

# Official Journal

## of the European Union

L 91



English edition

Legislation

Volume 57

27 March 2014

Contents

II *Non-legislative acts*

## REGULATIONS

- ★ **Council Implementing Regulation (EU) No 307/2014 of 24 March 2014 amending Implementing Regulation (EU) No 875/2013 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an interim review pursuant of Article 11(3) of Regulation (EC) No 1225/2009.....** 1
- ★ **Commission Implementing Regulation (EU) No 308/2014 of 20 March 2014 entering a name in the register of protected designations of origin and protected geographical indications [Almendra de Mallorca/Almendra Mallorquina/Ametlla de Mallorca/Ametlla Mallorquina (PGI)]** 7
- ★ **Commission Implementing Regulation (EU) No 309/2014 of 20 March 2014 entering a name in the register of protected designations of origin and protected geographical indications [Aceite de la Comunitat Valenciana (PDO)] .....** 9
- ★ **Commission Implementing Regulation (EU) No 310/2014 of 25 March 2014 concerning the classification of certain goods in the Combined Nomenclature .....** 10
- ★ **Commission Implementing Regulation (EU) No 311/2014 of 25 March 2014 concerning the classification of certain goods in the Combined Nomenclature .....** 12
- ★ **Commission Regulation (EU) No 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks <sup>(1)</sup> .....** 15

Price: EUR 3

(Continued overleaf)

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

EN

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

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

★ <b>Commission Implementing Regulation (EU) No 313/2014 of 26 March 2014 approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications [Pecorino Sardo (PDO)]</b> .....	36
--	----

Commission Implementing Regulation (EU) No 314/2014 of 26 March 2014 establishing the standard import values for determining the entry price of certain fruit and vegetables .....	38
--	----

## DECISIONS

2014/169/EU:

★ <b>Council Implementing Decision of 24 March 2014 amending Implementing Decision 2013/463/EU on approving the macroeconomic adjustment programme for Cyprus</b> .....	40
---	----

2014/170/EU:

★ <b>Council Implementing Decision of 24 March 2014 establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing</b> .....	43
---	----

2014/171/EU:

★ <b>Council Decision of 24 March 2014 appointing a Danish member of the European Economic and Social Committee</b> .....	48
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## II

(Non-legislative acts)

## REGULATIONS

## COUNCIL IMPLEMENTING REGULATION (EU) No 307/2014

of 24 March 2014

**amending Implementing Regulation (EU) No 875/2013 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an interim review pursuant of Article 11(3) of Regulation (EC) No 1225/2009**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community<sup>(1)</sup> ('the basic Regulation'), and in particular 11(3) thereof,

Having regard to the proposal submitted by the European Commission after consulting the Advisory Committee,

Whereas:

## 1. PROCEDURE

## 1. Measures in force

- (1) Following an investigation ('the original investigation'), the Council, by Regulation (EC) No 682/2007<sup>(2)</sup>, imposed a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels currently falling within CN codes ex 2001 90 30 and ex 2005 80 00 originating in Thailand. The measures took the form of an *ad valorem* duty ranging between 3,1 % and 12,9 %.
- (2) By Regulation (EC) No 954/2008<sup>(3)</sup>, the Council amended the measures in force with regard to one exporting producer and consequently the rate applicable to 'all other companies', thereafter ranging between 3,1 % and 14,3 %.

- (3) Following an expiry review pursuant to Article 11(2) of the basic Regulation ('the expiry review') the Council, by Implementing Regulation (EU) No 875/2013<sup>(4)</sup>, maintained the duty ranging between 3,1 % and 14,3 %.

## 2. Request for a review

- (4) The European Commission ('the Commission') received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation. This request was lodged by River Kwai International Food Industry Co. Ltd ('the applicant'), an exporting producer from Thailand.
- (5) The request was limited in scope to the examination of dumping as far as the applicant was concerned.
- (6) In its request, the applicant provided *prima facie* evidence that, as far as the dumping by the applicant is concerned, the circumstances on the basis of which the measures in force were imposed have changed and that these changes were of a lasting nature.
- (7) In particular, the applicant claimed that the changed circumstances relate to changes in the product range it commercialises which have a direct impact on the cost of production thereof. A comparison of its domestic prices with its export prices to the Union indicated that the dumping margin appeared to be lower than the current level of measures.

## 3. Initiation of a partial interim review

- (8) The Commission determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review limited to

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

<sup>(2)</sup> Council Regulation (EC) No 682/2007 of 18 June 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand (OJ L 159, 20.6.2007, p. 14).

<sup>(3)</sup> Council Regulation (EC) No 954/2008 of 25 September 2008 amending Council Regulation (EC) No 682/2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand (OJ L 260, 30.9.2008, p. 1).

<sup>(4)</sup> Council Implementing Regulation (EU) No 875/2013 of 2 September 2013 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 244, 13.9.2013, p. 1).

the examination of dumping as far as the applicant is concerned. On this basis, it announced by a notice published in the *Official Journal of the European Union* <sup>(1)</sup> on 14 February 2013 ('the notice of initiation'), the initiation of a partial interim review pursuant to Article 11(3) of the basic Regulation.

#### 4. Review investigation period

- (9) The investigation of dumping covered the period from 1 July 2011 to 31 December 2012 ('the review investigation period' or 'RIP').

#### 5. Parties concerned by the investigation

- (10) The Commission officially advised the applicant, representatives of the exporting country, as well as the association of Union producers (Association Européenne des Transformateurs de Maïs Doux 'AETMD') of the initiation of the interim review.
- (11) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.
- (12) The written comments submitted by AETMD were considered and, where appropriate, taken into account.
- (13) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to the applicant and received a reply within the deadline set for that purpose.
- (14) The Commission sought and verified all information deemed necessary for the determination of dumping. The Commission carried out a verification visit at the premises of the applicant in Thailand in Bangkok and Kanchanaburi.

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 1. Product concerned

- (15) The product under this review is the same as that defined in the original investigation and in the expiry review, namely sweetcorn (*Zea mays* var. *saccharata*) in kernels, prepared or preserved by vinegar or acetic acid, not frozen, currently falling within CN code ex 2001 90 30, and sweetcorn (*Zea mays* var. *saccharata*) in kernels, prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006, currently falling within CN code ex 2005 80 00, originating in Thailand.

### 2. Like product

- (16) As established in the original investigation and confirmed in the expiry review, sweetcorn produced and sold in the Union and sweetcorn produced and sold in Thailand was

found to have essentially the same physical and chemical characteristics and the same basic uses as sweetcorn produced in Thailand and sold for export to the Union. They are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

## 3. DUMPING

### 1. Determination of Normal Value

- (17) In accordance with the first sentence of Article 2(2) of the basic Regulation, the Commission first established whether the applicant's total domestic sales of the like product during the RIP were representative. The domestic sales are representative if the total domestic sales volume of the like product represented at least 5 % of the total export sales volume of the product concerned to the Union during the RIP.
- (18) Total domestic sales of the like product were found to be representative.
- (19) The Commission subsequently identified the product types sold domestically that were identical or directly comparable with the types sold for export to the Union.
- (20) For each of those product types, the Commission established whether domestic sales were sufficiently representative in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the RIP represents at least 5 % of the total volume of export sales to the Union of the identical or comparable product type.
- (21) The Commission established that, for all the product types sold for export to the Union, the applicant's domestic sales were made in representative quantities.
- (22) Next, the Commission defined the proportion of profitable sales to independent customers on the domestic market for each product type during the RIP in order to decide whether to use actual domestic sales for the calculation of the normal value in accordance with Article 2(4) of the basic Regulation.
- (23) The normal value is based on the actual domestic price per product type irrespective of whether the sales are profitable or not, if:
- the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type, and
  - the weighted average sales price of that product type is equal to or higher than the unit cost of production.

<sup>(1)</sup> OJ C 42, 14.2.2013, p. 7.

- (24) The Commission's analysis of domestic sales showed that more than 90 % of domestic sales were profitable and that the weighted average sales price was higher than the unit cost of production. Accordingly, the normal value was calculated as a weighted average of the prices of all domestic sales during the RIP.

## 2. Determination of the Export price

- (25) All sales by the applicant for export to the Union were made directly to unrelated customers in the Union or Thailand. The export price is therefore established on the basis of prices paid or payable, in accordance with Article 2(8) of the basic Regulation.

## 3. Comparison

- (26) The Commission compared the normal value and the export price on an ex-works basis.
- (27) Where justified, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.
- (28) Adjustments for differences in transport costs, insurance costs, handling and loading costs, packaging, commissions, credit costs and bank charges were granted when applicable and duly justified.
- (29) The applicant claimed an allowance under Article 2(10)(d) of the basic Regulation for a difference in brand value when sold under own brand on the domestic market and when sold under own brand on the Union market. Allegedly, the brand value of the applicant's own brand is higher on the Thai market than on the Union market. To justify its claim the applicant made reference to the adjustment made in the original investigation and in the expiry review.
- (30) However, the applicant's situation in this interim review differs from the situation of other exporting producers for which the adjustment was granted in the original investigation and the expiry review. The adjustment made in the original investigation and in the expiry review specifically refers to exporting producers whose sales on the domestic market are carrying their own brand whereas sales to the Union are sold under retailer's brand. In this interim review, the applicant's sales on both the domestic market and the Union market carry its own brand. Moreover, the adjustments made in the original investigation and the expiry review were made to the profit margin when constructing the normal value in accordance with Article 2(6) of the basic Regulation.

However, in this interim review, the normal value is based on applicant's actual domestic prices.

- (31) Concerning the alleged lack of brand value when selling to the Union market, the importer of the product concerned carrying the applicant's brand is specialised in imports of branded food products, in particular from Asia. The applicant failed to clarify or provide evidence why sales to that particular importer would carry a lower value than the brand value on the applicant's domestic market. Consequently, the Commission concluded that the applicant has not demonstrated that the alleged difference in brand value has an impact on prices or price comparability.
- (32) The applicant also claimed the same adjustment under Article 2(10)(k) of the basic Regulation. However, since the applicant has not demonstrated that the alleged difference has an impact on prices or price comparability, the allowance could not be accepted under this provision either.
- (33) The claim for an allowance under Article 2(10)(d) and (k) is therefore rejected.
- (34) With reference to Article 2(10)(b) of the basic Regulation, the applicant also claimed an allowance for a government-paid export tax rebate. An amount is paid to the applicant by the government when the product concerned is sold for export, including to the Union market.
- (35) The applicant could demonstrate that an amount equivalent to less than 0,5 % of the invoice value is paid to the applicant for exports to the Union market. However, in accordance with Article 2(10)(b) of the basic Regulation, an adjustment is to be made to the normal value if the conditions set in that Article are met, and not to the export price as claimed by the applicant. Furthermore, the investigation showed that no direct link could be established between the payment received by the applicant in respect of the product concerned when exported to the Union and import charges for the raw materials physically incorporated therein.
- (36) The applicant also claimed the same adjustment under Article 2(10)(k). However, since it failed to demonstrate any link between the export tax rebate and the pricing of the exported product concerned, the claim could not be accepted.
- (37) The claim for an allowance for export tax rebate under Article 2(10)(b) and (k) is therefore rejected.

#### 4. Dumping during the RIP

- (38) The weighted average normal value of each type of the product concerned exported to the Union was compared with the weighted average export price of the corresponding type of the product concerned, as provided for in Article 2(11) and (12) of the basic Regulation.
- (39) On this basis, the weighted average dumping margin expressed as a percentage of the CIF Union frontier price, duty unpaid, was found to be 3,6 %.

#### 4. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (40) In accordance with Article 11(3) of the basic Regulation, the Commission examined whether the circumstances on the basis of which the current dumping margin was based have changed and whether that change was of a lasting nature.
- (41) In its request for a review, the applicant had referred to changes in the product range it commercialises which would have a direct impact on the cost of production thereof. The investigation has confirmed that, due to a corporate restructuring, the applicant no longer produces and sells certain other products as compared to the original investigation period, and that this change has had an impact on the cost of production for the product concerned.
- (42) AETMD has commented that the restructuring carried out by the applicant might not be of a lasting nature, as it could easily be reversed.
- (43) It is indeed possible that the management of the applicant, if it so wishes, would be in a position to reverse the restructuring. However, there is no evidence suggesting that the applicant's decision to restructure and to streamline the commercialisation of the group's products between the group's companies would not be of a lasting nature. In addition, the restructuring already took place by 2009, which indicates that the new corporate structure is of a lasting nature.
- (44) Following disclosure, AETMD reiterated its claim that the change on the basis of which the review was initiated could not be considered as of a lasting nature. More specifically, it questioned the impact on the cost of production due to the internal reorganisation within the group, claiming that costs within the group can simply be reallocated in order to lower the normal value. For this reason, the new cost of production could not be considered as being of a lasting nature. AETMD also noted that the subsidiary responsible for

production and sales of fresh products shares the same address as the applicant. AETMD claimed that this is another indication that the reorganisation is not profound and lasting.

- (45) In response to AETMD's claims set out in recital 44, the applicant stressed that the reorganisation also entailed an improved cost accounting system whereby bottlenecks were identified and resolved in order to optimise production and to reduce manufacturing costs. The applicant also stressed that any reversal of the 2009 reorganisation at this stage would be a very complex process as the mother-company to the applicant, Agripure Holding PLC, is listed on the Thai Stock Exchange.
- (46) The risk for a potential reversal of the applicant's reorganisation has already been addressed in recital 43.
- (47) Moreover, for the purpose of verifying the accuracy of the claims in the request for the initiation of this review, the Commission made a comparison of the cost of production for the product types exported to the Union during the original investigation (i.e. before the applicant's reorganisation in 2009) and during the RIP. That comparison confirmed that the manufacturing costs per unit have changed to a significant degree. The change in manufacturing costs per unit identified goes beyond a simple reallocation of costs and is due to a real decrease in indirect costs of production such as manufacturing overheads and labour costs.
- (48) As to the question of the applicant and its subsidiary sharing the same administrative address, this is a common business practice. Moreover, during the verification visit to the applicant's premises, the Commission noted that the production lines and storage of finished goods within the premises were dedicated to sweetcorn production; there was no visible trace of the production and storage of the fresh products sold by the subsidiary.
- (49) Having regard to the arguments of AETMD and of the applicant, and having identified a de facto decrease in the cost of manufacturing per unit between the original investigation and the RIP, the argument put forward by AETMD has to be rejected.
- (50) AETMD has also submitted that the applicant planned to increase its production capacity during 2013 by some 40 %. According to AETMD, this fact would go against the applicant's claim that the new, revised cost of production (which followed the restructuring) would be of a lasting nature.

