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## Legislation

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Contents

### II *Non-legislative acts*

#### INTERNATIONAL AGREEMENTS

- ★ **Statement submitted to the Energy Charter Treaty (ECT) Secretariat pursuant to Article 26(3)(b)(ii) of the ECT replacing the statement made on 17 November 1997 on behalf of the European Communities** ..... 1

#### REGULATIONS

- ★ **Commission Regulation (EU) 2019/680 of 30 April 2019 amending Annex VI to Regulation (EC) No 1223/2009 of the European Parliament and of the Council on cosmetic products<sup>(1)</sup>** 3
- ★ **Commission Regulation (EU) 2019/681 of 30 April 2019 amending Annex II to Regulation (EC) No 1223/2009 of the European Parliament and of the Council on cosmetic products<sup>(1)</sup>** 5

#### DECISIONS

- ★ **Council Decision (EU) 2019/682 of 9 April 2019 authorising Member States to ratify, in the interest of the European Union, the Protocol amending the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data** ..... 7
- ★ **Council Decision (EU) 2019/683 of 9 April 2019 authorising Member States to become parties, in the interest of the European Union, to the Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events (CETS No 218)** ..... 9

<sup>(1)</sup> Text with EEA relevance.

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

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

<p>★ Commission Implementing Decision (EU) 2019/684 of 25 April 2019 on the recognition of the legal, supervisory and enforcement arrangements of Japan for derivatives transactions supervised by the Japan Financial Services Agency as equivalent to the valuation, dispute resolution and margin requirements of Article 11 of Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories <sup>(1)</sup> .....</p>	11
<p>★ Decision (EU) 2019/685 of the European Central Bank of 18 April 2019 on the total amount of annual supervisory fees for 2019 (ECB/2019/10) .....</p>	16

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<sup>(1)</sup> Text with EEA relevance.

## II

(Non-legislative acts)

## INTERNATIONAL AGREEMENTS

**Statement submitted to the Energy Charter Treaty (ECT) Secretariat pursuant to Article 26(3)(b)(ii) of the ECT replacing the statement made on 17 November 1997 on behalf of the European Communities**

The European Union, the European Atomic Energy Community (Euratom) and their Member States make the following statement:

1. The European Union and Euratom are regional economic integration organisations within the meaning of the Energy Charter Treaty. The European Union and Euratom exercise the competences conferred on them by their Member States through autonomous decision-making and judicial institutions.
2. The European Union, Euratom and their Member States are internationally responsible for the fulfilment of the obligations contained within the Energy Charter Treaty, in accordance with their respective competences.
3. On 23 July 2014 Regulation (EU) No 912/2014 <sup>(1)</sup> of the European Parliament and of the Council establishing a framework for managing financial responsibility linked to investor-to-state-dispute settlement tribunals established by international agreements to which the European Union is party was adopted (Regulation (EC) No 912/2014) <sup>(2)</sup>. The Regulation applies to investor-to-state disputes initiated by a claimant from a third country under the Energy Charter Treaty. This Regulation provides, in particular:
  - A. In accordance with Article 4(1) of Regulation (EC) No 912/2014, in the case of disputes concerning treatment afforded by the institutions, bodies, offices or agencies of the European Union, the European Union shall act as respondent.
  - B. In the case of disputes concerning treatment afforded, fully or partially, by a Member State, Article 8 of Regulation (EC) No 912/2014 provides that
    1. *Where the Commission receives notice by which a claimant states its intention to initiate arbitration proceedings, in accordance with an agreement, it shall immediately notify the Member State concerned. When a claimant states its intention to initiate arbitration proceedings against the Union or a Member State, the Commission shall inform the European Parliament and the Council, within 15 working days of receiving the notice, of the name of the claimant, the provisions of the agreement alleged to have been breached, the economic sector involved, the treatment alleged to be in breach of the agreement and the amount of damages claimed.*
    2. *Where a Member State receives notice by which a claimant states its intention to initiate arbitration proceedings, it shall immediately notify the Commission.*

Article 9 of Regulation (EC) No 912/2014 further provides that:

1. *The Member State concerned shall act as the respondent except where either of the following situations arise:*

*(a) the Commission, following consultations pursuant to Article 6, has taken a decision pursuant to paragraph 2 or 3 of this Article within 45 days of receiving the notice or notification referred to in Article 8; or*

<sup>(1)</sup> Regulation (EU) No 912/2014 of the European Parliament and of the Council of 23 July 2014 establishing a framework for managing financial responsibility linked to investor-to-state dispute settlement tribunals established by international agreements to which the European Union is party, OJ L 257, 28.8.2014, p. 121-134.

<sup>(2)</sup> For greater certainty, this statement is intended to address the consequences of the adoption of Regulation (EC) No 912/2014 in relation to cases initiated by a claimant from a non-EU Contracting Party under the Energy Charter Treaty. Disputes between an investor of a Member State and a Member State under the Energy Charter Treaty do not fall within the scope of this statement. The EU and its Member States may address this matter at a later stage.

(b) the Member State, following consultations pursuant to Article 6, has confirmed to the Commission in writing that it does not intend to act as the respondent within 45 days of receiving the notice or notification referred to in Article 8.

