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Contents

[1] Text with EEA relevance.

EN

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

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

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Notice concerning the entry into force of the Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part

The Framework Agreement between the European Union and its Member States, of the one part, and Australia, of the other part ([1]), signed in Manila (Philippines) on 7 August 2017, will enter into force on 21 October 2022, the procedure provided for in Article 61(1) of the Agreement having been completed on 21 September 2022.

([1]) OJ L 237, 15.9.2017, p. 7.

DECISIONS

COUNCIL DECISION (EU) 2022/1977

of 17 October 2022

on the position to be taken on behalf of the European Union within the EU-Ukraine Association Committee in Trade configuration established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, as regards the update of Annex XV (Approximation of customs legislation) to that Agreement

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

(1) The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part [1] (the 'Agreement') entered into force on 1 September 2017.

(2) Pursuant to Article 465(2) of the Agreement, the Association Council may delegate to the Association Committee any of its powers, including the power to take binding decisions.

(3) By Decision No 3/2014 of the Association Council [2], the Association Council delegated to the Association Committee in Trade configuration the power to update or amend, among others, Annex XV to the Agreement.

(4) The Association Committee in Trade configuration in its next meeting is to adopt a decision on the update of Annex XV to the Agreement.

(5) Considering that several Union acts listed in Annex XV to the Agreement have been amended or repealed since the conclusion of the negotiations of the Agreement, it is necessary to update that Annex, including by adjusting certain deadlines to take into account the progress already made to date by Ukraine in the process of approximation to the Union *acquis*.

(6) It is appropriate to establish the position to be taken on the Union's behalf in the Association Committee in Trade configuration, as the envisaged decision will be binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the EU-Ukraine Association Committee in Trade configuration established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, at its next meeting, as regards the update of Annex XV (Approximation of customs legislation) to that Agreement, shall be based on the draft Decision of the EU-Ukraine Association Committee in Trade configuration attached to this Decision.

[1] OJ L 161, 29.5.2014, p. 3.

[2] Decision No 3/2014 of the EU-Ukraine Association Council of 15 December 2014 on the delegation of certain powers by the Association Council to the Association Committee in Trade configuration [2015/980] (OJ L 158, 24.6.2015, p. 4).

Article 2

After its adoption, the Decision of the EU-Ukraine Association Committee in Trade configuration referred to in Article 1 shall be published in the *Official Journal of the European Union*.

Article 3

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

Done at Luxembourg, 17 October 2022.

For the Council
The President
J. BORRELL FONTELLES

COMMISSION DECISION (EU) 2022/1978

of 25 July 2022

ON AID SCHEME SA.54817 (2020/C) (ex 2019/N) which Belgium plans to implement to support the production of video games

(notified under document C(2022)5130)

(Only the French and Dutch are authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

1. PROCEDURE

(1) By letter of 1 July 2019, Belgium notified the Commission of the aid scheme for the production of video games. Further information was sent to the Commission by letters dated 3 January 2020 and 2 February 2020.

(2) By letter of 30 April 2020, the Commission informed Belgium that it had decided to initiate the procedure provided for by Article 108(2) of the Treaty on the Functioning of the European Union (referred to below as 'TFEU') in respect of the aid.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ([2]). The Commission called on the interested parties to submit their comments on the aid in question.

(4) In its letter of 29 May 2020, Belgium presented its comments on the decision to open the procedure.

(5) On 16 July 2020, the Commission received a number of observations on the matter from an interested party. It forwarded them to Belgium, which was given an opportunity to respond. The Commission received Belgium's comments by letter of 30 November 2020.

(6) In its letter of 29 May 2020, Belgium informed the Commission that it wished to amend the legislation on which the aid was based, and in that of 30 November 2021, that a draft law containing the relevant amendments had been tabled before the Belgian Chamber of Representatives ([3]).

(7) Belgium provided additional information on 10 June 2021 and 8 December 2021, as well as on 10 February 2022 and 29 March 2022.

([1]) Decision C(2020) 2648 final of 30 April 2020 (OJ C 206, 19.6.2020, p. 11).
([2]) OJ C 206, 19.6.2020, p. 11.
([3]) https://www.lachambre.be/FLWB/PDF/55/1590/55K1590001.pdf

2. DETAILED DESCRIPTION OF THE AID SCHEME

2.1. Title of the scheme, legal basis and duration

(8) This is a tax shelter scheme to encourage the production of video games. It is designed as an extension of the initial tax shelter, the purpose of which was to support audiovisual production, and which was authorised by the Commission in 2003 ([4]). Extensions of this initial scheme were approved in 2004 ([5]), 2007 ([6]), 2009 ([7]), 2013 ([8]), and 2014 ([9]). The tax shelter scheme that was approved in 2014 was extended, unchanged, in 2020 ([10]). The current version of this scheme will remain in place until 31 December 2026.

(9) The legal basis is the Belgian Income Tax Code (*Code des impôts sur les revenus/Wetboek van Inkomstenbelastingen*) ([11]) and the Law of 29 March 2019 extending the tax shelter to the video game industry, published in the Belgian Official Gazette (*Moniteur belge/Belgisch Staatsblad*) of 16 April 2019 ([12]), and the amendment to that law, currently under scrutiny by the Belgian Chamber of Representatives ([13]). It is expected that the amendment will be adopted once the Commission has approved it.

(10) The duration of the aid measure will be extended until 31 December 2027 ([14]).

2.2. Budget

(11) The estimated budget is EUR 36 000 000 (EUR 6 000 000 annually). Its source is the federal budget of the Belgian State.

2.3. Purpose of the aid measure and eligible works

(12) The purpose of this scheme is to support and encourage investment by companies in the production of video games, by granting tax advantages to such companies. Companies subject to corporation tax in Belgium that meet the required criteria can avail themselves of the tax shelter for which this aid scheme provides.

(13) To benefit from tax reductions under the scheme, they must invest in works produced by companies producing video games approved as European video games by the competent services of the community concerned, which means that the games must have been produced mainly with the help of authors and creative workers resident in Belgium or another country belonging to the EEA or supervised and controlled in practice by one or more producers and co-producers established in one or more EEA countries.

([4]) N 410/02 (ex-CP 77/2002), Belgium – State aid to Belgian film and audiovisual production – cinema tax shelter scheme, https://ec.europa.eu/competition/state_aid/cases/137343/137343_455458_39_2.pdf

([5]) N 224/04, Belgium – State aid to Belgian cinematic and audiovisual production – changes in the federal scheme known as the cinema tax shelter, https://ec.europa.eu/competition/state_aid/cases/140619/140619_503601_23_2.pdf

([6]) N 121/2007, Belgium – Tax measures to encourage audiovisual production – tax shelter – extension of aid measure No N 224/2004, https://ec.europa.eu/competition/state_aid/cases/219141/219141_703682_36_2.pdf

([7]) N 516/2009, Belgium – Tax shelter to encourage audiovisual production – extension of aid measure No N 121/2007, https://ec.europa.eu/competition/state_aid/cases/233078/233078_1210789_29_2.pdf

([8]) SA.35643 (2012/N), Belgium – Extension of tax shelter in support of audiovisual productions, https://ec.europa.eu/competition/state_aid/cases/246468/246468_1451339_61_2.pdf, and SA.36655 (2013/N), Belgium – Changes in the tax shelter in support of audiovisual productions, https://ec.europa.eu/competition/state_aid/cases/248603/248603_1525887_174_2.pdf

([9]) SA.38370 (2014/N), Belgium – Changes in the tax shelter in support of audiovisual productions, https://ec.europa.eu/competition/state_aid/cases/253328/253328_1646431_87_2.pdf

([10]) SA.59274 (2020/N), Belgium – Extension of the tax shelter in support of audiovisual productions SA.38370 (2014/N), https://ec.europa.eu/competition/state_aid/cases1/20215/289138_2239389_113_2.pdf

([11]) https://eservices.minfin.fgov.be/myminfin-web/pages/public/fisconet/document/6c0aa338-3dad-4e4b-960f-8e01564d20d0

([12]) http://www.ejustice.just.fgov.be/eli/loi/2019/03/29/2019040875/moniteur

([13]) See footnote No 3.

([14]) In its notification dated 1 July 2019, Belgium proposed that the measure be extended until 31 December 2025. In view of the length of time that has passed since this notification, Belgium decided it wished to extend the duration of the measure until 31 December 2027.

(14) This accreditation of video games depends on cultural tests established by the Flemish Community and the Walloon Region for their own aid schemes and approved by the Commission (in 2018 for the Flemish Community ([15]), extended and amended in 2022 ([16]), and in 2020 for the Walloon Region ([17])). The test criteria are that the game must have cultural and artistic qualities, that the production activities and the parties concerned must have links with Flanders or the Walloon region, and that the game concerned must be innovative and creative. To ensure this, Belgium has committed itself to ensuring that the Belgian federal State will conclude a cooperation agreement with the Flemish Community, the French–speaking Community and the German–speaking Community on the respective competences of these communities and of the federal State in relation to the tax shelter scheme. Belgium notes that, for the duration of the tax shelter scheme, approval by the communities of video games in this context will be subject to the same criteria as those applied by the Flemish Community and the Walloon Region to their own aid schemes for video games.

2.4. **Form of aid, organisation of the system, aid intensity and cumulation**

(15) Under the current tax shelter system, a company ('the investor') can make a financial contribution, based on a framework contract, to the producer of a particular audiovisual work. The investor receives compensation for this investment in the form of a 'tax shelter certificate' enabling the investor to benefit from tax relief through a reduction in its taxable profits. The principle underpinning the taxation of company profits is that companies are liable for tax on their overall profits (Article 185 of the Belgian Income Tax Code). The tax base is ascertained by deducting deductible expenses from profits (Article 6 of the Income Tax Code). As a rule, companies can deduct the professional expenses they have incurred during the taxable period (Article 49 of the Income Tax Code). As regards the value of investments, an amount may be deducted that depends on the value of the contribution (Article 61, second paragraph of the Income Tax Code). Under the tax shelter scheme, the company liable for tax can immediately deduct 421 % of the amounts invested, a sum exceeding its financial contribution. Depending on the nature of the notified project, this also applies to contributions to the production of a video game.

(16) Under the scheme notified by Belgium, the tax value of the tax shelter certificate was set at 70 % of the production and operating costs incurred within the EEA or, if the production and operating costs incurred in Belgium account for less than 63 % of the total budget, of the production and operating costs incurred in Belgium. The amount of aid for possible investment in a production is set at 48 % of the tax value of the tax shelter certificate. This means that in a maximalist scenario in which at least 63 % of the total budget is spent in Belgium, aid intensity could reach 48 % of 70 %, amounting to 33,6 % of the budget for the production, but it would be lower in cases where production expenditure incurred in Belgium was lower than 63 % of the overall budget. If such aid were provided in addition to other forms of production aid, aid intensity would be limited to 50 %.

(17) Accordingly, in the initial version of the scheme the tax value of the tax shelter certificate was established on the basis of territorial spending. The amount of investment (and therefore the amount of aid) depends on the percentage of territorial spending, which means that it varies according to the planned amount of expenditure in Belgium.

2.5. **Accreditation of beneficiaries**

(18) Under the tax shelter scheme, production companies benefiting from the scheme must be accredited in order to be able to take part. The point of this, according to Belgium, is that accreditation can be withdrawn from any companies or individuals that fail to abide by the law ([18]).

([15]) SA.49947, Belgium – Aid for videogames (VAF Gamefonds), https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49947

([16]) SA.101526, Belgium – VAF Gamefonds, recital (23), https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_101526

([17]) SA.55046, Belgium – Soutien aux jeux vidéo culturels, artistiques et éducatifs (Wallimage), recital (14) https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_55046; the Walloon Region includes the German–speaking region.

([18]) Article 194 ter(1)(2) of the Income Tax Code states that the conditions for accreditation are laid down by royal decree.

(19) Belgium has explained that accreditation will be granted swiftly following an application by the production companies concerned. Such an application comprises simply: information identifying the company concerned, a document showing that the applicant is not in arrears with payments to the National Social Security Office, and an undertaking to abide by the law on the tax shelter scheme. Specifically, this means that the production company undertakes to make its offer of a tax shelter certificate in accordance with the provisions of the Law of 11 July 2018 on public offers of investment vehicles and the admission of investment vehicles to negotiation on regulated markets ([19]) and those of Regulation 2017/1129 of the European Parliament and of the Council ([20]).

(20) Belgium has explained that the accreditation process will not introduce any conditions relating to the establishment in Belgium of the companies concerned at the time of their application for accreditation.

2.6. **Rationale for the aid**

(21) Belgium explained in its notification that the video game sector in Belgium accounted for EUR 100 000 000 in 2018, or 0,08 % of the world market (about EUR 124 000 000 000 in 2018).