- (51) The investigation indeed confirmed that the applicant is in the process of increasing its production capacity. The impact of the increased capacity has been one of the factors on the basis of which it was concluded in the expiry review that there was a risk for continuation of dumping <sup>(1)</sup>.
- (52) Following disclosure, AETMD reiterated the claim that the investment into new production capacity will necessarily have an effect on the cost of production and therefore, the prevailing cost of production against which the domestic prices were compared in this review (see recital 24) is not of a lasting nature. In particular, AETMD made a calculation based on available sources on the basis of which it concluded that the total costs would increase due to increased depreciation by some 10 % as compared to the current costs.
- (53) The applicant did not contradict AETMD's claim concerning increased depreciation costs per se, but stressed that these increased costs of depreciation are to be offset by increases in total revenues (through increased sales) and by decreases in other costs as a result of increased automation.
- (54) As mentioned in recital 51, the applicant is indeed in the process of investing in new production facilities. Investments in new facilities may entail increases of costs for depreciation. On the other hand, and as the applicant pointed out in response to AETMD's comment, new production facilities may also entail changes (as compared to existing production lines) such as the level of automation. These changes should have a direct decreasing effect on the labour and energy costs and could offset the increases for the cost of depreciation.
- (55) On balance, it is concluded that the overall impact on the cost of production per unit produced cannot be measured until the new installations have been inaugurated and any additional costs reflected in the accounts.
- (56) Nevertheless, and having regard to the objective of the investment (increased efficiency and competitiveness, to reduce manufacturing costs per unit), it is expected that at least in the medium to long term there will be no significant increase in the cost of production per unit. In such circumstances it is expected that the normal value will still be based on domestic prices as in this review. The argument brought forward by AETMD must therefore be rejected.
- (57) Following disclosure, AETMD also questioned the lasting nature of the new dumping margin. It argued that the basis of the export prices used for the calculation of the dumping margin were not representative. More specifically, it argued that:
- (a) the number of tonnes exported during the RIP was too small to be considered representative; and
- (b) with reference to recital 29, the fact that the export transactions of own-branded products made up almost half of all exports during the RIP, the export prices should be deemed unrepresentative. AETMD considered that, should the proposed decrease of measures enter into force, the major portion of exports to the Union are more likely to be of retailers' brand carrying lower export prices <sup>(2)</sup>.
- (58) Due to the fact that the quantities exported to the Union were not significant, the Commission itself ascertained that the applicant's prices paid or payable for exports to the Union were representative by comparing them with the applicant's prices paid or payable for exports to other third countries. On this basis, it was concluded that the prices charged to customers in the Union were consistent with those charged to customers in other export markets.
- (59) The existence of different market segments, the own-brand and the retailers' brand, have been acknowledged during the course of earlier investigations <sup>(3)</sup>. It constitutes one important part of the definition of different product types within the scope of the product concerned. On this basis, exports of own-brand products have been compared with domestic sales of own-brand products and export sales of retailers' brand have been compared with domestic sales of retailers' brand.
- (60) The claim by AETMD that future exports will mainly be constituted by retailers' brand is speculative, not supported by evidence and as such is insufficient to put into question the representativity of the exports of own-brand products during the RIP. The claim by AETMD is therefore rejected.
- (61) AETMD also claimed that the decrease of the duty to a lower level could lead to the risk for circumvention of the measures.
- (62) It is recalled that the duties in force are already differentiated between the Thai exporting producers. Thus, the risk for circumvention (i.e. using the TARIC additional code with lower duties) has been present since the introduction of the original measures. The lower duty for one of these exporting producers does not per se increase the risk of circumvention from Thailand as a whole.

<sup>(1)</sup> See recitals 49 to 75 of the expiry review.

<sup>(2)</sup> See recital 86 of the expiry review.

<sup>(3)</sup> See recital 85 of the expiry review.

- (63) Moreover, should information become available suggesting that the duties are undermined by way of circumvention, an investigation can be initiated as appropriate provided that conditions set in Article 13 of the basic Regulation are met.
- (64) AETMD also stated that the applicant may have artificially increased the export prices to the Union by way of cross-compensation with parallel sales of other products at artificially low prices.
- (65) As indicated in recital 58, export prices to the Union of the product concerned were in line with those to third countries. Thus, there are no indications that export prices to the Union were artificially high during the RIP, and the argument is therefore rejected.

#### 5. ANTI-DUMPING MEASURES

- (66) In light of the results of the investigation, the Commission considers it appropriate to amend the anti-dumping duty applicable to imports of the product concerned from River Kwai International Food Industry Co., Ltd.
- (67) Moreover, and upon request from the applicant, its address in Thailand is also changed.

#### 6. DISCLOSURE

- (68) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend an amendment to Implementing Regulation (EU) No 875/2013.

- (69) Following disclosure, the Thai government argued that the average duty rate for cooperating non-sampled exporters should also be revised in order to take account of the findings of this partial interim review. It should be noted that this claim goes beyond the limited scope of this review which aims only at adjusting the level of the existing anti-dumping duty rate for the applicant. Any request to amend the level of the anti-dumping duty rates following an alleged change in circumstances should be presented pursuant to Article 11(3) of the basic Regulation. Therefore, this claim has to be rejected,

HAS ADOPTED THIS REGULATION:

#### Article 1

The entry concerning River Kwai International Food Industry Co., Ltd in the table of Article 1(2) of Implementing Regulation (EU) No 875/2013 is hereby replaced by the following:

Company	Anti-Dumping duty (%)	TARIC Additional Code
'River Kwai International Food Industry Co., Ltd, 99 Moo 1 Thanamtuen Khaupoon Road Kaengsian, Muang, Kanchanaburi 71000 Thailand	3,6	A791'

#### Article 2

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

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

Done at Brussels, 24 March 2014.

For the Council  
The President  
A. TSAFTARIS

**COMMISSION IMPLEMENTING REGULATION (EU) No 308/2014****of 20 March 2014****entering a name in the register of protected designations of origin and protected geographical indications [Almendra de Mallorca/Almendra Mallorquina/Ametlla de Mallorca/Ametlla Mallorquina (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 <sup>(1)</sup>, and in particular Article 52(2) thereof,

Whereas:

(1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Spain's application to register the name 'Almendra de Mallorca'/'Almendra Mallorquina'/'Ametlla de Mallorca'/'Ametlla Mallorquina' was published in the *Official Journal of the European Union* <sup>(2)</sup>.

(2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Almendra de Mallorca'/'Almendra Mallorquina'/'Ametlla de Mallorca'/'Ametlla Mallorquina' 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, 20 March 2014.

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

<sup>(1)</sup> OJ L 343, 14.12.2012, p. 1.

<sup>(2)</sup> OJ C 317, 31.10.2013, p. 8.

## ANNEX

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

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

SPAIN

Almendra de Mallorca/Almendra Mallorquina/Ametlla de Mallorca/Ametlla Mallorquina (PGI)

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**COMMISSION IMPLEMENTING REGULATION (EU) No 309/2014****of 20 March 2014****entering a name in the register of protected designations of origin and protected geographical indications [Aceite de la Comunitat Valenciana (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 <sup>(1)</sup>, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Spain's application to register the name 'Aceite de la Comunitat Valenciana' was published in the *Official Journal of the European Union* <sup>(2)</sup>.
- (2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the

Commission, the name 'Aceite de la Comunitat Valenciana' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

*Article 1*

The name 'Aceite de la Comunitat Valenciana' (PDO) is hereby entered in the register.

The name referred to in the first paragraph identifies a product in Class 1.5. Oils and fats (butter, margarine, oil, etc.) of Annex II to Commission Regulation (EC) No 1898/2006 <sup>(3)</sup>.

*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, 20 March 2014.

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

<sup>(1)</sup> OJ L 343, 14.12.2012, p. 1.

<sup>(2)</sup> OJ C 276, 25.9.2013, p. 9.

<sup>(3)</sup> Commission Regulation (EC) No 1898/2006 of 14 December 2006 laying down detailed rules of implementation of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 369, 23.12.2006, p. 1).

**COMMISSION IMPLEMENTING REGULATION (EU) No 310/2014**  
**of 25 March 2014**  
**concerning the classification of certain goods in the Combined Nomenclature**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff<sup>(1)</sup>, and in particular Article 9(1)(a) thereof,

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.
- (2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific provisions of the Union, with a view to the application of tariff and other measures relating to trade in goods.
- (3) Pursuant to those general rules, the goods described in column (1) of the table set out in the Annex should be classified under the CN code indicated in column (2), by virtue of the reasons set out in column (3) of that table.

(4) It is appropriate to provide that binding tariff information issued in respect of the goods concerned by this Regulation which does not conform to this Regulation may, for a certain period, continue to be invoked by the holder in accordance with Article 12(6) of Council Regulation (EEC) No 2913/92<sup>(2)</sup>. That period should be set at three months.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

*Article 1*

The goods described in column (1) of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column (2) of that table.

*Article 2*

Binding tariff information which does not conform to this Regulation may continue to be invoked in accordance with Article 12(6) of Regulation (EEC) No 2913/92 for a period of three months from the date of entry into force of this Regulation.

*Article 3*

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

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

Done at Brussels, 25 March 2014.

*For the Commission,  
On behalf of the President,  
Algirdas ŠEMETA  
Member of the Commission*

<sup>(1)</sup> OJ L 256, 7.9.1987, p. 1.

<sup>(2)</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

## ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
<p>A colour monitor of the liquid crystal display (LCD) type with a diagonal measurement of the screen of approximately 48 cm (19 inches) with dimensions of approximately 46 × 37 × 21 cm with:</p> <ul style="list-style-type: none"> <li>— a native resolution of 1 440 × 900 pixels,</li> <li>— supported resolutions of 640 × 480, 800 × 600, 1 024 × 768 and 1 280 × 1 024 pixels,</li> <li>— an aspect ratio of 16:10,</li> <li>— a pixel pitch of 0,285 mm,</li> <li>— a brightness of 300 cd/m<sup>2</sup>,</li> <li>— a contrast ratio of 500:1,</li> <li>— a response time of 8 ms,</li> <li>— two loudspeakers,</li> <li>— power and control buttons.</li> </ul> <p>It is equipped with the following interfaces:</p> <ul style="list-style-type: none"> <li>— a DVI-D,</li> <li>— two VGA.</li> </ul> <p>It has a stand with a tilt mechanism.</p> <p>The monitor is presented for use with automatic data-processing (ADP) machines.</p>	8528 51 00	<p>Classification is determined by general rules 1 and 6 for the interpretation of the Combined Nomenclature, and by the wording of CN codes 8528 and 8528 51 00.</p> <p>Given the objective characteristics of the product, such as the resolution, the supported resolutions, the aspect ratio, the pixel pitch suitable for prolonged close viewing, the brightness, the interfaces commonly used in ADP systems and the presence of tilt mechanisms, the intended use is that of a monitor of a kind solely or principally used in an ADP system of heading 8471.</p> <p>The monitor is therefore to be classified under CN code 8528 51 00 as other monitors of a kind solely or principally used in an automatic data-processing system of heading 8471.</p>

**COMMISSION IMPLEMENTING REGULATION (EU) No 311/2014**  
**of 25 March 2014**  
**concerning the classification of certain goods in the Combined Nomenclature**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff<sup>(1)</sup>, and in particular Article 9(1)(a) thereof,

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.
- (2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific provisions of the Union, with a view to the application of tariff and other measures relating to trade in goods.
- (3) Pursuant to those general rules, the goods described in column (1) of the table set out in the Annex should be classified under the CN codes indicated in column (2), by virtue of the reasons set out in column (3) of that table.

(4) It is appropriate to provide that binding tariff information issued in respect of the goods concerned by this Regulation which does not conform to this Regulation may, for a certain period, continue to be invoked by the holder in accordance with Article 12(6) of Council Regulation (EEC) No 2913/92<sup>(2)</sup>. That period should be set at three months.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

*Article 1*

The goods described in column (1) of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN codes indicated in column (2) of that table.

*Article 2*

Binding tariff information which does not conform to this Regulation may continue to be invoked in accordance with Article 12(6) of Regulation (EEC) No 2913/92 for a period of three months from the date of entry into force of this Regulation.

*Article 3*

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

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

Done at Brussels, 25 March 2014.

*For the Commission,  
On behalf of the President,  
Algirdas ŠEMETA  
Member of the Commission*

<sup>(1)</sup> OJ L 256, 7.9.1987, p. 1.

<sup>(2)</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

## ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
<p>1. A machine with sound reproducing and editing functions in a housing with dimensions of approximately 43 × 15 × 8 cm.</p> <p>It is equipped with a CD reader and an audio output. It has knobs, push-buttons, sliders and a small liquid crystal display (LCD) indicator.</p> <p>The machine is capable of editing sound: it is equipped with seamless loop points, stutter starts, a beats per minute (BPM) counter and a fader.</p> <p>The machine is intended to be used for sound reproducing and editing in a non-professional environment.</p>	8519 81 35	<p>Classification is determined by general rules 1 and 6 for the interpretation of the Combined Nomenclature, note 3 to Section XVI and by the wording of CN codes 8519, 8519 81 and 8519 81 35.</p> <p>As the machine is designed for the purpose of performing two alternative functions (sound reproducing function and sound editing function), it is to be classified, by virtue of note 3 to Section XVI, as being that machine which performs the principal function.</p> <p>Due to its objective characteristics, namely the presence of only one input possibility for sound files (the CD reader) and the limited editing capability, the sound reproducing function is the machine's principal function.</p> <p>The machine is therefore to be classified under CN code 8519 81 35 as other sound recording or sound reproducing apparatus with laser reading system.</p>
<p>2. A machine with sound reproducing and editing/mixing functions (so-called 'disc jockey multi player') in a housing with dimensions of approximately 40 × 32 × 10 cm.</p> <p>It is equipped with a CD reader and has various interfaces (USB, audio outputs, SD card reader). It has knobs, push-buttons, sliders and a 6,1 inches liquid crystal display (LCD) indicator.</p> <p>The machine is capable of editing and mixing sound. For those purposes it is, inter alia, equipped with:</p> <ul style="list-style-type: none"> <li>— an auto beats per minute (BPM) counter;</li> <li>— a fader start and back cue;</li> <li>— a track hot cue;</li> <li>— a loop;</li> <li>— a 4 beat loop;</li> <li>— cue point setting.</li> </ul> <p>The machine is intended to be used by professional disc-jockeys for reproducing, editing and mixing sound.</p>	8543 70 90	<p>Classification is determined by general rules 1 and 6 for the interpretation of the Combined Nomenclature, note 3 to Section XVI and by the wording of CN codes 8543, 8543 70 and 8543 70 90.</p> <p>As the machine is designed for the purpose of performing two alternative functions (sound reproducing function and sound editing/mixing function), it is to be classified, by virtue of note 3 to Section XVI, as being that machine which performs the principal function.</p> <p>Due to its objective characteristics, namely the number of technical features for editing and mixing sound, the possibility to mix sound files originating from various sources, the design and conception of the machine, the sound editing /mixing function is the machine's principal function. Consequently, classification under heading 8519 is excluded.</p> <p>The machine is therefore to be classified under CN code 8543 70 90 as other machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85.</p>

(1)	(2)	(3)
<p>The sound files that are reproduced, edited and mixed can come from various sources (CD-reader, automatic data-processing (ADP) machine, USB memory or SD card).</p> <p>The machine can operate stand-alone or in conjunction with an ADP machine.</p>		

**COMMISSION REGULATION (EU) No 312/2014**  
**of 26 March 2014**  
**establishing a Network Code on Gas Balancing of Transmission Networks**  
**(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 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 <sup>(1)</sup>, and in particular Article 6(11) thereof,

Whereas:

- (1) The urgent completion of a fully functioning and inter-connected internal energy market which contributes to ensuring the supply of affordable and sustainable energy to the Union's economy is crucial to the objective of increasing competitiveness and ensuring that all consumers can purchase energy at the keenest prices.
- (2) In order to move towards greater market integration, it is important that rules on gas balancing of transmission networks facilitate gas trading across balancing zones thus contributing towards the development of market liquidity. This Regulation therefore sets out harmonized Union-wide rules on balancing which have the objective to give network users the certainty that they can manage their balance positions in different balancing zones throughout the Union in an economically efficient and non-discriminative manner.
- (3) This Regulation supports the development of a competitive short term wholesale gas market in the European Union that enables the provision of gas flexibility, from whatever source, to offer it for purchase and sale via market mechanisms so that network users can balance their balancing portfolios efficiently or the transmission system operator can use the gas flexibility when balancing the transmission network.
- (4) Regulation (EC) No 715/2009 sets non-discriminatory rules for access conditions to the natural gas transmission networks with a view to ensuring the proper functioning of the internal market in gas. Market-based balancing rules financially incentivise network users to balance their balancing portfolios via cost-reflective imbalance charges.
- (5) Network users are to bear the responsibility of balancing their inputs against their off-takes, with the balancing rules designed to promote a short term wholesale gas market, with trading platforms established to better facilitate gas trade between network users and the transmission system operator. The transmission system operators carry out any residual balancing of the transmission networks that might be necessary. In doing so, the transmission system operators should follow the merit order. The merit order is constructed so that transmission system operators will procure gas taking account of both economical and operational considerations, using products that can be delivered from the widest range of sources, including products sourced from LNG and storage facilities. The transmission system operators should aim to maximise the amount of their gas balancing needs through the purchase and sale of short term standardised products on the short term wholesale gas market.
- (6) In order to enable network users to balance their balancing portfolios, this Regulation also sets out minimum requirements for information provision to implement a market-based balancing regime. The information flows provided under this Regulation therefore aim to support the daily balancing regime and seek to be a set of information to support the network user in managing its risks and opportunities in a cost efficient way.
- (7) In addition to the protection of commercially sensitive information, under this Regulation the transmission system operators should preserve the confidentiality of information and data submitted to them for the purpose of implementation of this Regulation and should not disclose to third parties any of this information and data or part of it except and to the extent legally entitled to.

