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EN

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II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2015/1588**of 13 July 2015****on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (codification)****(Text with EEA relevance)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 109 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) Council Regulation (EC) No 994/98 ⁽²⁾ has been substantially amended ⁽³⁾. In the interests of clarity and rationality that Regulation should be codified.
- (2) Under the Treaty on the Functioning of the European Union (TFEU), the assessment of compatibility of aid with the internal market essentially rests with the Commission.
- (3) The proper functioning of the internal market requires strict and efficient application of the rules of competition with regard to State aid.
- (4) The Commission should be enabled to declare by means of regulations, in areas where the Commission has sufficient experience to define general compatibility criteria, that certain specified categories of aid are compatible with the internal market pursuant to one or more of the provisions of Article 107(2) and (3) TFEU and are exempted from the procedure provided for in Article 108(3) thereof.
- (5) Block exemption regulations ensure transparency and legal certainty. They can be directly applied by national courts, without prejudice to Article 4(3) of the Treaty on European Union and to Article 267 TFEU.
- (6) State aid is an objective notion defined in Article 107(1) TFEU. The power of the Commission to adopt block exemptions as provided for in this Regulation only applies to measures that fulfil all the criteria of Article 107(1) TFEU and therefore constitute State aid. Inclusion of a certain category of aid in this Regulation or in an exemption regulation does not predetermine the qualification of a measure as State aid within the meaning of Article 107(1) TFEU.
- (7) The Commission should be enabled to declare that, under certain conditions, aid to small and medium-sized enterprises, aid in favour of research, development and innovation, aid in favour of environmental protection, aid in favour of employment and training, and aid that complies with the map approved by the Commission for each Member State for the grant of regional aid is compatible with the internal market and not subject to the notification requirement.

⁽¹⁾ Opinion of 29 April 2015 (not yet published in the Official Journal).

⁽²⁾ Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (OJ L 142, 14.5.1998, p. 1).

⁽³⁾ See Annex I.

- (8) Innovation has become a Union policy priority in the context of 'Innovation Union', one of the Europe 2020 flagship initiatives. Moreover, many aid measures for innovation are relatively small and create no significant distortions of competition.
- (9) In the culture and heritage conservation sector, a number of measures taken by Member States might not constitute aid because they do not fulfil all the criteria of Article 107(1) TFEU, for example because the beneficiary does not carry out an economic activity or because there is no effect on trade between Member States. However, to the extent measures in the field of culture and heritage conservation do constitute State aid within the meaning of Article 107(1) TFEU, the Commission should be enabled to declare that, under certain conditions, that aid is compatible with the internal market and not subject to the notification requirement in Article 108(3) TFEU. Small culture, creation and heritage conservation projects do not typically give rise to any significant distortion, and recent cases have shown that such aid has limited effects on trade.
- (10) Exemptions in the culture and heritage conservation sector could be designed on the basis of the Commission's experience as set out in guidelines, such as for cinematographic and audiovisual works, or developed case by case. When drafting such block exemptions, the Commission should take into account that they should only cover measures constituting State aid, that they should in principle focus on measures that contribute to the objectives of 'EU State aid modernisation', and that only aid in respect of which the Commission has already substantial experience is block-exempted. Furthermore, the primary competence of the Member States in the area of culture, the special protection enjoyed by cultural diversity under Article 167(1) TFEU and the special nature of culture should be taken into account.
- (11) As regards State aid measures to make good the damage caused by natural disasters, as well as State aid measures to make good the damage caused by certain adverse weather conditions in fisheries, the amounts granted in those areas are usually limited, and clear compatibility conditions can be defined. This Regulation should enable the Commission to exempt such aid from the notification requirement. In the Commission's experience, such aid does not give rise to any significant distortion, and clear compatibility conditions can be defined on the basis of the experience acquired.
- (12) In accordance with Article 42 TFEU, State aid rules do not apply under certain conditions to certain aid measures in favour of agriculture products listed in Annex I to the TFEU. Article 42 does not apply to forestry or to products not listed in that Annex. The Commission should be able to exempt certain types of aid in favour of forestry, including aid contained in the rural development programmes and also that in favour of promoting and advertising food sector products not listed in Annex I to the TFEU, where, according to the Commission's experience, the distortions of competition are limited and clear compatibility conditions can be defined.
- (13) According to Article 7 of Council Regulation (EC) No 1198/2006 ⁽¹⁾, Articles 107, 108 and 109 TFEU apply to aid granted by the Member States to enterprises in the fisheries sector, except for payments made by Member States pursuant to, and in conformity with, Regulation (EC) No 1198/2006. Additional State aid for the conservation of marine and freshwater biological resources usually has limited effects on trade between Member States, contributes to the Union's objectives in the field of maritime and fisheries policy, and does not create serious distortions of competition. The amounts granted are usually limited and clear compatibility conditions can be defined.
- (14) In the sports sector, in particular in the field of amateur sport, a number of measures taken by Member States might not constitute aid because they do not fulfil all the criteria of Article 107(1) TFEU, for example because the beneficiary does not carry out an economic activity, or because there is no effect on trade between Member States. However, to the extent that measures in the field of sports do constitute State aid within the meaning of Article 107(1) TFEU, the Commission should be enabled to declare that, under certain conditions, that aid is compatible with the internal market and not subject to the notification requirement. State aid measures for sport, in particular those in the field of amateur sport or those that are small-scale, often have limited effects on trade between Member States and do not create serious distortions of competition. The amounts granted are typically also limited. Clear compatibility conditions can be defined on the basis of the experience acquired so as to ensure that aid to sports does not give rise to any significant distortion.