(22) Belgium has since updated these figures. In 2020 the video game sector generated USD 159 800 000 000 in revenue worldwide ([21]). The EUR 82 000 000 which Belgium reported as the total revenue of the Belgian market for that year accounted for a mere 0,05 % of worldwide revenue. The market on the European continent accounts for 19 % of the world market, corresponding to USD 29 600 000 000, or over EUR 27 600 000 000. This means that in 2020 the Belgian video games market accounted for 0,3 % of the relevant market on the European continent. According to the 2019 data, the Belgian sector employed 1 000 people, out of a total of 87 628 across Europe. There were 63 video game development studios in Belgium, out of a total of 4 913 across Europe ([22]). These figures thus show that the Belgian video game sector occupies a modest place on the overall European market. In Belgium, many of the companies active in the video game sector are small companies. Many of them are relatively new, meaning that they have been in existence for less than six years. Given the size of companies in this sector and the short time for which they have existed, they face difficulties in developing. This is holding back the production of a larger number of cultural video games, entailing greater diversity.

(23) Belgium wishes to make the following observations: despite the growth this sector has experienced, the industry lacks the financial impetus required to achieve a market breakthrough. Developing a game to be played on a computer, console, tablet or smartphone is akin to making a film in that it takes several months or even years. The process requires highly skilled workers. As in the film industry, no marketable result is available until the end of the process. Given these features, the video game sector is relatively risky. Moreover, just as in the film industry, it is impossible to be sure that a particular game will prove attractive to enough people to bring a return on investment. In addition, projects involving video games with a significant educational, cultural and artistic component are considered to be more risky. This is because they involve the same production costs as video games enjoying worldwide popularity, but have access to a more limited market.

(24) Financial limitations impede the launching of major projects with significant creative potential but which require a correspondingly higher budget. Production of video games therefore focuses on games that can be played on personal computers and games that can be produced on a lower budget. Financing difficulties stand in the way of preserving and developing cultural know-how at local level. The fact is that it is in producers' interests to work as subcontractors for foreign companies, rather than developing their own video games.

(25) As a result, Belgian video game companies often have serious difficulties in obtaining financing for new projects. They also face a great deal of international competition.

([19]) http://www.ejustice.just.fgov.be/mopdf/2018/07/20_2.pdf#Page18, p. 58312.

([20]) Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

([21]) Newzoo – Global Games Market Report 2020, downloadable from newzoo.com.

([22]) 2019 report, by the European Game Developers Federation in cooperation with the Interactive Software Federation of Europe. Data collected on a majority of European Union countries and a number of non-Member States. https://www.egdf.eu/wp-content/uploads/2021/08/EGDF_report2021.pdf

(26) The tax shelter will help to increase the number of private investments in the video game production sector, in the same way as the tax shelter for film and audiovisual production.

2.7. **Description of the grounds for initiating the procedure**

(27) The scheme, as initially notified to the Commission, raised doubts as to its general legality. The tax value of the tax shelter certificate is established on the basis of territorial spending. There could have been a conflict between these territoriality conditions and the principles of general legality, specifically the principles of the TFEU guaranteeing free movement of goods and freedom to provide services (Articles 34 and 56 of the TFEU).

(28) The Commission expressed its doubts as to whether it was legal and compatible with the internal market for aid to video games to define the amount of investment and thereby the amount of aid as a percentage of territorial spending in Belgium, and whether it was necessary or proportionate to have territorial conditions linked to such aid.

3. **COMMENTS BY INTERESTED PARTIES**

(29) In a letter dated 16 July 2020, the organisation of Flemish independent film and television producers (Vlaamse Onafhankelijke Film & Televisie Producenten, referred to in what follows as VOFTP), made a number of comments on the notified aid scheme. VOFTP believes that it is affected by this scheme, fearing that extending the tax shelter system to video games will reduce the flow of investment to its members' audiovisual productions. According to VOFTP, the extension of the initial tax shelter does not meet the conditions for compatibility with the internal market and should not, therefore, be approved by the Commission.

(30) In its submission, VOFTP underlines the importance of a thorough examination to ascertain whether the video games to receive aid under this scheme genuinely have a link with Belgium and contribute to the objective of promoting culture within the meaning of Article 107(3)(d) of the TFEU, and cultural diversity. VOFTP fears that the scheme contains no guarantee that aid will be granted only for video games with a cultural objective.

(31) According to VOFTP, the criteria applied under the aid scheme for video games to assess the cultural aspect of such games should guarantee that any game benefiting from aid is of cultural value. Such criteria should be defined by the community or region responsible, which have their own aid schemes for the video game sector. In each case, an organisation specific to respectively the Flemish Community (the Flemish Audiovisual Fund) or the Walloon Region defines the criteria for assessing the cultural aspect of a video game. VOFTP doubts whether the application of these criteria is guaranteed. A cooperation agreement between the Belgian state and the respective communities is needed, but no such agreement exists.

4. **COMMENTS BY BELGIUM**

(32) In its letter of 29 May 2020, Belgium noted that the decision to initiate the procedure confirmed that the conditions for the aid concerned to be classed as aid to promote culture and thus compatible with the internal market, pursuant to Article 107(3)(d) of the TFEU, are met.

(33) As regards the conditions of territorial spending and the general legality of such expenditure (including its necessity and proportionality) and, specifically, the principles of the TFEU guaranteeing the free movement of goods and freedom to provide services (Articles 34 and 56 of the TFEU), Belgium has started to examine the possibility of extending eligible spending to the whole territory of the EEA. On 16 July 2021, the Finance and Budget Committee of the Belgian Chamber of Representatives proposed that the applicable legislation be amended to replace the phrase 'expenditure on production and operating costs in Belgium' by 'expenditure on production and operating costs in the European Economic Area'. In the draft amendment, the value for tax purposes of the tax shelter certificate is set at 70 % of expenditure on production and operating costs incurred within the EEA or, if expenditure on production and operating costs that constitutes professional income subject to taxation within the EEA accounts for less than 63 % of the total budget, of expenditure on production and operating costs that constitutes professional income subject to taxation within the EEA. The Chamber of Representatives is ready to adopt the amendment as soon as the Commission takes an affirmative decision.

(34) As regards the VOFTP's comments on the cultural nature of video games that are potentially eligible for aid and the application of the respective communities' cultural tests to the video games covered by the tax shelter, Belgium has stated that the cooperation agreement between the federal State and the communities on the existing tax shelter for audiovisual productions should be adapted to include the application of the communities' or regions' cultural tests to video games. This will take place before the notified scheme is implemented, as soon as the Chamber of Representatives adopts the legislative amendment proposed, and as soon as the Commission adopts the decision on the tax shelter for the production of video games. Belgium confirms that this cooperation agreement will not alter the content of these tests.

5. **ASSESSMENT OF THE SCHEME**

5.1. **Existence of State aid**

(35) Article 107(1) of the TFEU provides: 'Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.

5.1.1. *State resources and imputability*

(36) Investors can deduct from their taxable profits funds used in the context of the scheme under examination. This deduction, provided for by the law, reduces the amount of tax collected by the State. The law also states that these funds are to be allocated to companies approved by the State for this operation and that they must contribute to specific productions that have been explicitly accredited as European video games by the competent services of the community concerned. Consequently, the investments in question make use of State resources and are imputable to the State.

5.1.2. *Advantage*

(37) The purpose of the scheme is to reduce the production costs borne by producers of video games. Such expenditure is part of the costs habitually borne by all producers of video games. In other words, it is a cost that is usually assigned to the beneficiary's budget.

(38) The aid provided to the producer comes from the investor's contribution, which itself results from the tax-deductibility of this operation. The Commission thus notes that the advantage resulting from tax-deductibility is in fact transferred to the producer via the framework contract.

(39) Consequently, the scheme confers an advantage on the producer to which that producer would not have access under normal market conditions. The measure therefore constitutes an advantage favouring producers of video games.

5.1.3. *Selectivity*

(40) The scheme is selective because only beneficiaries whose projects have passed the selection test can receive aid. Moreover, the aid scheme covers only the video game sector. In addition, the tax deduction of 421 % of the value of the investment means that the investments concerned (and therefore the beneficiaries) are treated more favourably than other investments with respect to the objective of the tax system, as other investments cannot be deducted at a rate exceeding their nominal value. This is the case even though their situation, both *de jure* and *de facto*, is comparable with respect to the objective of the tax system, which is to tax companies' revenue after the deduction of investments. This treatment cannot be justified by the nature and the logic of the system. Under the corporate tax system, a standard deduction cannot exceed the nominal value of an investment.

5.1.4. *Distortion of competition and effect on trade between Member States*

(41) Since video games are part of international trade and this market is open to competition, the financial advantage granted to beneficiaries may affect competition and trade between Member States.

5.2. **Lawfulness of the aid**

(42) In notifying the scheme before it took effect, Belgium complied with its obligations under Article 108(3) of the TFEU.

5.3. **Legal basis for the assessment**

(43) The extent to which the scheme is compatible with the internal market will be analysed on the basis of Article 107(3)(d) of the TFEU, in view of the objective of promoting culture through support for cultural projects.

(44) To be more precise, the scheme's compatibility with the internal market will be analysed in the light of point 24 of the Commission Communication on State aid for films and other audiovisual works ([23]) (referred to below as the 'Cinema Communication'). Point 24, which deals specifically with State aid for the production of video games, states that where an aid scheme targeting games with a cultural and educational purpose can be shown to be necessary, the Commission will apply, *mutatis mutandis*, the aid intensity criteria defined for films in the Cinema Communication.

5.4. **Compatibility of the aid with the internal market**

(45) In its decision to open the procedure, the Commission noted that the scheme appears to meet most of the criteria for classification as aid to promote culture and hence as aid compatible with the internal market, pursuant to Article 107(3)(d) of the TFEU.

5.4.1. *General legality*

(46) To be compatible, aid schemes must first meet the criterion of 'general legality'. The concept of 'general legality' rests on the assumption that the eligibility conditions and the criteria for granting aid do not contain any clause indissolubly bound up with the granting of aid that contradicts the specific provisions of the TFEU in fields other than State aid ([24]).

(47) The scheme does not impose any conditions relating to Belgian nationality or any requirement for the company receiving aid to be based mainly in Belgian territory. Beneficiaries can be based in another European Union country or in the European Economic Area.

(48) The accreditation procedure for production companies and intermediaries has no bearing on the general legality of the scheme. Under the existing tax shelter scheme, production companies benefiting from the scheme must have an established agency in Belgium at the time the aid is disbursed. The accreditation process does not include any conditions regarding the establishment or residence in Belgium of the companies concerned at the time when they apply for accreditation.

(49) As regards aid intensity, Belgium has introduced an amendment, by means of a draft law, to the restrictive territorial provisions of the aid scheme initially notified. Under this draft law, the amount of aid is established according to the amount of expenditure on production and operating costs incurred in the European Economic Area. Consequently, the scheme is no longer liable to constitute an obstacle to the freedom of movement of goods or the freedom to provide services within the internal market (Articles 34 and 56 of the TFEU).

5.4.2. *Promotion of culture, pursuant to Article 107(3)(d) of the TFEU*

(50) Under Article 107(3)(d) of the TFEU, aid to promote culture and heritage conservation may be deemed compatible with the internal market if such aid does not affect trading and competition conditions in the EU to an extent that is contrary to the common interest.

([23]) OJ C 332, 15.11.2013, p. 1.

([24]) Judgment of the Court of Justice of 15 June 1993, Matra, C-225/91, ECLI:EU:C:1993:239, paragraph 41.

(51) The Commission has not drawn up any guidelines on how to apply this provision to aid for video games. Point 24 of the Cinema Communication confirms that aid intended to support video games is analysed on a case-by-case basis.

(52) The assessment of aid for video games under Article 107(3)(d) of the TFEU follows Commission practice, which started with the decision on French tax credit in support of video games, in which the Commission recognised that certain video games can be classed as cultural products ([25]).

(53) The Flemish Community and the Walloon Region have developed – for their own video game aid schemes – a number of cultural criteria for games eligible for aid, which are also applicable to the tax shelter scheme ([26]). They have established a scale for the selection of projects in order to ensure that the games which receive support genuinely meet the conditions for recognition as a cultural work. The Commission has analysed these criteria ([27]) and approved these schemes.

(54) Contrary to the claim made by the interested party VOFPT, Belgium has committed itself to establishing a cooperation agreement between the federal State and the communities before implementing the tax shelter scheme for video games (see recitals (14) and (34)). This kind of cooperation is already in place for support for audiovisual works.

(55) In conclusion, the scheme supports cultural projects and meets the objective of promoting culture, pursuant to Article 107(3)(d) of the TFEU.