<sup>(1)</sup> OJ L 211, 14.8.2009, p. 36.

- (8) This Regulation has been adopted on the basis of Regulation (EC) No 715/2009 which it supplements and of which it forms an integral part. References to Regulation (EC) No 715/2009 in other legal acts shall be understood as also referring to this Regulation. This Regulation does apply to non-exempted capacities in major new infrastructures which have received an exemption from Article 32 of Directive 2009/73/EC of the European Parliament and of the Council<sup>(1)</sup> or from the former Article 18 of Directive 2003/55/EC of the European Parliament and of the Council<sup>(2)</sup> to the extent the application of this Regulation does not undermine such an exemption. This Regulation shall be applied taking into account the specific nature of interconnectors.
- (9) This Regulation was established according to the procedure as set out in Article 6 of Regulation (EC) No 715/2009. It further harmonises the balancing rules laid down in Article 21 Regulation (EC) No 715/2009 in order to facilitate gas trade.
- (10) This Regulation includes provisions that apply to distribution system operators and that aim to harmonise their roles only where and to the extent necessary for the due implementation of these provisions.
- (11) National regulatory authorities and transmission system operators should have regard to best practices and endeavours to harmonise processes for the implementation of this Regulation. Acting in accordance with Article 7 of Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators<sup>(3)</sup>, the Agency and the national regulatory authorities should ensure that balancing rules are implemented across the Union in the most effective way.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Committee established pursuant to Article 51 of Directive 2009/73/EC.

HAS ADOPTED THIS REGULATION:

#### CHAPTER I

#### GENERAL PROVISIONS

##### Article 1

##### Subject matter

This Regulation establishes a Network Code setting out gas balancing rules, including network-related rules on nomination procedures, imbalance charges, settlement processes associated with the daily imbalance charge and operational balancing between transmission system operators' networks.

<sup>(1)</sup> Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

<sup>(2)</sup> Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ L 176, 15.7.2003, p. 57).

<sup>(3)</sup> Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ L 211, 14.8.2009, p. 1).

##### Article 2

##### Scope

1. This Regulation shall apply to balancing zones within the borders of the Union.
2. This Regulation shall not apply to balancing zones in Member States that hold a derogation on the basis of Article 49 of Directive 2009/73/EC.
3. This Regulation shall not apply to reconciliation that would be necessary between the allocations and actual consumption subsequently derived from final customer meter readings when obtained.
4. This Regulation shall not apply in emergency situations where the transmission system operator shall implement specific measures defined under the applicable national rules and on the basis of Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply<sup>(4)</sup>, as appropriate.
5. The respective rights and obligations originating from this Regulation with regard to network users shall only apply to those network users which have concluded a legally binding agreement, being a transport contract or another contract, which enables them to submit trade notifications in accordance with Article 5.

##### Article 3

##### Definitions

For the purposes of this Regulation, the definitions in Article 2 of Regulation (EC) No 715/2009, Article 3 Commission Regulation (EU) No 984/2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) No 715/2009 of the European Parliament and of the Council<sup>(5)</sup> as well as Article 2 of Directive 2009/73/EC shall apply. In addition, the following definitions shall apply:

- (1) 'balancing zone' means an entry-exit system to which a specific balancing regime is applicable and which may include distribution systems or part of them;
- (2) 'balancing action' means an action undertaken by the transmission system operator to change the gas flows onto or off the transmission network, excluding those actions related to gas unaccounted for as off-taken from the system and gas used by the transmission system operator for the operation of the system;

<sup>(4)</sup> OJ L 295, 12.11.2010, p. 1.

<sup>(5)</sup> OJ L 273, 15.10.2013, p. 5.

- (3) 'neutrality charge for balancing' means a charge amounting to the difference between the amounts received or receivable and the amounts paid or payable by the transmission system operator due to performance of its balancing activities which is payable to or recoverable from the relevant network users;
- (4) 'trading platform' means an electronic platform provided and operated by a trading platform operator by means of which trading participants may post and accept, including the right to revise and withdraw, bids and offers for gas required to meet short term fluctuations in gas demand or supply, in accordance with the terms and conditions applicable on the trading platform and at which the transmission system operator trades for the purpose of undertaking balancing actions;
- (5) 'trading participant' means a network user or a transmission system operator holding a contract with the trading platform operator and satisfying the conditions necessary to transact on the trading platform.
- (6) 'balancing platform' means a trading platform where a transmission system operator is a trading participant to all trades;
- (7) 'balancing service' means a service provided to a transmission system operator via a contract for gas required to meet short term fluctuations in gas demand or supply, which is not a short term standardised product;
- (8) 'confirmed quantity' means the quantity of gas confirmed by a transmission system operator to be scheduled or rescheduled to flow on gas day D;
- (9) 'daily imbalance charge' means the amount of money a network user pays or receives in respect of a daily imbalance quantity;
- (10) 'daily metered' means that the gas quantity is measured and collected once per gas day;
- (11) 'intraday metered' means that the gas quantity is measured and collected a minimum of two times within the gas day;
- (12) 'non daily metered' means that the gas quantity is measured and collected less frequently than once per gas day;
- (13) 'balancing portfolio' means a grouping of a network user's inputs and off-takes;
- (14) 'notification quantity' means the quantity of gas transferred between a transmission system operator and a network user or network users or balancing portfolios, as appropriate;
- (15) 'allocation' means the quantity of gas attributed to a network user by a transmission system operator as an input or an off-take expressed in kWh for the purpose of determining the daily imbalance quantity;
- (16) 're-nomination cycle' means the process carried out by the transmission system operator in order to provide a network user with the message regarding the confirmed quantities following the receipt of a re-nomination;
- (17) 'within day charge' means a charge levied or a payment made by a transmission system operator on or to a network user as a result of a within day obligation;
- (18) 'within day obligation' means a set of rules regarding network users' inputs and off-takes within the gas day imposed by a transmission system operator on network users;
- (19) 'base case' means the model for information provision where the information on non daily metered off-takes consists of a day ahead and within day forecasts;
- (20) 'variant 1' means the model for information provision where the information on non daily metered and daily metered off-takes is based on apportionment of measured flows during the gas day;
- (21) 'variant 2' means the model for information provision where the information on non daily metered off-takes is a day ahead forecast

## CHAPTER II

### BALANCING SYSTEM

#### Article 4

#### General principles

1. The network users shall be responsible to balance their balancing portfolios in order to minimise the need for transmission system operators to undertake balancing actions set out under this Regulation.
2. Balancing rules established in accordance with this Regulation shall reflect genuine system needs, taking into account the resources available to transmission system operators and shall provide incentives for network users to balance their balancing portfolios efficiently.
3. Network users shall have the possibility to enter into a legally binding agreement with a transmission system operator which enables them to submit trade notifications irrespective of whether they have contracted transport capacity or not.

4. In a balancing zone where more than one transmission system operator is active, this Regulation shall apply to all the transmission system operators within that balancing zone. In case the responsibility of keeping their transmission networks in balance has been transferred to an entity, this Regulation shall apply to that entity to the extent defined under the applicable national rules.

#### Article 5

##### Trade notifications and allocations

1. Gas transfer between two balancing portfolios within one balancing zone shall be made through disposing and acquiring trade notifications submitted to the transmission system operator in respect of the gas day.

2. The timing for submitting, withdrawing and amending trade notifications shall be defined by the transmission system operator in the transport contract or other legally binding agreement with network users taking into account the time, if any, for processing the trade notifications. The transmission system operator shall enable the network users to submit trade notifications close to the time when the trade notification becomes effective.

3. The transmission system operator shall minimise the time for processing trade notifications. The time for processing shall not take more than thirty minutes except where the time when the trade notification becomes effective permits to extend the time for processing up to two hours.

4. A trade notification shall provide at least the following information:

- (a) the gas day for which gas is transferred;
- (b) the identification of the balancing portfolios concerned;
- (c) whether it is a disposing or an acquiring trade notification;
- (d) the notification quantity expressed in kWh/d for daily notification quantity or in kWh/h for hourly notification quantity, as required by the transmission system operator.

5. If the transmission system operator receives a corresponding set of a disposing and an acquiring trade notifications and the notification quantities are equal then the transmission system operator shall allocate the notification quantity to the balancing portfolios concerned:

- (a) as an off-take to the balancing portfolio of the network user making the disposing trade notification; and

- (b) as an input to the balancing portfolio of the network user making the acquiring trade notification.

6. Where the notification quantities referred to in paragraph 5 are not equal, the transmission system operator shall either allocate the lower notification quantity specified in the relevant trade notification or shall reject both trade notifications. The applicable rule shall be defined by the transmission system operator in the applicable transport contract or other legally binding agreement.

7. A service provider shall not be prevented to act on behalf of a network user for the purpose of paragraph 5, subject to the prior approval of the transmission system operator.

8. A network user may make a trade notification on a gas day irrespective of whether any nomination was made by this network user for that gas day.

9. Paragraphs 1 to 8 shall apply, *mutatis mutandis*, to the transmission system operators trading in accordance with Article 6(3)(a).

#### CHAPTER III

##### OPERATIONAL BALANCING

#### Article 6

##### General provisions

1. The transmission system operator shall undertake balancing actions in order to:

- (a) maintain the transmission network within its operational limits;
- (b) achieve an end of day linepack position in the transmission network different from the one anticipated on the basis of expected inputs and off-takes for that gas day, consistent with economic and efficient operation of the transmission network.

2. While undertaking balancing actions the transmission system operator shall consider at least the following in respect of the balancing zone:

- (a) the transmission system operator's own estimates of demand of gas over and within the gas day for which the balancing action(s) is (are) considered;
- (b) nomination and allocation information and measured gas flows;
- (c) gas pressures throughout the transmission network(s).

3. The transmission system operator shall undertake balancing actions through:

- (a) purchase and sale of short term standardised products on a trading platform; and/or
- (b) the use of balancing services.

4. While undertaking balancing actions the transmission system operator shall take into account the following principles:

- (a) the balancing actions shall be undertaken on a non-discriminatory basis;
- (b) the balancing actions shall have regard to any obligation upon transmission system operators to operate an economic and efficient transmission network.

#### Article 7

##### Short term standardised products

1. The short term standardised products shall be traded for delivery on a within day or day ahead basis seven days a week in accordance with the applicable rules of the trading platform as defined between the trading platform operator and the transmission system operator.

2. The originating trading participant is the trading participant that posts a bid or an offer to trade on the trading platform and the accepting trading participant is the trading participant that accepts it.

3. Where a title product is traded:

- (a) one trading participant makes an acquiring trade notification and the other makes a disposing trade notification;
- (b) both trade notifications shall specify the gas quantity transferred from the trading participant who makes a disposing trade notification to the trading participant who makes an acquiring trade notification;
- (c) where an hourly notification quantity is used, it shall be applied flat to all the remaining hours of the gas day from a specified start time and shall be equal to zero for all the hours before this start time.

4. Where a locational product is traded:

- (a) the transmission system operator shall determine the relevant entry and exit points or groups thereof that can be used;
- (b) all the conditions specified in paragraph 3 shall be fulfilled;
- (c) the originating trading participant shall modify the quantity of gas to be delivered to or off-taken from the transmission network at the specified entry or exit point by an amount

equal to the notification quantity and provide evidence to the transmission system operator that the quantity was modified accordingly;

5. Where a temporal product is traded:

- (a) the conditions specified in paragraph 3(a) and (b) shall be fulfilled;
- (b) an hourly notification quantity shall be applied to the hours of the gas day from a specified start time up to a specified end time and shall be equal to zero for all the hours before the start time and zero for all the hours after the end time.

6. Where a temporal locational product is traded, the conditions specified in paragraph 4(a), and (c) and paragraph 5 shall be fulfilled.

7. When establishing the short term standardised products, the transmission system operators from adjacent balancing zones shall cooperate in order to determine the relevant products. Each transmission system operator shall inform the relevant trading platform operators of the result of such cooperation without undue delay.

#### Article 8

##### Balancing services

1. The transmission system operator is entitled to procure balancing services for those situations in which short term standardised products will not or are not likely to provide the response necessary to keep the transmission network within its operational limits or in the absence of liquidity of trade in short term standardised products.

2. For the purpose of undertaking balancing actions through the use of balancing services, the transmission system operator when procuring these balancing services shall consider at least the following:

- (a) how balancing services will keep the transmission network within its operational limits;
- (b) the response time of the balancing services compared to the response times of any available short term standardised products;
- (c) the estimated cost of the procurement and use of balancing services compared to the estimated cost of use of any available short term standardised products;
- (d) the area at which the gas needs to be delivered;
- (e) the transmission system operator's gas quality requirements;
- (f) to what extent the procurement and use of balancing services may affect the liquidity of the short term wholesale gas market.

3. Balancing services shall be procured in a market-based manner, through a transparent and non-discriminatory public tender procedure in accordance with the applicable national rules, in particular:

(a) prior to any commitment to contract for a balancing service, the transmission system operator shall publish a non-restrictive call for tender indicating the purpose, scope and related instructions to tenderers, to enable them to participate in the tender process;

(b) the results shall be published without prejudice to the protection of commercially sensitive information and individual results shall be disclosed to each tenderer.

4. Under specific circumstances a transparent and non-discriminatory procedure other than a public tender may be approved by the national regulatory authority.

5. Unless a decision by the national regulatory authority allows for a longer duration of a balancing service, the duration of a balancing service shall not exceed one year and the starting date shall occur within a twelve month period from the related binding commitment of the contracting parties.

6. The transmission system operator shall review the use of its balancing services annually in order to assess whether available short term standardised products would better meet the transmission system operator's operational requirements and whether the use of balancing services could be reduced for the next year.

7. The transmission system operator shall publish annually the information with regard to the balancing services procured and the related costs incurred.

#### Article 9

##### Merit order

1. Subject to the principles set out in Article 6(4), when deciding upon the appropriate balancing actions, the transmission system operator, shall:

(a) prioritise the use of title products where and to the extent appropriate over any other available short term standardised products.

(b) use the other short term standardised products when the following circumstances are met:

(1) locational products when, in order to keep the transmission network within its operational limits, gas flow changes are needed at specific entry and/or exit points and/or to start from a specific period of time within the gas day.