⁽¹⁾ Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund (OJ L 223, 15.8.2006, p. 1).

- (15) In relation to aid concerning air and maritime transport, in the Commission's experience, aid having a social character for the transport of residents of remote regions such as outermost regions and islands, including single region island Member States and sparsely populated areas, does not give rise to any significant distortion, provided that it is granted without discrimination related to the identity of the carrier. Moreover, clear compatibility conditions can be defined.
- (16) In the field of aid to broadband infrastructure, the Commission has in recent years acquired vast experience and has devised guidelines ⁽¹⁾. In the Commission's experience, aid for certain types of broadband infrastructure does not give rise to any significant distortion and could benefit from a block exemption, provided that certain compatibility conditions are met and that the infrastructure is deployed in 'white areas', being areas where there is no infrastructure of the same category (either broadband or very high-speed next-generation access, 'NGA') and where none is likely to be developed in the near future, as outlined in the criteria developed in the guidelines. This is true of aid covering the provision of basic broadband, as well as of aid for small individual measures covering NGA networks, and of aid to broadband-related civil engineering works and passive broadband infrastructure.
- (17) As regards infrastructure, a number of measures taken by Member States might not constitute aid because they do not fulfil all the criteria of Article 107(1) TFEU, for example because the beneficiary does not carry out an economic activity, because there is no effect on trade between Member States, or because the measure consists of compensation for a service of general economic interest which fulfils all the criteria of the *Altmark* case-law ⁽²⁾. However, to the extent that the financing of infrastructure constitutes State aid within the meaning of Article 107(1) TFEU, the Commission should be enabled to declare that, under certain conditions, that aid is compatible with the internal market and not subject to the notification requirement. With regard to infrastructure, small amounts of aid for infrastructure projects can be an efficient way of supporting the Union's objectives, to the extent that the aid minimises costs and the potential distortion of competition is limited. The Commission should therefore be able to exempt State aid for infrastructure projects that are in support of the objectives mentioned in this Regulation and in support of other objectives of common interest, in particular the Europe 2020 objectives ⁽³⁾. This could include support for projects involving multi-sectoral networks or facilities where relatively small amounts of aid are necessary. However, block exemptions can only be granted for infrastructure projects where the Commission has enough experience to define clear and strict compatibility criteria, ensuring that the risk of potential distortion of competition is limited and that large amounts of aid remain subject to notification pursuant to Article 108(3) TFEU.
- (18) It is appropriate that the Commission, when it adopts regulations exempting categories of aid from the obligation to notify provided for in Article 108(3) TFEU, specifies the purpose of the aid, the categories of beneficiaries and thresholds limiting the exempted aid, the conditions governing the cumulation of aid and the conditions of monitoring, in order to ensure the compatibility with the internal market of aid covered by this Regulation.
- (19) Thresholds for each category of aid in respect of which the Commission adopts a block exemption regulation can be expressed in terms of aid intensities in relation to a set of eligible costs, or in terms of maximum aid amounts. Moreover, the Commission should also be enabled to issue block exemptions for certain types of measures involving State aid which, because of the specific way in which they are designed, cannot be expressed precisely in terms of the aid intensities or maximum amounts of aid, such as financial engineering instruments or certain forms of measures aimed to promote risk capital investments. Such complex measures may involve aid at different levels: direct beneficiaries, intermediate beneficiaries and indirect beneficiaries. Given the increasing importance of such measures and their contribution to the Union's objectives, it should be possible to exempt them. It should therefore be possible, in the case of such measures, to define the thresholds for a particular award of aid in terms of the maximum level of state support in or related to that measure. The maximum level of state support may comprise an element of support, which may not be State aid, provided that the measure includes at least some elements that contain State aid within the meaning of Article 107(1) TFEU and which elements are not marginal.

⁽¹⁾ Communication from the Commission — EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (OJ C 25, 26.1.2013, p. 1).

⁽²⁾ Judgment of the Court of Justice of 24 July 2003 in Case C-280/00, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* ([2003] ECR I-7747).

⁽³⁾ See Council Recommendation 2010/410/EU of 13 July 2010 on broad guidelines for the economic policies of the Member States and of the Union (OJ L 191, 23.7.2010, p. 28) and Council Decision 2010/707/EU of 21 October 2010 on guidelines for the employment policies of the Member States (OJ L 308, 24.11.2010, p. 46).