If either of the situations referred to in point (a) or (b) arise, the Union shall act as the respondent.

2. The Commission may decide by means of implementing acts, based on a full and balanced factual analysis and legal reasoning provided to the Member States, in accordance with the advisory procedure referred to in Article 22(2), that the Union is to act as the respondent where one or more of the following circumstances arise:

(a) the Union would bear all or at least part of the potential financial responsibility arising from the dispute in accordance with the criteria laid down in Article 3; or

(b) the dispute also concerns treatment afforded by the institutions, bodies, offices or agencies of the Union.

3. The Commission may decide by means of implementing acts, based on a full and balanced factual analysis and legal reasoning provided to the Member States in accordance with the examination procedure referred to in Article 22(3), that the Union is to act as the respondent where similar treatment is being challenged in a related claim against the Union in the WTO, where a panel has been established and the claim concerns the same specific legal issue, and where it is necessary to ensure a consistent argumentation in the WTO case.

[...]

5. The Commission and the Member State concerned shall immediately after receiving the notice or notification referred to in Article 8 enter into consultations pursuant to Article 6 on the management of the case pursuant to this Article. The Commission and the Member State concerned shall ensure that any deadlines set down in the agreement are respected.

C. Having made a determination of who shall act as respondent in a dispute in accordance with the above provisions of Regulation (EC) No 912/2014, the European Union will inform the claimant within 60 days from the date on which the claimant has given notice of its intention to initiate a dispute. This is without prejudice to the division of competences between the European Union and the Member States for investment.

4. The Court of Justice of the European Union, as the judicial institution of the European Union and Euratom, is competent to examine any question relating to the application and interpretation of the constituent treaties and acts adopted thereunder, including international agreements concluded by the European Union and Euratom, which under certain conditions may be invoked before the Court of Justice.

5. Any case brought before the Court of Justice of the European Union by a claimant of another non-EU Contracting Party in application of the forms of action provided by the constituent treaties of the Union falls under Article 26(2)(a) of the Energy Charter Treaty<sup>(3)</sup>. Given that the Union's legal system provides for means of such action, neither the European Union nor Euratom has given its unconditional consent to the submission of a dispute to international arbitration or conciliation.

6. As far as international arbitration is concerned, it should be stated that the provisions of the ICSID Convention do not allow the European Union and Euratom to become parties to it. The provisions of the ICSID Additional Facility also do not allow the European Union and Euratom to make use of them. Any arbitral award against the European Union and Euratom will be implemented by the Union's institutions, in accordance with their obligation under Article 26(8) of the Energy Charter Treaty.'

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<sup>(3)</sup> Article 26(2)(a) is also applicable in the case where the Court of Justice of the European Union may be called upon to examine the application or interpretation of the Energy Charter Treaty on the basis of a request for a preliminary ruling submitted by a court or tribunal of a Member State in accordance with Article 267 of the Treaty on the Functioning of the European Union.

# REGULATIONS

## COMMISSION REGULATION (EU) 2019/680

of 30 April 2019

amending Annex VI to Regulation (EC) No 1223/2009 of the European Parliament and of the Council on cosmetic products

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products <sup>(1)</sup>, and in particular Article 31(2) thereof,

Whereas:

- (1) The Scientific Committee on Consumer Safety (SCCS) concluded in its opinion of 30 July 2018 <sup>(2)</sup> (‘the SCCS opinion’) that Phenylene Bis-Diphenyltriazine is safe for use as a UV filter in sunscreen products and other cosmetic products at a maximum concentration of 5 % and that its use was safe only in dermally applied products and not in products that may lead to inhalation exposure.
- (2) In light of the SCCS opinion and in order to take into account technical and scientific progress, the use of Phenylene Bis-Diphenyltriazine as a UV filter in cosmetic products should be authorised at a maximum concentration of 5 %, except in applications that may lead to exposure of the end user’s lungs by inhalation.
- (3) Annex VI to Regulation (EC) No 1223/2009 should therefore be amended accordingly.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Cosmetic Products,

HAS ADOPTED THIS REGULATION:

### *Article 1*

Annex VI to Regulation (EC) No 1223/2009 is amended in accordance with the Annex to this Regulation.

### *Article 2*

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

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

Done at Brussels, 30 April 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

<sup>(1)</sup> OJ L 342, 22.12.2009, p. 59.

<sup>(2)</sup> SCCS/1594/18.

## ANNEX

In Annex VI to Regulation (EC) No 1223/2009, the following entry is added:

Reference number	Substance identification				Conditions			Wording of conditions of use and warnings
	Chemical name/INN/XAN	Name of Common Ingredients Glossary	CAS number	EC number	Product type, Body parts	Maximum concentration in ready for use preparation	Other	
a	b	c	d	e	f	g	h	i
'31	3,3'-(1,4-Phenylene) bis(5,6-diphenyl-1,2,4-triazine)	Phenylene Bis-Diphenyltriazine	55514-22-2	700-823-1		5 %	Not to be used in applications that may lead to exposure of the end user's lungs by inhalation.'	