5.4.3. *Appropriateness of the aid measure*

(56) The purpose of the scheme is to support cultural projects that face difficulties in obtaining funding on the market, given the nature of the project (cultural works) and the risks involved (while there will definitely be production costs, there is no guarantee of an audience). So the scheme helps to finance part of the production costs of video games selected for their contribution to promoting culture. The support mechanism is based on the principle of support for the production of games by private investors. Belgium has explained that a system of direct support would entail higher administrative and financial costs than the tax shelter measure. Moreover, the payment of a direct grant would come earlier in the process than any tax exemptions (both provisional and final). In addition, since responsibility for cultural matters is devolved to Belgium's communities, audiovisual policy at Belgian federal

([25]) The Commission recognised the need for support for video games in the following decisions:
C47/2006 (ex N 648/2005), France – Tax credit for the production of video games, https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_20324;
SA 33943 (2011/N), France – Extension of aid scheme C 47/2006 – Tax credit for the production of video games, https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_33943;
SA.36139 (2013/C), United Kingdom – Video games tax relief, https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_36139;
SA.39299 (2014/N), France – Tax credit for the production of video games – amendments, https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_39299;
SA.47892 (2017/N), France – Tax credit for the production of video games – amendments and extension, https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_47892;
SA.45735 (2017/N), Denmark – Scheme for the development, production and promotion of cultural and educational digital games, https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_45735;
SA.46572 (2017/N), Germany – Bavarian games support measure, https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46572;
SA.49947 (2017/N), Belgium – Aid for video games (VAF Gamefonds), https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49947;
SA.50512 (2018/N), France – Video games aid fund – writing, creation of intellectual property and collective operations, https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_50512;
SA.51820 (2018/N), Germany – North Rhine Westphalian games support measure, https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_51820;
SA.101526, Belgium – VAF Gamefonds, https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_101526.

([26]) SA.55046, Belgium – Soutien aux jeux vidéo culturels, artistiques et éducatifs (Wallimage);
SA.101526, Belgium – VAF Gamefonds.

([27]) Recitals (52) to (54) of the decision concerning the Wallimage fund and (38) and (39) of the decision concerning the VAF Gamefonds.

level is limited to establishing the tax shelter system as part of Belgium's socioeconomic policy. By involving private investors, Belgium wishes to encourage mutual contacts and access for the cultural sector to the various potential sources of funding.

(57) The scheme is thus an appropriate means to achieve the intended objective.

5.4.4. *Whether the aid is necessary*

(58) Video games benefiting from aid are cultural works that promote local and European culture. Their international marketing potential provides leverage for the promotion of culture on a large scale.

(59) However, projects involving video games face difficulties in obtaining funding under market conditions (see recitals (22) to (24) above). The financial risks inherent in projects involving video games, which necessarily incur production costs, while any earnings remain uncertain, constitute barriers to private investment. This means that public intervention is required to bring a larger and more diverse share of projects to fruition.

5.4.5. *Proportionality of the aid*

(60) Point 24 of the Cinema Communication states that, provided that an aid scheme for games with a cultural and educational purpose can be shown to be necessary, the Commission will apply, by analogy, the same aid intensity criteria as those established for aid schemes in favour of audiovisual works.

(61) The scheme supports the creation of video games in limited proportions. The maximum aid intensity is 33,6 %, and, where there is more than one source of aid, it is limited to 50 % of the production costs of a video game, in line with the 50 % threshold established by the Cinema Communication. The purpose of the maximum intensity rates is to preserve private initiative by obliging aid beneficiaries to obtain funds from other sources, in addition to the State.

(62) In conclusion, the scheme is proportional to the objective pursued.

5.4.6. *Limited distortion of competition and effects on trade*

(63) Worldwide, the video game sector generated revenue amounting to USD 159 800 000 000 in 2020. The market on the European continent accounts for 19 % of this market, corresponding to USD 29 600 000 000 (over EUR 27 600 000 000). In 2020, revenue on the Belgian video game market came to EUR 82 000 000, which corresponds to 0,3 % of the overall European market and 0,05 % of the world market ([28]).

(64) In the light of the above, it is clear, firstly, that the budget for the scheme to support the Belgian video game sector is relatively limited (see recital (11)) by comparison with the sector's overall turnover in Belgium. Secondly, any distortion caused by this aid can be considered minor, as Belgian video games have a limited share of both the European and the world market.

(65) The Commission concludes that this aid will not unduly increase the market power of the beneficiary companies, while it will expand the range of games with cultural qualities on the market. The overall assessment of this aid in relation to the internal market is positive, as any distortions of competition and impact on trade that may result will be limited.

([28]) Recital (22).

6. **CONCLUSION**

(66) The Commission therefore concludes that this aid will not unduly increase the market power of the beneficiary companies, while it will, conversely, improve the variety of the range of games with cultural qualities on the market. It should thus be concluded that any distortions of competition and effects on trade resulting from the scheme are limited, and that the overall assessment of aid designed to promote culture is positive. The tax shelter for the creation of video games is compatible with the internal market on the basis of Article 107(3)(d) of the TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Belgium plans to implement in favour of the production of video games by applying a tax shelter scheme for the production of video games is compatible with the internal market, pursuant to Article 107(3)(d) of the Treaty on the Functioning of the European Union.

Implementation of the aid is accordingly authorised.

Article 2

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 25 July 2022.

For the Commission
Margrethe VESTAGER
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2022/1979

of 31 August 2022

on establishing the form and databases for communicating the information referred to in Articles 18(1) and 21(3) of Directive 2012/18/EU of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances and repealing Commission Implementing Decision 2014/895/EU

(notified under document C(2022) 6124)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC ([1]), and in particular Article 21(5) thereof,

Whereas:

(1) In accordance with Article 18(1) of Directive 2012/18/EU, Member States are to inform the Commission of the major accidents which have occurred within their territory and which fulfil the criteria of Annex VI to this Directive, using the specific form set out in the Annex to Commission Decision 2009/10/EC ([2]).

(2) In accordance with Article 21(3) of Directive 2012/18/EU, Member States are also to supply the Commission with certain information regarding establishments covered by that Directive, using the specific form set out in the Annex to Commission Implementing Decision 2014/895/EU ([3]).

(3) To report the information referred to in Articles 18(1) and 21(3) of Directive 2012/18/EU, Member States are to use the databases referred to respectively in Article 21(3) and (4) of that Directive that are to be set up and kept up to date by the Commission.

(4) According to Article 2 of Regulation (EC) No 401/2009 of the European Parliament and of the Council ([4]), the European Environment Agency (EEA) is, in the context of the European Environment Information and Observation Network (Eionet), to collect, process and analyse the data, in particular on the quality of and pressures on the environment, as well as on the chemicals that are hazardous for the environment. In order to increase the synergies with the existing databases developed by the EEA, consolidate information on the environmental impacts stemming from these plants, enhance the quality of the information made available to the public and policy makers and facilitate the identification of potential risks (e.g. domino effects), it is appropriate that the EEA sets up and keeps up to date, on behalf of the Commission, the databases referred to in Article 21(3) and (4) of Directive 2012/18/EU. Member States should use these databases when reporting the information referred to in Articles 18(1) and 21(3) of Directive 2012/18/EU.

([1]) OJ L 197, 24.7.2012, p. 1.

([2]) Commission Decision 2009/10/EC of 2 December 2008 establishing a major accident report form pursuant to Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances (OJ L 6, 10.1.2009, p. 64).

([3]) Commission Implementing Decision 2014/895/EU of 10 December 2014 establishing the format for communicating the information referred to in Article 21(3) of Directive 2012/18/EU of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances (OJ L 355, 12.12.2014, p. 51).

([4]) Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network (OJ L 126, 21.5.2009, p. 13).

(5) The report forms and databases used pursuant to Directive 2012/18/EU should allow for the communication and availability of streamlined information which is submitted by Member States, in order to maximise the accuracy, usefulness and comparability of the information provided and minimise the administrative burden for Member States, whilst also respecting the requirements set out in Directive 2007/2/EC of the European Parliament and the Council ([5]).

(6) In order to maximise the synergies of the information provided by Members States with the reporting set out for similar industrial plants, the report forms and databases should be similar to, and compatible with those used for reporting under Directive 2010/75/EU of the European Parliament and of the Council ([6]) and under Regulation (EC) No 166/2006 of the European Parliament and of the Council ([7]), whose format, frequency and content is respectively established by Commission Implementing Decision (EU) 2018/1135 ([8]) and by Commission Implementing Decision (EU) 2019/1741 ([9]).

(7) To achieve these objectives, it is appropriate that the report form that Member States are to use when providing the information on establishments referred to in Article 21(3) of Directive 2012/18/EU, as set out in Implementing Decision 2014/895/EU, is updated. Thus, Implementing Decision 2014/895/EU should be repealed accordingly.

(8) The development by the EEA of the two databases referred to respectively in Article 21(3) and (4) of Directive 2012/18/EU should be completed by 31 December 2025. That is why the reporting of the information referred to in Articles 18(1) and 21(3) of that Directive should only start after that date.

(9) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 27 of Directive 2012/18/EU,

HAS ADOPTED THIS DECISION:

Article 1

1. The European Environment Agency shall, on behalf of the Commission, set up and keep up to date the electronic databases referred to in Article 21(3) and (4) of Directive 2012/18/EU.

2. For the purpose of the reporting in accordance with Articles 18(1) and 21(3) of Directive 2012/18/EU, Member States shall use the electronic databases referred to in paragraph 1 of this Article.

3. Member States shall use the report form laid down in the Annex to this Decision when providing the information on establishments referred to in Article 21(3) of Directive 2012/18/EU.

4. Member States shall ensure that the information supplied to the Commission in accordance with paragraph 3 of this Article is updated regularly.

([5]) Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).

([6]) Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

([7]) Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (OJ L 33, 4.2.2006, p. 1).

([8]) Commission Implementing Decision (EU) 2018/1135 of 10 August 2018 establishing the type, format and frequency of information to be made available by the Member States for the purposes of reporting on the implementation of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (OJ L 205, 14.8.2018, p. 40).

([9]) Commission Implementing Decision (EU) 2019/1741 of 23 September 2019 establishing the format and frequency of data to be made available by the Member States for the purposes of reporting under Regulation (EC) No 166/2006 of the European Parliament and of the Council concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (OJ L 267, 21.10.2019, p. 3).

Article 2

Implementing Decision 2014/895/EU is repealed with effect from 31 December 2025.

References to the repealed Decision shall be construed as references to this Decision.

Article 3

Article 1(1) shall apply from 1 January 2023.

Article 1(2) to (4) shall apply from 1 January 2026.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 31 August 2022.

For the Commission
Virginijus SINKEVIČIUS
Member of the Commission

ANNEX

Establishing the report form of data to be made available by Member States for the purposes of reporting under Article 21(3) of Directive 2012/18/EU

Note:

— All fields with an asterisk are mandatory.

— Fields not marked with an asterisk have a multiplicity of 0-1 under INSPIRE, and are therefore not a mandatory field.

— Confidential information shall be marked as such with an indication, for each type of data, of the grounds for refusal in accordance with Article 4 of Directive 2003/4/EC of the European Parliament and of the Council ([1]).

1.	Contextual information	
Type		Format
1.1	Country identifier*	Identification of the country where the reported establishment is located.
1.2	Reporting year*	Calendar year to which the reporting refers.
2	Information on the competent authority for the establishment	
Type		Format
2.1	Competent authority name*	
2.2	Competent authority address*	Postal address as defined by building number, street, city/town, postal code, country.
2.3	Competent authority email*	
2.4	Competent authority phone number*	
2.5	Comments	Comments the user may want to add regarding the reporting competent authority.
3	Information where the Seveso establishment is part of, or coincides with, a 'Production site' ([2]).	
Type		Format
3.1	InspireId*	Unique identifier of the 'production site' that meets the requirements of Directive 2007/2/EC.
3.2	ThematicId	Thematic object identifier of the 'production site'.
3.3	Geometry*	Latitude and longitude (coordinates for the approximate centre of the production site) expressed with reference to the ETRS89 (2D)-EPSG:4258 coordinate reference system to a precision of 5 decimal places.

([1]) Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26).

([2]) 'Production Site' as defined in Regulation (EU) No 1253/2013, point 8.2.4 of Annex IV: 'all land at a distinct geographic location where the production facility was, is, or is intended to be located. This includes all infrastructure, equipment and materials' and covered by Regulation (EC) No 166/2006 or Directive 2012/18/EU.

