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⁽¹⁾ Text with EEA relevance

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II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) No 240/2014

of 7 January 2014

on the European code of conduct on partnership in the framework of the European Structural and Investment Funds

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 ⁽¹⁾, and in particular Article 5(3) thereof,

Whereas:

- (3) The partners selected should be the most representative of the relevant stakeholders. Selection procedures should be transparent and take into account the different institutional and legal frameworks of the Member States and their national and regional competences.
- (4) The partners should include public authorities, economic and social partners and bodies representing civil society, including environmental partners, community-based and voluntary organisations, which can significantly influence or be significantly affected by implementation of the Partnership Agreement and programmes. Specific attention should be paid to including groups who may be affected by programmes but who find it difficult to influence them, in particular the most vulnerable and marginalised communities, which are at highest risk of discrimination or social exclusion, in particular persons with disabilities, migrants and Roma people.
- (1) The aim of this Regulation is to provide for a European code of conduct in order to support and facilitate Member States in the organisation of partnerships for Partnership Agreements and programmes supported by the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF). These funds now operate under a common framework and are referred to as the 'European Structural and Investment Funds (hereinafter 'the ESI Funds').
- (5) For the selection of partners, it is necessary to take into account the differences between Partnership Agreements and programmes. Partnership Agreements cover all the ESI Funds providing support to each Member State, while programmes refer only to the ESI Funds contributing to them. The partners for Partnership Agreements should be those relevant in view of the planned use of all the ESI Funds, while for programmes it is sufficient that the partners are those relevant in view of the planned use of the ESI Funds contributing to the programme.
- (2) Working in partnership is a long-established principle in the implementation of the ESI Funds. Partnership implies close cooperation between public authorities, economic and social partners and bodies representing civil society at national, regional and local levels throughout the whole programme cycle consisting of preparation, implementation, monitoring and evaluation.
- (6) The partners should be involved in preparing and implementing Partnership Agreements and programmes. For this purpose, it is necessary to establish main principles and good practices concerning timely, meaningful and transparent consultation of the partners on the analysis of challenges and needs to be tackled, the selection of objectives and priorities to address them, and the coordination structures and multi-level governance agreements necessary for effective policy delivery.

⁽¹⁾ OJ L 347, 20.12.2013, p. 320.

- (7) The partners should be represented on the monitoring committees of programmes. The rules governing membership and committee procedures should promote continuity and ownership of programming and implementation, and working arrangements that are clear and transparent, as well as timeliness and non-discrimination.
- (8) Through their active participation in the monitoring committees, the partners should be involved in assessing performance on the different priorities, the relevant reports on the programmes and, where appropriate, calls for proposals.
- (9) Effective partnership should be facilitated by helping the relevant partners to strengthen their institutional capacity in view of the preparation and implementation of programmes.
- (10) The Commission should facilitate the exchange of good practice, strengthening institutional capacity and the dissemination of relevant outcomes among Member States, managing authorities and representatives of the partners by setting up a Community of Practice on Partnership covering all the ESI Funds.
- (11) The role of the partners in implementing the Partnership Agreements and the performance and effectiveness of the partnership in the programming period should be subject to assessment by the Member States.
- (12) In order to support and facilitate Member States in the organisation of the partnership, the Commission should make available examples of best practices existing in Member States,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

This Regulation establishes the European code of conduct on partnership for Partnership Agreements and programmes supported by the European Structural and Investment Funds.

CHAPTER II

MAIN PRINCIPLES CONCERNING TRANSPARENT PROCEDURES FOR IDENTIFICATION OF RELEVANT PARTNERS

Article 2

Representativeness of partners

Member States shall ensure that the partners referred to in Article 5(1) of Regulation (EU) No 1303/2013 are the most representative of the relevant stakeholders and are nominated

as duly mandated representatives, taking into consideration their competence, capacity to participate actively and appropriate level of representation.

Article 3

Identification of relevant partners for the Partnership Agreement

1. For the Partnership Agreement, Member States shall identify the relevant partners among at least the following:

- (a) competent regional, local, urban and other public authorities, including:
 - (i) regional authorities, national representatives of local authorities and local authorities representing the largest cities and urban areas, whose competences are related to the planned use of the ESI Funds;
 - (ii) national representatives of higher educational institutions, educational and training providers and research centres in view of the planned use of the ESI Funds;
 - (iii) other national public authorities responsible for the application of horizontal principles referred to in Articles 4 to 8 of Regulation (EU) No 1303/2013, in view of the planned use of the ESI Funds; and in particular the bodies for the promotion of equal treatment established in accordance with Council Directive 2000/43/EC ⁽¹⁾, Council Directive 2004/113/EC ⁽²⁾ and Directive 2006/54/EC of the European Parliament and of the Council ⁽³⁾;
- (b) economic and social partners, including:
 - (i) nationally recognised social partners' organisations, in particular general cross-industry organisations and sectoral organisations, whose sectors are related to the planned use of the ESI Funds;
 - (ii) national chambers of commerce and business associations representing the general interest of industries and branches, in view of the planned use of the ESI Funds and with a view to ensuring balanced representation of large, medium-sized, small and microenterprises, together with representatives of the social economy;

⁽¹⁾ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).

⁽²⁾ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37).

⁽³⁾ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23).

(c) bodies representing civil society, such as environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination, including:

- (i) bodies working in the areas related to the planned use of the ESI Funds and to the application of horizontal principles referred to in Articles 4 to 8 of Regulation (EU) No 1303/2013 based on their representativeness, and taking into account geographic and thematic coverage, management capacity, expertise and innovative approaches;
- (ii) other organisations or groups which are significantly affected or likely to be significantly affected by the implementation of the ESI Funds, in particular groups considered to be at risk of discrimination and social exclusion.

2. Where public authorities, economic and social partners, and bodies representing civil society have established an organisation regrouping their interests to facilitate their involvement in the partnership (umbrella organisation), they may nominate a single representative to present the views of the umbrella organisation in the partnership.

Article 4

Identification of relevant partners for programmes

1. For each programme, Member States shall identify the relevant partners among at least the following:

- (a) competent regional, local, urban and other public authorities, including:
 - (i) regional authorities, national representatives of local authorities and local authorities representing the largest cities and urban areas, whose competences are related to the planned use of the ESI Funds contributing to the programme;
 - (ii) national or regional representatives of higher educational institutions, education, training and advisory services providers and research centres, in view of the planned use of the ESI Funds contributing to the programme;
 - (iii) other public authorities responsible for the application of horizontal principles referred to in Articles 4 to 8 of Regulation (EU) No 1303/2013, in view of the planned use of the ESI Funds contributing to the programme, and in particular the bodies for the promotion of equal treatment established in accordance with Directive 2000/43/EC, Directive 2004/113/EC and Directive 2006/54/EC;

(iv) other bodies organised at national, regional or local level and authorities representing the areas where integrated territorial investments and local development strategies funded by the programme are carried out;

(b) economic and social partners, including:

- (i) nationally or regionally recognised social partners' organisations, in particular general cross-industry organisations and sectoral organisations whose sectors are related to the planned use of the ESI Funds contributing to the programme;
- (ii) national or regional chambers of commerce and business associations representing the general interest of industries or branches, with a view to ensuring balanced representation of large, medium-sized, small and microenterprises, together with representatives of the social economy;

(iii) other similar bodies organised at national or regional level;

(c) bodies representing civil society, such as environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination, including:

- (i) bodies working in the areas related to the planned use of the ESI Funds contributing to the programme and to the application of horizontal principles, referred to in Articles 4 to 8 of Regulation (EU) No 1303/2013 based on their representativeness, and taking into account geographic and thematic coverage, management capacity, expertise and innovative approaches;
- (ii) bodies representing the local action groups referred to in Article 34(1) of Regulation (EU) No 1303/2013;
- (iii) other organisations or groups which are significantly affected or likely to be significantly affected by the implementation of the ESI Funds; in particular, groups considered to be at risk of discrimination and social exclusion.

2. As regards European territorial cooperation programmes, Member States may involve in the partnership:

- (i) European groupings of territorial cooperation operating in the respective cross-border or transnational programme area;
- (ii) authorities or bodies that are involved in the development or implementation of a macro-regional or sea-basin strategy in the programme area, including priority area coordinators for macro-regional strategies.

3. Where public authorities, economic and social partners, and bodies representing civil society have established an umbrella organisation, they may nominate a single representative to present the views of the umbrella organisation in the partnership.

CHAPTER III

MAIN PRINCIPLES AND GOOD PRACTICES CONCERNING THE INVOLVEMENT OF RELEVANT PARTNERS IN THE PREPARATION OF THE PARTNERSHIP AGREEMENT AND PROGRAMMES

Article 5

Consultation of relevant partners in the preparation of the Partnership Agreement and programmes

1. In order to ensure transparent and effective involvement of relevant partners, Member States and managing authorities shall consult them on the process and timetable of the preparation of the Partnership Agreement and programmes. In doing so, they shall keep them fully informed of their content and any changes thereof.

2. As regards the consultation of relevant partners, Member States shall take account of the need for:

- (a) timely disclosure of and easy access to relevant information;
- (b) sufficient time for partners to analyse and comment on key preparatory documents and on the draft Partnership Agreement and draft programmes;
- (c) available channels through which partners may ask questions, may provide contributions and will be informed of the way in which their proposals have been taken into consideration;
- (d) the dissemination of the outcome of the consultation.

3. As regards the rural development programmes, Member States shall take account of the role that the national rural networks established in accordance with Article 54 of the Regulation (EU) No 1305/2013 of the European Parliament and of the Council ⁽¹⁾ can play involving relevant partners.

4. Where formal agreements have been established between the different tiers of government below national level, the Member State shall take account of these multi-level governance agreements in accordance with its institutional and legal framework.

Article 6

Preparation of the Partnership Agreement

Member States shall involve relevant partners, in accordance with their institutional and legal framework, in the preparation of the Partnership Agreement, and in particular concerning:

⁽¹⁾ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 347, 20.12.2013, p. 487).

- (a) the analysis of disparities, development needs and growth potential with reference to the thematic objectives, including those addressed by the relevant country-specific recommendations;
- (b) summaries of the *ex ante* conditionalities of the programmes and key findings of any *ex ante* evaluations of the Partnership Agreement undertaken at the Member State's initiative;
- (c) the selection of the thematic objectives, the indicative allocations of the ESI Funds and their main expected results;
- (d) the list of programmes and the mechanisms at national and regional level to ensure coordination of the ESI Funds with one another and with other Union and national funding instruments and with the European Investment Bank;
- (e) the arrangements for ensuring an integrated approach to the use of ESI Funds for the territorial development of urban, rural, coastal and fisheries areas and areas with particular territorial features;
- (f) the arrangements for ensuring an integrated approach to addressing the specific needs of geographical areas most affected by poverty and of target groups at the highest risk of discrimination or exclusion, with special regard to marginalised communities;
- (g) the implementation of the horizontal principles referred to in Articles 5, 7 and 8 of Regulation (EU) No 1303/2013.

Article 7

Information on the involvement of relevant partners in the Partnership Agreement

Member States shall provide for the Partnership Agreement at least the following information:

- (a) the list of partners involved in the preparation of the Partnership Agreement;
- (b) the actions taken to ensure the active participation of the partners, including actions taken in terms of accessibility, in particular for persons with disabilities;
- (c) the role of the partners in the preparation of the Partnership Agreement;
- (d) the results of the consultation with partners and a description of its added value in the preparation of the Partnership Agreement.

*Article 8***Preparation of programmes**

Member States shall involve relevant partners, in accordance with their institutional and legal framework, in the preparation of programmes, and in particular concerning:

- (a) the analysis and identification of needs;
- (b) the definition or selection of priorities and related specific objectives;
- (c) the allocation of funding;
- (d) the definition of programmes' specific indicators;
- (e) the implementation of the horizontal principles as defined in Articles 7 and 8 of Regulation (EU) No 1303/2013;
- (f) the composition of the monitoring committee.

*Article 9***Information on the involvement of relevant partners in programmes**

Member States shall provide for programmes at least the following information:

- (a) the actions taken to involve the relevant partners in the preparation of the programmes and their amendments;
- (b) the planned actions to ensure the participation of the partners in the implementation of the programmes.

CHAPTER IV

GOOD PRACTICES CONCERNING THE FORMULATION OF THE RULES OF MEMBERSHIP AND INTERNAL PROCEDURES OF MONITORING COMMITTEES*Article 10***Rules of membership of the monitoring committee**

1. When formulating the rules of membership of the monitoring committee, Member States shall take into account the involvement of partners that have been involved in the preparation of the programmes and shall aim to promote equality between men and women and non-discrimination.

2. As regards the monitoring committees of European territorial cooperation programmes, partners may be represented by umbrella organisations at Union or transnational level for inter-regional and transnational cooperation programmes. Member States may involve partners in the preparations of the monitoring committee, in particular through their participation in coordination committees at national level organised in the participating Member States.

*Article 11***Rules of procedure of the monitoring committee**

When formulating the rules of procedure, monitoring committees shall take into account the following elements:

- (a) the members' voting rights;
- (b) the notice given of meetings and the transmission of documents, which, as a general rule, shall not be less than 10 working days;
- (c) the arrangements for publication and accessibility of the preparatory documents submitted to the monitoring committees;
- (d) the procedure for adoption, publication and accessibility of the minutes;
- (e) the arrangements for the establishment and activities of working groups under the monitoring committees;
- (f) the provisions on conflict of interest for partners involved in monitoring, evaluation and calls for proposals;
- (g) the conditions, principles and arrangements for reimbursement rules, capacity building opportunities and use of technical assistance.

CHAPTER V

MAIN PRINCIPLES AND GOOD PRACTICES CONCERNING THE INVOLVEMENT OF RELEVANT PARTNERS IN THE PREPARATION OF CALLS OF PROPOSALS, PROGRESS REPORTS AND IN RELATION TO MONITORING AND EVALUATION OF PROGRAMMES*Article 12***Obligations relating to data protection, confidentiality and conflict of interest**

Member States shall ensure that partners involved in the preparation of calls of proposals, progress reports and in monitoring and evaluation of programmes are aware of their obligations related to data protection, confidentiality and conflict of interest.

*Article 13***Involvement of relevant partners in the preparation of calls for proposals**

Managing authorities shall take appropriate measures to avoid potential conflict of interest where involving relevant partners in the preparation of calls for proposals or in their assessment.

*Article 14***Involvement of relevant partners in the preparation of progress reports**

Member States shall involve relevant partners in the preparation of the progress reports on implementation of the Partnership Agreement referred to in Article 52 of Regulation (EU) No 1303/2013, in particular concerning the assessment of the role of partners in the implementation of the Partnership Agreement and the overview of the opinions given by the partners during the consultation, including, where appropriate, the description of the way in which the opinions of partners have been taken into account.

*Article 15***Involvement of relevant partners in the monitoring of programmes**

Managing authorities shall involve the partners, within the framework of the monitoring committee and their working groups, in assessing performance of the programme, including the conclusions of the performance review, and in the preparation of the annual implementation reports on the programmes.

*Article 16***Involvement of partners in the evaluation of programmes**

1. Managing authorities shall involve the relevant partners in the evaluation of programmes within the framework of the monitoring committees and, where appropriate, specific working groups established by the monitoring committees for this purpose.

2. Managing authorities for the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund programmes shall consult the partners on the reports summarising the findings of evaluations carried out during the programming period in accordance with Article 114(2) of Regulation (EU) No 1303/2013.

CHAPTER VI

**INDICATIVE AREAS, THEMES AND GOOD PRACTICES
CONCERNING THE USE OF THE ESI FUNDS TO STRENGTHEN
THE INSTITUTIONAL CAPACITY OF RELEVANT PARTNERS
AND THE ROLE OF THE COMMISSION IN DISSEMINATION OF
GOOD PRACTICES**

*Article 17***Strengthening the institutional capacity of relevant partners**

1. The managing authority shall examine the need to make use of technical assistance in order to support the strengthening of the institutional capacity of partners, in particular as regards small local authorities, economic and social partners and

non-governmental organisations, in order to help them so that they can effectively participate in the preparation, implementation, monitoring and evaluation of the programmes.

2. The support referred to in paragraph 1 may take the form of, inter alia, dedicated workshops, training sessions, coordination and networking structures or contributions to the cost of participating in meetings on the preparation, implementation, monitoring and evaluation of a programme.

3. For rural development programmes, the support referred to in paragraph 1 may be provided through the national rural network established in accordance with Article 54 of Regulation (EU) No 1305/2013.

4. For ESF programmes, managing authorities in less developed or transition regions or in Member States eligible for Cohesion Fund support shall ensure that, according to need, appropriate ESF resources are allocated to the capacity building activities of social partners and non-governmental organisations that are involved in the programmes.

5. For European territorial cooperation, support under paragraphs 1 and 2 may also cover support for partners to strengthen their institutional capacity for participating in international cooperation activities.

*Article 18***Role of the Commission in the dissemination of good practices**

1. The Commission shall set up a cooperation mechanism called the European Community of Practice on Partnership, which shall be common to the ESI Funds and open to interested Member States, managing authorities and organisations representing the partners at Union level.

The European Community of Practice on Partnership shall facilitate exchange of experience, capacity building, as well as dissemination of relevant outcomes.

2. The Commission shall make available examples of good practice in organising the partnership.

3. The exchange of experience on the identification, transfer and dissemination of good practice and innovative approaches in relation to the implementation of interregional cooperation programmes and actions under Article 2(3)(c) of Regulation (EU) No 1299/2013 of the European Parliament and of the Council⁽¹⁾ shall include experience of partnership in cooperation programmes.

⁽¹⁾ Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal (OJ L 347, 20.12.2013, p. 259).

CHAPTER VII

FINAL PROVISIONS*Article 19***Entry into force**

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

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

Done at Brussels, 7 January 2014.

For the Commission

The President

José Manuel BARROSO

COMMISSION DELEGATED REGULATION (EU) No 241/2014**of 7 January 2014****supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ⁽¹⁾, and in particular third subparagraph of Article 26(4); third subparagraph of Article 27(2); third subparagraph of Article 28(5); third subparagraph of Article 29(6); third subparagraph of Article 32(2); third subparagraph of Article 36(2); third subparagraph of Article 41(2); third subparagraph of Article 52(2); third subparagraph of Article 76(4); third subparagraph of Article 78(5); third subparagraph of Article 79(2); third subparagraph of Article 83(2); third subparagraph of Article 481(6); third subparagraph of Article 487(3) thereof,

Whereas:

- (1) The provisions in this Regulation are closely linked, since they refer to elements of own funds requirements of institutions and to deductions from those same elements of own funds for the application of Regulation (EU) No 575/2013. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is desirable to include all of the regulatory technical standards on own funds required by Regulation (EU) No 575/2013, in a single Regulation.
- (2) In order to bring more convergence across the Union in the way foreseeable dividends have to be deducted from interim or year-end profits, it is necessary to introduce a hierarchy of ways to evaluate the deduction, by first having a decision on distributions from the relevant body, then the dividend policy, and thirdly an historical payout ratio.
- (3) In addition to the general requirements for own funds as added to or amended by specific requirements laid down

in terms of own funds for these types of institutions, a specification of conditions according to which competent authorities may determine that a type of undertaking recognised under applicable national law qualifies as a mutual, cooperative society, savings institution or similar institution for the purpose of own funds is necessary in order to mitigate the risk that any institution could operate under the specific status of mutual, cooperative society, savings institution or similar institution to which specific own funds requirements may apply, where the institution does not possess features which are common to the Union cooperative banking sector institutions.

- (4) For an institution recognised under applicable national law as a mutual, cooperative society, savings institution or similar institution, it is appropriate in some cases to distinguish between the holders of the institution's Common Equity Tier 1 instruments and the members of that institution since members generally need to hold capital instruments in order to be entitled to a right to dividends, as well as to a right to a part of the profits and reserves.
- (5) In general, the common feature of a cooperative, savings institution, mutual or similar institution is to carry on business for the benefit of the customers and members of the institution, and as a service to the public. The primary objective is not to generate and pay a financial return to external providers of capital, like shareholders of joint stock companies. For this reason, capital instruments used by these institutions are different from capital instruments issued by joint stock companies that generally grant the holders a full access to reserves and profits in going concern and liquidation and are transferable to a third party.
- (6) With regard to cooperative institutions, a common feature is in general the ability of members to resign and therefore to require the redemption of the Common Equity Tier 1 capital instruments they hold. That does not prevent a cooperative society from issuing qualifying Common Equity Tier 1 capital instruments for which there is no possibility for the holders to put the instruments back to the institution, provided that these instruments meet the provisions of Article 29 of Regulation (EU) No 575/2013. Where an institution issues different types of instruments under Article 29 of that Regulation, there should be no privileges assigned to only some of these types of instruments other than the ones foreseen in Article 29(4) of that Regulation.

⁽¹⁾ OJ L 176, 27.6.2013, p. 1.

