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

## II

*(Non-legislative acts)*

## REGULATIONS

## COUNCIL REGULATION (EU) No 488/2013

of 27 May 2013

**amending Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof,

Having regard to Council Decision 2011/137/CFSP of 28 February 2011 concerning restrictive measures in view of the situation in Libya <sup>(1)</sup>,

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

Whereas:

- (1) Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya <sup>(2)</sup> gives effect to the measures provided for in Decision 2011/137/CFSP.
- (2) Council Decision 2013/45/CFSP of 22 January 2013 <sup>(3)</sup> amends Decision 2011/137/CFSP in order to permit the release of certain frozen funds or economic resources where they are required to respond to a judicial or administrative decision delivered in the Union, or a judicial decision enforceable in a Member State.
- (3) Council Decision 2013/182/CFSP of 22 April 2013 <sup>(4)</sup> amends Decision 2011/137/CFSP in accordance with Resolution 2095 (2013) of the United Nations Security Council (UNSC) which amends the exemptions to the arms embargo set out in paragraph 9(a) of Resolution 1970 (2011) of the UNSC and paragraph 13(a) of Resolution 2009(2011) of the UNSC.
- (4) Certain of those measures fall within the scope of the Treaty on the Functioning of the European Union and regulatory action at Union level is therefore necessary in order to implement them, in particular with a view to ensuring their uniform application by economic operators in all Member States.

- (5) Regulation (EU) No 204/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EU) No 204/2011 is amended as follows:

- (1) Article 3 is replaced by the following:

*"Article 3*

1. It shall be prohibited:
  - (a) to provide, directly or indirectly, technical assistance related to the goods and technology listed in the Common Military List of the European Union (\*) (Common Military List) or related to the provision, manufacture, maintenance and use of goods included in that list, to any person, entity or body in Libya or for use in Libya;
  - (b) to provide, directly or indirectly, technical assistance or brokering services related to equipment which might be used for internal repression as listed in Annex I, to any person, entity or body in Libya or for use in Libya;
  - (c) to provide, directly or indirectly, financing or financial assistance related to the goods and technology listed in the Common Military List or in Annex I, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items, or for any provision of related technical assistance to any person, entity or body in Libya or for use in Libya;
  - (d) to provide, directly or indirectly, technical assistance, financing or financial assistance, brokering services or transport services related to the provision of armed mercenary personnel in Libya or for use in Libya;

<sup>(1)</sup> OL L 58, 3.3.2011, p. 53.<sup>(2)</sup> OJ L 58, 3.3.2011, p. 1.<sup>(3)</sup> OJ L 20, 23.1.2013, p. 60.<sup>(4)</sup> OJ L 111, 23.4.2013, p. 50.

(e) to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in points (a) to (d).

2. By way of derogation from paragraph 1, the prohibitions laid down therein shall not apply to:

(a) the provision of technical assistance, financing or financial assistance related to non-lethal military equipment intended solely for humanitarian purposes or protective use as approved in advance by the competent authorities in the Member States, as listed in Annex IV;

(b) the provision of technical assistance, financing or financial assistance related to other sales and supply of arms and related material, as approved in advance by the Sanctions Committee;

(c) the provision of technical assistance, financing or financial assistance intended solely for security or disarmament assistance to the Libyan government;

(d) protective clothing, including flak jackets and helmets, temporarily exported to Libya by United Nations personnel, personnel of the Union or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.

3. By way of derogation from paragraph 1, the competent authorities in the Member States, as listed in Annex IV, may authorise the provision of technical assistance, financing and financial assistance related to equipment which might be used for internal repression, under such conditions as they deem appropriate, if they determine that such equipment is intended solely for humanitarian or protective use.

(\*) OJ C 69, 18.3.2010, p. 19.";

(2) Article 8 is replaced by the following:

#### "Article 8

1. By way of derogation from Article 5, with regard to persons, entities or bodies listed in Annex II, the competent authorities in the Member States, as listed in Annex IV, may authorise the release of certain frozen funds or economic resources, if the following conditions are met:

(a) the funds or economic resources in question are the subject of a judicial, administrative or arbitral lien established prior to the date on which the person, entity or body referred to in Article 5 was included in Annex II,

or was referred to in Article 5(4), or of a judicial, administrative or arbitral judgment rendered prior to that date;

(b) the funds or economic resources in question will be used exclusively to satisfy claims secured by such a lien or recognised as valid in such a judgment, within the limits set by applicable laws and regulations governing the rights of persons having such claims;

(c) the lien or judgment is not for the benefit of a person, entity or body listed in Annex II or III, or referred to in Article 5(4);

(d) recognising the lien or judgment is not contrary to public policy in the Member State concerned; and

(e) the Sanctions Committee has been notified by the Member State of the lien or judgment.

2. By way of derogation from Article 5, with regard to persons, entities or bodies listed in Annex III, the competent authorities in the Member States, as listed in Annex IV, may authorise the release of certain frozen funds or economic resources, if the following conditions are met:

(a) the funds or economic resources in question are the subject of an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in Article 5 was included in Annex III, or of a judicial or administrative decision rendered in the Union, or a judicial decision enforceable in the Member State concerned, prior to or after that date;

(b) the funds or economic resources in question will be used exclusively to satisfy claims secured by such a decision or recognised as valid in such a decision, within the limits set by applicable laws and regulations governing the rights of persons having such claims;

(c) the decision is not for the benefit of a natural or legal person, entity or body listed in Annex II or III, or referred to in Article 5(4); and

(d) recognising the decision is not contrary to public policy in the Member State concerned.

3. The relevant Member State shall inform the other Member States and the Commission of any authorisation granted under this Article.";

(3) In Article 9(1), the following points are added:

"(c) payments due under judicial, administrative or arbitral lien or judgment, as referred to in Article 8(1);

(d) payments due under judicial, administrative or arbitral decisions rendered in the Union, or enforceable in the Member State concerned, as referred to in Article 8(2);"

(4) In Article 13, the following paragraph is added:

"3. Paragraph 2 shall not prevent Member States from sharing that information, in accordance with their national law, with the relevant authorities of Libya and other Member States where necessary for the purpose of assisting the recovery of misappropriated assets."

*Article 2*

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

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

Done at Brussels, 27 May 2013.

*For the Council*  
*The President*  
C. ASHTON

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## COMMISSION IMPLEMENTING REGULATION (EU) No 489/2013

of 27 May 2013

**amending the Annex to Regulation (EU) No 37/2010 on pharmacologically active substances and their classification regarding maximum residue limits in foodstuffs of animal origin, as regards the substance double stranded ribonucleic acid homologous to viral ribonucleic acid coding for part of the coat protein and part of the intergenic region of the Israel Acute Paralysis Virus**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council <sup>(1)</sup>, and in particular Article 14 in conjunction with Article 17 thereof,

Having regard to the opinion of the European Medicines Agency formulated by the Committee for Medicinal Products for Veterinary Use,

Whereas:

- (1) The maximum residue limit ('MRL') for pharmacologically active substances intended for use in the Union in veterinary medicinal products for food-producing animals or in biocidal products used in animal husbandry should be established in accordance with Regulation (EC) No 470/2009.
- (2) Pharmacologically active substances and their classification regarding MRLs in foodstuffs of animal origin are set out in the Annex to Commission Regulation (EU) No 37/2010 of 22 December 2009 on pharmacologically active substances and their classification regarding maximum residue limits in foodstuffs of animal origin <sup>(2)</sup>.
- (3) An application for the establishment of MRLs for double stranded ribonucleic acid homologous to viral ribonucleic acid coding for part of the coat protein and part of the intergenic region of the Israel Acute Paralysis Virus for bees has been submitted to the European Medicines Agency.
- (4) The Committee for Medicinal Products for Veterinary Use has recommended that for this pharmacologically active

substance a standard pharmacological and toxicological approach, including the setting of a level of acceptable daily intake, is not appropriate and that there is no need to establish an MRL, applicable to honey, for double stranded ribonucleic acid homologous to viral ribonucleic acid coding for part of the coat protein and part of the intergenic region of the Israel Acute Paralysis Virus for bees.

- (5) According to Article 5 of Regulation (EC) No 470/2009 the European Medicines Agency is to always consider the use of MRLs established for a pharmacologically active substance in a particular foodstuff for another foodstuff derived from the same species, or MRLs established for a pharmacologically active substance in one or more species for other species. The Committee for Medicinal Products for Veterinary Use has concluded that the extrapolation to other food producing species cannot be supported for this substance.
- (6) Table 1 of the Annex to Regulation (EU) No 37/2010 should therefore be amended to include the substance double stranded ribonucleic acid homologous to viral ribonucleic acid coding for part of the coat protein and part of the intergenic region of the Israel Acute Paralysis Virus for bees while establishing the absence of the need to establish a MRL, applicable to honey.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Veterinary Medicinal Products,

HAS ADOPTED THIS REGULATION:

*Article 1*

The Annex to Regulation (EU) No 37/2010 is amended as set out in the Annex to this Regulation.

*Article 2*

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

<sup>(1)</sup> OJ L 152, 16.6.2009, p. 11.

<sup>(2)</sup> OJ L 15, 20.1.2010, p. 1.

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

Done at Brussels, 27 May 2013.

*For the Commission*

*The President*

José Manuel BARROSO

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ANNEX

In Table 1 of the Annex to Regulation (EU) No 37/2010, the following substance is inserted in alphabetical order:

Pharmacologically active Substance	Marker residue	Animal Species	MRL	Target Tissues	Other Provisions (according to Article 14(7) of Regulation (EC) No 470/2009)	Therapeutic Classification
'Double stranded ribonucleic acid homologous to viral ribonucleic acid coding for part of the coat protein and part of the intergenic region of the Israel Acute Paralysis Virus	NOT APPLICABLE	Bees	No MRL required	Honey	NO ENTRY	NO ENTRY'



## COMMISSION REGULATION (EU) No 490/2013

of 27 May 2013

## imposing a provisional anti-dumping duty on imports of biodiesel originating in Argentina and Indonesia

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup> (‘the basic Regulation’), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

## A. PROCEDURE

## 1. Initiation

- (1) On 29 August 2012, the European Commission (‘the Commission’) announced, by a notice published in the *Official Journal of the European Union* <sup>(2)</sup> (‘notice of initiation’), the initiation of an anti-dumping proceeding with regard to imports into the Union of biodiesel originating in Argentina and Indonesia (‘the countries concerned’).
- (2) The investigation was initiated following a complaint lodged on 17 July 2012 by the European Biodiesel Board (‘the complainant’) on behalf of producers representing more than 60% of the total Union production of biodiesel. The complaint contained prima facie evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of the investigation.
- (3) On 30 January 2013, the Commission made imports of the same product originating in the countries concerned subject to registration under Commission Regulation (EU) No 79/2013 of 28 January 2013 <sup>(3)</sup>.
- (4) On 10 November 2012, the Commission announced, by notice published in the *Official Journal of the European Union* <sup>(4)</sup>, the initiation of an anti-subsidy proceeding with regard to imports into the Union of biodiesel originating in Argentina and Indonesia and commenced a separate investigation.

## 2. Investigation period

- (5) The investigation of dumping and injury covered the period from 1 July 2011 to 30 June 2012 (‘the investigation period’ or ‘IP’). The examination of trends relevant for the assessment of injury covered the period from 1 January 2009 to the end of the IP (‘the period considered’).

## 3. Parties concerned by the investigation

- (6) The Commission officially advised the complainant, other known Union producers, the known exporting producers in Argentina and Indonesia, known importers, suppliers, distributors, users and associations known to be concerned, and the authorities of Argentina and Indonesia of the initiation of the investigation. The notice of initiation invited all parties concerned by the investigation to contact the Commission and make themselves known.
- (7) Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (8) The complainant, exporting producers in Argentina and Indonesia, importers and the authorities of Argentina and Indonesia made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

## 3.1. Sampling

- (9) In view of the large number of exporting producers in Argentina and Indonesia, unrelated importers in the Union and Union producers involved in the investigation and in order to complete the investigation within the statutory time limits, the Commission announced in the notice of initiation that it might limit to a reasonable number the exporting producers in Argentina and Indonesia, the unrelated importers and Union producers that would be investigated by selecting a sample in accordance with Article 17 of the basic Regulation (this process is also referred to as ‘sampling’).

## 3.2. Sampling of exporting producers in Argentina

- (10) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in Argentina were requested to make themselves known to the Commission and provide information specified in the notice of initiation.
- (11) Ten exporting producers or groups of exporting producers provided the requested information and agreed to be included in the sample. However, two companies reported no exports to the Union (or no production at all) during the IP.
- (12) The remaining eight (groups of) exporting producers accounted for the entire volume exported to the Union during the IP.

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> OJ C 260, 29.8.2012, p. 8.

<sup>(3)</sup> OJ L 27, 29.1.2013, p. 10.

<sup>(4)</sup> OJ C 342, 10.11.2012, p. 12.



(13) In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three exporting producers or groups of exporting producers based on the largest representative volume of exports of the product concerned to the Union, which could reasonably be investigated within the time available. The selected sample accounted for 86% of the total volume of exports to the Union of the product concerned in the IP as reported by the eight exporting producers referred to above in recital (12).

(14) In accordance with Article 17(2) of the basic Regulation, all known exporting producers, as well as the Argentine producers' association and the Argentine authorities, were consulted on the selection of the sample and raised no objections.

### 3.3. Individual examination

(15) No Argentine company that was not included in the sample requested individual examination pursuant to Article 17(3) of the basic Regulation.

### 3.4. Sampling of exporting producers in Indonesia

(16) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in Indonesia were requested to make themselves known to the Commission and provide information specified in the notice of initiation.

(17) Eight exporting producers or groups of exporting producers provided the requested information and agreed to be included in the sample. However, three companies reported no exports to the Union during the IP.

(18) The remaining five (groups of) exporting producers accounted for the entire volume exported to the Union during the IP.

(19) In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of four exporting producers or groups of exporting producers based on the largest representative volume of exports of the product concerned to the Union, which could reasonably be investigated within the time available. The selected sample accounted for 99% of the total volume of exports to the Union of the product concerned in the IP as reported by the five exporting producers referred to above in recital (18).

(20) In accordance with Article 17(2) of the basic Regulation, all known exporting producers, as well as the Indonesian authorities, were consulted and raised no objections.

### 3.5. Individual examination

(21) No Indonesian company that was not included in the sample requested individual examination pursuant to Article 17(3) of the basic Regulation.

### 3.6. Sampling of unrelated importers

(22) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all unrelated importers were requested to make themselves known to the Commission and to provide information specified in the notice of initiation. However no importers cooperated in this investigation.

### 3.7. Sampling of Union producers

(23) The Commission announced in the notice of initiation that it had provisionally selected a sample of Union producers. This sample consisted of eight Union producers that were known to the Commission prior to the initiation of the investigation to produce biodiesel. The Commission selected the sample on the basis of production volume, sales volume and geographical location. The sampled Union producers accounted for 27% of Union production.

(24) Interested parties were also invited in the notice of initiation to make their views known on the provisional sample. Following publication of the proposed sample two of the companies that were to be sampled withdrew their cooperation and they were replaced by two other companies. The Union industry also commented that due to the large number of SME producers of biodiesel at least one should be included in the sample. This request was accepted.

(25) The sample is considered to be representative of the Union industry.

### 3.8. Questionnaire replies

(26) Questionnaires were sent to the three sampled exporting producers or groups of producers in Argentina, to the four sampled exporting producers or groups of producers in Indonesia, and to the eight sampled Union producers.

(27) Questionnaire replies were received from the seven sampled exporting producers or producer groups in Argentina and Indonesia, eight sampled Union producers and three users.

### 3.9. Verification visits

(28) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits were carried out at the premises of the following companies:

#### (a) Producers located in the Union

— Bio-Oils Huelva S.L., Huelva, Spain

— Biocom Energia S.L., Valencia, Spain

- Diester Industrie S.A.S., Paris, France
- Elin Biofuels S.A., Kifissia, Greece
- Novaol S.R.L., Milan, Italy
- Perstorp BioProducts A.B., Stenungsund, Sweden
- Preol A.S., Lovosice, Czech Republic
- VERBIO Vereinigte BioEnergie A.G., Leipzig, Germany

**(b) Exporting producers in Argentina**

- Louis Dreyfus Commodities S.A., Buenos Aires ('LDC');
- group of related companies "Renova":
  - Molinos Río de la Plata S.A., Buenos Aires ('Molinos');
  - Oleaginoso Moreno Hermanos S.A.F.I.C.I., Bahia Blanca ('Oleaginoso');
  - Renova S.A., Bahia Blanca ('Renova');
  - Vicentin S.A.I.C., Avellaneda ('Vicentin');
- group of related companies "T6":
  - Aceitera General Deheza S.A., General Deheza, Rosario ('AGD');
  - Bunge Argentina S.A., Buenos Aires ('Bunge');
  - T6 Industrial S.A., Puerto General San Martín, Santa Fe ('T6').