(2) temporal products when, in order to keep the transmission network within its operational limits, gas flow changes are needed within a specific period of time within the gas day. The transmission system operator shall only use a temporal product when it would be more economic and efficient than the purchase and sale of a combination of title products or locational products.

(3) temporal locational products when, in order to keep the transmission network within its operational limits, gas flow changes are needed at specific entry and/or exit points and within a specific period of time within the gas day. The transmission system operator shall only use a temporal locational product when it would be more economic and efficient than the purchase and sale of a combination of locational products.

(c) only use balancing services where short term standardised products will not or are not likely to provide, upon assessment of the transmission system operator concerned, the response necessary to keep the transmission network within its operational limits.

The transmission system operator shall take into account cost-efficiency within the respective levels of the merit order referred to under (a)-(c).

2. While trading in short term standardised products, the transmission system operator shall prioritise the use of within day products over day ahead products where and to the extent appropriate.

3. The transmission system operator may seek approval from the national regulatory authority to trade within an adjacent balancing zone, and have the gas transported to and from this balancing zone, as an alternative to trading title products and/or locational products in its own balancing zone(s). When deciding on granting the approval, the national regulatory authority may consider alternative solutions to improve the functioning of the domestic market. The applicable terms and conditions shall be reconsidered on an annual basis by the transmission system operator and the national regulatory authority. The use of this balancing action shall not limit the access to and use by the network users of capacity at the interconnection point concerned.

4. The transmission system operator shall publish on a yearly basis the information with regard to the costs, frequency and quantity of the balancing actions undertaken in accordance with each of the requirements set out in paragraph 1 and of the balancing actions undertaken in accordance with paragraph 3.

*Article 10***Trading platform**

1. For the purpose of procurement of short term standardised products, the transmission system operator shall trade on a trading platform that meets all of the following criteria:

- (a) provides sufficient support throughout the gas day to both the network users to trade in and the transmission system operators to undertake appropriate balancing actions through trade in the relevant short term standardised products;
- (b) provides transparent and non-discriminatory access;
- (c) provides services on an equal treatment basis;
- (d) ensures anonymous trading at least until a transaction is concluded;
- (e) provides a detailed overview of the current bids and offers to all trading participants;
- (f) ensures that all trades are duly notified to the transmission system operator.

2. The transmission system operator shall endeavour to ensure that the criteria set out in paragraph 1 are met on at least one trading platform. Where the transmission system operator has been unable to ensure that these criteria are met on at least one trading platform it shall take the necessary measures towards the establishment of a balancing platform or a joint balancing platform as set out in Article 47.

3. After each trade is concluded, the trading platform operator shall make available to the trading participants sufficient details to confirm the trade.

4. The trading participant shall be responsible for submitting trade notification to the transmission system operator as defined in Article 5 unless the responsibility is assigned to the trading platform operator or a third party in accordance with the applicable rules of the trading platform.

5. The trading platform operator shall:

- (a) publish the evolution of the marginal buy price and the marginal sell price after each trade without undue delay; or
- (b) provide the transmission system operator with the information where the transmission system operator elects to publish the evolution of the marginal buy price and the marginal sell price. The transmission system operator shall publish this information without undue delay.

Where there is more than one trading platform operator in the same balancing zone point (b) shall apply.

6. The trading platform operator shall only allow network users to trade on its trading platform if they are entitled to make trade notifications.

7. The transmission system operator shall without undue delay inform the trading platform operator of network user's losing the right to make trade notifications pursuant to the applicable contractual arrangement in force which shall result in the suspension of the network user's right to trade on the trading platform, without prejudice to the other remedies that could be available in such case to the trading platform operator under the applicable rules of the trading platform.

*Article 11***Incentives**

1. With the view to foster the liquidity of the short term wholesale gas market, the national regulatory authority can incentivise the transmission system operator to undertake balancing actions efficiently or to maximise the undertaking of balancing actions through the trade in short term standardised products.

2. The transmission system operator may submit for approval to the national regulatory authority an incentive mechanism that shall be consistent with the general principles set out in this Regulation.

3. Prior to submitting the proposal referred to in paragraph 2, the transmission system operator may consult stakeholders upon the transmission system operator's own initiative or upon the national regulatory authority's request.

4. The incentive mechanism shall:

- (a) be based on the transmission system operator's performance via capped payments to the transmission system operator for outperformance and by the transmission system operator for underperformance, that are measured against predetermined performance targets which may include, inter alia, costs targets;
- (b) take into account the means available to the transmission system operator to control the performance;
- (c) ensure that its application accurately reflects the allocation of responsibilities between the parties involved;
- (d) be adapted to the state of development of the relevant gas market where it is to be implemented;
- (e) be subject to a regular review by the national regulatory authority in close cooperation with the transmission system operator to evaluate where and to what extent changes thereto may be needed.

## CHAPTER IV

## NOMINATIONS

## Article 12

**General provisions**

1. The gas quantity to be specified in the nomination and re-nomination shall be expressed either in kWh/d for daily nominations and re-nominations or in kWh/h for hourly nominations and re-nominations.
2. The transmission system operator may require network users to provide further information on nominations and re-nominations in addition to the requirements set out in this Regulation, including, inter alia, an accurate, updated and sufficiently detailed forecast of the expected inputs and off-takes, this in accordance with the specific need(s) of the transmission system operator.
3. Articles 13 to 16 regarding nominations and re-nominations for unbundled capacity products shall apply *mutatis mutandis* to single nominations and re-nominations for bundled capacity products. Transmission system operators shall cooperate for the purpose of implementing nomination and re-nomination rules for bundled capacity products at interconnection points.
4. Article 15(3) and Article 17(1) shall be without prejudice to the rule for minimum interruption lead times referred to in Article 22 of Commission Regulation (EU) No 984/2013 of 14 October 2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) No 715/2009 <sup>(1)</sup>.

## Article 13

**Information regarding nominations and re-nominations at interconnection points**

Nominations and re-nominations provided by network users to the transmission system operators with regard to interconnection points shall contain at least the following information:

- (1) interconnection point identification;
- (2) direction of the gas flow;
- (3) network user identification or, if applicable, its balancing portfolio identification;
- (4) network user's counterparty identification or, if applicable, its balancing portfolio identification;
- (5) start and end time of the gas flow for which the nomination or re-nomination is submitted;
- (6) gas day D;

<sup>(1)</sup> OJ L 273, 15.10.2013, p. 5.

- (7) the gas quantity requested to be transported.

## Article 14

**Nomination procedure at interconnection points**

1. A network user shall be entitled to submit to the transmission system operator a nomination for gas day D no later than the nomination deadline on gas day D-1. The nomination deadline shall be 13:00 UTC (winter time) or 12:00 UTC (daylight saving) on gas day D-1.
2. The last nomination received by the transmission system operator from a network user before the nomination deadline shall be taken into account by the transmission system operator.
3. The transmission system operator shall send the message regarding the confirmed quantities to the respective network users no later than the confirmation deadline on gas day D-1. The confirmation deadline shall be 15:00 UTC (winter time) or 14:00 UTC (daylight saving) on gas day D-1.
4. The transmission system operators at either side of the interconnection point may agree to offer a pre-nomination cycle within which:
  - (a) network users are not obliged to submit nominations;
  - (b) network users may submit to transmission system operators the nominations for gas day D no later than 12:00 UTC (winter time) or 11:00 UTC (daylight saving) on gas day D-1;
  - (c) the transmission system operator shall send the message regarding the processed quantities to the respective network users no later than 12:30 UTC (winter time) or 11:30 UTC (daylight saving) on gas day D-1.

5. In the absence of a valid nomination sent by the network user before the nomination deadline, the respective transmission system operators shall apply the default nomination rule agreed between these transmission system operators. The default nomination rule in force at an interconnection point shall be made available to the network users of the transmission system operators.

## Article 15

**Re-nomination procedure at interconnection points**

1. A network user shall be entitled to submit re-nominations within the re-nomination period which starts immediately after the confirmation deadline and ends no earlier than three hours before the end of gas day D. The transmission system operator shall start a re-nomination cycle at the start of every hour within the re-nomination period.

2. The last re-nomination received by the transmission system operator from a network user before the re-nomination cycle starts shall be taken into account by the transmission system operator in the re-nomination cycle.

3. The transmission system operator shall send the message regarding the confirmed quantities to the respective network users within two hours from the start of each re-nomination cycle. The start time of the effective gas flow change shall be two hours from the start of the re-nomination cycle, unless:

- (a) a later time is requested by the network user; or
- (b) an earlier time is allowed by the transmission system operator.

4. It shall be assumed that any change to the gas flow occurs at the start of each hour.

#### Article 16

##### Specific provisions at interconnection points

1. Where daily and hourly nominations and re-nominations co-exist at an interconnection point, the transmission system operators or national regulatory authorities (as appropriate) may consult the stakeholders for the purpose of identifying whether harmonised nominations and re-nominations should be submitted at both sides of this interconnection point. This consultation shall consider at least the following:

- (a) financial impact on transmission system operators and network users;
- (b) impact on cross-border trade;
- (c) impact on the daily balancing regime at the interconnection point(s).

2. Following this consultation, the proposed changes, if any, shall be approved by the national regulatory authorities. Once the proposed changes are approved the transmission system operators shall amend accordingly the existing interconnection agreements and the transport contracts or other legally binding agreements and publish those changes.

#### Article 17

##### Rejection of nominations and re-nominations or amendment of the requested gas quantity at interconnection points

1. The transmission system operator may reject:
- (a) a nomination or re-nomination no later than two hours after the nomination deadline or the beginning of the re-nomination cycle in the following cases:
    - (i) it does not comply with the requirements as to its content;

- (ii) it is submitted by an entity other than a network user;
  - (iii) the acceptance of the daily nomination or re-nomination would result in a negative implied nomination flow rate;
  - (iv) it exceeds the network user's allocated capacity;
- (b) a re-nomination no later than two hours after the beginning of the re-nomination cycle in the following additional cases:
  - (i) it exceeds the network user's allocated capacity for the remaining hours, unless this re-nomination is submitted in order to request interruptible capacity, where offered by the transmission system operator;
  - (ii) the acceptance of the hourly re-nomination would result in an expected gas flow change before the end of the re-nomination cycle.

2. The transmission system operator shall not reject a network user's nomination and re-nomination on the sole ground that this network user's intended inputs are not equal to its intended off-takes.

3. In case a re-nomination is rejected, the transmission system operator shall use the network user's last confirmed quantity, if any.

4. Without prejudice to the specific terms and conditions applicable to interruptible capacity and capacity subject to congestion management rules, the transmission system operator may in principle only amend the gas quantity requested under a nomination and re-nomination in exceptional events, and emergency situations when there is an evident danger to system security and stability. Transmission system operators shall notify to the national regulatory authority any such action taken.

#### Article 18

##### Nomination and re-nomination procedure at points other than interconnection points

1. The national regulatory authority shall, if not determined already, after consultation of the transmission system operator, determine at which points other than interconnection points nominations and re-nominations are required.

2. Where nominations and re-nominations are required at points other than interconnection points the following principles shall apply:

- (a) network users shall be entitled to submit re-nominations for the gas day;
- (b) the transmission system operator shall confirm or reject the submitted nominations and re-nominations considering the timelines referred to in Article 17.

## CHAPTER V

**DAILY IMBALANCE CHARGES***Article 19***General provisions**

1. Network users shall be bound to pay or be entitled to receive (as appropriate) daily imbalance charges in relation to their daily imbalance quantity for each gas day.

2. Daily imbalance charges shall be identified separately on the transmission system operator's invoices to network users.

3. The daily imbalance charge shall be cost reflective and shall take account of the prices associated with transmission system operator's balancing actions, if any, and of the small adjustment referred to in Article 22(6).

*Article 20***Daily imbalance charge calculation methodology**

1. The transmission system operator shall submit the daily imbalance charge calculation methodology to be applied in its balancing zone to the national regulatory authority for approval.

2. Once approved, the daily imbalance charge calculation methodology shall be published on the relevant website. Any update thereof shall be published in a timely manner.

3. The daily imbalance charge calculation methodology shall define:

(a) the calculation of the daily imbalance quantity referred to in Article 21;

(b) the derivation of the applicable price referred to in Article 22; and

(c) any other necessary parameter.

*Article 21***Daily imbalance quantity calculation**

1. The transmission system operator shall calculate a daily imbalance quantity for each network user's balancing portfolio for each gas day in accordance with the following formula:

daily imbalance quantity = inputs – off-takes

2. The daily imbalance quantity calculation shall be adapted accordingly where:

(a) a linepack flexibility service is offered; and/or

(b) any arrangement is in place whereby network users provide gas, including gas in kind, to cover:

(i) gas unaccounted for as off taken from the system, such as losses, metering errors; and/or

(ii) gas used by the transmission system operator for the operation of the system, such as fuel gas

3. Where the sum of a network user's inputs for the gas day is equal to the sum of its off-takes for this gas day, a network user is deemed balanced for this gas day.

4. Where the sum of a network user's inputs for the gas day is not equal to the sum of its off-takes for this gas day, a network user is deemed imbalanced for this gas day and daily imbalance charges shall be applied in accordance with Article 23.

5. The transmission system operator shall provide a network user with its initial and its final daily imbalance quantities in accordance with Article 37.

6. The daily imbalance charge shall be based on the final daily imbalance quantity.

*Article 22***Applicable price**

1. For the purpose of daily imbalance charge calculation as provided in Article 23 the applicable price shall be determined as follows:

(a) marginal sell price where the daily imbalance quantity is positive (i.e. the network user's inputs for that gas day exceed its off-takes for that gas day); or

(b) marginal buy price where the daily imbalance quantity is negative (i.e. the network user's off-takes for that gas day exceed its inputs for that gas day).

2. A marginal sell price and a marginal buy price shall be calculated for each gas day pursuant to the following:

(a) a marginal sell price is the lower of:

(i) the lowest price of any sales of title products in which the transmission system operator is involved in respect of the gas day; or

(ii) the weighted average price of gas in respect of that gas day, minus a small adjustment.

(b) a marginal buy price is the higher of:

- (i) the highest price of any purchases of title products in which the transmission system operator is involved in respect of the gas day; or
- (ii) the weighted average price of gas in respect of that gas day, plus a small adjustment.

3. For the purpose of determining the marginal sell price, the marginal buy price and the weighted average price, the related trades shall be made on trading platforms that are pre-identified by the transmission system operator and approved by the national regulatory authority. The weighted average price shall be the energy weighted average price of trades in title products carried out at the virtual trading point in respect of a gas day.

4. A default rule shall be defined in case paragraph 2(a) and (b) do not allow for the derivation of a marginal sell price and/or a marginal buy price.

5. Subject to the approval of the national regulatory authority, the price of locational products may be taken into account for the purpose of determining the marginal sell price, the marginal buy price and the weighted average price, where proposed by the transmission system operator with corresponding consideration of the extent of the transmission system operator's use of locational products.

6. The small adjustment shall:

- (a) incentivise network users to balance their inputs and off-takes;
- (b) be designed and applied in a non-discriminatory manner in order to:
  - (i) not deter market entry;
  - (ii) not impede the development of competitive markets;
- (c) not have a detrimental impact on cross-border trade;
- (d) not result in network users' excessive financial exposure to daily imbalance charges.

7. The value of the small adjustment may differ for determining the marginal buy price and the marginal sell price. The value of the small adjustment shall not exceed ten percent of the weighted average price unless the transmission system operator concerned can justify otherwise to the national regulatory authority and have it approved pursuant to Article 20.