- (7) Savings institutions are generally structured like a foundation where there is no owner of the capital, meaning nobody who participates in the capital and may benefit from the profits of the institution. One of the key feature of mutuals is that, in general, members do not contribute to the capital of the institution and do not, in the ordinary course of the business, benefit from direct distribution of the reserves. This should not prevent these institutions, in order to develop their business, from issuing Common Equity Tier 1 instruments to investors or members who may participate in the capital and benefit to some extent from the reserves in going concern situations and in liquidation.
- (8) All existing institutions already set up and recognised as mutuals, cooperative societies, savings institutions or similar institutions under applicable national law before 31 December 2012 continue to be classified as such for the purpose of Part Two of Regulation (EU) No 575/2013 without regard to their legal form as long as they continue to meet the criteria that determined such recognition as one of those entities under applicable national law.
- (9) When defining situations which would qualify as indirect funding for all types of capital instruments it is more practical and comprehensive to do so by specifying the characteristics of the opposite concept, direct funding.
- (10) In order to apply own funds rules to mutuals, cooperative societies, savings institutions and similar institutions, the specificities of such institutions have to be taken into account in an appropriate manner. Rules should be put in place to ensure, among others, that such institutions are able to limit the redemption of their capital instruments, where appropriate. Therefore, where the refusal of the redemption of instruments is prohibited under applicable national law for these types of institutions, it is essential that the provisions governing the instruments give the institution the ability to defer their redemption and limit the amount to be redeemed. Further, given the importance of the ability to limit or defer redemption, competent authorities should have the power to limit the redemption of cooperative shares and institutions should document any decision to limit the redemption.
- (11) There is a need to define and align the treatment of the concept of gain on sale associated with a future margin income in the context of securitisation, with international practices as those defined by the Basel Committee on Banking Supervision and to ensure that no revocable gain on sale is included among the own funds of an institution, given the lack of its permanence.
- (12) In order to avoid regulatory arbitrage and ensure a harmonised application of the capital requirements rules in the Union, it is important to ensure that there is a uniform approach concerning the deduction from own funds of certain items like losses for the current financial year, deferred tax assets that rely on future profitability, and defined benefit pension fund assets.
- (13) In order to ensure consistency across the Union in the way incentives to redeem are assessed, it is necessary to provide a description of cases where an expectation is created that the instrument is likely to be redeemed. There is also a need to design rules leading to timely activation of loss absorbency mechanisms for hybrid instruments so as to consequently increase the loss absorbency of these instruments in the future. Further, given that instruments issued by special purpose entities give less certainty in prudential terms than directly issued instruments, the use of special purpose entities for indirect issuance of own funds has to be restricted and strictly framed.
- (14) It is necessary to balance the need between ensuring prudentially appropriate calculations of exposures of institutions to indirect holdings arising from index holdings, with the need to ensure that does not become overly burdensome for them.
- (15) A detailed and comprehensive process is deemed necessary for competent authorities to grant a supervisory permission for reducing own funds. Redemptions, reductions and repurchases of own funds instruments should not be announced to holders before the institution has obtained the prior approval of the relevant competent authority. Institutions should provide a detailed list of elements in order for the competent authority to be provided with all relevant information before deciding on granting its approval.
- (16) Temporary waivers for deduction from own funds items are provided in order to accommodate and allow the application of financial assistance operation plans, where applicable. Therefore the duration of such waivers should not exceed the duration of financial assistance operation plans.
- (17) In order for special purposes entities to qualify for inclusion under the Additional Tier 1 and Tier 2 own funds items, the assets of the special purpose entities not invested in own funds instruments issued by institutions should remain minimal and insignificant. In order to achieve this, that amount of assets should be capped by a limit expressed in relation to the average total assets of the special purpose entity.

- (18) Transitional provisions aim at allowing a smooth passage to the new regulatory framework, therefore it is important, when applying the transitional provisions for filters and deductions, that this transitional treatment set out in Regulation (EU) No 575/2013 is applied consistently, but in a manner that takes into account the original starting point created by the national rules transposing the previous Union regulatory regime, represented by Directives 2006/48/EC⁽¹⁾ and 2006/49/EC⁽²⁾ of the European Parliament and of the Council.
- (19) Excess Common Equity Tier 1 or Additional Tier 1 instruments grandfathered according to the transitional provisions of Regulation (EU) No 575/2013 are, on the basis of these provisions, allowed to be included within the limits for grandfathered instruments for lower tiers of capital. That nevertheless cannot alter the limits for grandfathered instruments for lower tiers, therefore any inclusion in the grandfathering limits of the lower tier should only be possible if there is sufficient allowance in that lower tier. Finally, as those are excess instruments of the higher tier, it should be possible for those instruments to be later reclassified in a higher tier of capital.
- (20) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (21) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁽³⁾,
- (22) The European Banking Authority should carry out a review of the application of this Regulation, and especially of the rules for laying down the procedures for authorisations for redemption of Common Equity Tier 1 instruments of mutuals, cooperative societies, savings institutions or similar institutions, and propose amendments where appropriate.
- (23) The European Banking Authority consulted the European Insurance and Occupational Pensions Authority on the treatment of capital instruments of third country insurance and reinsurance undertakings and on the treatment of capital instruments of undertakings excluded from the scope of Directive 2009/138/EC of the European Parliament and of the Council⁽⁴⁾ for the purposes of Article 36(3) of Regulation (EU) No 575/2013.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Subject matter

This Regulation lays down rules concerning:

- (a) the meaning of 'foreseeable' when determining whether foreseeable charges or dividends have been deducted from own funds according to Article 26(4) of Regulation (EU) No 575/2013;
- (b) conditions according to which competent authorities may determine that a type of undertaking recognised under applicable national law qualifies as a mutual, cooperative society, savings institution or similar institution, according to Article 27(2) of Regulation (EU) No 575/2013;
- (c) the applicable forms and nature of indirect funding of capital instruments, according to Article 28(5) of Regulation (EU) No 575/2013;
- (d) the nature of limitations on redemption necessary where the refusal by the institution of the redemption of own funds instruments is prohibited under applicable national law, according to Article 29(6) of Regulation (EU) No 575/2013;
- (e) the further specification of the concept of gain on sale according to Article 32(2) of Regulation (EU) No 575/2013;

⁽¹⁾ Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ L 177, 30.6.2006, p. 1).

⁽²⁾ Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (OJ L 177, 30.6.2006, p. 201).

⁽³⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

⁽⁴⁾ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p.1).

- (f) the application of the deductions from Common Equity Tier 1 items and other deductions for Common Equity Tier 1, Additional Tier 1 and Tier 2 items according to Article 36(2) of Regulation (EU) No 575/2013;
- (g) the criteria according to which competent authorities shall permit institutions to reduce the amount of assets in the defined benefit pension fund, according to Article 41(2) of Regulation (EU) No 575/2013;
- (h) the form and nature of incentives to redeem, the nature of a write-up of an Additional Tier 1 instrument following a write-down of the principal amount on a temporary basis and the procedures and timing surrounding trigger events, features of instruments that could hinder recapitalisation and use of special purpose entities, according to Article 52(2) of Regulation (EU) No 575/2013;
- (i) the extent of conservatism required in estimates used as an alternative to the calculation of underlying exposures for indirect holdings arising from index holdings, according to Article 76(4) of Regulation (EU) No 575/2013;
- (j) certain detailed conditions that need to be met before a supervisory permission for reducing own funds can be given, and the relevant process, according to Article 78(5) of Regulation (EU) No 575/2013;
- (k) the conditions for a temporary waiver for deduction from own funds to be provided, according to Article 79(2) of Regulation (EU) No 575/2013;
- (l) the types of assets that can relate to the operations of a special purpose entity and the concepts of minimal and insignificant for the purposes of determining Qualifying Additional Tier 1 and Tier 2 capital issued by a special purpose entity according to Article 83(2) of Regulation (EU) No 575/2013;
- (m) the detailed conditions for adjustments to own funds under the transitional provisions, according to Article 481(6) of Regulation (EU) No 575/2013;
- (n) the conditions for items excluded from grandfathering in Common Equity Tier 1 or Additional Tier 1 items in other elements of own funds, according to Article 487(3) of Regulation (EU) No 575/2013.

CHAPTER II

ELEMENTS OF OWN FUNDS

SECTION 1

Common Equity Tier 1 capital and instruments

Subsection 1

Foreseeable dividends and charges

Article 2

Meaning of 'foreseeable' in foreseeable dividend for the purposes of Article 26(2)(b) of Regulation (EU) No 575/2013

1. The amount of foreseeable dividends to be deducted by institutions from the interim or year-end profits as provided in Article 26(2) of Regulation (EU) No 575/2013, shall be determined in accordance with paragraphs 2 to 4.

2. Where an institution's management body has formally taken a decision or proposed a decision to the institution's relevant body regarding the amount of dividends to be distributed, this amount shall be deducted from the corresponding interim or year-end profits.

3. Where interim dividends are paid, the residual amount of interim profit resulting from the calculation laid down in paragraph 2 which is to be added to Common Equity Tier 1 items shall be reduced, taking into account the rules laid down in paragraphs 2 and 4, by the amount of any foreseeable dividend which can be expected to be paid out from that residual interim profit with the final dividends for the full business year.

4. Before the management body has formally taken a decision or proposed a decision to the relevant body on the distribution of dividends, the amount of foreseeable dividends to be deducted by institutions from the interim or year-end profits shall equal the amount of interim or year-end profits multiplied by the dividend payout ratio.

5. The dividend pay-out ratio shall be determined on the basis of the dividend policy approved for the relevant period by the management body or other relevant body.

6. Where the dividend policy contains a pay-out range instead of a fixed value, the upper end of the range is to be used for the purpose of paragraph 2.

7. In the absence of an approved dividend policy, or when, in the opinion of the competent authority, it is likely that the institution will not apply its dividend policy or this policy is not a prudent basis upon which to determine the amount of deduction, the dividend pay-out ratio shall be based on the highest of the following:

(a) the average dividend pay-out ratio over the three years prior to the year under consideration;

(b) the dividend pay-out ratio of the year preceding the year under consideration.

8. The competent authority may permit the institution to adjust the calculation of the dividend pay-out ratio as described in points (a) and (b) of paragraph 7 to exclude exceptional dividends paid during the period.

9. The amount of foreseeable dividends to be deducted shall be determined taking into account any regulatory restrictions on distributions, in particular restrictions determined in accordance with Article 141 of Directive 2013/36/EU of the European Parliament and of the Council⁽¹⁾. The amount of profit after deduction of foreseeable charges subject to such restrictions may be included fully in Common Equity Tier 1 items where the condition of point (a) of paragraph 2 of Article 26 of Regulation (EU) No 575/2013 is met. When such restrictions are applicable, the foreseeable dividends to be deducted shall be based on the capital conservation plan agreed by the competent authority pursuant to Article 142 of Directive 2013/36/EU.

10. The amount of foreseeable dividends to be paid in a form that does not reduce the amount of Common Equity Tier 1 items, such as dividends in the form of shares, known as scrip-dividends, shall not be deducted from interim or year-end profits to be included in Common Equity Tier 1 items.

11. The competent authority shall be satisfied that all necessary deductions to the interim or year-end profits and all those related to foreseeable dividends have been made, either under applicable accounting framework or under any other adjustments, before permitting that the institution includes interim or year-end profits in Common Equity Tier 1 items.

Article 3

Meaning of 'foreseeable' in foreseeable charge for the purposes of Article 26(2)(b) of Regulation (EU) No 575/2013

1. The amount of foreseeable charges to be taken into account shall comprise the following:

(a) the amount of taxes;

(b) the amount of any obligations or circumstances arising during the related reporting period which are likely to reduce the profits of the institution and for which the competent authority is not satisfied that all necessary value adjustments, such as additional value adjustments according to Article 34 of Regulation (EU) No 575/2013, or provisions have been made.

2. Foreseeable charges that have not already been taken into account in the profit and loss account shall be assigned to the interim period during which they have incurred so that each interim period bears a reasonable amount of these charges. Material or non-recurrent events shall be considered in full and without delay in the interim period during which they arise.

3. The competent authority shall be satisfied that all necessary deductions to the interim or year-end profits and all those related to foreseeable charges have been made, either under applicable accounting framework or under any other adjustments, before permitting that the institution includes interim or year-end profits in Common Equity Tier 1 items.

Subsection 2

Cooperative societies, savings institutions, mutuals and similar institutions

Article 4

Type of undertaking recognised under applicable national law as a cooperative society for the purposes of Article 27(1)(a)(ii) of Regulation (EU) No 575/2013

1. Competent authorities may determine that a type of undertaking recognised under applicable national law qualifies as a cooperative society for the purpose of Part Two of Regulation (EU) No 575/2013, where all of the conditions in paragraphs 2, 3 and 4 are met.

2. To qualify as a cooperative society for the purposes of paragraph 1, an institution's legal status shall fall within one of the following categories:

(a) in Austria: institutions registered as 'eingetragene Genossenschaft (e.Gen.)' or 'registrierte Genossenschaft' under the 'Gesetz über Erwerbs- und Wirtschaftsgenossenschaften (GenG)';

(b) in Belgium: institutions registered as 'société coopérative/coöperatieve vennootschap' and approved in application of the Royal Decree of 8 January 1962 fixing the conditions of approval of the national groupings of cooperative societies and cooperative societies;

(c) in Cyprus: institutions registered as 'Συνεργατικό Πιστωτικό Ίδρυμα ή ΣΠΠ' established by virtue of the Cooperative Societies Laws of 1985;

(d) in the Czech Republic: institutions authorised as 'spořitelní a úvěrní družstvo' under 'zákon upravující činnost spořitelních a úvěrních družstev';

(e) in Denmark: institutions registered as 'andelskasser' or 'sammenslutninger af andelskasser' under the Danish Financial Business Act;

⁽¹⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

- (f) in Finland: institutions registered as one of the following:
- (1) 'Osuuspankki' or 'andelsbank' under 'laki osuuspankeista ja muista osuuskuntamuotoisista luottolaitoksista' or 'lag om andelsbanker och andra kreditinstitut i andelslagsform';
 - (2) 'Muu osuuskuntamuotoinen luottolaitos' or 'annat kreditinstitut i andelslagsform' under 'laki osuuspankeista ja muista osuuskuntamuotoisista luottolaitoksista' or 'lag om andelsbanker och andra kreditinstitut i andelslagsform';
 - (3) 'Keskusyhteisö' or 'centralinstitutet' under 'laki talletuspankkien yhteenliittymästä' or 'lag om en sammanslutning av inlåningsbanker';
- (g) in France: institutions registered as 'sociétés coopératives' under the 'Loi n°47-1775 du 10 septembre 1947 portant statut de la coopération' and authorised as 'banques mutualistes ou coopératives' under the 'Code monétaire et financier, partie législative, Livre V, titre Ier, chapitre II';
- (h) in Germany: institutions registered as 'eingetragene Genossenschaft (eG)' under the 'Gesetz betreffend die Erwerbs- und Wirtschaftsgenossenschaften (Genossenschaftsgesetz –GenG)';
- (i) in Greece: institutions registered as 'Πιστωτικοί Συνεταιρισμοί' under the Cooperative Law 1667/1986 that operate as credit institutions and may be labeled as 'Συνεταιριστική Τράπεζα' according to the Banking Law 3601/2007;
- (j) in Hungary: institutions registered as 'Szövetkezeti hitelintézet' under Act CXII of 1996 on Credit Institutions and Financial Enterprises;
- (k) in Italy: institutions registered as on of the following:
- (1) 'Banche popolari' referred to in Legislative Decree 1 September 1993, no. 385;
 - (2) 'Banche di credito cooperativo' referred to in Legislative Decree 1 September 1993, no. 385;
 - (3) 'Banche di garanzia collettiva dei fidi' referred to in art. 13 of Decree Law 30 September 2003, no. 269, converted into Law 24 November 2003, no. 326;
- (l) in Luxembourg: institutions registered as 'sociétés coopératives' as defined in Section VI of the law of 10 August 1915 on commercial companies;
- (m) in the Netherlands: institutions registered as 'coöperaties' or 'onderlinge waarborgmaatschappijen' under 'Title 3 of Book 2 Rechtspersonen of the Burgerlijk wetboek';
- (n) in Poland: institutions registered as 'bank spółdzielczy' under the provisions of 'Prawo bankowe';
- (o) in Portugal: institutions registered as 'Caixa de Crédito Agrícola Mútuo' or as 'Caixa Central de Crédito Agrícola Mútuo e das Cooperativas de Crédito Agrícola' approved by Decreto-Lei n.º 24/91, de 11 de Janeiro;
- (p) in Romania: institutions registered as 'Organizații cooperatiste de credit' under the provisions of Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, approved with amendments and supplements by Law no. 227/2007;
- (q) in Spain: Institutions registered as 'Cooperativas de Crédito' under the 'Ley 13/1989, de 26 de mayo, de Cooperativas de Crédito';
- (r) in Sweden: institutions registered as 'Medlemsbank' under 'Lag (1995:1570) om medlemsbanker' or as 'Kreditmarknadsförening' under Lag (2004:297) om bank- och finansieringsrörelse;
- (s) in the United Kingdom: institutions registered as 'cooperative societies' under the Industrial and Provident Societies Act 1965 and under the Industrial and Provident Societies Act (Northern Ireland) 1969.
3. With respect to Common Equity Tier 1 capital, to qualify as a cooperative society for the purposes of paragraph 1, the institution shall be able to issue, according to the national applicable law or company statutes, at the level of the legal entity, only capital instruments referred to in Article 29 of Regulation (EU) No 575/2013.
4. To qualify as a cooperative society for the purposes of paragraph 1, when the holders, which may be members or non-members of the institution, of the Common Equity Tier 1 instruments referred to in paragraph (3) have the ability to resign, under the applicable national law, they may also have the right to put the capital instrument back to the institution, but only subject to the restrictions of the applicable national law, company statutes, of Regulation (EU) No 575/2013 and of this Regulation. This does not prevent the institution from issuing, under applicable national law, Common Equity Tier 1 instruments complying with Article 29 of Regulation (EU) No 575/2013 to members and non-members that do not grant a right to put the capital instrument back to the institution.

Article 5

Type of undertaking recognised under applicable national law as a savings institution for the purposes of Article 27(1)(a)(iii) of Regulation (EU) No 575/2013

1. Competent authorities may determine that a type of undertaking recognised under applicable national law qualifies as a savings institution for the purpose of Part Two of Regulation (EU) No 575/2013, where all the conditions in paragraphs 2, 3 and 4 are met.

2. To qualify as a savings institution for the purposes of paragraph 1, the institution's legal status shall fall within one of the following categories:

- (a) in Austria: institutions registered as 'Sparkasse' under para. 1 (1) of the 'Bundesgesetz über die Ordnung des Sparkassenwesens (Sparkassengesetz – SpG)';
- (b) in Denmark: institutions registered as 'Sparekasser' under the Danish Financial Business Act;
- (c) in Finland: institutions registered as 'Säästöpankki' or 'Sparbank' under 'Säästöpankkilaki' or 'Sparbankslag';
- (d) in Germany: institutions registered as 'Sparkasse' as follows:
 - (1) Sparkassengesetz für Baden-Württemberg (SpG);
 - (2) 'Gesetz über die öffentlichen Sparkassen (Sparkassengesetz – SpkG) in Bayern';
 - (3) 'Gesetz über die Berliner Sparkasse und die Umwandlung der Landesbank Berlin – Girozentrale – in eine Aktiengesellschaft (Berliner Sparkassengesetz – SpkG)';
 - (4) 'Brandenburgisches Sparkassengesetz (BbgSpkG)';
 - (5) 'Sparkassengesetz für öffentlich-rechtliche Sparkassen im Lande Bremen (Bremisches Sparkassengesetz)';
 - (6) 'Hessisches Sparkassengesetz';
 - (7) 'Sparkassengesetz des Landes Mecklenburg-Vorpommern (SpkG)';
 - (8) 'Niedersächsisches Sparkassengesetz (NSpG)';
 - (9) 'Sparkassengesetz Nordrhein-Westfalen (Sparkassengesetz – SpkG)';
 - (10) Sparkassengesetz (SpkG) für Rheinland-Pfalz;
 - (11) 'Saarländisches Sparkassengesetz (SSpG)';
 - (12) 'Gesetz über die öffentlich-rechtlichen Kreditinstitute im Freistaat Sachsen und die Sachsen-Finanzgruppe';
 - (13) 'Sparkassengesetz des Landes Sachsen-Anhalt (SpkG-LSA)';
 - (14) 'Sparkassengesetz für das Land Schleswig-Holstein (Sparkassengesetz – SpkG)';
 - (15) 'Thüringer Sparkassengesetz (ThürSpkG)';
- (e) in Spain: institutions registered as 'Cajas de Ahorros' under 'Real Decreto-Ley 2532/1929, de 21 de noviembre, sobre Régimen del Ahorro Popular';

(f) in Sweden: institutions registered as 'Sparbank' under 'Sparbankslag (1987:619)'.

3. With respect to Common Equity Tier 1 capital, to qualify as a savings institution for the purposes of paragraph 1, the institution has to be able to issue, according to national applicable law or company statutes, at the level of the legal entity, only capital instruments referred to in Article 29 of Regulation (EU) No 575/2013.

4. To qualify as a savings institution for the purposes of paragraph 1, the sum of capital, reserves and interim or year-end profits, shall not be allowed, according to national applicable law, to be distributed to holders of Common Equity Tier 1 instruments. Such condition is deemed to be fulfilled even where the institution issues Common Equity Tier 1 instruments that grant the holders, on a going concern basis, a right to a part of the profits and reserves, where allowed by the applicable national law, provided that this part is proportionate to their contribution to the capital and reserves or, where permitted by the applicable national law, in accordance with an alternative arrangement. The institution may issue Common Equity Tier 1 instruments that grant the holders, in the case of insolvency or liquidation of the institution, the right to reserves which do not need to be proportionate to the contribution to capital and reserves provided that the conditions of paragraphs 4 and 5 of Article 29 of Regulation (EU) No 575/2013 are met.

Article 6

Type of undertaking recognised under applicable national law as a mutual for the purposes of Article 27(1)(a)(i) of Regulation (EU) No 575/2013

1. Competent authorities may determine that a type of undertaking recognised under applicable national law qualifies as a mutual for the purpose of Part Two of Regulation (EU) No 575/2013, where all of the conditions in paragraphs 2, 3 and 4 are met.

2. To qualify as a mutual for the purposes of paragraph 1, the institution's legal status shall fall within one of the following categories:

- (a) in Denmark: Associations ('Foreninger') or funds ('Fonde') which originate from the conversion of insurance companies ('Forsikringsselskaber'), mortgage credit institutions ('Realkreditinstitutter'), savings banks ('Sparekasser'), cooperative savings banks ('Andelskasser') and affiliations of cooperative savings banks ('Sammenslutninger af andelskasser') into limited companies as defined under the Danish Financial Business Act;
- (b) in Ireland: institutions registered as 'building societies' under the Building Societies Act 1989;
- (c) in the United Kingdom: institutions registered as 'building societies' under the Building Societies Act 1986; institutions registered as a 'savings bank' under the Savings Bank (Scotland) Act 1819.