- (20) It may be useful to set thresholds or other appropriate conditions requiring the notification of awards of aid in order to allow the Commission to examine individually the effect of certain aid on competition and trade between Member States and its compatibility with the internal market.
- (21) It is appropriate to enable the Commission, when it adopts regulations exempting certain categories of aid from the obligation to notify in Article 108(3) TFEU, to attach further detailed conditions in order to ensure the compatibility with the internal market of aid covered by this Regulation.
- (22) The Commission, having regard to the development and the functioning of the internal market, should be enabled to establish by means of a regulation that certain aid does not fulfil all the criteria of Article 107(1) TFEU and is therefore exempted from the notification procedure laid down in Article 108(3) TFEU, provided that aid granted to the same undertaking over a given period of time does not exceed a certain fixed amount.
- (23) In accordance with Article 108(1) TFEU the Commission is under an obligation, in cooperation with Member States, to keep under constant review all systems of existing aid. For this purpose and in order to ensure the largest possible degree of transparency and adequate control it is desirable that the Commission ensures the establishment of a reliable system of recording and storing information about the application of the regulations it adopts, to which all Member States have access, and that it receives all necessary information from the Member States on the implementation of aid exempted from notification to fulfil this obligation, which may be examined and evaluated with the Member States within the Advisory Committee on State aid. For this purpose it is also desirable that the Commission may require such information to be supplied as is necessary to ensure the efficiency of such review.
- (24) Member States should provide summaries of information concerning aid implemented by them which is covered by an exemption regulation. The publication of those summaries is necessary to ensure the transparency of the measures adopted by the Member States. With the growth of electronic communication media, publication of the summaries on the website of the Commission is a fast and effective method ensuring transparency for the benefit of interested parties. Therefore, those summaries should be published on the website of the Commission.
- (25) The control of the granting of aid involves factual, legal and economic issues of a very complex nature and great variety in a constantly evolving environment. The Commission should therefore regularly review the categories of aid which should be exempted from notification. The Commission should be able to repeal or amend regulations it has adopted pursuant to this Regulation where circumstances have changed with respect to any important element which constituted grounds for their adoption or where the progressive development or the functioning of the internal market so requires.
- (26) The Commission, in close and constant liaison with the Member States, should be able to define precisely the scope of those regulations and the conditions attached to them. In order to provide for cooperation between the Commission and the competent authorities of the Member States, it is appropriate that the Advisory Committee on State aid be consulted before the Commission adopts regulations pursuant to this Regulation.
- (27) Draft regulations and other documents to be examined by the Advisory Committee on State aid in accordance with this Regulation should be published on the website of the Commission to ensure transparency.
- (28) The Advisory Committee on State aid should be consulted before publication of a draft regulation. However, in the interest of transparency, the draft regulation should be published on the website of the Commission at the same time as the Commission consults the Advisory Committee for the first time,

HAS ADOPTED THIS REGULATION:

Article 1

Block exemptions

1. The Commission may, by means of regulations adopted in accordance with the procedure laid down in Article 8 of this Regulation and in accordance with Article 107 TFEU, declare that the following categories of aid are compatible with the internal market and are not subject to the notification requirements of Article 108(3) TFEU:

- (a) aid in favour of:
 - (i) small and medium-sized enterprises;

- (ii) research, development and innovation;
 - (iii) environmental protection;
 - (iv) employment and training;
 - (v) culture and heritage conservation;
 - (vi) making good the damage caused by natural disasters;
 - (vii) making good the damage caused by certain adverse weather conditions in fisheries;
 - (viii) forestry;
 - (ix) promotion of food sector products not listed in Annex I of the TFEU;
 - (x) conservation of marine and freshwater biological resources;
 - (xi) sports;
 - (xii) residents of remote regions, for transport, when this aid has a social character and is granted without discrimination related to the identity of the carrier;
 - (xiii) basic broadband infrastructure, small individual infrastructure measures covering next-generation access networks, broadband-related civil engineering works and passive broadband infrastructure, in areas where there is either no such infrastructure or where no such infrastructure is likely to be developed in the near future;
 - (xiv) infrastructure in support of the objectives listed in points (i) to (xiii) as well as in point (b) of this paragraph and in support of other objectives of common interest, in particular the Europe 2020 objectives;
- (b) aid that complies with the map approved by the Commission for each Member State for the grant of regional aid.
2. The regulations referred to in paragraph 1 shall specify for each category of aid:
- (a) the purpose of the aid;
 - (b) the categories of beneficiaries;
 - (c) thresholds expressed in terms of aid intensities in relation to a set of eligible costs or in terms of maximum aid amounts or, for certain types of aid where it may be difficult to identify the aid intensity or amount of aid precisely, in particular financial engineering instruments or risk capital investments or those of a similar nature, in terms of the maximum level of state support in or related to that measure, without prejudice to the qualification of the measures concerned in the light of Article 107(1) TFEU;
 - (d) the conditions governing the cumulation of aid;
 - (e) the conditions of monitoring as specified in Article 3.
3. In addition, the regulations referred to in paragraph 1 may, in particular:
- (a) set thresholds or other conditions for the notification of awards of individual aid;
 - (b) exclude certain sectors from their scope;
 - (c) attach further conditions for the compatibility of aid exempted under such regulations.