#### Article 23

##### Daily imbalance charge

1. To calculate daily imbalance charges for each network user, the transmission system operator shall multiply a

network user's daily imbalance quantity by the applicable price determined in accordance with Article 22.

2. Daily imbalance charges shall be applied as follows:

- (a) if a network user's daily imbalance quantity for the gas day is positive then this network user shall be deemed to have sold gas to the transmission system operator equivalent to the daily imbalance quantity and therefore shall be entitled to receive a credit in respect of daily imbalance charges from the transmission system operator; and
- (b) if a network user's daily imbalance quantity for the gas day is negative then this network user shall be deemed to have purchased gas from the transmission system operator equivalent to the daily imbalance quantity and therefore shall be obliged to pay daily imbalance charges to the transmission system operator.

#### CHAPTER VI

##### WITHIN DAY OBLIGATIONS

#### Article 24

##### General provisions

1. A transmission system operator is only entitled to apply within day obligations in order to incentivise network users to manage their within day position in view of ensuring the system integrity of its transmission network and minimising its need to undertake balancing actions.
2. Where the transmission system operator is required to provide information to network users to enable them to manage their exposures associated with within day positions, it shall be provided to them regularly. Where applicable, this information shall be provided upon a request submitted by each network user once.

#### Article 25

##### Types of within day obligations

There are three types of within day obligations, each incentivising the network user for a specific objective as set out in this Article:

(1) System-wide within day obligation

shall be designed to provide incentives for network users to keep the transmission network within its operational limits and shall set out the following:

- (a) the operational limits of the transmission network within which it has to remain;
- (b) the actions the network users can undertake to keep the transmission network within the operational limits;

- (c) the consequential balancing actions of the transmission system operator when the operational limits of the transmission network are approached or reached;
- (d) the attribution of costs and/or revenues to the network users and/or consequences on the within day position of these network users resulting from balancing actions undertaken by the transmission system operator;
- (e) the related charge which shall be based on the individual within day position of the network user.

## (2) Balancing portfolio within day obligation

shall be designed to incentivise network users to keep their individual position during the gas day within a pre-defined range and shall set out the following:

- (a) for each balancing portfolio the range within which this balancing portfolio has to stay;
- (b) how the range referred to above is determined;
- (c) the consequences for network users not staying within the defined range and, where appropriate, details of how any corresponding charge is derived;
- (d) the related charge which shall be based on the individual within day position of the network user.

## (3) Entry-exit point within day obligation

shall be designed to provide incentives for network users to limit the gas flow or the gas flow variation under specific conditions at specific entry-exit points and shall set out the following:

- (a) the limits in the gas flow and/or the gas flow variation;
- (b) the entry and/or exit point or groups of entry and/or exit points to which such limits apply;
- (c) the conditions under which such limits shall apply;
- (d) the consequences of not complying with such limits.

This obligation is additional to any other agreements with final costumers containing, amongst other things, localised specific restrictions and obligations regarding the physical gas flow.

### Article 26

#### Requirements for within day obligations

1. The transmission system operator may propose to the national regulatory authority a within day obligation or an

amendment thereof. It may combine features of the different types described in Article 25 provided the proposal meets the criteria set out in paragraph 2. The transmission system operator's right of proposal is without prejudice to the right of the national regulatory authority to take a decision on its own initiative.

2. Any within day obligation shall meet the following criteria:

- (a) a within day obligation and related within day charge, if any, shall not pose any undue barriers on cross-border trade and new network users entering the relevant market;
- (b) a within day obligation shall only be applied where the network users are provided with adequate information before a potential within day charge is applied regarding their inputs and/or off-takes and have reasonable means to respond to manage their exposure;
- (c) the main costs to be incurred by the network users in relation to their balancing obligations shall relate to their position at the end of the gas day;
- (d) to the extent possible, within day charges shall be reflective of the costs of the transmission system operator for the undertaking of any associated balancing actions;
- (e) a within day obligation will not result in network users being financially settled to a position of zero during the gas day;
- (f) the benefits of introducing a within day obligation in terms of economic and efficient operation of the transmission network outweigh any potential negative impacts thereof, including on liquidity of trades at the virtual trading point.

3. The transmission system operator may propose different within day obligations for distinct categories of entry or exit points with the aim to provide better incentives for different categories of network users in order to avoid cross subsidies. The transmission system operator's right of proposal is without prejudice to the right of the national regulatory authority to take a decision on its own initiative.

4. The transmission system operator shall consult stakeholders, including the national regulatory authorities, the affected distribution system operators and transmission system operators in adjacent balancing zones, on any within day obligation it intends to introduce, including the methodology and assumptions used in arriving at the conclusion that it meets the criteria set out in paragraph 2.

5. Following the consultation process, the transmission system operator shall produce a recommendation document which shall include the finalised proposal and an analysis of:

- (a) the necessity of the within day obligation, taking into account the transmission network's characteristics and the flexibility available to the transmission system operator through purchase and sale of short term standardised products or use of balancing services in accordance with Chapter III;
- (b) the information available to enable network users to manage in a timely manner their within day positions;
- (c) the expected financial impact on network users;
- (d) the effect on new network users entering the relevant market, including any undue negative impact thereon;
- (e) the effect on cross-border trade, including the potential impact on balancing in adjacent balancing zones;
- (f) the impact on the short term wholesale gas market, including the liquidity thereof;
- (g) the non-discriminatory nature of the within day obligation.

6. The transmission system operator shall submit the recommendation document to the national regulatory authority for the approval of the proposal in accordance with the procedure set out in Article 27. In parallel, the transmission system operator shall publish this recommendation document, subject to any confidentiality obligations that it may be bound by, and send it to ENTSOG for information.

#### Article 27

##### National regulatory authority decision making

1. The national regulatory authority shall take and publish a motivated decision within six months following the receipt of the complete recommendation document. In deciding whether to approve the proposed within day obligation, the national regulatory authority shall assess whether this within day obligation meets the criteria set out in Article 26(2).

2. Before taking the motivated decision the national regulatory authority shall consult with the national regulatory authorities of adjacent Member States and take account of their opinions. The adjacent national regulatory authority(-ies) may seek an opinion from the Agency in accordance with Article 7(4) of Regulation (EC) No 713/2009 on the decision referred to in paragraph 1.

#### Article 28

##### Existing within day obligations

Where the transmission system operator has within day obligation(s) at the date of entry into force of this Regulation,

within six months from such date this transmission system operator shall follow the process set out in Article 26(5) to (7) and shall submit the within day obligation(s) to the national regulatory authority for approval in accordance with Article 27 to continue its (their) use.

#### CHAPTER VII

##### NEUTRALITY ARRANGEMENTS

#### Article 29

##### Principles of neutrality

1. The transmission system operator shall not gain or lose by the payment and receipt of daily imbalance charges, within day charges, balancing actions charges and other charges related to its balancing activities, which shall be considered as all the activities undertaken by the transmission system operator to fulfil the obligations set out in this Regulation.

2. The transmission system operator shall pass to network users:

- (a) any costs and revenues arising from daily imbalance charges and within day charges;
- (b) any costs and revenues arising from the balancing actions undertaken pursuant to Article 9, unless the national regulatory authority considers those costs and revenues as incurred inefficiently in accordance with the applicable national rules. This consideration shall be based upon an assessment which:
  - (i) shall demonstrate to what extent the transmission system operator could have reasonably mitigated the costs incurred when undertaking the balancing action; and
  - (ii) shall be made with regard to the information, the time and the tools available to the transmission system operator at the moment it decided to undertake the balancing action;
- (c) any other costs and revenues related to the balancing activities undertaken by the transmission system operator, unless the national regulatory authority considers these costs and revenues as incurred inefficiently in accordance with the applicable national rules.

3. Where an incentive to promote efficient undertaking of balancing actions is implemented, the aggregate financial loss shall be limited to the transmission system operator's inefficiently incurred costs and revenues.

4. Transmission system operators shall publish the relevant data regarding the aggregate charges referred to in paragraph 1 and the aggregate neutrality charges for balancing, at least at the same frequency as the respective charges are invoiced to network users, but no less than once per month.

5. Notwithstanding paragraphs 1 and 2, the transmission system operator in its balancing role may be subject to an incentive mechanism as referred to in Article 11.

#### *Article 30*

##### **Balancing neutrality cash flows**

1. The neutrality charge for balancing shall be paid by or to the network user concerned.

2. The national regulatory authority shall set or approve and publish the methodology for the calculation of the neutrality charges for balancing, including their apportionment amongst network users and credit risk management rules.

3. The neutrality charge for balancing shall be proportionate to the extent the network user makes use of the relevant entry or exit points concerned or the transmission network.

4. The neutrality charge for balancing shall be identified separately when invoiced to network users and the invoice shall be accompanied by sufficient supporting information defined in the methodology referred to in paragraph 2.

5. Where the information model variant 2 is applied and thus the neutrality charge for balancing may be based on forecasted costs and revenues, the transmission system operator's methodology for the calculation of neutrality charge for balancing shall provide rules for a separate neutrality charge for balancing in respect of non daily metered off-takes.

6. Where relevant, the transmission system operator's methodology for the calculation of the neutrality charge for balancing may provide rules for the division of the neutrality charge for balancing components and the subsequent apportionment of the corresponding sums amongst the network users in order to reduce cross subsidies.

#### *Article 31*

##### **Credit risk management arrangements**

1. The transmission system operator shall be entitled to take necessary measures and impose relevant contractual requirements, including financial security safeguards, on network users to mitigate their default in payment regarding any payment due for the charges referred to in Article 29 and 30.

2. The contractual requirements shall be on a transparent and equal treatment basis, proportionate to the purpose and defined in the methodology referred to in Article 30(2).

3. In case of a default attributable to a network user, the transmission system operator shall not be liable to bear any loss incurred provided the measures and requirements referred to paragraphs 1 and 2 were duly implemented and such loss shall be recovered in accordance with the methodology referred to in Article 30(2).

#### **CHAPTER VIII**

##### **INFORMATION PROVISION**

#### *Article 32*

##### **Information obligations of transmission system operators towards the network users**

The information provided to network users by the transmission system operator shall refer to:

- (1) the overall status of the transmission network in accordance with point 3.4(5) of Annex I to Regulation (EC) No 715/2009;
- (2) the transmission system operator's balancing actions referred to in Chapter III;
- (3) the network user's inputs and off-takes for the gas day referred to in Articles 33 to 42.

#### *Article 33*

##### **General provisions**

1. If not already provided by the transmission system operator according to point 3.1.2 of Annex I to Regulation (EC) No 715/2009, the transmission system operator shall provide all information referred to under Article 32 in the following manner:

- (a) on the transmission system operator's website or other system providing the information in electronic format;
- (b) accessible to network users free of charge;
- (c) in a user-friendly manner;
- (d) clear, quantifiable and easily accessible;
- (e) on a non-discriminatory basis;
- (f) in consistent units either in kWh or kWh/d and kWh/h;
- (g) in the official language(s) of the Member State and in English.

2. Where a measured quantity cannot be obtained from a meter, a replacement value may be used. This replacement value shall be used as an alternative reference without any further warranty from the transmission system operator.

3. Providing access to the information shall not be construed as giving any specific warranty other than the availability of this information in a defined format and via a defined tool such as a website or web address and the related access of the network users to this information under normal conditions of use. In no circumstances shall the transmission system operators be liable to provide any further warranty, in particular as to the IT system of the network users.

4. The national regulatory authority shall decide on one information model per balancing zone. For information provision on intraday metered inputs and off-takes, the same rules shall apply to all models.

5. For balancing zones where the information model variant 2 is sought to be applied after the entry into force of this Regulation, a prior market consultation shall be conducted by the transmission system operator or the national regulatory authority as relevant.

#### Article 34

##### **Intraday metered inputs and off-takes**

1. For intraday metered inputs to and off-takes from the balancing zone, where a network user's allocation equals its confirmed quantity, the transmission system operator shall not be obliged to provide information other than the confirmed quantity.

2. For intraday metered inputs to and off-takes from the balancing zone, where a network user's allocation does not equal its confirmed quantity, on gas day D the transmission system operator shall provide network users with a minimum of two updates of their measured flows for at least the aggregate intraday metered inputs and off-takes according to either of the following two options, as decided by the transmission system operator:

- (a) each update covers gas flows from the beginning of this gas day D; or
- (b) each update covers incremental gas flows after that reported in the previous update.

3. The first updates shall cover at least four hours of gas flow within gas day D. These updates shall be provided without undue delay and within four hours after the gas flow and no later than 17:00 UTC (winter time) or 16:00 UTC (daylight saving).

4. The time of the second update provision shall be defined upon approval by the national regulatory authority and published by the transmission system operator.

5. The transmission system operator may request the network users to indicate which of the information referred to in paragraph 2 they have access to. Based on the response

received, this transmission system operator shall provide the network user with the part of information it does not have access to, in accordance with paragraphs 2 to 4.

6. Where the transmission system operator is not responsible for apportioning the gas quantities between network users as part of the allocation process, as an exception to paragraph 2, it shall provide at least information on aggregate inputs and off-takes at a minimum of two times per gas day D on that gas day D.

#### Article 35

##### **Daily metered off-takes**

1. Where the information model variant 1 is applied, on gas day D the transmission system operator shall provide network users with a minimum of two updates of their apportionment of measured flows for at least the aggregate daily metered off-takes according to either of the following two options, as decided by the transmission system operator:

- (a) each update covers gas flows from the beginning of this gas day D; or
  - (b) each update covers incremental gas flows after that reported in the previous update.
2. Each update shall be provided within two hours from the end of the final hour of gas flows.

#### Article 36

##### **Non daily metered off-takes**

1. Where the information model base case is applied:

- (a) on gas day D-1, the transmission system operator shall provide network users with a forecast of their non daily metered off-takes for gas day D no later than 12:00 UTC (winter time) or 11:00 UTC (daylight saving);
- (b) on gas day D, the transmission system operator shall provide network users with a minimum of two updates of the forecast of their non daily metered off-takes.

2. The first update shall be provided no later than 13:00 UTC (winter time) or 12:00 UTC (daylight saving).

3. The time of the second update provision shall be defined upon approval by the national regulatory authority and published by the transmission system operator. This shall take into consideration the following:

- (a) access to short term standardised products on a trading platform;
- (b) accuracy of the forecast of a network users non daily off-takes as compared to the time of its provision;

(c) time when the re-nomination period ends, as provided in Article 15(1);

(d) time of the first update of the forecast for a network user's non daily metered off-takes.

4. Where the information model variant 1 is applied, on gas day D, the transmission system operator shall provide network users with a minimum of two updates of their apportionment of measured flows for at least the aggregate non daily metered off-takes as referred to in Article 35.

5. Where the information model variant 2 is applied, on gas day D-1, the transmission system operator shall provide network users with a forecast of their non daily metered off-takes for gas day D as referred to in paragraph 1(a).

#### Article 37

##### Inputs and off-takes after the gas day

1. No later than the end of gas day D+1, the transmission system operator shall provide each network user with an initial allocation for its inputs and off-takes on day D and an initial daily imbalance quantity.

(a) For the information models base case and variant 1, all gas delivered to the distribution system shall be allocated;

(b) for the information model variant 2, the non daily metered off-takes shall equal the forecast of a network user's non daily metered off-takes provided day ahead;

(c) for the information model variant 1, an initial allocation and an initial daily imbalance quantity shall be considered as the final allocation and the final daily imbalance quantity.

2. Where an interim measure referred to in Articles 47 to 51 applies, an initial allocation and an initial daily imbalance quantity can be provided within three gas days after gas day D in case it would not be technically or operationally feasible to comply with paragraph 1.

