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Contents

II *Non-legislative acts*

INTERNATIONAL AGREEMENTS

2013/521/EU:

- ★ **Council Decision of 7 October 2013 on the conclusion of the Agreement between the European Union and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union** 1

- ★ **Agreement between the European Union and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union** 3

2013/522/EU:

- ★ **Council Decision of 7 October 2013 on the conclusion of the Agreement between the European Union and the Republic of Cape Verde on the readmission of persons residing without authorisation** 13

- ★ **Agreement between the European Union and the Republic of Cape Verde on the readmission of persons residing without authorisation** 15

2013/523/EU:

- ★ **Council Decision of 18 October 2013 on the signing, on behalf of the European Union, of the revised Memorandum of Understanding with the United States of America Regarding the Importation of Beef from Animals Not Treated with Certain Growth-Promoting Hormones and Increased Duties Applied by the United States to Certain Products of the European Union** 35

Price: EUR 4

(Continued overleaf)

EN

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

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

REGULATIONS

★ Commission Implementing Regulation (EU) No 1016/2013 of 23 October 2013 concerning the authorisation of a preparation of a micro-organism strain DSM 11798 of the <i>Coriobacteriaceae</i> family as a feed additive for pigs ⁽¹⁾	36
★ Commission Regulation (EU) No 1017/2013 of 23 October 2013 refusing to authorise certain health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health ⁽¹⁾	39
★ Commission Regulation (EU) No 1018/2013 of 23 October 2013 amending Regulation (EU) No 432/2012 establishing a list of permitted health claims made on foods other than those referring to the reduction of disease risk and to children's development and health ⁽¹⁾	43
★ Commission Regulation (EU) No 1019/2013 of 23 October 2013 amending Annex I to Regulation (EC) No 2073/2005 as regards histamine in fishery products ⁽¹⁾	46
Commission Implementing Regulation (EU) No 1020/2013 of 23 October 2013 establishing the standard import values for determining the entry price of certain fruit and vegetables	48

DECISIONS

2013/524/EU:

★ Council Decision of 17 October 2013 on the position to be adopted, on behalf of the European Union, in the EU-EFTA Joint Committee on common transit concerning the adoption of a Decision amending the Convention of 20 May 1987 on a common transit procedure, as regards the modification of HS codes and package codes	50
--	----

2013/525/EU:

★ Council Implementing Decision of 22 October 2013 amending Implementing Decision 2011/77/EU on granting Union financial assistance to Ireland	71
--	----



⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 7 October 2013

on the conclusion of the Agreement between the European Union and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union

(2013/521/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(a), in conjunction with Article 218(6)(a), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) In accordance with Council Decision 2012/649/EU of 15 October 2012 ⁽¹⁾, the Agreement between the European Union and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union (hereinafter 'the Agreement') was signed on 26 October 2012, subject to its conclusion at a later date.

(2) This Decision constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ⁽²⁾; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(3) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the

Schengen *acquis* ⁽³⁾; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(4) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(5) The Agreement should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union (hereinafter 'the Agreement') is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 12(1) of the Agreement ⁽⁴⁾.

Article 3

The Commission, assisted by experts from Member States, shall represent the Union in the Joint Committee established under Article 10 of the Agreement.

⁽¹⁾ OJ L 288, 19.10.2012, p. 1.

⁽²⁾ OJ L 131, 1.6.2000, p. 43.

⁽³⁾ OJ L 64, 7.3.2002, p. 20.

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

Article 4

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

Done at Luxembourg, 7 October 2013.

For the Council
The President
J. BERNATONIS

AGREEMENT**between the European Union and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union**

THE EUROPEAN UNION, hereinafter referred to as 'the Union',

and

THE REPUBLIC OF CAPE VERDE, hereinafter referred to as 'Cape Verde',

Hereinafter referred to as 'the Parties',

WISHING to promote contacts between their peoples as an important factor in ensuring the constant development of economic, humanitarian, cultural, scientific and other ties by facilitating the issue of visas to their citizens on the basis of reciprocity,

HAVING REGARD to the Joint Declaration of 5 June 2008 on a Mobility Partnership between the European Union and Cape Verde, in accordance with which the Parties are to take steps to develop a dialogue on matters relating to short-stay visas, with a view to facilitating the mobility of certain categories of people,

RECALLING the Cotonou Partnership Agreement and the Special Partnership between the European Union and Cape Verde, approved by the Council of the European Union on 19 November 2007,

RECOGNISING that this should not encourage illegal immigration and paying special attention to security and readmission,

TAKING INTO ACCOUNT the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and confirming that the provisions of this Agreement do not apply to the United Kingdom of Great Britain and Northern Ireland or to Ireland,

TAKING INTO ACCOUNT the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and confirming that the provisions of this Agreement do not apply to the Kingdom of Denmark,

HAVE AGREED AS FOLLOWS:

*Article 1***Subject matter and scope**

The purpose of this Agreement is to facilitate, on the basis of reciprocity, the issue of visas to citizens of Cape Verde and of the Union for an intended stay of no more than 90 days per period of 180 days.

*Article 2***General clause**

1. The measures to facilitate the issue of visas set out in this Agreement shall apply to citizens of Cape Verde and of the Union only in so far as they are not exempt from visa requirements under the laws and regulations of the Union or its Member States or of Cape Verde, or under the present Agreement or other international agreements.

2. The national law of Cape Verde and of the Member States or the law of the Union shall apply to matters not covered by the provisions of this Agreement, such as refusal to issue a visa, recognition of travel documents, proof of sufficient means of subsistence, refusal of entry and expulsion measures.

*Article 3***Definitions**

For the purposes of this Agreement:

(a) 'Member State' shall mean any Member State of the Union, with the exception of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland;

(b) 'Union citizen' shall mean any national of a Member State as defined in point (a);

(c) 'citizen of Cape Verde' shall mean any person with Cape Verde citizenship;

(d) 'visa' shall mean an authorisation issued or a decision taken by a Member State or by Cape Verde which is required with a view to entering, for transit purposes or for an intended stay of no more than 90 days in total, the territory of that Member State or of several Member States or the territory of Cape Verde;

(e) 'legal resident' shall mean:

in the case of the Union, any citizen of Cape Verde authorised or entitled to stay for more than 90 days in the territory of a Member State, on the basis of Union or national law.

in the case of Cape Verde, any Union citizen, as defined in point (b), holding a residence permit in accordance with national legislation.

Article 4

Issue of multiple-entry visas

1. Diplomatic missions and consular posts of the Member States and of Cape Verde shall issue multiple-entry visas valid for five years to the following categories of citizen:

- (a) members of national and regional governments and parliaments, constitutional courts, supreme courts or courts of auditors, if they are not exempt from visa requirements under this Agreement, in the exercise of their duties;
- (b) permanent members of official delegations who, following an official invitation addressed to Cape Verde, the Member States or the Union, take part in meetings, consultations, negotiations or exchange programmes, or in events in the territory of the Member States or Cape Verde organised on the initiative of intergovernmental organisations;
- (c) business people and company representatives who regularly travel to the Member States or to Cape Verde;
- (d) spouses, children (including adopted children) who are under the age of 21 or are dependent, and parents visiting either:
 - citizens of Cape Verde legally resident in the territory of a Member State or citizens of the Union legally resident in Cape Verde, or
 - citizens of the Union resident in the Member State of their nationality, or citizens of Cape Verde resident in Cape Verde.

However, if the need or intention to travel frequently or regularly is clearly limited to a shorter stay, the validity of the multiple-entry visa shall be limited to this stay, in particular where

- the term of office, in the case of those covered by point (a) above,
- the term of office of a permanent member of an official delegation, in the case of those covered by point (b) above,
- the duration of the positions as business people and company representatives, in the case of those covered by point (c) above, or
- the duration of the residence permits issued to Cape Verde citizens residing in the territory of a Member State and Union citizens residing in Cape Verde, in the case of those covered by point (d) above,

is less than five years.

2. Diplomatic missions and consular posts of the Member States and Cape Verde shall issue multiple-entry visas valid for one year to the following categories of citizens, provided that during the previous year they have obtained at least one visa and that they have made use of it in accordance with the laws on entry and residence in the territory of the State in question:

- (a) representatives of civil society organisations travelling regularly to Member States or to Cape Verde for the purposes of educational training or to take part in seminars and conferences, including as part of exchange programmes;
- (b) practitioners of a liberal profession taking part in international exhibitions, conferences, symposia, seminars or other similar events who regularly travel to the Member States or to Cape Verde;
- (c) persons taking part in scientific, cultural and artistic activities, including university and other exchange programmes, who regularly travel to the Member States or to Cape Verde;
- (d) participants in international sports events and persons accompanying them in a professional capacity;
- (e) journalists and accredited persons accompanying them in a professional capacity;
- (f) school pupils, students, post-graduate students and accompanying teachers who undertake trips for the purposes of study or educational training, including exchange programmes and other school-related activities;
- (g) representatives of religious organisations recognised in Cape Verde or in the Member States who regularly travel to the Member States or to Cape Verde respectively;
- (h) persons visiting regularly for medical reasons;
- (i) participants in official exchange programmes organised by twinned towns or municipal authorities;
- (j) members of official delegations who, following an official invitation addressed to Cape Verde, the Member States or the Union, regularly take part in meetings, consultations, negotiations or exchange programmes, and in events in the territory of the Member States or of Cape Verde organised on the initiative of intergovernmental organisations.

However, if the need or intention to travel frequently or regularly is clearly limited to a shorter stay, the validity of the multiple-entry visa shall be limited to the length of this stay.

3. Diplomatic missions and consular posts of the Member States and of Cape Verde shall issue multiple-entry visas that are valid for at least two years and at most five years to citizens in the categories referred to in paragraph 2 of this Article, provided that during the two years prior to the application they have made use of a one-year multiple-entry visa in accordance with the laws on entry and residence in the territory of the host State.

However, if the need or intention to travel frequently or regularly is clearly limited to a shorter stay, the validity of the multiple-entry visa shall be limited to the length of that stay.

4. The total period of residence of the persons referred to in paragraphs 1 to 3 of this Article shall not exceed 90 days per period of 180 days in the territory of the Member States or of Cape Verde.

Article 5

Visa fees and service charges

1. Without prejudice to the provisions of paragraph 2, the Member States or Cape Verde shall not collect visa fees from the following categories of people:

- (a) members of official delegations who, following an official invitation addressed to Cape Verde, the Member States or the Union, take part in meetings, consultations, negotiations or official exchange programmes, or in events in the territory of a Member State or of Cape Verde organised by intergovernmental organisations;
- (b) children under 12 years of age;
- (c) school pupils, students, postgraduate students and accompanying teachers travelling for study or educational purposes;
- (d) researchers travelling for the purposes of scientific research;
- (e) participants no older than 25 years of age taking part in seminars, conferences or sports, cultural or educational events organised by non-profit organisations.

2. Where the Member States or Cape Verde cooperate with an external service provider, service charges may be collected. The service charge shall be proportionate to the costs incurred by the external service provider in the performance of the tasks, and shall not exceed EUR 30. Cape Verde and the Member State or States concerned shall maintain the possibility for all applicants to lodge their applications directly at its/their consulates.

Article 6

Departure in the case of lost or stolen documents

Citizens of Cape Verde and of the Union who have lost their identity documents, or from whom these documents have been stolen while staying in the territory of the Member States or of Cape Verde respectively, may leave that territory on the basis of valid identity documents issued by diplomatic missions or consular posts of the Member States or of Cape Verde entitling them to cross the border without any visa or other authorisation.

Article 7

Extension of visa in exceptional circumstances

Citizens of Cape Verde and of the Union who are unable to leave the territory of the Member States or of Cape Verde respectively by the date indicated in their visas for reasons of force majeure shall have their visas extended free of charge in accordance with the legislation applied by the host State for the period necessary for their return to their State of residence.

Article 8

Diplomatic and service passports

1. Citizens of Cape Verde or of the Member States who are holders of valid diplomatic or service passports can enter, leave and transit through the territories of the Member States or of Cape Verde without visas.

2. The citizens referred to in paragraph 1 of this Article may stay in the territories of the Member States or of Cape Verde for a period not exceeding 90 days per period of 180 days.

Article 9

Territorial validity of visas

Subject to the national rules and regulations concerning national security applied by the Member States and Cape Verde, and subject to Union rules on visas with limited territorial validity, citizens of Cape Verde and of the Union shall be entitled to travel within the territory of the Member States and of Cape Verde under the same conditions as Union and Cape Verde citizens respectively.

Article 10

Joint Committee for the management of the Agreement

1. The Parties shall establish a Joint Committee to manage the Agreement ('the Committee'), consisting of representatives of the Union and of Cape Verde. The Union shall be represented on the Committee by the European Commission, assisted by experts from the Member States.

2. The Committee shall, in particular, have the following tasks:

- (a) monitoring the implementation of the Agreement;
- (b) proposing amendments or additions to the Agreement;
- (c) settling disputes arising from the interpretation or application of the provisions in the Agreement.

3. The Committee shall meet whenever necessary at the request of either of the Parties and at least once a year.

4. The Committee shall lay down its own rules of procedure.

Article 11

Relationship between this Agreement and agreements between the Member States and Cape Verde

From its entry into force, this Agreement shall take precedence over the provisions of any bilateral or multilateral agreements or arrangements concluded between Member States and Cape Verde, in so far as the provisions of those agreements or arrangements relate to matters that are dealt with by this Agreement.

Article 12

Final clauses

1. This Agreement shall be ratified or approved by the Parties in accordance with their respective procedures and shall enter into force on the first day of the second month following the date on which the Parties notify each other that the procedures referred to above have been completed.

2. By way of derogation from paragraph 1 of this Article, this Agreement shall enter into force only on the date of the entry into force of the Agreement on readmission between the Union and Cape Verde if that date is after the date provided for in paragraph 1 of this Article.

3. This Agreement is concluded for an indefinite period, unless terminated in accordance with paragraph 6 of this Article.

4. This Agreement may be amended by written agreement of the Parties. Amendments shall enter into force after the Parties have notified each other of the completion of their internal procedures necessary for this purpose.

5. Either Party may suspend the application of this Agreement in whole or in part for reasons of public order,

protection of national security or protection of public health. The decision on suspension shall be notified to the other Party not later than 48 hours before its entry into force. The Party that has suspended the application of this Agreement shall immediately inform the other Party once the reasons for the suspension no longer apply.

6. Either Party may terminate this Agreement by giving written notice to the other Party. The Agreement shall cease to apply 90 days after the date of receipt of such notification.

Done in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic.

Съставено в Прая на двадесет и шести октомври две хиляди и дванадесета година.

Hecho en Praia, el veintiséis de octubre de dos mil doce.

V Praie dne dvacátého šestého října dva tisíce dvanáct.

Udfærdiget i Praia den seksogtyvende oktober to tusind og tolv.

Geschehen zu Praia am sechszwanzigsten Oktober zweitausendzwoölf.

Kahe tuhande kaheteistkümnenda aasta oktoobrikuu kahekümne kuuendal päeval Praias.

Έγινε στην Πράια, στις είκοσι έξι Οκτωβρίου δύο χιλιάδες δώδεκα.

Done at Praia on the twenty-sixth day of October in the year two thousand and twelve.

Fait à Praia, le vingt-six octobre deux mille douze.

Fatto a Praia, addì ventisei ottobre duemiladodici.

Prajā, divi tūkstoši divpadsmitā gada divdesmit sestajā oktobrī.