Article 2

De minimis

1. The Commission may, by means of a regulation adopted in accordance with the procedure laid down in Article 8 of this Regulation, decide that, having regard to the development and functioning of the internal market, certain aid does not meet all the criteria of Article 107(1) TFEU and that it is therefore exempted from the notification procedure provided for in Article 108(3) TFEU, provided that aid granted to the same undertaking over a given period of time does not exceed a certain fixed amount.
2. At the Commission's request, Member States shall, at any time, communicate to it any additional information relating to aid exempted under paragraph 1.

*Article 3***Transparency and monitoring**

1. When adopting regulations pursuant to Article 1, the Commission shall impose detailed rules upon Member States to ensure transparency and monitoring of the aid exempted from notification in accordance with those regulations. Such rules shall consist, in particular, of the requirements laid down in paragraphs 2, 3 and 4.
2. Upon implementing aid systems or individual aids granted outside any system, which have been exempted pursuant to regulations referred to in Article 1(1), Member States shall forward to the Commission, with a view to publication on the website of the Commission, summaries of the information regarding such systems of aid or such individual aids as are not covered by exempted aid systems.
3. Member States shall record and compile all the information regarding the application of the block exemptions. If the Commission has information which leads it to doubt that an exemption regulation is being applied properly, the Member States shall forward to it any information it considers necessary to assess whether an aid complies with that regulation.
4. At least once a year, Member States shall supply the Commission with a report on the application of block exemptions, in accordance with the Commission's specific requirements, preferably in computerised form. The Commission shall make access to those reports available to all the Member States. The Committee referred to in Article 7 shall examine and evaluate those reports once a year.

*Article 4***Period of validity and amendment of regulations**

1. Regulations adopted pursuant to Articles 1 and 2 shall apply for a specific period. Aid exempted by a regulation adopted pursuant to Articles 1 and 2 shall be exempted for the period of validity of that regulation and for the adjustment period provided for in paragraphs 2 and 3 of this Article.
2. Regulations adopted pursuant to Articles 1 and 2 may be repealed or amended where circumstances have changed with respect to any important element that constituted grounds for their adoption or where the progressive development or the functioning of the internal market so requires. In that case the new regulation shall set a period of adjustment of six months for the adjustment of aid covered by the previous regulation.
3. Regulations adopted pursuant to Articles 1 and 2 shall provide for a period as referred to in paragraph 2 of this Article, should their application not be extended when they expire.

*Article 5***Evaluation report**

Every five years the Commission shall submit a report to the European Parliament and to the Council on the application of this Regulation. It shall submit a draft report for consideration by the Committee referred to in Article 7.

*Article 6***Hearing of interested parties**

Where the Commission intends to adopt a regulation, it shall publish a draft thereof to enable all interested persons and organisations to submit their comments to it within a reasonable time limit to be fixed by the Commission and which may not under any circumstances be less than one month.

*Article 7***Advisory Committee on State aid**

The Advisory Committee on State aid ('the Committee') shall be set up. It shall be composed of representatives of the Member States and chaired by a representative of the Commission.

*Article 8***Consultation of the Committee**

1. The Commission shall consult the Committee:
 - (a) at the same time as publishing any draft regulation in accordance with Article 6;
 - (b) before adopting any regulation.
2. Consultation of the Committee shall take place at a meeting called by the Commission. The drafts and documents to be examined shall be annexed to the notification and may be published on the Commission website. The meeting shall take place no earlier than two months after notification has been sent.

This period may be reduced in the case of the consultations referred to in paragraph 1(b), when urgent or for simple extension of a regulation.
3. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.
4. The opinion shall be recorded in the minutes. In addition, each Member State shall have the right to ask to have its position recorded in the minutes. The Committee may recommend the publication of the opinion in the *Official Journal of the European Union*.
5. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

*Article 9***Repeal**

Regulation (EC) No 994/98 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

*Article 10***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*.

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

Done at Brussels, 13 July 2015.

For the Council
The President
F. ETGEN

ANNEX I

REPEALED REGULATION WITH ITS AMENDMENT

Council Regulation (EC) No 994/98

(OJ L 142, 14.5.1998, p. 1).

Council Regulation (EU) No 733/2013

(OJ L 204, 31.7.2013, p. 11).

