arrival on the customs territory of the Community as goods with content of Community origin (reciprocal agreement) (OJ L 38, 8.2.2001, p. 24).

- (6) Moreover, the rules of origin in the GSP of the Union, as reformed in 2010, provide for the implementation of a new system for the establishment of proofs of origin by registered exporters, which is to be applied from 1 January 2017. Modifications to the Exchange of Letters also need to be made in this regard.
- (7) In order to anticipate the application of that new system and the rules relating thereto, on 8 March 2012 the Council authorised the Commission to negotiate an agreement with Switzerland, in the form of an Exchange of Letters, on the mutual acceptance of replacement certificates of origin Form A or replacement statements of origin providing that products with content of Norwegian, Swiss or Turkish origin are to be treated on their arrival on the customs territory of the Union as products with content of Union origin.
- (8) The negotiations with Switzerland were conducted by the Commission and resulted in the Agreement in the form of an Exchange of Letters between the European Union and the Swiss Confederation on the cumulation of origin between the European Union, the Swiss Confederation, the Kingdom of Norway and the Republic of Turkey in the framework of the Generalised System of Preferences ('the Agreement').
- (9) The Agreement should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement in the form of an Exchange of Letters between the European Union and the Swiss Confederation on the cumulation of origin between the European Union, the Swiss Confederation, the Kingdom of Norway and the Republic of Turkey in the framework of the Generalised System of Preferences is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall, on behalf of the Union, give the notification provided for in paragraph 18 of the Agreement ⁽⁴⁾.

Article 3

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

Done at Luxembourg, 15 October 2018.

For the Council
The President
E. KÖSTINGER

⁽⁴⁾ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

AGREEMENT**in the form of an Exchange of Letters between the European Union and the Swiss Confederation on the cumulation of origin between the European Union, the Swiss Confederation, the Kingdom of Norway and the Republic of Turkey in the framework of the Generalised System of Preferences***A. Letter from the Union*

Sir,

1. The European Union ('the Union') and the Swiss Confederation ('Switzerland'), as the Parties to this Agreement, acknowledge that, for the purposes of the Generalised System of Preferences ('GSP'), both Parties apply similar rules of origin with the following general principles:

- (a) definition of the concept of 'originating products' based on the same criteria;
- (b) provisions for regional cumulation of origin;
- (c) provisions for applying cumulation to materials which originate, within the meaning of their GSP rules of origin, in the Union, Switzerland, Norway or Turkey;
- (d) provisions for a general tolerance for non-originating materials;
- (e) provisions for non-alteration of products from the beneficiary country;
- (f) provisions for issuing or making out replacement proofs of origin;
- (g) requirement for administrative cooperation with the competent authorities in the beneficiary countries on the matter of proofs of origin.

2. The Union and Switzerland shall recognise that materials originating, within the meaning of their respective GSP rules of origin, in the Union, Switzerland, Norway or Turkey acquire the origin of a beneficiary country of the GSP scheme of either Party if they undergo, in that beneficiary country, a working or processing going beyond the operations considered as insufficient working or processing to confer the status of originating products. This subparagraph shall apply to materials originating in Norway and Turkey, subject to the completion of the conditions laid down respectively in paragraphs 15 and 16.

The customs authorities of the Member States of the Union and of Switzerland shall provide each other with appropriate administrative cooperation, in particular for the purpose of subsequent verification of the proofs of origin in respect of the materials referred to in the first subparagraph. The provisions concerning administrative cooperation laid down in Protocol No 3 to the Agreement of 22 July 1972 between the European Economic Community and the Swiss Confederation are to be applied.

This paragraph shall not apply to products of Chapters 1 to 24 of the Harmonized Commodity Description and Coding System, adopted by the Organization set up by the Convention establishing a Customs Cooperation Council, done at Brussels on 15 December 1950.

3. The Union and Switzerland hereby undertake to accept replacement proofs of origin in the form of replacement certificates of origin Form A ('replacement certificates') issued by the customs authorities of the other Party and replacement statements on origin made out by reconsignors of the other Party, registered for that purpose.

Each Party may assess the eligibility for preferential treatment of products covered by replacement proofs of origin in accordance with its own legislation.

4. Each Party shall provide that the following conditions are respected before issuing or making out a replacement proof of origin:

- (a) replacement proofs of origin may be issued or made out only if the initial proofs of origin were issued or made out in accordance with the legislation applicable in the Union or Switzerland;

- (b) only where products have not been released for free circulation in a Party, a proof of origin or a replacement proof of origin may be replaced by one or more replacement proofs of origin for the purpose of sending all or some of the products covered by the initial proof of origin from that Party to the other Party;
- (c) the products shall have remained under customs supervision in the reconsigning Party and shall not have been altered, transformed in any way, or subjected to operations other than those necessary to preserve them in their condition ('principle of non-alteration');
- (d) where products have acquired originating status under a derogation from the rules of origin granted by a Party, replacement proofs of origin shall not be issued or made out if the products are reconsigned to the other Party;
- (e) replacement proofs of origin may be issued by the customs authorities or made out by the reconsignors where the products to be reconsigned to the territory of the other Party have acquired originating status through regional cumulation;
- (f) replacement proofs of origin may be issued by the customs authorities or made out by the reconsignors if the products to be reconsigned to the territory of the other Party are not granted preferential treatment by the reconsigning Party.

5. For the purpose of point (c) of paragraph 4, the following shall apply:

- (a) where there appear to be grounds for doubt as regards compliance with the principle of non-alteration, the customs authorities of the Party of final destination may request the declarant to provide evidence of compliance with that principle, which may be given by any means;
- (b) upon request by the reconsignor, the customs authorities of the reconsigning Party shall certify that the products have remained under customs supervision during their stay in the territory of that Party and that no authorisation to alter, transform in any way, or subject them to operations other than those necessary to preserve them in their condition was granted by the customs authorities during their storage in the territory of the Party;
- (c) where the replacement proof is a replacement certificate, the customs authorities of the Party of final destination shall not request a certificate of non-manipulation for the time the products were in the other Party.

6. Each Party shall ensure that:

- (a) where the replacement proofs of origin correspond to the initial proofs of origin issued or made out in a beneficiary country of the GSP scheme of the Union and of that of Switzerland, the customs authorities of the Member States of the Union and of Switzerland shall provide each other with appropriate administrative cooperation for the purpose of subsequent verification of these replacement proofs of origin. At the request of the Party of final destination, the customs authorities of the reconsigning Party shall launch and follow up the procedure of subsequent verification of the corresponding initial proofs of origin;
- (b) when the replacement proofs of origin correspond to the initial proofs of origin issued or made out in a country exclusively beneficiary of the GSP scheme of the Party of final destination, that Party shall carry out the procedure of subsequent verification of the initial proofs of origin in cooperation with the beneficiary country. The initial proofs of origin corresponding to the replacement proofs of origin under verification or, where appropriate, copies of the initial proofs of origin corresponding to the replacement proofs of origin under verification shall be provided by the customs authorities of the reconsigning Party to the customs authorities of the Party of final destination in order to allow them to carry out the procedure of subsequent verification.

7. Each Party shall ensure that:

- (a) the top right-hand box of each replacement certificate shall indicate the name of the intermediary country of reconsignment where it is issued;
- (b) box 4 shall contain the words 'replacement certificate' or '*certificat de remplacement*', as well as the date of issue of the initial certificate of origin Form A and its serial number;
- (c) the name of the reconsignor shall be given in box 1;
- (d) the name of the final consignee may be given in box 2;
- (e) all particulars of the reconsigned products appearing on the initial certificate shall be transferred to boxes 3 to 9;
- (f) references to the reconsignor's invoice may be given in box 10;

- (g) the customs authority which issued the replacement certificate shall endorse box 11. The responsibility of the authority is confined to the issue of the replacement certificate. The particulars in box 12 concerning the country of origin and the country of final destination shall be taken from the initial certificate of origin Form A. The reconsignor shall sign the certificate of origin in box 12. A reconsignor who signs box 12 in good faith shall not be held responsible for the accuracy of the particulars entered on the initial certificate of origin Form A;
- (h) the customs authority which is requested to issue the replacement certificate shall note on the initial certificate of origin Form A the weights, numbers and nature of the products forwarded and shall indicate thereon the serial numbers of each corresponding replacement certificate. It shall keep the request for the replacement certificate as well as the initial certificate of origin Form A for at least three years;
- (i) replacement certificates of origin shall be drawn up in English or French.