Priimta du tūkstančiai dvyliktų metų spalio dvidešimt šeštą dieną Prajoje.

Kelt Praiában, a kétezer-tizenkettedik év október havának huszonhatodik napján.

Magħmul fi Praja, fis-sitta u għoxrin jum ta' Ottubru tas-sena elfejn u tnax.

Gedaan te Praia, de zesentwintigste oktober tweeduizend twaalf.

Sporządzono w Prai dnia dwudziestego szóstego października roku dwa tysiące dwunastego.

Feito em Praia, em vinte e seis de outubro de dois mil e doze.

Întocmit la Praia la douăzeci și șase octombrie două mii doisprezece.

V Praii dņa dvadsiateho šiesteho oktobra dvetisícdvanásť.

V Praii, dne šestindvajsetega oktobra leta dva tisoč dvanajst.

Tehty Praiassa kahdentenäkymmenentenäkuudentena päivänä lokakuuta vuonna kaksituhattakaksitoista.

Som skedde i Praia den tjugosjätte oktober tjugohundratolv.

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



За Република Кабо Верде
Por la República de Cabo Verde
Za Kapverdiskou republiku
For Republikken Kap Verde
Für die Republik Kap Verde
Cabo Verde Vabariigi nimel
Για τη Δημοκρατία του Πράσινου Ακρωτηρίου
For the Republic of Cape Verde
Pour la République du Cap-Vert
Per la Repubblica del Capo Verde
Kaboverdes Republikas vārdā –
Žaliojo Kyšulio Respublikos vardu
A Zöld-foki Köztársaság részéről
Għar-Repubblika tal-Kap Verde
Voor de Republiek Kaapverdië
W imieniu Republiki Zielonego Przylądka
Pela República de Cabo Verde
Pentru Republica Capului Verde
Za Kapverdiskú republiku
Za Republika Zelenortski otoki
Kap Verden tasavallan puolesta
För Republiken Kap Verde



PROTOCOL**to the Agreement on the Member States that do not fully apply the Schengen *acquis***

The Member States which are bound by the Schengen *acquis* but which do not yet issue Schengen visas pending the relevant Council decision to that end, shall issue national visas the validity of which is limited to their own territory.

In accordance with Decision No 582/2008/EC of the European Parliament and of the Council of 17 June 2008 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Cyprus and Romania of certain documents as equivalent to their national visas for the purposes of transit through their territories ⁽¹⁾, harmonised measures have been taken in order to simplify the transit of holders of Schengen visas and Schengen residence permits through the territory of the Member States not yet fully applying the Schengen *acquis*.

⁽¹⁾ OJ L 161, 20.6.2008, p. 30.

Joint Declaration on Article 8 of the Agreement concerning diplomatic and service passports

Either Party may invoke a partial suspension of the Agreement, and in particular of Article 8, in accordance with the procedure set out in Article 12(5), if the implementation of Article 8 leads to abuse by the other Party or to a threat to public security.

If the implementation of Article 8 is suspended, the two Parties shall initiate consultations in the framework of the Committee set up by the Agreement with a view to solving the problems that led to the suspension.

As a priority, both Parties undertake to ensure a high level of security for diplomatic and service passports, in particular by integrating biometric identifiers. For the Union, this will be ensured in accordance with the requirements set out in Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States ⁽¹⁾.

Joint Declaration on the harmonisation of information on procedures for issuing short-stay visas and on the documents to be submitted when applying for short-stay visas

Recognising the importance of transparency for visa applicants, the Parties consider that appropriate measures should be taken:

- in general, to draw up a list of basic information for applicants on the procedures and conditions for applying for visas, on the visas themselves and on the validity of the visas issued;
- in the case of each Party, to draw up a list of minimum requirements in order to ensure that applicants are given basic, coherent and uniform information and are required to submit, in principle, the same supporting documents.

The information mentioned above is to be disseminated widely (on the information board of consulates, in leaflets, on the internet, etc.).

⁽¹⁾ OJ L 385, 29.12.2004, p. 1.

Joint Declaration concerning the Kingdom of Denmark

The Parties take note that the present Agreement does not apply to the procedures for issuing visas by the diplomatic missions and consular posts of the Kingdom of Denmark.

It is therefore desirable that the authorities of Denmark and of Cape Verde should conclude, without delay, a bilateral agreement on facilitating the issue of short-stay visas, in terms similar to those in the Agreement between the Union and Cape Verde.

Joint Declaration concerning Ireland and the United Kingdom of Great Britain and Northern Ireland

The Parties take note that the present Agreement does not apply to the territory of Ireland or of the United Kingdom of Great Britain and Northern Ireland.

It is therefore desirable that the authorities of the United Kingdom of Great Britain and Northern Ireland, Ireland and Cape Verde should conclude bilateral agreements on facilitating the issue of visas.

**Joint Declaration concerning the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the
Principality of Liechtenstein**

The Parties take note of the close relationship between the Union and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Principality of Liechtenstein, particularly by virtue of the Agreements of 18 May 1999 and 26 October 2004 concerning the association of these countries with the implementation, application and development of the Schengen *acquis*.

It is therefore desirable that the authorities of the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation, the Principality of Liechtenstein and Cape Verde should conclude, without delay, bilateral agreements on facilitating the issue of short-stay visas, in terms similar to those set out in this Agreement.

Joint Declaration on cooperation on travel documents

The Parties agree that when monitoring the implementation of the Agreement, the Joint Committee established under Article 11 should evaluate the impact of the level of security of the respective travel documents on the functioning of the Agreement. To that end, the Parties agree to regularly inform each other about the measures taken to avoid the proliferation of travel documents, to develop the technical aspects of travel document security, and regarding the personalisation process in the issue of travel documents.

COUNCIL DECISION

of 7 October 2013

**on the conclusion of the Agreement between the European Union and the Republic of Cape Verde
on the readmission of persons residing without authorisation**

(2013/522/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 79(3), in conjunction with point (a)(v) of Article 218(6), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) In accordance with Council Decision 2013/77/EU ⁽¹⁾, the Agreement between the European Union and the Republic of Cape Verde on the readmission of persons residing without authorisation ('the Agreement') was signed, on behalf of the Union, subject to its conclusion.

(2) The Agreement should be approved.

(3) Article 18 of the Agreement establishes a Joint Readmission Committee which, pursuant to Article 18(5) thereof, is to lay down its own rules of procedure. It is appropriate to provide for a simplified procedure for establishing the position of the Union within the Joint Readmission Committee with regard to the adoption of those rules of procedure.

(4) In accordance with Articles 1 and 2 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(5) In accordance with Articles 1 and 2 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(6) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Republic of Cape Verde on the readmission of persons residing without authorisation ('the Agreement') is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person(s) empowered to proceed, on behalf of the Union, to the notification provided for in Article 22(2) of the Agreement, in order to express the consent of the Union to be bound by the Agreement ⁽²⁾.

Article 3

The Commission, assisted by experts from the Member States, shall represent the Union in the Joint Readmission Committee established by Article 18 of the Agreement.

⁽¹⁾ OJ L 37, 8.2.2013, p. 1.

⁽²⁾ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Article 4

The position of the Union within the Joint Readmission Committee with regard to the adoption of its rules of procedure, pursuant to Article 18(5) of the Agreement, shall be taken by the Commission after consultation with a special committee designated by the Council.

Article 5

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

Done at Luxembourg, 7 October 2013.

For the Council

The President

J. BERNATONIS

AGREEMENT**between the European Union and the Republic of Cape Verde on the readmission of persons residing without authorisation**

THE HIGH CONTRACTING PARTIES,

THE EUROPEAN UNION, hereinafter referred to as 'the Union',

and

THE REPUBLIC OF CAPE VERDE, hereinafter referred to as 'Cape Verde',

DETERMINED to strengthen their cooperation in order to combat illegal immigration more effectively,

HAVING REGARD to the obligation to initiate the negotiations for a readmission agreement at the request of either Party, set out in Article 13(5)(c)(ii) of the Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 and revised in Luxembourg on 25 June 2005, hereinafter referred to as 'the Cotonou Agreement',

DESIRING to facilitate the obligation for Parties to readmit their own nationals as confirmed by Article 13(5)(c)(i) of the Cotonou Agreement,

HAVING REGARD to the Joint Declaration of 5 June 2008 on a Mobility Partnership between the European Union and Cape Verde, in accordance with which the Parties will take steps to develop a dialogue on the readmission of persons without authorisation with a view to ensuring effective cooperation for their return,

DESIRING to establish, by means of this Agreement and on the basis of reciprocity, rapid and effective procedures for the identification and safe and orderly return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territory of Cape Verde or of one of the Member States of the Union, and to facilitate the transit of such persons in a spirit of cooperation,

EMPHASISING that this Agreement shall be without prejudice to the rights, obligations and responsibilities of the Union, of its Member States and of Cape Verde arising from international law and, in particular, from the Convention of 28 July 1951 on the Status of Refugees,

CONSIDERING that in accordance with the Protocol (No 21) on the position of the United Kingdom and of Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland will not take part in this Agreement unless they notify their wish to that effect in accordance with that Protocol,

CONSIDERING that the provisions of this Agreement, which falls within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union, do not apply to the Kingdom of Denmark, in accordance with the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union,

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

For the purposes of this Agreement:

- (a) the 'Contracting Parties' shall mean Cape Verde and the Union;
- (b) 'national of Cape Verde' shall mean any person with Cape Verde nationality;
- (c) 'national of a Member State' shall mean any person who holds the nationality, as defined for Union purposes, of a Member State;
- (d) 'Member State' shall mean any Member State of the Union bound by this Agreement;
- (e) 'third-country national' shall mean any person who holds a nationality other than that of Cape Verde or of one of the Member States;
- (f) 'stateless person' shall mean a person who does not hold the nationality of any country;
- (g) 'residence permit' shall mean a permit of any type issued by Cape Verde or by one of the Member States entitling a person to reside on its territory. This shall not include temporary permissions to remain on these territories granted in connection with the processing of an asylum application or an application for a residence permit;

- (h) 'visa' shall mean an authorisation issued or a decision taken by Cape Verde or by one of the Member States which is required in order to enter, or transit through, its territory. This shall not include the airport transit visa;
- (i) 'requesting State' shall mean the State (Cape Verde or one of the Member States) submitting a readmission application pursuant to Article 7 or a transit application pursuant to Article 14 of this Agreement;
- (j) 'requested State' shall mean the State (Cape Verde or one of the Member States) to which a readmission application pursuant to Article 7 or a transit application pursuant to Article 14 of this Agreement is addressed;
- (k) 'competent authority' shall mean any national authority of Cape Verde or of one of the Member States entrusted with the implementation of this Agreement in accordance with Article 19(1)(a) thereof;
- (l) 'transit' shall mean the passage of a third-country national or of a stateless person through the territory of the requested State during his transfer between the requesting State and the country of destination;
- (m) 'border region' shall mean an area which extends up to 30 kilometres from the territories of seaports, including customs zones, and international airports of the Member States and of Cape Verde.

SECTION I

READMISSION OBLIGATIONS OF CAPE VERDE

Article 2

Readmission of own nationals

1. Pursuant to Article 13(5)(c)(i) of the Cotonou Agreement, Cape Verde shall readmit, upon application by a Member State and without further formalities other than those provided for in this Agreement, all persons who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of the requesting Member State provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that they are nationals of Cape Verde.
2. Cape Verde shall also readmit:
 - (a) minor unmarried children of the persons referred to in paragraph 1, regardless of their place of birth or their nationality, unless they have an independent right of residence in the requesting Member State;
 - (b) spouses, holding another nationality, of the persons referred to in paragraph 1, provided they have the right to enter and stay or receive the right to enter and stay in the territory of Cape Verde, unless they have an independent right of residence in the requesting Member State.

3. Cape Verde shall also readmit persons who have been deprived of, or who have renounced, the nationality of Cape Verde since entering the territory of a Member State, unless such persons have at least been promised naturalisation by a Member State.

4. After Cape Verde has given a positive reply to the readmission application, the competent diplomatic mission or consular office of Cape Verde shall, irrespective of the will of the person to be readmitted, immediately and not later than within four working days issue the travel document required for the return of the person to be readmitted with a period of validity of six months. If Cape Verde has not, within four working days, issued the travel document, it shall be deemed to accept the use of the Union standard travel document for expulsion purposes ⁽¹⁾.

5. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the competent diplomatic mission or consular office of Cape Verde shall, within four working days, issue a new travel document with a period of validity of the same duration. If Cape Verde has not, within four working days, issued the new travel document, it shall be deemed to accept the use of the Union standard travel document for expulsion purposes ⁽²⁾.

Article 3

Readmission of third-country nationals and stateless persons

1. Cape Verde shall readmit, upon application by a Member State and without further formalities other than those provided for in this Agreement, all third-country nationals or stateless persons who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of the requesting Member State provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that such persons:

- (a) hold or held at the time of entering the territory in question a valid visa issued by Cape Verde, accompanied by legal proof of entry to the territory of Cape Verde, or a valid residence permit issued by Cape Verde; or
- (b) illegally entered the territory of a Member State coming directly from Cape Verde and that their prior presence in the territory of Cape Verde has been established.

2. The readmission obligation in paragraph 1 shall not apply if:

- (a) the third-country national or stateless person has only been in airside transit via an international airport of Cape Verde; or

⁽¹⁾ In line with the form set out in Council Recommendation of 30 November 1994, OJ C 274, 19.9.1996, p. 18.

⁽²⁾ Ibid.

(b) the requesting Member State has issued to the third-country national or stateless person a visa or residence permit before or after that person entered its territory, except where:

- (i) that person holds a valid visa issued by Cape Verde, accompanied by legal proof of entry to the territory of Cape Verde, or a residence permit issued by Cape Verde, which has a longer period of validity or is still valid; or
- (ii) that person has exceeded the length of time authorised by their visa or has conducted activities unauthorised by their visa in the territory of the requesting Member State.

3. After Cape Verde has given a positive reply to the readmission application, the requesting Member State shall issue the Union standard travel document for expulsion purposes⁽³⁾ to the person whose readmission has been accepted.

SECTION II

READMISSION OBLIGATIONS OF THE UNION

Article 4

Readmission of own nationals

1. Pursuant to Article 13(5)(c)(i) of the Cotonou Agreement, a Member State shall readmit, upon application by Cape Verde and without further formalities other than those provided for in this Agreement, all persons who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of Cape Verde provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that they are nationals of that Member State.

2. A Member State shall also readmit:

- (a) minor unmarried children of the persons referred to in paragraph 1, regardless of their place of birth or their nationality, unless they have an independent right of residence in Cape Verde;
- (b) spouses, holding another nationality, of the persons referred to in paragraph 1, provided they have the right to enter and stay or receive the right to enter and stay in the territory of the requested Member State, unless they have an independent right of residence in Cape Verde.

3. A Member State shall also readmit persons who have been deprived of, or who have renounced, the nationality of a Member State since entering the territory of Cape Verde, unless such persons have at least been promised naturalisation by Cape Verde.

4. After the requested Member State has given a positive reply to the readmission application, the competent diplomatic

mission or consular office of that Member State shall, irrespective of the will of the person to be readmitted, immediately and not later than within four working days, issue the travel document required for the return of the person to be readmitted with a period of validity of six months.

5. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the competent diplomatic mission or consular office of that Member State shall, within four working days, issue a new travel document with a period of validity of the same duration.