3. The transmission system operator shall provide each network user with the final allocation for its inputs and off-takes and the final daily imbalance quantity within a period of time defined under the applicable national rules.

#### Article 38

##### Cost benefit analysis

1. Within two years as from the entry into force of this Regulation, the transmission system operators shall assess the costs and benefits of:

(a) increasing the frequency of information provision to network users;

(b) reducing the related timelines of information provision;

(c) improving the accuracy of the information provided.

This cost benefit analysis shall specify the breakdown of costs and benefits among the categories of affected parties.

2. The transmission system operator shall consult the stakeholders on this assessment, in cooperation with the distribution system operators where they are affected.

3. On the basis of the consultation results, the national regulatory authority shall decide on any relevant changes of information provision.

#### Article 39

##### Information obligations of distribution system operator(s) and forecasting party(-ies) towards the transmission system operator

1. Each distribution system operator associated to a balancing zone and each forecasting party shall provide the transmission system operator in the respective balancing zone with the information necessary for information provision to the network users under this Regulation. This shall include inputs and off-takes on the distribution system regardless whether that system is a part of the balancing zone or not.

2. The information, its format and the procedure for its provision shall be defined in cooperation between the transmission system operator, the distribution system operator and the forecasting party, as relevant, to ensure the due provision of information by the transmission system operator to the network users under this Chapter and in particular the criteria set out in Article 33(1).

3. This information shall be provided to the transmission system operator in the same format as defined under the applicable national rules and shall be consistent with the format used by the transmission system operator to provide the information to the network users.

4. The national regulatory authority may ask the transmission system operator, the distribution system operator and the forecasting party, to propose an incentive mechanism regarding the provision of an accurate forecast for a network user's non daily metered off-takes which shall meet the criteria set out for the transmission system operator in Article 11(4).

5. The national regulatory authority shall designate the forecasting party in a balancing zone after prior consultation with the transmission system operators and distribution system operators concerned. The forecasting party shall be responsible for forecasting a network user's non daily metered off-takes and where appropriate its subsequent allocation. It may be a transmission system operator, distribution system operator or a third party.

#### Article 40

##### **Information obligations of the distribution system operator(s) towards the transmission system operator**

The distribution system operator shall provide the transmission system operator with information on the intraday and daily metered inputs and off-takes on the distribution system consistent with the information requirements set out in Articles 34(2) to (6), 35 and 37. This information shall be provided to the transmission system operator within the time sufficient for the transmission system operator to provide the information to network users.

#### Article 41

##### **Information obligations of the distribution system operator(s) towards the forecasting party**

1. Distribution system operators are responsible for providing the forecasting party with sufficient and updated information for the purpose of the methodology for the forecast of a network user's non daily metered off-takes application as set out in Article 42(2). This information shall be provided in a timely manner in accordance with the timelines defined by the forecasting party to be consistent with its needs.

2. Paragraph 1 shall apply, *mutatis mutandis*, to variant 1.

#### Article 42

##### **Information obligations of the forecasting party towards the transmission system operator**

1. The forecasting party shall provide the transmission system operator with forecasts of network user's non daily metered off-takes and subsequent allocations consistent with the information requirements set out in Articles 36 and 37. This information shall be provided to the transmission system operator within the time sufficient for the transmission system operator to provide the information to network users and for day ahead and within day forecasts of a network user's non daily metered off-takes no later than one hour before the deadlines referred to in Article 36(1)(a) and (b), unless a later time sufficient for the transmission system operator to provide this information to the network users is agreed by the transmission system operator and the forecasting party.

2. The methodology for the forecast of a network user's non daily metered off-takes shall be based on a statistical demand model, with each non daily metered off-take assigned with a load profile, consisting of a formula of the variation in gas

demand versus variables such as temperature, day of week, customer type and holiday seasons. The methodology shall be subject to consultation before its adoption.

3. A report on the accuracy of the forecast of a network user's non daily metered off-takes shall be published by the forecasting party at least every two years.

4. Where relevant, transmission system operators shall provide the data regarding gas flows within the time sufficient for the forecasting party to comply with its obligations under this Article.

5. Paragraphs 2 to 4 shall, *mutatis mutandis*, apply to variant 1.

#### CHAPTER IX

##### **LINEPACK FLEXIBILITY SERVICE**

#### Article 43

##### **General provisions**

1. A transmission system operator may offer the provision of a linepack flexibility service to network users after the approval of the related terms and conditions by the national regulatory authority.

2. The terms and conditions applicable to a linepack flexibility service shall be consistent with the responsibility of a network user to balance its inputs and off-takes over the gas day.

3. The linepack flexibility service shall be limited to the level of linepack flexibility available in the transmission network and deemed not required for carrying out its function of transmission according to the concerned transmission system operator's evaluation.

4. Gas delivered to and off-taken from the transmission network by network users under this service shall be taken into account for the purpose of calculation of their daily imbalance quantity.

5. The neutrality mechanism set out in Chapter VII shall not apply to the linepack flexibility service unless otherwise decided by the national regulatory authority.

6. Network users shall notify the transmission system operator concerned of the use of the linepack flexibility service by submitting nominations and re-nominations.

7. The transmission system operator may refrain from requiring the network users to submit nominations and re-nominations referred to in paragraph 6, where the absence of such a notification does not undermine the development of the short term wholesale gas market and the transmission system operator has sufficient information to provide an accurate allocation of the use of a linepack flexibility service the following gas day.

*Article 44***Conditions for provision of linepack flexibility service**

1. Linepack flexibility service can only be provided once all the following criteria are met:
  - (a) the transmission system operator shall not need to enter into any contracts with any other infrastructure provider, such as storage system operator or LNG system operator, for the purpose of provision of a linepack flexibility service;
  - (b) the revenues generated by the transmission system operator from the provision of a linepack flexibility service shall at least be equal to the costs incurred or to be incurred in providing this service;
  - (c) the linepack flexibility service shall be offered on a transparent and non-discriminatory basis and can be offered using competitive mechanisms;
  - (d) the transmission system operator shall not charge, either directly or indirectly, a network user for any costs incurred by the provision of a linepack flexibility service, should this network user not contract for it; and
  - (e) the provision of a linepack flexibility service shall not have a detrimental impact on cross-border trade.
2. The transmission system operator shall prioritise the reduction of within day obligations over the provision of a linepack flexibility service.

## CHAPTER X

**INTERIM MEASURES***Article 45***Interim measures: general provisions**

1. In the absence of sufficient liquidity of the short term wholesale gas market, suitable interim measures referred to in Articles 47 to 50 shall be implemented by the transmission system operators. Balancing actions undertaken by the transmission system operator in case of interim measures shall foster the liquidity of the short term wholesale gas market to the extent possible.
2. The resort to an interim measure is without prejudice to the implementation of any other interim measure(s) as an alternative or additionally, provided that such measures aim at promoting competition and liquidity of the short term wholesale gas market and are consistent with the general principles set out in this Regulation.
3. The interim measures referred to in paragraph 1 and 2 shall be developed and implemented by each transmission system operator, in accordance with the report, referred to in

Article 46(1), approved by the national regulatory authority in accordance with the procedure set out in Article 46.

4. The report shall foresee the termination of the interim measures no later than five years as from the entry into force of this Regulation.

*Article 46***Interim measures: annual report**

1. Where the transmission system operator foresees implementing or continuing to implement interim measures, it shall prepare a report which shall specify:
  - (a) a description of the state of development and the liquidity of the short term wholesale gas market at the time of preparing the report, including, where available to the transmission system operator, inter alia:
    - (i) the number of transactions concluded at the virtual trading point and the number of transactions in general;
    - (ii) the bid/offer spreads and the volumes of bids and offers;
    - (iii) the number of participants having access to the short term wholesale gas market;
    - (iv) the number of participants having been active on the short term wholesale gas market during a given period of time;
  - (b) the interim measures to be applied
  - (c) the reasons for the application of the interim measures:
    - (i) an explanation why they are needed due to the state of development of the short term wholesale gas market referred to in point (b);
    - (ii) an assessment of how they will increase the liquidity of the short term wholesale gas market.
  - (d) an identification of the steps that will be taken to remove the interim measures, including the criteria for making these steps and an assessment of the related timing.

2. The transmission system operator shall consult stakeholders on the proposed report.

3. Following the consultation process, the transmission system operator shall submit the report to the national regulatory authority for the approval. The first report shall be submitted within six months as from the entry into force of this Regulation and the subsequent reports updating it, if necessary, shall be submitted annually.

4. The national regulatory authority shall take and publish a motivated decision within six months following the receipt of the complete report. Such a decision shall be notified, without delay, to the Agency and the Commission. In deciding whether to approve the report, the national regulatory authority shall assess its effect on balancing regimes' harmonisation, facilitation of market integration, ensuring non-discrimination, effective competition and the efficient functioning of the gas market.

5. The procedure as set out in Article 27(2) applies.

#### Article 47

##### **Balancing platform**

1. Where the short term wholesale gas market has or is anticipated to have insufficient liquidity or where temporal products and locational products required by the transmission system operator cannot reasonably be procured on this market, a balancing platform shall be established for the purpose of transmission system operator balancing.

2. The transmission system operators shall consider whether a joint balancing platform may be implemented for adjacent balancing zones in the framework of cooperation between the transmission system operators or where there is sufficient inter-connection capacity and such joint balancing platform is deemed efficient to be implemented. If a joint balancing platform is established, it shall be operated by the transmission system operators concerned.

3. In case the situation described under paragraph 1 has not fundamentally changed after five years the national regulatory authority may, without prejudice to Article 45(4) and after submitting the appropriate amendment of the report, decide to continue the operation of the balancing platform for another period of no more than five years.

#### Article 48

##### **Alternative to a balancing platform**

Where the transmission system operator can demonstrate that as a result of insufficient interconnection capacity between balancing zones a balancing platform cannot increase the liquidity of the short term wholesale gas market and cannot enable the transmission system operator to undertake efficient balancing actions, it may use an alternative, such as balancing services, subject to the approval by the national regulatory authority. Where such an alternative is used, the terms and conditions of the subsequent contractual arrangements as well as the applicable prices and duration shall be specified

#### Article 49

##### **Interim imbalance charge**

1. Where interim measures referred to in Article 45 are necessary, the price derivation may be calculated in accordance

with the report referred to in Article 46 which shall substitute the daily imbalance charge calculation methodology.

2. In that case, the price derivation may be based upon an administered price, a proxy for a market price or a price derived from balancing platform trades.

3. The proxy for a market price shall seek to satisfy the conditions provided for in Article 22(6). The design of this proxy shall consider the potential risk for market manipulation.

#### Article 50

##### **Tolerance**

1. Tolerances may only be applied in case network users do not have access:

- (a) to a short term wholesale gas market that has sufficient liquidity;
- (b) to gas required to meet short term fluctuations in gas demand or supply; or
- (c) to sufficient information regarding their inputs and off-takes.

2. Tolerances shall be applied:

- (a) with regard to network users' daily imbalance quantity;
- (b) on a transparent and non-discriminatory basis;
- (c) only to the extent necessary and for the minimum duration required.

3. The application of tolerances may reduce a network user's financial exposure to the marginal sell price or the marginal buy price in respect of a part of or the network user's entire daily imbalance quantity for the gas day.

4. The tolerance level shall be the maximum quantity of gas to be bought or sold by each network user at a weighted average price. If there is a remaining quantity of gas that constitutes each network user's daily imbalance quantity which exceeds the tolerance level, it shall be sold or bought at marginal sell price or marginal buy price.

5. The design of the tolerance level shall:

- (a) reflect the transmission network's flexibility and network user's needs;
- (b) reflect the level of risk to the network user in managing the balance of its inputs and off-takes;

- (c) not undermine the development of the short term wholesale gas market;
- (d) not result in an unduly excessive increase of the transmission system operator's balancing actions' costs.

6. The tolerance level shall be calculated on the basis of each network user's inputs and off-takes, excluding trades at the virtual trading point, for each gas day. The subcategories shall be defined under the applicable national rules.

7. The tolerance level applicable for a non daily metered off-take defined under the applicable national rules shall be based upon the difference between the relevant forecast of a network user's non daily metered off-takes and the allocation for non daily metered off-take.

8. The tolerance level may include a component calculated taking into account the application of the deviation of the forecast of a network user's non daily metered off-takes which is the amount by which the relevant forecast:

- (a) exceeds the allocation for non daily metered off-take in case the daily imbalance quantity is positive;
- (b) is less than the allocation for non daily metered off-take in case the daily imbalance quantity is negative.

## CHAPTER XI

### FINAL AND TRANSITIONAL PROVISIONS

#### Article 51

##### **Release of surplus transmission system operator's flexibility**

1. Where long term contracts for the procurement of flexibility in force at the date of entry into force of this Regulation provide the transmission system operator with a right to off-take or input specified volumes of gas, the transmission system operator shall aim to reduce these amounts of flexibility.

2. While determining the amount of surplus flexibility available for input or off-take under a long term contract in force, the transmission system operator shall take into account the use of the short term standardised products.

3. The surplus flexibility may be released either:

- (a) pursuant to the terms and conditions of the existing contract where it contains provisions permitting to reduce the gas quantity committed and/or to terminate the existing contract; or
- (b) as follows in the absence of such contractual rights:

- (i) the contract remains in force until its termination pursuant to the applicable terms and conditions;

- (ii) the contracting parties shall consider additional arrangements in order to release back to the market any surplus gas not required for balancing purposes to give access to the other network users to greater amounts of flexibility.

4. Where the contract in force provides for reducing the flexibility by amounts consistent with the surplus availability, the transmission system operator shall reduce such flexibility as soon as reasonably possible as from the entry into force of this Regulation or as soon as the existence of the surplus can be established.

5. The transmission system operator shall consult stakeholders on specific proposals to be implemented as interim measures for release of any surplus flexibility under a long term contract in force.

6. The transmission system operator shall publish information on its balancing actions undertaken pursuant to the long term contract in force.

7. The national regulatory authority may set targets for the proportion by which the long term contracts should be reduced in order to increase the liquidity of the short term wholesale gas market.

#### Article 52

##### **Transitional provisions**

1. The national regulatory authority may allow the transmission system operator, based on its justified request, to comply with the provisions of this Regulation within a twenty four-month period as from 1 October 2014, provided no interim measure referred to in Chapter X is implemented by the transmission system operator. In case the national regulatory authority makes use of this possibility, this Regulation shall not apply in the balancing zone of that transmission system operator to the extent and for the duration of the transitional period laid down in the decision of the national regulatory authority.

2. The national regulatory authority shall take and publish a motivated decision in accordance with paragraph 1 within three months following the receipt of such a request. Such a decision shall be notified, without delay, to the Agency and the Commission.

*Article 53***Entry into force**

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

Without prejudice to Articles 28, 33(5), 38(1), 45(4), 46(3), 51 and 52 this Regulation shall apply as from 1 October 2015.

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

Done at Brussels, 26 March 2014.

*For the Commission*

*The President*

José Manuel BARROSO

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## COMMISSION IMPLEMENTING REGULATION (EU) No 313/2014

of 26 March 2014

**approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications [Pecorino Sardo (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 <sup>(1)</sup>, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined Italy's application for the approval of amendments to the specification for the protected designation of origin 'Pecorino Sardo' registered under Commission Regulation (EC) No 1263/96 <sup>(2)</sup>, as amended by Regulation (EC) No 215/2011 <sup>(3)</sup>.
- (2) Since the amendments in question are not minor within the meaning of Article 53(2) of Regulation (EU) No

1151/2012, the Commission published the amendment application in the *Official Journal of the European Union* <sup>(4)</sup> as required by Article 50(2)(a) of that Regulation.