**COMMISSION REGULATION (EU) 2019/681**  
**of 30 April 2019**  
**amending Annex II to Regulation (EC) No 1223/2009 of the European Parliament and of the**  
**Council on cosmetic products**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products <sup>(1)</sup>, and in particular Article 31(1) thereof,

Whereas:

- (1) The substance 2-Chloro-p-Phenylenediamine, including its sulfate and dihydrochloride salts, is used in formulations for colouring eyebrows and eyelashes in a maximum concentration of 4,6 %. The Scientific Committee on Consumer Safety (SCCS) stated in its opinion of 19 September 2013 <sup>(2)</sup> ('the SCCS opinion') that no sufficient margin of safety could be deduced for the use of 2-Chloro-p-Phenylenediamine in oxidative hair dye formulations for eyebrows and eyelashes in a concentration of maximum 4,6 %. The SCCS further stated that it was not possible to give a conclusion on the genotoxic potential of 2-Chloro-p-Phenylenediamine based on the available data and the lack of a proper *in vivo* test for gene mutation induction. Therefore, the SCCS did not consider the use of 2-Chloro-p-Phenylenediamine safe for the consumer. The SCCS has subsequently clarified that it is of the opinion that sulfate and dihydrochloride salts of 2-Chloro-p-Phenylenediamine should be handled with the same caution as 2-Chloro-p-Phenylenediamine until proven to be safe, because they have the same core structure, including genotoxic potential, as 2-Chloro-p-Phenylenediamine. Moreover, the SCCS has clarified that the scope of the SCCS opinion and its conclusion can be extended to the hair on the head <sup>(3)</sup>.
- (2) In light of the SCCS opinion, and the subsequent clarification by SCCS, there is a potential risk to human health arising from the use of 2-Chloro-p-Phenylenediamine, its sulfate and dihydrochloride salts in products for colouring eyebrows and eyelashes. With regard to products for colouring the hair on the head, the exposure to the substance is even higher, since those products are applied to a larger surface of the body. On that basis, and in light of the clarification by SCCS, there is also a potential risk to human health arising from the use of 2-Chloro-p-Phenylenediamine, its sulfate and dihydrochloride salts in products for colouring the hair of the head. Therefore, 2-Chloro-p-Phenylenediamine, its sulfate and dihydrochloride salts should be prohibited in hair dye products, including eyebrow dye products, and in eyelash dye products and added in the list of prohibited substances in Annex II to Regulation (EC) No 1223/2009.
- (3) It is appropriate to provide for reasonable periods of time in order for the industry to adapt to the new prohibition. When determining the length of those periods, the interest of the economic operators should be balanced against the specific health risk factors identified.
- (4) Regulation (EC) No 1223/2009 should therefore be amended accordingly.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Cosmetic Products,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex II to Regulation (EC) No 1223/2009 is amended in accordance with the Annex to this Regulation.

*Article 2*

From 22 November 2019 hair dye products, including eyebrow dye products, and eyelash dye products containing the substances prohibited by this Regulation shall not be placed on the Union market.

<sup>(1)</sup> OJ L 342, 22.12.2009, p. 59.

<sup>(2)</sup> SCCS/1510/13.

<sup>(3)</sup> Minutes of the SCCS plenary meeting of 21-22 June 2018.

From 22 February 2020 hair dye products, including eyebrow dye products, and eyelash dye products containing the substances prohibited by this Regulation shall not be made available on the Union market.

*Article 3*

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

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

Done at Brussels, 30 April 2019.

*For the Commission*  
*The President*  
 Jean-Claude JUNCKER

ANNEX

In Annex II to Regulation (EC) No 1223/2009, the following entry is added:

Reference number	Chemical name/INN	CAS number	EC number
'1384	2-chlorobenzene-1,4-diamine (2-Chloro-p-Phenylenediamine), its sulfate and dihydrochloride salts (*) when used as a substance in hair dye products, including eyebrow dye products, and eyelash dye products	615-66-7	210-441-2
		61702-44-1 (sulfate)	262-915-3
		615-46-3 (dihydrochloride)	210-427-6

(\*) From 22 November 2019 hair dye products, including eyebrow dye products, and eyelash dye products containing those substances shall not be placed on the Union market. From 22 February 2020 hair dye products, including eyebrow dye products, and eyelash dye products containing those substances shall not be made available on the Union market.'