ANNEX II

CORRELATION TABLE

Regulation (EC) No 994/98	This Regulation
Articles 1 to 8	Articles 1 to 8
—	Article 9
Article 9	Article 10
—	Annex I
—	Annex II

COUNCIL REGULATION (EU) 2015/1589**of 13 July 2015****laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (codification)****(Text with EEA relevance)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 109 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) Council Regulation (EC) No 659/1999 ⁽²⁾ has been substantially amended several times ⁽³⁾. In the interests of clarity and rationality, that Regulation should be codified.
- (2) Without prejudice to special procedural rules laid down in regulations for certain sectors, this Regulation should apply to aid in all sectors. For the purpose of applying Articles 93 and 107 of the Treaty on the Functioning of the European Union (TFEU), the Commission has specific competence under Article 108 thereof to decide on the compatibility of State aid with the internal market when reviewing existing aid, when taking decisions on new or altered aid and when taking action regarding non-compliance with its decisions or with the requirement as to notification.
- (3) In the context of a modernised system of State aid rules, to contribute both to the implementation of the Europe 2020 strategy for growth and to budgetary consolidation, Article 107 of the TFEU should be applied effectively and uniformly throughout the Union. Regulation (EC) No 659/1999 consolidated and reinforced the Commission's previous practice of increasing legal certainty and supporting the development of State aid policy in a transparent environment.
- (4) In order to ensure legal certainty, it is appropriate that the circumstances under which aid is to be considered as existing aid be defined. The completion and enhancement of the internal market is a gradual process, reflected in the permanent development of State aid policy. Following those developments, certain measures, which at the moment they were put into effect did not constitute State aid, may since have become aid.
- (5) In accordance with Article 108(3) TFEU, any plans to grant new aid are to be notified to the Commission and should not be put into effect before the Commission has authorised it.
- (6) In accordance with Article 4(3) of the Treaty on European Union (TEU), Member States are under an obligation to cooperate with the Commission and to provide it with all information required to allow the Commission to carry out its duties under this Regulation.
- (7) The period within which the Commission is to conclude the preliminary examination of notified aid should be set at 2 months from the receipt of a complete notification or from the receipt of a duly reasoned statement of the Member State concerned that it considers the notification to be complete because the additional information requested by the Commission is not available or has already been provided. For reasons of legal certainty, that examination should be brought to an end by a decision.

⁽¹⁾ Opinion of 29 April 2015 (not yet published in the Official Journal).

⁽²⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 83, 27.3.1999, p. 1).

⁽³⁾ See Annex I.

- (8) In all cases where, as a result of the preliminary examination, the Commission cannot find that the aid is compatible with the internal market, the formal investigation procedure should be opened in order to enable the Commission to gather all the information it needs to assess the compatibility of the aid and to allow the interested parties to submit their comments. The rights of the interested parties can best be safeguarded within the framework of the formal investigation procedure provided for in Article 108(2) TFEU.
- (9) In order to assess the compatibility with the internal market of any notified or unlawful State aid for which the Commission has exclusive competence under Article 108 TFEU, it is appropriate to ensure that the Commission has the power, for the purposes of enforcing the State aid rules, to request all necessary market information from any Member State, undertaking or association of undertakings whenever it has doubts as to the compatibility of the measure concerned with the Union rules, and has therefore initiated the formal investigation procedure. In particular, the Commission should use this power in cases in which a complex substantive assessment appears necessary. In deciding whether to use this power, the Commission should take due account of the duration of the preliminary examination.
- (10) For the purpose of assessing the compatibility of an aid measure after the initiation of the formal investigation procedure, in particular as regards technically complex cases subject to substantive assessment, the Commission should be able, by simple request or by decision, to require any Member State, undertaking or association of undertakings to provide all market information necessary for completing its assessment, if the information provided by the Member State concerned during the course of the preliminary examination is not sufficient, taking due account of the principle of proportionality, in particular for small and medium-sized enterprises.
- (11) In the light of the special relationship between aid beneficiaries and the Member State concerned, the Commission should be able to request information from an aid beneficiary only in agreement with the Member State concerned. The provision of information by the beneficiary of the aid measure in question does not constitute a legal basis for bilateral negotiations between the Commission and the beneficiary in question.
- (12) The Commission should select the addressees of information requests on the basis of objective criteria appropriate to each case, while ensuring that, when the request is addressed to a sample of undertakings or associations thereof, the sample of respondents is representative within each category. The information sought should consist, in particular, of factual company and market data and facts-based analysis of the functioning of the market.
- (13) The Commission, as the initiator of the procedure, should be responsible for verifying both the information transmission by the Member States, undertakings or associations of undertakings, and the purported confidentiality of the information to be disclosed.
- (14) The Commission should be able to enforce compliance with the requests for information it addresses to any undertaking or association of undertakings, as appropriate, by means of proportionate fines and periodic penalty payments. In setting the amounts of fines and periodic penalty payments, the Commission should take due account of the principles of proportionality and appropriateness, in particular as regards small and medium-sized enterprises. The rights of the parties requested to provide information should be safeguarded by giving them the opportunity to make known their views before any decision imposing fines or periodic penalty payments is taken. The Court of Justice of the European Union should have unlimited jurisdiction with regard to such fines and periodic penalties pursuant to Article 261 TFEU.
- (15) Taking due account of the principles of proportionality and appropriateness, the Commission should be able to reduce the periodic penalty payments or waive them entirely, when addressees of requests provide the information requested, albeit after the expiry of the deadline.
- (16) Fines and periodic penalty payments are not applicable to Member States, since they are under a duty to cooperate sincerely with the Commission in accordance with Article 4(3) TEU, and to provide the Commission with all information required to allow it to carry out its duties under this Regulation.
- (17) After having considered the comments submitted by the interested parties, the Commission should conclude its examination by means of a final decision as soon as the doubts have been removed. It is appropriate, should this examination not be concluded after a period of 18 months from the opening of the procedure, that the Member State concerned has the opportunity to request a decision, which the Commission should take within 2 months.