3. With respect to Common Equity Tier 1 capital, to qualify as a mutual for the purposes of paragraph 1, the institution is only allowed to issue, according to the national applicable law or company statutes, at the level of the legal entity, capital instruments referred to in Article 29 of Regulation (EU) No 575/2013.

4. To qualify as a mutual for the purposes of paragraph 1, the total amount or a partial amount of the sum of capital and reserves shall be owned by members of the institution, who do not, in the ordinary course of business, benefit from direct distribution of the reserves, in particular through the payment of dividends. Such conditions are deemed to be fulfilled even where the institution issues Common Equity Tier 1 instruments that grant a right on the profits and reserves, where allowed by the applicable national law.

Article 7

Type of undertaking recognised under applicable national law as a similar institution for the purposes of Article 27(1)(a)(iv) of Regulation (EU) No 575/2013

1. Competent authorities may determine that a type of undertaking recognised under applicable national law qualifies as a similar institution to cooperatives, mutuals and savings institutions for the purpose of Part Two of Regulation (EU) No 575/2013, where all of the conditions in paragraphs 2, 3 and 4 are met.

2. To qualify as a similar institution to cooperatives, mutuals and savings institutions for the purposes of paragraph 1, the institution's legal status falls under one of the following categories:

(a) in Austria: the 'Pfandbriefstelle der österreichischen Landes-Hypothekenbanken' under the 'Bundesgesetz über die Pfandbriefstelle der österreichischen Landes-Hypothekenbanken (Pfandbriefstelle-Gesetz – PfBrStG)';

(b) in Finland: institutions registered as 'Hypoteekkiyhdistys' or 'Hypoteksförening' under 'Laki hypoteekkiyhdistyksistä' or 'Lag om hypoteksföreningar'.

3. With respect to Common Equity Tier 1 capital, to qualify as a similar institution to cooperatives, mutuals and savings institutions for the purposes of paragraph 1, the institution shall be only able to issue, according to the national applicable law or company statutes, at the level of the legal entity, capital instruments referred to in Article 29 of Regulation (EU) No 575/2013.

4. To qualify as a similar institution to cooperatives, mutuals and savings institutions for the purposes of paragraph 1, one or more of the following conditions shall also be met:

(a) where the holders, which may be members or non-members of the institution, of the Common Equity Tier 1 instruments referred to in paragraph 3 have the ability to resign under the applicable national law, they may also have the right to put the capital instrument back to the institution, but only subject to the restrictions of the applicable national law, company statutes and of Regulation (EU) No 575/2013 and this Regulation. That does not prevent the institution from issuing, under applicable national law, Common Equity Tier 1 instruments complying with Article 29 of Regulation (EU) No 575/2013 to members and non-members that do not grant a right to put the capital instrument back to the institution;

(b) the sum of capital, reserves and interim or year-end profits, is not allowed, according to national applicable law, to be distributed to holders of Common Equity Tier 1 instruments. That condition is deemed to be fulfilled even where the institution issues Common Equity Tier 1 instruments that grant the holders, on a going concern basis, a right to a part of the profits and reserves, where allowed by the applicable national law, provided that that part is proportionate to their contribution to the capital and reserves or, where permitted by the applicable national law, in accordance with an alternative arrangement. The institution may issue Common Equity Tier 1 instruments that grant the holders, in the case of insolvency or liquidation of the institution, the right to reserves which do not need to be proportionate to the contribution to capital and reserves provided that the conditions of Article 29(4) and (5) of Regulation (EU) No 575/2013 are met;

(c) the total amount or a partial amount of the sum of capital and reserves is owned by members of the institution who do not, in the ordinary course of business, benefit from direct distribution of the reserves, in particular through the payment of dividends.

Subsection 3

Indirect funding

Article 8

Indirect funding of capital instruments for the purposes of Article 28(1)(b), Article 52(1)(c) and Article 63(c) of Regulation (EU) No 575/2013

1. Indirect funding of capital instruments under Article 28(1)(b), Article 52(1)(c) and Article 63(c) of Regulation (EU) No 575/2013 shall be deemed funding that is not direct.

2. For the purposes of paragraph 1, direct funding shall refer to situations where an institution has granted a loan or other funding in any form to an investor that is used for the purchase of its capital instruments.

3. Direct funding shall also include funding granted for other purposes than purchasing an institution's capital instruments, to any natural or legal person who has a qualifying holding in the credit institution, as referred to in Article 4(36) of Regulation (EU) No 575/2013, or who is deemed to be a related party within the meaning of the definitions in paragraph 9 of International Accounting Standard 24 on Related Party Disclosures as applied in the Union according to Regulation (EC) No 1606/2002 of the European Parliament and of the Council⁽¹⁾, taking into account any additional guidance as defined by the competent authority, if the institution is not able to demonstrate all of the following:

- (a) the transaction is realised at similar conditions as other transactions with third parties;
- (b) the natural or legal person or the related party does not have to rely on the distributions or on the sale of the capital instruments held to support the payment of interest and the repayment of the funding.

Article 9

Applicable forms and nature of indirect funding of capital instruments for the purposes of Article 28(1)(b) and 52(1)(c) and 63(c) of Regulation (EU) No 575/2013

1. The applicable forms and nature of indirect funding of the purchase of an institution's capital instruments shall include the following:

- (a) funding of an investor's purchase, at issuance or thereafter, of an institution's capital instruments by any entities on which the institution has a direct or indirect control or by entities included in any of the following:

- (1) the scope of accounting or prudential consolidation of the institution;
- (2) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3)(a)(iv) of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;
- (3) the scope of supplementary supervision of the institution in accordance with Directive 2002/87/EC of the European Parliament and of the Council⁽²⁾ on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate;

- (b) funding of an investor's purchase, at issuance or thereafter, of an institution's capital instruments by external entities that are protected by a guarantee or by the use of a credit derivative or are secured in some other way so that

the credit risk is transferred to the institution or to any entities on which the institution has a direct or indirect control or any entities included in any of the following:

- (1) the scope of accounting or prudential consolidation of the institution;
- (2) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3)(a)(iv) of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;
- (3) the scope of supplementary supervision of the institution in accordance with Directive 2002/87/EC.

- (c) funding of a borrower that passes the funding on to the ultimate investor for the purchase, at issuance or thereafter, of an institution's capital instruments.

2. In order to be considered as indirect funding for the purposes of paragraph 1, the following conditions shall also be met, where applicable:

- (a) the investor is not included in any of the following:

- (1) the scope of accounting or prudential consolidation of the institution;
- (2) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3)(a)(iv) of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs. For this purpose an investor is deemed to be included in the scope of the extended aggregated calculation if the relevant capital instrument is subject to consolidation or extended aggregated calculation in accordance with Article 49(3)(a) (iv) of Regulation (EU) No 575/2013 in a way that the multiple use of own funds items and any creation of own funds between members of the institutional protection scheme is eliminated. Where the permission from competent authorities referred to in Article 49(3) of Regulation (EU) No 575/2013 has not been granted, this condition shall be deemed to be met where both the entities referred to in paragraph 1(a) and the institution are members of the same institutional protection scheme and the entities deduct the funding provided for the purchase of the institution's capital instruments according to Articles 36(1)(f) to (i), Article 56(a) to (d) and Article 66(a) to (d) of Regulation (EU) No 575/2013, as applicable;

⁽¹⁾ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, (OJ L 243, 11.9.2002, p. 1).

⁽²⁾ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (OJ L 35, 11.2.2003, p.1).

- (3) the scope of the supplementary supervision of the institution in accordance with Directive 2002/87/EC;

- (b) the external entity is not included in any of the following:

- (1) the scope of accounting or prudential consolidation of the institution;
- (2) the scope of the consolidated balance sheet or extended aggregated calculation, where equivalent to consolidated accounts as referred to in Article 49(3)(a)(iv) of Regulation (EU) No 575/2013, that is drawn up by the institutional protection scheme or the network of institutions affiliated to a central body that are not organised as a group to which the institution belongs;
- (3) the scope of the supplementary supervision of the institution in accordance with Directive 2002/87/EC.

3. When establishing whether the purchase of a capital instrument involves direct or indirect funding in accordance with Article 8, the amount to be considered shall be net of any individually assessed impairment allowance made.

4. In order to avoid a qualification of direct or indirect funding in accordance with Article 8 and where the loan or other form of funding or guarantees is granted to any natural or legal person who has a qualifying holding in the credit institution or who is deemed to be a related party as referred to in paragraph 3, the institution shall ensure on an on-going basis that it has not provided the loan or other form of funding or guarantees for the purpose of subscribing directly or indirectly capital instruments of the institution. Where the loan or other form of funding or guarantees is granted to other types of parties, the institution shall make this control on a best effort basis.

5. With regard to mutuals, cooperative societies and similar institutions, where there is an obligation under national law or the statutes of the institution for a customer to subscribe capital instruments in order to receive a loan, that loan shall not be considered as a direct or indirect funding where all of the following conditions are met:

- (a) the amount of the subscription is considered immaterial by the competent authority;
- (b) the purpose of the loan is not the purchase of capital instruments of the institution providing the loan;
- (c) the subscription of one or more capital instruments of the institution is necessary in order for the beneficiary of the loan to become a member of the mutual, cooperative society or similar institution.

Subsection 4

Limitations on redemption of capital instruments

Article 10

Limitations on redemption of capital instruments issued by mutuals, savings institutions, cooperative societies and similar institutions for the purposes of Article 29(2)(b) of Regulation (EU) No 575/2013 and Article 78(3) of Regulation (EU) No 575/2013

1. An institution may issue Common Equity Tier 1 instruments with a possibility to redeem only where such possibility is foreseen by the applicable national law.

2. The ability of the institution to limit the redemption under the provisions governing capital instruments as referred to in Article 29(2)(b) and 78(3) of Regulation (EU) No 575/2013, shall encompass both the right to defer the redemption and the right to limit the amount to be redeemed. The institution shall be able to defer the redemption or limit the amount to be redeemed for an unlimited period of time pursuant to paragraph 3.

3. The extent of the limitations on redemption included in the provisions governing the instruments shall be determined by the institution on the basis of the prudential situation of the institution at any time, having regard to in particular, but not limited to:

- (a) the overall financial, liquidity and solvency situation of the institution;
- (b) the amount of Common Equity Tier 1 capital, Tier 1 and total capital compared to the total risk exposure amount calculated in accordance with the requirements laid down in point (a) of Article 92(1) of Regulation (EU) No 575/2013, the specific own funds requirements referred to in Article 104(1)(a) of Directive 2013/36/EU and the combined buffer requirement as defined in point (6) of Article 128 of that Directive.

Article 11

Limitations on redemption of capital instruments issued by mutuals, savings institutions, cooperative societies and similar institutions for the purposes of Article 29(2)(b) of Regulation (EU) No 575/2013 and Article 78(3) of Regulation (EU) No 575/2013

1. The limitations on redemption included in the contractual or legal provisions governing the instruments shall not prevent the competent authority from limiting further the redemption on the instruments on an appropriate basis as foreseen by Article 78 of Regulation (EU) No 575/2013.

2. Competent authorities shall assess the bases of limitations on redemption included in the contractual and legal provisions governing the instrument. They shall require institutions to modify the corresponding contractual provisions where they are not satisfied that the bases of limitations are appropriate. Where the instruments are governed by the national law in the absence of contractual provisions, the legislation shall enable the institution to limit redemption as referred to in paragraphs 1 to 3 of Article 10 in order for the instruments to qualify as Common Equity Tier 1.

3. Any decision to limit redemption shall be documented internally and reported in writing by the institution to the competent authority, including the reasons why, in view of the criteria set out in paragraph 3, a redemption has been partially or fully refused or deferred.

4. Where several decisions to limit redemption are taking place in the same period of time, institutions may document these decisions in a single set of documents.

SECTION 2

Prudential Filters

Article 12

The concept of gain on sale for the purposes of Article 32(1)(a) of Regulation (EU) No 575/2013

1. The concept of gain on sale referred to in point (a) paragraph 1 of Article 32 of Regulation (EU) No 575/2013 shall mean any recognised gain on sale for the institution that is recorded as an increase in any element of own funds and is associated with future margin income arising from a sale of securitised assets when they are removed from the institution's balance sheet in the context of a securitisation transaction.

2. The recognised gain on sale shall be determined as the difference between the following points (a) and (b) as determined by applying the relevant accounting framework:

(a) the net value of the assets received including any new asset obtained less any other asset given or any new liability assumed;

(b) and the carrying amount of the securitised assets or of the part derecognised.

3. The recognised gain on sale which is associated with the future margin income, shall refer, in this context, to the expected future 'excess spread' as defined in Article 242 of Regulation (EU) No 575/2013.

SECTION 3

Deductions from Common Equity Tier 1 items

Article 13

Deduction of losses for the current financial year for the purposes of Article 36(1)(a) of Regulation (EU) No 575/2013

1. For the purpose of calculating its Common Equity Tier 1 capital during the year, and irrespective of whether the

institution closes its financial accounts at the end of each interim period, the institution shall determine its profit and loss accounts and deduct any resulting losses from Common Equity Tier 1 items as they arise.

2. For the purpose of determining an institution's profit and loss accounts in accordance with paragraph 1, income and expenses shall be determined under the same process and on the basis of the same accounting standards as the one followed for the year-end financial report. Income and expenses shall be prudently estimated and shall be assigned to the interim period in which they incurred so that each interim period bears a reasonable amount of the anticipated annual income and expenses. Material or non-recurrent events shall be considered in full and without delay in the interim period during which they arise.

3. Where losses for the current financial year have already reduced Common Equity Tier 1 items as a result of an interim or a year-end financial report, a deduction is not needed. For the purpose of this Article, the financial report means that the profit and losses have been determined after a closing of the interim or the annual accounts in accordance with the accounting framework to which the institution is subject under Regulation (EC) No 1606/2002 on the application of international accounting standards and Council Directive 86/635/EEC⁽¹⁾ on the annual accounts and consolidated accounts of banks and other financial institutions.

4. Paragraphs 1 to 3 shall apply in the same manner to gains and losses included in accumulated other comprehensive income.

Article 14

Deductions of deferred tax assets that rely on future profitability for the purposes of Article 36(1)(c) of Regulation (EU) No 575/2013

1. The deductions of deferred tax assets that rely on future profitability under Article 36(1)(c) of Regulation (EU) No 575/2013 shall be made according to paragraphs 2 and 3.

2. The offsetting between deferred tax assets and associated deferred tax liabilities shall be done separately for each taxable entity. Associated deferred tax liabilities shall be limited to those that arise from the tax law of the same jurisdiction as the deferred tax assets. For the calculation of deferred tax assets and liabilities at consolidated level, a taxable entity includes any number of entities which are members of the same tax group, fiscal consolidation, fiscal unity or consolidated tax return under applicable national law.

⁽¹⁾ Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

3. The amount of associated deferred tax liabilities which are eligible for offsetting deferred tax assets that rely on future profitability is equal to the difference between the amount in point (a) and the amount in point (b):

- (a) the amount of deferred tax liabilities as recognised under the applicable accounting framework;
- (b) the amount of associated deferred tax liabilities arising from intangible assets and from defined benefit pension fund assets.

Article 15

Deduction of defined benefit pension fund assets for the purposes of Article 36(1)(e) of Regulation (EU) No 575/2013 and Article 41(1)(b) of Regulation (EU) No 575/2013

1. The competent authority shall only grant the prior permission mentioned in point (b) of Article 41(1) of Regulation (EU) No 575/2013 where the unrestricted ability to use the respective defined benefit pension fund assets entails immediate and unfettered access to the assets such as when the use of the assets is not barred by a restriction of any kind and there are no claims of any kind from third parties on these assets.

2. Unfettered access to the assets is likely to exist when the institution is not required to request and receive specific approval from the manager of the pension funds or the pension beneficiaries each time it would access excess funds in the plan.

Article 16

Deductions of foreseeable tax charges for the purposes of Article 36(1)(l) and Article 56(f) of Regulation (EU) No 575/2013

1. On the condition that the institution applies accounting framework and accounting policies that provide for the full recognition of current and deferred tax liabilities related to transactions and other events recognised in the balance sheet or the profit and loss account, the institution may consider that foreseeable tax charges have been already taken into account. The competent authority shall be satisfied that all necessary deductions have been made, either under applicable accounting standards or under any other adjustments.

2. When the institution is calculating its Common Equity Tier 1 capital on the basis of financial statements prepared in accordance with Regulation (EC) No 1606/2002, the condition of paragraph 1 is deemed to be fulfilled.

3. Where the condition of paragraph 1 is not fulfilled, the institution shall decrease its Common Equity Tier 1 items by the estimated amount of current and deferred tax charges not yet recognised in the balance sheet and profit and loss account related to transactions and other events recognised in the balance sheet or the profit and loss account. The estimated

amount of current and deferred tax charges shall be determined using an approach equivalent to the one provided by Regulation (EC) No 1606/2002. The estimated amount of deferred tax charges may not be netted against deferred tax assets that are not recognised in the financial statements.

SECTION 4

Other deductions for Common Equity Tier 1, additional Tier 1 and Tier 2 items

Article 17

Other deductions for capital instruments of financial institutions for the purposes of Article 36(3) of Regulation (EU) No 575/2013

1. Holdings of capital instruments of financial institutions as defined in Article 4(26) of Regulation (EU) No 575/2013 shall be deducted according to the following calculations:

- (a) all instruments qualifying as capital under the company law applicable to the financial institution that issued them and, where the financial institution is subject to solvency requirements, which are included in the highest quality Tier of regulatory own funds without any limits shall be deducted from Common Equity Tier 1 items;
- (b) all instruments which qualify as capital under the company law applicable to the issuer and, where the financial institution is not subject to solvency requirements, which are perpetual, absorb the first and proportionately greatest share of losses as they occur, rank below all other claims in the event of insolvency and liquidation and have no preferential or predetermined distributions shall be deducted from Common Equity Tier 1 items;
- (c) any subordinated instruments absorbing losses on a going-concern basis, including the discretion to cancel coupon payments, shall be deducted from Additional Tier 1 items. Where the amount of these subordinated instruments exceeds the amount of Additional Tier 1 capital, the excess amount shall be deducted from Common Equity Tier 1 capital;
- (d) any other subordinated instruments shall be deducted from Tier 2 items. If the amount of these subordinated instruments exceeds the amount of Tier 2 capital, the excess amount shall be deducted from Additional Tier 1 items. Where the amount of Additional Tier 1 capital is insufficient, the remaining excess amount shall be deducted from Common Equity Tier 1 items;
- (e) any other instruments included in the financial institution's own funds pursuant to the relevant applicable prudential framework or any other instruments for which the institution is not able to demonstrate that the conditions in points (a), (b), (c) or (d) apply shall be deducted from Common Equity Tier 1 items.

2. In the cases foreseen in paragraph 3, institutions shall apply the deductions as foreseen by Regulation (EU) No 575/2013 for holdings of capital instruments based on a corresponding deduction approach. For the purposes of this paragraph, corresponding deduction approach shall mean an approach that applies the deduction to the same component of capital for which the capital would qualify if it was issued by the institution itself.

3. The deductions referred to in paragraph 1 shall not apply in the following cases:

- (a) where the financial institution is authorised and supervised by a competent authority and subject to prudential requirements equivalent to those applied to institutions under Regulation (EU) No 575/2013. This approach shall be applied to third country financial institutions only where an equivalence assessment of the prudential regime of the third country concerned has been performed under that regulation and where it has been concluded that the prudential regime of the third country concerned is at least equivalent to that applied in the Union;
- (b) where the financial institution is an electronic money institution within the meaning of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council⁽¹⁾ and does not benefit from optional exemptions as provided by Article 9 of that Directive;
- (c) where the financial institution is a payment institution within the meaning of Article 4 of Directive 2007/64/EC of the European Parliament and of the Council⁽²⁾ and does not benefit from a waiver as provided by Article 26 of that Directive;
- (d) where the financial institution is an alternative investment fund manager within the meaning of Article 4 of Directive 2011/61/EU of the European Parliament and of the Council⁽³⁾ or a management company within the meaning of Article 2(1) of Directive 2009/65/EC of the European Parliament and of the Council⁽⁴⁾.

⁽¹⁾ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions (OJ L 267, 10.10.2009, p. 7).

⁽²⁾ Directive 2007/64/EC of the European Parliament and of the Council on payment services in the internal market (OJ L 319, 5.12.2007, p. 1).

⁽³⁾ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investments Fund Managers (OJ L 174, 1.7.2011, p. 1).

⁽⁴⁾ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

Article 18

Capital instruments of third country insurance and reinsurance undertakings for the purposes of Article 36(3) of Regulation (EU) No 575/2013

1. Holdings of capital instruments of third country insurance and reinsurance undertakings that are subject to a solvency regime that either has been assessed as non-equivalent to that laid down in Title I, Chapter VI of Directive 2009/138/EC according to the procedure set out in Article 227 of that Directive, or that has not been assessed, shall be deducted as follows:

- (a) all instruments which qualify as capital under the company law applicable to the third country insurance and reinsurance undertakings that issued them, and which are included in the highest quality Tier of regulatory own funds without any limits under the third-country regime shall be deducted from Common Equity Tier 1 items;
- (b) any subordinated instruments absorbing losses on a going-concern basis, including the discretion to cancel coupon payments, shall be deducted from Additional Tier 1 items. Where the amount of these subordinated instruments exceeds the amount of Additional Tier 1 capital, the excess amount shall be deducted from Common Equity Tier 1 items;
- (c) any other subordinated instruments shall be deducted from Tier 2 items. Where the amount of these subordinated instruments exceeds the amount of Tier 2 capital, the excess amount shall be deducted from Additional Tier 1 items. Where this excess amount exceeds the amount of Additional Tier 1 capital, the remaining excess amount shall be deducted from Common Equity Tier 1 items;
- (d) for third country insurance and reinsurance undertakings that are subject to prudential solvency requirements, any other instruments included in the third country insurance and reinsurance undertakings' own funds pursuant to the relevant applicable solvency regime or any other instruments for which the institution is not able to demonstrate that conditions (a), (b) or (c) apply shall be deducted from Common Equity Tier 1 items.