# DECISIONS

## COUNCIL DECISION (EU) 2019/682

of 9 April 2019

### **authorising Member States to ratify, in the interest of the European Union, the Protocol amending the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16, in conjunction with Article 218(6)(a)(v) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) On 6 June 2013, the Council authorised the Commission to participate on behalf of the Union in the negotiations on the modernisation of the Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data (ETS No 108) ('Convention 108') and the conditions and modalities of accession of the Union to the amended Convention 108.
- (2) The Protocol amending Convention 108 ('the amending Protocol') was adopted by the Committee of Ministers of the Council of Europe on 18 May 2018.
- (3) The amending Protocol aims to widen the scope, increase the level and improve the effectiveness of data protection afforded under Convention 108.
- (4) The provisions of the amended Convention 108 cover both activities falling within the scope of Union law and activities outside its scope, such as in national security and defence.
- (5) The provisions of the amended Convention 108, to the extent they apply to the processing of personal data in the context of activities falling within the scope of Union law, may affect common rules or alter their scope within the meaning of Article 3(2) of the Treaty, as these provisions are based on the same principles as those set out in Regulation (EU) 2016/679 <sup>(1)</sup> and in Directive (EU) 2016/680 <sup>(2)</sup> of the European Parliament and of the Council.
- (6) Given that the amended Convention 108 will contain safeguards based on the same principles as those set out in Regulation (EU) 2016/679 and in Directive (EU) 2016/680, its entry into force will contribute to the promotion of Union data protection standards at global level, facilitate data flows between the Union and the non-Union Parties to Convention 108, ensure compliance by Member States with their international obligations under Convention 108 and enable future accession of the Union to Convention 108.
- (7) The Union cannot sign or ratify the amending Protocol, as under Convention 108 only States are Parties.
- (8) Member States should therefore be authorised to ratify the amending Protocol, acting jointly in the interests of the Union, insofar as its provisions fall within the exclusive competence of the Union,

<sup>(1)</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>(2)</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

HAS ADOPTED THIS DECISION:

*Article 1*

Member States are hereby authorised to ratify, in the interest of the Union, the Protocol amending the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No 108) insofar as its provisions fall within the exclusive competence of the Union.

*Article 2*

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

*Article 3*

This Decision is addressed to the Member States.

Done at Luxembourg, 9 April 2019.

*For the Council*  
*The President*  
G. CIAMBA

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**COUNCIL DECISION (EU) 2019/683****of 9 April 2019****authorising Member States to become parties, in the interest of the European Union, to the Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events (CETS No 218)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 87(1), in conjunction with point (a)(v) of the second subparagraph of Article 218(6) and Article 218(8) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament <sup>(1)</sup>,

Whereas:

- (1) The Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events ('the Convention') was done at Saint-Denis on 3 July 2016 and has been open for signature and ratification since then.
- (2) The Convention aims to provide a safe, secure and welcoming environment at football matches and other sports events.
- (3) Paragraphs 2, 3 and 4 of Article 11 of the Convention, which concern national football information points, may affect common rules or alter their scope within the meaning of Article 3(2) of the Treaty on the Functioning of the European Union (TFEU), as those provisions coincide with certain obligations contained in Council Decision 2002/348/JHA <sup>(2)</sup>.
- (4) Union support for the Convention is important for combating violence related to sporting events and would complement the efforts already made in that field through support for projects under the sport chapter of the Erasmus+ programme, established by Regulation (EU) No 1288/2013 of the European Parliament and of the Council <sup>(3)</sup>.
- (5) The Union cannot become party to the Convention, as only States can be parties thereto.
- (6) Member States should therefore be authorised to sign and ratify the Convention, acting jointly in the interest of the Union, in respect of those parts of the Convention which fall under the exclusive competence of the Union.
- (7) The United Kingdom and Ireland are bound by Decision 2002/348/JHA, and are therefore taking part in the adoption of this Decision.
- (8) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the TFEU, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

*Article 1*

Member States are hereby authorised to become parties to the Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events (CETS No 218) in respect of Article 11(2), (3) and (4) thereof.

<sup>(1)</sup> Consent of 12 March 2019 (not yet published in the Official Journal).

<sup>(2)</sup> Council Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension (OJ L 121, 8.5.2002, p. 1).

<sup>(3)</sup> Regulation (EU) No 1288/2013 of the European Parliament and of the Council of 11 December 2013 establishing 'Erasmus+' the Union programme for education, training, youth and sport and repealing Decisions No 1719/2006/EC, No 1720/2006/EC and No 1298/2008/EC (OJ L 347, 20.12.2013, p. 50).

*Article 2*

This Decision is addressed to the Member States.

Done at Luxembourg, 9 April 2019.

*For the Council*  
*The President*  
G. CIAMBA

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**COMMISSION IMPLEMENTING DECISION (EU) 2019/684****of 25 April 2019****on the recognition of the legal, supervisory and enforcement arrangements of Japan for derivatives transactions supervised by the Japan Financial Services Agency as equivalent to the valuation, dispute resolution and margin requirements of Article 11 of Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories <sup>(1)</sup>, and in particular Article 13(2) thereof,

After consulting the European Securities Committee,

Whereas:

- (1) Article 13 of Regulation (EU) No 648/2012 provides for a mechanism to ensure consistency between the legal, supervisory and enforcement arrangements established by the Union and those of third countries in the areas within the scope of that Regulation. The Commission is empowered to adopt equivalence decisions whereby the legal, supervisory and enforcement arrangements of a third country are declared equivalent to the requirements laid down in Articles 4, 9, 10 and 11 of Regulation (EU) No 648/2012 so that counterparties which enter into a transaction within the scope of that Regulation, where at least one of the counterparties is established in that third country, should be deemed to have fulfilled those requirements by complying with the requirements set out in that third country's legal regime. The declaration of equivalence avoids the application of duplicative or conflicting rules. Furthermore, the declaration of equivalence contributes to the achievement of the overarching aim of Regulation (EU) No 648/2012 namely to reduce systemic risk and increase the transparency of derivatives markets by ensuring an internationally consistent application of the principles agreed with third countries and laid down in that Regulation.
- (2) Paragraphs 1, 2 and 3 of Article 11 of Regulation (EU) No 648/2012 which is supplemented by Commission Delegated Regulation (EU) No 149/2013 <sup>(2)</sup> and Commission Delegated Regulation (EU) 2016/2251 <sup>(3)</sup>, establish the Union's legal requirements concerning the timely confirmation of the terms of an OTC derivative contract, the conduct of a portfolio compression exercise and the arrangements under which portfolios are reconciled in relation to OTC derivative contracts not cleared by a central counterparty ('CCP'). In addition, those paragraphs lay down the valuation and dispute resolution obligations applicable to those contracts ('operational risk mitigation techniques') as well as the obligations on the exchange of collateral ('margins') between counterparties.
- (3) In order for a third country's legal, supervisory and enforcement regime to be considered equivalent to the regime of the Union in respect of operational risk mitigation techniques and margins requirements, the substantive outcome of the applicable legal, supervisory and enforcement arrangements should be equivalent to Union requirements under Article 11 of Regulation (EU) No 648/2012, ensure protection of professional secrecy that is equivalent to that set out in this Regulation; and the legal, supervisory and enforcement arrangements should be effectively applied and enforced in an equitable and non-distortive manner so as to ensure effective

<sup>(1)</sup> OJ L 201, 27.7.2012, p. 1.

<sup>(2)</sup> Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (OJ L 52, 23.2.2013, p. 11).

<sup>(3)</sup> Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty (OJ L 340, 15.12.2016, p. 9).

supervision and enforcement in that third country. The purpose of this equivalence assessment is therefore to verify that the legal, supervisory and enforcement arrangements of Japan ensure that OTC derivative contracts not cleared by a CCP and entered into by at least one counterparty established in that third country do not expose financial markets in the Union to a higher level of risk and consequently do not pose unacceptable levels of systemic risk in the Union.

- (4) On 1 September 2013, the Commission received the technical advice of the European Markets Supervisory Authority ('ESMA') on the legal, supervisory and enforcement arrangements in Japan (\*) including, inter alia, the operational risk mitigation techniques applicable to OTC derivative contracts not cleared by a CCP. In its technical advice, ESMA found that there were no legally binding requirements on timely confirmation of the terms of an OTC derivative contract, the arrangements for carrying out portfolio reconciliation, the conduct of a portfolio compression, the valuation of a portfolio and the obligation for dispute resolution or for the exchange of collateral between counterparties to OTC derivative contracts in Japan. ESMA also observed that the equivalence between regimes for bilateral margins could not be assessed at the time, as the technical standards specifying the rules on bilateral margins in the Union had not yet been developed.
- (5) The Commission has considered ESMA's technical advice in carrying out its assessment, and has taken into account the regulatory developments that have taken place since then. This Decision is not only based on a comparative analysis of the legal, supervisory and enforcement requirements applicable in Japan, but also on an assessment of the outcome of those requirements and their adequacy in order to mitigate the risks arising from OTC derivative contracts not cleared by a CCP in a manner considered equivalent to the outcome of the requirements laid down in Regulation (EU) No 648/2012.
- (6) The legal, supervisory and enforcement arrangements applicable in Japan for OTC derivative contracts are laid out in the Financial Instruments and Exchange Act, No 25 of 1948 ('FIEA'), and apply to Financial Instrument Business Operators ('FIBOs') and Registered Financial Institutions ('RFIs'), which include regulated banks, cooperatives, insurance companies, pension funds and investment funds. The Financial Services Agency of Japan ('JFSA') has broad powers to implement the FIEA and has the Cabinet Office Ordinance, Supervisory Guidelines, and Public Notifications (together 'the OTC derivatives rules of Japan'). The JFSA has jurisdiction over OTC derivatives within the meaning of Article 2(7) of Regulation (EU) No 648/2012, with the exception of OTC commodity derivatives, which are under the jurisdiction of the Japanese Ministry of Economy, Trade and Industry ('METI') and the Japanese Ministry of Agriculture, Forestry and Fisheries ('MAFF').
- (7) The operational risk mitigation techniques for OTC derivative contracts not cleared by a CCP, as laid down in the OTC derivatives rules of Japan, continue to be insufficient when compared with the obligations provided for in paragraphs 1 and 2 of Article 11 of Regulation (EU) No 648/2012 and Delegated Regulation (EU) No 149/2013 with regard to timely confirmation of the terms of an OTC derivative contract, the conduct of a portfolio compression exercise and the arrangements under which portfolios are reconciled. This Decision should therefore only cover the legal, supervisory and enforcement arrangements concerning the valuation and dispute resolution obligations as provided for in paragraphs 1 and 2 of Article 11 of Regulation (EU) No 648/2012 and Delegated Regulation (EU) No 149/2013 as well as those concerning margin requirements as provided for in paragraph 3 of Article 11 of Regulation (EU) No 648/2012 and Delegated Regulation (EU) 2016/2251.
- (8) With regard to the requirements for the valuation of transactions and for the resolution of disputes applicable to OTC derivatives not cleared by a CCP, the OTC derivatives rules of Japan contain similar obligations to those provided for in paragraphs 1 and 2 of Article 11 of Regulation (EU) No 648/2012. In particular, Section IV-2-4 of the Supervisory Guidelines contains specific requirements regarding dispute resolution applicable to OTC derivative contracts not cleared by a CCP and Article 123 of the Cabinet Office Ordinance lays out the requirements for carrying out daily valuations for the purpose of margin exchanges.
- (9) Concerning the margins for OTC derivative contracts not cleared by a CCP, the legally binding requirements of Japan consist of a set of final regulations adopted by the JFSA, published on 31 March 2016 which entered into