8. Each Party shall provide that:

- (a) the reconsignor shall indicate the following on each replacement statement on origin:
 - (1) all particulars of the reconsigned products taken from the initial proof of origin;
 - (2) the date on which the initial proof of origin was made out;
 - (3) the particulars of the initial proof of origin, including, where appropriate, information about cumulation applied to the goods covered by the statement on origin;
 - (4) the name, address and registered exporter number of the reconsignor;
 - (5) the name and address of the consignee in the Union or in Switzerland;
 - (6) the date and place of making out the statement on origin or issuing the certificate of origin;
- (b) each replacement statement on origin shall be marked 'Replacement statement' or '*Attestation de remplacement*';
- (c) replacement statements on origin shall be made out by reconsignors registered in the electronic system of self-certification of origin by exporters, namely the Registered Exporter (REX) system, irrespective of the value of the originating products contained in the initial consignment;
- (d) where a proof of origin is replaced, the reconsignor shall indicate the following on the initial proof of origin:
 - (1) the date of making out the replacement statement(s) on origin and the quantities of goods covered by the replacement statement(s) on origin;
 - (2) the name and address of the reconsignor;
 - (3) the name and address of the consignee or consignees in the Union or in Switzerland;
- (e) the initial statement on origin shall be marked with the word 'Replaced' or '*Remplacé*';
- (f) a replacement statement on origin shall be valid for 12 months from the date of its making out;
- (g) replacement statements on origin shall be drawn up in English or French.

9. The initial proofs of origin and copies of the replacement proofs of origin shall be kept by the reconsignor for at least three years from the end of the calendar year in which the replacement proofs of origin were issued or made out.

10. The Parties agree to share the costs of the REX system in accordance with the modalities of cooperation to be laid down between the competent authorities of the Parties.

11. Any differences between the Parties arising from the interpretation or application of this Agreement shall be settled solely by bilateral negotiation between the Parties. If the differences could affect the interests of Norway and/or Turkey, they shall be consulted.

12. The Parties may amend this Agreement by mutual agreement in written form at any time. Both Parties shall enter into consultation with respect to possible amendments to this Agreement at the request of one of the Parties. If the amendments could affect the interests of Norway and/or Turkey, they shall be consulted. Such amendments shall enter into force on a mutually agreed date, once both Parties have notified each other of the completion of their respective internal requirements.

13. In the event of serious misgivings as to the proper functioning of this Agreement, either Party may suspend its application provided that the other Party has been notified in writing three months in advance.

14. This Agreement may be terminated by either Party provided that the other Party has been notified in writing three months in advance.

15. The first subparagraph of paragraph 2 shall apply to materials originating in Norway only if the Parties have concluded a similar agreement with Norway and have notified each other of the fulfilment of this condition.

16. The first subparagraph of paragraph 2 shall apply to materials originating in Turkey ⁽¹⁾ only if the Parties have concluded a similar agreement with Turkey and have notified each other of the fulfilment of this condition.

17. As from the entry into force of an agreement between Switzerland and Turkey in accordance with the first subparagraph of paragraph 2 of this Agreement, and subject to reciprocity by Turkey, each party may provide that replacement proofs of origin for products incorporating materials originating in Turkey which have been processed under bilateral cumulation in GSP beneficiary countries may be issued or made out in the Parties.

18. This Agreement shall enter into force on a mutually agreed date, once the Union and Switzerland have notified each other of the completion of the internal adoption procedures required. From that date, it shall replace the Agreement in the form of an Exchange of Letters between the Community and each of the EFTA countries that grants tariff preferences under the GSP (Norway and Switzerland), providing that goods originating in Norway or Switzerland shall be treated on their arrival on the customs territory of the Community as goods with content of Community origin, signed on 14 December 2000 ⁽²⁾.

I should be obliged if you would confirm that your Government is in agreement with the above.

I have the honour to propose that, if the above is acceptable to your Government, this letter and your confirmation shall together constitute an Agreement between the European Union and the Swiss Confederation.

Please accept, Sir, the assurance of my highest consideration.

Съставено в Брюксел на
Hecho en Bruselas, el
V Bruselu dne
Udfærdiget i Bruxelles, den
Geschehen zu Brüssel am
Brüssel,
Έγινε στις Βρυξέλλες, στις
Done at Brussels,
Fait à Bruxelles, le
Sastavljeno u Bruxellesu
Fatto a Bruxelles, addì
Briselē,
Priimta Briuselyje,
Kelt Brüsselben,
Magħmul fi Brussell,
Gedaan te Brussel,
Sporządzono w Brukseli, dnia
Feito em Bruxelas,
Întocmit la Bruxelles,
V Bruseli
V Bruslju,
Tehty Brysselissä
Utfärdat i Bryssel den

21 -06- 2017

⁽¹⁾ The Union fulfilled this condition through the publication of the Notice from the Commission pursuant to Article 85 of Regulation (EEC) No 2454/93, implementing the provisions of the Community Customs Code, extending to Turkey the bilateral cumulation system established by that Article (OJ C 134, 15.4.2016, p. 1).

⁽²⁾ OJ L 38, 8.2.2001, p. 25.

За Европейския съюз
Por la Unión Europea
Za Evropskou unii
For Den Europæiske Union
Für die Europäische Union
Euroopa Liidu nimel
Για την Ευρωπαϊκή Ένωση
For the European Union
Pour l'Union européenne
Za Europejsku uniju
Per l'Unione europea
Eiropas Savienības vārdā –
Europos Sąjungos vardu
Az Európai Unió részéről
Għall-Unjoni Ewropea
Voor de Europese Unie
W imieniu Unii Europejskiej
Pela União Europeia
Pentru Uniunea Europeană
Za Európsku úniu
Za Evropsko unijo
Euroopan unionin puolesta
För Europeiska unionen



B. *Letter from the Swiss Confederation*

Madam,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

'1. The European Union ("the Union") and the Swiss Confederation ("Switzerland"), as the Parties to this Agreement, acknowledge that, for the purposes of the Generalised System of Preferences ("GSP"), both Parties apply similar rules of origin with the following general principles:

- (a) definition of the concept of "originating products" based on the same criteria;
- (b) provisions for regional cumulation of origin;
- (c) provisions for applying cumulation to materials which originate, within the meaning of their GSP rules of origin, in the Union, Switzerland, Norway or Turkey;
- (d) provisions for a general tolerance for non-originating materials;
- (e) provisions for non-alteration of products from the beneficiary country;
- (f) provisions for issuing or making out replacement proofs of origin;
- (g) requirement for administrative cooperation with the competent authorities in the beneficiary countries on the matter of proofs of origin.

2. The Union and Switzerland shall recognise that materials originating, within the meaning of their respective GSP rules of origin, in the Union, Switzerland, Norway or Turkey acquire the origin of a beneficiary country of the GSP scheme of either Party if they undergo, in that beneficiary country, a working or processing going beyond the operations considered as insufficient working or processing to confer the status of originating products. This subparagraph shall apply to materials originating in Norway and Turkey, subject to the completion of the conditions laid down respectively in paragraphs 15 and 16.

The customs authorities of the Member States of the Union and of Switzerland shall provide each other with appropriate administrative cooperation, in particular for the purpose of subsequent verification of the proofs of origin in respect of the materials referred to in the first subparagraph. The provisions concerning administrative cooperation laid down in Protocol No 3 to the Agreement of 22 July 1972 between the European Economic Community and the Swiss Confederation are to be applied.

This paragraph shall not apply to products of Chapters 1 to 24 of the Harmonized Commodity Description and Coding System, adopted by the Organization set up by the Convention establishing a Customs Cooperation Council, done at Brussels on 15 December 1950.

3. The Union and Switzerland hereby undertake to accept replacement proofs of origin in the form of replacement certificates of origin Form A (“replacement certificates”) issued by the customs authorities of the other Party and replacement statements on origin made out by reconsignors of the other Party, registered for that purpose.

Each Party may assess the eligibility for preferential treatment of products covered by replacement proofs of origin in accordance with its own legislation.

4. Each Party shall provide that the following conditions are respected before issuing or making out a replacement proof of origin:

- (a) replacement proofs of origin may be issued or made out only if the initial proofs of origin were issued or made out in accordance with the legislation applicable in the Union or Switzerland;
- (b) only where products have not been released for free circulation in a Party, a proof of origin or a replacement proof of origin may be replaced by one or more replacement proofs of origin for the purpose of sending all or some of the products covered by the initial proof of origin from that Party to the other Party;
- (c) the products shall have remained under customs supervision in the reconsigning Party and shall not have been altered, transformed in any way, or subjected to operations other than those necessary to preserve them in their condition (“principle of non-alteration”);
- (d) where products have acquired originating status under a derogation from the rules of origin granted by a Party, replacement proofs of origin shall not be issued or made out if the products are reconsigned to the other Party;
- (e) replacement proofs of origin may be issued by the customs authorities or made out by the reconsignors where the products to be reconsigned to the territory of the other Party have acquired originating status through regional cumulation;
- (f) replacement proofs of origin may be issued by the customs authorities or made out by the reconsignors if the products to be reconsigned to the territory of the other Party are not granted preferential treatment by the reconsigning Party.

5. For the purpose of point (c) of paragraph 4, the following shall apply:

- (a) where there appear to be grounds for doubt as regards compliance with the principle of non-alteration, the customs authorities of the Party of final destination may request the declarant to provide evidence of compliance with that principle, which may be given by any means;
- (b) upon request by the reconsignor, the customs authorities of the reconsigning Party shall certify that the products have remained under customs supervision during their stay in the territory of that Party and that no authorisation to alter, transform in any way, or subject them to operations other than those necessary to preserve them in their condition was granted by the customs authorities during their storage in the territory of the Party;
- (c) where the replacement proof is a replacement certificate, the customs authorities of the Party of final destination shall not request a certificate of non-manipulation for the time the products were in the other Party.