2. Where the solvency regime of the third country including rules on own funds, has been assessed as equivalent to that laid down in Title I, Chapter VI of Directive 2009/138/EC according to the procedure set out in Article 227 of that Directive, holdings of capital instrument of the third-country insurance or reinsurance undertakings shall be treated as holdings of capital instruments of insurance or reinsurance undertakings authorised in accordance with Article 14 of Directive 2009/138/EC.

3. In the cases foreseen in paragraph 2 of this Article, institutions shall apply the deductions as foreseen by point (b) of Article 44, point (b) of Article 58 and point (b) of Article 68 of Regulation (EU) No 575/2013, as applicable, for holdings of own funds insurance items.

Article 19

Capital instruments of undertakings excluded from the scope of Directive 2009/138/EC for the purposes of Article 36(3) of Regulation (EU) No 575/2013

Holdings of capital instruments of undertakings excluded from the scope of Directive 2009/138/EC in accordance with Article 4 of that Directive shall be deducted as follows:

- (a) all instruments qualifying as capital under the company law applicable to the undertaking that issued them and that are included in the highest quality Tier of regulatory own funds without any limits shall be deducted from Common Equity Tier 1 capital;
- (b) any subordinated instruments absorbing losses on a going-concern basis, including the discretion to cancel coupon payments, shall be deducted from Additional Tier 1 items. Where the amount of these subordinated instruments exceeds the amount of Additional Tier 1 capital, the excess amount shall be deducted from Common Equity Tier 1 items;
- (c) any other subordinated instruments shall be deducted from Tier 2 items. If the amount of these subordinated instruments exceeds the amount of Tier 2 capital, the excess amount shall be deducted from Additional Tier 1 items. Where this amount exceeds the amount of Additional Tier 1 capital, the remaining excess amount shall be deducted from Common Equity Tier 1 items;
- (d) any other instruments included in the undertaking's own funds pursuant to the relevant applicable solvency regime or any other instruments for which the institution is not able to demonstrate that conditions (a), (b) or (c) apply shall be deducted from Common Equity Tier 1 capital.

CHAPTER III

ADDITIONAL TIER 1 CAPITAL

SECTION 1

Form and nature of incentives to redeem

Article 20

Form and nature of incentives to redeem for the purposes of Article 52(1)(g) and 63(h) of Regulation (EU) No 575/2013

1. Incentives to redeem shall mean all features that provide, at the date of issuance, an expectation that the capital instrument is likely to be redeemed.
2. The incentives referred to in paragraph 1 shall include the following forms:
 - (a) a call option combined with an increase in the credit spread of the instrument if the call is not exercised;
 - (b) a call option combined with a requirement or an investor option to convert the instrument into a Common Equity Tier 1 instrument where the call is not exercised;

- (c) a call option combined with a change in reference rate where the credit spread over the second reference rate is greater than the initial payment rate minus the swap rate;
- (d) a call option combined with an increase of the redemption amount in the future;
- (e) a remarketing option combined with an increase in the credit spread of the instrument or a change in reference rate where the credit spread over the second reference rate is greater than the initial payment rate minus the swap rate where the instrument is not remarketed;
- (f) a marketing of the instrument in a way which suggests to investors that the instrument will be called.

SECTION 2

Conversion or write-down of the principal amount

Article 21

Nature of the write-up of the principal amount following a write-down for the purposes of Article 52(1)(n) and Article 52(2)(c)(ii) of Regulation (EU) No 575/2013

1. The write-down of the principal amount shall apply on a pro rata basis to all holders of Additional Tier 1 instruments that include a similar write-down mechanism and an identical trigger level.
2. For the write-down to be considered temporary, all of the following conditions shall be met:
 - (a) any distributions payable after a write-down shall be based on the reduced amount of the principal;
 - (b) write-ups shall be based on profits after the institution has taken a formal decision confirming the final profits;
 - (c) any write-up of the instrument or payment of coupons on the reduced amount of the principal shall be operated at the full discretion of the institution subject to the constraints arising from points (d) to (f) and there shall be no obligation for the institution to operate or accelerate a write-up under specific circumstances;
 - (d) a write-up shall be operated on a pro rata basis among similar Additional Tier 1 instruments that have been subject to a write-down;
 - (e) the maximum amount to be attributed to the sum of the write-up of the instrument together with the payment of coupons on the reduced amount of the principal shall be equal to the profit of the institution multiplied by the amount obtained by dividing the amount determined in point (1) by the amount determined in point (2):
 - (1) the sum of the nominal amount of all Additional Tier 1 instruments of the institution before write-down that have been subject to a write-down;
 - (2) the total Tier 1 capital of the institution.

- (f) the sum of any write-up amounts and payments of coupons on the reduced amount of the principal shall be treated as a payment that results in a reduction of Common Equity Tier 1 and shall be subject, together with other distributions on Common Equity Tier 1 instruments, to the restrictions relating to the Maximum Distributable Amount as referred to in Article 141(2) of Directive 2013/36/EU, as transposed in national law or regulation.

3. For the purposes of point (e) of paragraph 2, the calculation shall be made at the moment when the write-up is operated.

Article 22

Procedures and timing for determining that a trigger event has occurred for the purposes of Article 52(1)(n) of Regulation (EU) No 575/2013

1. Where the institution has established that the Common Equity Tier 1 ratio has fallen below the level that activates conversion or write-down of the instrument at the level of application of the requirements provided in Title II of Part One of Regulation (EU) No 575/2013, the management body or any other relevant body of the institution shall without delay determine that a trigger event has occurred and there shall be an irrevocable obligation to write-down or convert the instrument.

2. The amount to be written-down or converted shall be determined as soon as possible and within a maximum period of one month from the time it is determined that the trigger event has occurred pursuant to paragraph 1.

3. The competent authority may require that the maximum period of one month referred to in paragraph 2 is reduced in cases where it assesses that sufficient certainty on the amount to be converted or written down is established or in cases where it assesses that an immediate conversion or write-down is needed.

4. Where an independent review of the amount to be written down or converted is required according to the provisions governing the Additional Tier 1 instrument, or where the competent authority requires an independent review for the determination of the amount to be written down or converted, the management body or any other relevant body of the institution shall see that this is done immediately. That independent review shall be completed as soon as possible and shall not create impediments for the institution to write-down or convert the Additional Tier 1 instrument and to meet the requirements of paragraphs 2 and 3.

SECTION 3

Features of instruments that could hinder recapitalisation

Article 23

Features of instruments that could hinder recapitalisation for the purposes of Article 52(1)(o) of Regulation (EU) No 575/2013

Features that could hinder the recapitalisation of an institution shall include provisions that require the institution to

compensate existing holders of capital instruments where a new capital instrument is issued.

SECTION 4

Use of special purposes entities for indirect issuance of own funds instruments

Article 24

Use of special purposes entities for indirect issuance of own funds instruments for the purposes of Article 52(1)(p) and Article 63(n) of Regulation (EU) No 575/2013

1. Where the institution or an entity within the consolidation pursuant to Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 issues a capital instrument that is subscribed by a special purpose entity, this capital instrument shall not, at the level of the institution or of the above-mentioned entity, receive recognition as capital of a higher quality than the lowest quality of the capital issued to the special purpose entity and the capital issued to third parties by the special purpose entity. That requirement shall apply at the consolidated, sub-consolidated and individual levels of application of prudential requirements.

2. The rights of the holders of the instruments issued by a special purpose entity shall be no more favourable than if the instrument was issued directly by the institution or an entity within the consolidation pursuant to Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013.

CHAPTER IV

GENERAL REQUIREMENTS

SECTION 1

Indirect holdings arising from index holdings

Article 25

Extent of conservatism required in estimates for calculating exposures used as an alternative to the underlying exposures for the purposes of Article 76(2) of Regulation (EU) No 575/2013

1. An estimate is sufficiently conservative when either of the following conditions is met:

- (a) where the investment mandate of the index specifies that a capital instrument of a financial sector entity which is part of the index cannot exceed a maximum percentage of the index, the institution uses that percentage as an estimate for the value of the holdings that is deducted from its Common Equity Tier 1, Additional Tier 1 or Tier 2 items, as applicable in accordance with Paragraph 2 of Article 17 or from Common Equity Tier 1 capital in situations where the institution cannot determine the precise nature of the holding;

(b) where the institution is unable to determine the maximum percentage referred to in point (a) and where the index, as evidenced by its investment mandate or other relevant information, includes capital instruments of financial sector entities, the institution deducts the full amount of the index holdings from its Common Equity Tier 1, Additional Tier 1 or Tier 2 items, as applicable in accordance with Paragraph 2 of Article 17 or from Common Equity Tier 1 capital in situations where the institution cannot determine the precise nature of the holding.

2. For the purposes of paragraph 1, the following shall apply:

- (a) an indirect holding arising from an index holding comprises the proportion of the index invested in the Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of financial sector entities included in the index;
- (b) an index includes, but is not limited to, index funds, equity or bond indices or any other scheme where the underlying instrument is a capital instrument issued by a financial sector entity.

Article 26

Meaning of operationally burdensome in Article 76(3) of Regulation (EU) No 575/2013

1. For the purpose of Article 76(3) of Regulation (EU) No 575/2013, operationally burdensome shall mean situations under which look-through approaches to capital holdings in financial sector entities on an ongoing basis are unjustified, as assessed by the competent authorities. In their assessment of the nature of operationally burdensome situations, competent authorities shall take into account the low materiality and short holding period of such positions. A holding period of short duration shall require the strong liquidity of the index to be evidenced by the institution.

2. For the purpose of paragraph 1, a position shall be deemed to be of low materiality where all of the following conditions are met:

- (a) the individual net exposure arising from index holdings measured before any look-through is performed does not exceed 2 % of Common Equity Tier 1 items as calculated in point (a) of Article 46(1) of Regulation (EU) No 575/2013;
- (b) the aggregated net exposure arising from index holdings measured before any look-through is performed does not exceed 5 % of Common Equity Tier 1 items as calculated in point (a) of Article 46(1) of Regulation (EU) No 575/2013;
- (c) the sum of the aggregated net exposure arising from index holdings measured before any look-through is performed and of any other holdings that shall be deducted pursuant

to Article 36(1)(h) of Regulation (EU) No 575/2013 does not exceed 10 % of Common Equity Tier 1 items as calculated in point (a) of Article 46(1) of Regulation (EU) No 575/2013.

SECTION 2

Supervisory permission for reducing own funds

Article 27

Meaning of sustainable for the income capacity of the institution for the purposes of Article 78(1)(a) of Regulation (EU) No 575/2013

Sustainable for the income capacity of the institution under point (a) of Article 78(1) of Regulation (EU) No 575/2013 shall mean that the profitability of the institution, as assessed by the competent authority, continues to be sound or does not see any negative change after the replacement of the instruments with own funds instruments of equal or higher quality, at that date and for the foreseeable future. The competent authority's assessment shall take into account the institution's profitability in stress situations.

Article 28

Process and data requirements for an application by an institution to carry out redemptions, reductions and repurchases — for the purposes of Article 77 of Regulation (EU) No 575/2013

1. Redemptions, reductions and repurchases of own funds instruments shall not be announced to holders of the instruments before the institution has obtained the prior approval of the competent authority.

2. Where redemptions, reductions and repurchases are expected to take place with sufficient certainty, and once the prior permission of the competent authority has been obtained, the institution shall deduct the corresponding amounts to be redeemed, reduced or repurchased from corresponding elements of its own funds before the effective redemptions, reductions or repurchases occur. Sufficient certainty is deemed to exist in particular when the institution has publicly announced its intention to redeem, reduce or repurchase an own funds instrument.

3. Paragraphs 1 and 2 shall apply at the consolidated, sub-consolidated and individual levels of application of prudential requirements, where applicable.

Article 29

Submission of application by the institution to carry out redemptions, reductions and repurchases for the purposes of Article 77 and Article 78 of Regulation (EU) No 575/2013 and appropriate bases of limitation of redemption for the purposes of paragraph 3 of Article 78 of Regulation (EU) No 575/2013

1. An institution shall submit an application to the competent authority before reducing or repurchasing Common Equity Tier 1 instruments or calling, redeeming or repurchasing Additional Tier 1 or Tier 2 instruments.

2. The application may include a plan to carry out, over a limited period of time, actions listed in Article 77 of Regulation (EU) No 575/2013 for several capital instruments.

3. In the case of a repurchase of Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments for market making purposes, competent authorities may give their permission in accordance with the criteria set out in Article 78 of Regulation (EU) No 575/2013 in advance to actions listed in Article 77 of that Regulation for a certain predetermined amount.

(a) For Common Equity Tier 1 instruments, that amount shall not exceed the lower of the following amounts:

- (1) 3 % of the amount of the relevant issuance;
- (2) 10 % of the amount by which Common Equity Tier 1 capital exceeds the sum of the Common Equity Tier 1 capital requirements pursuant to Article 92 of Regulation (EU) No 575/2013, the specific own funds requirements referred to in Article 104(1)(a) of Directive 2013/36/EU and the combined buffer requirement as defined in point (6) of Article 128 of that Directive.

(b) For Additional Tier 1 instrument or Tier 2 instruments, that predetermined amount shall not exceed the lower of the following amounts:

- (1) 10 % of the amount of the relevant issuance;
- (2) or 3 % of the total amount of outstanding Additional Tier 1 instruments or Tier 2 instruments, as applicable.

4. Competent authorities may also give in advance their permission to actions listed in Article 77 of Regulation (EU) No 575/2013 where the related own funds instruments are passed on to employees of the institution as part of their remuneration. Institutions shall inform competent authorities where own funds instruments are purchased for these purposes and deduct these instruments from own funds on a corresponding deduction approach for the time they are held by the institution. A deduction on a corresponding basis is no longer required, where the expenses related to any action according to this paragraph are already included in own funds as a result of an interim or a year-end financial report.

5. A competent authority may give its permission in advance in accordance with the criteria set out in Article 78 of Regulation (EU) No 575/2013 to an action listed in Article 77 of that Regulation for a certain predetermined amount when the amount of own funds instruments to be called, redeemed or repurchased is immaterial in relation to the outstanding amount of the corresponding issuance after the call, redemption or repurchase has taken place.

6. Paragraphs 1 to 5 shall apply at the consolidated, sub-consolidated and individual levels of application of prudential requirements, where applicable.

Article 30

Content of the application to be submitted by the institution for the purposes of Article 77 of Regulation (EU) No 575/2013

1. The application referred to in Article 29 shall be accompanied by the following information:

- (a) a well-founded explanation of the rationale for performing one of the actions referred to in paragraph 1 of Article 29;
- (b) information on capital requirements and capital buffers, covering at least a three year period, including the level and composition of own funds before and after the performing of the action and the impact of the action on regulatory requirements;
- (c) the impact on the profitability of the institution of a replacement of a capital instrument as specified in point (a) of Article 78(1) of Regulation (EU) No 575/2013;
- (d) an evaluation of the risks to which the institution is or might be exposed and whether the level of own funds ensures an appropriate coverage of such risks, including stress tests on main risks evidencing potential losses under different scenarios;
- (e) any other information considered necessary by the competent authority for evaluating the appropriateness of granting a permission according to Article 78 of Regulation (EU) No 575/2013.

2. The competent authority shall waive the submission of some of the information listed in paragraph 2 where it is satisfied that this information is already available to it.

3. Paragraphs 1 and 2 shall apply at the individual, consolidated and sub-consolidated levels of application of prudential requirements, where applicable.

Article 31

Timing of the application to be submitted by the institution and processing of the application by the competent authority for the purposes of Article 77 of Regulation (EU) No 575/2013

1. The institution shall transmit a complete application and the information referred to in Articles 29 and 30 to the competent authority at least three months in advance of the date where one of the actions listed in Article 77 of Regulation (EU) No 575/2013 will be announced to the holders of the instruments.

2. Competent authorities may allow institutions on a case-by-case basis and under exceptional circumstances to transmit the application referred to in paragraph 1 within a time frame shorter than the three months period.

3. The competent authority shall process an application during either the period of time referred to in paragraph 1 or during the period of time referred to in paragraph 2. Competent authorities shall take into account new information, where any is available and where they consider this information to be material, received during this period. The competent authorities shall begin processing the application only when they are satisfied that the information required under Article 28 has been received from the institution.

Article 32

Applications for redemptions, reductions and repurchases by mutuals, cooperative societies, savings institutions or similar institutions for the purposes of Article 77 of Regulation (EU) No 575/2013

1. With regard to the redemption of Common Equity Tier 1 instruments of mutuals, cooperative societies, savings institutions or similar institutions, the application referred to in Article 29(1), (2) and (6) and the information referred to in Article 30(1) shall be submitted to the competent authority with the same frequency as that used by the competent body of the institution to examine redemptions.

2. Competent authorities may give their permission in advance to an action listed in Article 77 of Regulation (EU) No 575/2013 for a certain predetermined amount to be redeemed, net of the amount of the subscription of new paid in Common Equity Tier 1 instruments during a period up to one year. That predetermined amount may go up to 2 % of Common Equity Tier 1 capital, if they are satisfied that this action will not pose a danger to the current or future solvency situation of the institution.

SECTION 3

Temporary waiver from deduction from own funds

Article 33

Temporary waiver from deduction from own funds for the purposes of Article 79(1) of Regulation (EU) No 575/2013

1. A temporary waiver shall be of a duration that does not exceed the timeframe envisaged under the financial assistance operation plan. That waiver shall not be granted for a period longer than 5 years.

2. The waiver shall apply only in relation to new holdings of instruments in the financial sector entity subject to the financial assistance operation.

3. For the purposes of providing a temporary waiver for deduction from own funds, a competent authority may deem the temporary holdings referred to in Article 79(1) of

Regulation (EU) No 575/2013 to be held for the purposes of a financial assistance operation designed to reorganise and save a financial sector entity where the operation is carried out under a plan and approved by the competent authority, and where the plan clearly states phases, timing and objectives and specifies the interaction between the temporary holdings and the financial assistance operation.

CHAPTER V

MINORITY INTEREST AND ADDITIONAL TIER 1 AND TIER 2 INSTRUMENTS ISSUED BY SUBSIDIARIES

Article 34

The type of assets that can relate to the operation of special purpose entities and meaning of minimal and insignificant regarding qualifying Additional Tier 1 and Tier 2 capital issued by special purpose entities for the purposes of Article 83(1) of Regulation (EU) No 575/2013

1. The assets of a special purpose entity shall be considered to be minimal and insignificant where both the following conditions are met:

- (a) the assets of the special purpose entity which are not constituted by the investments in the own funds of the related subsidiary are limited to cash assets dedicated to payment of coupons and redemption of the own funds instruments that are due;
- (b) the amount of assets of the special purpose entity other than the ones mentioned in point (a) are not higher than 0,5 % of the average total assets of the special purpose entity over the last three years.

2. For the purpose of point (b) of paragraph 1, the competent authority may permit an institution to use a higher percentage provided that both of the following conditions are met:

- (a) the higher percentage is necessary to enable exclusively the coverage of the running costs of the special purpose entity;
- (b) the corresponding nominal amount does not exceed EUR 500 000.

CHAPTER VI

SPECIFICATION OF THE TRANSITIONAL PROVISIONS OF REGULATION (EU) No 575/2013 IN RELATION TO OWN FUNDS

Article 35

Additional filters and deductions for the purposes of Article 481(1) of Regulation (EU) No 575/2013

1. The adjustments to Common Equity Tier 1 items, Additional Tier 1 items and Tier 2 items, according to Article 481 of Regulation (EU) No 575/2013, shall be applied according to paragraphs 2 to 7.

2. Where, under the transposition measures of Directive 2006/48/EC and Directive 2006/49/EC, those deductions and filters result from own funds items as referred to in points (a), (b) and (c) of Article 57 of Directive 2006/48/EC, the adjustment shall be made to Common Equity Tier 1 items.

3. In cases other than those covered by paragraph 1, and where, under the transposition measures of Directive 2006/48/EC and Directive 2006/49/EC, these deductions and filters have been applied to the total of the items as referred to in Article 57(a) to (ca) of the Directive 2006/48/EC, taking into account Article 154 of that Directive, the adjustment shall be made to Additional Tier 1 items.

4. Where the amount of Additional Tier 1 items is lower than the related adjustment, the residual adjustment shall be made to Common Equity Tier 1 items.

5. In cases other than those covered by paragraphs 1 and 2, and where under the transposition measures of the Directive 2006/48/EC and the Directive 2006/49/EC, these deductions and filters have been applied to own funds items as referred to in Article 57(d) to (h) or total own funds of Directive 2006/48/EC and Directive 2006/49/EC, the adjustment shall be made to Tier 2 items.

6. Where the amount of Tier 2 items is lower than the related adjustment, the residual adjustment shall be made to Additional tier 1 items.

7. Where the amount of Tier 2 and Additional Tier 1 items is lower than the related adjustment, the residual adjustment shall be made to Common equity Tier 1 items.

Article 36

Items excluded from grandfathering of capital instruments not constituting state aid in Common Equity Tier 1 or Additional Tier 1 items in other elements of own funds for the purposes of Article 487(1) and (2) of Regulation (EU) No 575/2013

1. Where affording to own funds instruments the treatment set out in paragraphs 1 and 2 of Article 487 of Regulation (EU) No 575/2013 during the period from 1 January 2014 to 31 December 2021, instruments may be treated in such a way either in whole or in part. Any such treatment shall have no effect on the calculation of the limit as specified in Article 486(4) of Regulation (EU) No 575/2013.