- (18) In order to safeguard the rights of defence of the Member State concerned, it should be provided with copies of the requests for information sent to other Member States, undertakings or associations of undertakings, and be able to submit its observations on the comments received. It should also be informed of the names of the undertakings and the associations of undertakings requested, to the extent that these entities have not demonstrated a legitimate interest in the protection of their identity.
- (19) The Commission should take due account of the legitimate interests of undertakings in the protection of their business secrets. It should not be able to use confidential information provided by respondents, which cannot be aggregated or otherwise be anonymised, in any decision unless it has previously obtained their agreement to disclose that information to the Member State concerned.
- (20) In cases where information marked as confidential does not seem to be covered by obligations of professional secrecy, it is appropriate to have a mechanism in place according to which the Commission can decide the extent to which such information can be disclosed. Any such decision to reject a claim that information is confidential should indicate a period at the end of which the information will be disclosed, so that the respondent can make use of any judicial protection available to it, including any interim measure.
- (21) In order to ensure that the State aid rules are applied correctly and effectively, the Commission should have the opportunity of revoking a decision which was based on incorrect information.
- (22) In order to ensure compliance with Article 108 TFEU, and in particular with the notification obligation and the standstill clause in Article 108(3), the Commission should examine all cases of unlawful aid. In the interests of transparency and legal certainty, the procedures to be followed in such cases should be laid down. When a Member State has not respected the notification obligation or the standstill clause, the Commission should not be bound by time limits.
- (23) The Commission should be able, on its own initiative, to examine information on unlawful aid, from whatever source, in order to ensure compliance with Article 108 TFEU, and in particular with the notification obligation and standstill clause laid down in Article 108(3) TFEU, and to assess the compatibility of an aid with the internal market.
- (24) In cases of unlawful aid, the Commission should have the right to obtain all necessary information enabling it to take a decision and to restore immediately, where appropriate, undistorted competition. It is therefore appropriate to enable the Commission to adopt interim measures addressed to the Member State concerned. The interim measures may take the form of information injunctions, suspension injunctions and recovery injunctions. The Commission should be enabled, in the event of non-compliance with an information injunction, to decide on the basis of the information available and, in the event of non-compliance with suspension and recovery injunctions, to refer the matter to the Court of Justice directly, in accordance with the second subparagraph of Article 108(2) TFEU.
- (25) In cases of unlawful aid which is not compatible with the internal market, effective competition should be restored. For this purpose it is necessary that the aid, including interest, be recovered without delay. It is appropriate that recovery be effected in accordance with the procedures of national law. The application of those procedures should not, by preventing the immediate and effective execution of the Commission decision, impede the restoration of effective competition. To achieve this result, Member States should take all necessary measures ensuring the effectiveness of the Commission decision.
- (26) For reasons of legal certainty it is appropriate to provide for a period of limitation of 10 years with regard to unlawful aid, after the expiry of which no recovery can be ordered.
- (27) For reasons of legal certainty, it is appropriate to provide for limitation periods for the imposition and enforcement of fines and periodic penalty payments.
- (28) Misuse of aid may have effects on the functioning of the internal market which are similar to those of unlawful aid and should thus be treated according to similar procedures. Unlike unlawful aid, aid which has possibly been misused is aid which has been previously approved by the Commission. Therefore the Commission should not be allowed to use a recovery injunction with regard to misuse of aid.