6. Each Party shall ensure that:

- (a) where the replacement proofs of origin correspond to the initial proofs of origin issued or made out in a beneficiary country of the GSP scheme of the Union and of that of Switzerland, the customs authorities of the Member States of the Union and of Switzerland shall provide each other with appropriate administrative cooperation for the purpose of subsequent verification of these replacement proofs of origin. At the request of the Party of final destination, the customs authorities of the reconsigning Party shall launch and follow up the procedure of subsequent verification of the corresponding initial proofs of origin;

- (b) when the replacement proofs of origin correspond to the initial proofs of origin issued or made out in a country exclusively beneficiary of the GSP scheme of the Party of final destination, that Party shall carry out the procedure of subsequent verification of the initial proofs of origin in cooperation with the beneficiary country. The initial proofs of origin corresponding to the replacement proofs of origin under verification or, where appropriate, copies of the initial proofs of origin corresponding to the replacement proofs of origin under verification shall be provided by the customs authorities of the reconsigning Party to the customs authorities of the Party of final destination in order to allow them to carry out the procedure of subsequent verification.

7. Each Party shall ensure that:

- (a) the top right-hand box of each replacement certificate shall indicate the name of the intermediary country of reconsignment where it is issued;
- (b) box 4 shall contain the words “replacement certificate” or “*certificat de remplacement*”, as well as the date of issue of the initial certificate of origin Form A and its serial number;
- (c) the name of the reconsignor shall be given in box 1;
- (d) the name of the final consignee may be given in box 2;
- (e) all particulars of the reconsigned products appearing on the initial certificate shall be transferred to boxes 3 to 9;
- (f) references to the reconsignor’s invoice may be given in box 10;
- (g) the customs authority which issued the replacement certificate shall endorse box 11. The responsibility of the authority is confined to the issue of the replacement certificate. The particulars in box 12 concerning the country of origin and the country of final destination shall be taken from the initial certificate of origin Form A. The reconsignor shall sign the certificate of origin in box 12. A reconsignor who signs box 12 in good faith shall not be held responsible for the accuracy of the particulars entered on the initial certificate of origin Form A;
- (h) the customs authority which is requested to issue the replacement certificate shall note on the initial certificate of origin Form A the weights, numbers and nature of the products forwarded and shall indicate thereon the serial numbers of each corresponding replacement certificate. It shall keep the request for the replacement certificate as well as the initial certificate of origin Form A for at least three years.
- (i) replacement certificates of origin shall be drawn up in English or French.

8. Each Party shall provide that:

- (a) the reconsignor shall indicate the following on each replacement statement on origin:
- (1) all particulars of the reconsigned products taken from the initial proof of origin;
 - (2) the date on which the initial proof of origin was made out;
 - (3) the particulars of the initial proof of origin, including, where appropriate, information about cumulation applied to the goods covered by the statement on origin;
 - (4) the name, address and registered exporter number of the reconsignor;
 - (5) the name and address of the consignee in the Union or in Switzerland;
 - (6) the date and place of making out the statement on origin or issuing the certificate of origin;
- (b) each replacement statement on origin shall be marked “Replacement statement” or “*Attestation de remplacement*”;
- (c) replacement statements on origin shall be made out by reconsignors registered in the electronic system of self-certification of origin by exporters, namely the Registered Exporter (REX) system, irrespective of the value of the originating products contained in the initial consignment;
- (d) where a proof of origin is replaced, the reconsignor shall indicate the following on the initial proof of origin:
- (1) the date of making out the replacement statement(s) on origin and the quantities of goods covered by the replacement statement(s) on origin;

- (2) the name and address of the reconsignor;
- (3) the name and address of the consignee or consignees in the Union or in Switzerland;
- (e) the initial statement on origin shall be marked with the word "Replaced" or "Remplacé";
- (f) a replacement statement on origin shall be valid for 12 months from the date of its making out;
- (g) replacement statements on origin shall be drawn up in English or French.
9. The initial proofs of origin and copies of the replacement proofs of origin shall be kept by the reconsignor for at least three years from the end of the calendar year in which the replacement proofs of origin were issued or made out.
10. The Parties agree to share the costs of the REX system in accordance with the modalities of cooperation to be laid down between the competent authorities of the Parties.
11. Any differences between the Parties arising from the interpretation or application of this Agreement shall be settled solely by bilateral negotiation between the Parties. If the differences could affect the interests of Norway and/or Turkey, they shall be consulted.
12. The Parties may amend this Agreement by mutual agreement in written form at any time. Both Parties shall enter into consultation with respect to possible amendments to this Agreement at the request of one of the Parties. If the amendments could affect the interests of Norway and/or Turkey, they shall be consulted. Such amendments shall enter into force on a mutually agreed date, once both Parties have notified each other of the completion of their respective internal requirements.
13. In the event of serious misgivings as to the proper functioning of this Agreement, either Party may suspend its application provided that the other Party has been notified in writing three months in advance.
14. This Agreement may be terminated by either Party provided that the other Party has been notified in writing three months in advance.
15. The first subparagraph of paragraph 2 shall apply to materials originating in Norway only if the Parties have concluded a similar agreement with Norway and have notified each other of the fulfilment of this condition.
16. The first subparagraph of paragraph 2 shall apply to materials originating in Turkey ⁽³⁾ only if the Parties have concluded a similar agreement with Turkey and have notified each other of the fulfilment of this condition.
17. As from the entry into force of an agreement between Switzerland and Turkey in accordance with the first subparagraph of paragraph 2 of this Agreement, and subject to reciprocity by Turkey, each party may provide that replacement proofs of origin for products incorporating materials originating in Turkey which have been processed under bilateral cumulation in GSP beneficiary countries may be issued or made out in the Parties.
18. This Agreement shall enter into force on a mutually agreed date, once the Union and Switzerland have notified each other of the completion of the internal adoption procedures required. From that date, it shall replace the Agreement in the form of an Exchange of Letters between the Community and each of the EFTA countries that grants tariff preferences under the GSP (Norway and Switzerland), providing that goods originating in Norway or Switzerland shall be treated on their arrival on the customs territory of the Community as goods with content of Community origin, signed on 14 December 2000 ⁽⁴⁾.

I should be obliged if you would confirm that your Government is in agreement with the above.

I have the honour to propose that, if the above is acceptable to your Government, this letter and your confirmation shall together constitute an Agreement between the European Union and the Swiss Confederation.

I am able to inform you that my Government is in agreement with the contents of your letter.

Please accept, Madam, the assurance of my highest consideration.

⁽³⁾ The Union fulfilled this condition through the publication of the Notice from the Commission pursuant to Article 85 of Regulation (EEC) No 2454/93, implementing the provisions of the Community Customs Code, extending to Turkey the bilateral cumulation system established by that Article (OJ C 134, 15.4.2016, p. 1).

⁽⁴⁾ OJ L 38, 8.2.2001, p. 25.

Geschehen zu Brüssel am
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 Întocmit la Bruxelles,
 V Bruseli
 V Bruslju,
 Tehty Brysselissä
 Utfärdat i Bryssel den

21-06-2017

Für die Schweizerische Eidgenossenschaft
 Pour la Confédération suisse
 Per la Confederazione Svizzera
 За Конфедерация Швейцария
 Por la Confederación Suiza
 Za Švýcarskou konfederaci
 For Det Schweiziske Forbund
 Šveitsi Konföderatsiooni nimel
 Για την Ελβετική Συνομοσπονδία
 For the Swiss Confederation
 Za Švicarsku Konfederaciju
 Šveices Konfederācijas vārdā –
 Šveicarijos Konfederācijas vardu
 A Svájci Államszövetség részéről
 Ghall-Konfederazzjoni Svizzera
 Voor de Zwitserse Bondsstaat
 W imieniu Konfederacji Szwajcarskiej
 Pela Confederação Suíça
 Pentru Confederația Elvețiană
 Za švajčiarsku konfederáciu
 Za švicarsko konfederacijo
 Sveitsin valaliiton puolesta
 För Schweiziska edsförbundet

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) 2019/132

of 28 January 2019

implementing Regulation (EU) No 101/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) No 101/2011 of 4 February 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia ⁽¹⁾, and in particular Article 12 thereof,

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

Whereas:

- (1) On 4 February 2011 the Council adopted Regulation (EU) No 101/2011.
- (2) On the basis of a review of the list set out in Annex I to Regulation (EU) No 101/2011, the entry for one person should be removed.
- (3) Annex I to Regulation (EU) No 101/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EU) No 101/2011 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 28 January 2019.

For the Council

The President

P. DAEA

⁽¹⁾ OJ L 31, 5.2.2011, p. 1.