**(c) Traders outside the EU related to exporting producers in Argentina**

- Molinos Overseas, Montevideo, Uruguay ('Molinos Overseas');
- Louis Dreyfus Commodities Suisse, Geneva, Switzerland ('LDC Suisse');

**(d) Exporting producers in Indonesia**

- PT. Ciliandra Perkasa, Jakarta, Indonesia ('CPL')
- PT. Musim Mas, Medan, Indonesia ('PTMM')
- PT. Pelita Agung Agrindustri, Medan, Indonesia ('PAA')
- group of related companies ('Wilmar'), PT. Wilmar Bioenergi Indonesia, PT. Wilmar Nabati Indonesia;
  - PT. Wilmar Bioenergi Indonesia, Medan, Indonesia ('WBI')
  - PT. Wilmar Nabati Indonesia, Medan, Indonesia ('WINA')

**(e) Traders outside the EU related to exporting producers in Indonesia**

- First Resources Limited, Suntex Tower Three, Singapore ('FRL')
- IM Biofuel Pte Ltd, Gateway West, Singapore ('IMBS')
- Inter-continental Oils and Fats Pte Ltd, Gateway West, Singapore ('ICOF')
- Virgen Oils & Fats Pte Ltd, Marina Bay Financial Centre, Singapore ('VOF')
- Wilmar Trading Pte Ltd, Neil road, Singapore

**(f) Importers in the Union related to Argentinian and Indonesian exporters**

- Campa Iberia S.A.U., Tarragona, Spain ('CAMP')
- IM Biofuel Italy S.R.L., Milan, Italy ('IMBI')
- Louis Dreyfus Commodities España S.A., Madrid, Spain ('LDC Spain');
- Losur Overseas S.A., Madrid, Spain ('Losur');
- Wilmar Europe Trading B.V., Barendrecht, The Netherlands ('WET BV') <sup>(1)</sup>

**B. PRODUCT CONCERNED AND LIKE PRODUCT**

**1. Product concerned**

- (29) The product concerned is fatty-acid mono-alkyl esters and/or paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin, in pure form or as included in a blend originating in Argentina and Indonesia, currently falling within CN codes ex 1516 20 98, ex 1518 00 91, ex 1518 00 95, ex 1518 00 99, ex 2710 19 43, ex 2710 19 46, ex 2710 19 47, 2710 20 11, 2710 20 15, 2710 20 17, ex 3824 90 97, 3826 00 10 and ex 3826 00 90 ('the product concerned', commonly referred to as 'biodiesel').
- (30) The investigation showed that biodiesel produced in Argentina is exclusively "soybean methyl ester" (SME) derived from soybean oil, and that biodiesel produced in Indonesia is exclusively "palm methyl ester" (PME) derived from palm oil, whereas biodiesel produced in the Union is mainly "rapeseed methyl ester" (RME) but also from other feedstocks, including waste oils as well as virgin oils.
- (31) SME, PME and RME all belong to the category of fatty acid methyl esters (FAME). The term "ester" refers to the transesterification of vegetable oils, namely, the mingling of the oil with alcohol, which generates biodiesel and, as a by-product, glycerine. The term "methyl" refers to methanol, the most commonly used alcohol in the process.

<sup>(1)</sup> At the premises of WET BV, the accounts of other companies from the Wilmar group located in Europe were also verified: Wilmar Italia Srl, Milan Italy; Oxem Oleo, Mezzana Bigli, Italy

- (32) SME and PME biodiesel could be used in their pure forms but they are generally blended, either among themselves or with RME, before being used in the European Union. The reason for blending SME with PME is that SME in its pure form does not meet the European standard EN 14214 as regards iodine and cetane numbers. The reason for blending PME (and SME) with RME is that PME and SME have a higher Cold Filter Plugging Point (CFPP) than RME and are not therefore suitable for use in their pure form during winter months in cold regions of the European Union.
- (33) The blends of biodiesels and mineral diesel are ultimately used in the transport sector as a fuel in diesel-power engines of road vehicles such as cars, trucks, buses and also in trains. Biodiesels in their pure forms or blended with mineral diesels can also be used as a heating fuel in domestic, commercial or industrial boilers and as a fuel for generators to produce electricity.
- (37) However one European importer of palm kernel oil based fatty acid methyl ester from Indonesia requested End User Relief for their imports which were not destined for fuel use, but for processing into unsaturated fatty alcohol.
- (38) End User Relief is a scheme administered by national Customs administrations whereby duties paid on importation are subject to a relief based on the final certified use of the raw materials imported. The scheme is set out in the Implementing Provisions of the Community Customs Code <sup>(1)</sup>.
- (39) This request will be addressed at the definitive stage of the investigation after the Commission has received comments from interested parties on whether this specific request should be granted for imports of palm kernel oil fatty acid methyl ester for non-fuel use. These comments should address whether this Relief could be used to circumvent any definitive duties if they are imposed and the effect on imports of biodiesel for non-fuel use from countries already subject to measures.

## 2. Like product

- (34) The investigation has shown that the product concerned, the product produced and sold on the domestic market of Argentina and Indonesia, and the product produced and sold in the Union by the Union industry have similar basic physical, chemical, technical characteristics and uses. They are therefore provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

## 3. Product exclusion request

- (35) One Indonesian producer requested that fractionated methyl esters be excluded from the product scope of the proceeding. Fractional distillation of fatty acid methyl esters separates them into components with different chemical characteristics for different end uses. They stated that fractionated methyl esters, which the company produced and exported to the EU, were not biodiesel and not used for fuel, but other industrial applications. They also stated that the raw material used for these fractionated methyl esters was coconut oil or palm kernel oil, rather than the crude palm oil usually used to make biodiesel in Indonesia.
- (36) Fractionated methyl esters fall within the product description of the product concerned, as they remain fatty acid methyl esters and are manufactured from raw materials that are used to manufacture biodiesel. Although it does not in itself meet the European norm (EN 14214) it can be mixed with other biodiesels to create a blend that meets the norm. This is exactly the same as palm methyl ester biodiesel, which itself does not meet the European norm without blending. This argument is therefore rejected.

## C. DUMPING

### 1. Argentina

#### 1.1. Normal value

- (40) The Commission first examined for each sampled exporting producer whether the total domestic sales volume of the like product to independent customers in Argentina was representative, i.e. whether the total volume of such sales represented at least 5% of its total export sales volume of the product concerned to the Union during the IP in accordance with Article 2(2) of the basic Regulation. The Commission found that for each sampled company or group of companies the total volume of such sales represented at least 5% of the total export sales volume to the Union during the IP.
- (41) The Commission subsequently identified for each sampled company or group of companies those product types sold domestically that were identical or comparable with the types sold for export to the Union.
- (42) For each product type sold by each sampled company or group of companies on their domestic market and found to be identical or comparable with the product type sold for export to the Union, it was examined whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the total volume of that product type sold on the domestic market to independent customers during the IP represented at least 5% of the total volume of the comparable product type sold for export to the Union.

<sup>(1)</sup> Commission Regulation (EEC) No 2454/93 as amended, in particular by Commission Regulation (EC) No. 1602/2000, Articles 291 to 300

- (43) Subsequently, the Commission assessed for each sampled company or group of companies whether the domestic sales of the like product were made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for each product type the proportion of profitable sales to independent customers on the domestic market during the IP.
- (44) The investigation has shown that the Argentinian market is heavily regulated by the State. Blending fossil diesel and biodiesel is mandatory in Argentina (at 7% of biodiesel during the IP). The total amount of biodiesel needed to meet this blending requirement is apportioned, via the attribution of quotas, among a selected number of Argentine biodiesel producers. Oil companies are obliged to purchase biodiesel from those Argentine biodiesel producing companies to meet the mandatory blending. The price is fixed by the State and published by the Argentine Ministry of Energy. During the IP, this State-fixed reference price was calculated according to a complex formula which took into account the cost of production (raw materials, transport and other costs) and ensured the achievement of a certain amount of profit. The parameters used in the determination of the reference price were established on the basis of estimated costs of the most inefficient producer located in the most remote area of the country and resulted in significant profitability for the Argentinian producers.
- (45) Under these conditions, domestic sales were not considered as being made in the ordinary course of trade and the normal value of the like product had to be provisionally constructed pursuant to Article 2(3) and (6) of the basic Regulation by adding to the company's own production costs during the investigation period, the selling, general and administrative expenses incurred ('SG&A') and a reasonable profit margin. The complainants have claimed that the Differential Export Tax system in Argentina depresses the price of soya beans and soya bean oil and therefore distorts the costs of biodiesel producers. The Commission does not have enough information at this stage to make a decision as to the most appropriate way to address this claim. The question as to whether the costs reasonably reflect the costs associated with the production of the product concerned will therefore be further examined at the definitive stage as well as in the ongoing anti-subsidy investigation.
- (46) Considering the prevailing market condition, as described in recital (44) above, the Commission considered that the amount for profit could not be based on actual data of the sampled companies. Therefore, the amount for profit used when constructing the normal value was determined pursuant to Article 2(6)(c) of the basic Regulation on the basis of the reasonable amount of profit that a young and innovative capital intensive industry of this type under normal conditions of competition in a free and open market could achieve, that is 15% based on turnover.

#### 1.2. Export price

- (47) The sampled exporting producers exported to the Union either directly to independent customers or through related companies.
- (48) Where the product concerned was directly exported to independent customers in the Union, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable for the product concerned.
- (49) Where export sales to the Union were made through related trading companies located inside the Union, the export price was established in accordance with Article 2(9) of the basic Regulation on the basis of the price at which the imported product was first resold to independent customers in the Union. In such cases adjustments were made for all costs incurred between importation and resale, and for profits accruing. For the purpose of this calculation, a level of profit of 5% based on turnover was considered reasonable.

#### 1.3. Comparison

- (50) The normal value and export price of the sampled exporting producers were compared on an ex-works basis.
- (51) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.
- (52) On this basis, adjustments were made for transport, ocean freight and insurance costs, handling, loading and ancillary costs, export duties and commissions in all cases where demonstrated to affect price comparability.
- (53) Where export sales to the Union were made through related trading companies located outside the Union, the Commission examined whether or not such related traders should be treated as the export sales department of the exporting producer or as an agent working on a commission basis.
- (54) One trading company was closely related and fully controlled by the exporting producer, did not have any negotiating power or influence on the prices or delivery terms, and was trading exclusively products manufactured by the exporting producer in Argentina. Therefore, it was considered as an export sales department of the exporting producer and no adjustment for commission was made. One trading company located outside the EU was found to have looser links with the exporting producer in Argentina, was not under its control and trading a number of other products manufactured by other producers. In this case, it was considered that the trading company was carrying out functions similar to those of a trader acting on a commission basis. As a consequence, export sales



prices were adjusted in accordance with Article 2(10)(i) of the basic Regulation to take account of the notional mark-up received by the trader.

- (55) The actual difference between the sales prices charged by the exporting producer in Argentina to the related trader and the sales prices charged by the related traders to the first independent customer in the EU was not used to calculate the adjustment. The adjustment was calculated on the basis of the SG&A of the related trader and a reasonable amount of profit. The actual profit of the company was not considered to be reliable due to the nature of the relationship.

#### 1.4. Dumping margin

- (56) For the sampled exporting producers, the weighted average normal value of each type of the like product was compared with the weighted average export price, as provided for in Article 2(11) and (12) of the basic Regulation.
- (57) The weighted average dumping margin for the cooperating exporting producers not included in the sample was calculated in accordance with the provisions of Article 9(6) of the basic Regulation. This margin was established on the basis of the margins established for the three sampled exporting producers.
- (58) With regards to all other exporting producer in Argentina, the dumping margin was established on the basis of the facts available in accordance with Article 18 of the basic Regulation. To this end the level of cooperation was first established by comparing the volume of exports to the Union reported by the cooperating exporting producers with the equivalent Eurostat import statistics. Since the level of cooperation was very high at 100% of the total exports to the Union during the IP, the residual dumping margin applicable to all other exporting producers in Argentina was set at a level corresponding to the one found for the cooperating exporting producer in the sample with the highest dumping margin.
- (59) The provisional dumping margins thus established, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

#### Dumping margin

Company	Provisional dumping margin
Louis Dreyfus Commodities S.A.	7,2%
Group "Renova" (Molinos Río de la Plata S.A., Oleaginosa Moreno Hermanos S.A.F.I.C.I. y A. and Vicentin S.A.I.C.)	6,8%

Company	Provisional dumping margin
Group "T6" (Aceitera General Deheza S.A., Bunge Argentina S.A.)	10,6%
Other cooperating companies	7,9%
All other companies	10,6%

## 2. Indonesia

### 2.1. Normal value

- (60) The Commission first examined for each sampled exporting producer whether the total domestic sales volume of the like product to independent customers in Indonesia was representative, i.e. whether the total volume of such sales represented at least 5% of its total export sales volume of the product concerned to the Union during the IP in accordance with Article 2(2) of the basic Regulation. The Commission found that, except for two exporting producers, the domestic sales were not representative.
- (61) For the exporting producers with global representativity, the Commission subsequently identified the product types sold domestically that were identical or comparable with the types sold for export to the Union.
- (62) For these identical or comparable product types, it was examined whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular product type were considered sufficiently representative when the total volume of that product type sold by the exporting producers on the domestic market to independent customers during the IP represented at least 5% of its total sales volume of the comparable product type exported to the Union. For the exporting producers with global representativity, no representative sales or no sales at all were found on the domestic market of the product type that was exported.
- (63) Therefore, for all exporting producers, normal value of the like product was provisionally constructed pursuant to Article 2(3) and (6) of the basic Regulation by adding to the company's own production costs during the investigation period, the selling, general and administrative expenses ('SG&A') incurred and a reasonable profit margin. The complainants have claimed that the Differential Export Tax system in Indonesia depresses the price of palm oil and therefore distorts the costs of biodiesel producers. The Commission does not have enough information at this stage to make a decision as to the most appropriate way to address this claim. The question as to whether the costs reasonably reflect the costs

associated with the production of the product concerned will therefore be further examined at the definitive stage as well as in the ongoing anti-subsidy investigation.

(64) The investigation has shown that the Indonesian domestic market of biodiesel is heavily regulated by the State. The fully State-owned oil and gas company Pertamina is by far the biggest company active on the domestic market (more than 90% of the domestic biodiesel purchases from the sampled producers). Pertamina is mandated by the State to blend the biofuels with fossil fuels for sale at its gas stations. Every month, the Indonesian Ministry of Trade administratively sets the so called "HPE price (or Export Check Price)" which is a benchmark price used to calculate the monthly level of export duties. Pertamina purchases biodiesel at the level of the HPE price set by the Indonesian government.

(65) Under these conditions the amount of profit could not be based on actual data from the sampled companies given that the domestic sales are not considered as being made in the ordinary course of trade. Therefore, the amount for profit used when constructing the normal value was determined pursuant to Article 2(6)(c) of the basic Regulation on the basis of the reasonable amount of profit that a young and innovative capital intensive industry of this type under normal conditions of competition in a free and open market could achieve, that is 15% based on turnover.

## 2.2. Export price

(66) The sampled exporting producers exported to the Union either directly to independent customers or through related companies.

(67) Where the product concerned was directly exported to independent customers in the Union, the export price was established in accordance with Article 2(8) of the basic Regulation on the basis of the prices actually paid or payable for the product concerned.

(68) Where export sales to the Union were made through related trading companies located inside the Union, export price was established in accordance with Article 2(9) of the basic Regulation on the basis of the price at which the imported product was first resold to independent customers in the Union. In such cases adjustments were made for all costs incurred between importation and resale, and a level of profit of 5% based on turnover was considered reasonable.

(69) Premiums charged to clients in one Member State who were - subsequent to a biodiesel purchase - seeking to benefit from the 'double counting' biodiesel regulatory

framework in place<sup>(1)</sup>, were not considered part of the export price. Such premiums are not linked to the product concerned as such, but rather to the provision of documents by the related importer in order to obtain a government certificate which enables the related importer's client to fulfil the necessary conditions to blend only half the biodiesel quantity (given that this biodiesel can be counted 'double').

## 2.3. Comparison

(70) The normal value and export price of the sampled exporting producers were compared on an ex-works basis.

(71) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.

(72) On this basis, adjustments were made for transport, ocean freight and insurance costs, handling, loading and ancillary costs, credit costs, export duties, survey fees, bank charges and commissions in all cases where demonstrated to affect price comparability.

(73) Where export sales to the Union were made through related trading companies located outside the Union, the Commission examined whether or not such related traders should be treated as the export sales department of the exporting producer or as an agent working on a commission basis.

(74) One company or group of companies was found to have established a contract with a related trading company to trade, among other things, biodiesel in exchange for a commission. In this case, it was considered that the related trader should be treated as an agent working on a commission basis and therefore export sales prices were adjusted in accordance with Article 2(10)(i) of the basic Regulation to take account of the mark-up received by the trader.

(75) For one exporting producer, the product concerned (PME) was blended with RME before being sold to the first independent customer. Therefore, in accordance with Article 2(10)(a), an adjustment was made for differences in the physical characteristics of the product concerned.

<sup>(1)</sup> This Member State recognises biodiesel made from Palm Fatty Acid Distillate ("PFAD") as "double counting" which means the contribution made by biofuels produced from PFAD shall be considered to be twice that made by other biofuels. You would therefore only have to blend the mineral diesel with half of such double counting biodiesel. Double counting biodiesel is more expensive than the normal/single counting biodiesel, hence a premium is charged to the client. However, it is a national practice that for the double counting biodiesel, the client will only pay this premium upon approval by the government (via a certificate) that the double counting biodiesel fulfils all the criteria to be qualified as double counting biodiesel. Once the government has issued this certificate, the related importer can send a separate invoice to the client for the outstanding premium that has to be paid.

#### 2.4. Dumping margin

- (76) For the sampled exporting producers, the weighted average normal value of each type of the like product was compared with the weighted average export price, as provided for in Article 2(11) and 2(12) of the basic Regulation.
- (77) The weighted average dumping margin for the cooperating exporting producers not included in the sample was calculated in accordance with the provisions of Article 9(6) of the basic Regulation. This margin was established on the basis of the margins established for the sampled exporting producers, disregarding the margin of the exporting producer with a zero dumping margin.
- (78) With regards to all other exporting producer in Indonesia, the dumping margin was established on the basis of the facts available in accordance with Article 18 of the basic Regulation. To this end the level of cooperation was first established by comparing the volume of exports to the Union reported by the cooperating exporting producers with the equivalent Eurostat import statistics. Since the level of cooperation was very high at 99% of the total exports to the Union during the IP, the residual dumping margin applicable to all other exporting producers in Indonesia was set at a level corresponding to the one found for the cooperating exporting producer in the sample with the highest dumping margin.
- (79) The provisional dumping margins thus established, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

#### Dumping margin

Company	Provisional dumping margin
PT. Ciliandra Perkasa	0,0%
PT. Musim Mas	2,8%
PT. Pelita Agung Agrindustri	5,3%
PT. Wilmar Bioenergi Indonesia	9,6%
PT. Wilmar Nabati Indonesia	9,6%
Other cooperating companies	6,5%
All other companies	9,6%

#### D. INJURY

##### 1. Definition of the Union industry and Union production

- (80) The like product is manufactured by 254 producers in the Union. They constitute the Union industry within the meaning of Article 4(1) of the basic Regulation and will hereafter be referred to as 'the Union industry'.