Article 5

Readmission of third-country nationals and stateless persons

1. A Member State shall readmit, upon application by Cape Verde and without further formalities other than those provided for in this Agreement, all third-country nationals or stateless persons who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of Cape Verde provided that it is proved, or may be validly assumed on the basis of prima facie evidence furnished, that such persons:

- (a) hold or held at the time of entering the territory in question a valid visa issued by the requested Member State, accompanied by legal proof of entry to the territory of the requested Member State, or a valid residence permit issued by the requested Member State; or
- (b) illegally entered the territory of Cape Verde coming directly from the requested Member State and that their prior presence in the territory of the requested Member State has been established.

2. The readmission obligation in paragraph 1 shall not apply if:

- (a) the third-country national or stateless person has only been in airside transit via an international airport of the requested Member State; or
- (b) Cape Verde has issued a visa or residence permit to the third-country national or stateless person before or after they entered its territory, unless:

- (i) that person holds a visa issued by the requested Member State, accompanied by legal proof of entry to the territory of the requested Member State, or a residence permit issued by the requested Member State, which has a longer period of validity or is still valid; or
- (ii) that person has exceeded the length of time authorised by their visa or has conducted activities unauthorised by their visa in the territory of Cape Verde.

⁽³⁾ Ibid.

3. The readmission obligation in paragraph 1 rests on the Member State that issued a visa or residence permit. If two or more Member States issued a visa or residence permit, the readmission obligation in paragraph 1 rests on the Member State that issued the document with the longer period of validity or, if one or several of them have already expired, the document that is still valid. If all of the documents have already expired, the readmission obligation in paragraph 1 rests on the Member State that issued the document with the most recent expiry date. If no such document can be presented, the readmission obligation in paragraph 1 rests on the Member State of last exit.

4. After the Member State has given a positive reply to the readmission application, where necessary, Cape Verde shall issue to the person whose readmission has been accepted the travel document required for his or her return.

SECTION III

READMISSION PROCEDURE

Article 6

Principles

1. Subject to paragraphs 2 and 3, any transfer of a person to be readmitted on the basis of one of the obligations contained in Articles 2 to 5 shall require the submission of a readmission application, drawn up in accordance with Article 7, to the competent authority of the requested State.

2. The transfer of the person to be readmitted may take place without the submission of a readmission application or the written notification referred to in Article 11(1) from the requesting State to the competent authority of the requested State:

- (a) in the case of the requested State's own nationals, if the person to be readmitted holds a valid travel document or identity card;
- (b) in the case of third-country nationals or stateless persons, if the person was apprehended at the airport of the requesting State after arriving directly from the territory of the requested State.

3. Without prejudice to paragraph 2, in the case of third-country nationals or stateless persons holding a valid travel document and a valid visa or residence permit issued by the requested State, the transfer shall require only the written notification referred to in Article 11(1) from the requesting State to the competent authority of the requested State.

4. Without prejudice to paragraph 1 and as an exception to paragraph 2, the written notification referred to in Article 11(1) from the requesting State to the competent authority of the requested State shall be necessary in the case of the transfer of any person requiring an escort.

5. Without prejudice to paragraphs 2 and 3, if a person has been apprehended in the border region of the requesting State

after illegally crossing the border coming directly from the territory of the requested State, the requesting State may submit a readmission application within two working days of the apprehension of this person (accelerated procedure).

Article 7

Readmission application

1. Readmission applications shall where possible be made in writing, and must contain the following information:

- (a) the particulars of the person to be readmitted (e.g. given names, surnames, date of birth, and – where possible – place of birth, and the last place of residence) and, where applicable, the particulars of minor unmarried children and/or spouse;
- (b) in the case of own nationals, indication of the means by which proof or prima facie evidence of nationality will be provided in accordance with Annexes 1 and 2 respectively;
- (c) in the case of third-country nationals and stateless persons, indication of the means by which proof or prima facie evidence of the conditions for the readmission of third-country nationals and stateless persons will be provided in accordance with Annexes 3 and 4 respectively;
- (d) a photograph of the person to be readmitted.

2. To the extent possible, the readmission application shall also contain the following additional information:

- (a) a statement indicating that the person to be transferred may need help or care, provided the person concerned has explicitly consented to the statement;
- (b) any other protection or security measure or information concerning the health of the person which may be necessary in the individual transfer case.

3. A common form to be used for readmission applications is attached at Annex 5 to this Agreement.

4. A readmission application may be submitted by any means of communication, including by electronic means or fax.

Article 8

Evidence of nationality

1. Proof of nationality pursuant to Article 2(1) and Article 4(1) may in particular be furnished through the documents listed in Annex 1 to this Agreement, even if their period of validity has expired. If such documents are presented, the Member States and Cape Verde shall mutually recognise the nationality without further investigation being required. Proof of nationality cannot be furnished through false documents.

2. Prima facie evidence of nationality pursuant to Article 2(1) and Article 4(1) may in particular be furnished through the documents listed in Annex 2 to this Agreement, even if their period of validity has expired. If such documents are presented, the Member States and Cape Verde shall deem the nationality to be established, unless they can prove otherwise. Prima facie evidence of nationality cannot be furnished through false documents.

3. If none of the documents listed in Annexes 1 or 2 can be presented, the competent diplomatic and consular representations of the requested State concerned shall, upon a request from the requesting State which is to be included in the readmission application, make arrangements to interview the person to be readmitted without undue delay, at the latest within three calendar days of the date of the request, in order to establish his or her nationality. The procedure for such interviews may be established in the implementing Protocols provided for in Article 19 of this Agreement.

Article 9

Evidence regarding third-country nationals and stateless persons

1. Proof of the conditions for the readmission of third-country nationals and stateless persons laid down in Article 3(1) and Article 5(1) shall in particular be furnished through the means of evidence listed in Annex 3 to this Agreement. It cannot be furnished through false documents. Any such proof shall be mutually recognised by the Member States and Cape Verde without any further investigation being required.

2. Prima facie evidence of the conditions for the readmission of third-country nationals and stateless persons laid down in Article 3(1) and Article 5(1) shall in particular be furnished through the means of evidence listed in Annex 4 to this Agreement. It cannot be furnished through false documents. Where such prima facie evidence is presented, the Member States and Cape Verde shall deem the conditions to be established, unless they can prove otherwise.

3. The unlawfulness of entry, presence or residence shall be established by means of the travel documents of the person concerned in which the necessary visa or other residence permit for the territory of the requesting State is missing. A statement by the requesting State that the person concerned has been found not to have the necessary travel documents, visa or residence permit shall likewise provide prima facie evidence of the unlawful entry, presence or residence.

Article 10

Time limits

1. The application for readmission of a third-country national or stateless person must be submitted to the competent authority of the requested State within a maximum of one year after the requesting State's competent authority has gained knowledge that the person concerned does not fulfil, or

no longer fulfils, the conditions in force for entry, presence or residence. Where there are legal or factual obstacles to the application being submitted in time, the time limit shall, upon request by the requesting State, be extended, but only until the obstacles have ceased to exist.

2. All readmission applications must be replied to in writing:

(a) within two working days if the application has been made under the accelerated procedure (Article 6(5));

(b) within eight calendar days in all other cases.

This time limit begins to run from the date of receipt of the readmission request. If there is no reply within this time limit, the transfer shall be deemed to have been agreed to.

Replies to readmission applications may be sent by any means of communication, including by electronic means or fax.

3. Reasons shall be given in writing for the refusal of a readmission request.

4. After readmission has been approved or, where appropriate, after expiry of the time limit laid down in paragraph 2, the person concerned shall be transferred within three months. At the request of the requesting State, this time limit may be extended by the time taken to deal with legal or practical obstacles.

Article 11

Transfer modalities and modes of transport

1. Without prejudice to Articles 6(2) and (3), before returning a person, the competent authorities of the requesting State shall, at least 48 hours in advance, notify the competent authorities of the requested State in writing of the transfer date, the point of entry, possible escorts and other information regarding the transfer.

2. Transport may take place by air or sea. Return by air shall not be restricted to the use of the national carriers of Cape Verde or the Member States and may take place by using scheduled or charter flights. In the event of escorted returns, such escorts shall not be restricted to persons authorised by the requesting State, provided that the persons are authorised by Cape Verde or by any Member State.

Article 12

Readmission in error

The requesting State shall take back any person readmitted by the requested State if it is established, within a period of three months after the transfer of the person concerned, that the requirements laid down in Articles 2 to 5 of this Agreement were not met.

In such cases the procedural provisions of this Agreement shall apply *mutatis mutandis* and all available information relating to the actual identity and nationality of the person to be taken back shall be provided.

SECTION IV

TRANSIT OPERATIONS

Article 13

Principles

1. The Member States and Cape Verde shall endeavour to restrict the transit of third-country nationals and stateless persons to cases where such persons cannot be returned to the State of destination directly.

2. Cape Verde shall nevertheless allow the transit of third-country nationals or stateless persons if a Member State so requests, and a Member State shall authorise the transit of third-country nationals or stateless persons if Cape Verde so requests, if the onward journey in other possible States of transit and the readmission by the State of destination is assured.

3. Transit can be refused by Cape Verde or a Member State:

- (a) if the third-country national or the stateless person runs a real risk of being subjected to torture, inhuman or degrading treatment or punishment, or the death penalty, or of persecution because of their race, religion, nationality, membership of a particular social group or political convictions in the State of destination or another State of transit;
- (b) if the third-country national or the stateless person is to be subject to criminal sanctions in the requested State or in another State of transit; or
- (c) on grounds of public health, domestic security, public order or other national interests of the requested State.

4. Cape Verde or a Member State may revoke any authorisation issued if circumstances referred to in paragraph 3 subsequently arise or come to light which stand in the way of the transit operation, or if the onward journey in possible States of transit or the readmission by the State of destination is no longer assured. In this case, the requesting State shall take back the third-country national or the stateless person, as necessary and without delay.

Article 14

Transit procedure

1. An application for a transit operation must be submitted to the competent authority of the requested State in writing and must contain the following information:

- (a) type of transit (by air, sea or land), possible other States of transit and intended final destination;

- (b) the particulars of the person concerned (e.g. given name, surname, maiden name, other names used/by which known or aliases, date of birth, sex and – where possible – place of birth, nationality, language, type and number of travel document);

- (c) envisaged point of entry, date of transfer and possible use of escorts;

- (d) a declaration that in the view of the requesting State the conditions pursuant to Article 13(2) are met, and that no reasons for a refusal pursuant to Article 13(3) are known of.

A common form to be used for transit applications is attached as Annex 6 to this Agreement.

A transit application may be submitted by any means of communication, including by electronic means or fax.

2. The requested State shall, within three working days after receipt of the application and in writing, inform the requesting State of the admission, confirming the point of entry and the envisaged date of admission, or inform it of the admission refusal and of the reasons for such refusal. If there is no reply within three working days, the transit shall be deemed to have been approved.

Replies to transit applications may be sent by any means of communication, including by electronic means or fax.

3. If the transit operation takes place by air, the person to be readmitted and possible escorts shall be exempted from having to obtain an airport transit visa.

If the transit operation to the final destination cannot proceed as expected for reasons of force majeure, the requested State shall, if necessary, issue the visa required to the person to be readmitted and to any escorts without delay for the period necessary to continue the transit operation.

4. The competent authorities of the requested State shall, subject to mutual consultations, assist in the transit operations, in particular through the surveillance of the persons in question and the provision of suitable amenities for that purpose.

SECTION V

COSTS

Article 15

Transport and transit costs

Without prejudice to the right of the competent authorities to recover the costs associated with the readmission from the person to be readmitted or third parties, all transport costs incurred in connection with readmission and transit operations pursuant to this Agreement as far as the border of the State of final destination shall be borne by the requesting State.

SECTION VI

DATA PROTECTION AND WITHOUT PREJUDICE CLAUSE*Article 16***Data protection**

The communication of personal data shall take place only if such communication is necessary for the implementation of this Agreement by the competent authorities of Cape Verde or a Member State as the case may be. The processing and treatment of personal data in a particular case shall be subject to the domestic laws of Cape Verde and, where the controller is a competent authority of a Member State, to the provisions of Directive 95/46/EC of the European Parliament and of the Council⁽⁴⁾ and of the national legislation of that Member State adopted pursuant to that Directive. Furthermore, the following principles shall apply:

- (a) personal data must be processed fairly and lawfully;
- (b) personal data must be collected for the specified, explicit and legitimate purpose of implementing this Agreement and not further processed by the communicating authority nor by the receiving authority in a way incompatible with that purpose;
- (c) personal data must be adequate, relevant and not excessive in relation to the purpose for which they are collected and/or subsequently processed; in particular, personal data communicated may concern only the following:
 - (i) the particulars of the person to be transferred (e.g. given name, surname, any previous names, other names used/by which known or aliases, sex, civil status, date and place of birth, current and any previous nationality);
 - (ii) passport, identity card or driving licence (number, period of validity, date of issue, issuing authority, place of issue);
 - (iii) stop-overs and itineraries;
 - (iv) other information needed to identify the person to be transferred or to examine the readmission requirements laid down in this Agreement;
- (d) personal data must be accurate and, where necessary, kept up to date;
- (e) personal data must be kept in a form which permits identification of the data subjects for no longer than is necessary for the purpose for which the data were collected or for which they are subsequently processed;
- (f) both the communicating authority and the receiving authority shall take every reasonable step to ensure, as appropriate, the rectification, erasure or blocking of personal data where their processing does not comply with the provisions of this Article, in particular because those data are not adequate, relevant, accurate, or they are excessive in relation to the purpose for which they are processed. This includes the notification of any rectification, erasure or blocking to the other Party;
- (g) upon request, the receiving authority shall inform the communicating authority of the use of the communicated data and of the results obtained therefrom;
- (h) personal data may be communicated only to the competent authorities. Further communication of personal data to other bodies shall require the prior consent of the communicating authority;
- (i) the communicating and the receiving authorities shall make a written record of the communication and of the receipt of personal data.

*Article 17***Without prejudice clause**

1. This Agreement shall be without prejudice to the rights, obligations and responsibilities of the Union, its Member States and Cape Verde arising from international law, including from international conventions to which they are party, in particular:

- the Convention of 28 July 1951 on the Status of Refugees as amended by the Protocol of 31 January 1967 on the Status of Refugees,
- the European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms,
- the international conventions on determining the State responsible for examining applications for asylum,
- the Convention of 10 December 1984 against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,
- international conventions on extradition and transit,
- multilateral international conventions and agreements on the readmission of foreign nationals.

2. Nothing in this Agreement shall prevent the return of a person under other formal or informal arrangements between the requested and requesting States.

⁽⁴⁾ OJ L 281, 23.11.1995, p. 31.

SECTION VII

IMPLEMENTATION AND APPLICATION

Article 18

Joint Readmission Committee

1. The Contracting Parties shall provide each other with mutual assistance in the application and interpretation of this Agreement. To this end, they shall set up a Joint Readmission Committee (hereinafter referred to as 'the Committee') which shall, in particular, have the following tasks:

- (a) monitoring the application of this Agreement;
 - (b) deciding on the implementing arrangements necessary for the uniform application of this Agreement;
 - (c) regularly exchanging information on the implementing Protocols drawn up by individual Member States and Cape Verde pursuant to Article 19;
 - (d) recommending amendments to this Agreement and its Annexes.
2. The decisions of the Committee shall be binding on the Contracting Parties.
3. The Committee shall be composed of representatives of the Union and of Cape Verde.
4. The Committee shall meet, whenever necessary, at the request of either of the Contracting Parties.
5. The Committee shall lay down its own rules of procedure.