- (3) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the amendments to the specification should be approved,

HAS ADOPTED THIS REGULATION:

*Article 1*

The amendments to the specification published in the *Official Journal of the European Union* regarding the name contained in the Annex to this Regulation are hereby approved.

*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, 26 March 2014.

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

<sup>(1)</sup> OJ L 343, 14.12.2012, p. 1.

<sup>(2)</sup> OJ L 163, 2.7.1996, p. 19.

<sup>(3)</sup> OJ L 59, 4.3.2011, p. 15.

<sup>(4)</sup> OJ C 318, 1.11.2013, p. 8.

## ANNEX

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

**Class 1.3. Cheeses**

ITALY

Pecorino Sardo (PDO)

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**COMMISSION IMPLEMENTING REGULATION (EU) No 314/2014****of 26 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) <sup>(1)</sup>,

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

Whereas:

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

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

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

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

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

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

Done at Brussels, 26 March 2014.

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

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

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

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

## ANNEX

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

(EUR/100 kg)		
CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	IL	219,4
	MA	57,9
	TN	88,6
	TR	95,6
	ZZ	115,4
0707 00 05	MA	44,0
	TR	139,3
	ZZ	91,7
0709 93 10	MA	36,6
	TR	85,5
	ZZ	61,1
0805 10 20	EG	38,0
	IL	67,0
	MA	51,7
	TN	55,9
	TR	58,4
	ZZ	54,2
0805 50 10	MA	35,6
	TR	67,7
	ZZ	51,7
0808 10 80	AR	89,5
	BR	107,3
	CL	127,1
	CN	94,6
	MK	30,8
	US	164,6
	ZA	68,9
0808 30 90	ZZ	97,5
	AR	97,0
	CL	117,7
	CN	52,7
	TR	127,0
	ZA	92,6
	ZZ	97,4

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

# DECISIONS

## COUNCIL IMPLEMENTING DECISION

of 24 March 2014

**amending Implementing Decision 2013/463/EU on approving the macroeconomic adjustment programme for Cyprus**

(2014/169/EU)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Regulation (EU) No 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability <sup>(1)</sup>, and in particular Article 7(2) and (5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Regulation (EU) No 472/2013 applies to Member States already in receipt of financial assistance, including those from the European Stability Mechanism (ESM), at the time of its entry into force.
- (2) Regulation (EU) No 472/2013 sets the rules for the approval of macroeconomic adjustment programme for Member States in receipt of financial assistance, which rules need to be consistent with the provisions of the Treaty Establishing the ESM.
- (3) Upon a request of 25 June 2012 by Cyprus for financial assistance from the ESM, the Council decided on 25 April 2013 by Decision 2013/236/EU <sup>(2)</sup> that Cyprus was to rigorously implement a macroeconomic adjustment programme.
- (4) On 24 April 2013 the ESM Board of Governors decided to grant, in principle, stability support to Cyprus and approved the Memorandum of Understanding on Specific Economic Policy Conditionality (hereinafter referred to as the 'MoU') and its signing by the Commission on behalf of the ESM.
- (5) In accordance with Article 1(2) of Implementing Decision 2013/463/EU <sup>(3)</sup>, the Commission, in liaison

with the European Central Bank (ECB), and, where appropriate, with the International Monetary Fund (IMF), has conducted the third review to assess the progress with the implementation of the agreed measures as well as their effectiveness and economic and social impact.

- (6) As a result, Implementing Decision 2013/463/EU should be updated in the areas of financial sector reform, fiscal policy and structural reforms, in particular with regard to (i) the design of a communication strategy by a joint Central Bank of Cyprus (CBC) and Ministry of Finance task force on the roadmap for the relaxation of the capital controls and on the implementation of the banking sector strategy; (ii) the timely reporting of banks' estimates of the potential impact of the newly introduced and upcoming Union rules on capital requirements and non-performing loans (NPLs) on capital, profitability and coverage ratio; (iii) the establishment of a task force to assess the magnitude of registered but untitled land sales contracts, and to provide recommendations on this issue; (iv) the reform of corporate and personal insolvency procedures; (v) the review of the Civil Procedure Code and Court Rules to ensure a smooth and effective functioning of the revised foreclosure and insolvency frameworks; (vi) a revision of the primary deficit target for 2014 to 1,8 % of GDP; (vii) the implementation of a first stage of the National Health System (NHS), having first defined and adopted a full roadmap to NHS; (viii) the revision of policies on pricing and reimbursement of medical goods and services, including those related to pharmaceutical expenditure; (ix) the establishment of a Privatisation Unit; (x) the presentation of an action plan for addressing the shortcoming identified in Phase 2 of the peer review by the Organisation for Economic Cooperation and Development (OECD) Global Forum on Transparency and Exchange of Information for Tax Purposes; (xi) the development of a growth strategy based on Cyprus' competitive advantages to help the Cypriot authorities to kick-starting the economy. The implementation of comprehensive and ambitious reforms in financial, fiscal and structural areas should safeguard the medium-term sustainability of the Cypriot public debt.
- (7) Throughout the implementation of Cyprus' comprehensive policy package, the Commission should provide additional policy advice and technical assistance in

<sup>(1)</sup> OJ L 140, 27.5.2013, p. 1.

<sup>(2)</sup> Council Decision 2013/236/EU of 25 April 2013 addressed to Cyprus on specific measures to restore financial stability and sustainable growth (OJ L 141, 28.5.2013, p. 32).

<sup>(3)</sup> Council Implementing Decision 2013/463/EU of 13 September 2013 on approving the macroeconomic adjustment programme for Cyprus and repealing Decision 2013/236/EU (OJ L 250, 20.9.2013, p. 40).

specific areas. A Member State subject to a macro-economic adjustment programme experiencing insufficient administrative capacity is to seek technical assistance from the Commission, which may constitute, for that purpose, groups of experts.

- (8) The Cypriot authorities should seek the view, in accordance with current national rules and practices, of social partners and civil society organisations in the preparation, implementation, monitoring and evaluation of the macroeconomic adjustment programme,

HAS ADOPTED THIS DECISION:

#### Article 1

Article 2 of Implementing Decision 2013/463/EU is amended as follows:

- (1) Paragraph 5 is replaced by the following:

‘5. With a view to restoring the soundness of its financial sector, Cyprus shall continue to implement the restructuring of the banking and cooperative credit institution sectors; continue to strengthen the supervision and regulation; undertake a reform of the debt restructuring framework; and gradually lift capital restrictions in line with its roadmap, while safeguarding financial stability. The programme shall provide for the following measures and outcomes:

- (a) ensuring that the liquidity situation of the banking sector shall be closely monitored. Temporary restrictions on the free movement of capital (inter alia, limits on cash withdrawals, payments and transfers) shall be closely monitored. The goal is that controls shall remain in place only for as long as is strictly necessary to mitigate serious risks for the stability of the financial system. The implementation of the roadmap for the gradual relaxation of restrictive measures shall continue, also taking into account the credit institutions’ liquidity situation. A well-targeted communication strategy shall be designed aiming to communicate regularly information regarding that roadmap and the progress made in the implementation of banking sector strategy.

The funding and capital plans of domestic banks relying on central bank funding or receiving State aid shall realistically reflect the anticipated deleveraging in the banking sector and the gradual easing of restrictive measures, and shall reduce dependency on borrowing from the central bank, while avoiding asset fire-sales and a credit crunch;

- (b) adapting the minimum capital requirements, taking into account the parameters of the balance sheet assessment and the Union-wide stress test;
- (c) ensuring that any restructuring plans shall be formally approved under State aid rules, before any state aid is provided. Banks with a capital shortfall may, if other measures do not suffice, ask for recapitalisation aid from the State in accordance with State aid procedures. Banks with restructuring plans shall report the progress in their implementation of the plans;
- (d) ensuring that a credit register is created and operational, that the current regulatory framework on asset

impairment and provisioning, and on the treatment of collateral in provisioning is amended, as necessary, and that the Union rules on capital requirements and non-performing loans are implemented in a timely fashion;

- (e) easing constraints on the seizure of collateral. This shall accompany the preparation of legislation on the basis of a comprehensive reform framework establishing appropriate corporate and personal insolvency procedures, as well as ensuring the smooth and effective functioning of the revised foreclosure and insolvency frameworks. In addition, once reformed, the new private sector debt restructuring legal framework shall be reviewed and additional measures shall be defined as needed;
- (f) implementing the strategy for the future structure, functioning, and viability of the cooperative credit institution sector, as designed by the Central Bank of Cyprus in consultation with the Commission, the ECB and the IMF;
- (g) enhancing the monitoring of the indebtedness of the corporate and household sectors and establishing a framework for targeted private sector debt restructuring to facilitate new lending and diminish credit constraints. The banks’ arrears management policies and practices shall be reviewed and the Directive on Arrears Management and the Code of Conduct shall be amended, as needed. Administrative measures that interfere with the setting of bank lending rates shall not be introduced;
- (h) continuing to further strengthen the anti-money-laundering framework and implementing an action plan ensuring the application of improved practices with regard to customer due diligence and entity transparency, in line with best practices;
- (i) integrating stress-testing into regular off-site bank supervision;
- (j) introducing mandatory disclosure requirements to ensure that banks regularly communicate to the authorities and the markets, their progress in restructuring their operations;
- (k) ensuring the implementation of the restructuring measures that shall enhance the viability of the cooperative credit sector, following the establishment of the legal framework for the new governance structure for the management of the State’s stake in the sector; and
- (l) ensuring the revision of the governance directive, which will specify, among other matters, the interaction between banks’ internal audit units and bank supervisors.’

- (2) Paragraph 7 is replaced by the following:

‘7. During 2014, the Cypriot authorities shall fully implement the permanent measures included in the 2014 Budget Law which shall amount to at least EUR 270 million. They shall also ensure the full implementation of the consolidation measures adopted since December 2012.’

(3) The following paragraph is inserted:

‘7a. For the fiscal policy in 2015-16, the Cypriot authorities shall pursue a general government balance in line with the adjustment path respecting the excessive deficit procedure (EDP) recommendation.’

(4) Paragraph 8 is amended as follows:

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

‘(a) if necessary, further reforms of the general and public sector pension system to ensure the viability of the pension system in the long term, while addressing the adequacy of pensions;’

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

‘(e) elaboration of a programme to achieve a solid corporate governance system for State-owned and semi-public enterprises and implementation of a privatisation plan to help improve economic efficiency and restore debt sustainability;’

(5) Paragraphs 10 to 13 are replaced by the following:

‘10. Cyprus shall ensure the implementation of the agreed measures to address the identified shortcomings in its activation policies. Cyprus shall take swift action to create opportunities for young people and improve their employability prospects, in line with the objectives of the Council Recommendation on establishing a Youth Guarantee (\*). The design, management and implementation of the measures targeted to youth shall be well integrated within the broader system of activation policies and be coherent with the reform of the social welfare system and the agreed budgetary targets.

11. Cyprus shall stand ready to adopt any further necessary amendments to sector-specific legislation required in order to fully implement Directive 2006/123/EC of the European Parliament and of the Council (\*\*). The Cypriot authorities shall further improve the functioning of the regulated professions. The competition framework shall be improved by enhancing the functioning of the competent competition authority and by reinforcing the independence and powers of the National Regulatory Authorities.

12. Cyprus shall ensure a reduction in the title deed issuance backlog, take action to accelerate the swift clearing of encumbrances on title deeds to be transferred to purchases of immovable property, and define deadlines for the issuance of building certificates and title deeds.

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

be eliminated by the end of the programme. Cyprus shall take initiatives to strengthen the competitiveness of its tourism sector, by implementing the concrete action plan leading to the attainment of the quantified targets identified, inter alia, in the revised Tourism Strategy for 2011-15. Cyprus shall implement an aero-political strategy leading to the adaptation of Cyprus’ external aviation policy, taking into account the EU external aviation and the EU aviation agreements, while ensuring sufficient air connectivity.

(\*) Council Recommendation of 22 April 2013 on establishing a Youth Guarantee (OJ C 120, 26.4.2013, p. 1).

(\*\*) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).’

(6) In paragraph 14, point (b) is replaced by the following:

‘(b) a comprehensive outline of the regulatory regime and market organisation for the restructured energy and gas sector, including an appropriate sales framework for the off-shore gas supply aimed at maximising revenues; and’.

(7) Paragraph 15 is replaced by the following:

‘15. Cyprus shall submit an updated request to the Commission for technical assistance during the programme period. The request shall identify and specify the areas of technical assistance or advisory services which the Cypriot authorities consider essential for the implementation of its macroeconomic adjustment programme.’.

(8) The following paragraph is added:

‘16. When developing a comprehensive and coherent growth strategy that would allow the kick-starting of the economy, Cyprus shall integrate it into its national institutional framework leveraging on the on-going public administration, public financial management reform, other commitments in Cyprus’ macroeconomic adjustment programme and relevant Union initiatives taking into account the Partnership agreement for the implementation of the European Structural and Investments Funds.’.

## Article 2

This Decision is addressed to the Republic of Cyprus.

Done at Brussels, 24 March 2014.

For the Council  
The President  
A. TSAFTARIS

## COUNCIL IMPLEMENTING DECISION

of 24 March 2014

**establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing**

(2014/170/EU)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 <sup>(1)</sup>, and in particular Article 33(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

## 1. INTRODUCTION

- (1) Regulation (EC) No 1005/2008 (the 'IUU Regulation') establishes a Union system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing.
- (2) Chapter VI of the IUU Regulation lays down the procedure with respect to the identification of non-cooperating third countries, démarches in respect of countries identified as non-cooperating third countries, the establishment of a list of non-cooperating countries, removal from the list of non-cooperating countries, publicity of the list of non-cooperating countries and any emergency measures.
- (3) In accordance with Article 32 of the IUU Regulation, the Commission notified by a Decision of 15 November 2012 <sup>(2)</sup> ('Decision of 15 November 2012') eight third countries of the possibility of their being identified as third countries that the Commission considers as non-cooperating third countries.
- (4) In the Decision of 15 November 2012, the Commission included the information concerning the essential facts and considerations underlying such identification.
- (5) Also on 15 November 2012, the Commission notified the eight third countries by separate letters of the fact

that it was considering the possibility of identifying them as non-cooperating third countries.

- (6) The Commission highlighted, in those letters, that in order to avoid being identified and proposed for formal listing as a non-cooperating third country as provided for in Articles 31 and 33 of the IUU Regulation, the third countries concerned were invited to establish, in close cooperation with the Commission, an action plan to rectify the shortcomings identified in the Decision of 15 November 2012.
- (7) As a consequence, the Commission invited the eight third countries concerned: (i) to take all necessary measures to implement the actions contained in the action plans suggested by the Commission; (ii) to assess the implementation of the actions contained in the action plans suggested by the Commission; and (iii) to send every six months detailed reports to the Commission assessing the implementation of each action as regards, inter alia, their individual and/or overall effectiveness in ensuring a fully compliant fisheries control system.
- (8) The eight third countries concerned were given the opportunity to respond in writing on issues explicitly indicated in the Decision of 15 November 2012 as well as on other relevant information, allowing them to submit evidence in order to refute or complete the facts invoked in the Decision of 15 November 2012 or to adopt, as appropriate, a plan of action to improve and measures taken to rectify the situation. The eight countries were assured of their right to ask for, or to provide, additional information.
- (9) On 15 November 2012, the Commission opened a process of dialogue with the eight third countries and highlighted that it considered a period of six months as being in principle sufficient for reaching an agreement on the matter in question.
- (10) The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by the eight countries following the Decision of 15 November 2012 were considered and taken into account. The eight countries were kept informed, either orally or in writing, of the Commission's deliberations.
- (11) By an Implementing Decision of 26 November 2013 <sup>(3)</sup> ('Implementing Decision of 26 November 2013'), the

<sup>(1)</sup> OJ L 286, 29.10.2008, p. 1.