- (81) Allegations were received that a significant number of large Union producers were related to exporters in Argentina and/or were importing biodiesel from Argentina and therefore should be excluded from the definition of the Union industry.
- (82) After investigation, three companies were excluded from the definition of the Union industry due to their reliance on imports from the countries concerned, where imports had reached 63%, 85% and 71% respectively of their own production during the IP. Two further companies were excluded as they had not produced biodiesel during the investigation period. No data from these companies has been used in the sections below. It was provisionally concluded that there were no grounds to exclude any other Union producers from the definition of the Union industry.
- (83) All available information concerning the Union industry, including information provided in the complaint and data collected from Union producers before and after the initiation of the investigation, was used in order to establish the total Union production for the IP. Based on this information it was found that the total Union production was around 9 052 871 tonnes during the IP. As indicated above, eight Union producers were selected in the sample representing 27% of the total Union production of the like product.

##### 2. Union consumption

Table 1

Union consumption	2009	2010	2011	IP
Tonnes	11 165 831	11 538 511	11 159 706	11 728 400
Index 2009 = 100	100	103	100	105

Source: Eurostat, data from the Union industry

- (84) Union consumption was established on the basis of the volume of the total Union production on the Union market of all Union producers, minus their exports, plus imports from Argentina and Indonesia and imports from other third countries.
- (85) The volume of imports from Argentina and Indonesia was taken from Eurostat data for the different CN codes under which the product has been classified.
- (86) Based on the above, Union consumption of biodiesel increased by 5% between 2009 and the end of the IP.

##### 3. Cumulative assessment of the effects of the imports from the countries concerned

- (87) As set out in Article 3(4) of the basic Regulation, an assessment of the effect of the imports from two countries can only be cumulatively assessed if two conditions are met.



- (88) The first is that the dumping margin in relation to imports from both countries is more than de minimis, and that the volume of imports is not negligible. The margin of dumping established in relation to the imports from Argentina and Indonesia was above the de minimis threshold as defined in Article 9(3) of the basic Regulation and the volume of imports from each of the countries concerned was not negligible in the sense of Article 5(7) of the basic Regulation, with market shares of 10,8% and 8,5% respectively in the IP.

- (89) The second is that the imported products are in competition with each other, and in competition with the like Union product. Imports of biodiesel from Argentina and Indonesia are blended with mineral diesel by the same trading companies and sold to customers across the Union in direct competition with biodiesel produced by the Union industry.

- (90) In view of the above, it is provisionally considered that all the criteria set out in Article 3(4) of the basic Regulation are met and that imports from Argentina and Indonesia should be examined cumulatively for the purpose of the injury analysis.

#### 4. Volume and market share of the imports from the countries concerned

Table 2

	2009	2010	2011	IP
Imports from Argentina				
Tonnes	853 589	1 179 285	1 422 142	1 263 230
Index 2009 = 100	100	138	167	148
Market share	7,6%	10,2%	12,7%	10,8%
Index 2009 = 100	100	135	167	141
Imports from Indonesia				
Tonnes	157 915	495 169	1 087 518	995 663
Index 2009 = 100	100	314	689	631
Market share	1,4%	4,3%	9,7%	8,5%
Index 2009 = 100	100	303	689	600

	2009	2010	2011	IP
Total market share	9,1%	14,5%	22,5%	19,3%
Index 2009 = 100	100	160	248	213

Source: Eurostat

- (91) Import volumes from Argentina and Indonesia increased significantly from 2009 to the IP, imports from Indonesia increasing at a faster rate than imports from Argentina. Market share increased from 9,1% to 19,3% during the same period.

#### 5. Prices of imports from the countries concerned and price undercutting

##### 5.1. Price evolution

Table 3

Import price EUR/tonne	2009	2010	2011	IP
Argentina	629	730	964	967
Index 2009 = 100	100	116	153	154
Indonesia	597	725	864	863
Index 2009 = 100	100	121	145	145
Total	624	728	920	921
Index 2009 = 100	100	117	147	148

Source: Eurostat

- (92) Although import prices rose during the period considered, in particular between 2010 and 2011, prices of biodiesel from both Argentina and Indonesia remained below the prices of the Union industry throughout the period considered.

##### 5.2. Price undercutting

- (93) In order to determine price undercutting during the IP, the weighted average sales prices of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level, were compared to the corresponding weighted average prices of the imports from the sampled Argentinian and Indonesian producers to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for customs duties and post-importation costs.

- (94) A comparison between the SME from Argentina and the PME from Indonesia with the product manufactured and sold on the Union market was made based on the Cold Filter Plugging Point (CFPP), which is the temperature at which the biodiesel turns back into fat and cannot be used as fuel.
- (95) All sales from Argentina to the EU were at a CFPP of 0 degrees centigrade. These sales were therefore compared to the sales of Union producers of biodiesel at a CFPP of 0.
- (96) All sales from Indonesia to the EU were at a CFPP of 13 degrees centigrade. Given the very small volume of sales of Union producers at this CFPP - since PME from Indonesia is almost always blended with other biodiesel from other sources before being sold to the first independent customer – a direct comparison was not considered reasonable. The export price of the PME from Indonesia at CFPP 13 was therefore adjusted upwards to a price at CFPP 0 by taking the difference in price on the Union market between the sales of PME at CFPP 13 manufactured by the Union industry and the average price of biodiesel at CFPP 0.
- (97) Based on the above methodology, the difference between prices from Argentina and Indonesia and Union prices, expressed as a percentage of the Union industry's weighted average ex-works price, i.e. the price under-cutting margin, ranged from 2,5% to 9,1%.

## 6. Economic situation of the Union industry

- (98) In accordance with Article 3(5) of the basic Regulation, the examination of the effects of the dumped imports on the Union industry included an evaluation of all economic indicators established for the Union industry over the period analysed.
- (99) As mentioned above, data verified from a sample of Union producers was used to examine the possible injury suffered by the Union industry.
- (100) To analyse injury, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission analysed the macroeconomic indicators for the period considered on the basis of data provided by the Union industry relating to all Union producers. The Commission analysed the microeconomic indicators on the basis of the verified data collected from the sampled Union producers.
- (101) The following macroeconomic indicators were assessed on the basis of information relating to all producers of biodiesel in the Union: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin and recovery from past dumping.
- (102) The following microeconomic indicators were assessed on the basis of information relating to the sampled producers of biodiesel in the Union: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments and ability to raise capital.

## 7. Macroeconomic indicators

### 7.1. Production capacity, production and capacity utilisation

Table 4

	2009	2010	2011	IP
Production capacity (tonnes)	20 359 000	21 304 000	21 517 000	22 227 500
Index 2009 = 100	100	105	106	109
Production volume (tonnes)	8 745 693	9 367 183	8 536 884	9 052 871
Index 2009 = 100	100	107	98	104
Capacity utilisation	43 %	44 %	40 %	41 %
Index 2009 = 100	100	102	92	95

Source: Data supplied by the Union industry

- (103) Production of the Union industry increased over the period considered in line with consumption. Capacity remained relatively stable in particular between 2010 and the IP; therefore capacity utilisation remained low throughout the period. The Union industry was unable to use the capacity previously installed, or exploit to any extent the increase in capacity during the period, made in anticipation of an effect from the imposition of measures against the USA, or the expected quota systems and increased mandates from some Member States.

### 7.2. Sales volume and market share

Table 5

	2009	2010	2011	IP
Sales volumes (tonnes)	9 454 786	9 607 731	8 488 073	9 294 137
Index 2009 = 100	100	102	90	98
Market share	84,7 %	83,3 %	76,1 %	79,2 %
Index 2009 = 100	100	98	90	94

Source: Data supplied by the Union industry

- (104) Sales volumes to unrelated companies in the Union remained rather stable during the period. Given that consumption rose slightly during the period, a stable sales volume leads to a decreased market share (down 5.5 percentage points), which was taken by imports from the countries concerned.

	2009	2010	2011	IP
Productivity (tonnes/FTE)	4 707	4 558	4 142	4 354
Index 2009 = 100	100	97	88	93

Source: Data supplied by the Union industry.

### 7.3. Growth

- (105) The growth of the Union industry is reflected in its volume indicators such as production, sales but in particular, in its market share. Despite an increase in consumption during the period analysed the market share of the Union producers did not grow in line with consumption. The market share of the Union industry declined over the period as the volume of imports rose. During the same period, imports from Indonesia and Argentina managed to gain over 10 percentage points of market share. The fact that the Union industry could not fully benefit from market growth had an overall negative impact on its economic situation.

- (106) As the biodiesel industry is a capital intensive industry not requiring a large labour force in the production process, and given the amount of subcontracting of the actual production of biodiesel, the numbers of people employed in manufacture is not large. Given production volumes increased slightly during the period, employment also increased.

- (107) As employment increased but at a higher rate than production, productivity decreased by 7 percentage points between 2009 and the end of the IP.

### 7.4. Employment and productivity

Table 6

	2009	2010	2011	IP
Employment - Full time equivalent (FTE)	1 858	2 055	2 061	2 079
Index 2009 = 100	100	111	111	112

### 7.5. Magnitude of the actual margin of dumping and recovery from past dumping

- (108) The Union industry had been suffering injury due to dumped imports from the United States of America until 2009, where the period of investigation for this proceeding starts. The duties in force against imports from the United States of America were designed to provide a level playing field where the Union industry could compete fairly with these imports and recover from the injury suffered.

(109) This has clearly not happened. The Union industry is now less profitable than in 2009 and has lost market share, even from 2009, to imports from Argentina and Indonesia that are undercutting Union prices. Capacity utilisation is down even as consumption in the Union has risen. Recovery from past dumping has clearly not taken place.

(110) The dumping margins for exporting producers in Argentina and Indonesia are specified above in the dumping section. One exporting producer in Indonesia, accounting for a low level of imports from Indonesia, was found not to be dumping. However the remaining exporting producers in Indonesia and all exporting producers in Argentina were found to be dumping biodiesel onto the Union market. Furthermore, given the volumes and the prices of the dumped imports from the two countries concerned, the impact of the actual margin of dumping cannot be considered to be negligible.

## 8. Microeconomic indicators

### 8.1. Average unit prices, unit costs and wage costs

Table 7

	2009	2010	2011	IP
Unit price EUR per tonne	797	845	1 096	1 097
Index 2009 = 100	100	106	137	138
Unit cost EUR per tonne	760	839	1 089	1 116
Index 2009 = 100	100	110	143	147
Wage costs EUR/FTE	57 391	63 490	62 141	61 004
Index 2009 = 100	100	111	108	106

Source: Questionnaire replies of the sampled Union producers.

(111) Although over the period considered the Union industry was able to increase its sales price, due to a poor rapeseed harvest in 2011 the cost of production rose to an extent that it could not be covered by an increase in sales price. It was uneconomical for the Union industry to import alternative raw materials

from Argentina and Indonesia due to the tax regimes in place in those countries and therefore was forced to resort to importing the finished biodiesel in order to keep down its costs and therefore reducing overall losses.

(112) At the same time the wage costs of the sampled companies rose during the period under consideration, again causing the companies to find ways of reducing their overall cost burden.

### 8.2. Stocks

Table 8

	2009	2010	2011	IP
Stocks (tonnes)	74 473	87 283	90 249	103 058
Index 2009 = 100	100	117	121	138

Source: Questionnaire replies of the sampled Union producers.

(113) Over the period analysed stocks of biodiesel increased by around 40 %. This growth in inventories took place throughout the period analysed. However, because biodiesel cannot be stored for more than 6 months (on average the storage period is only around 3 months), data related to stocks have only limited value for assessing the economic situation of the Union industry.

### 8.3. Profitability, investments, return on investments, cash flow and ability to raise capital

Table 9

	2009	2010	2011	IP
Profitability	3,5 %	– 0,3 %	– 0,2 %	– 2,5 %
Investments in EUR 000	188 491	156 927	149 113	141 578
Index 2009 = 100	100	83	79	75
Return on investments	19 %	– 2 %	– 2 %	– 24 %
Cash flow in EUR 000	244 001	– 48 649	21 241	23 984
Index 2009 = 100	100	– 20	9	10

Source: Questionnaire replies of the sampled Union producers

- (114) Profitability of the sampled Union producers was established by expressing the net pre-tax profit of the sales of the like product on the Union market as a percentage to the turnover of these sales. Over the period analysed the profitability of the sampled Union producers decreased considerably from 3,5 % to – 2,5 %.
- (115) The level of investments in the production of biodiesel made by the sampled Union producers fell during the period, showing that whereas the sampled producers were still able to invest in the production of biodiesel, the amount of resources available for such investment had declined with the Union producers' market share.
- (116) The sampled Union producers' return on investment, which expresses their pre-tax result as a percentage of the average opening and closing net book value of the assets employed in the production of biodiesel followed the negative trend in profitability. The deterioration of the return on investments is a clear indication of the deterioration of the economic situation of the Union industry during the period under investigation.
- (117) Cash flow, which is the ability of the industry to self-finance their activities, has shown a significant decrease over the period analysed, showing the difficulty of the sampled companies to compete with the dumped imports from Argentina and Indonesia.

## 9. Conclusion on injury

- (118) An analysis of the verified data clearly shows that the Union industry has suffered material injury as defined by Article 3(5) of the basic Regulation. At a time of increasing consumption they have lost market share and profitability, while imports have gained market share and undercut Union producer prices.
- (119) Other indicators also show a declining or stable trend, even after the imposition of measures against the United States of America and the extension of duties to circumvented imports from Canada.
- (120) The Union producers were able to pass on most of the increase in cost of production from 2010 to 2011 (+33 percentage points) but only by lowering profitability to the break-even point. However they could not pass on the further increase in cost from 2011 to the IP, due to an increase in the feedstock price, which represents close to 80 % of the full cost of production of biodiesel. These cost increases could not be fully passed on to customers on the Union market, causing the losses in the IP.

## E. CAUSATION

### 1. Introduction

- (121) In accordance with Article 3(6) and Article 3(7) of the basic Regulation, it was examined whether the dumped imports originating in the countries concerned have caused injury to the Union industry to a degree that enabled it to be classified as material.
- (122) Known factors other than the dumped imports, which could at the same time have injured the Union industry, were also examined to ensure that the possible injury caused by these other factors was not attributed to the dumped imports.

### 2. Effect of the dumped imports

- (123) During the investigation period a low level (between 2% and 6%) of the imports from Indonesia to the EU were found not to be dumped. The remaining volume from Indonesia, and all imports from Argentina, were found to be dumped. Removing the small quantity of non-dumped imports from the total imports declared from Indonesia does not affect the trend of the imports detailed above.
- (124) The investigation showed that low-priced dumped imports from the countries concerned significantly increased in terms of volume (more than doubled) during the period considered. This resulted in a significant increase in their market share by 10 percentage points, from 9.1% in 2009 to 18.8 % by the end of the IP.
- (125) At the same time, despite the increase in consumption, the Union industry lost 5.5 percentage points of market share during the period considered.
- (126) The average prices of the dumped imports increased by 48% between 2009 and the IP but were significantly lower than those of the Union industry during the same period. The dumped imports undercut Union industry prices with an average undercutting margin of 4% for Indonesia and 8% for Argentina during the IP.
- (127) The pressure exercised by the increase of low-priced dumped imports on the Union market did not allow the Union industry to set its sales prices in line with market conditions and the cost increases. The sampled companies were only able to pass on to their customers a price increase limited to 38% while its full costs increased by 47% over the same period.

- (128) Based on the above, it is provisionally concluded that the low-priced dumped imports from the countries concerned, which undercut the prices of the Union industry during the IP and which also significantly increased in volume, have had a determining role in the material injury suffered by the Union industry.

### 3. Effect of other factors

#### 3.1. Imports from other countries

Table 10

Other third countries	2009	2010	2011	IP
Total imports (tonnes)	699 541	256 327	161 973	175 370
Index 2009 = 100	100	37	23	25
Market share	6,3 %	2,2 %	1,5 %	1,5 %
Index 2009 = 100	100	35	23	24

Source: Eurostat

- (129) Imports from third countries, mainly the USA, Norway and South Korea, decreased substantially from 2009 to the end of the IP. This decline was due to the imposition of measures on imports from the United States in 2009 and following an anti-circumvention investigation against imports consigned from Canada in 2010. Given the decline in the market share of imports from other third countries at the time of the deterioration in the financial position of the Union industry, imports from other third countries cannot have made more than a negligible contribution to the injury suffered by the Union industry. Thus, it cannot be concluded that they break the causal link between the injury and the effect of dumped imports.

#### 3.2. Non-dumped imports from the countries concerned

- (130) Non-dumped imports from the countries concerned were found, but only in the second half of 2011. Given the short period of time in which these imports were made, and the limited quantities, they cannot have caused more than a negligible amount of injury to the Union industry and are not capable of breaking the causal link between the injury and the effect of dumped imports.

#### 3.3. Other Union producers

- (131) Given the small volume of production of the Union producers excluded from the definition of the Union

industry, and the small volume in overall terms of their imports, these producers were not considered as a cause of injury to the Union industry.