3.4	Name of production site*	Official denomination, proper name or conventional name of the production site.
4	Information on the Seveso establishment	
Type		Format
4.1	InspireId*	Unique identifier of the establishment ([3]) that meets the requirements of Directive 2007/2/EC.
4.2	ThematicId	Thematic object identifier of the production facility.
4.3	Seveso establishment tier*	Indication whether it is a lower tier or upper tier establishment according to Annex I to Directive 2012/18/EU.
4.4	Status*	Operational status of the establishment (functional, disused, decommissioned).
4.5	Name of the establishment*	Official denomination, proper name or conventional name of the establishment.
4.6	Name of the parent company	A parent company is a company that owns or controls the company operating the establishment (for example by holding more than 50 % of the company's share capital or a majority of voting rights of the shareholders or associates) – see Directive 2013/34/EU of the European Parliament and of the Council ([4]).
4.7	Establishment address*	Postal address of the establishment as defined by building number, street, city/town, postal code, country.
4.8	Geometry*	Latitude and longitude (coordinates for the approximate centre of the establishment) expressed with reference to the ETRS89 (2D)-EPSG:4258 coordinate reference system to a precision of 5 decimal places.
4.9	Industry type* using the Eurostat NACE classification. (Where an establishment relates to more than one NACE code, a distinction shall be made between primary activity and secondary activities)	NACE code: NACE is the European industry standard related to a statistical classification of economic activities, consisting of a 6-digit code. The user is expected to relate the Seveso establishment to this classification scheme, referring to the first 4 digits, in addition or as an alternative to the SPIRS codes.
4.10	Industry type using SPIRS code. An optional secondary industry category can also be selected that further defines the nature of the hazard. (Where an establishment relates to more than one SPIRS code, a distinction shall be made between primary activity and secondary activities)	The user may want to report SPIRS Code. Industry type to be indicated in accordance with the SPIRS Codes: (1) Agriculture (2) Leisure and sport activities (e.g. ice rink) (3) Mining activities (tailings & physicochemical processes) (4) Processing of metals

([3]) For the purpose of the reporting in this Decision, 'establishment' is equivalent to 'production facility' as defined in Regulation (EU) No 1089/2010, point 8.2.1 of Annex IV.

([4]) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

		(5) Processing of ferrous metals (foundries, smelting, etc.) (6) Processing of non-ferrous metals (foundries, smelting, etc.) (7) Processing of metals using electrolytic or chemical processes (8) Petrochemical/Oil Refineries (9) Power generation, supply and distribution (10) Fuel storage (including heating, retail sale, etc.) (11) Production, destruction and storage of explosives (12) Production and storage of fireworks (13) LPG production, bottling and bulk distribution (14) LPG storage (15) LNG storage and distribution (16) Wholesale and retail storage and distribution (excluding LPG) (17) Production and storage of pesticides, biocides, fungicides (18) Production and storage of fertilisers (19) Production of pharmaceuticals (20) Waste storage, treatment and disposal (21) Water and sewage (collection, supply, treatment) (22) Chemical installations (23) Production of basic organic chemicals (24) Plastic and rubber manufacture (25) Production and manufacturing of pulp and paper (26) Wood treatment and furniture (27) Textiles manufacturing and treatment (28) Manufacture of food products and beverages (29) General engineering, manufacturing and assembly (30) Shipbuilding, shipbreaking, ship repair (31) Building & works of engineering construction (32) Ceramics (bricks, pottery, glass, cement, etc.) (33) Manufacture of glass (34) Manufacture of cement, lime and plaster (35) Electronics & electrical engineering (36) Handling and transportation centres (ports, airports, lorry parks, marshalling yards, etc.) (37) Medical, research, education (including hospitals, universities, etc.) (38) General chemicals manufacture (not otherwise specified in the list) (39) Other activity (not otherwise specified in the list).

		Secondary activities; (40) Production, storage and handling of Biogas (41) Production, storage and handling of technical gas (the most common could be listed, such as Oxygen, Chlorine, Ammonia, Phosgene, Acetylene, etc.) (42) Production, storage and handling of Hydrogen (43) Production, storage, handling of Sodium (44) Production, storage, handling of Lithium (45) Production, storage and handling of Potassium
4.11	Link to the website with information to the population*	Website address where can be found the information provided for by Art. 14 (Information to the public) of Directive 2012/18/EU.
4.12	Link to the generic website	
4.13	Date of last inspection ([5])	
4.14	Link to the last inspection conclusions	
4.15	Comments	
5.	Establishment substances	
Type		Format
5.1	Substance(s)	The common name or the generic name or the hazard classification.
5.2	CAS Number	A CAS Registry Number is a unique numeric identifier, is designated to only one substance, has no chemical significance and is a link to a wealth of information about a specific chemical substance. It can contain up to 10 digits, divided by hyphens into three parts. (http://www.cas.org/content/chemical-substances)
5.3	Quantity(ies)	Amount of each hazardous substance in tonnes triggering the Seveso status.
5.4	Physical properties	Storage conditions under which the substance is maintained, such as state (solid, liquid, gas), granularity (powder, pellets, etc.), pressure, temperature, etc.
5.5	Substances comments	

([5]) As defined in Article 3, point (19), of Directive 2012/18/EU.

COMMISSION IMPLEMENTING DECISION (EU) 2022/1980

of 19 October 2022

amending Implementing Decision (EU) 2021/626 establishing the InvestEU Portal and setting out its technical specifications

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2021/523 of the European Parliament and of the Council establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 ([1]), and in particular Article 26 thereof,

Whereas:

(1) Commission Implementing Decision (EU) 2021/626 ([2]) establishing the InvestEU Portal should be amended in order to enable projects from the European Free Trade Association (EFTA) States to be published on the InvestEU Portal.

(2) Implementing Decision (EU) 2021/626 should also be amended in order to clarify the maturity of projects that are eligible to be published on the InvestEU Portal,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Implementing Decision (EU) 2021/626 is amended as follows:

(1) point (e) is replaced by the following:

'(e) the project shall be situated in the Union, in an European Free Trade Association (EFTA) State or in an overseas country or territory linked to a Member State as set out in Annex II to the Treaty. In the case of a cross-border project, the principal part of the implementation of project shall take place in the Union, in the EFTA States or in an overseas country or territory linked to a Member State as set out in Annex II to the Treaty;';

(2) point (g) is replaced by the following:

'(g) the project implementation already commenced or is expected to commence within three years from the date of submission to the InvestEU Portal;'.

Article 2

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

Done at Brussels, 19 October 2022.

For the Commission
The President
Ursula VON DER LEYEN

([1]) OJ L 107, 26.3.2021, p. 30.
([2]) Commission Implementing Decision (EU) 2021/626 of 14 April 2021 establishing the InvestEU Portal and setting out its technical specifications (OJ L 131, 16.4.2021, p. 183).

DECISION (EU) 2022/1981 OF THE EUROPEAN CENTRAL BANK

of 10 October 2022

on the use of services of the European System of Central Banks by competent authorities *(ECB/2022/33)*

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 127(6) and Article 132 thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 34 thereof,

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 ([1]), and in particular Article 6(1) in conjunction with Article 6(7) thereof,

Whereas:

(1) Services of the European System of Central Banks (ESCB) are provided to central banks within the ESCB to indirectly support the performance of their tasks. The ESCB services are developed, run and maintained by one or more central banks (hereinafter the 'providing central banks') and steered by an ESCB Committee. The ESCB services are financed by participating central banks (hereinafter the 'participating central banks'), whose respective contributions are defined in financial envelopes approved by the Governing Council. The rights and obligations of the participating central banks are set out in European Central Bank (ECB) legal acts, as is the case for the ESCB public key infrastructure (ESCB-PKI), and/or in agreements between the participating central banks.

(2) It is necessary for the smooth, effective and consistent functioning of the Single Supervisory Mechanism (SSM) that practical arrangements for the cooperation between the ECB and the national competent authorities (NCAs) within the SSM include arrangements for the use by NCAs of ESCB services for carrying out their tasks under Regulation (EU) No 1024/2013.

(3) Pursuant to Decision (EU) 2022/1982 of the European Central Bank (ECB/2022/34) ([2]), competent authorities may use the ESCB services for the purpose of cooperating with the ESCB and with each other in order to carry out their tasks under Regulation (EU) No 1024/2013.

(4) The ESCB services that should be made available to competent authorities should be defined by reference to exhaustive lists of (a) ESCB services that all competent authorities should be required to use in carrying out their SSM tasks to ensure efficiency and consistency in the functioning of the SSM and (b) ESCB services that competent authorities may decide to use on a voluntary basis for the purpose of carrying out their SSM tasks.

(5) Competent authorities that use the ESCB services when carrying out their tasks under Regulation (EU) No 1024/2013 should comply with the legal framework governing each ESCB service, taking into account that competent authorities are not part of the governance framework of the ESCB. In particular, such competent authorities should contribute to the costs of developing and operating the ESCB services concerned according to a defined reimbursement framework, which should be based on a cost allocation key. Competent authorities should not have to submit a declaration of participation in respect of ESCB services that they are required to use, but should comply with the requirements regarding such services as set out in this Decision,

([1]) OJ L 287, 29.10.2013, p. 63.

([2]) Decision (EU) 2022/1982 of the European Central Bank of 10 October 2022 on the use of services of the European System of Central Banks by competent authorities and by cooperating authorities, and amending Decision ECB/2013/1 (ECB/2022/34) (see page 29 of this Official Journal).

HAS ADOPTED THIS DECISION:

Article 1

Definitions

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

(1) 'competent authority' means either a national competent authority or the European Central Bank (ECB);

(2) 'national competent authority' (NCA) means a national competent authority as defined in point (2) of Article 2 of Regulation (EU) No 1024/2013 and, for the purposes of this Decision, also includes, in respect of the supervisory tasks assigned to them, national central banks that have been assigned certain supervisory tasks under national law and are not designated as NCAs;

(3) 'ESCB services' means any one or more of the electronic applications, systems, platforms, databases and services listed in Annexes I and II;

(4) 'providing central bank' means a central bank developing, running and maintaining an ESCB service.

Article 2

Use of ESCB services by competent authorities

1. Competent authorities shall use the ESCB services listed in Annex I for the purpose of carrying out their tasks under Regulation (EU) No 1024/2013.

2. Competent authorities may use the ESCB services listed in Annex II for the purpose of carrying out their tasks under Regulation (EU) No 1024/2013.

3. Competent authorities that decide to use ESCB services set out in Annex II shall submit a declaration to the Governing Council by which they confirm their participation and accept compliance with the related obligations, including the obligation to pay their contributions directly to the providing central bank in accordance with Article 3.

4. Competent authorities that use ESCB services shall comply with the legal framework governing each ESCB service, including the agreements between the participating and providing central banks. The agreements between the parties may establish direct contractual relationships between the providing central banks and the competent authorities.

5. When using the services listed in Annex I the competent authorities shall comply with the requirements set out in Annex III.

Article 3

Financial arrangements

Competent authorities that use ESCB services shall contribute to the costs of developing and operating the respective ESCB service in accordance with a defined reimbursement framework, which is based on a cost allocation key, as further specified in the respective financial envelopes following the applicable reimbursement rules.

Article 4

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, 10 October 2022.

The President of the ECB
Christine LAGARDE

ANNEX I

ESCB services that competent authorities are required to use

— CoreNet3

— Enterprise Service Bus (ESB)

— Identity and Access Management Service (IAM)

ANNEX II

ESCB services that competent authorities may use

— ESCB Teleconference System

— Secure ESCB Email (SEE)

— ESCB public key infrastructure (ESCB PKI)

— ESCB Performing Survey Initiative LimeSurvey-based Solution (EPSILON)

— ENTM Modelling tool and repository (ENTM)

ANNEX III

Requirements for ESCB services that competent authorities are required to use

(1) Competent authorities must carry out the tasks and assume the responsibilities corresponding to their role in the relevant ESCB service.

(2) Competent authorities must adjust their internal systems and interfaces to operate seamlessly with the ESCB service.

(3) Competent authorities will be liable for any loss or damage incurred as a result of any deliberate or negligent action and/or omission in performing their obligations. The limitations of liability laid down in the Level 2 – Level 3 Agreement will apply accordingly.

(4) Competent authorities will bear the burden of proof of demonstrating that they have not breached their duty of reasonable care in performing their obligations, including in operating the technical facilities.

(5) Outsourcing, delegation or subcontracting by a competent authority to third parties will be without prejudice to the liability of that competent authority.

Competent authorities may only outsource, delegate or subcontract to a third party tasks that have or may have a material impact on compliance with the requirements set forth in this Annex to the extent that they have obtained the express, prior and written consent (or deemed consent as provided for in paragraph (6)) of the Eurosystem central banks, or the ESCB central banks, as the case may be. No such consent is needed if the third party is a joint affiliate of the relevant competent authority and if that competent authority's rights and obligations remain materially unchanged.

(6) Competent authorities must give reasonable prior notice of any planned outsourcing, delegation or subcontracting as referred to in paragraph 5 and must provide details of the requirements that are proposed to apply to such outsourcing, delegation or subcontracting.

The competent ESCB Committee must respond to any request for consent under paragraph 5 within two months of it being notified of the planned outsourcing, delegation or subcontracting. Any refusal to grant consent must be accompanied by the reasons for such refusal. If the competent authority receives no response within the two-month deadline, it may notify the competent ESCB Committee of its request once again. The Eurosystem central banks, or ESCB central banks, as the case may be, will have one further month within which to respond to the second notification. If there is no response within that time period, the competent authority will be deemed to have received consent to proceed with the outsourcing, delegation or subcontracting.