Article 19

Implementing Protocols

1. At the request of a Member State or Cape Verde, Cape Verde and that Member State shall draw up an implementing Protocol which shall, inter alia, lay down rules on:

- (a) designation of the competent authorities, border crossing points and exchange of contact points;
- (b) conditions for escorted returns, including the transit of third-country nationals and stateless persons under escort;
- (c) evidence and documents additional to those listed in Annexes 1 to 4 to this Agreement;
- (d) the arrangements for readmission under the accelerated procedure;
- (e) the procedure for interviews.

2. The implementing Protocols referred to in paragraph 1 shall enter into force only after the Readmission Committee provided for in Article 18 has been notified.

3. Cape Verde agrees to apply any provision of an implementing Protocol drawn up with one Member State also in its relations with any other Member State upon request of the latter.

Article 20

Relation to bilateral readmission agreements or arrangements of Member States

The provisions of this Agreement shall take precedence over the provisions of any legally binding instrument on the readmission of persons residing without authorisation which, under Article 19, have been or may be concluded between individual Member States and Cape Verde, in so far as the provisions of any such legally binding instrument are incompatible with those of this Agreement.

SECTION VIII

FINAL CLAUSES

Article 21

Territorial application

1. Subject to paragraph 2, this Agreement shall apply to the territory in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applicable and to the territory of Cape Verde.

2. This Agreement shall apply to the territory of Ireland and of the United Kingdom only pursuant to a notification by the Union to Cape Verde to that effect. This Agreement shall not apply to the territory of the Kingdom of Denmark.

Article 22

Entry into force, duration and termination

1. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their respective procedures.

2. This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties notify each other that the procedures referred to in the first paragraph have been completed.

3. This Agreement shall apply to Ireland and to the United Kingdom on the first day of the second month following the date of the notification referred to in Article 21(2).

4. This Agreement is concluded for an unlimited period.

5. Either Contracting Party may terminate this Agreement by officially notifying the other Contracting Party. This Agreement shall cease to apply six months after the date of such notification.

Article 23

Annexes

Annexes 1 to 6 shall form an integral part of this Agreement.

Done in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic.

Съставено в Брюксел на осемнадесети април две хиляди и тринадесета година.

Hecho en Bruselas, el dieciocho de abril de dos mil trece.

V Bruselu dne osmnáctého dubna dva tisíce třináct.

Udfærdiget i Bruxelles den attende april to tusind og tretten.

Geschehen zu Brüssel am achtzehnten April zweitausenddreizehn.

Kahe tuhande kolmeteistkümnenda aasta aprillikuu kaheksateistkümnendal päeval Brüsselis.

Έγινε στις Βρυξέλλες, στις δέκα οκτώ Απριλίου δύο χιλιάδες δεκατρία.

Done at Brussels on the eighteenth day of April in the year two thousand and thirteen.

Fait à Bruxelles, le dix-huit avril deux mille treize.

Fatto a Bruxelles, addì diciotto aprile duemilatreddici.

Briselē, divi tūkstoši trīspadsmitā gada astoņpadsmitajā aprīlī.

Priimta du tūkstančiai trylikų metų balandžio aštuonioliką dieną Briuselyj.

Kelt Brüsszelben, a kétezer-tizenharmadik év április havának tizennyolcadik napján.

Magħmul fi Brussell, fit-tmintax-il jum ta' April tas-sena elfejn u tlettax.

Gedaan te Brussel, de achttiende april tweeduizend vier dertien.

Sporządzono w Brukseli dnia osiemnastego kwietnia roku dwa tysiące trzynastego.

Feito em Bruxelas, em dezoito de abril de dois mil e treze.

Întocmit la Bruxelles la optsprezece aprilie două mii treisprezece.

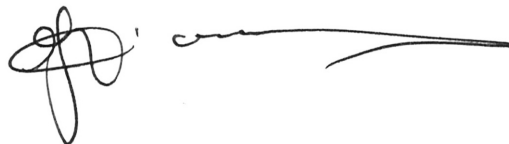
V Bruseli osemnásteho apríla dvetisíctrinásť.

V Bruslju, dne osemnajstega aprila leta dva tisoč trinajst.

Tehty Brysselissä kahdeksantenatoista päivänä huhtikuuta vuonna kaksituhattakolmetoista.

Som skedde i Bryssel den artonde april tjugohundratretton.

Pela República de Cabo Verde
За Република Кабо Верде
Por la República de Cabo Verde
Za Kapverdskou republiku
For Republikken Kap Verde
Für die Republik Kap Verde
Cabo Verde Vabariigi nimel
Για τη Δημοκρατία του Πράσινου Ακρωτηρίου
For the Republic of Cape Verde
Pour la République du Cap Vert
Per la Repubblica del Capo Verde
Kaboverdes Republikas vārdā –
Žaliojo Kyšulio Respublikos vardu
A Zöld-foki Köztársaság részéről
Għar-Repubblika Tal-Kap Verde
Voor de Republiek Kaarverdië
W imieniu Republiki Zielonego Przylądka
Pentru Republica Capului Verde
Za Kapverdskú republiku
Za Republika Zelenortski otoki
Kap Verden tasavallan puolesta
För Republiken Kap Verde



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



ANNEX 1

COMMON LIST OF DOCUMENTS THE PRESENTATION OF WHICH IS CONSIDERED AS PROOF OF NATIONALITY

(ARTICLES 2(1), 4(1) AND 8(1))

Where the requested State is either one of the Member States or Cape Verde:

- passports of any kind (national passports, diplomatic passports, service passports, collective passports and replacement passports, including the passports of minors),
- laissez-passer issued by the requested State,
- identity cards of any kind (including temporary and provisional ones),
- service books and military identity cards,
- seamen's registration books and skippers' service cards,
- nationality certificates and other official documents that mention or clearly indicate nationality.

Where the requested State is Cape Verde:

- confirmation of identity as a result of a search carried out in the Visa Information System ⁽¹⁾,
- in the case of Member States not using the Visa Information System, positive identification established from the visa application records kept by those Member States.

Where the requested State is one of the Member States:

- positive identification established from the visa application records kept by Cape Verde.

⁽¹⁾ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

ANNEX 2

**COMMON LIST OF DOCUMENTS THE PRESENTATION OF WHICH IS CONSIDERED AS PRIMA FACIE
EVIDENCE OF NATIONALITY**

(ARTICLES 2(1), 4(1) AND 8(2))

- photocopies of any of the documents listed in Annex 1 to this Agreement,
 - driving licences or photocopies thereof,
 - birth certificates or photocopies thereof,
 - company identity cards or photocopies thereof,
 - statements by witnesses,
 - statements made by the person concerned and language spoken by him or her, which may in particular be shown by means of an official test result,
 - fingerprints,
 - any other document which may help to establish the nationality of the person concerned.
-

ANNEX 3

COMMON LIST OF DOCUMENTS WHICH ARE CONSIDERED AS PROOF OF THE GROUNDS FOR THE READMISSION OF THIRD-COUNTRY NATIONALS AND STATELESS PERSONS

(ARTICLES 3(1), 5(1) AND 9(1))

- visa accompanied by proof of entry to the territory of the requested State and/or residence permit issued by the requested State,
 - entry/departure stamps or similar endorsement in the travel document of the person concerned or other evidence of entry/departure (e.g. photographic),
 - documents, certificates and bills of any kind (e.g. hotel bills, appointment cards for doctors/dentists, entry cards for public/private institutions, car rental agreements, credit card receipts etc.) which clearly show that the person concerned stayed on the territory of the requested State,
 - tickets in a person's name and/or passenger lists of air, train, boat or coach companies which show the presence and the itinerary of the person concerned on the territory of the requested State,
 - information showing that the person concerned has used the services of a guide or travel agency,
 - official statements made, in particular, by border authority staff and other witnesses who can testify that the person concerned crossed the border,
 - official statements by the person concerned in judicial or administrative proceedings.
-

ANNEX 4

COMMON LIST OF DOCUMENTS WHICH ARE CONSIDERED AS PRIMA FACIE EVIDENCE OF THE GROUNDS FOR THE READMISSION OF THIRD-COUNTRY NATIONALS AND STATELESS PERSONS

(ARTICLES 3(1), 5(1) AND 9(2))

- visa issued by the requested State,
 - description of the place and circumstances under which the person concerned has been intercepted after entering the territory of the requesting State, issued by the relevant authorities of that State,
 - information relating to the identity and/or stay of a person which has been provided by an international organisation (e.g. the United Nations High Commissioner for Refugees),
 - reports/corroboation of information by family members, travelling companions, etc.,
 - statements made by the person concerned,
 - fingerprints.
-

ANNEX 5



[Emblem of the Republic of Cape Verde]

.....

 (Designation of requesting authority)

.....

 (Place and date)

Reference:

To

.....

 (Designation of requested authority)

☐ ACCELERATED PROCEDURE (Article 6(5))☐ INTERVIEW REQUEST (Article 8(3))

READMISSION APPLICATION

pursuant to Article 7 of the Agreement of between the European Union and the Republic of Cape Verde on the readmission of persons residing without authorisation

A. PERSONAL DETAILS

1. Full name (underline surname):

.....

2. Name at birth:

.....

3. Date and place of birth:

.....

4. Sex and physical description (height, colour of eyes, distinguishing marks etc.):

.....

5. Also known as (earlier names, other names used/by which known, or aliases):

.....

6. Nationality and language:

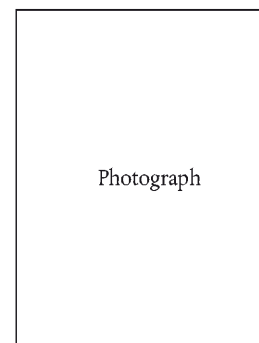
.....

7. Civil status:

☐ married☐ single☐ divorced☐ widowed

If married:

name of spouse



Names and age of children (if any)

.....

.....

.....

8. Last address in the requesting State:

.....

B. PERSONAL DETAILS OF SPOUSE (IF APPROPRIATE)

1. Full name (underline surname):

.....

2. Name at birth:

.....

3. Date and place of birth:

4. Sex and physical description (height, colour of eyes, distinguishing marks etc.):

.....

5. Also known as (earlier names, other names used/by which known, or aliases):

.....

6. Nationality and language:

.....

C. PERSONAL DETAILS OF CHILDREN (IF APPROPRIATE)

1. Full name (underline surname):

.....

2. Date and place of birth:

3. Sex and physical description (height, colour of eyes, distinguishing marks etc.):

.....

4. Nationality and language:

.....

D. SPECIAL CIRCUMSTANCES RELATING TO THE TRANSFEREE

1. State of health

(e.g. possible reference to special medical care; Latin name of contagious diseases):

.....

2. Indication of particularly dangerous persons

(e.g. suspected of serious offence; aggressive behaviour):

.....

E. MEANS OF EVIDENCE ATTACHED

1. ....	.....
(passport No)	(date and place of issue)
.....
(issuing authority)	(expiry date)

2.	..... (identity card No)	..... (date and place of issue)
	..... (issuing authority)	..... (expiry date)
3.	..... (driving licence No)	..... (date and place of issue)
	..... (issuing authority)	..... (expiry date)
4.	..... (other official document No)	..... (date and place of issue)
	..... (issuing authority)	..... (expiry date)

F. OBSERVATIONS

(Signature) (Seal/stamp)

ANNEX 6



Emblem of the Republic of Cape Verde

.....

 (Designation of requesting authority)

.....

 (Place and date)

Reference

.....

To

.....

.....

.....

(Designation of requested authority)

TRANSIT APPLICATION

pursuant to Article 14 of the Agreement of between the European Union and the Republic of Cape Verde on the readmission of persons residing without authorisation

A. PERSONAL DETAILS

1. Full name (underline surname):

.....

2. Name at birth:

.....

3. Date and place of birth:

.....

4. Sex and physical description (height, colour of eyes, distinguishing marks etc.):

.....

5. Also known as (earlier names, other names used/by which known, or aliases):

.....

6. Nationality and language:

.....

7. Type and number of travel document:

.....

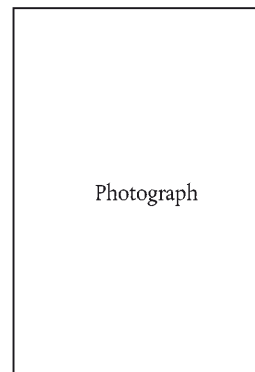
B. TRANSIT OPERATION

1. Type of transit:

☐ by air

☐ by land

☐ by sea



2. State of final destination:

.....

3. Possible other States of transit:

.....

4. Proposed border crossing point, date, time of transfer and possible escorts:

.....

.....

.....

5. Admission guaranteed in any other transit State and in the State of final destination

(Article 13(2)):

☐ yes

☐ no

6. Knowledge of any reason for refusal of transit

(Article 13(3)):

☐ yes

☐ no

C. OBSERVATIONS

.....

.....

.....

.....

.....

.....

.....

.....

(Signature) (Seal/stamp)

Joint Declaration concerning Articles 3 and 5

The Contracting Parties will endeavour to return any third-country national who does not, or who no longer, fulfils the legal conditions in force for entry to, presence in or residence on their respective territories, to his or her country of origin.

Joint Declaration concerning the Kingdom of Denmark

The Contracting Parties take note that this Agreement does not apply to the territory of the Kingdom of Denmark, nor to nationals of the Kingdom of Denmark. In such circumstances it is appropriate that the Republic of Cape Verde and the Kingdom of Denmark conclude a readmission agreement in the same terms as this Agreement.

Joint Declaration concerning the Republic of Iceland and the Kingdom of Norway

The Contracting Parties take note of the close relationship between the European Union and the Republic of Iceland and the Kingdom of Norway, particularly by virtue of the Agreement of 18 May 1999 concluded by the Council of the European Union, the Republic of Iceland and the Kingdom of Norway concerning the association of these two countries with the implementation, application and development of the Schengen *acquis*. In such circumstances it is appropriate that the Republic of Cape Verde conclude a readmission agreement with the Republic of Iceland and the Kingdom of Norway in the same terms as this Agreement.

Joint Declaration concerning the Swiss Confederation

The Contracting Parties take note of the close relationship between the European Union and the Swiss Confederation, particularly by virtue of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis*, which entered into force on 1 March 2008. In such circumstances it is appropriate that the Republic of Cape Verde conclude a readmission agreement with the Swiss Confederation in the same terms as this Agreement.

Joint Declaration concerning the Principality of Liechtenstein

The Contracting Parties take note of the close relationship between the European Union and the Principality of Liechtenstein, particularly by virtue of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis*, which entered into force on 7 April 2011. In such circumstances it is appropriate that the Republic of Cape Verde conclude a readmission agreement with the Principality of Liechtenstein in the same terms as this Agreement.

COUNCIL DECISION

of 18 October 2013

on the signing, on behalf of the European Union, of the revised Memorandum of Understanding with the United States of America Regarding the Importation of Beef from Animals Not Treated with Certain Growth-Promoting Hormones and Increased Duties Applied by the United States to Certain Products of the European Union

(2013/523/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 the first subparagraph of Article 207(4), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Phase 2 of the Memorandum of Understanding between the United States of America and the European Commission Regarding the Importation of Beef from Animals Not Treated with Certain Growth-Promoting Hormones and Increased Duties Applied by the United States to Certain Products of the European Communities (the 'MoU'), agreed between the United States and the European Community on 13 May 2009 and endorsed by the Council of the European Union as an international agreement of the Union, ended on 1 August 2013.
- (2) It is in the interest of the Union to extend Phase 2 of the MoU while continuing to seek the termination of the WTO dispute, European Communities – Measures Concerning Meat and Meat Products (Hormones).
- (3) The Commission has negotiated draft amendments to the MoU to this effect, pursuant to the negotiating authorisation set out therein.
- (4) The revised MoU should be signed,

Article 1

The signing on behalf of the Union of the revised Memorandum of Understanding with the United States of America Regarding the Importation of Beef from Animals Not Treated with Certain Growth-Promoting Hormones and Increased Duties Applied by the United States to Certain Products of the European Union (the 'revised MoU') is hereby authorised, subject to the conclusion of the said revised MoU.