#### 3.4. Imports made by the Union industry

- (132) CARBIO, the association of Argentinian biodiesel producers, alleged that the injury suffered by the Union industry was caused by imports from Argentina and Indonesia made by Union producers. They defined these imports as self-inflicted injury and claimed that they should be discounted as a cause of injury based on the behaviour of the Argentine producers.
- (133) It is clear from data provided by the Union industry that they have imported quantities of biodiesel from Argentina and Indonesia during the period considered, up to 60% of all imports in the IP from these countries. However they have stated that these imports have been made in self-defence. Being able to benefit from the dumped prices of these imports, in the short term, has assisted Union producers in being able to stay in business for the medium term.
- (134) The imports of biodiesel at dumped prices by the Union industry increased substantially in 2011 and the IP, which was when the effect of the differential export tax on biodiesel and its raw materials could be most felt, as it was at that time that imports of the raw materials (soybean oil and palm oil) became uneconomic as compared to imports of the finished product. The differential export tax system in both countries puts a higher tax on the export of raw materials than the tax on the finished product. Whether this differential export tax can be considered as a subsidy in the sense of Article 2 of the basic anti-subsidy Regulation will be examined in the ongoing anti-subsidy investigation.
- (135) For example during some months of the IP the import price of soybean oil from Argentina was higher than the import price of SME, making purchase of soybean oil economically disadvantageous. In this position purchase of SME was the only economically justifiable option.
- (136) In any case had the Union industry not imported these volumes of biodiesel, trading companies in the Union would have imported them, undercut the Union industry and sold them on the Union market, as they already import from these countries for sale to the diesel refiners in competition with the Union industry. The causal link is not broken by these imports and this argument is therefore provisionally rejected.



### 3.5. Capacity of the Union industry

- (137) CARBIO further alleges that the injury caused to the Union industry is due to overcapacity caused by over-expansion. With capacity utilisation at 50% in 2008 they allege that the industry has continued to expand without a commensurate increase in demand.
- (138) It is the case that during the period considered capacity utilisation across the Union remained low, at a low point of 40% during the IP. Therefore some companies have not been using the capacity they have installed.
- (139) However capacity utilisation was already low at the start of the period considered and has remained low throughout the whole period, and was also stable in the sampled companies.
- (140) The sampled companies were profitable at the start of the period considered and loss making at the end, with stable capacity utilisation. It is reasonable to deduce that the whole industry has also become less profitable while its capacity utilisation has remained stable. This cannot therefore be considered a major cause of injury, as there appears to be no causal link. This argument is therefore provisionally rejected.

### 3.6. Lack of access to raw materials and vertical integration

- (141) CARBIO also alleges that the Union industry is suffering injury because of a lack of efficiency, in particular because they are not vertically integrated and are not located close to raw materials.
- (142) These arguments are provisionally rejected. Some of the sampled companies are located at the ports with seamless access to raw materials brought in by ship, and other sampled companies have located their biodiesel plants directly on the same site as their vegetable oil producing plants. Many biodiesel producers in the south of Europe are located at port sites deliberately to access raw materials imported from Argentina and Indonesia or on the same sites as their customers (being the fossil oil refineries). Given that the effect of the differential export tax has been to make the raw materials more expensive than the finished product, this has clearly injured the Union industry by making it economically impossible to manufacture PME and SME in the EU.

### 3.7. Other regulatory factors

- (143) CARBIO also made reference to some regulatory factors which they allege have caused injury to the Union industry, some of which are proposals and have to date not been put into force. However they place emphasis on the system of 'double counting', which is described below.
- (144) The Renewable Energy Directive ('RED') requires Member States to mandate a certain proportion of biodiesel to be mixed with mineral diesel before being sold to users.

Some Member States have availed themselves of the provision in the RED which allows that proportion to be halved if the biodiesel used has been made from waste oils or used animal fats. For example if the Member State concerned requires that 7% biodiesel be mixed with 93% mineral diesel, then that 7% reduces to 3,5% if it is waste oil biodiesel.

- (145) CARBIO alleges that the double counting rules have caused a drop in the sale of so-called 'first generation' biodiesel of 1 million MT during the IP, and that this is a cause of injury to the Union industry. This allegation is rejected, as the sample of Union producers contains some companies who are manufacturing double counted biodiesel and their financial situation is not significantly different to that of sampled companies making biodiesel from virgin vegetable oils. These companies have shown during verification of their data that the price of their biodiesel has been affected by the low price of dumped imports from Argentina and Indonesia, as they are in indirect competition with the PME and SME from the countries concerned.
- (146) The argument has also been made that the Union industry is suffering injury by not investing more in second-generation biofuels such as using waste oils. This argument has been provisionally rejected, as there is not enough waste oil available in the Union to significantly increase the amount of processing from that already in existence.

### 3.8. Restrictions in Member States

- (147) CARBIO also alleged that the injury caused to the Union industry could not be caused by imports from the countries concerned due to quota systems and tax regimes in various Member States that restrict access to these markets. They also allege that some markets in the EU are closed to SME and PME due to climatic conditions.
- (148) They are correct to state that the Cold Filter Plugging Point ('CFPP') of PME (at +13 Centigrade) means that PME cannot be used across the Union without being mixed with other biodiesels to bring down the CFPP. The CFPP of SME, at 0 degrees Centigrade, does however allow it to be used more widely, in particular during the summer months.
- (149) The argument that it is the regulatory system in some Member States that is causing injury to the Union industry was examined closely throughout the investigation.
- (150) In some Member States, quota systems are in place that give a particular production quota to companies in that Member State or in other Member States across the Union. However most countries have given advantages by using the tax system and these advantages are being lowered or withdrawn.



(151) France for example has a 'detaxation advantage' of EUR90 per tonne for quota produced biodiesel. However given the low prices of dumped imports, it is often cheaper to import biodiesel than it is to buy from the Union industry even including the tax advantage. This is shown by the fact that Argentinian imports are clearly present on the French market.

(152) In some Member States imports from Argentina and Indonesia are not present, either due to climatic conditions or due to quota systems. However in most of the Union imports from Argentina and Indonesia are present on the market, either due to the lack of a quota system or due to the price being below any tax advantage that a Member State might give.

(153) Given that PME and SME, when blended with Union produced RME or other biodiesel, can be sold across the Union, and that imports are present in large quantities and dumped prices even in Member States with tax advantage systems in place, this argument is provisionally rejected as the existing quota systems and tax regimes are not capable of breaking the causal link between the injury and the effect of dumped imports.

#### 4. Conclusion on causation

(154) The above analysis has demonstrated that there was a substantial increase in the volume and market share of the low-priced dumped imports originating in the countries concerned. At the same time, it was found that these imports were undercutting the price of the Union industry during the IP.

(155) The data shows that as the volume of low-priced imports from the countries concerned increase, the economic situation of the Union industry deteriorates significantly.

(156) The analysis above has properly distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. Based on this analysis the provisional conclusion is that the dumped imports from the countries concerned have caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.

(157) The known factors other than the dumped imports have been assessed in line with Article 3(7) of the basic Regulation, and no evidence was found that they broke the causal link between the dumped imports and the injury suffered by the Union industry.

#### F. UNION INTEREST

(158) In accordance with Article 21 of the basic Regulation, the Commission examined whether, despite the conclusion on injurious dumping, compelling reasons existed for concluding that it was not in the Union interest to adopt measures in this particular case. The determination of the Union interest was based on an

appreciation of all the various interests involved, including those of the Union industry, importers, raw material suppliers and users.

#### 1. Interest of the Union industry

(159) As mentioned above, the Union industry suffered material injury caused by dumped imports originating in the countries concerned. Not imposing measures would most likely lead to a continuation of the negative trend of the financial situation of the Union industry. The situation of the Union industry was particularly marked by a decrease in profitability from + 3 % in 2009 to - 2,5 % by the end of the IP. Any further decline in performance would ultimately lead to cuts in production and more closures of production sites, which would therefore threaten employment and investments in the Union.

(160) The imposition of measures would restore fair competition on the market. The Union industry's downwards trend in profitability is the result of its difficulty in competing with the dumped, low-priced, imports originating in the countries concerned, a fact also due to the export tax regime in both countries that lowers the price of imports of SME and PME on the Union market, whilst increasing the price of the raw materials. The imposition of anti-dumping measures would therefore put the Union industry in the position to improve its profitability towards levels considered necessary for this capital intensive industry.

(161) Measures should give the Union industry the opportunity to begin to recover from the injurious dumping found during the investigation.

#### 2. Interest of unrelated importers/traders in the Union

(162) Unrelated importers/traders in the Union were invited to make themselves known to the Commission. However no importer cooperated with the investigation.

(163) In the absence of data from unrelated importers or traders, there was no evidence that imposition of measures would be clearly against the interests of these parties.

#### 3. Interest of users and consumers

(164) All known user companies involved in mineral diesel production and distribution, and also involved in the mandatory blending of mineral diesel with biodiesel were sent questionnaires upon initiation.

(165) Three users of biodiesel responded to the user questionnaire but stated that biodiesel was a very small part of their overall business activity. They stated that as they would be legally obliged to purchase biodiesel and as before, if a duty increased the price of biodiesel this would be passed on automatically to their customers.

- (166) Given the limited amount of information available, the imposition of measures should have an extremely limited effect on the final consumer, given the small percentage of biodiesel that is mixed into the mineral diesel that they purchase at the pump. No evidence was found that the imposition of measures would be clearly against the interests of either users, or consumers.

#### 4. Interest of suppliers of raw materials

- (167) One association of suppliers of raw materials, FEDIOL (the federation representing the European Vegetable Oil and Proteinmeal Industry in Europe), responded to the questionnaire sent to suppliers of raw materials. They stated that imports from the countries concerned have reduced the demand for rapeseed oil across the Union, with demand falling by over 1 million tonnes between 2009 and 2011.
- (168) They consider that imposition of measures will have a positive effect on the supplier industry in the EU as capacity utilisation will increase. Any increase in demand for rapeseed oil would then feed through to the compound feed sector – as this is the residue from rapeseed oil production and the farming sector in the EU as the producer of rapeseed.
- (169) The evidence received therefore shows that imposition of measures would be in the interests of the raw material suppliers in the Union.

#### 5. Conclusion on Union interest

- (170) The imposition of measures on imports of biodiesel originating in Argentina and Indonesia would clearly be in the interests of the Union industry. It would allow the Union industry to grow and to start to recover from the injury caused by the dumped imports. However if no measures were to be imposed, the economic situation of the Union industry would continue to deteriorate and more operators would go out of business. Although no clear conclusions could be made with regard to users and importers, the imposition of measures should be in the interest of raw material suppliers.
- (171) No compelling reasons exist to show that it would be clearly against the Union interest to impose provisional anti-dumping measures on imports of biodiesel originating in Argentina and Indonesia.

#### G. PROVISIONAL ANTI-DUMPING MEASURES

- (172) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, provisional anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports.

##### 1. Injury elimination level

- (173) For the purpose of determining the level of these measures, account was taken of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Union producers, without exceeding them.

- (174) When calculating the amount of duty necessary to remove the effects of injurious dumping, it was considered that any measures should allow the Union industry to cover its costs of production and to obtain a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports.

- (175) For this purpose a profit margin of 15% on turnover could be regarded as an appropriate level which the Union industry could have expected to obtain in the absence of injurious dumping based on the findings of the previous investigation concerning imports from the United States of America, where it was deemed reasonable for guaranteeing the productive investment for this industry in the long-term.

- (176) On this basis, a non-injurious price was calculated for the Union industry of the like product. The non-injurious price has been obtained by adjusting the sales prices of the sampled Union producers by the actual profit/loss made during the IP and by adding the above mentioned profit margin.

- (177) The necessary price increase was then determined on the basis of a comparison of the weighted average import price of the sampled exporting producers in the countries concerned, as established for the price undercutting calculations, with the non-injurious price of the like product sold by the sampled Union producers on the Union market during the IP. Any difference resulting from this comparison was then expressed as a percentage of the total CIF import value.

#### 2. Provisional measures

- (178) In accordance with Article 7(2) of the basic Regulation, provisional anti-dumping duties should be imposed in respect of imports of biodiesel originating in Argentina and Indonesia in accordance with the lesser duty rule, i.e. the lower of the two margins calculated, either dumping or injury.
- (179) Anti-dumping duty rates have been established by comparing the injury elimination margins and dumping margins. Consequently, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, are as follows:

Country	Company	Provisional dumping margin	Provisional injury margin	Provisional anti-dumping duty rate
Argentina	Aceitera General Deheza S.A., General Deheza, Rosario	10,6%	27,8%	10,6%
	Bunge Argentina S.A., Buenos Aires	10,6%	27,8%	10,6%

Country	Company	Provisional dumping margin	Provisional injury margin	Provisional anti-dumping duty rate
	Louis Dreyfus Commodities S.A., Buenos Aires	7,2%	30,9%	7,2%
	Molinos Río de la Plata S.A., Buenos Aires	6,8%	31,8%	6,8%
	Oleaginosa Moreno Hermanos S.A.F.I.C.I. y A., Bahía Blanca	6,8%	31,8%	6,8%
	Vicentin S.A.I.C., Avellaneda	6,8%	31,8%	6,8%
	Other cooperating companies	7,9%	31%	7,9%
	All other companies	10,6%	31,8%	10,6%
Indonesia	PT. Ciliandra Perkasa, Jakarta	0,0%		0,0%
	PT. Musim Mas, Medan	2,8%	23,3%	2,8%
	PT. Pelita Agung Agrindustri, Medan	5,3%	27,1%	5,3%
	PT Wilmar Bioenergi Indonesia, Medan	9,6%	26,4%	9,6%
	PT Wilmar Nabati Indonesia, Medan	9,6%	26,4%	9,6%
	Other cooperating companies	6,5%	25,3%	6,5%
	All other companies	9,6%	27,1%	9,6%

(180) However as the anti-dumping duty will also apply to blends that include biodiesel (in proportion to their biodiesel content by weight), as well as to pure biodiesel, it will be more accurate, and more appropriate for the correct implementation of the duty by Customs authorities of the Member States, to express the duty as a

fixed amount in Euro per tonne net and apply this to the pure biodiesel imported, or the proportion of biodiesel in the blended product.

(181) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of product concerned originating in the countries concerned and produced by the companies and thus by the specific legal entities mentioned. Imported product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(182) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission<sup>(1)</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will accordingly be amended by updating the list of companies benefiting from individual duty rates.

(183) The Commission made imports of the product concerned originating in the countries concerned subject to registration by Commission Regulation (EU) No 79/2013 of 28 January 2013. This was in view of the possible retroactive application of anti-dumping measures, under Article 10(4) of the basic Regulation. No decision on the possible retroactive application of anti-dumping measures can be taken at this stage in the proceeding.

#### H. FINAL PROVISION

(184) In the interests of sound administration, interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing within one month from the publication of this Regulation. The findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may be reconsidered for the purpose of any definitive measures,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of fatty-acid mono- alkyl esters and/or paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin, in pure form or as

<sup>(1)</sup> European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

included in a blend, currently falling within CN codes ex 1516 20 98 (TARIC codes 1516 20 98 21, 1516 20 98 29 and 1516 20 98 30), ex 1518 00 91 (TARIC codes 1518 00 91 21, 1518 00 91 29 and 1518 00 91 30), ex 1518 00 95 (TARIC code 1518 00 95 10), ex 1518 00 99 (TARIC codes 1518 00 99 21, 1518 00 99 29 and 1518 00 99 30), ex 2710 19 43 (TARIC codes 2710 19 43 21, 2710 19 43 29 and 2710 19 43 30), ex 2710 19 46 (TARIC codes 2710 19 46 21, 2710 19 46 29 and 2710 19 46 30), ex 2710 19 47 (TARIC codes 2710 19 47 21, 2710 19 47 29 and 2710 19 47 30), 2710 20 11, 2710 20 15, 2710 20 17, ex 3824 90 97 (TARIC codes 3824 90 97 01, 3824 90 97 03 and 3824 90 97 04), 3826 00 10 and ex 3826 00 90 (TARIC codes 3826 00 90 11, 3826 00 90 19 and 3826 00 90 30), and originating in Argentina and Indonesia.

2. The rates of the provisional anti-dumping duty applicable to the product described in paragraph 1 and produced by the companies below shall be as follows:

Country	Company	Provisional duty rate Euro per tonne net	TARIC additional code
Argentina	Aceitera General Deheza S.A., General Deheza, Rosario; Bunge Argentina S.A., Buenos Aires	104,92	B782
	Louis Dreyfus Commodities S.A., Buenos Aires	69,16	B783
	Molinos Río de la Plata S.A., Buenos Aires; Oleaginosa Moreno Hermanos S.A.F.I.C.I. y A., Bahía Blanca; Vicentin S.A.I.C., Avellaneda	65,24	B784
	Other cooperating companies: Cargill S.A.C.I., Buenos Aires; Unitec Bio S.A., Buenos Aires; Viluco S.A., Tucuman	75,97	B785
	All other companies	104,92	B999
Indonesia	PT Ciliandra Perkasa, Jakarta	0	B786
	PT Musim Mas, Medan	24,99	B787
	PT Pelita Agung Agrindustri, Medan	45,65	B788
	PT Wilmar Bioenergi Indonesia, Medan; PT Wilmar Nabati Indonesia, Medan	83,84	B789
	Other cooperating companies: PT Cermerlang Energi Perkasa, Jakarta	57,14	B790
	All other companies	83,84	B999

3. The anti-dumping duty on blends shall be applicable in proportion in the blend, by weight, of the total content of fatty-acid mono- alkyl esters and paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin (biodiesel content).

4. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Regulation (EEC) No 2454/93 <sup>(1)</sup> the amount of anti-dumping duty, calculated on the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

5. The release for free circulation in the European Union of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

<sup>(1)</sup> Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

6. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

*Article 2*

1. Without prejudice to Article 20 of Council Regulation (EC) No 1225/2009, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

2. Pursuant to Article 21(4) of Council Regulation (EC) No 1225/2009, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

*Article 3*

1. Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Commission Regulation (EU) No 79/2013.

2. Data collected regarding products which were entered for consumption not more than 90 days prior to the date of entry into force of this regulation shall be kept until the entry into force of possible definitive measures, or the termination of this proceeding.

*Article 4*

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

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 27 May 2013.