(\*) ESMA/2013/BS/1158, Technical advice on third country regulatory equivalence under EMIR – Japan, Final report, European Securities and Markets Authority, 1 September 2013.

force on 1 September 2016. Those regulations comprise the Cabinet Office Ordinance on Financial Instrument Businesses No 52 of 6 August 2007 including the Supplementary Provisions, the Financial Services Agency Public Notices No 15, 16 and 17 of 31 March 2016 and No 33 of 25 August 2017, the revised Comprehensive Guidelines for Supervision of Major Banks, etc., the revised Comprehensive Guidelines for Supervision of Small- and Medium-Sized and Regional Financial Institutions, the revised Comprehensive Guidelines for Supervision of Cooperative Banks, the revised Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc., the revised Comprehensive Guidelines for Supervision of Insurance Companies and the revised Comprehensive Guidelines for Supervision with respect to Trust Companies, etc. The rules applicable to OTC Commodity derivatives under the jurisdiction of METI and MAFF replicate the set of final regulations adopted by the JFSA, (together 'the margin rules of Japan').

- (10) As laid down in the margin rules of Japan, financial institutions which have an average total amount of notional principal of OTC derivatives for a certain period of time equal to or above JPY 300 billion must exchange variation margin on a daily basis under the FIEA, while financial institutions below that threshold must exchange variation margin with 'a sufficient frequency'. Because Regulation (EU) No 648/2012 requires all counterparties to an OTC derivative transaction not cleared by a CCP to exchange variation margin on a daily basis, this Decision should therefore be conditional on the daily exchange of variation margin for transactions conducted with FIBOs and RFIs whose average total amount of the notional principal of OTC derivatives for a one-year period, from April two years before the year in which calculation is required (or one year if calculated in December) falls below JPY 300 billion.
- (11) Similar to the requirements laid down in Delegated Regulation (EU) 2016/2251, under the margin rules of Japan, all financial institutions which aggregate notional amounts of non-cleared OTC derivatives, non-cleared OTC Commodity derivatives, physically-settled foreign exchange ('FX') forwards and FX swaps of a consolidated group, excluding intragroup transactions, for the months March, April and May one year before the year in which the calculation exceeds JPY 1,1 trillion must exchange details of the initial margin. The margin rules of Japan also provide for a combined minimum transfer amount of initial and variation margins of JPY 70 million, whereas the threshold in Article 25 of Delegated Regulation (EU) 2016/2251 is EUR 500 000. Taking into account the marginal difference in the value of those currencies, those amounts should be considered equivalent.
- (12) The margin rules of Japan apply to almost all OTC derivatives contracts as defined in point (7) of Article 2 of Regulation (EU) No 648/2012, with the exception of physically settled FX forwards and FX swaps, for which the margin rules of Japan set no requirements. FX transactions associated with the exchange of principal by means of cross-currency swaps are exempted from initial margin requirements. In addition, the margin rules of Japan do not contain any specific treatment for structured products, including covered bonds and securitisations. Under the terms of Regulation (EU) No 648/2012, only FX swaps and FX forwards are exempted from the initial margins requirements and only derivatives, associated with covered bonds for hedging purposes, are exempted from all margin requirements. This Decision should therefore only apply to OTC derivatives contracts that are subject to margin requirements under Regulation (EU) No 648/2012 and the margin rules of Japan.
- (13) The requirements in the margin rules of Japan for the calculation of initial margin are equivalent to the requirements set out in Regulation (EU) No 648/2012. In a similar manner to the standardised method for the calculation of the initial margin set out in Annex IV to Delegated Regulation (EU) 2016/2251, the margin rules of Japan allow for the use of a standardised model equivalent to the one laid out in the aforementioned annex. Alternatively, internal or third party models may be used to calculate the initial margin where those models contain certain specific parameters, including minimum confidence intervals and margin periods of risk and certain historical data, including stressed periods. Counterparties must notify the JFSA, METI or MAFF, as appropriate, of their intention to use those internal or third party models and must disclose any necessary assumptions, hypotheses and changes thereto.
- (14) The requirements in the margin rules of Japan on eligible collateral and on how that collateral is held and segregated are equivalent to those set out in Delegated Regulation (EU) 2016/2251. The margin rules of Japan also contain an equivalent list of eligible collateral and require FIBOs and RFIs to reasonably diversify the collateral they collect, including by limiting securities with low liquidity in order to avoid concentration of

collateral. The requirements in the margin rules of Japan applicable to the valuation of collateral are comparable to the requirements laid out in Article 19 of Delegated Regulation (EU) 2016/2251.