- (29) In accordance with Article 108(1) TFEU, the Commission is under an obligation, in cooperation with Member States, to keep under constant review all systems of existing aid. In the interests of transparency and legal certainty, it is appropriate to specify the scope of cooperation under that Article.
- (30) In order to ensure compatibility of existing aid schemes with the internal market and in accordance with Article 108(1) TFEU, the Commission should propose appropriate measures where an existing aid scheme is not, or is no longer, compatible with the internal market and should initiate the procedure provided for in Article 108(2) TFEU if the Member State concerned declines to implement the proposed measures.
- (31) It is appropriate to set out all the possibilities which third parties have to defend their interests in State aid procedures.
- (32) Complaints are an essential source of information for detecting infringements of the Union rules on State aid. To ensure the quality of the complaints submitted to the Commission, and at the same time transparency and legal certainty, it is appropriate to lay down the conditions that a complaint should fulfill in order to put the Commission in possession of information regarding alleged unlawful aid and set in motion the preliminary examination. Submissions not meeting those conditions should be treated as general market information, and should not necessarily lead to *ex officio* investigations.
- (33) Complainants should be required to demonstrate that they are interested parties within the meaning of Article 108(2) TFEU and of Article 1(h) of this Regulation. They should also be required to provide a certain amount of information in a form that the Commission should be empowered to set out in an implementing provision. In order not to discourage prospective complainants, that implementing provision should take into account that the demands on interested parties for lodging a complaint should not be burdensome.
- (34) In order to ensure that the Commission addresses similar issues in a consistent manner across the internal market, it is appropriate to provide for a specific legal basis to launch investigations into sectors of the economy or into certain aid instruments across several Member States. For reasons of proportionality and in the light of the high administrative burden entailed by such investigations, sector inquiries should be carried out only when the information available substantiates a reasonable suspicion that State aid measures in a particular sector could materially restrict or distort competition within the internal market in several Member States, or that existing aid measures in a particular sector in several Member States are not, or are no longer, compatible with the internal market. Such inquiries would enable the Commission to deal in an efficient and transparent way with horizontal State aid issues and to obtain an *ex ante* overview of the sector concerned.
- (35) In order to allow the Commission to monitor effectively compliance with Commission decisions and to facilitate cooperation between the Commission and Member States for the purpose of the constant review of all existing aid schemes in the Member States in accordance with Article 108(1) TFEU, it is necessary that a general reporting obligation with regard to all existing aid schemes be laid down.
- (36) Where the Commission has serious doubts as to whether its decisions are being complied with, it should have at its disposal additional instruments allowing it to obtain the information necessary to verify that its decisions are being effectively complied with. For this purpose on-site monitoring visits are an appropriate and useful instrument, in particular for cases where aid might have been misused. Therefore the Commission should be empowered to undertake on-site monitoring visits and should obtain the cooperation of the competent authorities of the Member States where an undertaking opposes such a visit.
- (37) Consistency in the application of the State aid rules requires that arrangements be established for cooperation between the courts of the Member States and the Commission. Such cooperation is relevant for all courts of the Member States that apply Article 107(1) and Article 108 TFEU. In particular, national courts should be able to ask the Commission for information or for its opinion on points concerning the application of State aid rules. The Commission should also be able to submit written or oral observations to courts which are called upon to apply Article 107(1) or Article 108 TFEU. When assisting national courts in this respect, the Commission should act in accordance with its duty to defend the public interest.
- (38) Those observations and opinions of the Commission should be without prejudice to Article 267 TFEU and not legally bind the national courts. They should be submitted within the framework of national procedural rules and practices including those safeguarding the rights of the parties, in full respect of the independence of the national

courts. Observations submitted by the Commission on its own initiative should be limited to cases that are important for the coherent application of Article 107(1) or Article 108 TFEU, in particular to cases which are significant for the enforcement or the further development of Union State aid case law.

- (39) In the interests of transparency and legal certainty, it is appropriate to give public information on Commission decisions while, at the same time, maintaining the principle that decisions in State aid cases are addressed to the Member State concerned. It is therefore appropriate to publish all decisions which might affect the interests of interested parties either in full or in a summary form or to make copies of such decisions available to interested parties, where they have not been published or where they have not been published in full.
- (40) The Commission, when publishing its decisions, should respect the rules on professional secrecy, including the protection of all confidential information and personal data, in accordance with Article 339 TFEU.
- (41) The Commission, in close liaison with the Advisory Committee on State aid, should be able to adopt implementing provisions laying down detailed rules concerning the procedures under this Regulation,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) 'aid' means any measure fulfilling all the criteria laid down in Article 107(1) TFEU;
- (b) 'existing aid' means:
 - (i) without prejudice to Articles 144 and 172 of the Act of Accession of Austria, Finland and Sweden, to point 3 and the Appendix of Annex IV to the Act of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, to points 2 and 3(b) and the Appendix of Annex V to the Act of Accession of Bulgaria and Romania, and to points 2 and 3(b) and the Appendix of Annex IV to the Act of Accession of Croatia, all aid which existed prior to the entry into force of the TFEU in the respective Member States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the TFEU in the respective Member States;
 - (ii) authorised aid, that is to say, aid schemes and individual aid which have been authorised by the Commission or by the Council;
 - (iii) aid which is deemed to have been authorised pursuant to Article 4(6) of Regulation (EC) No 659/1999 or to Article 4(6) of this Regulation, or prior to Regulation (EC) No 659/1999 but in accordance with this procedure;
 - (iv) aid which is deemed to be existing aid pursuant to Article 17 of this Regulation;
 - (v) aid which is deemed to be an existing aid because it can be established that at the time it was put into effect it did not constitute an aid, and subsequently became an aid due to the evolution of the internal market and without having been altered by the Member State. Where certain measures become aid following the liberalisation of an activity by Union law, such measures shall not be considered as existing aid after the date fixed for liberalisation;
- (c) 'new aid' means all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid;

- (d) 'aid scheme' means any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount;
- (e) 'individual aid' means aid that is not awarded on the basis of an aid scheme and notifiable awards of aid on the basis of an aid scheme;
- (f) 'unlawful aid' means new aid put into effect in contravention of Article 108(3) TFEU;
- (g) 'misuse of aid' means aid used by the beneficiary in contravention of a decision taken pursuant to Article 4(3) or Article 7(3) or (4) of Regulation (EC) No 659/1999 or Article 4(3) or Article 9(3) or (4) of this Regulation;
- (h) 'interested party' means any Member State and any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, in particular the beneficiary of the aid, competing undertakings and trade associations.