(7) Competent authorities must keep confidential all sensitive, secret or confidential information and know-how (whether such information is of a commercial, financial, regulatory, technical or other nature) that is marked as such and belongs to the providing central bank and/or to other ESCB/Eurosystem central banks, and may not disclose such information to any third party without the express, prior and written consent of the central bank(s) concerned.

(8) Competent authorities must restrict access to the information or know-how referred to in paragraph 7 to their relevant technical staff, and such access may only be exercised in cases of clear operational need.

(9) Competent authorities must establish appropriate measures to prevent access to such confidential information or know-how by persons other than the relevant technical staff.

(10) In the exceptional case that the usage of the ESCB service involves the processing of personal data by the competent authority, the competent authority must comply with the applicable data protection legislation. The Eurosystem central banks, or ESCB central banks, as the case may be, must determine the purposes for which and the means by which personal data may be processed. In relation to the processing of personal data the competent authority and the Eurosystem central banks, or ESCB central banks, as the case may be, should seek to conclude a contract that clarifies the necessary aspects of the controller–processor relationship.

The competent authority must declare to the competent data protection authorities, if so required under the data protection legislation applicable to its processing of personal data, the processing of personal data in the context of the relevant ESCB service.

(11) Access to personal data may be granted only to those with an need to know in order to perform their tasks and fulfil their responsibilities in relation to the relevant ESCB service.

DECISION (EU) 2022/1982 OF THE EUROPEAN CENTRAL BANK

of 10 October 2022

on the use of services of the European System of Central Banks by competent authorities and by cooperating authorities, and amending Decision ECB/2013/1 *(ECB/2022/34)*

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 127 and Article 132(1) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 12.1 in conjunction with Articles 3.1 and 12.3, and Article 34 thereof,

Whereas:

(1) Services of the European System of Central Banks (ESCB) are provided to central banks within the ESCB to indirectly support the performance of their tasks. The ESCB services are developed, run and maintained by one or more central banks (hereinafter the 'providing central banks') and steered by an ESCB Committee (hereinafter the 'System Owner Committee'). The ESCB services are financed by ESCB participating central banks (hereinafter the 'participating central banks'), whose respective contributions are defined in financial envelopes approved by the Governing Council. The rights and obligations of the participating central banks are set out in European Central Bank (ECB) legal acts, as is the case for the ESCB public key infrastructure (ESCB-PKI), and/or in agreements between the participating central banks.

(2) The legal frameworks for the provision of certain ESCB services currently do not provide for their use by parties that are not central banks within the ESCB.

(3) The Governing Council considers it appropriate to allow competent authorities to use these services for the purpose of cooperating with the ESCB and with each other, in order to carry out their tasks within the Single Supervisory Mechanism (SSM), established pursuant to Council Regulation (EU) No 1024/2013 ([1]) on the basis of Article 127(6) of the Treaty.

(4) Competent authorities that use the ESCB services for these purposes should comply with the legal framework governing each ESCB service, taking into account that competent authorities are not part of the governance framework of the ESCB. In particular, such competent authorities should contribute to the costs of developing and operating the services according to a defined reimbursement framework, which should be based on a cost allocation key.

(5) The Governing Council also considers it appropriate to allow cooperating authorities to use these services for the purpose of cooperating with the ESCB or the SSM in carrying out their tasks, including the tasks of the ECB under Regulation (EU) No 1024/2013.

(6) Cooperating authorities that decide to use these services should comply with the legal framework governing each ESCB service, taking into account that cooperating authorities are not part of the governance framework of the ESCB. Where relevant, cooperating authorities should contribute to the costs of developing and operating the services according to a defined reimbursement framework, which should be based on a cost allocation key.

(7) Therefore, the ESCB services that should be made available to competent authorities and cooperating authorities should be defined by reference to an exhaustive list including ESCB services that the competent authorities are required to use, as well as those that they may use.

([1]) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

(8) In addition, Decision ECB/2013/1 of the European Central Bank ([2]) should be amended to allow cooperating authorities to use ESCB-PKI services in order to access and use ESCB services,

HAS ADOPTED THIS DECISION:

Article 1

Definitions

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

(1) 'competent authority' means either a national competent authority or the European Central Bank (ECB);

(2) 'national competent authority' (NCA) means a national competent authority as defined in point (2) of Article 2 of Regulation (EU) No 1024/2013 and, for the purposes of this Decision, also includes, in respect of the supervisory tasks assigned to them, national central banks that have been assigned certain supervisory tasks under national law and are not designated as NCAs;

(3) 'participating competent authority' means a competent authority that uses the ESCB services for the purpose of cooperating with the ESCB and with other competent authorities, in order to carry out its tasks within the Single Supervisory Mechanism (SSM), established pursuant to Regulation (EU) No 1024/2013;

(4) 'cooperating authority' means a public authority, other than a central bank within the ESCB or a competent authority, with which the ESCB or the SSM cooperates in carrying out the tasks of the ESCB or of the ECB under Regulation (EU) No 1024/2013;

(5) 'ESCB services' means any one or more of the electronic applications, systems, platforms, databases and services listed in Annex I;

(6) 'providing central bank' means a central bank developing, running and maintaining an ESCB service;

(7) 'System Owner Committee' means an ESCB Committee steering an ESCB service.

Article 2

Use of ESCB services by competent authorities

1. Competent authorities may use ESCB services for the purpose of cooperating with the ESCB or with each other in carrying out their tasks under Regulation (EU) No 1024/2013.

2. Competent authorities that use ESCB services shall comply with the requirements set out in Annex II. They shall submit a declaration to the Governing Council by which they confirm their participation and accept compliance with the related obligations, including the obligation to pay their contributions directly to the providing central bank in accordance with Article 4. No such declaration shall be required if the competent authorities are subject to the requirements set out in Annex II by way of a decision of the Governing Council that competent authorities shall use ESCB services.

3. Competent authorities that use ESCB services shall comply with the legal framework governing each ESCB service, including the agreements between the participating and providing central banks. The agreements between the parties may establish direct contractual relationships between the providing central banks and the competent authorities.

4. NCAs that use ESCB services may participate in the proceedings of the respective System Owner Committee as observers in a consulting capacity. The System Owner Committee shall ensure that NCAs' views are sufficiently reflected in the decision-making processes.

([2]) Decision ECB/2013/1 of the European Central Bank of 11 January 2013 laying down the framework for a public key infrastructure for the European System of Central Banks (OJ L 74, 16.3.2013, p. 30).

Article 3

Use of ESCB services by cooperating authorities

1. Subject to the approval of the Governing Council, a cooperating authority may use ESCB services for the purpose of cooperating with the ESCB or the SSM in carrying out the tasks of the ESCB and the tasks of the ECB under Regulation (EU) No 1024/2013.

2. Cooperating authorities that decide to use ESCB services shall submit a declaration to the Governing Council by which they confirm their participation and accept compliance with the related obligations, set out in Annex II, including the obligation to pay their contributions directly to the providing central bank in accordance with Article 4.

3. Cooperating authorities that decide to use ESCB services shall comply with the legal framework governing each ESCB service, including the agreements between the participating and providing central banks. The agreements between the parties may establish a direct contractual relationship between the providing central banks and the cooperating authorities. Cooperating authorities shall not participate in the proceedings of the respective System Owner Committee.

Article 4

Financial arrangements

Participating central banks and participating competent authorities shall bear the costs of developing and operating the respective ESCB service in accordance with a defined reimbursement framework, which is based on a cost allocation key, as further specified in the respective financial envelopes following the applicable reimbursement rules. Where relevant, cooperating authorities shall contribute to the costs of the respective ESCB service in accordance with a specific reimbursement framework.

Article 5

Amendment of Decision ECB/2013/1

Decision ECB/2013/1 is amended as follows:

(1) in Article 1, the following definitions are added:

'19. "competent authority" means either a national competent authority or the ECB;

20. "national competent authority" (NCA) means a national competent authority as defined in point (2) of Article 2 of Council Regulation (EU) No 1024/2013 (*) and, for the purposes of this Decision, also includes, in respect of the supervisory tasks assigned to them, national central banks that have been assigned certain supervisory tasks under national law and are not designated as NCAs;

21. "cooperating authority" means a public authority, other than a central bank within the ESCB or a competent authority, with which the ESCB or the Single Supervisory Mechanism (SSM) cooperates in carrying out the tasks of the ESCB or of the ECB under Regulation (EU) No 1024/2013;

22. "participating competent authority" means a competent authority that uses the ESCB services for the purpose of cooperating with the ESCB and with other competent authorities, in order to carry out its tasks within the Single Supervisory Mechanism (SSM), established pursuant to Regulation (EU) No 1024/2013.

(*) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).';

(2) the following Article 9a is inserted:

'*Article 9a*

Use of the ESCB-PKI services by cooperating authorities

1. Subject to the approval of the Governing Council, a cooperating authority may use the ESCB-PKI services in order to access and use ESCB and Eurosystem electronic applications, systems, platforms, databases and services for the purpose of cooperating with the ESCB or with the SSM and may act for that purpose as a registration authority for its internal users.

2. Cooperating authorities that decide to use the ESCB-PKI services shall submit a declaration to the Governing Council by which they confirm their use of the services and accept compliance with the related obligations.

3. Cooperating authorities that decide to use the ESCB-PKI services shall comply with the applicable legal framework, including the Level 2 – Level 3 Agreement.';

(3) Article 14 is replaced by the following:

'*Article 14*

Financial arrangements

Participating central banks and participating competent authorities shall bear the costs of developing and operating the ESCB-PKI services according to a defined reimbursement framework, which is based on a cost allocation key, as further specified in the ESCB-PKI financial envelopes following the applicable reimbursement rules. Cooperating authorities shall contribute to the costs in accordance with a specific reimbursement framework.'.

Article 6

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, 10 October 2022.

The President of the ECB
Christine LAGARDE

ANNEX I

ESCB services to be made available to competent authorities and cooperating authorities

— CoreNet3

— Enterprise Service Bus (ESB)

— ESCB Public Key Infrastructure (ESCB PKI)

— Identity and Access Management Service (IAM)

— Secure ESCB Email (SEE)

— ESCB Teleconference System

— ESCB Performing Survey Initiative LimeSurvey-based Solution (EPSILON)

— ENTM modelling tool and repository (ENTM)

ANNEX II

Requirements for competent authorities' use of ESCB services

(1) Competent authorities must carry out the tasks and assume the responsibilities corresponding to their role in the relevant ESCB service.

(2) Competent authorities must adjust their internal systems and interfaces to operate seamlessly with the ESCB service.

(3) Competent authorities will be liable for any loss or damage incurred as a result of any deliberate or negligent action and/or omission in performing their obligations. The limitations of liability laid down in the Level 2 – Level 3 Agreement will apply accordingly.

(4) Competent authorities will bear the burden of proof of demonstrating that they have not breached their duty of reasonable care in performing their obligations, including in operating the technical facilities.

(5) Outsourcing, delegation or subcontracting by a competent authority to third parties will be without prejudice to the liability of that competent authority.

Competent authorities may only outsource, delegate or subcontract to a third party tasks that have or may have a material impact on compliance with the requirements set forth in this Annex to the extent that they have obtained the express, prior and written consent (or deemed consent as provided for in paragraph (6)) of the Eurosystem central banks, or the ESCB central banks, as the case may be. No such consent is needed if the third party is a joint affiliate of the relevant competent authority and if that competent authority's rights and obligations remain materially unchanged.

(6) Competent authorities must give reasonable prior notice of any planned outsourcing, delegation or subcontracting as referred to in paragraph 5 and must provide details of the requirements that are proposed to apply to such outsourcing, delegation or subcontracting.

The competent ESCB Committee must respond to any request for consent under paragraph 5 within two months of it being notified of the planned outsourcing, delegation or subcontracting. Any refusal to grant consent must be accompanied by the reasons for such refusal. If the competent authority receives no response within the two-month deadline, it may notify the competent ESCB Committee of its request once again. The Eurosystem central banks, or ESCB central banks, as the case may be, will have one further month within which to respond to the second notification. If there is no response within that time period, the competent authority will be deemed to have received consent to proceed with the outsourcing, delegation or subcontracting.

(7) Competent authorities must keep confidential all sensitive, secret or confidential information and know-how (whether such information is of a commercial, financial, regulatory, technical or other nature) that is marked as such and belongs to the providing central bank and/or to other ESCB/Eurosystem central banks, and may not disclose such information to any third party without the express, prior and written consent of the central bank(s) concerned.

(8) Competent authorities must restrict access to the information or know-how referred to in paragraph 7 to their relevant technical staff, and such access may only be exercised in cases of clear operational need.

(9) Competent authorities must establish appropriate measures to prevent access to such confidential information or know-how by persons other than the relevant technical staff.