*For the Commission*  
*The President*

José Manuel BARROSO

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**COMMISSION IMPLEMENTING REGULATION (EU) No 491/2013****of 27 May 2013****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) <sup>(1)</sup>,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors <sup>(2)</sup>, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multi-lateral trade negotiations, the criteria whereby the

Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

*Article 1*

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

*Article 2*

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

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

Done at Brussels, 27 May 2013.

*For the Commission,  
On behalf of the President,*

Jerzy PLEWA  
*Director-General for Agriculture and  
Rural Development*

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<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(2)</sup> OJ L 157, 15.6.2011, p. 1.

## ANNEX

**Standard import values for determining the entry price of certain fruit and vegetables**

(EUR/100 kg)

CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	AL	15,0
	MA	56,4
	TN	54,8
	TR	67,0
	ZZ	48,3
0707 00 05	AL	27,7
	MK	25,8
	TR	132,0
	ZZ	61,8
0709 93 10	MA	110,7
	TR	129,1
	ZZ	119,9
0805 10 20	EG	49,5
	IL	71,8
	MA	62,2
	ZZ	61,2
0805 50 10	AR	107,2
	TR	111,4
	ZA	98,7
	ZZ	105,8
0808 10 80	AR	155,2
	BR	95,6
	CL	113,1
	CN	90,5
	MK	42,6
	NZ	124,1
	US	207,5
	ZA	106,5
0809 29 00	ZZ	116,9
	US	557,8
	ZZ	557,8

<sup>(1)</sup> Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.



# DIRECTIVES

## COUNCIL DIRECTIVE 2013/12/EU

of 13 May 2013

**adapting Directive 2012/27/EU of the European Parliament and of the Council on energy efficiency,  
by reason of the accession of the Republic of Croatia**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Treaty of Accession of Croatia, and in particular Article 3(4) thereof,

Having regard to the Act of Accession of Croatia, and in particular Article 50 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Pursuant to Article 50 of the Act of Accession of Croatia, where acts of the institutions adopted prior to accession require adaptation by reason of accession, and the necessary adaptations have not been provided for in that Act of Accession or in the Annexes thereto, the Council, acting by qualified majority on a proposal from the Commission, shall, to this end, adopt the necessary acts, if the original act was not adopted by the Commission.
- (2) The Final Act of the Conference which drew up and adopted the Treaty of Accession of Croatia indicated that the High Contracting Parties had reached political agreement on a set of adaptations to acts adopted by the institutions required by reason of accession and invited the Council and the Commission to adopt those adaptations before accession, completed and updated where necessary to take account of the evolution of the law of the Union.
- (3) Directive 2012/27/EU of the European Parliament and of the Council <sup>(1)</sup> requires Member States to set indicative national energy efficiency targets, and in so doing the Member States should take into account the Union's 2020 energy consumption.
- (4) Due to the accession of Croatia it is necessary to adapt technically the projected energy consumption figures for the Union in 2020 to reflect the consumption in 28

Member States. Projections made in 2007 showed a primary energy consumption in 2020 of 1 842 Mtoe for the 27 Member States. The same projections show a primary energy consumption in 2020 of 1 853 Mtoe for the 28 Member States including Croatia. A 20 % reduction results in 1 483 Mtoe in 2020, i.e. a reduction of 370 Mtoe as compared to projections. This technical adaptation is necessary to allow Directive 2012/27/EU to be applicable in Croatia.

- (5) Directive 2012/27/EU should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

### *Article 1*

Directive 2012/27/EU is amended as set out in the Annex to this Directive.

### *Article 2*

The amendments set out in the Annex to this Directive shall be without prejudice to the time limit provided for in the first subparagraph of Article 28(1) of Directive 2012/27/EU.

### *Article 3*

This Directive shall enter into force subject to and as from the date of the entry into force of the Treaty of Accession of Croatia.

### *Article 4*

This Directive is addressed to the Member States.

Done at Brussels, 13 May 2013.

*For the Council*  
*The President*  
S. COVENEY

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<sup>(1)</sup> OJ L 315, 14.11.2012, p. 1.

## ANNEX

Article 3 of Directive 2012/27/EU is amended as follows:

(a) point (a) of the second subparagraph of paragraph 1 is replaced by the following:

‘(a) that the Union’s 2020 energy consumption has to be no more than 1 483 Mtoe of primary energy or no more than 1 086 Mtoe of final energy’;

(b) paragraph 2 is replaced by the following:

‘2. By 30 June 2014, the Commission shall assess progress achieved and whether the Union is likely to achieve energy consumption of no more than 1 483 Mtoe of primary energy and/or no more than 1 086 Mtoe of final energy in 2020.’;

(c) point (d) of paragraph 3 is replaced by the following:

‘(d) compare the results under points (a) to (c) with the quantity of energy consumption that would be needed to achieve energy consumption of no more than 1 483 Mtoe of primary energy and/or no more than 1 086 Mtoe of final energy in 2020.’.

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**COUNCIL DIRECTIVE 2013/13/EU****of 13 May 2013****adapting certain directives in the field of taxation, by reason of the accession of the Republic of Croatia**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Treaty of Accession of Croatia, and in particular Article 3(4) thereof,

Having regard to the Act of Accession of Croatia, and in particular Article 50 thereof,

Having regard to the proposal from the European Commission,  
Whereas:

- (1) Pursuant to Article 50 of the Act of Accession of Croatia, where acts of the institutions adopted prior to accession require adaptation by reason of accession, and the necessary adaptations have not been provided for in that Act of Accession or in the Annexes thereto, the Council, acting by qualified majority on a proposal from the Commission, shall, to this end, adopt the necessary acts, if the original act was not adopted by the Commission.
- (2) The Final Act of the Conference which drew up and adopted the Treaty of Accession of Croatia indicated that the High Contracting Parties had reached political agreement on a set of adaptations to acts adopted by the institutions required by reason of accession and invited the Council and the Commission to adopt those adaptations before accession, completed and updated where necessary to take account of the evolution of the law of the Union.
- (3) Directives 83/182/EEC <sup>(1)</sup>, 2003/49/EC <sup>(2)</sup>, 2008/7/EC <sup>(3)</sup>, 2009/133/EC <sup>(4)</sup> and 2011/96/EU <sup>(5)</sup> should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directives 83/182/EEC, 2003/49/EC, 2008/7/EC, 2009/133/EC and 2011/96/EU are amended as set out in the Annex to this Directive.

*Article 2*

1. Member States shall adopt and publish, by the date of accession of Croatia to the Union at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from the date of accession of Croatia to the Union.

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

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 3*

This Directive shall enter into force subject to and as from the date of the entry into force of the Treaty of Accession of Croatia.

*Article 4*

This Directive is addressed to the Member States.

Done at Brussels, 13 May 2013.

*For the Council*  
*The President*  
S. COVENEY

<sup>(1)</sup> Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another (OJ L 105, 23.4.1983, p. 59).

<sup>(2)</sup> Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

<sup>(3)</sup> Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital (OJ L 46, 21.2.2008, p. 11).

<sup>(4)</sup> Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (OJ L 310, 25.11.2009, p. 34).

<sup>(5)</sup> Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 345, 29.12.2011, p. 8).

## ANNEX

1. In the Annex to Directive 83/182/EEC, the following is added:  
‘CROATIA  
— poseban porez na motorna vozila (Zakon o posebnom porezu na motorna vozila (Narodne novine broj 15/13))’.
  2. Directive 2003/49/EC is amended as follows:
    - (a) in Article 3(a)(iii), the following is inserted after the entry for France:  
‘— porez na dobit in Croatia,’;
    - (b) in the Annex, the following point is added:  
‘(z) companies under Croatian law known as: “dioničko društvo”, “društvo s ograničenom odgovornošću”, and other companies constituted under Croatian law subject to Croatian profit tax’.
  3. In Annex I to Directive 2008/7/EC, the following point is inserted:  
‘(11a) companies under Croatian law known as:
    - (i) dioničko društvo
    - (ii) društvo s ograničenom odgovornošću’.
  4. Annex I to Directive 2009/133/EC is amended as follows:
    - (a) in Part A, the following point is inserted:  
‘(ka) companies under Croatian law known as: “dioničko društvo”, “društvo s ograničenom odgovornošću”, and other companies constituted under Croatian law subject to Croatian profit tax;’;
    - (b) in Part B the following is inserted after the entry for France:  
‘— porez na dobit in Croatia,’.
  5. Annex I to Directive 2011/96/EU is amended as follows:
    - (a) in Part A, the following point is inserted:  
‘(ka) companies under Croatian law known as: “dioničko društvo”, “društvo s ograničenom odgovornošću”, and other companies constituted under Croatian law subject to Croatian profit tax;’;
    - (b) in Part B, the following is inserted after the entry for France:  
‘— porez na dobit in Croatia,’.
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## DECISIONS

## COUNCIL DECISION

of 25 April 2013

**addressed to Cyprus on specific measures to restore financial stability and sustainable growth**

(2013/236/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 136(1), in conjunction with Article 126(6) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 136(1) of the Treaty on the Functioning of the European Union (TFEU) foresees the possibility of adopting measures specific to Member States whose currency is the euro in order to ensure the proper functioning of economic and monetary union.
- (2) On 13 July 2010, the Council adopted a Decision under Article 126(6) of the TFEU stating that an excessive deficit existed in Cyprus<sup>(1)</sup> and issued a Recommendation to Cyprus under Article 126(7) of the TFEU with a view to bringing an end to the situation of an excessive government deficit stating that 'Cyprus's authorities should put an end to the present excessive deficit situation as rapidly as possible and at the latest by 2012'.
- (3) In the Council's Recommendation of 10 July 2012 on the National Reform Programme 2012 of Cyprus and delivering a Council opinion on the Stability Programme of Cyprus, 2012-2015<sup>(2)</sup>, the Council recommended, inter alia, that Cyprus take action to achieve a durable correction of its excessive deficit in 2012, ensure sufficient progress with its debt reduction benchmark, strengthen regulatory provisions for the efficient recapitalisation of the financial institutions and improve competitiveness.
- (4) Cyprus has been under increasing pressure in financial markets, against the background of rising concerns about the sustainability of its public finances, including the required significant public support measures to the weakened financial sector. Some of the imbalances have emerged as a result of negative spill-over effects from the

euro area crisis, including developments in Greece. Other imbalances, as specified in the Commission's 2012 in-depth review for Cyprus and in the Council Recommendation of 10 July 2012, have been domestic and longer-lasting. Amidst consecutive downgrades of Cypriot sovereign bonds by credit rating agencies, the country became unable to refinance itself at rates compatible with long-term fiscal sustainability. In parallel, the banking sector was increasingly cut-off from international market funding and major institutions recorded substantial capital shortfalls.

- (5) In view of these severely adverse economic and financial conditions, the Cypriot authorities officially requested financial assistance under the terms of a loan by the European Financial Stability Facility/European Stability Mechanism (ESM) on 25 June 2012, as well as from the International Monetary Fund (IMF), with a view to supporting the return of Cyprus' economy to sustainable growth, ensuring a properly-functioning banking system and safeguarding financial stability in the Union and in the euro area. On 27 June 2012, the Eurogroup invited the Commission, in liaison with the European Central Bank (ECB), the Cypriot authorities, and the IMF to agree on a macroeconomic adjustment programme for Cyprus, including its financing needs, and to take appropriate action to safeguard financial stability in the current very challenging environment where there is a risk of spill-over effects from sovereign market turbulence. On 25 March 2013, the Eurogroup reached a political agreement with the Cypriot authorities on the cornerstones of a macroeconomic adjustment programme. The banking sector was to be restructured and downsized and efforts were to be stepped-up on fiscal consolidation, structural reforms and privatisation. In addition, the recapitalisation of the two largest banks was to be exclusively generated from within those banks (i.e. from shareholders, bondholders and depositors).
- (6) In the current circumstances, Cyprus should adopt a comprehensive policy package to be implemented in a three-year macroeconomic adjustment programme which would span from 2013 (Q2) to 2016 (Q1).
- (7) The comprehensive policy package should aim to restore financial market confidence, re-establish sound macroeconomic balances and enable the economy to return

<sup>(1)</sup> OJ L 186, 20.7.2010, p. 30.

<sup>(2)</sup> OJ C 219, 24.7.2012, p. 13.

to sustainable growth. It should be structured on three pillars. The first pillar should be a financial sector strategy based on restructuring and downsizing financial institutions and strengthening supervision of the sector, with efforts to address capital and liquidity shortfalls. The second pillar should be an ambitious front-loaded fiscal consolidation strategy to be implemented, in particular, by means of measures to reduce current primary expenditure, enhance government revenue, improve the functioning of the public sector and maintain fiscal consolidation in the medium-term, while minimising the impact on disadvantaged people and preserving the good implementation of Structural and other Union Funds. The third pillar should consist of an ambitious structural reform agenda, with a view to supporting competitiveness and sustainable and balanced growth, allowing for the unwinding of macroeconomic imbalances, in particular by reforming the wage indexation system, in consultation with social partners, and removing obstacles to the smooth functioning of markets. Recalling the political agreement of 28 February 2013 on a Council Recommendation on Establishing a Youth Guarantee, opportunities for young people and their employability prospects should be maintained.

- (8) Under the Commission services' update of the 2012 winter forecast for nominal GDP growth (– 0,5 % in 2012, – 8,2 % in 2013, – 2,9 % in 2014, 2,6 % in 2015 and 3,7 % in 2016), the debt-to-GDP ratio would amount to 87 % in 2012, 109 % in 2013, 123 % in 2014, 126 % in 2015 and 122 % in 2016. The debt-to-GDP ratio would therefore increase rapidly until 2015 and move to a declining path thereafter, reaching an estimated 105 % in 2020. Debt dynamics are affected by several below-the-line operations. Under the Commission services' update of the 2013 winter forecast for nominal GDP growth, the primary general government balance is projected to attain a deficit of EUR 395 million (2,4 % of GDP) in 2013, a deficit of EUR 678 million (4,3 % of GDP) in 2014, a deficit of EUR 344 million (2,1 % of GDP) in 2015 and a surplus of EUR 204 million (1,2 % of GDP) in 2016.
- (9) Enhancing the long-term resilience of the Cypriot banking sector is critical to restoring financial stability in Cyprus and consequently, given the strong links, to preserving financial stability in the euro area as a whole. Substantial downsizing and restructuring of the Cypriot banking sector is under way. The Cypriot House of Representatives adopted legislation establishing a comprehensive framework for the recovery and resolution of credit institutions. Using that new framework, the Cypriot banking sector has been downsized immediately and significantly. To preserve the liquidity of the Cypriot banking sector, temporary administrative measures have been imposed, including capital controls.
- (10) The implementation of comprehensive and ambitious reforms in financial, fiscal and structural areas should safeguard the medium-term sustainability of the Cypriot public debt.
- (11) The Commission, in liaison with the ECB and, where appropriate, with the IMF, should verify at regular intervals the rigorous implementation of Cyprus' macroeconomic adjustment programme through missions and regular reporting, on a quarterly basis, by the Cypriot authorities.
- (12) Throughout the implementation of Cyprus' comprehensive policy package, the Commission should provide additional policy advice and technical assistance in specific areas.
- (13) The Cypriot authorities should involve, in accordance with current national rules and practices, the social partners and civil society organisations in the preparation, implementation, monitoring and evaluation of the macroeconomic adjustment programme.
- (14) Any form of financial assistance received by Cyprus to help it implement the policies under its macroeconomic adjustment programme should be in line with the legal requirements and policies of the Union, in particular the Union's economic governance framework. Any intervention in support of financial institutions should be carried out in accordance with the Union's rules on competition. The Commission should ensure that any measures laid down in a Memorandum of Understanding in the context of requested ESM financial assistance is fully consistent with this Decision,

HAS ADOPTED THIS DECISION:

#### *Article 1*

1. In order to facilitate the return of the Cypriot economy to a path of sustainable growth and to fiscal and financial stability, Cyprus shall rigorously implement a macroeconomic adjustment programme (the 'programme'), the main elements of which are laid down in Article 2 of this Decision. The programme shall address the specific risks emanating from Cyprus for the financial stability of the euro area and shall aim to rapidly re-establish a sound and sustainable economic and financial situation in Cyprus and restore its capacity to finance itself fully on the international financial markets. The programme shall take due account of the Council recommendations addressed to Cyprus under Articles 121, 126, 136 and 148 TFEU as well as Cyprus' actions to comply with them, while aiming to broaden, strengthen and deepen the policy measures required.
2. The Commission, in liaison with the ECB and, where appropriate, with the IMF, shall monitor Cyprus' progress in implementing its programme. Cyprus shall give the Commission and the ECB its full cooperation. It shall, in particular, provide them with all the information that they deem necessary for the monitoring of the programme.



3. The Commission, in liaison with the ECB and, where appropriate, with the IMF, shall examine with the Cypriot authorities any changes and updates to the programme that may be needed in order to take proper account of, inter alia, any significant gap between macroeconomic and fiscal forecasts and realised figures (including employment), negative spill-over effects, as well as macroeconomic and financial shocks.

In order to ensure the smooth implementation of the programme and to help the correction of imbalances in a sustainable way, the Commission shall provide continued advice and guidance on fiscal, financial market and structural reforms.

The Commission shall at regular intervals assess the economic impact of the programme and shall recommend necessary corrections with a view to enhancing growth and job creation, securing the necessary fiscal consolidation, and minimising harmful social impacts.

#### Article 2

1. The key objectives of the programme shall be: to restore the soundness of the Cypriot banking sector; to continue the ongoing process of fiscal consolidation; and to implement structural reforms to support competitiveness and sustainable and balanced growth.

2. Cyprus shall pursue fiscal consolidation consistent with its obligations under the excessive deficit procedure by means of high-quality permanent measures while minimising the impact on disadvantaged people.