2. Own funds instruments referred to in paragraph 1 may again be treated as items referred to in Article 484(3) of Regulation (EU) No 575/2013, provided they are items referred to in Article 484(3) of that Regulation, and provided their amount no longer exceeds the applicable percentages referred to in Articles 486(2) of that Regulation.

3. Own funds instruments referred to in paragraph 1 may again be treated as items referred to in Article 484(4), provided that they are items referred to in Article 484(3) or Article 484(4) of Regulation (EU) No 575/2013 and provided that their amount no longer exceeds the applicable percentages referred to in Articles 486(3) of that Regulation.

Article 37

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, 7 January 2014.

For the Commission

The President

José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 242/2014**of 7 March 2014****entering a name in the register of protected designations of origin and protected geographical indications (Lammefjordskartofler (PGI))**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and food-stuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Denmark's application to register the name 'Lammefjordskartofler' was published in the *Official Journal of the European Union* ⁽²⁾.

- (2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Lammefjordskartofler' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name contained in the Annex to this Regulation is hereby entered in the register.

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, 7 March 2014.

*For the Commission,
On behalf of the President,
Dacian CIOLOŞ
Member of the Commission*

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ C 286, 2.1.2013, p. 3.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.6. Fruit, vegetables and cereals, fresh or processed

DENMARK

Lammefjordskartofler (PGI)

COMMISSION IMPLEMENTING REGULATION (EU) No 243/2014**of 7 March 2014****entering a name in the register of protected designations of origin and protected geographical indications (Bornheimer Spargel/Spargel aus dem Anbaugebiet Bornheim (PGI))**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

(1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Germany's application to register the name 'Bornheimer Spargel'/'Spargel aus dem Anbaugebiet Bornheim' was published in the *Official Journal of the European Union* ⁽²⁾.

(2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Bornheimer Spargel'/'Spargel aus dem Anbaugebiet Bornheim' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name contained in the Annex to this Regulation is hereby entered in the register.

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, 7 March 2014.

*For the Commission,
On behalf of the President,
Dacian CIOLOŞ
Member of the Commission*

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ C 286, 2.10.2013, p. 12.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.6. Fruit, vegetables and cereals, fresh or processed

GERMANY

Bornheimer Spargel/Spargel aus dem Anbaugebiet Bornheim (PGI)

COMMISSION IMPLEMENTING REGULATION (EU) No 244/2014**of 7 March 2014****entering a name in the register of protected designations of origin and protected geographical indications [Strachitunt (PDO)]**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Italy's application to register the name 'Strachitunt' was published in the *Official Journal of the European Union* ⁽²⁾.

- (2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Strachitunt' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name contained in the Annex to this Regulation is hereby entered in the register.

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, 7 March 2014.

*For the Commission,
On behalf of the President,
Dacian CIOLOŞ
Member of the Commission*

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ C 290, 5.10.2013, p. 5.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.3. Cheeses

ITALY

Strachitunt (PDO)

COMMISSION REGULATION (EU) No 245/2014**of 13 March 2014****amending Commission Regulation (EU) No 1178/2011 of 3 November 2011 laying down technical requirements and administrative procedures related to civil aviation aircrew****(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 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC ⁽¹⁾, and in particular Articles 7(5) and 7(6),

Whereas:

- (1) Commission Regulation (EU) No 1178/2011 ⁽²⁾ lays down the technical and administrative procedures related to civil aviation aircrew.
- (2) Some Member States have found that certain requirements of Regulation (EU) No 1178/2011 place an undue and disproportionate administrative or economic burden on themselves or on stakeholders and have requested derogations from certain requirements in accordance with Article 14(6) of Regulation (EC) No 216/2008.
- (3) The derogation requests have been analysed by the European Aviation Safety Agency, which in turn have resulted in a recommendation to the Commission to adopt certain derogations.
- (4) A number of editorial errors leading to unintended implementation difficulties have also been identified in Commission Regulation (EU) No 1178/2011 by Member States.
- (5) Therefore, the existing requirements should be amended in order to introduce the derogations that have a clear rulemaking effect and to correct editorial errors.
- (6) Further, Commission Regulation (EU) No 1178/2011 contains in Annex I (Part-FCL) requirements for training and checking towards an instrument rating

(IR). These requirements for the IR were based on the former JAR-FCL requirements, and a need for their review has been identified.

- (7) Therefore, additional requirements for the qualification to fly in instrument meteorological conditions and specific requirements for sailplane cloud flying operations should be introduced.
- (8) In order to ensure that instrument training or experience gained before the application of this Regulation may be taken into account for the purpose of obtaining these ratings, the conditions for crediting this training, or the instrument experience gained should be laid down.
- (9) It should be possible for Member States to give credit for the instrument experience of a third-country rating holder if a level of safety equivalent to that specified by Regulation (EC) No 216/2008 can be guaranteed. Conditions for recognising this experience should also be laid down.
- (10) In order to ensure a smooth transition and a high uniform level of civil aviation safety in the European Union, implementing measures should reflect the state of the art, including best practices, and scientific and technical progress in the field of pilot training. Accordingly, technical requirements and administrative procedures agreed by the International Civil Aviation Organization (ICAO) and the already developed requirements in Annex I (Part-FCL) to Regulation (EU) No 1178/2011 as well as the existing national legislation, pertaining to a specific national environment, should be considered and reflected by this set of rules taking into account the specific needs of General Aviation pilots in Europe.
- (11) The Agency prepared draft Implementing Rules and submitted them as an Opinion to the Commission in accordance with Article 19(1) of Regulation (EC) No 216/2008.
- (12) Member States that have established a national system for authorising pilots to fly in Instrument Meteorological Conditions (IMC) with limited privileges restricted to the national airspace of the Member State, and that can provide evidence that the system is safe and that there is a specific local need, should be allowed to continue to issue such authorisations for a limited period, subject to the fulfilment of certain conditions.

⁽¹⁾ OJ L 143, 30.4.2004, p. 76.

⁽²⁾ OJ L 311, 25.11.2011, p. 1.

- (13) Commission Regulation (EU) 965/2012⁽¹⁾ allows certain flights such as cost-sharing flights and introductory flights to be performed in accordance with the rules applicable to non-commercial operations of non-complex aircraft. There is, therefore, a need to ensure that the privileges of pilots established in Regulation (EU) 1178/2011 are consistent with this approach.
- (14) Therefore, it should be allowed to have flights of those categories identified in Regulation (EU) 965/2012 to be piloted by PPL, SPL, BPL or LAPL holders.
- (15) The measures provided for in this Regulation are in accordance with the Opinion of the European Aviation Safety Agency Committee established by Article 65 of Regulation (EC) No 216/2008
- (16) Regulation (EU) No 1178/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Commission Regulation (EU) No 1178/2011 is amended as follows:

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

'Article 3

Pilot licensing and medical certification

1. Without prejudice to Article 8 of this Regulation, pilots of aircraft referred to in Article 4(1)(b) and (c) and Article 4(5) of Regulation (EC) No 216/2008 shall comply with the technical requirements and administrative procedures laid down in Annex I and Annex IV to this Regulation.

2. Notwithstanding the privileges of the holders of licences as defined in Annex I to this Regulation, holders of pilot licences issued in accordance with Subpart B or C of Annex I to this Regulation may carry out flights referred to in Article 6(4a) of Regulation (EU) No 965/2012. This is without prejudice to compliance with any additional requirements for the carriage of passengers or the development of commercial operations defined in Subparts B or C of Annex I to this Regulation.'

- (2) In Article 4, the following paragraph 8 is added:

'8. Until 8 April 2019, a Member State may issue an authorisation to a pilot to exercise specified limited

privileges to fly aeroplanes under instrument flight rules before the pilot complies with all of the requirements necessary for the issue of an instrument rating in accordance with this Regulation, subject to the following conditions:

- (a) the Member State shall only issue these authorisations when justified by a specific local need which cannot be met by the ratings established under this Regulation;
- (b) the scope of the privileges granted by the authorisation shall be based on a safety risk assessment carried out by the Member State, taking into account the extent of training necessary for the intended level of pilot competence to be achieved;
- (c) the privileges of the authorisation shall be limited to the airspace of the Member State's national territory or parts of it;
- (d) the authorisation shall be issued to applicants having completed appropriate training with qualified instructors and demonstrated the required competencies to a qualified examiner, as determined by the Member State;
- (e) the Member State shall inform the Commission, EASA and the other Member States of the specificities of this authorisation, including its justification and safety risk assessment.
- (f) the Member State shall monitor the activities associated with the authorisation to ensure an acceptable level of safety and take appropriate action in case of identifying an increased risk or any safety concerns;
- (g) the Member State shall carry out a review of the safety aspects of the implementation of the authorisation and submit a report to the Commission by 8 April 2017 at the latest.'

- (3) In Article 12, paragraph 4 is replaced by the following:

'4. By way of derogation from paragraph 1, Member States may decide not to apply the provisions of the Regulation to pilots holding a licence and associated medical certificate issued by a third country involved in the non-commercial operation of aircraft specified in Article 4(1)(b) or (c) of Regulation (EC) No 216/2008 until 8 April 2015.'

⁽¹⁾ Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1).

- (4) Annexes I, II, III and VI are amended in accordance with the Annexes 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, 13 March 2014.

For the Commission

The President

José Manuel BARROSO

ANNEX I

Annex I (Part-FCL) to Regulation (EU) No 1178/2011 is amended as follows:

- (1) The title of FCL.015 is replaced by the following:

'FCL.015 Application and issue, revalidation and renewal of licences, ratings and certificates'

- (2) FCL.020 is replaced by the following:

'FCL.020 Student pilot'

- (a) A student pilot shall not fly solo unless authorised to do so and supervised by a flight instructor.

- (b) Before his/her first solo flight, a student pilot shall be at least:

- (1) in the case of aeroplanes, helicopters and airships: 16 years of age;
- (2) in the case of sailplanes and balloons: 14 years of age.'

- (3) FCL.025 is amended as follows:

- (a) the title is replaced by the following:

'FCL.025 Theoretical knowledge examinations for the issue of licences and ratings'

- (b) in point (a) paragraphs (1) and (2) are replaced by the following:

- '(1) Applicants shall take the entire set of theoretical knowledge examinations for a specific licence or rating under the responsibility of one Member State.
- (2) Applicants shall only take the theoretical knowledge examination when recommended by the approved training organisation (ATO) responsible for their training, once they have completed the appropriate elements of the training course of theoretical knowledge instruction to a satisfactory standard.'

- (c) point (b) is amended as follows:

- (i) paragraph (1) is replaced by the following:

'(1) A pass in a theoretical knowledge examination paper will be awarded to an applicant achieving at least 75 % of the marks allocated to that paper. There is no penalty marking.'

- (ii) paragraph 3 and the second subparagraph of point (b) are replaced by the following:

'(3) If an applicant has failed to pass one of the theoretical knowledge examination papers within 4 attempts, or has failed to pass all papers within either 6 sittings or the period mentioned in paragraph (2), he/she shall re-take the complete set of examination papers.

Before re-taking the theoretical knowledge examinations, the applicant shall undertake further training at an ATO. The extent and scope of the training needed shall be determined by the ATO, based on the needs of the applicant.'

- (d) in point (c) paragraph (1), point (ii) is replaced by the following:

'(ii) for the issue of a commercial pilot licence, instrument rating (IR) or en route instrument rating (EIR), for a period of 36 months;'

- (4) FCL.035 is amended as follows:

- (a) point (a) is amended as follows:

- (i) paragraph (1) and the first sentence of paragraph 2 are replaced by the following:

'(1) Unless otherwise specified in this Part, flight time to be credited for a licence, rating or certificate shall have been flown in the same category of aircraft for which the licence, rating or certificate is sought.

(2) PIC or under instruction.'

- (ii) paragraph (3) is replaced by the following:

'(3) Flight time as co-pilot or PICUS. Unless otherwise determined in this Part, the holder of a pilot licence, when acting as co-pilot or PICUS, is entitled to be credited with all of the co-pilot time towards the total flight time required for a higher grade of pilot licence.'

(b) point (b) is amended as follows:

(i) paragraph (1) is replaced by the following:

‘(1) An applicant having passed the theoretical knowledge examination for an airline transport pilot licence shall be credited with the theoretical knowledge requirements for the light aircraft pilot licence, the private pilot licence, the commercial pilot licence and, except in the case of helicopters, the IR and the EIR in the same category of aircraft.’

(ii) the following paragraph (5) is added:

‘(5) Notwithstanding point (b)(3), the holder of an IR(A) who has completed a competency-based modular IR(A) course or the holder of an EIR shall only be credited in full towards the requirements for theoretical knowledge instruction and examination for an IR in another category of aircraft when also having passed the theoretical knowledge instruction and examination for the IFR part of the course required in accordance with FCL.720.A.(b)(2)(i).’

(5) FCL.055 is amended as follows:

(a) the introductory part of point (d) is replaced by the following:

‘(d) Specific requirements for holders of an instrument rating (IR) or en-route instrument rating (EIR). Without prejudice to the paragraphs above, holders of an IR or an EIR shall have demonstrated the ability to use the English language at a level which allows them to:’

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

‘(e) The demonstration of language proficiency and the use of English for IR or EIR holders shall be done through a method of assessment established by the competent authority.’

(6) In FCL.060 point (b), paragraph 3 is replaced by the following:

‘(3) as cruise relief co-pilot unless he/she:

(i) has complied with the requirements in (b)(1); or

(ii) has carried out in the preceding 90 days at least 3 sectors as a cruise relief pilot on the same type or class of aircraft; or

(iii) has carried out recency and refresher flying skill training in an FFS at intervals not exceeding 90 days. This refresher training may be combined with the operator's refresher training prescribed in the relevant requirements of Part-ORO.’

(7) In FCL.105.A, point (b) is replaced by the following:

‘(b) Holders of a LAPL(A) shall only carry passengers once they have completed 10 hours of flight time as PIC on aeroplanes or TMG after the issuance of the licence.’

(8) In FCL.105.S, point (b) is replaced by the following:

‘(b) Holders of an LAPL(S) shall only carry passengers once they have completed 10 hours of flight time or 30 launches as PIC on sailplanes or powered sailplanes after the issuance of the licence.’

(9) FCL.105.B is replaced by the following:

‘FCL.105.B LAPL(B) — Privileges

The privileges of the holder of an LAPL for balloons are to act as PIC on hot-air balloons or hot-air airships with a maximum of 3 400 m³ envelope capacity or gas balloons with a maximum of 1 260 m³ envelope capacity, carrying a maximum of 3 passengers, such that there are never more than 4 persons on board of the aircraft.’

(10) In FCL.110.B the title is replaced by the following:

‘FCL.110.B LAPL(B) — Experience requirements and crediting’

(11) In point (c) of FCL.235, paragraph (2) is replaced by the following:

‘(2) Failure in any item of a section will cause the applicant to fail the entire section. If the applicant fails only 1 section, he/she shall repeat only that section. Failure in more than 1 section will cause the applicant to fail the entire test.’

(12) In point (b) of FCL.205.A, paragraph (3) is replaced by the following:

‘(3) the training, testing and checking for the ratings or certificates attached to this licence.’

(13) In point (b) of FCL.205.H, paragraph (3) is replaced by the following:

‘(3) the training, testing and checking for the ratings and certificates attached to this licence.’

(14) In point (b) of FCL.205.As, paragraph (3) is replaced by the following:

‘(3) the training, testing and checking for the ratings or certificates attached to this licence.’

(15) In FCL.205.S, point (c) is replaced by the following:

‘(c) Notwithstanding (b)(2), the holder of an SPL with instructor or examiner privileges may receive remuneration for:

- (1) the provision of flight instruction for the LAPL(S) or the SPL;
- (2) the conduct of skill tests and proficiency checks for these licences;
- (3) the training, testing and checking for the ratings and certificates attached to these licences.’

(16) FCL.205.B is amended as follows:

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

‘(a) The privileges of the holder of a BPL are to act as PIC on balloons.’

(b) in point (c) paragraph (3) is replaced by the following:

‘(3) the training, testing and checking for the ratings and certificates attached to these licences.’

(17) In point (a) of FCL.230.B, paragraph (2) is replaced by the following

‘(2) 1 training flight with an instructor in a balloon within the appropriate class and within the largest group for which they have privileges;’

(18) In point (c) of FCL.510.A, paragraph (2) is replaced by the following:

‘(2) Holders of a flight engineer licence issued in accordance with applicable national rules shall be credited with 50 % of the flight engineer time up to a maximum credit of 250 hours. These 250 hours may be credited against the 1 500 hours requirement of paragraph (b), and the 500 hours requirement of paragraph (b)(1), provided that the total credit given against any of these paragraphs does not exceed 250 hours.’

(19) FCL.600 is replaced by the following:

‘FCL.600 IR — General

Except as provided in FCL.825, operations under IFR on an aeroplane, helicopter, airship or powered-lift aircraft shall only be conducted by holders of a PPL, CPL, MPL and ATPL with an IR appropriate to the category of aircraft or when undergoing skill testing or dual instruction.’

(20) FCL.610 is amended as follows:

(a) in point (a) paragraph (1), point (i) is replaced by the following:

‘(i) the privileges to fly at night in accordance with FCL.810, if the IR privileges will be used at night; or’

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

‘(b) have completed at least 50 hours of cross-country flight time as PIC in aeroplanes, TMGs, helicopters or airships, of which at least 10 or, in the case of airships, 20 hours shall be in the relevant aircraft category.’

(21) In FCL.615, point (b) is replaced by the following:

‘(b) Examination. Applicants shall demonstrate a level of theoretical knowledge appropriate to the privileges granted in the following subjects:

- Air Law,
- Aircraft General Knowledge - Instrumentation,
- Flight Planning and Monitoring,
- Human Performance,
- Meteorology,
- Radio Navigation,
- IFR Communications.’

(22) In point (a) of FCL.625.H, paragraph (2) is replaced by the following:

‘(2) when not combined with the revalidation of a type rating, shall complete only section 5 and the relevant parts of section 1 of the proficiency check established in Appendix 9 to this Part for the relevant type of helicopter. In this case, an FTD 2/3 or an FFS representing the relevant type of helicopter may be used, but at least each alternate proficiency check for the revalidation of an IR(H) in these circumstances shall be performed in a helicopter.’

(23) In FCL.710, point (b) is replaced by the following:

‘(b) If the variant has not been flown within a period of 2 years following the differences training, further differences training or a proficiency check in that variant shall be required to maintain the privileges, except for types or variants within the single-engine piston and TMG class ratings.’

(24) In point (b) of FCL.725, paragraph (4) is replaced by the following:

‘(4) For single-pilot aeroplanes that are classified as high performance aeroplanes, the examination shall be written and comprise at least 100 multiple-choice questions distributed appropriately across the subjects of the syllabus.’

(25) In FCL.720.A, point (e) is replaced by the following:

‘(e) Notwithstanding point (d), a Member State may issue a type rating with restricted privileges for multi-pilot aeroplanes that allows the holder of such rating to act as a cruise relief co-pilot above Flight Level 200, provided that two other members of the crew have a type rating in accordance with point (d).’

(26) In point (a) of FCL.740.A, paragraph (4) is replaced by the following:

‘(4) The revalidation of an en route instrument rating (EIR) or an IR(A), if held, may be combined with a proficiency check for the revalidation of a class or type rating.’

(27) In FCL.735.As, point (a) is replaced by the following:

‘(a) The MCC training course shall comprise at least:

- (1) 12 hours of theoretical knowledge instruction and exercises; and
- (2) 5 hours of practical MCC training;

An FNPT II, or III qualified for MCC, an FTD 2/3 or an FFS shall be used.’

(28) Paragraph (1) of point (a) of FCL.810 is amended as follows:

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

‘(1) If the privileges of an LAPL, an SPL or a PPL for aeroplanes, TMGs or airships are to be exercised in VFR conditions at night, applicants shall have completed a training course at an ATO. The course shall comprise:’

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

‘(ii) at least 5 hours of flight time in the appropriate aircraft category at night, including at least 3 hours of dual instruction, including at least 1 hour of cross-country navigation with at least one dual cross-country flight of at least 50 km (27 NM) and 5 solo take-offs and 5 solo full-stop landings.’

(29) The following new FCL.825 and FLC.830 are inserted:

FCL.825 En route instrument rating (EIR)

(a) Privileges and conditions

(1) The privileges of the holder of an en route instrument rating (EIR) are to conduct flights by day under IFR in the en route phase of flight, with an aeroplane for which a class or type rating is held. The privilege may be extended to conduct flights by night under IFR in the en route phase of flight if the pilot holds a night rating in accordance with FCL.810.

(2) The holder of the EIR shall only commence or continue a flight on which he/she intends to exercise the privileges of his/her rating if the latest available meteorological information indicates that:

(i) the weather conditions on departure are such as to enable the segment of the flight from take-off to a planned VFR-to-IFR transition to be conducted in compliance with VFR; and

(ii) at the estimated time of arrival at the planned destination aerodrome, the weather conditions will be such as to enable the segment of the flight from an IFR-to-VFR transition to landing to be conducted in compliance with VFR.

(b) Prerequisites. Applicants for the EIR shall hold at least a PPL(A) and shall have completed at least 20 hours of cross-country flight time as PIC in aeroplanes.

(c) Training course. Applicants for an EIR shall have completed, within a period of 36 months at an ATO:

(1) at least 80 hours of theoretical knowledge instruction in accordance with FCL.615; and

(2) instrument flight instruction, during which:

(i) the flying training for a single-engine EIR shall include at least 15 hours of instrument flight time under instruction; and

(ii) the flying training for a multi-engine EIR shall include at least 16 hours of instrument flight time under instruction, of which at least 4 hours shall be in multi-engine aeroplanes.