(10) In the exceptional case that the usage of the ESCB service involves the processing of personal data by the competent authority, the competent authority must comply with the applicable data protection legislation. The Eurosystem central banks, or ESCB central banks, as the case may be, must determine the purposes for which and the means by which personal data may be processed. In relation to the processing of personal data the competent authority and the Eurosystem central banks, or ESCB central banks, as the case may be, should seek to conclude a contract that clarifies the necessary aspects of the controller–processor relationship.

The competent authority must declare to the competent data protection authorities, if so required under the data protection legislation applicable to its processing of personal data, the processing of personal data in the context of the relevant ESCB service.

(11) Access to personal data may be granted only to those with a need to know in order to perform their tasks and fulfil their responsibilities in relation to the relevant ESCB service.

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 3/2022 of the EU-CTC Joint Committee

of 29 September 2022

amending the Convention of 20 May 1987 on a common transit procedure [2022/1983]

THE EU-CTC JOINT COMMITTEE,

Having regard to the Convention of 20 May 1987 on a common transit procedure, and in particular point (a) of Article 15(3) thereof,

Whereas:

(1) Ukraine has expressed its wish to accede to the Convention on a common transit procedure ([1]) (the 'Convention') and has been invited to do so following Decision No 2/2022 of 25 August 2022 of the EU-CTC Joint Committee.

(2) The accession of Ukraine would require the relevant adaptation of the guarantee documents and the insertion of certain technical terms in the Ukrainian language.

(3) In order to allow the use of guarantee forms printed in accordance with the criteria in force prior to the date of accession of Ukraine, a transitional period should be established during which the printed forms, with some adaptations, could continue to be used.

(4) The entry into force of this Decision should be linked to the date on which the accession of Ukraine to the Convention becomes effective.

(5) The Convention should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Appendix III to the Convention of 20 May 1987 on a common transit procedure (the 'Convention') is amended as set out in Annex to this Decision.

Article 2

1. This Decision shall enter into force on the date on which Ukraine becomes a contracting party to the Convention.

2. The forms based on the specimen forms in Annexes C1 to C6 to Appendix III to the Convention, in the version applicable on the date before the entry into force of this Decision, may continue to be used subject to the necessary geographical adaptations and the adaptations concerning the address for service or the authorised agent, until 1 April 2024.

Done at Brussels, 29 September 2022.

For the Joint Committee
The President
Matthias PETSCHKE

([1]) OJ L 226, 13.8.1987, p. 2.

ANNEX

Appendix III to the Convention of 20 May 1987 on a common transit procedure is amended as follows:

(1) In Annex B1, in box 51 the following indent is inserted between Turkey and Northern Ireland:

'UA Ukraine';

(2) In Annex B6, Title III is amended as follows:

2.1. In the first part of the table 'Limited validity – 99200' the following indent is added after TR:

'- UA Дія обмежена',

2.2. In the second part of the table 'Waiver – 99201' the following indent is added after TR:

'- UA Звільнення',

2.3. In the third part of the table 'Alternative proof – 99202' the following indent is added after TR:

'- UA Альтернативне підтвердження',

2.4. In the fourth part of the table 'Differences: office where goods were presented …… (name and country) – 99203' the following indent is added after TR:

'- UA Розбіжності: митниця, де товари були пред'явлені …… (назва і країна)',

2.5. In the fifth part of the table 'Exit from …… subject to restrictions or charges under Regulation/Directive/Decision No… - 99204' the following indent is added after TR:

'- UA Вибуття із …… з урахуванням обмежень та зі сплатою зборів відповідно до Регламенту/Директиви/Рішення № …',

2.6. In the seventh part of the table 'Authorised consignor – 99206' the following indent is added after TR:

'- UA Авторизований вантажовідправник',

2.7. In the eighth part of the table 'Signature waived – 99207' the following indent is added after TR:

'- UA Звільнено від підпису',

2.8. In the ninth part of the table 'COMPREHENSIVE GUARANTEE PROHIBITED – 99208' the following indent is added after TR:

'- UA ЗАГАЛЬНА ГАРАНТІЯ ЗАБОРОНЕНА',

2.9. In the 10th part of the table 'UNRESTRICTED USE – 99209' the following indent is added after TR:

'- UA ВИКОРИСТАННЯ БЕЗ ОБМЕЖЕНЬ',

2.10. In the 11th part of the table 'Issued retroactively – 99210' the following indent is added after TR:

'- UA Видано згодом',

2.11. In the 12th part of the table 'Various – 99211' the following indent is added after TR:

'- UA Різне',

2.12 In the 13th part of the table 'Bulk – 99212' the following indent is added after TR:

'- UA Навалювальний вантаж',

2.13. In the 14th part of the table 'Consignor – 99213' the following indent is added after TR:

'- UA Вантажовідправник';

(3) Annex C1 is replaced by the following:

'ANNEX C1

GUARANTOR'S UNDERTAKING – INDIVIDUAL GUARANTEE

I. Undertaking by the guarantor

1. The undersigned ([1]) ……

……

resident at ([2])

……

……

hereby jointly and severally guarantees, at the office of guarantee of

……

up to a maximum amount of

……

in favour of the European Union (comprising the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Republic of Croatia, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden) and the Republic of Iceland, the Republic of North Macedonia, the Kingdom of Norway, the Republic of Serbia, the Swiss Confederation, the Republic of Turkey, Ukraine, the United Kingdom of Great Britain and Northern Ireland ([3]) ([4]), the Principality of Andorra and the Republic of San Marino ([5]), any amount for which the person providing this guarantee ([6]):

……

may be or become liable to the abovementioned countries for debt in the form of duty and other charges ([7]) with respect to the goods described below covered by the following customs operation ([8]):

……

……

Goods description

……

……

……

……

2. The undersigned undertakes to pay upon the first application in writing by the competent authorities of the countries referred to in point 1, and without being able to defer payment beyond a period of 30 days from the date of application, the sums requested unless he or she or any other person concerned establishes before the expiry of that period, to the satisfaction of the customs authorities, that the special procedure other than the end-use procedure has been discharged, the customs supervision of end-use goods or the temporary storage has ended correctly or, in case of operations other than special procedures and temporary storage, that the situation of goods has been regularised.

   At the request of the undersigned and for any reasons recognised as valid, the competent authorities may defer beyond a period of 30 days from the date of application for payment the period within which he or she is obliged to pay the requested sums. The expenses incurred as a result of granting this additional period, in particular any interest, must be so calculated that the amount is equivalent to what would be charged under similar circumstances on the money market or financial market in the country concerned.

3. This undertaking shall be valid from the day of its approval by the office of guarantee. The undersigned shall remain liable for payment of any debt incurred during the customs operation covered by this undertaking and commenced before any revocation or cancellation of the guarantee took effect, even if the demand for payment is made after that date.

4. For the purpose of this undertaking, the undersigned gives his or her address for service ([9]) in each of the other countries referred to in point 1 as:

Country	Surname and forenames, or name of firm, and full address

The undersigned acknowledges that all correspondence and notices and any formalities or procedures relating to this undertaking addressed to or effected in writing at one of his or her addresses for services shall be accepted as duly delivered to him or her.

The undersigned acknowledges the jurisdiction of the courts of the places where he or she has an address for service.

The undersigned undertakes not to change his or her address for service or, if he or she has to change one or more of those addresses, to inform the office of guarantee in advance.

Done at ..... on .....

.....

(Signature) ([10])

II. Approval by the office of guarantee

Office of guarantee .....

.....

.....

Guarantor's undertaking approved on ..... to cover the customs operation effected under customs declaration/ temporary storage declaration

No ..... of .... ([11])

(Stamp and Signature)'

([1]) Surname and forename or name of firm.
([2]) Full address.
([3]) Pursuant to the Protocol on Ireland/Northern Ireland of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, Northern Ireland is to be considered as part of the European Union for the purposes of this guarantee. Therefore, a guarantor established in the customs territory of the European Union shall indicate an address for service or appoint an agent in Northern Ireland if the guarantee may be used therein. However, if a guarantee, in the context of common transit, is made valid in the European Union and in the United Kingdom, a single address for service or an appointed agent in the United Kingdom may cover all parts of the United Kingdom, including Northern Ireland.
([4]) Delete the name/names of the State/States on the territory of which the guarantee may not be used.
([5]) The references to the Principality of Andorra and the Republic of San Marino shall apply solely to Union transit operations.
([6]) Surname and forename, or name of firm and full address of the person providing the guarantee.
([7]) Applicable with respect to the other charges due in connection with the import or export of the goods where the guarantee is used for the placing of goods under the Union/common transit procedure or may be used in more than one Member State.
([8]) Enter one of the following customs operations:

(a) temporary storage,
(b) Union transit procedure/common transit procedure,
(c) customs warehousing procedure,
(d) temporary admission procedure with total relief from import duty,
(e) inward processing procedure,
(f) end-use procedure,
(g) release for free circulation under normal customs declaration without deferred payment,
(h) release for free circulation under normal customs declaration with deferred payment,
(i) release for free circulation under a customs declaration lodged in accordance with Article 166 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code,
(j) release for free circulation under a customs declaration lodged in accordance with Article 182 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code,
(k) temporary admission procedure with partial relief from import duty,
(l) if another – indicate the other kind of operation.

([9]) If, in the law of the country, there is no provision for address for service, the guarantor shall appoint, in that country, an agent authorised to receive any communications addressed to him and the acknowledgement in the second subparagraph and the undertaking in the fourth subparagraph of point 4 must correspond. The courts of the places in which the addresses for service of the guarantor or of his agents are situated shall have jurisdiction in disputes concerning this guarantee.
([10]) The person signing the document must enter the following by hand before his or her signature: "Guarantee for the amount of …" (the amount being written out in letters)
([11]) To be completed by the office where the goods were placed under the procedure or were in temporary storage.;

(4) Annex C2 is replaced by the following:

'*ANNEX C2*

GUARANTOR'S UNDERTAKING - INDIVIDUAL GUARANTEE IN THE FORM OF VOUCHERS

I. Undertaking by the guarantor

1. The undersigned ([1])

……

……

resident at ([2])

……

……

hereby jointly and severally guarantees, at the office of guarantee of

……

in favour of the European Union (comprising the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Republic of Croatia, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden) and the Republic of Iceland, the Republic of North Macedonia, the Kingdom of Norway, the Republic of Serbia, the Swiss Confederation, the Republic of Turkey, Ukraine, the United Kingdom of Great Britain and Northern Ireland ([3]), the Principality of Andorra and the Republic of San Marino ([4]), any amount of the holder of the procedure for which the holder of the procedure may be or become liable to the abovementioned countries for debt in the form of duty and other charges due in connection with the import or export of the goods placed under the Union or common transit procedure, in respect of which the undersigned has undertaken to issue individual guarantee vouchers up to a maximum of EUR 10 000 per voucher.

2. The undersigned undertakes to pay upon the first application in writing by the competent authorities of the countries referred to in point 1 and without being able to defer payment beyond a period of 30 days from the date of application the sums requested, up to EUR 10 000 per individual guarantee voucher, unless he or she or any other person concerned establishes before the expiry of that period, to the satisfaction of the competent authorities, that the operation has been discharged.

At the request of the undersigned and for any reasons recognised as valid, the competent authorities may defer beyond a period of 30 days from the date of application for payment the period within which he or she is obliged to pay the requested sums. The expenses incurred as a result of granting this additional period, in particular any interest, must be so calculated that the amount is equivalent to what would be charged under similar circumstances on the money market or financial market in the country concerned.

3. This undertaking shall be valid from the day of its approval by the office of guarantee. The undersigned shall remain liable for payment of any debt incurred during the Union or common transit operation covered by this undertaking and commenced before any revocation or cancellation of the guarantee took effect, even if the demand for payment is made after that date.

4. For the purpose of this undertaking, the undersigned gives his or her address for service ([5]) in each of the other countries referred to in point 1 as:

Country	Surname and forenames, or name of firm, and full address

The undersigned acknowledges that all correspondence and notices and any formalities or procedures relating to this undertaking addressed to or effected in writing at one of his or her addresses for services shall be accepted as duly delivered to him or her.

The undersigned acknowledges the jurisdiction of the courts of the places where he or she has an address for service.

The undersigned undertakes not to change his or her address for service or, if he or she has to change one or more of those addresses, to inform the office of guarantee in advance.

Done at .....

on .....

.....

(Signature) ([6])

II. Approval by the office of guarantee

Office of guarantee

.....

.....

Guarantor's undertaking approved on .....