The text of the revised MoU is attached to this Decision ⁽¹⁾.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the revised MoU on behalf of the Union.

Article 3

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

Done at Luxembourg, 18 October 2013.

For the Council

The President

L. LINKEVIČIUS

⁽¹⁾ The text of the revised MoU will be published together with the decision on its conclusion.

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 1016/2013

of 23 October 2013

concerning the authorisation of a preparation of a micro-organism strain DSM 11798 of the *Coriobacteriaceae* family as a feed additive for pigs

(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 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

(1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.

(2) In accordance with Article 7 of Regulation (EC) No 1831/2003, an application was submitted for the authorisation of a preparation of a micro-organism strain DSM 11798 of the *Coriobacteriaceae* family. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.

(3) That application concerns the authorisation of a preparation of a micro-organism strain DSM 11798 of the *Coriobacteriaceae* family as a feed additive for pigs, to be classified in the additive category 'technological additives'.

(4) The European Food Safety Authority ('the Authority') in its opinion of 16 April 2013⁽²⁾ concluded that, under the proposed conditions of use, the preparation of a

micro-organism strain DSM 11798 of the *Coriobacteriaceae* family is safe for the target species, for the human health and for the environment. It recognised that it has the capacity to biotransform trichothecenes from contaminated feed for pigs. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.

(5) The assessment of the preparation of a micro-organism strain DSM 11798 of the *Coriobacteriaceae* family shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of that preparation should be authorised as specified in the Annex to this Regulation.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

The preparation specified in the Annex, belonging to the additive category 'technological additives' and to the functional group 'substances for the reduction of the contamination of feed by mycotoxins', is authorised as an additive in animal nutrition subject to the conditions laid down in that Annex.

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*.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ EFSA Journal 2013; 11(5):3203.

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

Done at Brussels, 23 October 2013.

For the Commission
The President
José Manuel BARROSO

ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method.	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						CFU/kg of complete feedingstuff with a moisture content of 12 %			
Category of technological additives. Functional group: substances for the reduction of the contamination of feed by mycotoxins: Deoxynivalenol (DON)									
1m01	—	Micro-organism strain DSM 11798 of the <i>Coriobacteriaceae</i> family	<i>Additive composition</i> Preparation of a micro-organism strain DSM 11798 of the <i>Coriobacteriaceae</i> family containing a minimum of 5×10^9 CFU/g of additive. Solid form <i>Characterisation of the active substance</i> Viable cells of: micro-organism strain DSM 11798 of the <i>Coriobacteriaceae</i> family <i>Analytical method</i> ⁽¹⁾ Enumeration of micro-organism strain DSM 11798 of the <i>Coriobacteriaceae</i> family: pour plate method using VM agar supplemented with Oxyrase. Identification of micro-organism strain DSM 11798 of the <i>Coriobacteriaceae</i> family: Pulsed Field Gel Electrophoresis (PFGE).	Pigs	—	$1,7 \times 10^8$	—	1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting. 2. The use of the additive is allowed in feedingstuffs complying with the European Union legislation on undesirable substances in animal feed. 3. For safety: it is recommended to use breathing protection and gloves during handling.	13 November 2023

⁽¹⁾ Details of the analytical methods are available at the following address of the Reference Laboratory: http://www.jrc.ec.europa.eu/EURLs/EURL_feed_additives/Pages/index.aspx

COMMISSION REGULATION (EU) No 1017/2013

of 23 October 2013

refusing to authorise certain health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health

(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 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods⁽¹⁾, and in particular Article 18(5) thereof,

Whereas:

- (1) Pursuant to Regulation (EC) No 1924/2006 health claims made on foods are prohibited unless they are authorised by the Commission in accordance with that Regulation and included in a list of permitted claims.
- (2) Regulation (EC) No 1924/2006 also provides that applications for authorisations of health claims may be submitted by food business operators to the national competent authority of a Member State. The national competent authority is to forward valid applications to the European Food Safety Authority (EFSA), hereinafter referred to as 'the Authority'.
- (3) Following receipt of an application the Authority is to inform without delay the other Member States and the Commission thereof and to deliver an opinion on the health claim concerned.
- (4) The Commission is to decide on the authorisation of health claims taking into account the opinion delivered by the Authority.
- (5) Following an application from Ceprodi KOT, submitted pursuant to Article 13(5) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on a health claim related to the effects of 'hypo-caloric snacks (KOT products)' on reduction of adipocyte size at the abdominal level in the context of

a low-calorie diet (Question No EFSA-Q-2011-00016)⁽²⁾. The claim proposed by the applicant was worded as follows: 'Contributes to reduce the adipocytes size at the abdominal level, in the context of a low-calorie diet'.

- (6) On 30 September 2011, the Commission and the Member States received the scientific opinion from the Authority, which concluded that on the basis of the data presented, a cause and effect relationship had not been established between the consumption of 'hypo-caloric snacks (KOT products)' and a beneficial physiological effect related to the reduction of subcutaneous adipocyte size at the abdominal level. Accordingly, as the claim does not comply with the requirements of Regulation (EC) No 1924/2006, it should not be authorised.
- (7) Following an application from Valio Ltd, submitted pursuant to Article 13(5) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on a health claim related to the effects of isoleucyl-prolyl-proline (IPP) and valyl-prolyl-proline (VPP) on maintenance of normal blood pressure (Question No EFSA-Q-2011-00121)⁽³⁾. The claim proposed by the applicant was worded as follows: 'Peptides IPP and VPP help to maintain normal blood pressure'.
- (8) On 30 September 2011, the Commission and the Member States received the scientific opinion from the Authority, which concluded that on the basis of the data presented, a cause and effect relationship had not been established between the consumption of IPP and VPP and the claimed effect. Accordingly, as the claim does not comply with the requirements of Regulation (EC) No 1924/2006, it should not be authorised.
- (9) Following an application from Diana Naturals, submitted pursuant to Article 13(5) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on a health claim related to the effects of Appl'In® polyphenolic apple extract powder (*Malus domestica*) on reduction of post-prandial glycaemic responses (Question No EFSA-Q-2011-00190)⁽⁴⁾. The claim proposed by the applicant was worded as follows: 'Appl'In® contributes to decrease glycaemic response in women'.

⁽²⁾ EFSA Journal 2011; 9(9):2381.⁽³⁾ EFSA Journal 2011; 9(9):2380.⁽⁴⁾ EFSA Journal 2011; 9(10):2383.⁽¹⁾ OJ L 404, 30.12.2006, p. 9.

- (10) On 5 October 2011, the Commission and the Member States received the scientific opinion from the Authority, which concluded that on the basis of the data presented, a cause and effect relationship had not been established between the consumption of Appl'In® and the claimed effect. Accordingly, as the claim does not comply with the requirements of Regulation (EC) No 1924/2006, it should not be authorised.
- (11) Following an application from Tchibo GmbH, submitted pursuant to Article 13(5) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on a health claim related to the consumption of coffee C21 and reduction of spontaneous DNA strand breaks (Question No EFSA-Q-2011-00783) ⁽¹⁾. The claim proposed by the applicant was worded as follows: 'Regular consumption of Coffee C21 contributes to the maintenance of DNA integrity in cells of the body'.
- (12) On 5 December 2011, the Commission and the Member States received the scientific opinion from the Authority, which concluded that on the basis of the data presented, a cause and effect relationship had not been established between the consumption of coffee C21 and the claimed effect. Accordingly, as the claim does not comply with the requirements of Regulation (EC) No 1924/2006, it should not be authorised.
- (13) Following an application from Kao Corporation, submitted pursuant to Article 13(5) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on a health claim related to the effects of diacylglycerol (DAG) oil and reduction of body weight (Question No EFSA-Q-2011-00751) ⁽²⁾. The claim proposed by the applicant was worded as follows: 'Substituting your usual vegetable oil with DAG oil helps in the management of body weight through weight loss'.
- (14) On 5 December 2011, the Commission and the Member States received the scientific opinion from the Authority, which concluded that on the basis of the data presented, a cause and effect relationship had not been established between the consumption of DAG oil (as a replacement of triacylglycerol oils) and the claimed effect. Accordingly, as the claim does not comply with the requirements of Regulation (EC) No 1924/2006, it should not be authorised.
- (15) Following an application from Giuliani S.p.A., submitted pursuant to Article 13(5) of Regulation (EC) No 1924/2006 and including a request for protection of proprietary data, the Authority was required to deliver an opinion on a health claim related to the effects of spermidine and prolongation of the growing phase (anagen) of the hair cycle (Question No EFSA-Q-2011-00896) ⁽³⁾. The claim proposed by the applicant was worded as follows: 'Spermidine prolongs the growing phase (anagen) of the hair cycle'.
- (16) On 7 December 2011, the Commission and the Member States received the scientific opinion from the Authority, which concluded that on the basis of the data presented, the claimed effect is related to pathological conditions leading to the shortening of the anagen phase of hair growth and relates thus to the treatment of a disease.
- (17) Regulation (EC) No 1924/2006 complements the general principles of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs ⁽⁴⁾. Article 2(1)(b) of Directive 2000/13/EC provides that the labelling shall not attribute to any foodstuff the property of preventing, treating or curing a human disease, or refer to such properties. Accordingly, as the attribution of medicinal properties to foods is prohibited, the claim related to the effects of spermidine should not be authorised.
- (18) Following an application from Clasado Ltd, submitted pursuant to Article 13(5) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on a health claim related to the effects of galacto-oligosaccharides from Bimuno® (Bimuno® GOS) and reducing gastro-intestinal discomfort (Question No EFSA-Q-2011-00401) ⁽⁵⁾. The claim proposed by the applicant was worded as follows: 'Regular daily consumption of 1,37 g galacto-oligosaccharides from Bimuno® may reduce intestinal discomfort'.
- (19) On 8 December 2011, the Commission and the Member States received the scientific opinion from the Authority, which concluded that on the basis of the data presented, a cause and effect relationship had not been established between the consumption of Bimuno® GOS and the claimed effect. Accordingly, as the claim does not comply with the requirements of Regulation (EC) No 1924/2006, it should not be authorised.
- (20) Following an application from Nordic Sugar A/S., submitted pursuant to Article 13(5) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on a health claim related to the effects of sugar beet fibre and decreasing intestinal transit time (Question No EFSA-Q-2011-00971) ⁽⁶⁾. The claim proposed by the applicant was worded as follows: 'Sugar beet fibre decreases intestinal transit time'.

⁽¹⁾ EFSA Journal 2011; 9(12):2465.

⁽²⁾ EFSA Journal 2011; 9(12):2469.

⁽³⁾ EFSA Journal 2011; 9(12):2466.

⁽⁴⁾ OJ L 109, 6.5.2000, p. 29.

⁽⁵⁾ EFSA Journal 2011; 9(12):2472.

⁽⁶⁾ EFSA Journal 2011; 9(12):2467.

- (21) On 8 December 2011, the Commission and the Member States received the scientific opinion from the Authority, which concluded that on the basis of the data presented, a cause and effect relationship had not been established between the consumption of sugar beet fibre and the claimed effect. Accordingly, as the claim does not comply with the requirements of Regulation (EC) No 1924/2006, it should not be authorised.
- (22) The health claim related to the effects of spermidine and prolongation of the growing phase (anagen) of the hair cycle, is a health claim attributing medicinal properties to the food subject to the claim and is therefore prohibited for foods.
- (23) The health claims related to 'hypo-caloric snacks (KOT products)' and to diacylglycerol (DAG) oil are health claims as those referred to in point (c) of Article 13(1) of Regulation (EC) No 1924/2006 which are subject to the transitional period laid down in Article 28(6) of that Regulation. However, as the applications were not made before 19 January 2008, the requirement provided for in point (b) of Article 28(6) of that Regulation is not fulfilled, and therefore those claims may not benefit from the transitional period provided for in that Article.
- (24) The other health claims subject to this Regulation are health claims as referred to in point (a) of Article 13(1) of Regulation (EC) No 1924/2006, which are subject to the transitional period laid down in Article 28(5) of that Regulation until the adoption of the list of permitted health claims provided that they comply with that Regulation.
- (25) The list of permitted health claims has been established by Commission Regulation (EU) No 432/2012 ⁽¹⁾ and is applicable since 14 December 2012. As regards claims referred to in Article 13(5) of Regulation (EC) No 1924/2006 for which the evaluation by the Authority or consideration by the Commission has not been completed by 14 December 2012 and which by virtue of this Regulation are not included in the list of permitted health claims, it is appropriate to provide for a transitional period during which they may still be used, in order to allow both food business operators and the competent national authorities to adapt to the prohibition of such claims.
- (26) The comments from the applicants and the members of the public received by the Commission pursuant to Article 16(6) of Regulation (EC) No 1924/2006 have been considered when setting the measures provided for in this Regulation.
- (27) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health and neither the European Parliament nor the Council have opposed them,
- HAS ADOPTED THIS REGULATION:
- Article 1*
1. The health claims listed in the Annex to this Regulation shall not be included in the Union list of permitted claims as provided for in Article 13(3) of Regulation (EC) No 1924/2006.
2. However, the health claims referred to in paragraph 1 used prior to the entry into force of this Regulation, may continue to be used for a maximum period of six months after the entry into force of this Regulation.
- Article 2*
- This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 23 October 2013.

For the Commission
The President
José Manuel BARROSO

⁽¹⁾ OJ L 136, 25.5.2012, p. 1.

ANNEX

Rejected health claims

Application – Relevant provisions of Regulation (EC) No 1924/2006	Nutrient, substance, food or food category	Claim	EFSA opinion reference
Article 13(5) health claim based on newly developed scientific evidence and/or including a request for the protection of proprietary data	'Hypo-caloric snacks (KOT products)'	Contributes to reduce the adipocytes size at the abdominal level, in the context of a low-calorie diet	Q-2011-00016
Article 13(5) health claim based on newly developed scientific evidence and/or including a request for the protection of proprietary data	Isoleucyl-prolyl-proline (IPP) and valyl-prolyl-proline (VPP)	Peptides IPP and VPP help to maintain normal blood pressure	Q-2011-00121
Article 13(5) health claim based on newly developed scientific evidence and/or including a request for the protection of proprietary data	Appl'In® polyphenolic apple extract powder (<i>Malus domestica</i>)	Appl'In® contributes to decrease glycaemic response in women	Q-2011-00190
Article 13(5) health claim based on newly developed scientific evidence and/or including a request for the protection of proprietary data	Coffee C21	Regular consumption of Coffee C21 contributes to the maintenance of DNA integrity in cells of the body	Q-2011-00783
Article 13(5) health claim based on newly developed scientific evidence and/or including a request for the protection of proprietary data	Diacylglycerol (DAG) oil	Substituting your usual vegetable oil with DAG oil helps in the management of body weight through weight loss	Q-2011-00751
Article 13(5) health claim based on newly developed scientific evidence and/or including a request for the protection of proprietary data	Spermidine	Spermidine prolongs the growing phase (anagen) of the hair cycle	Q-2011-00896
Article 13(5) health claim based on newly developed scientific evidence and/or including a request for the protection of proprietary data	Bimuno® (Bimuno® GOS)	Regular daily consumption of 1,37 g galacto-oligosaccharides from Bimuno® may reduce intestinal discomfort	Q-2011-00401
Article 13(5) health claim based on newly developed scientific evidence and/or including a request for the protection of proprietary data	Sugar beet fibre	Sugar beet fibre decreases intestinal transit time	Q-2011-00971

COMMISSION REGULATION (EU) No 1018/2013**of 23 October 2013****amending Regulation (EU) No 432/2012 establishing a list of permitted health claims made on foods other than those referring to the reduction of disease risk and to children's development and health****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

include the wording of the claims and specific conditions of use of the claims, and where applicable, conditions or restrictions of use and/or an additional statement or warning, in accordance with the rules laid down in Regulation (EC) No 1924/2006 and in line with the opinions of the Authority.