(d) Theoretical knowledge. Prior to taking the skill test, the applicant shall demonstrate a level of theoretical knowledge appropriate to the privileges granted, in the subjects referred to in FCL.615(b).

(e) Skill test. After the completion of the training, the applicant shall pass a skill test in an aeroplane with an IRE. For a multi-engine EIR, the skill test shall be taken in a multi-engine aeroplane. For a single-engine EIR, the test shall be taken in a single-engine aeroplane.

(f) By way of derogation from points (c) and (d), the holder of a single-engine EIR who also holds a multi-engine class or type rating wishing to obtain a multi-engine EIR for the first time, shall complete a course at an ATO comprising at least 2 hours instrument flight time under instruction in the en route phase of flight in multi-engine aeroplanes and shall pass the skill test referred to in point (e).

(g) Validity, revalidation, and renewal.

(1) An EIR shall be valid for 1 year.

(2) Applicants for the revalidation of an EIR shall:

(i) pass a proficiency check in an aeroplane within a period of 3 months immediately preceding the expiry date of the rating; or

(ii) within 12 months preceding the expiry date of the rating, complete 6 hours as PIC under IFR and a training flight of at least 1 hour with an instructor holding privileges to provide training for the IR(A) or EIR.

(3) For each alternate subsequent revalidation, the holder of the EIR shall pass a proficiency check in accordance with point (g)(2)(i).

(4) If an EIR has expired, in order to renew their privileges applicants shall:

(i) complete refresher training provided by an instructor holding privileges to provide training for the IR(A) or EIR to reach the level of proficiency needed; and

(ii) complete a proficiency check.

- (5) If the EIR has not been revalidated or renewed within 7 years from the last validity date, the holder will also be required to pass again the EIR theoretical knowledge examinations in accordance with FCL.615(b).
- (6) For a multi-engine EIR, the proficiency check for the revalidation or renewal, and the training flight required in point (g)(2)(ii) have to be completed in a multi-engine aeroplane. If the pilot also holds a single-engine EIR, this proficiency check shall also achieve revalidation or renewal of the single-engine EIR.
- (h) When the applicant for the EIR has completed instrument flight time under instruction with an IRI(A) or an FI(A) holding the privilege to provide training for the IR or EIR, these hours may be credited towards the hours required in point (c)(2)(i) and (ii) up to a maximum of 5 or 6 hours respectively. The 4 hours of instrument flight instruction in multi-engine aeroplanes required in point (c)(2)(ii) shall not be subject to this credit.
 - (1) To determine the amount of hours to be credited and to establish the training needs, the applicant shall complete a pre-entry assessment at the ATO.
 - (2) The completion of the instrument flight instruction provided by an IRI(A) or FI(A) shall be documented in a specific training record and signed by the instructor.
- (i) Applicants for the EIR, holding a Part-FCL PPL or CPL and a valid IR(A) issued in accordance with the requirements of Annex 1 to the Chicago Convention by a third country, may be credited in full towards the training course requirements mentioned in point (c). In order to be issued the EIR, the applicant shall:
 - (1) successfully complete the skill test for the EIR;
 - (2) by way of derogation from point (d), demonstrate during the skill test towards the examiner that he/she has acquired an adequate level of theoretical knowledge of air law, meteorology and flight planning and performance (IR);
 - (3) have a minimum experience of at least 25 hours of flight time under IFR as PIC on aeroplanes.

FCL.830 Sailplane Cloud Flying Rating

- (a) Holders of a pilot licence with privileges to fly sailplanes shall only operate a sailplane or a powered sailplane, excluding TMG, within cloud when they hold a sailplane cloud flying rating.
- (b) Applicants for a sailplane cloud flying rating shall have completed at least:
 - (1) 30 hours as PIC in sailplanes or powered sailplanes after the issue of the licence;
 - (2) a training course at an ATO including:
 - (i) theoretical knowledge instruction; and
 - (ii) at least 2 hours of dual flight instruction in sailplanes or powered sailplanes, controlling the sailplane solely by reference to instruments, of which a maximum of one hour may be completed on TMGs; and
 - (3) a skill test with an FE qualified for this purpose.
- (c) Holders of an EIR or an IR(A) shall be credited against the requirement of (b)(2)(i). By way of derogation from point (b)(2)(ii), at least one hour of dual flight instruction in a sailplane or powered sailplane, excluding TMG, controlling the sailplane solely by reference to instruments shall be completed.
- (d) Holders of a cloud flying rating shall only exercise their privileges when they have completed in the last 24 months at least 1 hour of flight time, or 5 flights as PIC exercising the privileges of the cloud flying rating, in sailplanes or powered sailplanes, excluding TMGs.
- (e) Holders of a cloud flying rating who do not comply with the requirements in point (d) shall, before they resume the exercise of their privileges:

- (1) undertake a proficiency check with an FE qualified for this purpose; or
 - (2) perform the additional flight time or flights required in point (d) with a qualified instructor.
 - (f) Holders of a valid EIR or an IR(A) shall be credited in full against the requirements in point (d).'
- (30) In paragraph 2 of point (b) of FCL.915, point (i) is replaced by the following:
- '(i) completed at least 15 hours of flight time as a pilot on the class or type of aircraft on which flight instruction is to be given, of which a maximum of 7 hours may be in an FSTD representing the class or type of aircraft, if applicable; or'
- (31) FCL.905.FI is amended as follows:
- (a) point (f) is replaced by the following:
 - '(f) a towing, aerobatic or, in the case of an FI(S), a cloud flying rating, provided that such privileges are held and the FI has demonstrated the ability to instruct for that rating to an FI qualified in accordance with point (i);'
 - (b) the introductory sentence of point (g) is replaced by the following:
 - '(g) an EIR or an IR in the appropriate aircraft category, provided that the FI has:'
 - (c) point (g), paragraph (3), point (i) is replaced by the following:
 - '(i) for multi-engine aeroplanes, met the requirements for a CRI for multi-engine aeroplanes;'
 - (d) in point (h), paragraph (2) is replaced by the following:
 - '(2) in the case of helicopters, the requirements established in FCL.910.TRI(c)(1) and the prerequisites for the TRI(H) training course established in FCL.915.TRI(d)(2);'
- (32) In point (a) of FCL.910.FI, paragraph (3) is replaced by the following:
- '(3) for class and type ratings for single-pilot, single-engine aircraft, except for single-pilot high performance complex aeroplanes, class and group extensions in the case of balloons and class extensions in the case of sailplanes;'
- (33) In FCL.915.FI, point (e) is replaced by the following:
- '(e) for an FI(S), have completed 100 hours of flight time and 200 launches as PIC on sailplanes. Additionally, where the applicant wishes to give flight instruction on TMGs, he/she shall have completed 30 hours of flight time as PIC on TMGs and an additional assessment of competence on a TMG in accordance with FCL.935 with an FI qualified in accordance with FCL.905.FI(i);'
- (34) In point (b) of FCL.930.FI, paragraph (3) is amended as follows:
- (a) point (v) is replaced by the following:
 - '(v) in the case of an FI(B), at least 3 hours of flight instruction, including 3 take-offs.'
 - (b) the second subparagraph of paragraph (3) is replaced by the following:
 - '(4) When applying for an FI certificate in another category of aircraft, pilots holding or having held an FI(A), (H) or (As) shall be credited with 55 hours towards the requirement in point (b)(2)(i) or with 18 hours towards the requirements in point (b)(2)(ii).'
- (35) In FCL.905.TRI, after the introductory words, point (a) is replaced by the following:
- '(a) the revalidation and renewal of an EIR or an IR, provided the TRI holds a valid IR;'

(36) FCL.905.CRI is amended as follows:

(a) in point (a) of FCL.905.CRI, paragraph (1) is replaced by the following:

‘(1) the issue, revalidation or renewal of a class or type rating for single-pilot aeroplanes, except for single-pilot high performance complex aeroplanes, when the privileges sought by the applicant are to fly in single-pilot operations;’

(b) the following new point (c) is inserted:

‘(c) Applicants for a CRI for multi-engine aeroplanes holding a CRI certificate for single-engine aeroplanes shall have fulfilled the prerequisites for a CRI established in FCL.915.CRI(a) and the requirements of FCL.930.CRI(a)(3) and FCL.935.’

(37) In FCL.905.IRI, point (a) is replaced by the following:

‘(a) The privileges of an IRI are to instruct for the issue, revalidation and renewal of an EIR or an IR on the appropriate aircraft category.’

(38) In point (a) of FCL.915.IRI, paragraph (2) is replaced by the following:

‘(2) in the case of applicants of an IRI(A) for multi-engine aeroplanes, meet the requirements of paragraphs FCL.915.CRI(a), FCL.930.CRI and FCL.935;’

(39) In point (d) of FCL.905.SFI, paragraph (2) is replaced by the following:

‘(2) MCC training, when the SFI has privileges to instruct for multi-pilot helicopters.’

(40) In point (b) of FCL.915.MCCI, paragraph (1) is replaced by the following:

‘(1) in the case of aeroplanes, airships and powered-lift aircraft, 1 500 hours of flying experience as a pilot in multi-pilot operations;’

(41) FCL.940.MI is replaced by the following:

FCL.940.MI Validity of the MI certificate

The MI certificate is valid as long as the FI, TRI or CRI certificate is valid.’

(42) FCL.1015 is amended as follows:

(a) in point (b), the following paragraphs (4) and (5) are added:

‘(4) a briefing on the need to review and apply the items in (3) when conducting skill tests, proficiency checks or assessments of competence of an applicant for which the competent authority is not the same that issued the examiner’s certificate; and

(5) an instruction on how to get access to these national procedures and requirements of other competent authorities when needed;’

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

‘(c) Holders of an examiners certificate shall not conduct skill tests, proficiency checks or assessments of competence of an applicant for which the competent authority is not the same that issued the examiner’s certificate, unless they have reviewed the latest available information containing the relevant national procedures of the applicant’s competent authority.’

(43) In point (b) of FCL.1030, paragraph (3) is amended as follows:

(a) a new point (iv) is added:

‘(iv) a declaration that the examiner has reviewed and applied the national procedures and requirements of the applicant’s competent authority if the competent authority responsible for the applicant’s licence is not the same that issued the examiner’s certificate;’

(b) a new point (v) is added:

‘(v) a copy of the examiner certificate containing the scope of his/her privileges as examiner in the case of skill tests, proficiency checks or assessments of competence of an applicant for which the competent authority is not the same that issued the examiner’s certificate.’

(44) FCL.1005.FE is amended as follows:

(a) In point (a), the following paragraph (5) is added:

‘(5) proficiency checks for the revalidation and renewal of EIRs, provided that the FE has completed at least 1 500 hours as a pilot on aeroplanes and complies with the requirements in FCL.1010.IRE(a)(2).’

(b) in point (d), paragraph (3) is replaced by the following:

‘(3) skill tests for the extension of the SPL or LAPL(S) privileges to TMG, provided that the examiner has completed 300 hours of flight time as a pilot on sailplanes or powered sailplanes, including 50 hours of flight instruction on TMG;

(4) skill tests and proficiency checks for the cloud flying rating, provided that the examiner has completed at least 200 hours of flight time as pilot on sailplanes or powered sailplanes, including at least 5 hours or 25 flights of flight instruction for the cloud flying rating or at least 10 hours of flight instruction for the EIR or IR(A).’

(45) In point (a) of FCL.1005.TRE, paragraph (2) is replaced by the following:

‘(2) proficiency checks for revalidation or renewal of type ratings, EIRs and IRs;’

(46) In point (b) paragraph (5) of FCL.1010.TRE, point (ii) is replaced by the following:

‘(ii) hold a CPL(H) or ATPL(H).’

(47) In point (b) of FCL.1005.CRE, the following paragraph (3) is added:

‘(3) revalidation and renewal of EIRs, provided that the CRE has completed at least 1 500 hours as a pilot on aeroplanes and complies with the requirements in FCL.1010.IRE(a)(2).’

(48) FCL.1005.IRE is replaced by the following:

FCL.1005.IRE IRE — Privileges

The privileges of the holder of an IRE certificate are to conduct skill tests for the issue, and proficiency checks for the revalidation or renewal of EIRs or IRs.’

(49) Appendix 1 to Annex I (Part-FCL) is amended as follows:

(a) paragraph 3.2 is replaced by the following

‘3.2. The applicant shall pass theoretical knowledge examinations as defined in this Part for the following subjects in the appropriate aircraft category:

021 — Aircraft General Knowledge: Airframe and Systems, Electrics, Powerplant, Emergency Equipment,

022 — Aircraft General Knowledge: Instrumentation,

032/034 — Performance Aeroplanes or Helicopters, as applicable,

070 — Operational Procedures, and

080 — Principles of Flight’

(b) Paragraph 4.1. is replaced by the following:

‘4.1. An applicant for an IR or an EIR having passed the relevant theoretical examinations for a CPL in the same aircraft category is credited towards the theoretical knowledge requirements in the following subjects:

— Human Performance,

— Meteorology.’

(50) Appendix 3 to Annex I (Part-FCL) is amended as follows:

(a) in section E, under the heading GENERAL in paragraph 12, point (d) is replaced by the following:

‘(d) 6 hours of flight time shall be completed in a multi-engine aeroplane, if a multi-engine aeroplane is used for the skill test.’

(b) in Section K under the heading GENERAL in paragraph 3, point (a) is replaced by the following:

‘(a) have completed 155 hours flight time, including 50 hours as PIC in helicopters of which 10 hours shall be cross-country. Hours as PIC of other categories of aircraft may count towards the 155 hours flight time as prescribed in paragraph 11 of Section K;’

(51) In Appendix 5 to Annex I (Part FCL) under the heading GENERAL, paragraph 2 is replaced by the following:

‘2. Approval for an MPL training course shall only be given to an ATO that is part of a commercial air transport operator certificated in accordance with Part-ORO or having a specific arrangement with such an operator. The licence shall be restricted to that specific operator until completion of the airline operator’s conversion course.’

(52) Appendix 6 to Part-FCL is amended as follows:

(a) section A is amended as follows:

(i) paragraph 2 is replaced by the following:

‘2. An applicant for a modular IR(A) course shall be the holder of a PPL(A) or a CPL(A). An applicant for the Procedural Instrument Flight Module, who does not hold a CPL(A), shall be holder of a Course Completion Certificate for the Basic Instrument Flight Module.

The ATO shall ensure that the applicant for a multi-engine IR(A) course who has not held a multi-engine aeroplane class or type rating has received the multi-engine training specified in Subpart H prior to commencing the flight training for the IR(A) course.’

(ii) paragraph 10.2 is replaced by the following:

‘10.2. The holder of an IR(H) may have the total amount of training required in paragraphs 7 or 8 above reduced to 10 hours.’

(b) a new Section Aa is inserted:

‘Aa. IR(A) — Competency-based modular flying training course

GENERAL

1. The aim of the competency-based modular flying training course is to train PPL or CPL holders for the instrument rating, taking into account prior instrument flight instruction and experience. It is designed to provide the level of proficiency needed to operate aeroplanes under IFR and in IMC. The course shall consist of a combination of instrument flight instruction provided by an IRI(A) or an FI(A) holding the privilege to provide training for the IR and flight instruction within an ATO.
2. An applicant for such a competency-based modular IR(A) shall be the holder of a PPL(A) or CPL(A).
3. The course of theoretical instruction shall be completed within 18 months. The instrument flight instruction and the skill test shall be completed within the period of validity of the pass of the theoretical knowledge examinations.
4. The course shall comprise:
 - (a) theoretical knowledge instruction to the IR(A) knowledge level;
 - (b) instrument flight instruction.

THEORETICAL KNOWLEDGE

5. An approved competency-based modular IR(A) course shall comprise at least 80 hours of theoretical knowledge instruction. The theoretical knowledge course may contain computer-based training and e-learning elements. A minimum amount of classroom teaching as required by ORA.ATO.305 has to be provided.

FLYING TRAINING

6. The method of attaining an IR(A) following this modular course is competency-based. However, the minimum requirements below shall be completed by the applicant. Additional training may be required to reach required competencies.

- (a) A single-engine competency-based modular IR(A) course shall include at least 40 hours of instrument time under instruction, of which up to 10 hours may be instrument ground time in an FNPT I, or up to 25 hours in an FFS or FNPT II. A maximum of 5 hours of FNPT II or FFS instrument ground time may be conducted in an FNPT I.

- (i) When the applicant has:

(A) completed instrument flight instruction provided by an IRI(A) or an FI(A) holding the privilege to provide training for the IR; or

(B) prior flight time under IFR as PIC on aeroplanes, under a rating providing the privileges to fly under IFR and in IMC

these hours may be credited towards the 40 hours above up to maximum of 30 hours,

- (ii) When the applicant has prior instrument flight time under instruction other than specified in point (a)(i), these hours may be credited towards the required 40 hours up to a maximum of 15 hours.

- (iii) In any case, the flying training shall include at least 10 hours of instrument flight time under instruction in an aeroplane at an ATO.

- (iv) The total amount of dual instrument instruction shall not be less than 25 hours.

- (b) A multi-engine competency-based modular IR(A) course shall include at least 45 hours instrument time under instruction, of which up to 10 hours may be instrument ground time in an FNPT I, or up to 30 hours in an FFS or FNPT II. A maximum of 5 hours of FNPT II or FFS instrument ground time may be conducted in an FNPT I.

- (i) When the applicant has:

(A) completed instrument flight instruction provided by an IRI(A) or an FI(A) holding the privilege to provide training for the IR; or

(B) prior flight time under IFR as PIC on aeroplanes, under a rating giving the privileges to fly under IFR and in IMC

these hours may be credited towards the 45 hours above up to a maximum of 35 hours.

- (ii) When the applicant has prior instrument flight time under instruction other than specified in point (b)(i), these hours may be credited towards the required 45 hours up to a maximum of 15 hours.

- (iii) In any case, the flying training shall include at least 10 hours of instrument flight time under instruction in a multi-engine aeroplane at an ATO.

- (iv) The total amount of dual instrument instruction shall not be less than 25 hours, of which at least 15 hours shall be completed in a multi-engine aeroplane.

- (c) To determine the amount of hours credited and to establish the training needs, the applicant shall complete a pre-entry assessment at an ATO.

- (d) The completion of the instrument flight instruction provided by an IRI(A) or FI(A) in accordance with point (a)(i) or (b)(i) shall be documented in a specific training record and signed by the instructor.

7. The flight instruction for the competency-based modular IR(A) shall comprise:
- (a) procedures and manoeuvres for basic instrument flight covering at least:
 - (i) basic instrument flight without external visual cues;
 - (ii) horizontal flight;
 - (iii) climbing;
 - (iv) descent;
 - (v) turns in level flight, climbing and descent;
 - (vi) instrument pattern;
 - (vii) steep turn;
 - (viii) radio navigation;
 - (ix) recovery from unusual attitudes;
 - (x) limited panel; and
 - (xi) recognition and recovery from incipient and full stall;
 - (b) pre-flight procedures for IFR flights, including the use of the flight manual and appropriate air traffic services documents for the preparation of an IFR flight plan;
 - (c) procedure and manoeuvres for IFR operation under normal, abnormal, and emergency conditions covering at least:
 - (i) transition from visual to instrument flight on take-off;
 - (ii) standard instrument departures and arrivals;
 - (iii) en route IFR procedures;
 - (iv) holding procedures;
 - (v) instrument approaches to specified minima;
 - (vi) missed approach procedures; and
 - (vii) landings from instrument approaches, including circling;
 - (d) in-flight manoeuvres and particular flight characteristics;
 - (e) if required, operation of a multi-engine aeroplane in the above exercises, including:
 - (i) operation of the aeroplane solely by reference to instruments with one engine simulated inoperative;
 - (ii) engine shutdown and restart (to be carried out at a safe altitude unless carried out in an FFS or FNPT II).
8. Applicants for the competency-based modular IR(A) holding a Part-FCL PPL or CPL and a valid IR(A) issued in compliance with the requirements of Annex 1 to the Chicago Convention by a third country may be credited in full towards the training course mentioned in paragraph 4. In order to be issued the IR(A), the applicant shall:
- (a) successfully complete the skill test for the IR(A) in accordance with Appendix 7;
 - (b) demonstrate to the examiner during the skill test that he/she has acquired an adequate level of theoretical knowledge of air law, meteorology and flight planning and performance (IR); and
 - (c) have a minimum experience of at least 50 hours of flight time under IFR as PIC on aeroplanes.

PRE-ENTRY ASSESSMENT

9. The content and duration of the pre-entry assessment shall be determined by the ATO based on the prior instrument experience of the applicant.

MULTI-ENGINE

10. The holder of a single-engine IR(A) who also holds a multi-engine class or type rating wishing to obtain a multi-engine IR(A) for the first time shall complete a course at an ATO comprising at least 5 hours instrument time under instruction in multi-engine aeroplanes, of which 3 hours may be in an FFS or FNPT II and shall pass a skill test.'

(c) Section B is amended as follows:

(i) paragraph 2 is replaced by the following:

'2. An applicant for a modular IR(H) course shall be the holder of a PPL(H), or a CPL(H) or an ATPL(H). Prior to commencing the aircraft instruction phase of the IR(H) course, the applicant shall be the holder of the helicopter type rating used for the IR(H) skill test, or have completed approved type rating training on that type. The applicant shall hold a certificate of satisfactory completion of MCC if the skill test is to be conducted in Multi- Pilot conditions.'

(ii) paragraph 9.2 is replaced by the following:

'9.2. The holder of an IR(A) may have the amount of training required reduced to 10 hours.'

(iii) the following paragraph 9.3 is inserted:

'9.3. The holder of a PPL(H) with a helicopter night rating or a CPL(H) may have the total amount of instrument time under instruction required reduced by 5 hours.'