ANNEX

In Annex I to Regulation (EU) No 101/2011, entry 28 (Mohamed Marwan Ben Ali Ben Mohamed MABROUK) is deleted.

COMMISSION IMPLEMENTING REGULATION (EU) 2019/133**of 28 January 2019****amending Regulation (EU) 2015/640 as regards the introduction of new additional airworthiness specifications**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 ⁽¹⁾, and in particular Article 17(1)(h) thereof,

Whereas:

- (1) Commission Regulation (EU) 2015/640 ⁽²⁾ sets out additional airworthiness requirements for aircraft, the design of which has already been certified. Those additional airworthiness requirements are needed to support continuing airworthiness and safety improvements. This is because when certification specifications ('CS') issued by the European Union Aviation Safety Agency (the 'Agency'), pursuant to Article 76(3) of Regulation (EU) 2018/1139, are updated by the Agency in order to ensure that CS remain fit for purpose, an aircraft, the design of which has already been certified is not required to comply with the updated version of CS when it is produced or while in service.
- (2) In order to maintain a high level of aviation safety and environmental requirements in Europe it might therefore be necessary to mandate the compliance of aircraft with additional airworthiness requirements which were not mandated by the Agency at the time of certification of design, because they were not included in the relevant CS at that time. This amendment to Regulation (EU) 2015/640 concerns three evolutions of the CS.
- (3) First, in 1989 the Joint Aviation Authorities (JAA) introduced new design standards for the dynamic conditions of passenger and cabin crew seats of large aeroplanes, offering an improved protection of occupants. Those standards aimed at mitigating the risk of injuries or deaths in the event of emergency landing. They were transposed in the Agency's certification specifications for large aeroplanes (CS-25), but they apply only to large aeroplanes of which the certification of the design has been applied for after 1989. Considering that certain large aeroplanes might not comply with those standards, additional airworthiness specifications should be therefore introduced. Having due regard to the nature and risk of operations with large aeroplanes while maintaining a high uniform level of civil aviation safety in the Union, it is considered proportionate and cost-efficient to introduce those additional airworthiness specifications only to large aeroplanes newly produced on the basis of a design which has already been certified by the Agency. Those additional airworthiness specifications should not apply to flight deck crew seats and seats in low-occupancy aeroplanes involved in on-demand non-scheduled commercial air transport operations because it is not considered proportionate or cost-efficient.
- (4) Second, in 2009 the Agency introduced new flammability standards for thermal or acoustic insulation materials improving certain characteristics of the insulation materials installed in the fuselage to resist flame propagation and flame penetration in the certification specifications for large aeroplanes (CS-25 Amendment 6). Those new flammability standards apply only to large aeroplanes of which the certification of the design has been applied for after 2009. Considering that certain large aeroplanes might not comply with those standards, additional airworthiness specifications should be introduced. Having due regard to the nature and risk of operations with large aeroplanes while maintaining a high uniform level of civil aviation safety in the Union, it is considered proportionate and cost-efficient to introduce the additional airworthiness specifications addressing the risk of flame propagation in flight to large aeroplanes newly produced on the basis of a design which has already been certified by the Agency. Those additional airworthiness specifications should also apply to large aeroplanes which are in service when thermal or acoustic insulation materials are replaced. Finally, the additional airworthiness specifications addressing the risk of flame penetration into the aeroplane after an accident should be introduced for large aeroplanes with a passenger capacity of 20 or more and apply only to aeroplanes newly produced on the basis of a design which has already been certified by the Agency.

⁽¹⁾ OJ L 212, 22.8.2018, p. 1.

⁽²⁾ Commission Regulation (EU) 2015/640 of 23 April 2015 on additional airworthiness specifications for a given type of operations and amending Regulation (EU) No 965/2012 (OJ L 106, 24.4.2015, p. 18).

- (5) Third, to gradually mitigate the environmental impact of halon used in the firefighting equipment, the International Civil Aviation Organization (ICAO) has issued new standards by amending ICAO Annex 6 applicable as from 15 December 2011. In order to comply with those standards, additional airworthiness specifications should be introduced to newly produced large aeroplanes and large helicopters the design of which has already been certified by the Agency on the basis of certification specifications which allowed the use of halon as a suitable agent.
- (6) Commission Regulation (EU) 2015/640 should therefore be amended accordingly.
- (7) The measures provided for in this Regulation are based on opinions issued by the Agency in accordance with Article 76(1) of Regulation (EU) 2018/1139.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 127(3) of Regulation (EU) 2018/1139,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2015/640 is amended as follows:

(1) Article 2 is amended as follows:

(a) point (b) is replaced by the following:

‘(b) “large aeroplane” means an aeroplane that has the Certification Specifications for large aeroplanes “CS-25” or equivalent in its certification basis;’

(b) the following points (c) and (d) are added:

‘(c) “large helicopter” means a helicopter that has the Certification Specifications for large rotorcraft “CS-29” or equivalent in its certification basis;

(d) “low-occupancy aeroplane” means an aeroplane that has a maximum operational passenger seating configuration of:

(1) up to and including 19 seats, or;

(2) up to and including one third of the maximum passenger seating capacity of the type-certified aeroplane, as indicated in the aeroplane type-certificate data sheet (TCDS), provided that both of the following conditions are met:

(a) the total number of passenger seats approved for occupancy during taxiing, take-off or landing does not exceed 100 per deck;

(b) the maximum operational passenger seating configuration during taxiing, take-off or landing in any individual zone between pairs of emergency exits (or any dead-end zone) does not exceed one third of the sum of the passenger seat allowances for the emergency exit pairs bounding that zone (using the passenger seat allowance for each emergency exit pairs as defined by the applicable certification basis of the aeroplane). For the purpose of determining compliance with this zonal limitation, in the case of an aeroplane that has deactivated emergency exits, it shall be assumed that all emergency exits are functional.’

(2) Annex I (Part-26) is amended in accordance with 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, 28 January 2019.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

Annex I is amended as follows:

- (1) the table of content is replaced by the following:

'CONTENTS

SUBPART A — GENERAL PROVISIONS

26.10 Competent authority

26.20 Temporary inoperative equipment

26.30 Demonstration of compliance

SUBPART B — LARGE AEROPLANES

26.50 Seats, berths, safety belts, and harnesses

26.60 Emergency landing — dynamic conditions

26.100 Location of emergency exits

26.105 Emergency exit access

26.110 Emergency exit markings

26.120 Interior emergency lighting and emergency light operation

26.150 Compartment interiors

26.155 Flammability of cargo compartment liners

26.156 Thermal or acoustic insulation materials

26.160 Lavatory fire protection

26.170 Fire extinguishers

26.200 Landing gear aural warning

26.250 Flight crew compartment door operating systems — single incapacitation

SUBPART C — LARGE HELICOPTERS

26.400 Fire extinguishers';

- (2) the following point 26.60 is inserted:

'26.60 Emergency landing — dynamic conditions

Operators of large aeroplanes used in commercial air transport of passengers, type-certified on or after 1 January 1958, and for which the individual certificate of airworthiness is first issued on or after 18 February 2021 shall demonstrate for each seat type design approved for occupancy during taxiing, take-off or landing that the occupant is protected when exposed to loads resulting from emergency landing conditions. The demonstration shall be made by one of the following means:

- (a) successfully completed dynamic tests;
- (b) rational analysis providing equivalent safety, based on dynamic tests of a similar seat type design.

The obligation set out in the first paragraph shall not apply to the following seats:

- (a) flight deck crew seats,
- (b) seats in low-occupancy aeroplanes involved only in on-demand non-scheduled commercial air transport operations.';

(3) the following point 26.156 is inserted:

‘26.156 Thermal or acoustic insulation materials

Operators of large aeroplanes used in commercial air transport, type certified on or after 1 January 1958, shall ensure that:

- (a) for aeroplanes for which the first individual certificate of airworthiness is issued before 18 February 2021, when new thermal or acoustic insulation materials are installed as replacements on or after 18 February 2021, those new materials have flame propagation resistance characteristics which prevent or reduce the risk of flame propagation in the aeroplane;
- (b) for aeroplanes for which the first individual certificate of airworthiness is issued on or after 18 February 2021, thermal and acoustic insulation materials have flame propagation resistance characteristics which prevent or reduce the risk of flame propagation in the aeroplane;
- (c) for aeroplanes for which the first individual certificate of airworthiness is issued on or after 18 February 2021 and with a passenger capacity of 20 or more, thermal and acoustic insulation materials (including the means of fastening the materials to the fuselage) installed in the lower half of the aeroplane have flame penetration resistance characteristics which prevent or reduce the risk of flame penetration into the aeroplane after an accident and which ensure survivable conditions in the cabin for a time needed to evacuate the aeroplane.’;

(4) the following point 26.170 is inserted:

‘26.170 Fire extinguishers

Operators of large aeroplanes shall ensure that the following extinguishers do not use halon as an extinguishing agent:

- (a) built-in fire extinguishers for each lavatory waste receptacle for towels, paper or waste in large aeroplanes for which the first individual certificate of airworthiness is issued on or after 18 February 2020;
- (b) portable fire extinguishers in large aeroplanes for which the first individual certificate of airworthiness is issued on or after 18 May 2019.’;