……

……

(Stamp and Signature)'

(1) Surname and forename or name of firm.
(2) Full address.
(3) Pursuant to the Protocol on Ireland/Northern Ireland of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, Northern Ireland is to be considered as part of the European Union for the purposes of this guarantee. Therefore, a guarantor established in the customs territory of the European Union shall indicate an address for service or appoint an agent in Northern Ireland if the guarantee may be used therein. However, if a guarantee, in the context of common transit, is made valid in the European Union and in the United Kingdom, a single address for service or an appointed agent in the United Kingdom may cover all parts of the United Kingdom, including the Northern Ireland.
(4) The references to the Principality of Andorra and the Republic of San Marino shall apply solely to Union transit operations.
(5) If, in the law of the country, there is no provision for address for service the guarantor shall appoint, in this country, an agent authorized to receive any communications addressed to him and the acknowledgement in the second subparagraph and the undertaking in the fourth subparagraph of point 4 must be made to correspond. The courts of the places in which the addresses for service of the guarantor or of his agents are situated shall have jurisdiction in disputes concerning this guarantee.
(6) The signature must be preceded by the following in the signatory's own handwriting: "Valid as guarantee voucher";

(5) Annex C4 is replaced by the following:

'*ANNEX C4*

GUARANTOR'S UNDERTAKING – COMPREHENSIVE GUARANTEE

I. Undertaking by the guarantor

1. The undersigned (1)

……

……

resident at (2)

……

……

hereby jointly and severally guarantees, at the office of guarantee of

……

up to a maximum amount of .....

in favour of the European Union (comprising the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden) and the Republic of Iceland, the Republic of North Macedonia, the Kingdom of Norway, the Republic of Serbia, the Swiss Confederation, the Republic of Turkey, Ukraine, the United Kingdom of Great Britain and Northern Ireland ([3]) ([4]), the Principality of Andorra and the Republic of San Marino ([5]), any amount for which the person providing this guarantee ([6])

.....

may be or become liable to the abovementioned countries for debt in the form of duty and other charges ([7]) which may be or have been incurred with respect to the goods covered by the customs operations indicated in point 1a and/or point 1b.

The maximum amount of the guarantee is composed of an amount:

.....

(a) being 100/50/30 % ([8]) of the part of the reference amount corresponding to an amount of customs debts and other charges which may be incurred, equivalent to the sum of the amounts listed in point 1a,

and

.....

(b) being 100/30 % ([8]) of the part of the reference amount corresponding to an amount of customs debts and other charges which have been incurred, equivalent to the sum of the amounts listed in point 1b,

1a. The amounts forming the part of the reference amount corresponding to an amount of customs debts and, where applicable, other charges which may be incurred are following for each of the purposes listed below ([9]):

(a) temporary storage - …,

(b) Union transit procedure/common transit procedure - …,

(c) customs warehousing procedure - …,

(d) temporary admission procedure with total relief from import duty - …,

(e) inward processing procedure - …,

(f) end-use procedure - …,

(g) if another – indicate the other kind of operation - ….

1b. The amounts forming the part of the reference amount corresponding to an amount of customs debts and, where applicable, other charges which have been incurred are as follows for each of the purposes listed below ([9]):

(a) release for free circulation under normal customs declaration without deferred payment - …,

(b) release for free circulation under normal customs declaration with deferred payment - …,

(c) release for free circulation under a customs declaration lodged in accordance with Article 166 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code - …,

(d) release for free circulation under a customs declaration lodged in accordance with Article 182 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code - …,

(e) temporary admission procedure with partial relief from import duty - …,

(f) end-use procedure - … ([10]) ,

(g) if another – indicate the other kind of operation - ….

2. The undersigned undertakes to pay upon the first application in writing by the competent authorities of the countries referred to in point 1, and without being able to defer payment beyond a period of 30 days from the date of application, the sums requested up to the limit of the abovementioned maximum amount, unless he or she or any other person concerned establishes before the expiry of that period, to the satisfaction of the customs authorities, that the special procedure other than the end-use procedure has been discharged, the customs supervision of end-use goods or the temporary storage has ended correctly or, in case of the operations other than special procedures, that the situation of goods has been regularised.

At the request of the undersigned and for any reasons recognised as valid, the competent authorities may defer beyond a period of 30 days from the date of application for payment the period within which he or she is obliged to pay the requested sums. The expenses incurred as a result of granting this additional period, in particular any interest, must be so calculated that the amount is equivalent to what would be charged under similar circumstances on the money market or financial market in the country concerned.

This amount may not be reduced by any sums already paid under the terms of this undertaking unless the undersigned is called upon to pay a debt incurred during a customs operation commenced before the preceding demand for payment was received or within 30 days thereafter.

3. This undertaking shall be valid from the day of its approval by the office of guarantee. The undersigned shall remain liable for payment of any debt arising during the customs operation covered by this undertaking and commenced before any revocation or cancellation of the guarantee took effect, even if the demand for payment is made after that date.

4. For the purpose of this undertaking, the undersigned gives his or her address for service ([11]) in each of the other countries referred to in point 1 as:

Country	Surname and forenames, or name of firm, and full address

The undersigned acknowledges that all correspondence and notices and any formalities or procedures relating to this undertaking addressed to or effected in writing at one of his or her addresses for services shall be accepted as duly delivered to him or her.

The undersigned acknowledges the jurisdiction of the courts of the places where he or she has an address for service.

The undersigned undertakes not to change his or her address for service or, if he or she has to change one or more of those addresses, to inform the office of guarantee in advance.

Done at .....

on .....

.....

(Signature) ([12])

II. Approval by the office of guarantee

Office of guarantee

.....

Guarantor's undertaking accepted on

.....

.....

(Stamp and Signature)'

([1]) Surname and forename, or name of the firm.
([2]) Full address.
([3]) Pursuant to the Protocol on Ireland/Northern Ireland of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, Northern Ireland is to be considered as part of the European Union for the purposes of this guarantee. Therefore, a guarantor established in the customs territory of the European Union shall indicate an address for service or appoint an agent in Northern Ireland if the guarantee may be used therein. However, if a guarantee, in the context of common transit, is made valid in the European Union and in the United Kingdom, a single address for service or an appointed agent in the United Kingdom may cover all parts of the United Kingdom, including the Northern Ireland.
([4]) Delete the name/names of the country/countries on whose territory the guarantee may not be used.
([5]) The references to the Principality of Andorra and the Republic of San Marino shall apply solely to Union transit operations.
([6]) Surname and forename, or name of the firm, and full address of the person providing the guarantee.
([7]) Applicable with respect to the other charges due in connection with the import or export of the goods where the guarantee is used for the placing of goods under the Union/common transit procedure or may be used in more than one Member State or one Contracting Party.
([8]) Delete what does not apply.
([9]) Procedures other than common transit apply solely in the Union.
([10]) For amounts declared in a customs declaration for the end-use procedure.
([11]) If, in the law of the country, there is no provision for address for service the guarantor shall appoint, in this country, an agent authorised to receive any communications addressed to him and the acknowledgement in the second subparagraph and the undertaking in the fourth subparagraph of point 4 must be made to correspond. The courts of the place in which the addresses for service of the guarantor or of his agents are situated shall have jurisdiction in disputes concerning this guarantee.
([12]) The person signing the document must enter the following by hand before his or her signature: "Guarantee for the amount of …" (the amount being written out in letters).;

(6) In box 7 Annex C5, the word 'UKRAINE' is inserted between the words 'TURKEY' and 'UNITED KINGDOM';

(7) In box 6 of Annex C6, the word 'UKRAINE' is inserted between the words 'TURKEY' and 'UNITED KINGDOM'.

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DELEGATED DECISION No 049/22/COL

of 9 February 2022

to grant three derogations requested by the Principality of Liechtenstein in relation to Article 30, Article 36(2) and Chapter 1.1.3.6.3. lit. b of Annex 5 to the Liechtenstein Ordinance of 3 March 1998 on the transport of dangerous goods by road based on Article 6(2)(a) of Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods [2022/1984]

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Act referred to at point 13c in Chapter I of Annex XIII to the EEA Agreement,

Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods ('the Directive'),

as amended and as adapted to the EEA Agreement by point 4(d) of Protocol 1 thereto and having regard to Article 5(2)(d) of the Surveillance and Court Agreement and Article 1(1)(c), Article 1(2) and Article 3 of Protocol 1 thereto, in particular Articles 6 and 9 of the Directive,

Having regard to Standing Committee Decisions No 3/12/SC and No 4/12/SC,

Whereas:

1. **PROCEDURE**

The Liechtenstein Government, by letter to the Authority of 20 December 2013 ([1]), requested four derogations on the basis of Article 6(2)(a) of the Directive. The derogations as requested by Liechtenstein were laid down in Articles 29, 30 and 36 and in Annex 5 to the Ordinance of 3 March 1998 on the transport of dangerous good by road (LR 741.621, as last amended) ([2]) ('the Ordinance').

To assist it in this assessment, the Authority commissioned DNV GL AS ('DNV') to assess whether the requested derogations would conform to the requirements set out in Article 6(2)(a) of the Directive, with emphasis on any potential or actual risks brought about by the derogations, whether the derogations would lead to less, more or equal safety, and on the identification of possible mitigating measures ([3]).

After having assessed the derogations requested by Liechtenstein, the Authority concluded that only the provisions in Articles 30 and 36 and in Annex 5 to the Ordinance qualify as derogations within the meaning of Article 6(2)(a) of the Directive, whereas Article 29 of the Ordinance, concerning explosives in once opened transport packages, did not qualify as a derogation.

([1]) Doc No 694300.
([2]) *Verordnung über den Transport gefährlicher Güter auf der Strasse* – VTGGS.
([3]) Doc No 709161.

After consulting with the EFTA Transport Committee, the Authority adopted College Decision 30/15/COL, authorising derogations for the three qualifying provisions. That authorisation was valid for a period of 6 years from 27 January 2015.

By letter dated 8 March 2021 ([4]) the Liechtenstein Government requested an authorisation for derogations under the Ordinance, which are laid down in Article 30, Article 36(2) and Chapter 1.1.3.6. lit. b of Annex 5 to the Ordinance and corresponds with the derogation authorised by the Authority by College Decision 30/15/COL. The derogations concern the transport of explosives, tank inspection undertakings, the special training of drivers and construction site tanks, respectively.

According to Article 6(4) of the Directive, if an EEA EFTA State requests extension of an authorised derogation, the Authority is to review the request. If no amendment to Annex I, Section I.1, Annex II, Section II.1, or Annex III, Section III.1, affecting the subject matter of the derogation has been adopted, the Authority, acting in accordance with the procedure referred to in Article 9(2), is to renew the authorisation for a further period not exceeding 6 years from the date of authorisation, such period to be fixed in the authorisation decision.

As the request from Liechtenstein was submitted after the expiry date referred to in College Decision 30/15/COL, Article 6(4) is not applicable even if the request is identical in substance to the one authorised by the Authority by that Decision. The request must therefore be assessed in accordance with the procedure referred to in Article 6(2) of the Directive. Information in relation to College Decision 30/15/COL is nevertheless still relevant for this assessment, such as the risk assessment conducted by DNV.

2. **ASSESSMENT**

Article 6(2)(a) of the Directive stipulates that '[p]rovided that safety is not compromised, [EEA] States may request derogations from Annex I, Section I.1, Annex II, Section II.1 and Annex III, Section III.1, for the transport within their territories of small quantities of certain dangerous goods, with the exception of substances having a medium or high level of radioactivity, provided that the conditions for such transport are no more stringent than the conditions set out in those Annexes.'

According to Article 6(3) of the Directive, derogations are to be valid for a period not exceeding 6 years from the date of authorisation, such period to be fixed in the authorisation decision.

According to Article 9 of the Directive, and as further prescribed in Standing Committee Decisions No 3/2012/SC and No 4/2012/SC, the Authority is to submit a draft of the Decision to be taken to the EFTA Transport Committee. The EFTA Transport Committee is to deliver its opinion on the draft pursuant to Article 3 of Standing Committee Decision No 3/2012/SC.

According to Article 3(2) of the Directive, transport of dangerous goods by road is to be authorised 'subject to compliance with the conditions laid down in Annex I, Section I.1, Annex II, Section II.1, and Annex III, Section III.1'.

Annex I, Section I.1 of the Directive contains provisions regarding the applicability of Annexes A and B to the ADR ([5]).

Annex A is divided into seven parts. Part 1 contains general provisions, whereas parts 2 and 3 classify and list up dangerous goods. Part 4 lays down requirements for packaging and use of portable tanks, part 5 sets out consignment procedures, part 6 lays down requirements for construction and testing of packaging, and part 7 sets out provisions concerning the conditions of carriage, loading, unloading and handling.

([4]) Document No 1185764.

([5]) The European Agreement concerning the International Carriage of Dangerous Goods by Road, concluded at Geneva on 30 September 1957, as amended.

Annex B, part 8 lays down requirements for vehicle crews, equipment, operation and documentation, and part 9 sets out construction requirements and approval of vehicles carrying dangerous goods.

The derogations requested are identical to those authorised by the Authority in 2015. Furthermore, the mitigating measures implemented by Liechtenstein are still in place. The Authority, therefore, concludes that the derogations can be sufficiently assessed based on information presented in relation to College Decision 30/15/COL, including the risk assessment conducted by DNV.