3. Cyprus shall adopt the measures specified in paragraphs 4 to 15.

4. In order to bring its deficit below 3 % of GDP as soon as possible, Cyprus shall stand ready to take additional consolidation measures. Specifically, in the event of underperformance of revenue or higher social spending needs due to adverse macroeconomic effects, the Cypriot Government shall stand ready to take additional measures to preserve the programme's objectives, including by reducing discretionary spending, while minimising the impact on disadvantaged people. Over the programme period, cash revenue above the programme projections, including any windfall gains, shall be saved or used to reduce debt. Conversely, over-performance, to the extent that it is deemed permanent, can reduce the need for additional measures in the outer years.

5. Cyprus shall preserve the good implementation of Structural and other Union Funds.

6. With a view to restoring the soundness of its financial sector, Cyprus shall continue to thoroughly reform and restructure the banking sector and reinforce viable banks by restoring their capital, addressing their liquidity situation and strengthening their supervision. The programme shall provide for the following measures and outcomes:

- (a) ensuring that the liquidity situation of the banking sector shall be closely monitored. The recently-imposed temporary restrictions on the free movement of capital (inter alia, limits on cash withdrawals, electronic payments and transfers abroad) shall be closely monitored. The goal is that controls shall remain in place only for as long as is strictly necessary to prevent serious and immediate risks to financial stability. The medium-term funding and capital plans of domestic banks relying on central bank funding or receiving State aid should realistically reflect the anticipated deleveraging in the banking sector, and reduce dependency on borrowing from the central banks, while avoiding asset fire sales and a credit crunch. The regulations on the minimum liquidity requirements shall be updated to prevent excessive issuer concentration in the future;
- (b) establishing an independent valuation of the assets of Bank of Cyprus and Cyprus Popular Bank and quickly integrating the operations of Cyprus Popular Bank into Bank of Cyprus. The valuation shall be completed quickly so as to enable the completion of the deposit-equity swap at Bank of Cyprus;
- (c) adopting the necessary regulatory requirements regarding an increase in the minimum core Tier 1 capital adequacy ratio to 9 % by the end of 2013;
- (d) taking steps to minimise the cost to taxpayers of bank restructuring. Undercapitalised commercial and cooperative credit institutions shall raise, to the largest extent possible, capital from private sources before State aid measures are granted. Any restructuring plans shall be formally approved under State aid rules, before such State aid is provided. Commercial and cooperative credit institutions with a capital shortfall may, if other measures do not suffice, ask for recapitalisation aid from the State in line with State aid procedures;
- (e) ensuring that a credit register is created, that the current regulatory framework on loan origination and management processes is reviewed and amended, if necessary, and that legislation strengthening the governance of commercial banks is adopted;
- (f) strengthening banks' governance, including by prohibiting lending to independent board members or their connected parties;
- (g) maximising recovery for non-performing loans, while minimising incentives for strategic default by borrowers. This shall include easing constraints on the seizure of collateral and proper monitoring and managing of non-performing loans. The Central Bank of Cyprus shall issue guidance on the classification as 'non-performing' all loans past due by more than 90 days;



- (h) aligning the regulation and supervision of cooperative credit institutions to those of commercial banks;
- (i) ascertaining the viability of cooperative credit institutions and developing, in consultation with the Commission, the ECB and the IMF, a strategy for the future structure, functioning and viability of the cooperative credit institution sector. The implementation of that strategy should be completed by mid-2015;
- (j) enhancing the monitoring of the indebtedness of the corporate and household sectors and establishing a framework for targeted private sector debt restructuring to facilitate new lending and diminish credit constraints;
- (k) further enhancing the anti-money laundering framework and ensuring full entity (legal persons and other legal arrangements, such as trusts) transparency, in line with best practice;
- (l) introducing mandatory supervision based on capitalisation levels;
- (m) integrating stress-testing into regular off-site bank supervision; and
- (n) implementing a unified data reporting system for banks and credit institutions.

7. Over 2013, the Cypriot authorities shall rigorously implement Cyprus' 2013 Budget Law with additional permanent measures of at least EUR 351 million (2,1 % of GDP). Cyprus shall implement through legislative and other measures, including if required the amendment of its 2013 Budget Law, the additional consolidation measures. Cyprus shall adopt the following measures:

- (a) on the expenditure side, its budget shall include the reduction of expenditure on housing schemes by at least EUR 36 million, a further scaled reduction of public sector wages, and the streamlining of certain social benefits;
- (b) on the revenue side, the additional measures shall include increases in property taxes, the tax rate on statutory corporate income, the tax rate on interest income, the bank levy, and the fees for public services;
- (c) a reform of its tax system for motor vehicles, based on environmentally-friendly principles and with a view to raising additional revenue;
- (d) measures to control healthcare expenditure and improve cost efficiency in the healthcare sector by enhancing the efficiency, competitiveness and cost-effectiveness of public hospitals. In addition, Cyprus shall introduce a co-payment system for a limited number of medical services and pharmaceuticals; and
- (e) full implementation of the consolidation measures adopted since December 2012.

8. The following measures shall apply as of 1 January 2014:

- (a) on the expenditure side, the budget shall include: a reduction in total outlays for social transfers through better targeting to yield at least EUR 28,5 million; a further reduction in the public and broader public sector wages; the introduction of a fee on public transport cards for students and pensioners; and structural reform measures in the educational sector to reduce wage expenditure; and
- (b) on the revenue side, the budget for 2014 shall include: an extension of the temporary contribution on gross earnings of public and private sector employees up to 31 December 2016; increases in VAT; increases in excise duties; and an increase in the contributions to the General Social Insurance Scheme.

9. In order to ensure the long-term sustainability of public finances, Cyprus shall implement fiscal-structural reforms, comprising, inter alia, the following measures and outcomes:

- (a) reforms of the general and public sector pension system in order to put the pension system on a sustainable path, while addressing the adequacy of pensions. If necessary, reforms will be further reinforced;
- (b) control of the growth of health expenditure in order to strengthen the sustainability of the funding structure and the efficiency of public healthcare provision;
- (c) improvement in the efficiency of public spending and the budgetary process by means of an effective medium-term budgetary framework as part of an improved public finance management, fully compliant with Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States<sup>(1)</sup> and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, signed in Brussels on 2 March 2012;
- (d) adoption of an adequate legal and institutional framework for Public Private Partnerships designed according to best practice;
- (e) elaboration of a programme to achieve a solid corporate governance system for state-owned and semi-public enterprises and initiation of a privatisation plan to help improve economic efficiency and restore debt sustainability;
- (f) elaboration and implementation of a comprehensive reform plan to improve the effectiveness and efficiency of tax collection and administration, including measures to safeguard the full and timely application of laws and standards governing international tax cooperation and the exchange of tax information;
- (g) reform of the immovable property tax regime;
- (h) reform of the public administration to improve its functioning and cost-effectiveness, in particular by reviewing the size, employment conditions and functional organisation of the public service in order to ensure the efficient use of government resources and the provision of a quality service to the population; and

<sup>(1)</sup> OJ L 306, 23.11.2011, p. 41.

(i) reforms of the overall structure and the levels of welfare benefits, with the aim of producing an efficient use of resources and ensuring an appropriate balance between welfare assistance and incentives to take up work.

10. Cyprus shall implement a reform of the system of wage indexation, after consulting the social partners, and in accordance with the objectives of improving the economy's competitiveness and reflecting developments in labour productivity. The planned reform of public assistance should ensure that social assistance serves as a safety net to ensure a minimum income for those unable to support a basic standard of living, while safeguarding incentives to take up work. Any change in the minimum wage shall be in line with the economic and labour market developments, and shall be adopted after consultation with the social partners.

11. Cyprus shall adopt the remaining amendments to sector specific legislation required in order to fully implement Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market<sup>(1)</sup>. Unjustified obstacles in the services markets, in particular in relation to regulated professions, shall be eliminated. The competition framework shall be improved by enhancing the functioning of the competent competition authority and by reinforcing the independence and powers of the national regulatory authorities.

12. Cyprus shall reduce to less than 2 000 the title deed issuance backlog by the end of 2014 and shall implement guaranteed timeframes for the issuance of building certificates and title deeds.

13. By the end of 2013, Cyprus shall amend the rules on the forced sale of mortgaged property and shall allow for private auctions within the shortest feasible timespan. The pace of court case handling shall be improved and court backlogs shall be eliminated by the end of the programme.

14. Cyprus shall take initiatives to strengthen the competitiveness of its tourism sector. Those initiatives shall include a review of the Tourism Strategy for 2011-15, based on a study on how to improve the tourism sector business model, and a thorough analysis of the best means of achieving sufficient air connectivity for Cyprus.

15. In the energy sector, Cyprus shall transpose and fully implement the Third Energy Package. In addition, a comprehensive development plan for the rearrangement of the Cypriot energy sector shall be formulated. That plan shall encompass:

- (a) a roll-out plan for the infrastructure required for the exploitation of gas;
- (b) an outline of the regulatory regime and market organisation for the energy sector and gas exports; and
- (c) a plan to establish the institutional framework for the management of hydrocarbon resources, including a resource fund, which should receive and manage public revenue from offshore gas exploitation and which is set up on the basis of internationally-recognised best practice.

#### *Article 3*

This Decision is addressed to the Republic of Cyprus.

Done at Brussels, 25 April 2013.

*For the Council*  
*The President*  
E. GILMORE

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<sup>(1)</sup> OJ L 376, 27.12.2006, p. 36.

**COUNCIL IMPLEMENTING DECISION****of 14 May 2013****authorising the Czech Republic and the Republic of Poland to apply special measures derogating from Article 5 of Directive 2006/112/EC on the common system of value added tax**

(2013/237/EU)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax <sup>(1)</sup>, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By letters from the Czech Republic registered with the Commission on 26 September 2011 and 5 November 2012, and by letter from the Republic of Poland registered with the Commission on 8 June 2012, the Czech Republic and the Republic of Poland requested authorisation to apply special measures derogating from Article 5 of Directive 2006/112/EC in relation to the construction and maintenance of border bridges and common road sections between the two Member States.

(2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States, by letter dated 5 December 2012, of the requests made by the Czech Republic and by the Republic of Poland. By letter dated 10 December 2012, the Commission notified the Czech Republic and the Republic of Poland that it had all the information necessary to consider the requests.

(3) With respect to the supply of goods or services and intra-Community acquisition of goods intended for the maintenance of border bridges and common road sections listed in Annex I and for the construction and subsequent maintenance of border bridges listed in Annex II, the bridges and common road sections, as well as their construction sites, should be regarded as being entirely within the territory either of the Czech Republic or of the Republic of Poland in accordance with an agreement to be concluded between them on

the construction and maintenance of bridges and maintenance of common road sections on the Czech-Polish State border. In the absence of special measures, it would be necessary, for each supply of goods or services and intra-Community acquisition of goods, to determine whether the place of taxation is the Czech Republic or the Republic of Poland. Work at a border bridge and common road section carried out within the territory of the Czech Republic would be subject to value added tax (VAT) in the Czech Republic while that carried out within the Republic of Poland's territory would be subject to VAT in the Republic of Poland.

(4) The purpose of the request for the derogation from Article 5 of Directive 2006/112/EC is therefore to simplify the procedure for collecting VAT with respect to the construction and maintenance of the border bridges and of common road sections of the two Member States.

(5) The derogation could affect the overall amount of the tax revenue of the Member States collected at the stage of final consumption only to a negligible extent and has no negative impact on the Union's own resources accruing from value added tax,

HAS ADOPTED THIS DECISION:

*Article 1*

1. Subject to the entry into force of an agreement to be concluded between the Czech Republic and the Republic of Poland on the maintenance of bridges and common road sections on the Czech-Polish State border, as referred to in Annex I to this Decision, and on the construction and subsequent maintenance of bridges on the Czech-Polish State border, as referred to in Annex II to this Decision, the Czech Republic and the Republic of Poland are hereby authorised to apply, in accordance with Articles 2 and 3, measures derogating from Article 5 of Directive 2006/112/EC in relation to the construction and maintenance of those border bridges and common road sections, all of which are partly within the territory of the Czech Republic and partly within the territory of the Republic of Poland.

2. This authorisation shall also apply to any additional bridges and common road sections which are brought within the scope of the agreement referred to in paragraph 1 by an exchange of diplomatic notes. The VAT Committee, established under Article 398 of Directive 2006/112/EC shall be notified thereof.

<sup>(1)</sup> OJ L 347, 11.12.2006, p. 1.

*Article 2*

By way of derogation from Article 5 of Directive 2006/112/EC, the border bridges and common road sections for the construction or maintenance of which the Czech Republic is responsible, and, where appropriate, the corresponding construction site, in so far as they are within the territory of Poland's territory, shall be deemed to be part of the territory of the Czech Republic for the purposes of the supply of goods and services and intra-Community acquisition of goods intended for the construction or maintenance of those bridges and common road sections.

*Article 3*

By way of derogation from Article 5 of Directive 2006/112/EC, the border bridges and common road sections for the construction or maintenance of which the Republic of Poland is responsible, and, where appropriate, the corresponding construction site, in so far as they are within the territory of the Czech Republic, shall be deemed to be part of the Republic

of Poland's territory for the purposes of the supply of goods and services and intra-Community acquisition of goods intended for the construction or maintenance of those bridges and common road sections.

*Article 4*

This Decision shall take effect on the day of its notification.

*Article 5*

This Decision is addressed to the Czech Republic and to the Republic of Poland.

Done at Brussels, 14 May 2013.

*For the Council*

*The President*

M. NOONAN

## ANNEX I

**The Czech Republic shall be responsible for the maintenance of the following bridges and common road sections on the Czech-Polish State border:**

- (1) the bridge over the Olecka Potok stream (Oleška) between Jasnowice and Bukovec, on border section I between boundary markers 12/6 and I/13,
- (2) the bridge (Wolności/Svobody) over the Olza (Olše) River between Cieszyn and Český Těšín, on border section I between boundary markers I/86 and 86/1,
- (3) the bridge (Przyjaźni/Družby) over the Olza (Olše) River between Cieszyn and Český Těšín, on border section I between boundary markers 87/2 and I/88,
- (4) the bridge over the Piotrówka Potok stream (Petrůvka) between Gołkowice and Závada, on border section I between boundary markers I/156 and 156/1,
- (5) the bridge over the Odra (Oder) River between Chałupki and Bohumín (concrete section of an old bridge), on border section II between boundary markers 7/4 and 7/5,
- (6) the bridge over the Odra (Oder) River between Chałupki and Bohumín (a new bridge), on border section II between boundary markers 8/1 and 8/2,
- (7) the bridge over the Opawa (Opava) River between Wiechowice and Vávrovice, on border section II between boundary markers 71/4 and II/72,
- (8) the bridge over the Opawa (Opava) River between Dzierzkowice and Držkovce, on border section II between boundary markers 74/1 and 74/2,
- (9) the bridge over the Opawa (Opava) River between Branice and Úvalno, on border section II between boundary markers 85/4 and 85/5,
- (10) the bridge over the Opawica (Opavice) River between Krasne Pole and the Krásné Loučky district of the town of Krnov, on border section II between boundary markers 97/11 and II/98,
- (11) the bridge over the Opawica (Opavice) River between Lenarcice and Linhartovy, on border section II between boundary markers 99/8 and 99/9,
- (12) the bridge over the Olešnica Potok stream (Olešnice) between Podlesie and Ondřejovice (by the sports field), on border section II between boundary markers 155/3a and 155/3b,
- (13) the bridge over the Olešnica Potok stream (Olešnice) between Podlesie and Ondřejovice (at the junction with the road to Rejvíz), on border section II between boundary markers 155/9 and 155/10,
- (14) the bridge over the Olešnica Potok stream (Olešnice) between Podlesie and Ondřejovice (by the Ondřejovice machinery plant), on border section II between boundary markers 157/8 and II/158a,
- (15) the bridge over the Orlica (Divoká Orlice) River between Niemojów and Bartošovice v Orlických horách, on border section III between boundary markers III/102 and III/103,
- (16) the bridge over the Orlica (Divoká Orlice) River between Mostowice and Orlické Záhoří, on border section III between boundary markers III/113 and III/114,
- (17) the bridge over the Orlica (Divoká Orlice) River between Lasówka and Orlické Záhoří, cadastral district Bedřichovka, on border section III between boundary markers 117/8 and III/118,
- (18) the bridge over the Lubota Potok stream (Oldřichovský potok) between Kopaczów and Oldřichov na Hranicích, on border section IV between boundary markers IV/144 and 144/1,
- (19) the bridge over the Lubota Potok stream (Oldřichovský potok) between Porajów and Hrádek nad Nisou, on border section IV between boundary markers 145/16 and IV/146,
- (20) the road between Leszna Górna and Horní Lištná, on border section I between boundary markers I/60 and 60/3a, 60/3b, with the length of 0,333 km,
- (21) the road between Chałupki and Šilheřovice, on border section II between boundary markers 11/4a, 11/4b and II/12, with the length of 0,671 km,
- (22) the road between Kopaczów and Oldřichov na Hranicích, on border section IV between boundary markers IV/142 and 142/14a, 142/14b, with the length of 0,867 km.

**The Republic of Poland shall be responsible for the maintenance of the following bridges and common road sections on the Czech-Polish State border:**

- (1) the bridge over the Olza (Olše) River between Cieszyn and Chotěbuz, on border section I between boundary markers 91/3 and 91/4,

- (2) the bridge over the Odra (Oder) River between Chałupki and Bohumín (steel section of an old bridge), on border section II between boundary markers 7/4 and 7/5,
- (3) the bridge over the Strachowicki Potok stream (Strahovický potok) between Krzanowice and Rohov, on border section II between boundary markers 35/12 and 35/13,
- (4) the bridge over the Opawa (Opava) River between Boboluszkki and Skrochovice, on border section II between boundary markers 81/8 and 81/9,
- (5) the bridge over the Opawica (Opavice) River between Chomiąza and Chomýž, on border section II between boundary markers II/96 and 96/1,
- (6) the bridge over the Wielki Potok stream (potok Hrozová) between Pielgrzymów and Pelhřimovy, on border section II between boundary markers 108/2 and 108/3,
- (7) the bridge over the Cieklec Potok stream (potok Hrozová) between Równe and Slezské Rudoltice, on border section II between boundary markers 110/7 and 110/8,
- (8) the bridge (culvert) on the Graniczny Potok stream (Hraniční potok) between Trzebina and Bartultovice, on border section II between boundary markers II/135 and 135/1,
- (9) the bridge (culvert) on the Łużyca Potok stream (Lužický potok) between Czerniawa Zdrój and Nove Mesto pod Smrkem, on border section IV between boundary markers 66/23 and IV/67,
- (10) the road between Puńców and Kojkovic u Trince, on border section I between boundary markers I/65a, I/65b and I/67a, I/67b, with the length of 0,968 km,
- (11) the road between Chałupki/Rudyszwałd and Šilheřovice, on border section II between boundary markers II/12 and 12/8, with the length of 0,917 km.