(5) the following Subpart C is added:

‘SUBPART C — LARGE HELICOPTERS

26.400 Fire extinguishers

Operators of large helicopters shall ensure that the following extinguishers do not use halon as an extinguishing agent:

- (a) built-in fire extinguishers for each lavatory waste receptacle for towels, paper or waste in large helicopters for which the individual certificate of airworthiness is first issued on or after 18 February 2020;
 - (b) portable fire extinguishers in large helicopters for which the individual certificate of airworthiness is first issued on or after 18 May 2019.’
-

DECISIONS

COUNCIL DECISION (EU) 2019/134

of 21 January 2019

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee, concerning the amendment of Annex IX (Financial Services) to the EEA Agreement

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area ⁽¹⁾, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area ⁽²⁾ ('the EEA Agreement') entered into force on 1 January 1994.
- (2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Annex IX to that Agreement, which contains provisions on financial services.
- (3) Regulation (EU) No 909/2014 of the European Parliament and of the Council ⁽³⁾ is to be incorporated into the EEA Agreement.
- (4) Annex IX to the EEA Agreement should therefore be amended accordingly.
- (5) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, within the EEA Joint Committee on the proposed amendment of Annex IX (Financial Services) to the EEA Agreement, shall be based on the draft decision of the EEA Joint Committee attached to this Decision.

Article 2

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

Done at Brussels, 21 January 2019.

For the Council

The President

F. MOGHERINI

⁽¹⁾ OJ L 305, 30.11.1994, p. 6.

⁽²⁾ OJ L 1, 3.1.1994, p. 3.

⁽³⁾ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

DRAFT

DECISION OF THE EEA JOINT COMMITTEE No ...
of ...
amending Annex IX (Financial services) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

- (1) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 ⁽¹⁾, as corrected by OJ L 349, 21.12.2016, p. 8, is to be incorporated into the EEA Agreement.
- (2) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Annex IX to the EEA Agreement shall be amended as follows:

1. The following indent is added in points 16b (Directive 98/26/EC of the European Parliament and of the Council) and 31ba (Directive 2014/65/EU of the European Parliament and of the Council):

— **32014 R 0909**: Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 (OJ L 257, 28.8.2014, p. 1), as corrected by OJ L 349, 21.12.2016, p. 8.'

2. The following is added in point 29f (Regulation (EU) No 236/2012 of the European Parliament and of the Council):

‘ as amended by:

— **32014 R 0909**: Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 (OJ L 257, 28.8.2014, p. 1), as corrected by OJ L 349, 21.12.2016, p. 8.'

3. The following point is inserted after point 31bea (Commission Implementing Regulation (EU) No 594/2014):

‘31bf. **32014 R 0909**: Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1), as corrected by OJ L 349, 21.12.2016, p. 8.

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) Notwithstanding the provisions of Protocol 1 to this Agreement, and unless otherwise provided for in this Agreement, the term “Member State(s)” and “competent authorities” shall be understood to include, in addition to their meaning in the Regulation, the EFTA States and their competent authorities, respectively.
- (b) References to “members of the ESCB” or to “central banks” shall be understood to include, in addition to their meaning in the Regulation, the national central banks of the EFTA States.
- (c) Liechtenstein may allow third-country CSDs already providing services referred to in Article 25(2) to financial intermediaries in Liechtenstein or already having set up a branch in Liechtenstein to continue to provide the services referred to in Article 25(2) for a period not exceeding 5 years after the date of entry into force of Decision of the EEA Joint Committee No .../... of ... [this Decision].

⁽¹⁾ OJ L 257, 28.8.2014, p. 1.

- (d) In Article 1(3), the words “Union law” shall be replaced by the words “the EEA Agreement”.
- (e) In Article 12(3), the words “Union currencies” shall be replaced by the words “official currencies of the Contracting Parties to the EEA Agreement”.
- (f) In Article 13 and in the first subparagraph of Article 14(1), the words “, the EFTA Surveillance Authority” shall be inserted after the words “relevant authorities”.
- (g) In Articles 19(3), 33(3), 49(4), 52(2) and 53(3), the words “ESMA, which” shall be replaced by the words “ESMA. ESMA or, as the case may be, the EFTA Surveillance Authority”.
- (h) In Article 24(5):
- (i) in the first and second subparagraphs, the words “and, in cases concerning an EFTA State, the EFTA Surveillance Authority” shall be inserted after the word “ESMA”;
 - (ii) in the third subparagraph, the words “ESMA, which” shall be replaced by the words “ESMA. ESMA or, as the case may be, the EFTA Surveillance Authority”.
- (i) In Article 34(8), the words “Union competition rules” shall be replaced by the words “competition rules applicable pursuant to the EEA Agreement”.
- (j) In Article 38(5), the words “17 September 2014” shall be replaced by the words “the date of entry into force of Decision of the EEA Joint Committee No .../... of ... [this decision]”.
- (k) In Article 49(1), as regards the EFTA States, the words “by 18 December 2014” shall read “within three months of the date of entry into force of Decision of the EEA Joint Committee No .../... of ... [this decision]”.
- (l) In Article 55:
- (i) in paragraphs 5 and 6, the words “Union law” shall be replaced by the words “the EEA Agreement”;
 - (ii) in paragraph 6, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the word “ESMA”.
- (m) In Articles 58(3) and 69(1), as regards the EFTA States, the words “by 16 December 2014” shall read “within three months of the date of entry into force of Decision of the EEA Joint Committee No .../... of ... [this decision]”.
- (n) In Article 61(1), as regards the EFTA States, the words “by 18 September 2016” shall read “within one year of the date of entry into force of Decision of the EEA Joint Committee No .../... of ... [this decision]”.
- (o) In Article 69(2) and (5), as regards the EFTA States, the words “in the EEA” shall be inserted after the words “entry into force”.
- (p) In Article 76, as regards the EFTA States:
- (i) in paragraphs 4, 5 and 6, the words “the decision of the EEA Joint Committee containing” shall be inserted after the words “entry into force of”;
 - (ii) in paragraph 5, the words “until 13 June 2017” are replaced by the words “within six months from the date of entry into force of a decision of the EEA Joint Committee containing Directive 2014/65/EU and Regulation (EU) No 600/2014”;
 - (iii) in paragraph 7, the words “3 January 2017” shall read “these acts apply in the EEA”.

Article 2

The text of Regulation (EU) No 909/2014, as corrected by OJ L 349, 21.12.2016, p. 8, in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 3

This Decision shall enter into force on [...], provided that all the notifications under Article 103(1) of the EEA Agreement have been made (*).

(*) [No constitutional requirements indicated.] [Constitutional requirements indicated.]

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels,

For the EEA Joint Committee
The President
The Secretaries to the EEA Joint Committee

COUNCIL DECISION (CFSP) 2019/135
of 28 January 2019
amending Decision 2011/72/CFSP concerning restrictive measures directed against certain persons
and entities in view of the situation in Tunisia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

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

Whereas:

- (1) On 31 January 2011 the Council adopted Decision 2011/72/CFSP ⁽¹⁾ concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia.
- (2) On the basis of a review of Decision 2011/72/CFSP, the restrictive measures should be extended until 31 January 2020 and the entry for one person should be removed.
- (3) Decision 2011/72/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2011/72/CFSP is amended as follows:

- (1) Article 5 is replaced by the following:

'Article 5

This Decision shall apply until 31 January 2020. It shall be kept under constant review. It may be renewed or amended, as appropriate, if the Council deems that its objectives have not been met.'

- (2) the Annex is amended in accordance with the Annex to this Decision.

Article 2

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

Done at Brussels, 28 January 2019.

For the Council

The President

P. DAEA

⁽¹⁾ Council Decision 2011/72/CFSP of 31 January 2011 concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ L 28, 2.2.2011, p. 62).

ANNEX

In the Annex to Decision 2011/72/CFSP, entry 28 (Mohamed Marwan Ben Ali Ben Mohamed MABROUK) is deleted.