2.1. **Article 30 VTGGS**

In its letter of 8 March 2021, the Liechtenstein Government described the derogation in the following way:

Article 30 para. 1 lit. b VTGGS allows for a deviation as regards the labelling of the carrier vehicle. The orange labels at the front and at the rear of the carrier vehicle have to correspond to Chapter 5.3.2.1.1 ADR, but do not need to contain the hazard identification number.

Article 30 para. 1 lit. c VTGGS exonerates the driver from the special training requirements foreseen by Chapter 8.2 ADR. The driver, however, needs to be in the possession of the training for tank inspection undertakings. This training is provided by CITEC (Swiss Association for the protection of the waters and the security of tanks) and consists of a 3-week course and a fresh-up course every 5 years, in which the drivers are trained in all the necessary security and environment relevant aspects as regards cleaning, inspecting and repairing tanks. It leads to the Federal Specialist Certificate for Tank Security ([6]).

Finally, Article 30 para. 2 VTGGS foresees that the tank and its carrier vehicle are exempt from the construction, equipment and control requirements foreseen in Chapters 4.3, 4.4, 6.8, 6.9 and 9.1 ADR.

In its report, DNV assessed whether the risk would increase following accidents that may happen during transportation on public roads, such as in case of collision, off-road driving and load dislocation. DNV came to the conclusion that risk would not increase in these situations provided that the drivers have the specific CITEC training.

2.2. **Article 36(2) VTGGS**

In its letter of 8 March 2021, the Liechtenstein Government described the derogation in the following way:

'This provision allows for the transport of dangerous goods belonging to class 1 ADR (explosive substances and explosive articles) beyond the free amount foreseen in Chapter 1.1.3.6 ADR. However, this is only allowed under the strict condition that the driver is in possession of a licence on explosive blasts ("Sprengausweis"), thus has enjoyed a special education for explosive experts. The training authorising a person to receive such a licence is a specialised training for persons handling explosives, which goes beyond the usual training concerning the transport of dangerous goods and ensures a high standard of safety. Additionally, such transport may only be undertaken for explosives and pyrotechnical articles for which the above mentioned licence has been granted.

Due to these reasons, the exception foreseen in Article 36 para. 2 VTGGS does not compromise the safety and Liechtenstein would hereby like to request a derogation in accordance with Article 6 of the Directive.'

In its report DNV concluded that the risk with the derogation in place will not increase, provided that BBT license is equivalent to ADR training for the drivers.

([6]) *Spezialistin für Tanksicherheit mit eidgenössischem Fachausweis.*

2.3. **Chapter 1.1.3.6.3. lit. b of Annex 5 VTGGS**

In its letter of 8 March 2021, the Liechtenstein Government described the derogation in the following way:

'This provision in combination with Chapter 6.14 deals specifically with construction site tanks ("Baustellentanks"), a notion which the ADR is not familiar with.

Construction site tanks are containers used temporarily on construction sites in order to fuel up the machines used on the site. They consist of an inner tank and a closed outer collection basin (see 6.14.1.1 of Annex 5 VTGGS). They are considered the safest solution for such use.

Construction site tanks up to a volume of 1 210 litres carrying a maximum of 1 150 litres may deviate from certain ADR rules, but may only be used for the storage and transport of UN 1202 diesel fuel/heating oil. The provisions of Chapter 6.8 ADR have to be complied with, except for 6.8.2.1.3, 6.8.2.1.4 and 6.8.2.1.15 to 6.8.2.1.23. The construction and testing requirements for such tanks are foreseen in Chapter 6.14.2 and 6.14.3 of Annex 5 VTGGS. Construction site tanks are subject to standardisation and testing by the authority which is also responsible for testing according to ADR (the Swiss Inspectorate for dangerous goods, "Eidgenössisches Gefahrgutinspektorat"). The Inspectorate ensures that all relevant safety characteristics are complied with in order to ensure a safety level which is comparable to the ADR rules.

Due to these reasons, the exception foreseen in Chapter 1.1.3.6.3. lit. b in combination with 6.14 of Annex 5 VTGGS does not compromise the safety.'

In its report, DNV assessed the increased risk regarding collision, off-road driving and load dislocation. DNV came to the conclusion that the risk is increased with the derogation, but identified the two preventive measures, namely (i) ADR control/tests on construction site tanks and (ii) the usage of double shell construction site tanks.

As stated in the request from Liechtenstein, construction site tanks consist of an inner tank and closed out collection basin and that safety will not be compromised. Furthermore, Liechtenstein stated that '[t]he exemption from Chapter 1.1.3.6.3. lit. b and Chapter 6.14 of Annex 5 VTGGS will no longer be required from 2027 onwards, as these provisions will be repealed'.

3. **CONCLUSION**

The Authority considers that safety will not be compromised by granting these derogations and that the three requests for derogations meet the conditions in Article 6(2)(a) of the Directive. Thus, the derogations contained in Article 30, Article 36(2) and in Chapter 1.1.3.6.3. lit. b of Annex 5 to the Ordinance should be authorised.

On 17 December 2021, the Authority, by its Delegated Decision No 298/21/COL (Document No 1228844), duly submitted a draft Decision concerning the measures to be taken to the EFTA Transport Committee in accordance with Article 9 of the Directive. On 14 January 2022, the EFTA Transport Committee delivered no opinion on the draft Decision.

According to Article 3(4) of the Decision of the Standing Committee of the EFTA States No 3/2012/SC, the Authority may adopt the measure envisaged, unless the basic act provides that the draft measure may not be adopted where no opinion is delivered, which does not apply to the current procedure, and the Authority may therefore adopt the measure.

The Authority therefore grants the derogation as requested, based on Article 6(2)(a) of the Directive. The derogation is to be valid for 6 years, as provided for in Article 6(3) of the Directive, The Authority may, in line with Article 6(4) of the Directive, renew its authorisation.

The College Member with special responsibility for Transport has been empowered, on behalf of the Authority and under its responsibility, to adopt the measures, if the draft measures to be adopted are in accordance with the opinion of the EFTA Transport Committee.

HAS ADOPTED THIS DECISION:

Article 1

The three derogations requested by the Liechtenstein Government in relation to Article 30, Article 36(2) and Chapter 1.1.3.6.3. Iit. b of Annex 5 to the Liechtenstein Ordinance of 3 March 1998 on the transport of dangerous good by road are granted.

Article 2

The derogations set out in Article 1 of this Decision shall be published in the EEA section of the *Official Journal of the European Union* and in the EEA Supplement thereof, according to point 6 of Protocol 1 to the EEA Agreement.

Article 3

The derogations set out in Article 1 of this Decision shall be valid for a period of 6 years.

Article 4

This Decision is addressed to the Principality of Liechtenstein and shall take effect upon notification to that State.

Article 5

This Decision shall be authentic in the English language.

Done at Brussels, 9 February 2022.

For the EFTA Surveillance Authority, acting under Delegation Decision No 103/13/COL,

Árni Páll ÁRNASON	Melpo-Menie JOSÉPHIDÈS
Responsible College Member	*Countersigning as Director, Legal and Executive Affairs*

CORRIGENDA

Corrigendum to Commission Implementing Regulation (EU) 2022/389 of 8 March 2022 laying down implementing technical standards for the application of Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to the format, structure, content lists and annual publication date of the information to be disclosed by competent authorities

(Official Journal of the European Union L 79 of 9 March 2022)

On page 19, Annex IV, Part 1 ('Individual data per competent authority'), in the second column 'Reference to reporting template':

in row 090:

for: 'I 02.00 row 0030',

read: 'I 02.01 row 0030';

in row 100:

for: 'I 02.00 row 0020',

read: 'I 02.01 row 0020';

in row 110:

for: 'I 02.00 row 0040',

read: 'I 02.01 row 0040'.

On page 20, Annex IV, Part 2 ('Data on market risk'), in footnote (1):

for: '(1) The template shall include information on all investment firms and not only on those with positions related to K-',

read: '(1) The template shall include information on all investment firms and not only on those with positions related to K-factor net position risk.'.

On pages 20 and 21, Annex IV, Part 2 ('Data on market risk'), in the third column 'Reference to reporting template':

in row 020:

for: 'IF 04.00 row 0100',

read: 'I 04.00 row 0100';

in row 070:

for: 'IF 04.00 row 0110',

read: 'I 04.00 row 0110';

in row 100:

for: 'IF 04.00 row 0100',

read: 'I 04.00 row 0100';

in row 150:

for: 'IF 04.00 row 0110',

read: 'I 04.00 row 0110'.

On page 21, Annex IV, Part 2 ('Data on market risk'), the template, first column 'risk to market data', in the third subcolumn:

for: 'Total own funds requirements under each approach (1)',

read: 'Total own funds requirements under each approach'.

On page 21, Annex IV, Part 2 ('Data on market risk'), the template, in the second column 'Approach', in row 130:

for: 'of which the alternative internal model approach (2)',

read: 'of which the alternative internal model approach'.

On page 21, Annex IV, Part 2 ('Data on market risk'), the template, in note (3):

for: '(3) Own funds requirements as referred to in Article 9 of Regulation (EU) 2019/2033.',

read: '(3) Own funds requirements as referred to in Article 11 of Regulation (EU) 2019/2033.'.

On pages 24 and 25, Part 4 ('Data on exemptions'), the fourth column ('Art. 9') is deleted.

Corrigendum to Commission Implementing Regulation (EU) 2022/978 of 23 June 2022 amending Implementing Regulation (EU) 2019/159 imposing a definitive safeguard measure on imports of certain steel products

(Official Journal of the European Union L 167 of 24 June 2022)

On page 77, in Annex II, in the amendment to product number 9 in the table in Part IV.1 of Annex IV to Implementing Regulation (EU) 2019/159:

for:

‘9	Stainless Cold Rolled Sheets and Strips	7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7219 90 20, 7219 90 80, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81, 7220 20 89, 7220 90 20, 7220 90 80	Korea, Republic of	47 773,95	47 773,95	46 735,39	47 254,67	49 549,16	49 549,16	49 010,58	49 010,58	25%	09.8846
			Taiwan	44 302,39	44 302,39	43 339,29	43 820,84	45 948,59	45 948,59	45 449,15	45 449,15	25%	09.8847
			India	29 610,23	29 610,23	28 966,53	29 288,38	30 710,50	30 710,50	30 376,69	30 376,69	25%	09.8848
			South Africa	25 765,68	25 765,68	25 205,56	25 485,62	26 723,10	26 723,10	26 432,63	26 432,63	25%	09.8853
			United States	24 090,93	24 090,93	23 567,21	23 829,07	24 986,11	24 986,11	24 714,52	24 714,52	25%	09.8849
			Turkey	20 046,66	20 046,66	19 610,86	19 828,76	20 791,56	20 791,56	20 565,57	20 565,57	25%	09.8850
			Malaysia	12 700,45	12 700,45	12 424,35	12 562,40	13 172,38	13 172,38	13 029,20	13 029,20	25%	09.8851
			Other countries	50 944,84	50 944,84	49 837,34	50 391,09	52 837,87	52 837,87	52 263,55	52 263,55	25%	([11])’

read:

‘9	Stainless Cold Rolled Sheets and Strips	7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7219 90 20, 7219 90 80, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81, 7220 20 89, 7220 90 20, 7220 90 80	Korea, Republic of	47 773,95	47 773,95	46 735,39	47 254,67	49 549,16	49 549,16	49 010,58	49 010,58	25%	09.8846
			Taiwan	44 302,39	44 302,39	43 339,29	43 820,84	45 948,59	45 948,59	45 449,15	45 449,15	25%	09.8847
			India	29 610,23	29 610,23	28 966,53	29 288,38	30 710,50	30 710,50	30 376,69	30 376,69	25%	09.8848
			South Africa	25 765,68	25 765,68	25 205,56	25 485,62	26 723,10	26 723,10	26 432,63	26 432,63	25%	09.8853
			United States	24 090,93	24 090,93	23 567,21	23 829,07	24 986,11	24 986,11	24 714,52	24 714,52	25%	09.8849
			Turkey	20 046,66	20 046,66	19 610,86	19 828,76	20 791,56	20 791,56	20 565,57	20 565,57	25%	09.8850
			Other countries	63 645,29	63 645,29	62 261,69	62 953,49	66 010,25	66 010,25	65 292,75	65 292,75	25 %	[11]’

On page 85, in Annex II, in the amendment to product number 9 in the table in Part IV.2 of Annex IV to Implementing Regulation (EU) 2019/159:

for:

‘9	Other countries	50 944,84	50 944,84	49 837,34	50 391,09	52 837,87	52 837,87	52 263,55	52 263,55’

read:

‘9	Other countries	63 645,29	63 645,29	62 261,69	62 953,49	66 010,25	66 010,25	65 292,75	65 292,75’

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