(53) Appendix 9 to Annex I (Part-FCL) is amended as follows:

(a) in section B paragraph 5 point (f), point (i) is replaced by the following:

'(i) the qualification of the FFS or FNPT II as set out in the relevant requirements of Part-ARA and Part-ORA;'

(b) Section C is amended as follows:

(i) the introductory sentence to paragraph 4 is replaced by the following:

'4. The following limits shall apply, corrected to make allowance for turbulent conditions and the handling qualities and performance of the helicopter used.'

(ii) in paragraph 10, point (i) is replaced by the following:

'(i) the qualification of the FSTD as set out in the relevant requirements of Part-ARA and Part-ORA;'

(iii) in Section D paragraph 8, point (a) is replaced by the following

'(a) the qualification of the flight simulation training devices as set out in the relevant requirements of Part-ARA and Part-ORA;'

(iv) in Section E paragraph 8, the introductory sentence and point (a) are replaced by the following:

'8. Flight Simulation Training Devices shall be used for practical training and testing if they form part of a type rating course. The following considerations will apply to the course:

(a) the qualification of the flight simulation training devices as set out in the relevant requirements of Part-ARA and Part-ORA;'

ANNEX II

Annex II to Regulation (EU) No 1178/2011 is amended as follows:

(1) Paragraph 1 of Section A. 'Aeroplanes' is amended as follows:

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

'(b) demonstrate knowledge of the relevant parts of the operational requirements and Part-FCL;'

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

'(d) comply with the requirements set out in the following table:

National licence held	Total flying hours experience	Any further requirements	Replacement Part-FCL licence and conditions (where applicable)	Removal of conditions	
(1)	(2)	(3)	(4)	(5)	
ATPL(A)	> 1 500 as PIC on multi-pilot aeroplanes	None	ATPL(A)	Not applicable	(a)
ATPL(A)	> 1 500 on multi-pilot aeroplanes	None	as in (c)(4)	as in (c)(5)	(b)
ATPL(A)	> 500 on multi-pilot aeroplanes	Demonstrate knowledge of flight planning and performance as required by FCL.515	ATPL(A), with type rating restricted to co-pilot	Demonstrate ability to act as PIC as required by Appendix 9 to Part-FCL	(c)
CPL/IR(A) and passed an ICAO ATPL theory test in the Member State of licence issue		(i) demonstrate knowledge of flight planning and performance as required by FCL.310 and FCL.615(b) (ii) meet remaining requirements of FCL.720.A(c)	CPL/IR(A) with ATPL theory credit	Not applicable	(d)
CPL/IR(A)	> 500 on multi-pilot aeroplanes, or in multi-pilot operations on single-pilot aeroplanes CS-23 commuter category or equivalent in accordance with the relevant requirements of Part-CAT and Part-ORO for commercial air transport	(i) pass an examination for ATPL(A) knowledge in the Member State of licence issue (*) (ii) meet remaining requirements of FCL.720.A(c)	CPL/IR(A) with ATPL theory credit	Not applicable	(e)
CPL/IR(A)	< 500 as PIC on single-pilot aeroplanes	Demonstrate knowledge of flight planning and flight performance for CPL/IR level	As (4)(f)	Obtain multi-pilot type rating in accordance with Part-FCL	(g)

National licence held	Total flying hours experience	Any further requirements	Replacement Part-FCL licence and conditions (where applicable)	Removal of conditions	
(1)	(2)	(3)	(4)	(5)	
CPL(A)	> 500 as PIC on single-pilot aeroplanes	Night rating, if applicable	CPL(A), with type/class ratings restricted to single-pilot aeroplanes		(h)
CPL(A)	< 500 as PIC on single-pilot aeroplanes	(i) Night rating, if applicable; (ii) demonstrate knowledge of flight performance and planning as required by FCL.310	as (4)(h)		(i)
PPL/IR(A)	≥ 75 in accordance with IFR		PPL/IR(A) (the IR restricted to PPL)	Demonstrate knowledge of flight performance and planning as required by FCL.615(b)	(j)
PPL(A)	≥ 70 on aeroplanes	Demonstrate the use of radio navigation aids	PPL(A)		(k)

(*) CPL holders already holding a type rating for a multi-pilot aeroplane are not required to have passed an examination for ATPL(A) theoretical knowledge whilst they continue to operate that same aeroplane type, but will not be given ATPL(A) theory credit for a Part-FCL licence. If they require another type rating for a different multi-pilot aeroplane, they must comply with column (3), row (e)(i) of the above table.

(2) Paragraph 1 of Section B. 'Helicopters' is amended as follows:

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

'(b) demonstrate knowledge of the relevant parts of the operational requirements and Part-FCL;'

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

'(d) comply with the requirements set out in the following table:

National licence held	Total flying hours experience	Any further requirements	Replacement Part-FCL licence and conditions (where applicable)	Removal of conditions	
(1)	(2)	(3)	(4)	(5)	
ATPL(H) valid IR(H)	> 1 000 as PIC on multi-pilot helicopters	none	ATPL(H) and IR	Not applicable	(a)
ATPL(H) no IR(H) privileges	> 1 000 as PIC on multi-pilot helicopters	none	ATPL(H)		(b)

National licence held	Total flying hours experience	Any further requirements	Replacement Part-FCL licence and conditions (where applicable)	Removal of conditions	
(1)	(2)	(3)	(4)	(5)	
ATPL(H) valid IR(H)	> 1 000 on multi-pilot helicopters	None	ATPL(H), and IR with type rating restricted to co-pilot	demonstrate ability to act as PIC as required by Appendix 9 to Part-FCL	(c)
ATPL(H) no IR(H) privileges	> 1 000 on multi-pilot helicopters	None	ATPL(H) type rating restricted to co-pilot	demonstrate ability to act as PIC as required by Appendix 9 to Part-FCL	(d)
ATPL(H) valid IR(H)	> 500 on multi-pilot helicopters	demonstrate knowledge of flight planning and flight performance as required by FCL.515 and FCL.615(b)	as (4)(c)	as (5)(c)	(e)
ATPL(H) no IR(H) privileges	> 500 on multi-pilot helicopters	as (3)(e)	as (4)(d)	as (5)(d)	(f)
CPL/IR(H) and passed an ICAO ATPL(H) theory test in the Member State of licence issue		(i) demonstrate knowledge of flight planning and flight performance as required by FCL.310 and FCL.615(b); (ii) meet remaining requirements of FCL.720.H(b)	CPL/IR(H) with ATPL(H) theory credit, provided that the ICAO ATPL(H) theory test is assessed as being at Part-FCL ATPL level	Not applicable	(g)
CPL/IR(H)	> 500 hrs on multi-pilot helicopters	(i) to pass an examination for Part-FCL ATPL(H) theoretical knowledge in the Member State of licence issue (*) (ii) to meet remaining requirements of FCL.720.H(b)	CPL/IR(H) with Part-FCL ATPL(H) theory credit	Not applicable	(h)

National licence held	Total flying hours experience	Any further requirements	Replacement Part-FCL licence and conditions (where applicable)	Removal of conditions	
(1)	(2)	(3)	(4)	(5)	
CPL/IR(H)	> 500 as PIC on single-pilot helicopters	None	CPL/IR(H) with type ratings restricted to single-pilot helicopters	obtain multi-pilot type rating as required by Part-FCL	(i)
CPL/IR(H)	< 500 as PIC on single-pilot helicopters	demonstrate knowledge of flight planning and flight performance as required by FCL.310 and FCL.615(b)	as (4)(i)		(j)
CPL(H)	> 500 as PIC on single-pilot helicopters	night rating	CPL(H), with type ratings restricted to single-pilot helicopters		(k)
CPL(H)	< 500 as PIC on single-pilot helicopters	night rating demonstrate knowledge of flight performance and planning as required by FCL.310	as (4)(k)		(l)
CPL(H) Without night rating	> 500 as PIC on single-pilot helicopters		As (4)(k) and restricted to day VFR operations	Obtain multi-pilot type rating as required by Part-FCL and a night rating	(m)
CPL(H) Without night rating	< 500 as PIC on single-pilot helicopters	demonstrate knowledge of flight planning and flight performance as required by FCL.310	As (4)(k) and restricted to day VFR operations		(n)
PPL/IR(H)	≥ 75 in accordance with IFR		PPL/IR(H) (the IR restricted to PPL)	Demonstrate knowledge of flight performance and planning as required by FCL.615(b)	(o)
PPL(H)	≥ 75 on helicopters	demonstrate the use of radio navigation aids	PPL (H)		(p)

(*) CPL holders already holding a type rating for a multi-pilot helicopter are not required to have passed an examination for ATPL(H) theoretical knowledge whilst they continue to operate that same helicopter type, but will not be given ATPL(H) theory credit for a Part-FCL licence. If they require another type rating for a different multi-pilot helicopter, they must comply with column (3), row (h)(i) of the table.

ANNEX III

Annex III to Regulation (EU) No 1178/2011 is amended as follows:

(1) Section A. 'Validation of Licences' is amended as follows:

(a) paragraph 1 is replaced by the following:

- '1. A pilot licence issued in compliance with the requirements of Annex 1 to the Chicago Convention by a third country may be validated by the competent authority of a Member State.

Pilots shall apply to the competent authority of the Member State where they reside or are established. If they are not residing in the territory of a Member State, pilots shall apply to the competent authority of the Member State where the operator for which they are flying or intend to fly has its principal place of business, or where the aircraft on which they are flying or intend to fly is registered.'

(b) paragraph 3 is amended as follows:

(i) points (b) and (c) are replaced by the following:

'(b) demonstrate that he/she has acquired knowledge of the relevant parts of the operational requirements and Part-FCL;

(c) demonstrate that he/she has acquired language proficiency in accordance with FCL.055;'

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

'(e) in the case of aeroplanes, comply with the experience requirements set out in the following table:

Licence held	Total flying hours experience	Privileges	
(1)	(2)	(3)	
ATPL(A)	> 1 500 hours as PIC on multi-pilot aeroplanes	Commercial air transport in multi-pilot aeroplanes as PIC	(a)
ATPL(A) or CPL(A)/IR (*)	> 1 500 hours as PIC or co-pilot on multi-pilot aeroplanes according to operational requirements	Commercial air transport in multi-pilot aeroplanes as co-pilot	(b)
CPL(A)/IR	> 1 000 hours as PIC in commercial air transport since gaining an IR	Commercial air transport in single-pilot aeroplanes as PIC	(c)
CPL(A)/IR	> 1 000 hours as PIC or as co-pilot in single-pilot aeroplanes according to operational requirements	Commercial air transport in single-pilot aeroplanes as co-pilot according to the operational requirements	(d)
ATPL(A), CPL (A)/IR, CPL(A)	> 700 hours in aeroplanes other than TMGs, including 200 hours in the activity role for which acceptance is sought, and 50 hours in that role in the last 12 months	Exercise of privileges in aeroplanes in operations other than commercial air transport	(e)
CPL(A)	> 1 500 hours as PIC in commercial air transport including 500 hours on seaplane operations	Commercial air transport in single-pilot aeroplanes as PIC	(f)

(*) CPL(A)/IR holders on multi-pilot aeroplanes shall have demonstrated ICAO ATPL(A) level knowledge before acceptance.'

(c) paragraph 4 is amended as follows:

(i) point (c) is replaced by the following:

‘(c) demonstrate that he/she has acquired language proficiency in accordance with FCL.055;’

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

‘(e) have a minimum experience of at least 100 hours of instrument flight time as PIC in the relevant category of aircraft.’

(d) paragraph 6, point (b) is replaced by the following:

‘(b) is employed, directly or indirectly, by an aircraft manufacturer.’

(2) In Section B. ‘CONVERSION OF LICENCES’, paragraph 1 is replaced by the following:

‘1. A PPL/BPL/SPL, a CPL or an ATPL licence issued in compliance with the requirements of Annex 1 to the Chicago Convention by a third country may be converted into a Part-FCL PPL/BPL/SPL with a single-pilot class or type rating by the competent authority of a Member State.’

ANNEX IV

Annex VI to Regulation (EU) No 1178/2011 is amended as follows:

(1) In Section II of Subpart FCL, ARA.FCL.205 point (b) is replaced by the following:

‘(b) The competent authority shall maintain a list of examiners it has certified. The list shall state the privileges of the examiners and be published and kept updated by the competent authority.’

(2) In Section II of Subpart FCL, ARA.FCL.210 is replaced by the following:

‘ARA.FCL.210 Information for examiners

- (a) The competent authority shall notify the Agency of the national administrative procedures, requirements for protection of personal data, liability, accident insurance and fees applicable in its territory, which shall be used by examiners when conducting skill tests, proficiency checks or assessments of competence of an applicant for which the competent authority is not the same that issued the examiner's certificate.
- (b) To facilitate dissemination and access to the information received from competent authorities under (a), the Agency shall publish this information according to a format prescribed by it.
- (c) The competent authority may provide examiners it has certified and examiners certified by other competent authorities exercising their privileges in their territory with safety criteria to be observed when skill tests and proficiency checks are conducted in an aircraft.’

(3) SUBPART MED is amended as follows:

(a) In Section I, ARA.MED.130 is replaced by the following:

‘ARA.MED.130 Medical certificate format

The medical certificate shall conform to the following specifications:

(a) Content

- (1) State where the pilot licence has been issued or applied for (I),
- (2) Class of medical certificate (II),
- (3) Certificate number commencing with the UN country code of the State where the pilot licence has been issued or applied for and followed by a code of numbers and/or letters in Arabic numerals and latin script (III),
- (4) Name of holder (IV),
- (5) Nationality of holder (VI),
- (6) Date of birth of holder: (dd/mm/yyyy) (XIV),
- (7) Signature of holder (VII),
- (8) Limitation(s) (XIII),
- (9) Expiry date of the medical certificate (IX) for:
 - (i) Class 1 single pilot commercial operations carrying passengers,
 - (ii) Class 1 other commercial operations,
 - (iii) Class 2,
 - (iv) LAPL
- (10) Date of medical examination
- (11) Date of last electrocardiogram
- (12) Date of last audiogram
- (13) Date of issue and signature of the AME or medical assessor that issued the certificate. GMP may be added to this field if they have the competence to issue medical certificates under the national law of the Member State where the licence is issued.
- (14) Seal or stamp (XI)

- (b) Material: Except for the case of LAPL issued by a GMP the paper or other material used shall prevent or readily show any alterations or erasures. Any entries or deletions to the form shall be clearly authorised by the licensing authority.
 - (c) Language: Certificates shall be written in the national language(s) and in English and such other languages as the licensing authority deems appropriate.
 - (d) All dates on the medical certificate shall be written in a dd/mm/yyyy format.'
- (b) In Section II, ARA.MED.200 Aero-medical examiners (AMEs), point (b) is replaced by the following:
- '(b) When satisfied that the AME is in compliance with the applicable requirements, the competent authority shall issue, revalidate, renew or change the AME certificate for a period not exceeding 3 years, using the form established in appendix VII to this Part.'
- (4) In Appendix II, 'Standard EASA format for cabin crew attestations', the part 'Instructions' is amended as follows:
- (a) points (a) and (b) are replaced by the following:
 - '(a) The cabin crew attestation shall include all items specified in EASA Form 142 in accordance with items 1 - 12 as listed and described below.
 - (b) Size shall be either 105mm × 74mm (one-eighth A4) or 85mm × 54mm, and the material used shall prevent or readily show any alterations or erasures.'
 - (b) Item 8 is replaced by the following:

'Item 8: Identification details of the competent authority of the Member State where the attestation is issued shall be entered and shall provide the full name of the competent authority, postal address, and official seal, stamp or logo as applicable.'
 - (c) the first sentence of Item 9 is replaced by the following:

'If the competent authority is the issuing body, the term "competent authority" and official seal, stamp or logo shall be entered.'
- (5) Appendix V, CERTIFICATE FOR AERO-MEDICAL CENTRES (AeMCs) is replaced with the following:

'Appendix V to ANNEX VI PART-ARA

CERTIFICATE FOR AERO-MEDICAL CENTRES (AeMCs)

European Union ⁽¹⁾

Competent Authority

AERO-MEDICAL CENTRE CERTIFICATE

REFERENCE:

Pursuant to Commission Regulation (EU) No 1178/2011 and subject to the conditions specified below, the [competent authority] hereby certifies

[NAME OF THE ORGANISATION]

[ADDRESS OF THE ORGANISATION]

as a Part-ORA certified Aero-medical centre with the privileges and the scope of activities as listed in the attached terms of approval.

CONDITIONS:

1. This certificate is limited to that specified in the scope of approval section of the approved organisation manual;
2. This certificate requires compliance with the procedures specified in the organisation documentation as required by Part-ORA.
3. This certificate shall remain valid subject to compliance with the requirements of Part-ORA unless it has been surrendered, superseded, suspended or revoked.

Date of issue Signed:

⁽¹⁾ 'European Union' to be deleted for non-EU Member States
EASA Form 146 Issue 1'

(6) The content of Appendix VI is deleted and is replaced by the following:

'(BLANK PAGE)'.

COMMISSION REGULATION (EU) No 246/2014**of 13 March 2014****amending Annex I to Regulation (EC) No 1334/2008 of the European Parliament and of the Council
as regards removal from the Union list of certain flavouring substances****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Regulation (EC) No 1331/2008, either on the initiative of the Commission or following an application submitted by a Member State or by an interested party.

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

Having regard to Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC ⁽¹⁾, and in particular Article 11(3) thereof,

Having regard to Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings ⁽²⁾, and in particular Article 7(4) thereof,

Whereas:

(1) Annex I to Regulation (EC) No 1334/2008 lays down a Union list of flavourings and source materials for use in food and their conditions of use.

(2) Commission Implementing Regulation (EU) No 872/2012 ⁽³⁾ has adopted the list of flavouring substances and has introduced that list in Part A of Annex I to Regulation (EC) No 1334/2008.

(3) That list may be updated in accordance with the common procedure referred to in Article 3(1) of

(4) Part A of the Union list contains a number of substances for which the European Food Safety Authority has not completed the evaluation or it has requested additional scientific data to be provided for completion of the evaluation. For 19 of those substances, the persons responsible for placing the flavouring substances on the market have now withdrawn their applications. Therefore, those flavouring substances should be removed from the Union list.

(5) Part A of Annex I to Regulation (EC) No 1334/2008 should therefore be amended accordingly.

(6) Pursuant to Article 30 of Regulation (EC) No 1334/2008 flavouring substances not included in the Union list may be placed on the market as such and used in or on food until 22 October 2014. Since flavouring substances are already on the market in the Member States and in order to ensure smooth transition to a Union authorisation procedure, transitional measures have been laid down for food containing those substances in Commission Regulation (EU) No 873/2012 ⁽⁴⁾.

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

HAS ADOPTED THIS REGULATION:

Article 1

Part A of Annex I to Regulation (EC) No 1334/2008 is amended in accordance with the Annex to this Regulation.

⁽¹⁾ OJ L 354, 31.12.2008, p. 34.

⁽²⁾ OJ L 354, 31.12.2008, p. 1.

⁽³⁾ Commission Implementing Regulation (EU) No 872/2012 of 1 October 2012 adopting the list of flavouring substances provided for by Regulation (EC) No 2232/96 of the European Parliament and of the Council, introducing it in Annex I to Regulation (EC) No 1334/2008 of the European Parliament and of the Council and repealing Commission Regulation (EC) No 1565/2000 and Commission Decision 1999/217/EC (OJ L 267, 2.10.2012, p. 1).

⁽⁴⁾ Commission Regulation (EU) No 873/2012 of 1 October 2012 on transitional measures concerning the Union list of flavourings and source materials set out in Annex I to Regulation (EC) No 1334/2008 of the European Parliament and of the Council (OJ L 267, 2.10.2012, p. 162).

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, 13 March 2014.

For the Commission
The President
José Manuel BARROSO

ANNEX

In Part A of Annex I to Regulation (EC) No 1334/2008, the following entries are deleted:

01.015	Vinylbenzene	100-42-5		11022			1	EFSA
02.122	p-Mentha-1,8(10)-dien-9-ol	3269-90-7					2	EFSA
09.809	p-Mentha-1,8(10)-dien-9-yl acetate	15111-97-4		10743			2	EFSA
12.114	Diethyl trisulfide	3600-24-6	1701	11451			4	EFSA
12.120	2,8-Epithio-p-menthane	68398-18-5	1685				4	EFSA
12.159	Methyl methanethiosulfonate	2949-92-0		11520			3	EFSA
12.256	Ethyl propyl trisulfide	31499-70-4	1695				4	EFSA
12.272	Propyl propanethiosulfonate	1113-13-9	1702				3	EFSA
13.029	2,5-Dimethylfuran	625-86-5	1488	2208			3	EFSA
13.030	2-Methylfuran	534-22-5	1487	2209			3	EFSA
13.092	2-Ethylfuran	3208-16-0	1489	11706			3	EFSA
14.145	Pyrrole-2-carbaldehyde	1003-29-8		11393			4	EFSA
14.163	1-Methylpyrrole-2-carboxaldehyde	1192-58-1					4	EFSA
14.169	1-Ethyl-2-pyrrolecarboxaldehyde	2167-14-8					4	EFSA
15.064	2,5-Dimethylthiophene	638-02-8					4	EFSA
15.072	2-Ethylthiophene	872-55-9		11614			4	EFSA
15.091	2-Methylthiophene	554-14-3		11631			4	EFSA
15.092	3-Methylthiophene	616-44-4		11632			4	EFSA
16.124	(1R,2S,5R)-N-cyclopropyl-5-methyl-2-isopropyl cyclohexanecarboxamide	73435-61-7					1	EFSA'

COMMISSION IMPLEMENTING REGULATION (EU) No 247/2014**of 13 March 2014****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, 13 March 2014.