COUNCIL DECISION (EU) 2019/136**of 28 January 2019****on the position to be taken on behalf of the European Union within the Working Group on Wine established by the Agreement between the European Union and Japan for an Economic Partnership as regards the forms to be used for certificates for the import of wine products originating in Japan into the European Union and the modalities concerning self-certification**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement between the European Union and Japan for an Economic Partnership ⁽¹⁾ ('the Agreement') was concluded by the Union by Council Decision (EU) 2018/1907 ⁽²⁾. It enters into force on 1 February 2019.
- (2) Pursuant to paragraph 1 of Article 2.28 of the Agreement, a certificate authenticated in conformity with the laws and regulations of Japan, including a self-certificate established by a producer authorised by the competent authority of Japan, suffices as documentation serving as evidence that the requirements for the importation and sale in the Union of wine products originating in Japan referred to in Article 2.25, 2.26 or 2.27 of the Agreement have been fulfilled.
- (3) Pursuant to paragraph 2 of Article 2.28 of the Agreement, the Working Group on Wine is, by decision, to adopt the modalities for the implementation of paragraph 1 of that Article, and in particular the forms to be used, and the information to be provided on the certificate.
- (4) Subparagraph 2(a) of Article 2.35 of the Agreement provides that the Working Group on Wine is to adopt the modalities concerning self-certification.
- (5) Pursuant to paragraph 3 of Article 2.35 of the Agreement, the Working Group on Wine is to hold its first meeting on the date of entry into force of the Agreement.
- (6) The Working Group on Wine, during its first meeting on 1 February 2019, is to adopt the decision on the forms to be used for certificates for the import of wine products originating in Japan into the Union and on the modalities concerning the self-certification in order to allow for the effective implementation of the Agreement and thus simplify import of wine products originating in Japan. The envisaged forms and modalities concerning the self-certification are consistent with the Union policies on facilitating trade and cooperating on prevention of fraud with third countries that concluded agreements with the Union.
- (7) It is appropriate to establish the position to be taken on the Union's behalf within the Working Group on Wine.
- (8) The position of the Union within the Working Group on Wine should therefore be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the Working Group on Wine at its first meeting shall be based on the draft Decision attached to this Decision.

⁽¹⁾ OJ L 330, 27.12.2018, p. 3.

⁽²⁾ Council Decision (EU) 2018/1907 of 20 December 2018 on the conclusion of the Agreement between the European Union and Japan for an Economic Partnership (OJ L 330, 27.12.2018, p. 1).

Article 2

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

Done at Brussels, 28 January 2019.

For the Council
The President
P. DAEA

DRAFT

DECISION No 1/2019 OF THE EU-JAPAN WORKING GROUP ON WINE

of ...

on the adoption of the forms to be used for certificates for the import of wine products originating in Japan into the European Union and the modalities concerning self-certification

THE WORKING GROUP ON WINE,

Having regard to the Agreement between the European Union and Japan for an Economic Partnership, and in particular Articles 2.28 and 2.35 thereof,

Whereas:

- (1) The Agreement between the European Union and Japan for an Economic Partnership ('the Agreement') enters into force on 1 February 2019.
- (2) Article 22.4 of the Agreement establishes a Working Group on Wine, which, inter alia, is responsible for the effective implementation and operation of Section C and Annex 2-E of the Agreement.
- (3) Pursuant to paragraph 1 of Article 2.28 of the Agreement, a certificate authenticated in conformity with the laws and regulations of Japan, including a self-certificate established by a producer authorised by the competent authority of Japan, suffices as documentation serving as evidence that the requirements for the importation and sale in the European Union of wine products originating in Japan referred to in Article 2.25, 2.26 or 2.27 of the Agreement have been fulfilled.
- (4) Pursuant to subparagraph 2(a) of Article 2.28 of the Agreement, the forms to be used for certificates and the information to be provided on the certificates are to be adopted by decision of the Working Group on Wine established pursuant to Article 22.4 of the Agreement.
- (5) Pursuant to subparagraph 2(a) of Article 2.35 of the Agreement, the modalities concerning self-certification are to be adopted by the Working Group on Wine,

HAS ADOPTED THIS DECISION:

Article 1

1. The form to be used for certificates authenticated in conformity with the laws and regulations of Japan is set out in Annex I to this Decision.
2. The form to be used for self-certificates established by producers authorised by the competent authority of Japan is set out in Annex II to this Decision.
3. The modalities concerning self-certification by producers authorised by the competent authority of Japan are set out in Annex III to this Decision.

Article 2

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

For the Working Group on Wine

[...]

ANNEX I

**TEMPLATE OF CERTIFICATE ISSUED BY THE NATIONAL RESEARCH INSTITUTE OF BREWING [NRIB]
FOR THE IMPORTS OF WINE PRODUCTS ORIGINATING IN JAPAN INTO THE EU ⁽¹⁾**

1. Exporter (Full name and address)	Third country of issue: JAPAN Simplified VI 1 Serial No ⁽²⁾ : <p align="center">DOCUMENT FOR THE IMPORT OF WINE, GRAPE JUICE OR GRAPE MUST INTO THE EUROPEAN UNION</p>	
2. Consignee (name and address)	3. Customs stamp (for official EU use only)	
4. Means of transport and transport details ⁽³⁾	5. Place of unloading (if different from 2)	
6. Description of the imported product ⁽⁴⁾	7. Quantity in l/hl/kg	
	8. Number of containers ⁽⁵⁾	
<p>9. Certificate</p> <p><i>"The product described above is intended for direct human consumption and complies with the definitions and oenological practices authorised in Section C of Chapter 2 of the Agreement between the European Union and Japan for an Economic Partnership."</i></p> <p>Name and address of the producer:</p> <p>Full name and address of the competent body: Place and date:</p> <p>National Research Institute of Brewing under the supervision of the Ministry of Finance of Japan 3-7-1, Kagamiyama, Higashihiroshima, Hiroshima, Japan</p> <p>Stamp of the competent body:</p> <p>Signature, name and title of official of the competent body:</p>		

⁽¹⁾ In accordance with Article 2.28 of the Agreement between the European Union and Japan for an Economic Partnership.

⁽²⁾ This is the traceability number of the lot allocated by the NRIB.

⁽³⁾ Indicate: transport used for delivery to the point of entry into the EU; specify transport mode (ship, air, etc.), give name of ship, etc.

⁽⁴⁾ Indicate the following information:

- Sale designation as it appears on the label (such as name of producer, wine-growing region, brand name, etc.);
- Name of the country of origin: [indicate 'Japan'];
- Name of the GI, if relevant;
- Actual alcoholic strength by volume
- Colour of the product (state 'red', 'rosé', 'pink' or 'white' only);
- Combined Nomenclature code (CN code).

⁽⁵⁾ A container means a recipient for wine of less than 60 litres. The number of containers may be the number of bottles.

Attribution (entry into free circulation and issue of extracts)

Quantity	10. No and date of customs document of release for free circulation and of the extract	11. Full name and address of consignee (extract)	12. Seal authority of the competent
Available			
Attributed			
Available			
Attributed			
Available			
Attributed			
13. Additional observations			

ANNEX II

TEMPLATE OF SELF-CERTIFICATE FOR THE IMPORTS OF WINE PRODUCTS ORIGINATING IN JAPAN INTO THE EUROPEAN UNION ⁽¹⁾

1. Exporter (Full name and address)	Third country of issue: JAPAN Simplified VI 1 Serial No ⁽²⁾ : DOCUMENT FOR THE IMPORT OF WINE, GRAPE JUICE OR GRAPE MUST INTO THE EUROPEAN UNION
2. Consignee (name and address)	3. Customs stamp (for official EU use only)
4. Means of transport and transport details ⁽³⁾	5. Place of unloading (if different from 2)
6. Description of the imported product ⁽⁴⁾	7. Quantity in l/hl/kg
	8. Number of containers ⁽⁵⁾
9. Certificate <i>“The product described above is intended for direct human consumption and complies with the definitions and oenological practices authorised in Section C of Chapter 2 of the Agreement between the European Union and Japan for an Economic Partnership. It has been produced by a producer who has been individually authorised by the National Tax Agency of Japan for the production of wine and by the National Research Institute of Brewing (NRIB) for the self-certification. The producer is subject to inspection and supervision by the NRIB.”</i> Name, address and registration/authorisation number of the authorised producer: Full name and address of the competent body: National Research Institute of Brewing under the supervision of the Ministry of Finance of Japan 3-7-1, Kagamiyama, Higashihiroshima, Hiroshima, Japan Place and date: Stamp of the competent body: Signature, name and title of official of the competent body:	

⁽¹⁾ In accordance with Article 2.28 of the Agreement between the European Union and Japan for an Economic Partnership.

⁽²⁾ This is the traceability number of the lot allocated by the National Research Institute of Brewing (NRIB).

⁽³⁾ Indicate: transport used for delivery to the point of entry into the EU; specify transport mode (ship, air, etc.), give name of ship, etc.

⁽⁴⁾ Indicate the following information:

- Sale designation as it appears on the label (such as name of producer, wine-growing region, brand name, etc.);
- Name of the country of origin: [indicate 'Japan'];
- Name of the GI, if relevant;
- Actual alcoholic strength by volume
- Colour of the product (state 'red', 'rosé', 'pink' or 'white' only);
- Combined Nomenclature code (CN code).

⁽⁵⁾ A container means a recipient for wine of less than 60 litres. The number of containers may be the number of bottles.