<sup>(2)</sup> Commission Decision of 15 November 2012 on notifying the third countries that the Commission considers as possible of being identified as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ C 354, 17.11.2012, p. 1).

<sup>(3)</sup> Commission Implementing Decision of 26 November 2013 identifying the third countries that the Commission considers as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ C 346, 27.11.2013, p. 2).

Commission identified Belize, the Kingdom of Cambodia and the Republic of Guinea as non-cooperating third countries in fighting IUU fishing. In accordance with the IUU Regulation, the Commission provided the reasons why it considered that those three countries failed to discharge their duties under international law as flag, port, coastal or market States to take action, to prevent, deter and eliminate IUU fishing.

- (12) A Council Implementing Decision placing Belize, the Kingdom of Cambodia and the Republic of Guinea on the list of non-cooperating third countries in fighting IUU fishing should therefore be taken in the context of the implementation of the IUU Regulation as a result of investigation and dialogue procedures which were carried out in line with the substantive and procedural requirements laid out in the IUU Regulation. Those investigation and dialogue procedures, including the correspondence exchanged and the meetings held, as well as the Decision of 15 November 2012 and the Implementing Decision of 26 November 2013 are at the basis of this Decision and the reasons underlying are the same. This Decision placing Belize, the Kingdom of Cambodia and the Republic of Guinea on the list of non-cooperating third countries in fighting IUU fishing should entail the consequences stated in Article 38 of the IUU Regulation.
- (13) Pursuant to Article 34(1) of the IUU Regulation the Council, acting by qualified majority on a proposal from the Commission, shall remove a third country from the list of non-cooperating third countries if the third country concerned demonstrates that the situation that warranted its listing has been rectified. A removal decision shall also take into consideration whether the identified third countries concerned have taken concrete measures capable of achieving a lasting improvement of the situation.

## 2. PROCEDURE WITH RESPECT TO BELIZE

- (14) On 15 November 2012, the Commission notified Belize pursuant to the Article 32 of the IUU Regulation that it considered the possibility of identifying Belize as a non-cooperating third country and invited Belize to establish in close cooperation with its services an action plan to rectify the shortcomings identified in the Decision of 15 November 2012. During the period from December 2012 to August 2013, Belize made written submissions making its views known and met the Commission to discuss the matter. The Commission provided to Belize relevant information in writing. The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by Belize following the Decision of 15 November 2012 were considered and taken into account, while Belize was kept informed either orally or in writing of the Commission's deliberations. The Commission took the view that the areas of concern and shortcomings as described in the Decision of 15 November 2012 had not been addressed sufficiently by Belize. Moreover, the Commission concluded that the measures suggested in a plan of action presented by Belize had not been fully implemented.

## 3. IDENTIFICATION OF BELIZE AS A NON-COOPERATING THIRD COUNTRY

- (15) In the Decision of 15 November 2012, the Commission analysed the duties of Belize and evaluated its compliance with its international obligations as flag, port, coastal or market State. For the purpose of that review, the Commission took into account the parameters listed in Article 31(4) to (7) of the IUU Regulation. The Commission reviewed the compliance of Belize in line with the findings in the Decision of 15 November 2012, and having regard to relevant information provided thereon by Belize, the suggested plan of action, as well to the measures taken to rectify the situation.
- (16) The main shortcomings identified by the Commission in the suggested plan of action were related to several failures to implement international law obligations, linked in particular to the failure to adopt an adequate legal framework, the lack of adequate and efficient monitoring, the lack of a control and inspection scheme, the lack of a deterrent sanctioning system, and to improper implementation of the catch certification scheme. Other identified shortcomings relate, more generally, to compliance with international obligations, including Regional Fisheries Management Organisations' (RFMOs) recommendations and resolutions, and the conditions for the registration of vessels according to international law. A lack of compliance with recommendations and resolutions from relevant bodies such as the International Plan of Action against Illegal, Unreported and Unregulated fishing of the United Nations (IPOA-UN) was also identified. However, the lack of compliance with non-binding recommendations and resolutions was considered only as supporting evidence and not as a basis for the identification.
- (17) In the Implementing Decision of 26 November 2013, the Commission identified Belize as a non-cooperating third country pursuant to the IUU Regulation.
- (18) With respect to the possible constraints upon Belize as a developing country, it is noted that the specific development status and overall performance of Belize with respect to fisheries are not impaired by its general level of development.
- (19) Having regard to the Decision of 15 November 2012 and the Implementing Decision of 26 November 2013, and to the dialogue process with Belize entertained by the Commission and the outcome thereof, it can be concluded that the actions undertaken by Belize in light of its duties as flag State are insufficient to comply with the Articles 91, 94, 117 118 of the United Nations Convention on the Law of the Sea (UNCLOS), Articles 18, 19, 20 of the United Nations Fish Stocks Agreement (UNFSA), and with the Article II(8) of FAO Compliance Agreement.

- (20) Thus, Belize has failed to discharge its duties under international law as flag State to take action to prevent, deter and eliminate IUU fishing and it should therefore be included in the Union list of non-cooperating third countries.

#### 4. PROCEDURE WITH RESPECT TO THE KINGDOM OF CAMBODIA

- (21) On 15 November 2012, the Commission notified the Kingdom of Cambodia (Cambodia) pursuant to the Article 32 of the IUU Regulation that it considered the possibility of identifying Cambodia as a non-cooperating third country and invited Cambodia to establish in close cooperation with its services an action plan to rectify the shortcomings identified in the Decision of 15 November 2012. During the period from December 2012 to June 2013, Cambodia made written submissions making its views known and met the Commission to discuss the matter. The Commission provided to Cambodia relevant information in writing. The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by Cambodia following the Decision of 15 November 2012 were considered and taken into account, while Cambodia was kept informed either orally or in writing of the Commission's deliberations. The Commission took the view that the areas of concern and shortcomings as described in the Decision of 15 November 2012 had not been addressed sufficiently by Cambodia. Moreover, the Commission concluded that the measures suggested in a plan of action presented by Cambodia had not been fully implemented.

#### 5. IDENTIFICATION OF CAMBODIA AS A NON-COOPERATING THIRD COUNTRY

- (22) In the Decision of 15 November 2012, the Commission analysed the duties of Cambodia and evaluated its compliance with its international obligations as flag, port, coastal or market State. For the purpose of that review, the Commission took into account the parameters listed in Article 31(4) to (7) of the IUU Regulation. The Commission reviewed the compliance of Cambodia in line with the findings in the Decision of 15 November 2012, and having regard to the suggested plan of action, as further elaborated with relevant information provided by Cambodia.
- (23) The main shortcomings identified by the Commission in the suggested plan of action were related to several failures to implement international law obligations, linked in particular to the failure to adopt an adequate legal framework, the lack of adequate and efficient monitoring, the lack of a control and inspection scheme, and to the lack of a deterrent sanctioning system. Other identified shortcomings relate, more generally, to compliance with international obligations and the conditions for the registration of vessels according to international law. A lack of compliance with recommendations and resolutions from relevant bodies such as the IPOA –UN was also identified. However, the lack of

compliance with non-binding recommendations and resolutions was considered only as supporting evidence and not as a basis for the identification.

- (24) In the Implementing Decision 26 November 2013, the Commission identified Cambodia as a non-cooperating third country pursuant to the IUU Regulation.

- (25) With respect to the possible constraints upon Cambodia as a developing country, it is noted that the specific development status and overall performance of Cambodia with respect to fisheries are not impaired by its general level of development.

- (26) The actions undertaken by Cambodia in light of its duties as flag State are insufficient to comply with the Articles 91 and 94 of the UNCLOS. It is recalled that it is immaterial whether Cambodia has actually ratified the UNCLOS, since its provisions on navigation on the High Seas (Articles 86 to 115 of the UNCLOS) have been recognised as customary international law. Moreover, those provisions codify pre-existing rules of customary international law and take over almost literally the wording of the Convention on the High Seas and the Convention on the Territorial Sea and the Contiguous Zone, both of which have been acceded to and ratified by Cambodia.

- (27) Having regard to the Decision of 15 November 2012 and the Implementing Decision of 26 November 2013, and to the dialogue process with Cambodia entertained by the Commission and the outcome thereof, it can be concluded that the actions undertaken by Cambodia in light of its duties as flag State are insufficient to comply with the Articles 91 and 94 of the UNCLOS.

- (28) Thus, Cambodia has failed to discharge its duties under international law as flag State to take action to prevent, deter and eliminate IUU fishing and it should therefore be included in the Union list of non-cooperating third countries.

#### 6. PROCEDURE WITH RESPECT TO THE REPUBLIC OF GUINEA

- (29) On 15 November 2012, the Commission notified the Republic of Guinea (Guinea) pursuant to the Article 32 of the IUU Regulation that it considered the possibility of identifying Guinea as a non-cooperating third country and invited Guinea to establish in close cooperation with its services an action plan to rectify the shortcomings identified in the Decision of 15 November 2012. During the period from December 2012 to July 2013, Guinea made written submissions making its views known and met the Commission to discuss the matter. The Commission provided to Guinea relevant information in writing. The Commission continued to seek and verify all information it deemed necessary. The oral and written comments submitted by Guinea following the Decision of 15 November 2012 were considered and taken into account, while Guinea was

kept informed either orally or in writing of the Commission's deliberations. The Commission took the view that the areas of concern and shortcomings as described in the Decision of 15 November 2012 had not been addressed sufficiently by Guinea. Moreover, the Commission concluded that the measures suggested in a plan of action presented by Guinea had not been fully implemented.

#### 7. IDENTIFICATION OF GUINEA AS A NON-COOPERATING THIRD COUNTRY

- (30) In the Decision of 15 November 2012, the Commission analysed the duties of Guinea and evaluated its compliance with its international obligations as flag, port, coastal or market State. For the purpose of that review, the Commission took into account the parameters listed in Article 31(4) to (7) of the IUU Regulation. The Commission reviewed the compliance of Guinea in line with the findings in the Decision of 15 November 2012, and having regard to the suggested plan of action, as further elaborated with relevant information provided by Guinea.
- (31) The main shortcomings identified by the Commission in the suggested plan of action were related to reforms still due in order to ensure a sufficiently adequate and efficient monitoring of its fishing fleet, an effective implementation of national law and regulations on fisheries, enforcement of the rules by pursuing and sanctioning the IUU fishing activities detected, reinforcement of the means for inspection and surveillance, deterrent sanctioning system, fisheries policy consistent with administrative capacity in terms of control and surveillance. Other identified shortcomings relate, more generally, to compliance with international obligations including RFMOs recommendations and resolutions and the conditions for the registration of vessels according to international law. A lack of compliance with recommendations and resolutions from relevant bodies such as the IPOA – UN was also identified. However, the lack of compliance with non-binding recommendations and resolutions was considered only as supporting evidence and not as a basis for the identification.
- (32) In the Implementing Decision of 26 November 2013 the Commission identified Guinea as non-cooperating third country pursuant to the IUU Regulation.
- (33) With respect to the possible constraints upon Guinea as a developing country, it is noted that the specific development status of Guinea may be impaired by its level of development. However, account taken of the nature of the established shortcomings of Guinea, the assistance provided by the Union and the Member States, and the actions taken to rectify the situation, the development level of that country cannot explain the overall performance of Guinea as flag or coastal State with respect to fisheries and the insufficiency of its action to prevent, deter and eliminate IUU fishing.

- (34) Having regard to the Decision of 15 November 2012 and the Implementing Decision of 26 November 2013, and to the dialogue process with Guinea entertained by the Commission and the outcome thereof, it can be concluded that the actions undertaken by Guinea in light of its duties as flag and coastal State are insufficient to comply with the Articles 61, 62, 94, 117 and 118 of the UNCLOS and Articles 18, 19 and 20 of the UNFSA.

- (35) Thus, Guinea has failed to discharge its duties under international law as flag and coastal State to take action, prevent, deter and eliminate IUU fishing and it should therefore be included in the Union list of non-cooperating third countries.

#### 8. ESTABLISHMENT OF A LIST OF NON COOPERATING THIRD COUNTRIES

- (36) In view of the conclusions reached above with regard to Belize, Cambodia and Guinea, those countries should be included in a list of non-cooperating third countries to be established in accordance with Article 33 of the IUU Regulation.
- (37) Actions in respect of Belize, Cambodia and Guinea in the form of measures that should be applied are listed in Article 38 of the IUU Regulation. The prohibition of importation covers all stocks and species, as defined in Article 2(8) of the IUU Regulation, since the identification is not justified by the lack of appropriate measures adopted in relation to IUU fishing affecting a given stock or species. In line with the definition laid down in Article 2(11) of the IUU Regulation, 'importation' means the introduction of fishery products into the territory of the Union, including for transshipment purposes at ports in its territory.
- (38) It is noted that IUU fishing, inter alia, depletes fish stocks, destroys marine habitats, undermines the conservation and sustainable use of marine resources, distorts competition, endangers food security, puts honest fishermen at an unfair disadvantage, and weakens coastal communities. In view of the magnitude of the problems related to IUU fishing, it is necessary for the Union to implement expeditiously the actions in respect to Belize, Cambodia and Guinea as non-cooperating countries. In the light of the foregoing, this Decision should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (39) If Belize, Cambodia or Guinea demonstrates that the situation that warranted its listing has been rectified, the Council, acting by qualified majority on a proposal from the Commission, removes that country from the list

of non-cooperating third countries in line with Article 34(1) of the IUU Regulation. Any removal decision shall also take into consideration whether Belize, Cambodia or Guinea has taken concrete measures capable of achieving a lasting improvement of the situation.

HAS ADOPTED THIS DECISION:

*Article 1*

The Union list of non-cooperating third countries provided for in Article 33 of the Regulation (EC) No 1005/2008 is established in the Annex to this Decision.

*Article 2*

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

Done at Brussels, 24 March 2014.

*For the Council*  
*The President*  
A. TSAFTARIS

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ANNEX

**List of non-cooperating third countries in fighting Illegal Unreported and Unregulated ('IUU') fishing**

Belize  
Kingdom of Cambodia  
Republic of Guinea

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**COUNCIL DECISION**  
**of 24 March 2014**  
**appointing a Danish member of the European Economic and Social Committee**  
(2014/171/EU)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 302 thereof,

*Article 1*

Mr Niels LINDBERG MADSEN is hereby appointed as a member of the European Economic and Social Committee for the remainder of the current term of office, which runs until 20 September 2015.

Having regard to the proposal of the Danish Government,

Having regard to the opinion of the European Commission,

*Article 2*

Whereas:

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

- (1) On 13 September 2010 the Council adopted Decision 2010/570/EU, Euratom appointing the members of the European Economic and Social Committee for the period from 21 September 2010 to 20 September 2015 <sup>(1)</sup>.

Done at Brussels, 24 March 2014.

- (2) A member's seat on the European Economic and Social Committee has become vacant following the end of the term of office of Ms Rikke EDSJÖ,

*For the Council*  
*The President*  
A. TSAFTARIS

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<sup>(1)</sup> OJ L 251, 25.9.2010, p. 8.





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2985 Luxembourg  
LUXEMBOURG

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