The numbers of boundary markers identifying the location of bridges and shared road sections correspond to the border documentation drawn up on the basis of Article 10(4) of the Agreement between the Republic of Poland and the Czech Republic on the common State border, done at Prague on 17 January 1995.

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## ANNEX II

**The Czech Republic shall be responsible for the construction and subsequent maintenance of the following bridges on the Czech-Polish State border:**

- (1) a bridge over the Olza (Olše) River between Cieszyn and Český Těšín (a sports footbridge), on border section I between boundary markers I/85 and 84/4,
- (2) a bridge over the Olza (Olše) River between Cieszyn and Český Těšín (a footbridge by a railway bridge), on border section I at the boundary marker 88/7,
- (3) a bridge over the Olza (Olše) River between Olza and the Kopytov district of the town of Bohumín (a footbridge), on border section I between boundary markers I/182 and 182/1,
- (4) a bridge over the Orlica (Divoká Orlice) River between Niemojów and Bartošovice v Orlických horách, on border section III at the boundary marker 101/32,
- (5) a bridge over the Orlica (Divoká Orlice) River between Poniatów and Bartošovice v Orlických horách, cadastral district Neratov (a footbridge), on border section III at the boundary marker III/106,
- (6) a bridge over the Orlica (Divoká Orlice) River between Rudawa and Bartošovice v Orlických horách, cadastral district Podlesí (a footbridge) on border section III between boundary markers 107/9 and 107/10.

**The Republic of Poland shall be responsible for the construction and subsequent maintenance of the following bridges on the Czech-Polish State border:**

- (1) a bridge over the Olza (Olše) River between Cieszyn and Český Těšín (European Footbridge), on border section I at the boundary marker I/87,
- (2) a bridge over the Olza (Olše) River between Hażlach-Pogwizdów and the Louky nad Olší district of the town of Karviná (a footbridge), on border section I between boundary markers 98/6 and I/99,
- (3) a bridge over the Opawica (Opavice) River between Chomiąza and Chomýž (a footbridge), on border section II between boundary markers 95/2 and 95/3,
- (4) a bridge over the Orlica (Divoká Orlice) River between Niemojów and Bartošovice v Orlických horách, cadastral district Vrchní Orlice (a footbridge), on border section III between boundary markers III/104 and 104/1,
- (5) a bridge over the Orlica (Divoká Orlice) River between Rudawa and Bartošovice v Orlických horách, cadastral district Nová Ves (a footbridge), on border section III between boundary markers 108/2 and 108/3.

The numbers of boundary markers identifying the location of bridges correspond to the border documentation drawn up on the basis of Article 10(4) of the Agreement between the Republic of Poland and the Czech Republic on the common State border, done at Prague on 17 January 1995.

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**COUNCIL DECISION****of 21 May 2013****appointing four United Kingdom members and three United Kingdom alternate members of the Committee of the Regions**

(2013/238/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal of the United Kingdom Government,

Whereas:

(1) On 22 December 2009 and on 18 January 2010, the Council adopted Decisions 2009/1014/EU <sup>(1)</sup> and 2010/29/EU <sup>(2)</sup> appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2010 to 25 January 2015.

(2) Four members' seats on the Committee of the Regions have become vacant following the end of the terms of office of Ms Amanda BYRNE, Ms Christine CHAPMAN, Ms Flo CLUCAS and Mr Roger KNOX. Two alternate members' seats on the Committee of the Regions have become vacant following the end of the terms of office of Mr Peter MOORE and Mr Sandy PARK. An alternate member's seat will become vacant following the appointment of Ms Paula BAKER as member of the Committee of the Regions,

HAS ADOPTED THIS DECISION:

*Article 1*

The following are hereby appointed to the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2015:

(a) as members:

— Mr Mick ANTONIW, *Member of the National Assembly for Wales*,— Ms Paula BAKER, *Councillor, Basingstoke and Deane Council*,— Mr Anthony Gerard BUCHANAN, *Councillor, East Renfrewshire Council*,— Ms Dee SHARPE, *Councillor, East Riding of Yorkshire Council*;

and

(b) as alternate members:

— Ms Barbara GRANT, *Councillor, East Renfrewshire Council*,— Mr Stewart GOLTON, *Councillor, Leeds Council*,— Ms Margaret LISHMAN, *Councillor, Burnley Council*.*Article 2*

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

Done at Brussels, 21 May 2013.

*For the Council*  
*The President*  
E. GILMORE

<sup>(1)</sup> OJ L 348, 29.12.2009, p. 22.

<sup>(2)</sup> OJ L 12, 19.1.2010, p. 11.

**COUNCIL DECISION**  
**of 21 May 2013**  
**appointing an Estonian alternate member of the Committee of the Regions**  
(2013/239/EU)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal of the Estonian Government,

Whereas:

(1) On 22 December 2009 and on 18 January 2010, the Council adopted Decisions 2009/1014/EU <sup>(1)</sup> and 2010/29/EU <sup>(2)</sup> appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2010 to 25 January 2015.

(2) An alternate member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Andres JAADLA,

*Article 1*

The following is hereby appointed as alternate member to the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2015:

— Mr Mihkel JUHKAMI, *Chairman, Rakvere City Council.*

*Article 2*

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

Done at Brussels, 21 May 2013.

*For the Council*

*The President*

E. GILMORE

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<sup>(1)</sup> OJ L 348, 29.12.2009, p. 22.

<sup>(2)</sup> OJ L 12, 19.1.2010, p. 11.

**COUNCIL DECISION 2013/240/CFSP****of 27 May 2013****amending Decision 2010/279/CFSP on the European Union Police Mission in Afghanistan (EUPOL AFGHANISTAN)**

THE COUNCIL OF THE EUROPEAN UNION,

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

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

Whereas:

- (1) On 18 May 2010, the Council adopted Decision 2010/279/CFSP<sup>(1)</sup>, extending EUPOL AFGHANISTAN for three years until 31 May 2013.
- (2) Following the recommendations of the Strategic Review conducted in October 2012 and the subsequent adaptation of the Operational Plan (OPLAN), EUPOL AFGHANISTAN should be extended until 31 December 2014.
- (3) EUPOL AFGHANISTAN will be conducted in the context of a situation which may deteriorate and could impede the achievement of the objectives of the Union's external action as set out in Article 21 of the Treaty.
- (4) Decision 2010/279/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

Decision 2010/279/CFSP is hereby amended as follows:

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

'1. The European Union Police Mission in Afghanistan ("EUPOL AFGHANISTAN" or the "Mission"), established by Joint Action 2007/369/CFSP, shall be extended as from 31 May 2010 until 31 December 2014.;

- (2) Article 3(1) is replaced by the following:

'1. In order to fulfil the objectives set out in Article 2, EUPOL AFGHANISTAN shall:

- (a) assist the Government of Afghanistan in advancing the institutional reform of the Ministry of the Interior and in developing and coherently implementing policies and a strategy towards sustainable and effective civilian policing arrangements, especially with regard to the Afghan Uniform (Civilian) Police and the Afghan Anti-Crime Police;
- (b) assist the Government of Afghanistan in further professionalising the Afghan National Police (ANP), in particular by supporting the development of training infrastructure and by enhancing Afghan abilities to develop and deliver training;

- (c) support the Afghan authorities in further developing linkages between the police and the wider rule of law and ensure appropriate interaction with the wider criminal justice system;

- (d) improve cohesion and coordination among international actors and further work on strategy development on police reform, especially through the International Police Coordination Board (IPCB), in close coordination with the international community and through continued cooperation with key partners, including with the NATO-led International Security Assistance Force (ISAF) and the NATO Training Mission and other contributors.

These tasks shall be further developed in the Operational Plan (OPLAN). The Mission shall carry out its tasks through, amongst other means, monitoring, mentoring, advising and training.;

- (3) Article 4 is replaced by the following:

*'Article 4*

**Structure of the Mission**

1. The Mission shall have its Headquarters (HQ) in Kabul. The Mission shall comprise:

- (i) the Head of Mission and his office including a Senior Mission Security Officer;
- (ii) a police component;
- (iii) a rule of law component;
- (iv) a training component;
- (v) a field component;
- (vi) mission support;
- (vii) field offices outside Kabul, as appropriate;
- (viii) a support element in Brussels.

2. Mission staff shall be deployed at the central, regional and provincial levels and may work, as necessary, with the district level for the implementation of the mandate with regard to the security assessment and when enabling factors, such as appropriate logistical and security support, are in place. Technical arrangements shall be concluded with ISAF and Regional Command/Provincial Reconstruction Team (PRT) Lead Nations for information exchange, medical, security and logistical support including accommodation by Regional Commands and PRTs.

<sup>(1)</sup> OJ L 123, 19.5.2010, p. 4.

3. In addition, a number of Mission staff shall be deployed to improve strategic coordination in police reform in Afghanistan, as appropriate, and in particular with the IPCB Secretariat in Kabul.;

(4) Article 11 is replaced by the following:

*'Article 11*

### **Security**

1. The Civilian Operation Commander shall direct the Head of Mission's planning of security measures and ensure their proper and effective implementation for EUPOL AFGHANISTAN in accordance with Article 5.

2. The Head of Mission shall be responsible for the security of the operation and for ensuring compliance with minimum security requirements applicable to the operation, in line with the policy of the Union on the security of personnel deployed outside the Union in an operational capacity under Title V of the Treaty, and its supporting documents.

3. The Head of Mission shall be assisted by a Senior Mission Security Officer (SMSO), who shall report to the Head of Mission and also maintain a close functional relationship with the European External Action Service.

4. The Head of Mission shall appoint Security Officers in the provincial and regional Mission locations, who, under the authority of the SMSO shall be responsible for the day-to-day management of all security aspects of the respective Mission elements.

5. EUPOL AFGHANISTAN staff shall undergo mandatory security training before their entry into function, in accordance with the OPLAN. They shall also receive regular in-theatre refresher training organised by the SMSO.

6. The Head of Mission shall ensure the protection of EU classified information in accordance with Council Decision 2011/292/EU of 31 March 2011 on the security rules for protecting EU classified information (\*).

(\*) OJ L 141, 27.5.2011, p. 17.;

(5) Article 13(1) is replaced by the following:

'1. The financial reference amount intended to cover the expenditure related to EUPOL AFGHANISTAN for the period from 31 May 2010 until 31 July 2011 shall be EUR 54 600 000.

The financial reference amount intended to cover the expenditure related to EUPOL AFGHANISTAN for the period from 1 August 2011 to 31 July 2012 shall be EUR 60 500 000.

The financial reference amount intended to cover the expenditure related to EUPOL AFGHANISTAN for the period from 1 August 2012 to 31 May 2013 shall be EUR 56 870 000.

The financial reference amount intended to cover the expenditure related to EUPOL AFGHANISTAN for the period from 1 June 2013 until 31 December 2014 shall be EUR 108 050 000.;

(6) Article 14 is replaced by the following:

*'Article 14*

### **Release of information**

1. The HR shall be authorised to release to NATO/ISAF EU classified information and documents generated for the purposes of the Mission, in accordance with Decision 2011/292/EU. Local technical arrangements shall be drawn up to facilitate this.

2. The HR shall be authorised to release to third States associated with this Decision, as appropriate and in accordance with the needs of the Mission, EU classified information and documents up to the level "CONFIDENTIEL UE" generated for the purposes of the Mission, in accordance with Decision 2011/292/EU.

3. The HR shall be authorised to release to UNAMA, as appropriate and in accordance with the operational needs of the Mission, EU classified information and documents up to the level "RESTREINT UE" generated for the purposes of the Mission, in accordance with Decision 2011/292/EU. Local arrangements shall be drawn up for this purpose.

4. In the event of a specific and immediate operational need, the HR shall also be authorised to release to the host State EU classified information and documents up to the level "RESTREINT UE" generated for the purposes of the Mission, in accordance with Decision 2011/292/EU. Arrangements between the HR and the competent authorities of the host State shall be drawn up for this purpose.

5. The HR shall be authorised to release to third States associated with this Decision, EU non-classified documents related to the deliberations of the Council with regard to the Mission covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council Rules of Procedure (\*).

6. The HR may delegate the powers referred to in paragraphs 1, 2, 3 and 5, as well as the ability to conclude the arrangements referred to in paragraph 4, to persons placed under his/her authority, to the Civilian Operations Commander and/or to the Head of Mission.

(\*) Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 35).;

(7) In Article 17, the second paragraph is replaced by the following:

'It shall apply from 31 May 2010 until 31 December 2014.'

*Article 2*

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

Done at Brussels, 27 May 2013.

*For the Council*  
*The President*  
C. ASHTON

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**COUNCIL DECISION 2013/241/CFSP****of 27 May 2013****amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo <sup>(1)</sup>,  
EULEX KOSOVO**

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

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

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

Whereas:

- (1) On 4 February 2008, the Council adopted Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO <sup>(2)</sup>.
- (2) On 5 June 2012, the Council adopted Decision 2012/291/CFSP <sup>(3)</sup> amending Joint Action 2008/124/CFSP and extending the duration of EULEX KOSOVO until 14 June 2014.
- (3) The financial reference amount covers the period until 14 June 2013. Joint Action 2008/124/CFSP should be amended to provide a new financial reference amount intended to cover the period from 15 June 2013 until 14 June 2014.
- (4) EULEX KOSOVO will be conducted in the context of a situation which may deteriorate and could impede the achievement of the objectives of the Union's external action as set out in Article 21 of the Treaty.
- (5) Joint Action 2008/124/CFSP should therefore be amended accordingly,

*Article 1*

Article 16(1) of Joint Action 2008/124/CFSP is replaced by the following:

'1. The financial reference amount intended to cover the expenditure of EULEX KOSOVO until 14 October 2010 shall be EUR 265 000 000.

The financial reference amount intended to cover the expenditure of EULEX KOSOVO from 15 October 2010 until 14 December 2011 shall be EUR 165 000 000.

The financial reference amount intended to cover the expenditure of EULEX KOSOVO from 15 December 2011 until 14 June 2012 shall be EUR 72 800 000.

The financial reference amount intended to cover the expenditure of EULEX KOSOVO from 15 June 2012 until 14 June 2013 shall be EUR 111 000 000.

The financial reference amount intended to cover the expenditure of EULEX KOSOVO from 15 June 2013 until 14 June 2014 shall be EUR 110 000 000.'

*Article 2*

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

Done at Brussels, 27 May 2013.

*For the Council*

*The President*

C. ASHTON

<sup>(1)</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

<sup>(2)</sup> OJ L 42, 16.2.2008, p. 92.

<sup>(3)</sup> OJ L 146, 6.6.2012, p. 46.

**COMMISSION IMPLEMENTING DECISION****of 22 May 2013****establishing a template for National Energy Efficiency Action Plans under Directive 2012/27/EU of the European Parliament and of the Council***(notified under document C(2013) 2882)***(Text with EEA relevance)****(2013/242/EU)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC <sup>(1)</sup>, and in particular Article 24(2) and Annex XIV thereof,

Whereas:

- (1) Directive 2012/27/EU requires each Member State to submit National Energy Efficiency Action Plans by 30 April 2014 and every three years thereafter. These plans are to set out significant energy efficiency improvement measures and expected and/or achieved energy savings, including those in the supply, transmission and distribution of energy as well as energy end-use, in view of achieving the energy efficiency targets referred to in Article 3(1) of Directive 2012/27/EU. The National Efficiency Action Plans shall in any case include the information specified in Annex XIV Part 2 of Directive 2012/27/EU. The National Energy Efficiency Action Plans shall be complemented with updated estimates of expected overall primary energy consumption in 2020, as well as estimated levels of primary energy consumption in the sectors indicated in Part 1 of Annex XIV of Directive 2012/27/EU.
- (2) In accordance with Article 24(2) second paragraph of Directive 2012/27/EU, the Commission shall provide a

template as guidance for the National Energy Efficiency Action Plans, which shall be adopted in accordance with the advisory procedure referred to in Article 26(2) of the Directive. Article 26(1) of the Directive provides that the Commission will be assisted by a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(2)</sup> and Article 26(2) provides that Article 4 of that Regulation shall apply.

- (3) The measures provided for in this Decision take the utmost account of discussions within the Energy Efficiency Directive Committee,

HAS ADOPTED THIS DECISION:

*Article 1*

The template for the National Energy Efficiency Action Plans required by Article 24(2) and Annex XIV of Directive 2012/27/EU as set out in the Annex to this Decision is adopted.

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels, 22 May 2013.

*For the Commission*

Günther OETTINGER

*Member of the Commission*

<sup>(1)</sup> OJ L 315, 14.11.2012, p. 1.

<sup>(2)</sup> OJ L 55, 28.2.2011, p. 13.

## ANNEX

**TEMPLATE FOR COMPULSORY ELEMENTS**  
**NATIONAL ENERGY EFFICIENCY ACTION PLAN**

Insert the date of the plan here (*Note: the first Plan to be submitted by 30 April 2014*)

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## 1. Introduction

This template specifies the information that Member States are required to provide in their National Energy Efficiency Plans (NEEAPs) on measures adopted or planned to be adopted to implement the main elements of the Energy Efficiency Directive (EED, 2012/27/EU), as set out in Article 24(2) of the Directive and its Annex XIV. Therefore, where the template indicates mandatory reporting elements, it does not refer to measures that have not been adopted and are not planned by the Member States. The template is provided to the Member States as guidance to the NEEAPs as specified in EED Article 24(2) second paragraph.