10. ANALYSIS REPORT (describing the analytical characteristics of the product described above)

FOR GRAPE MUST AND GRAPE JUICE:

No information required

FOR WINE AND GRAPE MUST STILL IN FERMENTATION:

— **Actual alcoholic strength by volume:**

FOR ALL PRODUCTS:

— **Total sulphur dioxide content:**

— **Total acidity:**

Stamp of the authorised producer:

Place and date:

Signature, name and title of the authorised producer:

Attribution (entry into free circulation and issue of extracts)

Quantity	11. No and date of customs document of release for free circulation and of the extract	12. Full name and address of consignee (extract)	13. Seal authority of the competent
Available			
Attributed			
Available			
Attributed			
Available			
Attributed			
14. Additional observations			

ANNEX III

Modalities concerning Self-certification

1. The National Research Institute of Brewing, under the supervision of the Ministry of Finance of Japan,
 - (a) individually appoints the producers authorised in Japan to draw up the self-certificates referred to in Article 2.28 of the Agreement between the European Union and Japan for an Economic Partnership;
 - (b) supervises and inspects the authorised producers; and
 - (c) notifies the European Union:
 - twice a year, in the months of January and July, of the names and addresses of the authorised producers together with their official registration numbers; and
 - without delay, of any modification of the names and addresses or withdrawal of any authorised producers.
2. The European Union publishes and updates without delay the names and addresses of the authorised producers in the list entitled 'Third countries' competent bodies, designated laboratories and authorised wine producers and processors for drawing up VI-1 documents for wine imports into the EU' which is available on the official website of the European Commission:

ec.europa.eu/agriculture/sites/agriculture/files/wine/lists/06.pdf

DECISION (EU) 2019/137 OF THE EUROPEAN CENTRAL BANK**of 23 January 2019****on the selection of Eurosystem Single Market Infrastructure Gateway (ESMIG) network service providers (ECB/2019/2)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Articles 3.1 and 12.1 and Articles 17, 18 and 22 thereof,

Whereas:

- (1) The Eurosystem Single Market Infrastructure Gateway (ESMIG) is a technical component to be delivered as part of the T2-T2S Consolidation project that consolidates access by directly connected market participants to all market infrastructures provided by the Eurosystem. The ESMIG will give such participants one and the same technical set-up for accessing TARGET2 (T2) including the TARGET Instant Payment Settlement (TIPS) service, TARGET2-Securities (T2S), the Eurosystem Collateral Management System (ECMS) and possibly other Eurosystem market infrastructure services and applications.
- (2) In its meeting from 23 to 24 April 2018 the Market Infrastructure Board decided that the Deutsche Bundesbank, the Banco de España, the Banque de France and the Banca d'Italia (hereinafter the 'providing NCBs') would make the necessary preparations to have up to three network service providers to provide connectivity services to the ESMIG and that the Banca d'Italia would lead the selection procedure.
- (3) In that meeting, the Market Infrastructure Board further decided that the Banca d'Italia would act as the operating arm of the Eurosystem for the selection procedure. It also decided that the Market Infrastructure Board would be responsible for designating the selection panel members, since the Eurosystem central banks would be responsible and liable for the selection criteria and for the outcome of the selection panel's decision based on the selection criteria. The Banca d'Italia would be responsible for correctly conducting the selection procedure and its specific liability related to the selection procedure would be separate from the liability assumed by the providing NCBs under the Level 2-Level 3 agreement.
- (4) The purpose of the selection procedure is to entrust network service providers to provide a set of predefined connectivity services, on the basis of which the ESMIG network service providers design, implement, deliver and operate connectivity solutions intended to securely exchange business information between the directly connected market participants and the Eurosystem market infrastructures via the ESMIG.
- (5) The selection procedure for ESMIG network service providers falls under the scope of Directive 2014/23/EU of the European Parliament and of the Council ⁽¹⁾ as implemented in the national law of the Member State of the mandated central bank.
- (6) The Banca d'Italia has been appointed by the Governing Council to carry out the selection procedure for the ESMIG network service providers.
- (7) The Banca d'Italia has accepted the appointment and has confirmed its willingness to act in accordance with this Decision,

HAS ADOPTED THIS DECISION:

Article 1

Definitions

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

- (a) 'Market Infrastructure Board' means the governance body, which has as its mission to support the Governing Council by ensuring that the Eurosystem's market infrastructures and platforms, in the fields of cash settlement, securities settlement and collateral management, are maintained and further developed in line with the Treaty objectives of the European System of Central Banks (ESCB), the ESCB's business needs, technological advances, as well as regulatory and oversight requirements, as applicable from time to time;

⁽¹⁾ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

- (b) 'ESMIG network service provider' means a network service provider that has signed a concession contract to provide connectivity services;
- (c) 'connectivity services' means the direct network connection to the ESMIG that a directly connected market participant requires an ESMIG network service provider to provide in order to benefit from, or perform tasks and responsibilities related to the Eurosystem market infrastructure services;
- (d) 'concession' means the right as granted by the Eurosystem central banks to a network service provider to provide to the directly connected market participants a set of predefined connectivity services, on the basis of which the ESMIG network service provider shall design, implement, deliver and operate connectivity solutions intended to exchange securely electronic data between the directly connected market participants and the Eurosystem market infrastructures via the ESMIG;
- (e) 'selection panel' means a panel of three experts composed of two representatives from the mandated central bank (including the chairperson), as well as one representative from a Eurosystem central bank, all designated by the Market Infrastructure Board and formally appointed by the mandated central bank;
- (f) 'Eurosystem central bank' means either the European Central Bank (ECB) or a national central bank of a Member State whose currency is the euro;
- (g) 'Level 2-Level 3 agreement' means the supply and operation agreement that is negotiated between the Market Infrastructure Board and the providing NCBs, endorsed by the Governing Council and subsequently signed by the Eurosystem central banks and the providing NCBs. It is to contain the additional details of the tasks and responsibilities of the providing NCBs, the Market Infrastructure Board and the Eurosystem central banks;
- (h) 'directly connected market participant' means any entity that is authorised to exchange electronic data with a Eurosystem market infrastructure;
- (i) 'mandated central bank' means the national central bank of a Member State whose currency is the euro appointed by the Governing Council to conduct the selection procedure for the ESMIG network service providers and vested by the Eurosystem central banks with the power to sign a concession contract with each of the selected participants in the name and interest of the Eurosystem central banks;
- (j) 'Eurosystem market infrastructure services' means the services provided by the Eurosystem central banks' market infrastructures, comprising TARGET services (including the T2 service, TARGET Instant Payment Settlement (TIPS) service and the TARGET2-Securities (T2S) service), the Eurosystem Collateral Management System (ECMS) and other services to be provided by the Eurosystem's market infrastructures, platforms and applications in the fields of cash settlement, securities settlement and collateral management;
- (k) 'concession contract' means an agreement governed by the national law of the Member State of the mandated central bank, as proposed by the Market Infrastructure Board and approved by the Governing Council, setting out the reciprocal rights and obligations of the Eurosystem central banks and of the relevant ESMIG network service provider;
- (l) 'selected participant' means a participant in the selection procedure for the ESMIG network service providers that has been awarded a concession contract;
- (m) 'contract notice' means the notice of the selection procedure to be published by the mandated central bank in accordance with Article 3(2)(e);
- (n) 'awarding rules' means the detailed rules governing the selection procedure constituting part of the selection acts to be published;
- (o) 'selection acts' means the award announcement, the contract notice, as well as the awarding rules, and their annexes and attachments;
- (p) 'Network Acceptance Test' means a test to be performed by an ESMIG network service provider after the signature of the concession contract, aimed at verifying the compliance of its offered solution with basic functional, resilience and security requirements;
- (q) 'go-live date' means the date on which the first Eurosystem market infrastructure starts using the connectivity services for daily operation in production.

*Article 2***Mandated central bank**

1. The Banca d'Italia shall be the Eurosystem central bank appointed by the Governing Council to conduct the selection procedure for the ESMIG network service providers and to sign concession contracts with selected participants in accordance with this Decision.
2. The mandated central bank shall for the benefit of the Eurosystem central banks:
 - (a) plan the selection procedure and draft the selection acts and all relevant documentation in accordance with Article 3(2)(b);
 - (b) conduct the selection of ESMIG network service providers in full cooperation with the selection panel, in its own name and interest and in the interest of the Eurosystem central banks, by providing the material and human resources required to ensure that the selection procedure complies with the national law of its Member State;
 - (c) in line with the selection panel's decision, sign each concession contract, with the total number of ESMIG network service providers not exceeding three at any given time, in accordance with Article 4(1);
 - (d) represent the Eurosystem central banks vis-à-vis the ESMIG network service providers and other third parties and manage the concession contracts in accordance with Article 4(5).