- (15) With regard to the equivalent level of protection of professional secrecy in Japan, information held by the JFSA is subject to the JFSA Information Security Policy and the employees of the JFSA are subject to the National Public Service Act, which prohibits employees from divulging information which has come to their knowledge in the course of their duties. Therefore, the National Public Service Act and the JFSA Information Security Policy both guarantee professional secrecy, including the protection of business secrets exchanged by competent authorities with third parties, equivalent to those set out in Title VIII of Regulation (EU) No 648/2012. Therefore together, the National Public Service Act and the JFSA Information Security Policy should be considered as providing an equivalent level of protection as regards professional secrecy as that provided in Regulation (EU) No 648/2012.
- (16) Finally, as regards the effective application and enforcement in an equitable and non-distortive manner so as to ensure effective supervision and enforcement in that third country, the JFSA has broad investigative and surveillance powers to assess compliance with margin requirements applicable to OTC derivative contracts not cleared by a CCP. The JFSA can take a wide range of supervisory measures to prevent any breach of the applicable requirements, such as a business improvement order based on Article 51 of FIEA and other supervisory measures based on Article 52 of FIEA. Those measures should therefore be considered as providing for the effective application of the relevant legal, regulatory and enforcement arrangements under the OTC derivatives rules of Japan in an equitable and non-distortive manner to ensure effective supervision and enforcement.
- (17) This Decision is based on the legally binding requirements relating to OTC derivative contracts applicable at the time of adoption of this Decision. The Commission, in cooperation with ESMA, should continue to monitor on a regular basis the evolution of the legal, supervisory and enforcement arrangements for these OTC derivative contracts and their consistent and effective implementation, regarding the timely confirmation, portfolio compression and reconciliation, valuation, dispute resolution and margin requirements applicable to OTC derivative contracts, not cleared by a CCP on the basis of which this Decision has been taken. This should be without prejudice to the possibility of the Commission to undertake a specific review at any time, where relevant developments make it necessary for the Commission to re-assess the declaration of equivalence granted by this Decision. Such re-assessment may lead to the repeal of this Decision, which would make counterparties automatically subject again to all requirements laid down in Regulation (EU) No 648/2012.
- (18) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

#### *Article 1*

For the purposes of Article 13(3) of Regulation (EU) No 648/2012, the legal, supervisory and enforcement arrangements of Japan for valuation and dispute resolution that are applied to transactions regulated as OTC derivatives by the Financial Services Agency of Japan ('JFSA') or OTC Commodity derivatives by the Japanese Ministry of Economy, Trade and Industry ('METI') and the Japanese Ministry of Agriculture, Forestry and Fisheries ('MAFF') and that are not cleared by a CCP shall be considered as equivalent to the corresponding requirements set out in paragraphs 1 and 2 of Article 11 of Regulation (EU) No 648/2012, where at least one of the counterparties to those transactions is established in Japan and registered with the JFSA as a Financial Instrument Business Operator ('FIBO') or a Registered Financial Institution ('RFI').

#### *Article 2*

For the purposes of Article 13(3) of Regulation (EU) No 648/2012, the legal, supervisory and enforcement arrangements of Japan for the exchange of collateral that are applied to transactions regulated as OTC derivatives by the JFSA or OTC Commodity derivatives by METI and MAFF and that are not cleared by a CCP shall be considered as equivalent to the requirements of paragraph 3 of Article 11 of Regulation (EU) No 648/2012, where the following conditions are satisfied:

- (a) at least one of the counterparties to those transactions is established in Japan and registered with the JFSA as a FIBO or a RFI and that counterparty is subject to the margin rules of Japan;



- (b) transactions are marked-to-market and variation margin is exchanged on a daily basis where the counterparties to those transactions, established in Japan, have an average total amount of the notional principal of OTC derivatives for a one-year period from April two years before the year in which calculation is required (or one year if calculated in December) below JPY 300 billion.

*Article 3*

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

Done at Brussels, 25 April 2019.

*For the Commission*

*The President*

Jean-Claude JUNCKER

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**DECISION (EU) 2019/685 OF THE EUROPEAN CENTRAL BANK**  
**of 18 April 2019**  
**on the total amount of annual supervisory fees for 2019 (ECB/2019/10)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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

Having regard to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions <sup>(1)</sup>, and in particular Article 30 thereof,

Having regard to Regulation (EU) No 1163/2014 of the European Central Bank of 22 October 2014 on supervisory fees (ECB/2014/41) <sup>(2)</sup>, and in particular Articles 3(1) and 9(2) thereof,

Whereas:

- (1) The total amount of the annual supervisory fees to be levied under Article 9(2) of Regulation (EU) No 1163/2014 (ECB/2014/41) should cover, but not exceed, the expenditure incurred by the European Central Bank (ECB) in relation to its supervisory tasks in the relevant fee period. This expenditure consists of costs directly related to the ECB's supervisory tasks, such as direct supervision of significant entities, oversight of the supervision of less significant entities and performance of horizontal tasks and specialised services. It also includes costs indirectly related to the ECB's supervisory tasks, such as services provided by the ECB's support business areas, including premises, human resources management, administrative services, budgeting and controlling, accounting, legal, communication and translation services, internal audit, and statistical and information technology services.
- (2) To calculate the annual supervisory fees payable in respect of significant supervised entities and significant supervised groups, and less significant supervised entities and less significant supervised groups, the total costs should be split on the basis of the expenditure allocated to the relevant functions that perform the direct supervision of significant supervised entities and significant supervised groups and the indirect supervision of less significant supervised entities and less significant supervised groups.
- (3) The total amount of the annual supervisory fees for 2019 should be calculated as the sum of: (a) the estimated annual costs of supervisory tasks for 2019, based on the approved ECB budget for 2019, taking into account any developments in the estimated annual costs expected to be incurred by the ECB that were known at the time this Decision was adopted; and (b) the surplus or deficit from 2018.
- (4) The surplus or deficit should be determined by deducting the actual annual costs of the supervisory tasks incurred for 2018, as reflected in the ECB's Annual Accounts for 2018 <sup>(3)</sup>, from the estimated annual costs levied for 2018 set out in the Annex to Decision (EU) 2018/667 of the European Central Bank (ECB/2018/12) <sup>(4)</sup>.
- (5) In accordance with Article 5(3) of Regulation (EU) No 1163/2014 (ECB/2014/41), fee amounts related to previous fee periods that were not collectible, interest payments received in accordance with Article 14 and amounts received or refunded in accordance with Article 7(3) of that Regulation, if any, should also be taken into account in the estimated annual costs of supervisory tasks for 2019,

<sup>(1)</sup> OJ L 287, 29.10.2013, p. 63.

<sup>(2)</sup> OJ L 311, 31.10.2014, p. 23.

<sup>(3)</sup> Published on the ECB's website at [www.ecb.europa.eu](http://www.ecb.europa.eu) in February 2019.

<sup>(4)</sup> Decision (EU) 2018/667 of the European Central Bank of 19 April 2018 on the total amount of annual supervisory fees for 2018 (ECB/2018/12) (OJ L 111, 2.5.2018, p. 3).

HAS ADOPTED THIS DECISION:

*Article 1*

**Definitions**

For the purposes of this Decision, the definitions contained in Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) <sup>(<sup>3</sup>)</sup> and Regulation (EU) No 1163/2014 (ECB/2014/41) shall apply.

*Article 2*

**Total amount of annual supervisory fees for 2019**

1. The total amount of annual supervisory fees for 2019 shall be EUR 576 020 336, calculated as shown in Annex I.
2. Each category of supervised entities and supervised groups shall pay the following total amount of annual supervisory fees:
  - (a) significant supervised entities and significant supervised groups: EUR 524 196 987;
  - (b) less significant supervised entities and less significant supervised groups: EUR 51 823 349.

The split of the total amount of annual supervisory fees for 2019 payable in respect of each category is shown in Annex II.

*Article 3*

**Entry into force**

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

Done at Frankfurt am Main, 18 April 2019.

*The President of the ECB*  
Mario DRAGHI

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<sup>(3)</sup> Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

## ANNEX I

**Calculation of the total amount of annual supervisory fees for 2019**

	(EUR)
<b>Estimated annual costs for 2019</b>	<b>559 007 136</b>
Salaries and benefits	264 525 116
Rent and building maintenance	58 866 157
Other operating expenditure	235 615 863
<b>Surplus/deficit from 2018</b>	<b>15 332 187</b>
<b>Amounts to be taken into account in accordance with Article 5(3) of Regulation (EU) No 1163/2014 (ECB/2014/41)</b>	<b>1 681 013</b>
Fee amounts related to previous fee periods that were not collectible	0
Interest payments received in accordance with Article 14 of the above Regulation	– 9 626
Amounts received or refunded in accordance with Article 7(3) of the above Regulation	1 690 639
<b>TOTAL</b>	<b>576 020 336</b>

## ANNEX II

**Split of the total amount of annual supervisory fees for 2019**

(EUR)

	Significant supervised entities and significant supervised groups	Less significant supervised entities and less significant supervised groups	Total
<b>Estimated annual costs for 2019</b>	<b>508 696 494</b>	<b>50 310 642</b>	<b>559 007 136</b>
<b>Surplus/deficit from 2018</b>	<b>13 952 290</b>	<b>1 379 897</b>	<b>15 332 187</b>
<b>Amounts to be taken into account in accordance with Article 5(3) of Regulation (EU) No 1163/2014 (ECB/2014/41)</b>	<b>1 548 203</b>	<b>132 810</b>	<b>1 681 013</b>
Fee amounts related to previous fee periods that were not collectible	0	0	0
Interest payments received in accordance with Article 14 of the above Regulation	- 7 918	- 1 708	- 9 626
Amounts received or refunded in accordance with Article 7(3) of the above Regulation	1 556 121	134 518	1 690 639
<b>TOTAL</b>	<b>524 196 987</b>	<b>51 823 349</b>	<b>576 020 336</b>





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