*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	73,3
	TN	108,4
	TR	104,7
	ZZ	95,5
0707 00 05	EG	182,1
	MA	182,1
	TR	152,6
	ZZ	172,3
0709 91 00	EG	45,1
	ZZ	45,1
0709 93 10	MA	40,6
	TR	87,7
	ZZ	64,2
0805 10 20	EG	49,2
	IL	66,9
	MA	46,5
	TN	51,1
	TR	56,3
	ZA	62,4
	ZZ	55,4
0805 50 10	TR	69,1
	ZZ	69,1
0808 10 80	CL	132,6
	CN	58,1
	MK	32,3
	US	189,7
	ZZ	103,2
0808 30 90	AR	101,7
	CL	144,6
	TR	158,2
	US	211,0
	ZA	98,1
	ZZ	142,7

⁽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

COMMISSION IMPLEMENTING DECISION

of 12 March 2014

concerning certain protective measures relating to African swine fever in Poland

(notified under document C(2014) 1657)

(Only the Polish text is authentic)

(Text with EEA relevance)

(2014/134/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽¹⁾, and in particular Article 9(4) thereof,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽²⁾, and in particular Article 10(4) thereof,

Whereas:

(1) African swine fever is an infectious viral disease affecting domestic and feral pig populations and can have a severe impact on the profitability of pig farming causing disturbance to trade within the Union and exports to third countries.

(2) In the event of an outbreak of African swine fever, there is a risk that the disease agent might spread to other pig holdings and to feral pigs. As a result, it may spread from one Member State to another Member State and to third countries through trade in live pigs or their products.

(3) Council Directive 2002/60/EC ⁽³⁾ lays down minimum measures to be applied within the Union for the

control of African swine fever. Article 15 of Directive 2002/60/EC provides for the establishment of an infected area following the confirmation of one or more cases of African swine fever in feral pigs.

(4) Poland has informed the Commission of the current African swine fever situation on its territory, and in accordance with Article 15 of Directive 2002/60/EC, it has established an infected area where the measures referred to in Articles 15 and 16 of that Directive are applied.

(5) In order to prevent any unnecessary disturbance to trade within the Union and to avoid unjustified barriers to trade by third countries, it is necessary to establish in collaboration with the Member State concerned a Union list of the infected territories for African swine fever in Poland.

(6) Accordingly, the infected territories in Poland should be listed in the Annex to this Decision and the duration of that regionalisation established in accordance with Article 15 of Directive 2002/60/EC.

(7) Commission Implementing Decision 2014/100/EU ⁽⁴⁾ should be confirmed following consultation of the Standing Committee on the Food Chain and Animal Health.

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

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ Council Directive 2002/60/EC of 27 June 2002 laying down specific provisions for the control of African swine fever and amending Directive 92/119/EEC as regards Teschen disease and African swine fever (OJ L 192, 20.7.2002, p. 27).

⁽⁴⁾ Commission Implementing Decision 2014/100/EU of 18 February 2014 concerning certain interim protective measures relating to African swine fever in Poland (OJ L 50, 20.2.2014, p. 35).

HAS ADOPTED THIS DECISION:

Article 1

Poland shall ensure that the infected area established in accordance with Article 15 of Directive 2002/60/EC comprise at least the territories listed in the Annex to this Decision.

Article 2

This Decision shall apply until 30 April 2014.

Article 3

This Decision is addressed to the Republic of Poland.

Done at Brussels, 12 March 2014.

For the Commission

Tonio BORG

Member of the Commission

ANNEX

INFECTED AREA

The following territories in the Republic of Poland:

- in voivodship podlaskie: the powiat sejneński; in powiat augustowski, the municipalities of Płaska, Lipsk and Sztabin; the powiat sokółski; in powiat białostocki, the municipalities Czarna Białostocka, Supraśl, Zabłudów, Michałowo and Gródek; and the powiats hajnowski, bielski and siemiatycki,
- in voivodship mazowieckie: the powiat łosicki,
- in voivodship lubelskie: the powiats bialski, Biała Podlaska and włodawski.

RECOMMENDATIONS

COMMISSION RECOMMENDATION

of 12 March 2014

on a new approach to business failure and insolvency

(Text with EEA relevance)

(2014/135/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

(1) The objective of this Recommendation is to ensure that viable enterprises in financial difficulties, wherever they are located in the Union, have access to national insolvency frameworks which enable them to restructure at an early stage with a view to preventing their insolvency, and therefore maximise the total value to creditors, employees, owners and the economy as a whole. The Recommendation also aims at giving honest bankrupt entrepreneurs a second chance across the Union.

(2) National insolvency rules vary greatly in respect of the range of the procedures available to debtors facing financial difficulties in order to restructure their business. Some Member States have a limited range of procedures meaning that businesses are only able to restructure at a relatively late stage, in the context of formal insolvency proceedings. In other Member States, restructuring is possible at an earlier stage but the procedures available are not as effective as they could be or involve varying degrees of formality, in particular in relation to the use of out-of-court processes.

(3) Similarly, national rules giving entrepreneurs a second chance, in particular by granting them discharge from the debts they have incurred in the course of their business vary as regards the length of the discharge period and the conditions under which discharge can be granted.

(4) The discrepancies between the national restructuring frameworks, and between the national rules giving honest entrepreneurs a second chance lead to increased

costs and uncertainty in assessing the risks of investing in another Member State, fragment conditions for access to credit and result in different recovery rates for creditors. They make the design and adoption of consistent restructuring plans for cross-border groups of companies more difficult. More generally, the discrepancies may serve as disincentives for businesses wishing to establish themselves in different Member States.

(5) Council Regulation (EC) No 1346/2000 ⁽¹⁾ only deals with issues of jurisdiction, recognition and enforcement, applicable law and cooperation in cross-border insolvency proceedings. The Commission proposal for the amendment of that Regulation ⁽²⁾ should extend the scope of the Regulation to preventive procedures which promote the rescue of an economically viable debtor and give a second chance to entrepreneurs. However, the proposed amendment does not tackle the discrepancies between those procedures in national law.

(6) On 15 November 2011, the European Parliament adopted a Resolution ⁽³⁾ on insolvency proceedings. It included recommendations for harmonising specific aspects of national insolvency law, including the conditions for the establishment, effects and content of restructuring plans.

(7) In the Communication on the Single Market Act II ⁽⁴⁾ of 3 October 2012, the Commission undertook as a key action to modernise the Union insolvency rules in order to facilitate the survival of businesses and present a second chance to entrepreneurs. To this end, the Commission announced that it would analyse how the efficiency of national insolvency laws could be further improved with a view to creating a level playing field for companies, entrepreneurs and private persons within the internal market.

⁽¹⁾ Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, p. 1).

⁽²⁾ COM(2012) 744 final.

⁽³⁾ European Parliament Resolution of 15 November 2011 with recommendations to the Commission on insolvency proceedings in the context of EU company law, P7_TA (2011) 0484.

⁽⁴⁾ COM(2012) 573 final.

- (8) The Commission Communication on a new European approach to business failure and insolvency⁽¹⁾ of 12 December 2012 highlights certain areas where differences between domestic insolvency laws may hamper the establishment of an efficient internal market. It noted that the creation of a level playing field in these areas would lead to greater confidence in the systems of other Member States for companies, entrepreneurs and private individuals, and improve access to credit and encourage investment.
- (9) On 9 January 2013 the Commission adopted the Entrepreneurship 2020 Action Plan⁽²⁾ where the Member States are invited, among other things, to reduce when possible, the discharge time and debt settlement for honest entrepreneurs after bankruptcy to a maximum of 3 years by 2013 and to offer support services to businesses for early restructuring, advice to prevent bankruptcies and support for small and medium enterprises to restructure and re-launch.
- (10) Several Member States are currently undertaking reviews of their national insolvency laws with a view to improving the corporate rescue framework and the second chance for entrepreneurs. Therefore it is opportune to encourage coherence in these and any future such national initiatives in order to strengthen the functioning of the internal market.
- (11) It is necessary to encourage greater coherence between the national insolvency frameworks in order to reduce divergences and inefficiencies which hamper the early restructuring of viable companies in financial difficulties and the possibility of a second chance for honest entrepreneurs, and thereby to lower the cost of restructuring for both debtors and creditors. Greater coherence and increased efficiency in those national insolvency rules would maximise the returns to all types of creditors and investors and encourage cross-border investment. Greater coherence would also facilitate the restructuring of groups of companies irrespective of where the members of the group are located in the Union.
- (12) Furthermore, removing the barriers to effective restructuring of viable companies in financial difficulties contributes to saving jobs and also benefits the wider economy. Making it easier for entrepreneurs to have a second chance would also lead to higher self-employment rates in the Member States. Moreover, efficient insolvency frameworks would provide a better assessment of the risks involved in lending and borrowing decisions and smooth the adjustment for over-indebted firms, minimising the economic and social costs involved in their deleveraging process.
- (13) Small and medium sized enterprises would benefit from a more coherent approach at Union level, since they do not have the necessary resources to cope with high restructuring costs and take advantage of the more efficient restructuring procedures in some Member States.
- (14) Tax authorities also have an interest in an efficient restructuring framework for viable enterprises. In implementing this Recommendation, Member States should be able to take appropriate measures to ensure the collection and recovery of tax revenues respecting the general principles of tax fairness and to take efficient measures in cases of fraud, evasion or abuse.
- (15) It is appropriate to exclude from the scope of this Recommendation insurance undertakings, credit institutions, investment firms and collective investment undertakings, central counter parties, central securities depositories and other financial institutions which are subject to special recovery and resolution frameworks where national supervisory authorities have wide-ranging powers of intervention. Although consumer over-indebtedness and consumer bankruptcy are also not covered by the scope of this Recommendation, Member States are invited to explore the possibility of applying these recommendations also to consumers, since some of the principles followed in this Recommendation may also be relevant for them.
- (16) A restructuring framework should enable debtors to address their financial difficulties at an early stage, when their insolvency could be prevented and the continuation of their business assured. However, in order to avoid any potential risks of the procedure being misused, the financial difficulties of the debtor must be likely to lead to its insolvency and the restructuring plan must be capable of preventing the insolvency of the debtor and ensuring the viability of the business.
- (17) To promote efficiency and reduce delays and costs, national preventive restructuring frameworks should include flexible procedures limiting court formalities to where they are necessary and proportionate in order to safeguard the interests of creditors and other interested parties likely to be affected. For example, to avoid unnecessary costs and reflect the early nature of the procedure, debtors should in principle be left in control of their assets and the appointment of a mediator or a supervisor should not be compulsory, but made on a case-by-case basis.

⁽¹⁾ COM(2012) 742 final.

⁽²⁾ COM(2012) 795 final.

- (18) A debtor should be able to request the court for a stay of individual enforcement actions and suspension of insolvency proceedings whose opening has been requested by creditors where such actions may adversely affect negotiations and hamper the prospects of a restructuring of the debtor's business. However, in order to provide for a fair balance between the rights of the debtor and of creditors, and taking into account the experience of recent reforms in the Member States, the stay should be initially granted for a period of no more than 4 months.
- (19) Court confirmation of a restructuring plan is necessary to ensure that the reduction of the rights of creditors is proportionate to the benefits of the restructuring and that creditors have access to an effective remedy, in full compliance with the freedom to conduct a business and the right to property as enshrined in the Charter of Fundamental Rights of the European Union. The court should therefore reject a plan where it is likely that the attempted restructuring reduces the rights of dissenting creditors below what they could reasonably expect to receive in the absence of a restructuring of the debtor's business.
- (20) The effects of bankruptcy, in particular the social stigma, legal consequences and the ongoing inability to pay off debts constitute important disincentives for entrepreneurs seeking to set up a business or have a second chance, even if evidence shows that entrepreneurs who have gone bankrupt have more chance to be successful the second time. Steps should therefore be taken to reduce the negative effects of bankruptcy on entrepreneurs, by making provisions for a full discharge of debts after a maximum period of time,

HAS ADOPTED THIS RECOMMENDATION:

I. OBJECTIVE AND SUBJECT MATTER

1. The objective of this Recommendation is to encourage Member States to put in place a framework that enables the efficient restructuring of viable enterprises in financial difficulty and give honest entrepreneurs a second chance, thereby promoting entrepreneurship, investment and employment and contributing to reducing the obstacles to the smooth functioning of the internal market.
2. By reducing those obstacles, the Recommendation aims in particular to:
 - (a) lower the costs of assessing the risks of investing in another Member State;
 - (b) increase recovery rates for creditors; and
 - (c) remove the difficulties in restructuring cross-border groups of companies.

3. This Recommendation provides for minimum standards on:

- (a) preventive restructuring frameworks; and
- (b) discharge of debts of bankrupt entrepreneurs.

4. When implementing this Recommendation, Member States should be able to take appropriate and efficient measures to ensure the enforcement of taxes, in particular in cases of fraud, evasion or abuse.

II. DEFINITIONS

5. For the purposes of this Recommendation:

- (a) 'debtor' means any natural or legal person in financial difficulties when there is a likelihood of insolvency;
- (b) 'restructuring' means changing the composition, conditions, or structure of assets and liabilities of debtors, or a combination of those elements, with the objective of enabling the continuation, in whole or in part, of the debtors' activity;
- (c) 'stay of individual enforcement actions' means a court ordered suspension of the right to enforce a claim by a creditor against a debtor;
- (d) 'courts' includes any other body with competence in matters relating to preventive procedures to which the Member States have entrusted the role of the courts, and whose decisions may be subject to an appeal or review by a judicial authority.

III. PREVENTIVE RESTRUCTURING FRAMEWORK

A. Availability of a preventive restructuring framework

6. Debtors should have access to a framework which allows them to restructure their business with the objective of preventing insolvency. The framework should contain the following elements:
 - (a) the debtor should be able to restructure at an early stage, as soon as it is apparent that there is a likelihood of insolvency;
 - (b) the debtor should keep control over the day-to-day operation of its business;
 - (c) the debtor should be able to request a temporary stay of individual enforcement actions;
 - (d) a restructuring plan adopted by the majority prescribed by national law should be binding on all creditors provided that the plan is confirmed by a court;

- (e) new financing which is necessary for the implementation of a restructuring plan should not be declared void, voidable or unenforceable as an act detrimental to the general body of creditors.

- 7. The restructuring procedure should not be lengthy and costly and it should be flexible so that more steps can be taken out-of-court. The involvement of the court should be limited to where it is necessary and proportionate with a view to safeguarding the rights of creditors and other interested parties affected by the restructuring plan.

B. Facilitating negotiations on restructuring plans

Appointment of a mediator or a supervisor

- 8. Debtors should be able to enter a process for restructuring their business without the need to formally open court proceedings.
- 9. The appointment of a mediator or a supervisor by the court should not be compulsory, but rather be made on a case-by-case basis where it considers such appointment necessary:
 - (a) in the case of a mediator, in order to assist the debtor and creditors in the successful running of negotiations on a restructuring plan;
 - (b) in the case of a supervisor, in order to oversee the activity of the debtor and creditors and take the necessary measures to safeguard the legitimate interests of one or more creditors or another interested party.

Stay of individual enforcement actions and suspension of insolvency proceedings

- 10. The debtors should have the right to request a court to grant a temporary stay of individual enforcement actions (hereafter 'stay') lodged by creditors, including secured and preferential creditors, who may otherwise hamper the prospects of a restructuring plan. The stay should not interfere with the performance of ongoing contracts.
- 11. In Member States which make the granting of the stay subject to certain conditions, debtors should be able to be granted a stay in all circumstances where:
 - (a) creditors representing a significant amount of the claims likely to be affected by the restructuring plan support the negotiations on the adoption of a restructuring plan; and
 - (b) a restructuring plan has a reasonable prospect of being implemented and preventing the insolvency of the debtor.

- 12. Where provided for in the laws of the Member States, the obligation of the debtor to file for insolvency, as well as applications by creditors requesting the opening of insolvency proceedings against the debtor lodged after the stay has been granted should also be suspended for the duration of the stay.

- 13. The duration of the stay should strike a fair balance between the interests of the debtor and of creditors, and in particular secured creditors. The duration of the stay should therefore be determined on the basis of the complexity of the anticipated restructuring, and should not exceed 4 months. Member States may provide that the period can be renewed upon evidence of progress in the negotiations on a restructuring plan. The total duration of the stay should not exceed 12 months.

- 14. When the stay is no longer necessary with a view to facilitating the adoption of a restructuring plan, the stay should be lifted.

C. Restructuring plans

Contents of restructuring plans

- 15. Member States should ensure that courts can confirm plans with expediency and in principle in written procedure. They should lay down clear and specific provisions on the content of restructuring plans. Restructuring plans should contain a detailed description of the following elements:
 - (a) clear and complete identification of the creditors who would be affected by the plan;
 - (b) the effects of the proposed restructuring on individual debts or categories of debts;
 - (c) the position taken by affected creditors on the restructuring plan;
 - (d) where applicable, the conditions for new financing; and
 - (e) the potential of the plan to prevent the insolvency of the debtor and ensure the viability of the business.

Adoption of restructuring plans by creditors

- 16. To increase the prospects of restructuring and therefore the number of viable businesses being rescued, it should be possible to adopt a restructuring plan by the affected creditors, including secured and unsecured creditors.
- 17. Creditors with different interests should be treated in separate classes which reflect those interests. As a minimum, there should be separate classes for secured and unsecured creditors.

18. A restructuring plan should be adopted by the majority in the amount of creditors' claims in each class, as prescribed by national law. Where there are more than two classes of creditors, Member States should be able to maintain or introduce provisions which empower courts to confirm restructuring plans which are supported by a majority of those classes of creditors, taking into account in particular the weight of the claims of the respective classes of creditors.

19. Creditors should enjoy a level playing field irrespective of where they are located. Therefore, where the laws of the Member States require a formal voting process, creditors should in principle be allowed to vote by distance means of communication such as registered letter or secure electronic technologies.

20. To make the adoption of restructuring plans more effective, Member States should also ensure that it is possible for restructuring plans to be adopted by certain creditors or certain types or classes of creditors only, provided that other creditors are not affected.

Court confirmation of the restructuring plan

21. To ensure that the rights of creditors are not unduly affected by a restructuring plan and in the interest of legal certainty, restructuring plans which affect the interests of dissenting creditors or make provision for new financing should be confirmed by a court in order to become binding.

22. The conditions under which a restructuring plan can be confirmed by a court should be clearly specified in the laws of the Member States and should include at least the following:

- (a) the restructuring plan has been adopted in conditions which ensure the protection of the legitimate interests of creditors;
- (b) the restructuring plan has been notified to all creditors likely to be affected by it;
- (c) the restructuring plan does not reduce the rights of dissenting creditors below what they would reasonably be expected to receive in the absence of the restructuring, if the debtor's business was liquidated or sold as a going concern, as the case may be;
- (d) any new financing foreseen in the restructuring plan is necessary to implement the plan and does not unfairly prejudice the interests of dissenting creditors.

23. Member States should ensure that courts can reject restructuring plans which clearly do not have any prospect of preventing the insolvency of the debtor and ensuring the viability of the business, for example because new financing needed to continue its activity is not foreseen.

Rights of creditors

24. All creditors likely to be affected by the restructuring plan should be notified of the content of the plan and given the right to formulate objections and to appeal against the restructuring plan. Nevertheless, in the interest of the creditors supporting the plan, the appeal should not in principle suspend the implementation of the restructuring plan.

Effects of a restructuring plan

25. The restructuring plans which are adopted by the unanimity of affected creditors should be binding on all those affected creditors.

26. The restructuring plans which are confirmed by a court should be binding upon each creditor affected by and identified in the plan.

D. Protection for new financing

27. New financing, including new loans, selling of certain assets by the debtor and debt-equity swaps, agreed upon in the restructuring plan and confirmed by a court should not be declared void, voidable or unenforceable as an act detrimental to the general body of creditors.

28. Providers of new financing as part of a restructuring plan which is confirmed by a court should be exempted from civil and criminal liability relating to the restructuring process.

29. Exceptions to the rules on protection of new financing should be made where fraud is subsequently established in relation to the new financing.

IV. SECOND CHANCE FOR ENTREPRENEURS

Discharge periods

30. The negative effects of bankruptcy on entrepreneurs should be limited in order to give them a second chance. Entrepreneurs should be fully discharged of their debts which were subject of a bankruptcy after no later than 3 years starting from:

- (a) in the case of a procedure ending with the liquidation of the debtor's assets, the date on which the court decided on the application to open bankruptcy proceedings;
- (b) in the case of a procedure which includes a repayment plan, the date on which implementation of the repayment plan started.

31. On expiry of the discharge period, entrepreneurs should be discharged of their debts without the need in principle to re-apply to a court.

32. A full discharge after a short period of time is not appropriate in all circumstances. Member States should therefore be able to maintain or introduce more stringent provisions which are necessary to:

- (a) discourage entrepreneurs who have acted dishonestly or in bad faith, either before or after the bankruptcy proceedings were opened;
- (b) discourage entrepreneurs who do not adhere to a repayment plan or to any other legal obligation aimed at safeguarding the interests of creditors; or
- (c) safeguard the livelihood of the entrepreneur and his family by allowing the entrepreneur to keep certain assets.

33. Member States may exclude specific categories of debt, such as those rising out of tortious liability, from the rule of full discharge.

V. SUPERVISION AND REPORTING

34. The Member States are invited to implement the principles set out in this Recommendation by 14 March 2015.

35. The Member States are invited to collect reliable annual statistics on the number of preventive restructuring

procedures opened, the length of procedures and information about the size of the debtors involved and the outcome of the procedures opened, and to communicate that information to the Commission on an annual basis and for the first time by 14 March 2015.

36. The Commission will assess the implementation of this Recommendation in the Member States by 14 September 2015. In this context, the Commission will evaluate its impact on rescuing companies in financial difficulties and giving honest entrepreneurs a second chance, its interplay with other insolvency procedures in other areas such as discharge periods for natural persons not exercising a trade, business, craft or professional activity, its impact on the functioning of the internal market and on small and medium enterprises and the competitiveness of the economy of the Union. The Commission will assess also whether additional measures to consolidate and strengthen the approach reflected in this Recommendation should be proposed.

Done at Brussels, 12 March 2014.

For the Commission

Viviane REDING

Vice-President

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