*Article 3***Selection and awarding conditions**

1. The mandated central bank shall carry out the procedure for the selection of ESMIG network service providers in compliance with Directive 2014/23/EU as implemented in the national law of the Member State of the mandated central bank. The total number of ESMIG network service providers shall not exceed three at any given time.
2. When carrying out the selection procedure, the mandated central bank shall in particular observe the following conditions:
 - (a) the mandated central bank shall carry out an open procedure for the award of the concessions whereby any interested economic operator may submit an offer;
 - (b) all selection acts shall be prepared jointly by the Eurosystem central banks and the mandated central bank, and approved by the Market Infrastructure Board;
 - (c) the ESMIG network service providers shall be selected on the basis of the lowest maximum price for a standard set of services to be provided to the community of directly connected market participants, according to the model approved by the Market Infrastructure Board; all selection acts shall be published in English. The mandated central bank may also publish the contract notice in its official language. The participants in the selection procedure shall submit their offers and all supplemental documents in English;
 - (d) the mandated central bank shall specify in the contract notice that the selection procedure is carried out in its name and interest as well as in the interest of the Eurosystem central banks;
 - (e) the mandated central bank shall publish the contract notice at a minimum in: (a) the *Official Journal of the European Union*; (b) the relevant national official journal of the Member State of the mandated central bank; (c) two national newspapers; and (d) the *Financial Times* and *The Economist*. The selection acts shall be published on the mandated central bank's website. The contract notice shall also be published on the ECB's website, with a link to the mandated central bank's website in order to enable access to all the selection acts;
 - (f) the mandated central bank shall respond to requests for clarification in the selection procedure sent to the email address specified in the contract notice. Responses of general interest shall be published by the mandated central bank and the ECB on their respective websites;
 - (g) selection panel members shall be designated by the Market Infrastructure Board and formally appointed by the mandated central bank immediately after the end of the bidding period;

- (h) selection panel members shall be obliged to sign the declaration of absence of conflict of interest that has been approved by the Market Infrastructure Board;
- (i) the mandated central bank shall undertake the operational aspects of the selection procedure;
- (j) the selection panel shall, inter alia, examine the administrative documentation, and decide on the exclusion from the selection procedure of participants not fulfilling the participation requirements. The selection panel shall evaluate abnormally low offers pursuant to the rules laid down in the selection acts. The selection panel shall rank the participants not excluded from the selection procedure in increasing order of their economic offers;
- (k) the mandated central bank shall formally communicate all of the selection panel's decisions to the participants concerned using a secure and prompt means of written communication.

3. Once the selection panel has ranked the participants in accordance with paragraph 2(j) (award proposal), the mandated central bank shall, under its responsibility, undertake an internal legitimacy check to verify that the selection procedure was carried out correctly. When this check has been successfully completed, the mandated central bank shall issue the final award and shall verify that each selected participant fulfils the participation requirements and that their self-declarations are truthful. Should the legitimacy check be unsuccessful, the final award shall be deferred and the mandated central bank shall take all necessary actions under the national law of its Member State in order to ensure that the irregularity is resolved and that a new legitimacy check is performed and successfully completed. Without prejudice to the independence of the mandated central bank as a contracting authority under the national law of its Member State, it may consult the Market Infrastructure Board on policy matters relating to the resolution of any irregularities.

4. The mandated central bank shall act in its name and interest as well as in the interest of the Eurosystem central banks as regards all rights and obligations stemming from the selection procedure. It shall report to the Market Infrastructure Board on the progress of the selection procedure and, without prejudice to its independence as a contracting authority under the national law of its Member State, it shall consult the Market Infrastructure Board upon the occurrence of any event adversely affecting the project plan.

5. The mandated central bank shall bear its own costs related to the tasks it carries out in the selection procedure.

Article 4

Concession contract

1. Once the selection and awarding procedures have been concluded by the mandated central bank under the conditions mentioned above, the mandated central bank shall undertake all necessary preparatory measures to enter into a concession contract with each of the selected participants in the name and interest of the Eurosystem central banks. To this end, the Eurosystem central banks vest the mandated central bank with the power to sign the concession contract, by way of a separate power of attorney to act in the name and interest of the Eurosystem central banks (disclosed agency).

2. Subsequent to signing the concession contract, an ESMIG network service provider shall perform a Network Acceptance Test. If the ESMIG network service provider fails to successfully perform the test, the concession contract shall be terminated. Under such circumstances, the mandated central bank shall award a concession to the participant ranked next highest in the ranking list after the selected participants, under the same conditions as the original concession contract and on the basis of the offer that the next ranked participant submitted during the selection procedure.

3. Without prejudice to the following paragraphs, a concession awarded in the selection procedure shall have a duration of 10 years following the go-live date in order to allow the ESMIG network service provider to recoup the investments made in operating the services together with a return on invested capital taking into account the investments required to achieve the specific contractual objectives.

4. Where a concession contract with an ESMIG network service provider is terminated before the end of its duration, but after the successful performance of the Network Acceptance Test, the Market Infrastructure Board, at its sole discretion, may either not award a replacement concession contract, offer it to the participant in the selection procedure that ranked next highest in the ranking list after the selected participants or, if the ranking list does not allow for the previous option, award a new concession contract to another network service provider following a new selection procedure to be carried out by the mandated central bank. The new concession contract shall have a duration of 10 years.

5. The mandated central bank shall be vested with the power to represent the Eurosystem central banks vis-à-vis the ESMIG network service providers and other third parties in relation to the connectivity services as well as to manage the concession contracts in the name and interest of the Eurosystem central banks on an ongoing basis by, inter alia, enforcing the rights and obligations of the Eurosystem central banks, including in court proceedings, including but not limited to breach of contract, damages, termination, challenges or other alterations of contract. The mandated central bank shall report thereon to, and comply with the instructions issued by, the Market Infrastructure Board.
6. The mandated central bank shall take all measures necessary for the fulfilment of the Eurosystem central banks' and, if any, of the mandated central bank's, duties and obligations in relation to the concession contracts, and shall report thereon to, and respect any related instructions from the Market Infrastructure Board.
7. The mandated central bank shall receive all notices, declarations and writs of claims, including the service of process, in relation to a concession contract to enable it to fulfil the Eurosystem central banks', and, if any, the mandated central bank's, rights and obligations in relation to a concession contract.
8. Without prejudice to Article 5, the Eurosystem central banks shall reimburse the mandated central bank for all reasonable expenses it incurs for the management and monitoring of the concession contracts pursuant to paragraphs 5 to 7.

Article 5

Compensation claims

1. The mandated central bank shall be liable to the Eurosystem central banks without limitation for any loss or damage resulting from fraud or wilful misconduct in the performance of its rights and obligations under this Decision. It shall be liable to the Eurosystem central banks for any loss or damage resulting from its gross negligence in performing its obligations under this Decision, in which case its liability shall be limited to a maximum total amount of EUR 2 000 000 per calendar year.
2. Where losses or damages are suffered by a third party arising from fraud or wilful misconduct of the mandated central bank in performing its duties under this Decision, the mandated central bank shall be responsible for any compensation to be paid to that third party.
3. Where losses or damages are suffered by a third party arising from the mandated central bank's gross or ordinary negligence in performing its duties under this Decision, the mandated central bank shall be responsible for any compensation to be paid to that third party. The Eurosystem central banks shall reimburse the mandated central bank for any such compensation that exceeds a maximum total amount of EUR 2 000 000 per calendar year, on the basis of a court statement or of a settlement agreement between the mandated central bank and any such third party, provided that the settlement agreement has been approved in advance by the Market Infrastructure Board.
4. The Eurosystem central banks shall fully and promptly reimburse the mandated central bank for any compensation paid by it to third parties where this stems from: (a) the participation requirements and award criteria; (b) a decision made by the selection panel on the basis of the participation requirements and award criteria; (c) the incorrect conduct of the selection panel, unless it acted in line with the written advice of the mandated central bank or has not received appropriate prior written advice from the mandated central bank on the issue concerned provided that such advice was sought in writing well in advance; (d) any decision or event beyond the control of the mandated central bank including those which may affect the effectiveness of the concessions granted.
5. The mandated central bank shall not be reimbursed by the Eurosystem central banks for compensation paid to third parties resulting from operational activities and other procedural acts which fall within its responsibility, unless the mandated central bank has acted, contrary to its own advice, in line with instructions from the Market Infrastructure Board pursuant to Article 3(5).
6. Where legal actions are filed by third parties related to acts or omissions with respect to the selection procedure for which the Eurosystem central banks have exclusive liability, the Eurosystem central banks, having consulted the mandated central bank, shall instruct the mandated central bank on the measures it shall take, e.g. any representation by external counsel or by in-house legal services of the mandated central bank, in a timely manner. Once a decision as to the course of action in any such proceeding has been taken, the litigation costs and fees arising from any such action shall be borne by the Eurosystem central banks.
7. The Eurosystem central banks shall assume liability for acts and omissions of individual selection panel members in relation to the selection procedure.

8. Where legal actions are filed by third parties for acts or omissions connected to a selection procedure for which the mandated central bank takes exclusive liability, the mandated central bank shall fully cooperate with the Eurosystem central banks on the measures it shall take, e.g. any representation by external counsel or by its in-house legal services, and shall bear the subsequent costs.

9. Where the Eurosystem central banks and the mandated central bank are jointly responsible for losses or damages suffered by a third party, each of them shall bear an equal share of the costs.

Article 6

Final provisions

1. This mandate shall continue to be in force for 10 years from the go-live date.
2. The expiration of a mandate shall not affect the application of the relevant concession contracts.

Article 7

Entry into force

This Decision shall enter into force on 25 January 2019.

Done at Frankfurt am Main, 23 January 2019.

The President of the ECB
Mario DRAGHI

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