Having regard to Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods ⁽¹⁾, and in particular Article 13(3) thereof,

(5) However, a number of Member States raised concerns that such authorisation with its conditions of use would promote and encourage consumption of foods containing sugars other than those naturally contained. Furthermore, it would convey a conflicting and confusing message to consumers, particularly in light of national dietary advice to reduce sugars consumption. It is considered that, for this specific health claim, conflicting objectives can be addressed, by authorising the claim only under specific conditions of use limiting its use to foods which are either low in sugars or to foods to which sugars have not been added although they may contain sugars naturally.

Whereas:

(1) Pursuant to Article 13(3) of Regulation (EC) No 1924/2006, the Commission adopted Regulation (EU) No 432/2012 of 16 May 2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health ⁽²⁾.

(6) This Regulation should apply six months after the date of its entry into force to enable food business operators to adapt to its requirements.

(2) However, at the time of the adoption of the list of permitted health claims, there were a number of health claims whose evaluation by the European Food Safety Authority ('the Authority') or consideration by the Commission was not finalised ⁽³⁾.

(7) In line with Article 20(1) of Regulation (EC) No 1924/2006, the Register of nutrition and health claims containing all authorised health claims should be updated in light of the present Regulation.

(3) Among those claims, the Authority gave a favourable assessment to the health claim referring to the effect of carbohydrates on the maintenance of brain function and proposed as appropriate conditions of use for that claim that 'a daily intake of 130 g of glycaemic carbohydrates has been estimated to cover the glucose requirement of the brain' ⁽⁴⁾.

(8) Comments and positions from the members of the public and interested stakeholders, received by the Commission have been adequately considered when setting the measures provided for in this Regulation.

(4) Article 13(3) of Regulation (EC) No 1924/2006 provides that permitted health claims must be accompanied with all necessary conditions (including restrictions) for their use. Accordingly, the list of permitted claims should

(9) Regulation (EU) No 432/2012 should therefore be amended accordingly.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health, and neither the European Parliament nor the Council have opposed them,

⁽¹⁾ OJ L 404, 30.12.2006, p. 9.

⁽²⁾ OJ L 136, 25.5.2012, p. 1.

⁽³⁾ Corresponding to 2232 entries (IDs) in the consolidated list.

⁽⁴⁾ <http://www.efsa.europa.eu/en/efsajournal/doc/2226.pdf>

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EU) No 432/2012 is amended in accordance with the Annex to this Regulation.

Article 2

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

It shall apply from 13 May 2014.

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

Done at Brussels, 23 October 2013.

For the Commission

The President

José Manuel BARROSO

ANNEX

In the Annex to Regulation (EU) No 432/2012, the following entry is inserted in an alphabetical order:

Nutrient, substance, food or food category	Claim	Conditions of use of the claim	Conditions and/or restrictions of use of the food and/or additional statement or warning	EFSA Journal number	Relevant entry number in the Consolidated List submitted to EFSA for its assessment
'Carbohydrates	Carbohydrates contribute to the maintenance of normal brain function	<p>In order to bear the claim, information shall be given to the consumer that the beneficial effect is obtained with a daily intake of 130 g of carbohydrates from all sources.</p> <p>The claim may be used for food which contains at least 20 g carbohydrates which are metabolised by humans, excluding polyols, per quantified portion and complies with the nutrition claim LOW SUGARS or WITH NO ADDED SUGARS as listed in the Annex to Regulation (EC) No 1924/2006.</p>	The claim shall not be used on food which is 100 % sugars.	2011;9(6):2226	603,653'

COMMISSION REGULATION (EU) No 1019/2013
of 23 October 2013
amending Annex I to Regulation (EC) No 2073/2005 as regards histamine in fishery products
(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs ⁽¹⁾, and in particular Article 4(4) thereof,

Whereas:

- (1) Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs ⁽²⁾ lays down microbiological criteria for certain micro-organisms and the implementing rules that are to be complied with by food business operators when implementing the general and specific hygiene measures referred to in Article 4 of Regulation (EC) No 852/2004. In particular, it provides for food safety criteria for histamine and sampling plans for fishery products from fish species associated with high amount of histidine.
- (2) Fish sauce produced by fermentation is a liquid fishery product. The Codex Alimentarius Commission ⁽³⁾ has fixed new recommended maximum levels of histamine in such fish sauce which are different from the ones set out in Annex I to Regulation (EC) No 2073/2005. That recommendation is in line with the information on consumer exposure data presented by the European Food Safety Authority ('EFSA') in its Scientific Opinion on risk based control of biogenic amine formation in fermented foods ⁽⁴⁾.
- (3) Since fish sauce is a liquid fishery product histamine can be expected to be evenly distributed. The sampling plan can therefore be more simple than for fishery products occurring in another form.

- (4) It is appropriate to establish a separate food safety criterion for fish sauce produced by fermentation of fishery products in order to align the criterion with the new Codex Alimentarius standard and the EFSA opinion. Footnote 2 should also be amended.
- (5) The normal sampling plan for histamine from fishery products consists of nine samples which require much sample material. Footnote 18 to food safety criterion 1.26 for fishery products states that single samples may be taken at retail level. In such cases the whole batch should not be deemed unsafe based only on the result of one sample. However, if one of nine samples analysed is found to be above M the whole batch shall be deemed unsafe. This should also be the case when single samples are found to be above M. Consequently, it is appropriate to amend footnote 18. Footnote 18 should also be applied to both food safety criteria 1.26 and 1.27.
- (6) Regulation (EC) No 2073/2005 should therefore be amended accordingly.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health and neither the European Parliament nor the Council have opposed them,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 2073/2005 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 23 October 2013.

For the Commission
The President
José Manuel BARROSO

⁽¹⁾ OJ L 139, 30.4.2004, p. 1.

⁽²⁾ OJ L 338, 22.12.2005, p. 1.

⁽³⁾ Codex Alimentarius Standard for Fish Sauce (CODEX STAN 302 – 2011).

⁽⁴⁾ EFSA Journal 2011; 9(10):2393.

ANNEX

Chapter 1 of Annex I to Regulation (EC) No 2073/2005 is amended as follows:

(1) row 1.27 is replaced by the following:

'1.27 Fishery products, except those in food category 1.27a, which have undergone enzyme maturation treatment in brine, manufactured from fish species associated with a high amount of histidine ⁽¹⁷⁾	Histamine	9 ⁽¹⁸⁾	2	200 mg/kg	400 mg/kg	HPLC ⁽¹⁹⁾	Products placed on the market during their shelf-life'
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(2) the following row 1.27a is inserted:

'1.27a Fish sauce produced by fermentation of fishery products	Histamine	1		400 mg/kg	HPLC ⁽¹⁹⁾	Products placed on the market during their shelf-life'
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(3) footnote 2 is replaced by the following:

'⁽²⁾ For points 1.1-1.25, 1.27a and 1.28 m = M.;

(4) footnote 18 is replaced by the following:

'⁽¹⁸⁾ Single samples may be taken at retail level. In such a case the presumption laid down in Article 14(6) of Regulation (EC) No 178/2002, according to which the whole batch should be deemed unsafe, shall not apply, unless the result is above M.;

(5) under the heading 'Interpretation of the test results' the last paragraph of the text concerning Histamine in fishery products is replaced by the following:

'Histamine in fishery products:

Histamine in fishery products from fish species associated with a high amount of histidine except fish sauce produced by fermentation of fishery products:

— satisfactory, if the following requirements are fulfilled:

1. the mean value observed is $\leq m$
2. a maximum of c/n values observed are between m and M
3. no values observed exceed the limit of M.

— unsatisfactory, if the mean value observed exceeds m or more than c/n values are between m and M or one or more of the values observed are $> M$.

Histamine in fish sauce produced by fermentation of fishery products:

- satisfactory, if the value observed is \leq the limit,
- unsatisfactory, if the value observed is $>$ the limit.'

COMMISSION IMPLEMENTING REGULATION (EU) No 1020/2013**of 23 October 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) ⁽¹⁾,

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 ⁽²⁾, 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, 23 October 2013.

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

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ 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 ⁽¹⁾	Standard import value
0702 00 00	MA	37,2
	MK	47,7
	ZZ	42,5
0707 00 05	MK	58,9
	TR	119,2
	ZZ	89,1
0709 93 10	TR	147,7
	ZZ	147,7
0805 50 10	AR	87,9
	CL	90,0
	IL	100,2
	TR	80,3
	ZA	101,2
	ZZ	91,9
0806 10 10	BR	228,3
	TR	173,2
	ZZ	200,8
0808 10 80	CL	142,9
	IL	85,8
	NZ	177,4
	US	168,1
	ZA	112,8
	ZZ	137,4
0808 30 90	CN	64,2
	TR	125,4
	US	165,9
	ZZ	118,5

⁽¹⁾ 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'.

DECISIONS

COUNCIL DECISION

of 17 October 2013

on the position to be adopted, on behalf of the European Union, in the EU-EFTA Joint Committee on common transit concerning the adoption of a Decision amending the Convention of 20 May 1987 on a common transit procedure, as regards the modification of HS codes and package codes

(2013/524/EU)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 15 of the Convention of 20 May 1987 on a common transit procedure⁽¹⁾ (the 'Convention') empowers the EU-EFTA Joint Committee on common transit set up by the Convention to recommend and adopt, by decisions, amendments to the Convention and the Appendices thereto.

(2) On 26 June 2009, the Customs Cooperation Council adopted a Recommendation amending the Harmonised System nomenclature. As a consequence of that Recommendation, on 1 January 2012, the Commission Implementing Regulation (EU) No 1006/2011⁽²⁾ entered into force and replaced HS code 1701 11 by two new HS codes, namely 1701 13 and 1701 14, as well as HS code 2403 10 by two new HS codes, namely 2403 11 and 2403 19.

(3) Due to the replacement of HS codes 1701 11 and 2403 10 by Implementing Regulation (EU) No 1006/2011, those codes should also be amended in Annex I (Goods involving higher risk of fraud) to Appendix I to the Convention.

(4) The United Nations Economic Commission for Europe has issued revision 8.1 of Recommendation No 21 on, inter alia, package codes. It is therefore necessary to adapt the list of package codes contained in Annex A2 to Appendix III to the Convention in accordance with that revision.

(5) As the package codes format has changed from alphabetic2 (a2) to alphanumeric2 (an2) codes, the Type/Length of the kind of packages (box 31) provided for in Annex A1 to Appendix III to the Convention should also be amended accordingly.

(6) Therefore, the position of the European Union concerning the proposed amendment should be determined,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted by the European Union in the EU-EFTA Joint Committee on common transit concerning the adoption of Decision No 2/2013 by the EU-EFTA Joint Committee on common transit amending the Convention of 20 May 1987 on a common transit procedure shall be based on the draft Decision attached to this Decision.

Minor changes to the draft Decision may be agreed to by the representatives of the Union in the EU-EFTA Joint Committee on common transit after having duly informed the Council.

Article 2

The Commission shall publish the Decision of the EU-EFTA Joint Committee on common transit referred to in Article 1, once adopted, in the *Official Journal of the European Union*.

⁽¹⁾ OJ L 226, 13.8.1987, p. 2.

⁽²⁾ Commission Implementing Regulation (EU) No 1006/2011 of 27 September 2011 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 282, 28.10.2011, p. 1).

Article 3

The Decision is addressed to the Member States.

Done at Luxembourg, 17 October 2013.

For the Council

The President

V. JUKNA

DRAFT

DECISION No 2/2013 OF THE EU-EFTA JOINT COMMITTEE ON COMMON TRANSIT
of
amending the Convention of 20 May 1987 on a common transit procedure

THE EU-EFTA JOINT COMMITTEE,

Having regard to the Convention of 20 May 1987 on a common transit procedure ⁽¹⁾, and in particular Article 15(3)(a) thereof,

Whereas:

- (1) The Recommendation of 26 June 2009 of the Customs Cooperation Council amended the Harmonised System nomenclature. As a consequence, on 1 January 2012, Commission Implementing Regulation (EU) No 1006/2011 ⁽²⁾ entered into force and replaced HS code 170111 by two new HS codes, namely 170113 and 170114, and HS code 240310 by two new HS codes, namely 240311 and 240319.
- (2) Consequently, the corresponding HS codes specified in the list of goods involving higher risk of fraud of Annex I to Appendix I to the Convention of 20 May 1987 on a common transit procedure (the 'Convention') should be amended accordingly.
- (3) Due to a new revision of Recommendation 21 of the United Nations Economic Commission for Europe, revision 8.1, on, inter alia, package codes, it is appropriate to adapt Annex A2 to Appendix III to the Convention accordingly.
- (4) As the package codes format has changed from alphabetical2 (a2) to alphanumeric2 (an2) codes, the Type/Length of the kind of packages (box 31) in Annex A1 to Appendix III to the Convention should be amended accordingly.

- (5) The proposed amendments lead to an alignment of provisions on common transit with the EU provisions on transit.

- (6) Therefore the Convention should be amended accordingly,

HAS ADOPTED THIS DECISION,

Article 1

The Convention of 20 May 1987 on a common transit procedure shall be amended as set out in the Appendix to this Decision.

Article 2

The amendments set out in point 1 of the Appendix to this Decision shall apply from 1 January 2012.

The amendments set out in points 2 and 3 of the Appendix to this Decision shall apply from 1 January 2013.

Done at,

For the EU-EFTA
Joint Committee on common transit
The President

⁽¹⁾ OJ L 226, 13.8.1987, p. 2.

⁽²⁾ Commission Implementing Regulation (EU) No 1006/2011 of 27 September 2011 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 282, 28.10.2011, p. 1).

Appendix

1. Annex I to Appendix I to the Convention is amended as follows:

(i) The row for HS codes '1701 11, 1701 12, 1701 91, 1701 99' is replaced by the following:

'1701 12	Cane or beet sugar and chemically pure sucrose, in solid form	7 000 kg		—
1701 13				—
1701 14				—
1701 91				—;
1701 99				

(ii) The row for HS code '2403 10' is replaced by the following:

'2403 11	Smoking tobacco, whether or not containing tobacco substitutes in any proportion	35 kg		—;
2403 19				

2. The entry 'Kind of packages (box 31) Type/Length a2 The packaging codes presented in Annex A2 shall be used.' in Annex A1 to Appendix III to the Convention is replaced by the following:

'Kind of packages (box 31)

Type/Length: an2

The package codes referred to in Annex A2 shall be used.'