Where the text of the template refers to information to be provided in the first and/or second NEEAP this reflects the wording of the EED, and where there is no such reference the information is to be provided in the first and all subsequent NEEAPs.

This template is complemented by Guidance on NEEAPs [*references to be inserted of the linked Commission Staff Working Paper which provides further advice*].

## 2. Overview of national energy efficiency targets and savings

### 2.1. National 2020 energy efficiency targets

- (1) Please state the indicative national energy efficiency target for 2020 as required by Article 3(1) of the EED (EED Article 3(1), Annex XIV Part 2.1).
- (2) Please indicate the expected impact of the target on overall primary and final energy consumption in 2020 and explain how, and on the basis of which data, this has been calculated (EED Article 3(1)).
- (3) Please provide an estimate of primary energy consumption in 2020, overall and by sectors (EED Article 24(2), Annex XIV Part 2.2).

### 2.2. Additional energy efficiency targets

Please list any additional national targets related to energy efficiency, whether addressing the whole economy or specific sectors (EED Annex XIV Part 2.1).

### 2.3. Primary energy savings

Please provide an overview of the primary energy savings achieved by the time of reporting and estimations of expected savings for 2020 (EED Article 3(1), Article 24(2), Annex XIV Part 2.2(a)).

### 2.4. Final energy savings

- (1) For the purposes of Directive 2006/32/EC of the European Parliament and of the Council <sup>(1)</sup>, in the first and the second NEEAP, please provide information on the achieved final energy savings and forecast savings in energy end-use by 2016 (Article 4(1) and (2) of Directive 2006/32/EC; EED Annex XIV Part 2.2(b)).
- (2) For the purposes of Directive 2006/32/EC, in the first and the second NEEAP, please provide the measurement and/or calculation methodology used for calculating final energy savings (EED Annex XIV Part 2.2(b), second paragraph).

## 3. Policy measures implementing EED

### 3.1. Horizontal measures

#### 3.1.1. Energy efficiency obligation schemes and alternative policy measures (EED Article 7, Annex XIV, Part 2 3.2)

- (1) Please provide information on the overall amount of energy savings over the obligation period in order to meet the target set in accordance with Article 7(1), and, if applicable, on how the possibilities listed in Article 7(2) and (3) are used (EED Article 7, Annex XIV Part 2.2(a)).
- (2) Please provide a short description of the national energy efficiency obligation scheme as referred to in Article 7(1) including information on how monitoring and verification is ensured (EED Article 7(1) and (6), Article 20(6), Annex XIV Part 2.3.2).

<sup>(1)</sup> OJ L 114, 27.4.2006, p. 64.

- (3) Please provide information on alternative policy measures adopted in application of Article 7(9) and Article 20(6) including information on how monitoring and verification is ensured, and how their equivalence is ensured (*EED Article 7(9) and (10), Article 20(6), Annex XIV Part 2.3.2*).
- (4) Where applicable, please present published energy savings achieved as a result of the implementation of the energy efficiency obligation scheme (*EED Article 7(6) and (8), Annex XIV Part 2.2(a)*).
- (5) Where applicable, please present published energy savings achieved as a result of the implementation of alternative policy measures (*EED Article 7(10), Annex XIV Part 2.2(a)*).
- (6) Please provide details of the national coefficients chosen in accordance with EED Annex IV (*EED Annex XIV Part 2.3.2*).
- (7) Please provide information on any method, other than the one provided in EED Annex V part 2.e, used to take into account the lifetimes of energy savings, and explain how it is ensured that this leads to at least the same total quantity of savings (*EED Annex V 2(e)*).

### 3.1.2. Energy audits and management systems (EED Article 8)

Please provide an overview of measures planned or already undertaken to promote energy audits and energy management systems, including information on the numbers of energy audits carried out, specifying those carried out in large enterprises, with an indication of the total number of large companies in the Member State territory and the number of companies to which Article 8(5) is applicable (*EED Annex XIV Part 2.3.3*).

### 3.1.3. Metering and billing (EED Articles 9-11)

Please provide a description of the implemented and planned measures adopted or planned to be adopted in metering and billing (*EED Article 9, Article 10, Article 11, Annex XIV Part 2.2, first sentence*).

### 3.1.4. Consumer information programmes and training (EED Articles 12 and 17)

Please provide information on measures adopted or planned to be adopted to promote and facilitate efficient use of energy by SMEs and domestic customers, (*EED Article 12, Article 17, Annex XIV Part 2.2, first sentence*).

### 3.1.5. Availability of qualification, accreditation and certification schemes (EED Article 16)

Please provide information on existing or planned certification or accreditation schemes or equivalent qualification schemes (including, if applicable, training programmes) for providers of energy services, energy audits, energy managers and installers of energy-related building elements as defined in Article 2(9) of Directive 2010/31/EU of the European Parliament and of the Council <sup>(1)</sup> (*EED Article 16, Annex XIV Part 2.3.7*).

### 3.1.6. Energy Services (EED Article 18)

- (1) Please provide information on measures adopted or planned to be adopted for the promotion of energy services. The description must include an internet link to the list of available energy service providers and their qualifications (*EED Annex XIV Part 2.2 first sentence, Annex XIV Part 2.3.8*).
- (2) Please provide a qualitative review of the national market for energy services describing its current status and outlining future market developments (*EED Article 18 1(e)*).

### 3.1.7. Other energy efficiency measures of a horizontal nature (EED Articles 19 and 20)

- (1) Please indicate, in the first NEEAP, energy efficiency measures undertaken to implement Article 19 of EED. In particular, please provide the list of measures undertaken to remove regulatory and non-regulatory barriers to energy efficiency (e.g. split incentives in multi-owner properties, public purchasing and annual budgeting, and accounting of public bodies), (*EED Article 19, Annex XIV Part 2.3.9*).

<sup>(1)</sup> OJ L 153, 18.6.2010, p. 13.

- (2) Please provide information about the Energy Efficiency National Fund (*EED Article 20, Annex XIV Part 2.2, first sentence*).

### 3.2. *Energy efficiency in buildings*

#### 3.2.1. Building renovation strategy (*EED Article 4*)

Provide the national long-term building renovation strategy (*EED Article 4, final paragraph*).

#### 3.2.2. Other energy efficiency in buildings sector

Please provide details on significant energy efficiency improvement measures in buildings in view of achieving the national energy efficiency targets referred to in Article 3(1) (*EED Article 24(2), Annex XIV Part 2.2, first sentence*).

### 3.3. *Energy efficiency in public bodies*

#### 3.3.1. Central government buildings (*EED Article 5*)

Please provide information on the published inventory of heated and cooled central government buildings (*EED Article 5(5), Annex XIV Part 2.2, first sentence*).

#### 3.3.2. Buildings of other public bodies (*EED Article 5*)

- (1) Please provide information on measures undertaken or planned to encourage public bodies and social housing bodies governed by public law to adopt energy efficiency plans demonstrating the exemplary role of public bodies in buildings' energy efficiency (*EED Article 5(7)a, Annex XIV Part 2.2, first sentence*).

- (2) Please provide a list of public bodies having developed an energy efficiency action plan (*EED Annex XIV Part 2.3.1*).

#### 3.3.3. Purchasing by public bodies (*EED Article 6*)

Please provide information on steps taken or planned to ensure that central government purchase products, services and buildings with high-energy efficiency performance, (*EED Article 6(1)*), and on measures undertaken or planned to encourage other public bodies to do likewise (*EED Article 6(3), Annex XIV Part 2.2, first sentence*).

### 3.4. *Other end use energy efficiency measures including in industry and transport*

- (1) Please provide details on significant energy efficiency improvement measures in industry in view of achieving the national energy efficiency targets referred to in EED Article 3(1) (*EED Article 24(2), Annex XIV Part 2.2, first sentence*).

- (2) Please provide details on significant energy efficiency improvement measures in passenger and freight transport in view of achieving the national energy efficiency targets referred to in EED Article 3(1) (*EED Article 24(2), Annex XIV Part 2.2, first sentence*).

- (3) Please provide details of other significant end use energy efficiency measures which contribute towards national energy efficiency targets which are not reported on elsewhere in the NEEAP (*EED Article 24(2), Annex XIV Part 2.2, first sentence*).

### 3.5. *Promotion of efficient heating and cooling*

#### 3.5.1. Comprehensive assessment (*EED Article 14*)

- (1) In the second and subsequent NEEAPs please provide an assessment of the progress achieved in implementing the comprehensive assessment of the potential for the application of high-efficiency cogeneration and efficient district heating and cooling referred to in Article 14(1) (*EED Article 14(1), Annex XIV Part 2.3.4*).

- (2) Please provide description of the procedure and the methodology used for carrying out a cost benefit analysis to satisfy the criteria of EED Annex IX (*EED Article 14(3), Annex IX Part 1, last paragraph, Annex XIV Part 2.2, first sentence*).



### 3.5.2. Other measures addressing efficient heating and cooling (EED Article 14)

Please provide a description of measures, strategies and policies, including programmes and plans, at national, regional and local levels to develop the economic potential of high-efficiency cogeneration and efficient district heating and cooling and other efficient heating and cooling systems as well as the use of heating and cooling from waste heat and renewable energy sources (*EED Article 14(2) and (4), Annex XIV Part 2.2, first sentence*).

### 3.6. Energy transformation, transmission, distribution, and demand response

#### 3.6.1. Energy efficiency criteria in network tariffs and regulation (EED Article 15)

- (1) Please describe planned or adopted measures to ensure that incentives in tariffs that are detrimental to the overall efficiency of the generation, transmission, distribution and supply of energy, or might hamper participation of demand response in balancing markets and ancillary services procurement, are removed (*EED Article 15(4), Annex XIV Part 2.2, first sentence*).
- (2) Please describe planned or adopted measures to incentivise network operators to improve efficiency through infrastructure design and operation (*EED Article 15(4) Annex XIV Part 2.2, first sentence*).
- (3) Please describe planned or adopted measures to ensure that tariffs allow suppliers to improve consumer participation in system efficiency including demand response (*EED Article 15(4), Annex XIV Part 2.2, first sentence*).

#### 3.6.2. Facilitate and promote demand response (EED Article 15)

Please provide information on other measures adopted or planned to enable and develop demand response, including those addressing tariffs to support dynamic pricing (*EED Annex XI(3), Annex XIV Part 2.3.6*).

#### 3.6.3. Energy efficiency in network design and regulation (EED Article 15)

Please report on progress achieved in the assessment of the energy efficiency potential of national gas and electricity infrastructure, as well as adopted and planned measures and investments for the introduction of cost effective energy efficiency improvements in network infrastructure and a timetable for their introduction (*EED Article 15(2), Annex XIV Part 2.3.5*).

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## COMMISSION IMPLEMENTING DECISION

of 24 May 2013

**on a temporary derogation from the rules of origin laid down in Annex II to Council Regulation (EC) No 1528/2007 to take account of the special situation of Swaziland with regard to peaches, pears and pineapples**

*(notified under document C(2013) 2906)*

(2013/243/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1528/2007 of 20 December 2007 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements <sup>(1)</sup>, and in particular Article 36(4) of Annex II thereof,

Whereas:

- (1) On 23 April 2012 the Commission adopted Implementing Decision 2012/213/EU <sup>(2)</sup>, granting a temporary derogation from the rules of origin laid down in Annex II to Regulation (EC) No 1528/2007 to take account of the special situation of Swaziland with regard to peaches, pears and pineapples.
- (2) On 28 February 2013 Swaziland requested, in accordance with Article 36 of Annex II to Regulation (EC) No 1528/2007, a new derogation from the rules of origin set out in that Annex for two years from 1 January 2013 to 31 December 2014. The request covers a total quantity of 780 tonnes of peaches, pears and mixtures of peach and/or pear and/or pineapple in fruit juice of CN codes ex 2008 70 98, 2008 40 90 and ex 2008 97 98.
- (3) According to the information received from Swaziland, it is unable to satisfy the product specific rule of origin as laid down in Appendix 1 of Annex II to Regulation (EC) No 1528/2007 which, inter alia, requires that all the materials used be classified within a heading other than that of the final product. Swaziland sources non-originating diced peaches and pears in juice not containing sugar of CN codes ex 2008 70 92 and 2008 40 90 in neighbouring South Africa for manufacture of the final product because it has no local production of peaches and pears of commercial scale. In accordance with Article 6(7) of Annex II to Regulation (EC) No 1528/2007, the products are also excluded from cumulation with South Africa. Hence, the final product does not comply with the rules laid down in that Annex.

- (4) Article 36 of Annex II to Regulation (EC) No 1528/2007 states that the Community shall respond positively to all requests by ACP States which are duly justified in accordance with the provisions of that Article and which cannot cause serious injury to an established Community industry.
- (5) In accordance with Article 36(1)(b) of Annex II to Regulation (EC) No 1528/2007, Swaziland requests more time to prepare itself to comply with the rules of origin as economic operators are undertaking a trial, using fresh peaches and/or pears from South Africa, peeled, cut and packed in drums in cold water and transported to Swaziland in a refrigerated state for further processing there. The use of such materials, which are classified within Chapter 8 of the Harmonised System, could allow the final product manufactured in Swaziland to comply with the abovementioned rule.
- (6) Swaziland explained the need to meet demands from European buyers for a range of canned products, including limited quantities of pears and peaches that are not grown on its territory. If the European retailers are not able to buy the full product range from their supplier in Swaziland, it may result in the loss of the jelly, pineapple and citrus cup business for Swaziland.
- (7) Given that Swaziland needs more time to prepare itself to comply with the rules of origin, a temporary derogation should be granted. The temporary derogation should be limited to the length of time needed for the beneficiary company to achieve compliance with the rules in accordance with Article 36(2) of Annex II to Regulation (EC) No 1528/2007.
- (8) In order to allow Swaziland to make full use of the quantities granted, and taking into account that Swaziland could utilise the past derogation only in the second semester of 2012, the temporary derogation should have retroactive effect from 1 January 2013.
- (9) In accordance with Article 36(4) of Annex II to Regulation (EC) No 1528/2007, the temporary derogation from the rules of origin would not cause serious injury to an established Union industry, provided that certain conditions relating to quantities, surveillance and duration are respected.

<sup>(1)</sup> OJ L 348, 31.12.2007, p. 1.

<sup>(2)</sup> OJ L 113, 25.4.2012, p. 12.

- (10) It is therefore duly justified to respond positively to the request of Swaziland and to grant a temporary derogation under Article 36(1)(b) of Annex II to Regulation (EC) No 1528/2007.
- (11) According to the information received from Swaziland, exports under derogation of products of HS heading 2008 were around 250 tonnes for the period from July to December 2012. The quantities to be allocated for 2013 and 2014 should be consistent with this utilisation. It is appropriate to provide for 500 tonnes yearly which respects the ability of the existing industry to continue its exports to the Union.
- (12) Accordingly, a temporary derogation for two years should be granted to Swaziland in respect of 500 tonnes per year of peaches, pears and mixtures of peach and/or pear and/or pineapple in fruit juice of CN codes ex 2008 70 98, 2008 40 90 and ex 2008 97 98.
- (13) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code<sup>(1)</sup> lays down rules relating to the management of tariff quotas. In order to ensure efficient management carried out in close cooperation between the authorities of Swaziland, the customs authorities of the Member States and the Commission, those rules should apply to the quantities imported under the derogation granted by this Decision.
- (14) In order to allow efficient monitoring of the operation of the derogation, the authorities of Swaziland should communicate regularly to the Commission details of the EUR.1 movement certificates issued.
- (15) The measures provided for in this Decision are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS DECISION:

#### *Article 1*

By way of derogation from Annex II to Regulation (EC) No 1528/2007 and in accordance with Article 36(1)(b) of that Annex, peaches, pears and mixtures of peach and/or pear and/or pineapple in fruit juice of CN codes ex 2008 70 98, 2008 40 90 and ex 2008 97 98 in the manufacture of which non-originating diced peaches in juice not containing sugar of CN codes ex 2008 70 92 and diced pears in juice not containing sugar of CN code 2008 40 90 are used, shall be regarded as originating in Swaziland in accordance with the terms set out in Articles 2 to 5 of this Decision.

#### *Article 2*

The derogation provided for in Article 1 shall apply to the products and the quantities set out in the Annex which are declared for release for free circulation into the Union from Swaziland during the period from 1 January 2013 to 31 December 2014.

#### *Article 3*

The quantities set out in the Annex to this Decision shall be managed in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

#### *Article 4*

The customs authorities of Swaziland shall take the necessary measures to carry out quantitative checks on exports of the products referred to in Article 1.

All the EUR.1 movement certificates they issue in relation to the products referred to in Article 1 shall bear a reference to this Decision.

Before the end of the month following each quarter, the competent authorities of Swaziland shall forward to the Commission a quarterly statement of the quantities in respect of which EUR.1 movement certificates have been issued pursuant to this Decision and the serial numbers of those certificates.

#### *Article 5*

Box 7 of EUR.1 movement certificates issued under this Decision shall contain the following:

‘Derogation — Implementing Decision 2013/243/EU’.

#### *Article 6*

This Decision shall apply from 1 January 2013 until 31 December 2014.

#### *Article 7*

This Decision is addressed to the Member States.

Done at Brussels, 24 May 2013.

*For the Commission*

Algirdas ŠEMETA

*Member of the Commission*

<sup>(1)</sup> OJ L 253, 11.10.1993, p. 1.

## ANNEX

Order No	CN code	Description of goods	Period	Total annual quantity (tonnes)
09.1628	2008 40 90	Preparations of pears	1.1.2013 to 31.12.2013	500
	ex 2008 70 98	Preparations of peaches		
	ex 2008 97 98	Preparations of fruit; Mixtures of peach and/or pear and/or pineapple in fruit juice	1.1.2014 to 31.12.2014	500

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