3. Point 5 of Annex A2 to Appendix III to the Convention is replaced by the following:

'PACKAGE CODE

(UN/ECE Recommendation No 21/Rev.8.1 of 12 July 2010)

Aerosol	AE
Ampoule, non-protected	AM
Ampoule, protected	AP
Atomizer	AT
Bag	BG
Bag, flexible container	FX
Bag, gunny	GY
Bag, jumbo	JB
Bag, large	ZB
Bag, multiply	MB

Bag, paper	5M
Bag, paper, multi-wall	XJ
Bag, paper, multi-wall, water resistant	XK
Bag, plastic	EC
Bag, plastics film	XD
Bag, polybag	44
Bag, super bulk	43
Bag, textile	5L
Bag, textile, sift proof	XG
Bag, textile, water resistant	XH
Bag, textile, without inner coat/liner	XF
Bag, tote	TT
Bag, woven plastic	5H
Bag, woven plastic, sift proof	XB
Bag, woven plastic, water resistant	XC
Bag, woven plastic, without inner coat/liner	XA
Bale, compressed	BL
Bale, non-compressed	BN
Ball	AL
Balloon, non-protected	BF
Balloon, protected	BP
Bar	BR
Barrel	BA
Barrel, wooden	2C

Barrel, wooden, bung type	QH
Barrel, wooden, removable head	QJ
Bars, in bundle/bunch/truss	BZ
Basin	BM
Basket	BK
Basket, with handle, cardboard	HC
Basket, with handle, plastic	HA
Basket, with handle, wooden	HB
Belt	B4
Bin	BI
Block	OK
Board	BD
Board, in bundle/bunch/truss	BY
Bobbin	BB
Bolt	BT
Bottle, gas	GB
Bottle, non-protected, bulbous	BS
Bottle, non-protected, cylindrical	BO
Bottle, protected bulbous	BV
Bottle, protected cylindrical	BQ
Bottlecrate/bottlerack	BC
Box	BX
Box, aluminium	4B

Box, Commonwealth Handling Equipment Pool (CHEP), Eurobox	DH
Box, fibreboard	4G
Box, for liquids	BW
Box, natural wood	4C
Box, plastic	4H
Box, plastic, expanded	QR
Box, plastic, solid	QS
Box, plywood	4D
Box, reconstituted wood	4F
Box, steel	4A
Box, wooden, natural wood, ordinary	QP
Box, wooden, natural wood, with sift proof walls	QQ
Bucket	BJ
Bulk, gas (at 1 031 mbar and 15 °C)	VG
Bulk, liquefied gas (at abnormal temperature/pressure)	VQ
Bulk, liquid	VL
Bulk, scrap metal	VS
Bulk, solid, fine particles ("powders")	VY
Bulk, solid, granular particles ("grains")	VR
Bulk, solid, large particles ("nodules")	VO
Bunch	BH
Bundle	BE
Bundle, wooden	8C

Butt	BU
Cage	CG
Cage, Commonwealth Handling Equipment Pool (CHEP)	DG
Cage, roll	CW
Can, cylindrical	CX
Can, rectangular	CA
Can, with handle and spout	CD
Canister	CI
Canvas	CZ
Capsule	AV
Carboy, non-protected	CO
Carboy, protected	CP
Card	CM
Cart, flatbed	FW
Carton	CT
Cartridge	CQ
Case	CS
Case, car	7A
Case, isothermic	EI
Case, skeleton	SK
Case, steel	SS
Case, with pallet base	ED
Case, with pallet base, cardboard	EF

Case, with pallet base, metal	EH
Case, with pallet base, plastic	EG
Case, with pallet base, wooden	EE
Case, wooden	7B
Cask	CK
Chest	CH
Churn	CC
Clamshell	AI
Coffer	CF
Coffin	CJ
Coil	CL
Composite packaging, glass receptacle	6P
Composite packaging, glass receptacle in aluminium crate	YR
Composite packaging, glass receptacle in aluminium drum	YQ
Composite packaging, glass receptacle in expandable plastic pack	YY
Composite packaging, glass receptacle in fibre drum	YW
Composite packaging, glass receptacle in fibreboard box	YX
Composite packaging, glass receptacle in plywood drum	YT
Composite packaging, glass receptacle in solid plastic pack	YZ
Composite packaging, glass receptacle in steel crate box	YP
Composite packaging, glass receptacle in steel drum	YN
Composite packaging, glass receptacle in wickerwork hamper	YV
Composite packaging, glass receptacle in wooden box	YS

Composite packaging, plastic receptacle	6H
Composite packaging, plastic receptacle in aluminium crate	YD
Composite packaging, plastic receptacle in aluminium drum	YC
Composite packaging, plastic receptacle in fibre drum	YJ
Composite packaging, plastic receptacle in fibreboard box	YK
Composite packaging, plastic receptacle in plastic drum	YL
Composite packaging, plastic receptacle in plywood box	YH
Composite packaging, plastic receptacle in plywood drum	YG
Composite packaging, plastic receptacle in solid plastic box	YM
Composite packaging, plastic receptacle in steel crate box	YB
Composite packaging, plastic receptacle in steel drum	YA
Composite packaging, plastic receptacle in wooden box	YF
Cone	AJ
Container, flexible	1F
Container, gallon	GL
Container, metal	ME
Container, not otherwise specified as transport equipment	CN
Container, outer	OU
Cover	CV
Crate	CR
Crate, beer	CB
Crate, bulk, cardboard	DK

Crate, bulk, plastic	DL
Crate, bulk, wooden	DM
Crate, framed	FD
Crate, fruit	FC
Crate, metal	MA
Crate, milk	MC
Crate, multiple layer, cardboard	DC
Crate, multiple layer, plastic	DA
Crate, multiple layer, wooden	DB
Crate, shallow	SC
Crate, wooden	8B
Creel	CE
Cup	CU
Cylinder	CY
Demijohn, non-protected	DJ
Demijohn, protected	DP
Dispenser	DN
Drum	DR
Drum, aluminium	1B
Drum, aluminium, non-removable head	QC
Drum, aluminium, removable head	QD

Drum, fibre	1G
Drum, iron	DI
Drum, plastic	IH
Drum, plastic, non-removable head	QF
Drum, plastic, removable head	QG
Drum, plywood	1D
Drum, steel	1A
Drum, steel, non-removable head	QA
Drum, steel, removable head	QB
Drum, wooden	1W
Envelope	EN
Envelope, steel	SV
Filmpack	FP
Firkin	FI
Flask	FL
Flexibag	FB
Flexitank	FE
Foodtainer	FT
Footlocker	FO
Frame	FR
Girder	GI
Girders, in bundle/bunch/truss	GZ
Hamper	HR

Hanger	HN
Hogshead	HG
Ingot	IN
Ingots, in bundle/bunch/truss	IZ
Intermediate bulk container	WA
Intermediate bulk container, aluminium	WD
Intermediate bulk container, aluminium, liquid	WL
Intermediate bulk container, aluminium, pressurised > 10 kpa	WH
Intermediate bulk container, composite	ZS
Intermediate bulk container, composite, flexible plastic, liquids	ZR
Intermediate bulk container, composite, flexible plastic, pressurised	ZP
Intermediate bulk container, composite, flexible plastic, solids	ZM
Intermediate bulk container, composite, rigid plastic, liquids	ZQ
Intermediate bulk container, composite, rigid plastic, pressurised	ZN
Intermediate bulk container, composite, rigid plastic, solids	PLN
Intermediate bulk container, fibreboard	ZT
Intermediate bulk container, flexible	ZU
Intermediate bulk container, metal	WF
Intermediate bulk container, metal, liquid	WM
Intermediate bulk container, metal, other than steel	ZV
Intermediate bulk container, metal, pressure 10 kpa	WJ
Intermediate bulk container, natural wood	ZW

Intermediate bulk container, natural wood, with inner liner	WU
Intermediate bulk container, paper, multi-wall	ZA
Intermediate bulk container, paper, multi-wall, water resistant	ZC
Intermediate bulk container, plastic film	WS
Intermediate bulk container, plywood	ZX
Intermediate bulk container, plywood, with inner liner	WY
Intermediate bulk container, reconstituted wood	ZY
Intermediate bulk container, reconstituted wood, with inner liner	WZ
Intermediate bulk container, rigid plastic	AA
Intermediate bulk container, rigid plastic, freestanding, liquids	ZK
Intermediate bulk container, rigid plastic, freestanding, pressurised	ZH
Intermediate bulk container, rigid plastic, freestanding, solids	ZF
Intermediate bulk container, rigid plastic, with structural equipment, liquids	ZJ
Intermediate bulk container, rigid plastic, with structural equipment, pressurised	ZG
Intermediate bulk container, rigid plastic, with structural equipment, solids	ZD
Intermediate bulk container, steel	WC
Intermediate bulk container, steel, liquid	WK
Intermediate bulk container, steel, pressurised > 10 kpa	WG
Intermediate bulk container, textile with out coat/liner	WT
Intermediate bulk container, textile, coated	WV
Intermediate bulk container, textile, coated and liner	WX

Intermediate bulk container, textile, with liner	WW
Intermediate bulk container, woven plastic, coated	WP
Intermediate bulk container, woven plastic, coated and liner	WR
Intermediate bulk container, woven plastic, with liner	WQ
Intermediate bulk container, woven plastic, without coat/liner	WN
Jar	JR
Jerrican, cylindrical	JY
Jerrican, plastic	3H
Jerrican, plastic, non-removable head	QM
Jerrican, plastic, removable head	QN
Jerrican, rectangular	JC
Jerrican, steel	3A
Jerrican, steel, non-removable head	QK
Jerrican, steel, removable head	QL
Jug	JG
Jutebag	JT
Keg	KG
Kit	KI
Liftvan	LV
Log	LG
Logs, in bundle/bunch/truss	LZ

Lot	LT
Lug	LU
Luggage	LE
Mat	MT
Matchbox	MX
Mutually defined	ZZ
Nest	NS
Net	NT
Net, tube, plastic	NU
Net, tube, textile	NV
Not available	NA
Octabin	OT
Package	PK
Package, cardboard, with bottle grip-holes	IK
Package, display, cardboard	IB
Package, display, metal	ID
Package, display, plastic	IC
Package, display, wooden	IA
Package, flow	IF
Package, paper wrapped	IG
Package, show	IE
Packet	PA

Pail	PL
Pallet	PX
Pallet, 100 cm × 110 cm	AH
Pallet, AS 4068-1993	OD
Pallet, box Combined open-ended box and pallet	PB
Pallet, CHEP 100 cm × 120 cm	OC
Pallet, CHEP 40 cm × 60 cm	OA
Pallet, CHEP 80 cm × 120 cm	OB
Pallet, ISO T11	OE
Pallet, modular, collars 80 cm × 100 cm	PD
Pallet, modular, collars 80 cm × 120 cm	PE
Pallet, modular, collars 80 cm × 60 cm	AF
Pallet, shrinkwrapped	AG
Pallet, triwall	TW
Pallet, wooden	8A
Pan	P2
Parcel	PC
Pen	PF
Piece	PP
Pipe	PI
Pipes, in bundle/bunch/truss	PV
Pitcher	PH

Plank	PN
Planks, in bundle/bunch/truss	PZ
Plate	PG
Plates, in bundle/bunch/truss	PY
Platform, unspecified weight or dimension	OF
Pot	PT
Pouch	PO
Punnet	PJ
Rack	RK
Rack, clothing hanger	RJ
Receptacle, fibre	AB
Receptacle, glass	GR
Receptacle, metal	MR
Receptacle, paper	AC
Receptacle, plastic	PR
Receptacle, plastic wrapped	MW
Receptacle, wooden	AD
Rednet	RT
Reel	RL
Ring	RG
Rod	RD
Rods, in bundle/bunch/truss	RZ

Roll	RO
Sachet	SH
Sack	SA
Sack, multi-wall	MS
Sea-chest	SE
Set	SX
Sheet	ST
Sheet, plastic wrapping	SP
Sheetmetal	SM
Sheets, in bundle/bunch/truss	SZ
Shrinkwrapped	SW
Skid	SI
Slab	SB
Sleeve	SY
Slipsheet	SL
Spindle	SD
Spool	SO
Suitcase	SU
Tablet	T1
Tank container, generic	TG
Tank, cylindrical	TY
Tank, rectangular	TK

Tea-chest	TC
Tierce	TI
Tin	TN
Tray	PU
Tray, containing horizontally stacked flat items	GU
Tray, one layer no cover, cardboard	DV
Tray, one layer no cover, plastic	DS
Tray, one layer no cover, polystyrene	DU
Tray, one layer no cover, wooden	DT
Tray, rigid, lidded stackable (CEN TS 14482:2002)	IL
Tray, two layers no cover, cardboard	DY
Tray, two layers no cover, plastic tray	DW
Tray, two layers no cover, wooden	DX
Trunk	TR
Truss	TS
Tub	TB
Tub, with lid	TL
Tube	TU
Tube, collapsible	TD
Tube, with nozzle	TV
Tubes, in bundle/bunch/truss	TZ
Tun	TO

Tyre	TE
Uncaged	UC
Unit	UN
Unpacked or unpackaged	NE
Unpacked or unpackaged, multiple units	NG
Unpacked or unpackaged, single unit	NF
Vacuum-packed	VP
Vanpack	VK
Vat	VA
Vehicle	VN
Vial	VI
Wickerbottle	WB'.

COUNCIL IMPLEMENTING DECISION**of 22 October 2013****amending Implementing Decision 2011/77/EU on granting Union financial assistance to Ireland**

(2013/525/EU)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism ⁽¹⁾, and in particular Article 3(2) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Upon a request by Ireland, the Council granted financial assistance to Ireland by means of Implementing Decision 2011/77/EU ⁽²⁾ in support of a strong economic and reform programme aiming at restoring confidence, enabling the return of the economy to sustainable growth, and safeguarding financial stability in Ireland, the euro area and the Union.
- (2) The Commission completed the tenth review of the Irish economic reform programme on 10 July 2013.
- (3) In order to allow for a comprehensive and thorough assessment of programme compliance under the final review in due diligence and to make sure that the decision on the release of the last instalment can proceed in time, a short extension of the availability period of the financial assistance is necessary.

- (4) Implementing Decision 2011/77/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 1(2) of Implementing Decision 2011/77/EU is replaced by the following:

- ‘2. The financial assistance shall be made available during 3 years and 2 months starting from the first day after the entry into force of this Decision.’.

Article 2

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

Article 3

This Decision is addressed to Ireland.

Done at Luxembourg, 22 October 2013.

For the Council

The President

L. LINKEVIČIUS

⁽¹⁾ OJ L 118, 12.5.2010, p. 1.

⁽²⁾ Council Implementing Decision 2011/77/EU of 7 December 2010 on granting Union financial assistance to Ireland (OJ L 30, 4.2.2011, p. 34).

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 394/11/COL

of 14 December 2011

amending, for the eighty-third time, the procedural and substantive rules in the field of state aid by introducing a new chapter on the application, from 1 January 2012, of state aid rules to support measures in favour of banks in the context of the financial crisis

THE EFTA SURVEILLANCE AUTHORITY ("THE AUTHORITY"),

Whereas:

Under Article 5(2)(b) of the Surveillance and Court Agreement, the Authority shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the Authority considers it necessary,

On 1 December 2011, the European Commission adopted a Communication on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis ⁽¹⁾,

This Communication is also of relevance for the European Economic Area,

Uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area in line with the objective of homogeneity established in Article 1 of the EEA Agreement,

According to point II under the heading "GENERAL" on page 11 of Annex XV to the EEA Agreement, the Authority, after consultation with the Commission, is to adopt acts corresponding to those adopted by the European Commission,

The Authority consulted the European Commission and the EFTA States by letters dated 2 December 2011 on the subject,

HAS ADOPTED THIS DECISION:

Article 1

The State Aid Guidelines shall be amended by introducing a new chapter on the application, from 1 January 2012, of state aid rules to support measures in favour of banks in the context of the financial crisis.

The new chapter is set out in the Annex to this Decision.

Article 2

Only the English language version of this decision is authentic.

Done at Brussels, 14 December 2011.

For the EFTA Surveillance Authority

Oda Helen SLETNES
President

Sverrir Haukur GUNNLAUGSSON
College Member

⁽¹⁾ OJ C 356, 6.12.2011, p. 7.

ANNEX

THE APPLICATION, FROM 1 JANUARY 2012, OF STATE AID RULES TO SUPPORT MEASURES IN FAVOUR OF BANKS IN THE CONTEXT OF THE FINANCIAL CRISIS

1. Introduction

- (1) Since the beginning of the global financial crisis in the autumn of 2008, the EFTA Surveillance Authority ("the Authority") has issued four sets of Guidelines⁽¹⁾ which provided detailed guidance on the criteria for the compatibility of state support to financial institutions⁽²⁾ with the requirements of Article 61(3)(b) of the Agreement on the European Economic Area (the "EEA Agreement"). The Chapters of the Guidelines in question are the application of state aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis⁽³⁾ ("the Banking Guidelines"); the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition⁽⁴⁾ ("the Recapitalisation Guidelines"); the treatment of impaired assets in the EEA banking sector⁽⁵⁾ ("the Impaired Assets Guidelines") and the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the state aid rules⁽⁶⁾ ("the Restructuring Guidelines"). Three of those four Guidelines, the Banking, Recapitalisation and Impaired Assets Guidelines, set out the prerequisites for the compatibility of the main types of assistance granted by EFTA States – guarantees on liabilities, recapitalisations and asset relief measures – while the Restructuring Guidelines detail the particular features that a restructuring plan (or a viability plan) has to display in the specific context of crisis-related state aid granted to banks on the basis of Article 61(3)(b) of the EEA Agreement.
- (2) On 2 March 2011, the Authority adopted a fifth set of Guidelines, on the application, from 1 January 2011, of state aid rules to support measures in favour of banks in the context of the financial crisis⁽⁷⁾ ("the Prolongation Guidelines"). The Prolongation Guidelines extended the Restructuring Guidelines – the only one of the four Guidelines with a specified expiry date – on amended terms until 31 December 2011. The Authority also indicated in the Prolongation Guidelines that it considered that the requirements for state aid to be approved pursuant to Article 61(3)(b) of the EEA Agreement, which exceptionally allows for aid to remedy a serious disturbance in the economy of an EU Member State or an EFTA State, were still fulfilled and that the Banking, Recapitalisation and Impaired Assets Guidelines would remain in place in order to provide guidance on the criteria for the compatibility of crisis-related aid to banks on the basis of Article 61(3)(b) of the EEA Agreement.
- (3) The exacerbation of tensions in sovereign debt markets that has taken place in 2011 has put the banking sector in the EEA under increasing pressure, particularly in terms of access to term funding markets. The "banking package" agreed by the Heads of State or Government at their meeting of 26 October 2011⁽⁸⁾ aims to restore confidence in the banking sector by way of guarantees on medium-term funding and the creation of a temporary capital buffer amounting to a capital ratio of 9 % of the highest quality capital after accounting for market valuation of sovereign debt exposures. Despite those measures, the Authority considers that the requirements for state aid to be approved pursuant to Article 61(3)(b) will continue to be fulfilled beyond the end of 2011.
- (4) Therefore, the Banking, Recapitalisation and Impaired Assets Guidelines will remain in place beyond 31 December 2011. In the same vein, the temporal scope of the Restructuring Guidelines is extended beyond 31 December 2011⁽⁹⁾. The Authority will keep the situation in the financial markets under review and will take steps towards more permanent rules for State aid for rescue and restructuring of banks, based on Article 61(3)(b) of the EEA Agreement, as soon as market conditions permit.

(1) Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement ("the State Aid Guidelines"), adopted and issued by the Authority on 19.1.1994, published in the *Official Journal of the European Union* (hereinafter referred to as OJ) L 231 of 03.09.1994, p.1 and EEA Supplement No 32, 03.09.1994, p.1. The Guidelines were last amended on 02.03.2011. The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

(2) For the convenience of the reader, financial institutions are referred to simply as 'banks' in this document.

(3) Available at <http://www.eftasurv.int/?1=1&showLinkID=16604&1=1>

(4) Available at <http://www.eftasurv.int/?1=1&showLinkID=16015&1=1>

(5) Available at <http://www.eftasurv.int/?1=1&showLinkID=16585&1=1>

(6) Available at <http://www.eftasurv.int/media/state-aid-guidelines/Part-VIII---Return-to-viability-and-the-assessment-of-restructuring-measures-in-the-financial-sector.pdf>

(7) Available at <http://www.eftasurv.int/media/state-aid-guidelines/Part-VIII---Financial-Crisis-Guidelines-2011.pdf>

(8) Statement of EU Heads of State or Government of 26.10.2011, (http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/125621.pdf).

(9) In line with the Authority's previous practice, existing or new bank support schemes (irrespective of the support instruments they contain: guarantee, recapitalisation, liquidity, asset relief, other) will only be prolonged or approved for a duration of six months to allow for further adjustments, if necessary, in mid-2012.

(5) To facilitate the implementation of the banking package and to take into account developments in the risk profile of banks since the start of the crisis, it is desirable to further clarify and update the rules in certain respects. These Guidelines set out the necessary amendments to the parameters for the compatibility of crisis-related state aid to banks as from 1 January 2012. In particular, these Guidelines:

- (a) supplement the Recapitalisation Guidelines, by providing more detailed guidance on ensuring adequate remuneration for capital instruments that do not bear a fixed return;
- (b) explain how the Authority will undertake the proportionate assessment of the long-term viability of banks in the context of the banking package; and
- (c) introduce a revised methodology for ensuring that the fees payable in return for guarantees on bank liabilities are sufficient to limit the aid involved to the minimum, with the aim of ensuring that the methodology takes into account the greater differentiation of bank credit default swap (CDS) spreads in recent times and impact of the CDS spreads on the EFTA State concerned.

2. Pricing and conditions for state recapitalisations

- (6) The Recapitalisation Guidelines provide general guidance on the pricing of capital injections. That guidance is geared mainly towards capital instruments bearing a fixed remuneration.
- (7) In view of the regulatory changes and the changing market environment, the Authority anticipates that State capital injections may in the future more commonly take the form of shares bearing a variable remuneration. Clarification of the rules on pricing of capital injections is desirable given that such shares are remunerated in the form of (uncertain) dividends and capital gains, making it difficult to assess directly *ex ante* the remuneration on such instruments.
- (8) The Authority will therefore assess the remuneration of such capital injections on the basis of the issue price of the shares. Capital injections should be subscribed at a sufficient discount to the share price (after adjustment for the "dilution effect" ⁽¹⁾) immediately prior to the announcement of the capital injection to give a reasonable assurance of an adequate remuneration for the State ⁽²⁾.
- (9) For listed banks, the benchmark share price should be the quoted market price of shares with equivalent rights to those attaching to the shares being issued. For non listed banks, there is no such market price and EFTA States should use an appropriate market-based valuation approach (including a peer group P/E approach or other generally accepted valuation methodologies). Shares should be subscribed at an appropriate discount to that market (or market-based) value.
- (10) If EFTA States subscribe for shares without voting rights, a higher discount may be required, the size of which should reflect the pricing differential between voting and non-voting shares in the prevailing market conditions.
- (11) Recapitalisation measures must contain appropriate incentives for banks to exit from state support as soon as possible. In relation to shares with variable remuneration, if exit incentives are designed in a way that limits the upside potential for the EFTA State, for example by issuing warrants to the incumbent shareholders to allow them to buy back the newly issued shares from the State at a price that implies a reasonable annual return for the State, a higher discount will be required to reflect the capped upside potential.
- (12) In all cases, the size of the discount must reflect the size of the capital injection in relation to the existing Core Tier 1 capital. A higher capital shortage in relation to existing capital is indicative of greater risk to the State, and therefore requires a higher discount.
- (13) Hybrid instruments should in principle contain an "alternative coupon satisfaction mechanism" whereby coupons which cannot be paid out in cash would be paid to the State in the form of newly issued shares.
- (14) The Authority will continue to require EFTA States to submit a restructuring plan (or an update of the existing restructuring plan) within six months of the date of the Authority's decision authorising rescue aid for any bank that receives public support in the form of recapitalisation or impaired asset measures. Where a bank has been the subject of a previous rescue aid decision under the rules governing the compatibility of aid to banks with

⁽¹⁾ The "dilution effect" can be quantified using generally accepted market techniques (for instance, the theoretical ex-rights price (TERP)).

⁽²⁾ If EFTA States underwrite the issue of shares, an adequate underwriting fee should be payable by the issuing institution.

Article 61(3)(b) of the EEA Agreement, whether as part of the same restructuring operation or not, the Authority may require the submission of the restructuring plan within a period shorter than six months. The Authority will undertake a proportionate assessment of the long-term viability of banks, taking full account of elements indicating that banks can be viable in the long-term without the need for significant restructuring, in particular where the capital shortage is essentially linked to a confidence crisis on sovereign debt, the public capital injection is limited to the amount necessary to offset losses stemming from marking sovereign bonds of the Contracting Parties to the EEA Agreement to market in banks which are otherwise viable, and the analysis shows that the banks in question did not take excessive risk in acquiring sovereign debt.

3. Pricing and conditions for state guarantees

- (15) Banks may benefit from a state guarantee for the issuance of new debt instruments, whether secured or unsecured, with the exception of instruments that qualify as capital. Since pressure on the funding of banks is concentrated in the term funding markets, state guarantees should in general only cover debt with a maturity of between one and five years (seven years in the case of covered bonds).
- (16) Since the start of the crisis, the pricing of state guarantees has been linked to the median CDS spread of the beneficiary over the period from 1 January 2007 to 31 August 2008. That pricing was increased with effect from 1 July 2010 to better reflect the risk profile of individual beneficiaries ⁽¹⁾.
- (17) To take into account the greater differentiation by risk of bank CDS spreads in recent times, that pricing formula should be updated to refer to median CDS spreads over a three-year period ending one month before the grant of guarantees. Since increases in CDS spreads in recent years are partially due to influences that are not specific to individual banks, in particular the growing tensions in sovereign debt markets and an overall increase in the perception of risk in the banking sector, that formula should isolate the intrinsic risk of individual banks from changes in CDS spreads of EEA States and of the market as a whole. That formula should also reflect the fact that guarantees on covered bonds expose the guarantor to substantially lower risk than guarantees on unsecured debt.
- (18) In line with the principles mentioned in paragraph 17, the revised pricing formula set out in the Annex establishes the minimum guarantee fees that should apply where state guarantees are granted on a national basis, without any pooling of guarantees among EFTA States. The Authority will apply that formula to all state guarantees on bank liabilities with a maturity of one year or more issued on or after 1 January 2012.
- (19) Where guarantees cover liabilities that are not denominated in the domestic currency of the guarantor, an additional fee should apply to cover the foreign-exchange risk taken by the guarantor.
- (20) Where it is necessary for guarantees to cover debt with a maturity of less than one year, the Authority will continue to apply the existing pricing formula, which is set out for reference in the Appendix. The Authority will not authorise guarantees covering debt with a maturity of less than three months except in exceptional cases where such guarantees are necessary for financial stability. In such cases, the Authority will assess the appropriate remuneration taking into account the need for appropriate incentives to exit from state support as soon as possible.
- (21) If EFTA States decide to establish pooling arrangements for guarantees on bank liabilities, the Authority will review its guidance accordingly, to ensure in particular that weight is given to CDS spreads of EFTA States only to the extent that they remain relevant.
- (22) To enable the Authority to assess the application in practice of the revised pricing formula, EFTA States should indicate, when notifying new or prolonged guarantee schemes, an indicative fee for each bank eligible to benefit from those guarantees, based on an application of the formula using recent market data. EFTA States should also communicate to the Authority, within three months following each issue of guaranteed bonds, the actual guarantee fee charged in relation to each issue of guaranteed bonds.

⁽¹⁾ See Directorate-General for Competition Staff Working Document of 30.4.2010 on the application of State aid rules to government guarantee schemes covering bank debt to be issued after 30.6.2010 (http://ec.europa.eu/competition/state_aid/studies_reports/phase_out_bank_guarantees.pdf).

*Appendix***Guarantees covering debt with a maturity of one year or more**

The guarantee fee should as a minimum be the sum of:

- 1) a basic fee of 40 basis points (bp); and
- 2) a risk-based fee equal to the product of 40 basis points and a risk metric composed of (i) one-half of the ratio of the beneficiary's median five-year senior CDS spread over the three years ending one month before the date of issue of the guaranteed bond to the median level of the iTraxx Europe Senior Financials five-year index over the same three-year period, plus (ii) one-half of the ratio of the median five-year senior CDS spread of all EEA States to the median five-year senior CDS spread of the EFTA State granting the guarantee over the same three-year period.

The formula for the guarantee fee can be written as:

$$Fee = 40bp \times (1 + (1/2 \times A/B) + (1/2 \times C/D))$$

where A is the beneficiary's median five-year senior CDS spread, B is the median iTraxx Europe Senior Financials five-year index, C is the median five-year senior CDS spread of all EEA States and D is the median five-year senior CDS spread of the EFTA State granting the guarantee.

The medians are calculated over the three years ending one month before the date of issue of the guaranteed bond.

In the case of guarantees for covered bonds, the guarantee fee may take into account only one-half of the risk-based fee calculated in accordance with point (2) above.

Banks without representative CDS data

For banks without CDS data, or without representative CDS data, but with a credit rating, an equivalent CDS spread should be derived from the median value of five-year CDS spreads during the same sample period for the rating category of the bank concerned, based on a representative sample of large banks in the EEA States. The supervisory authority will assess whether the CDS data of a bank are representative.

For banks without CDS data and without a credit rating, an equivalent CDS spread should be derived from the median value of five-year CDS spreads during the same sample period for the lowest rating category ⁽¹⁾, based on a representative sample of large banks in the EEA States. The calculated CDS spread, for this category of banks, may be adapted on the basis of a supervisory assessment.

The Authority will determine the representative samples of large banks in the EEA States.

Guarantees covering debt with a maturity of less than one year

As CDS spreads may not provide an adequate measure of credit risk for debt with a maturity of less than one year, the guarantee fee for such debt should as a minimum be the sum of:

- 1) a basic fee of 50 basis points; and
- 2) a risk-based fee equal to 20 basis points for banks with a rating of A+ or A, 30 basis points for banks with a rating of A-, or 40 basis points for banks rated below A- or without a rating.

⁽¹⁾ The lowest rating category to be considered is A, as there is not sufficient data available for the rating category BBB.

III *Other acts*

EUROPEAN ECONOMIC AREA

★ EFTA Surveillance Authority Decision No 394/11/COL of 14 December 2011 amending, for the eighty-third time, the procedural and substantive rules in the field of state aid by introducing a new chapter on the application, from 1 January 2012, of state aid rules to support measures in favour of banks in the context of the financial crisis 72

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