CHAPTER II

PROCEDURE REGARDING NOTIFIED AID

Article 2

Notification of new aid

1. Save as otherwise provided in regulations made pursuant to Article 109 TFEU or to other relevant provisions thereof, any plans to grant new aid shall be notified to the Commission in sufficient time by the Member State concerned. The Commission shall inform the Member State concerned without delay of the receipt of a notification.
2. In a notification, the Member State concerned shall provide all necessary information in order to enable the Commission to take a decision pursuant to Articles 4 and 9 ('complete notification').

Article 3

Standstill clause

Aid notifiable pursuant to Article 2(1) shall not be put into effect before the Commission has taken, or is deemed to have taken, a decision authorising such aid.

Article 4

Preliminary examination of the notification and decisions of the Commission

1. The Commission shall examine the notification as soon as it is received. Without prejudice to Article 10, the Commission shall take a decision pursuant to paragraphs 2, 3 or 4 of this Article.
2. Where the Commission, after a preliminary examination, finds that the notified measure does not constitute aid, it shall record that finding by way of a decision.
3. Where the Commission, after a preliminary examination, finds that no doubts are raised as to the compatibility with the internal market of a notified measure, in so far as it falls within the scope of Article 107(1) TFEU, it shall decide that the measure is compatible with the internal market ('decision not to raise objections'). The decision shall specify which exception under the TFEU has been applied.
4. Where the Commission, after a preliminary examination, finds that doubts are raised as to the compatibility with the internal market of a notified measure, it shall decide to initiate proceedings pursuant to Article 108(2) TFEU ('decision to initiate the formal investigation procedure').

5. The decisions referred to in paragraphs 2, 3 and 4 of this Article shall be taken within 2 months. That period shall begin on the day following the receipt of a complete notification. The notification shall be considered as complete if, within 2 months from its receipt, or from the receipt of any additional information requested, the Commission does not request any further information. The period can be extended with the consent of both the Commission and the Member State concerned. Where appropriate, the Commission may fix shorter time limits.

6. Where the Commission has not taken a decision in accordance with paragraphs 2, 3 or 4 within the period laid down in paragraph 5, the aid shall be deemed to have been authorised by the Commission. The Member State concerned may thereupon implement the measures in question after giving the Commission prior notice thereof, unless the Commission takes a decision pursuant to this Article within a period of 15 working days following receipt of the notice.

Article 5

Request for information made to the notifying Member State

1. Where the Commission considers that information provided by the Member State concerned with regard to a measure notified pursuant to Article 2 is incomplete, it shall request all necessary additional information. Where a Member State responds to such a request, the Commission shall inform the Member State of the receipt of the response.

2. Where the Member State concerned does not provide the information requested within the period prescribed by the Commission or provides incomplete information, the Commission shall send a reminder, allowing an appropriate additional period within which the information shall be provided.

3. The notification shall be deemed to be withdrawn if the requested information is not provided within the prescribed period, unless, before the expiry of that period, either the period has been extended with the consent of both the Commission and the Member State concerned, or the Member State concerned, in a duly reasoned statement, informs the Commission that it considers the notification to be complete because the additional information requested is not available or has already been provided. In that case, the period referred to in Article 4(5) shall begin on the day following receipt of the statement. If the notification is deemed to be withdrawn, the Commission shall inform the Member State thereof.

Article 6

Formal investigation procedure

1. The decision to initiate the formal investigation procedure shall summarise the relevant issues of fact and law, shall include a preliminary assessment of the Commission as to the aid character of the proposed measure and shall set out the doubts as to its compatibility with the internal market. The decision shall call upon the Member State concerned and upon other interested parties to submit comments within a prescribed period which shall normally not exceed 1 month. In duly justified cases, the Commission may extend the prescribed period.

2. The comments received shall be submitted to the Member State concerned. If an interested party so requests, on grounds of potential damage, its identity shall be withheld from the Member State concerned. The Member State concerned may reply to the comments submitted within a prescribed period which shall normally not exceed 1 month. In duly justified cases, the Commission may extend the prescribed period.

Article 7

Request for information made to other sources

1. After the initiation of the formal investigation procedure provided for in Article 6, in particular as regards technically complex cases subject to substantive assessment, the Commission may, if the information provided by a Member State concerned during the course of the preliminary examination is not sufficient, request any other Member State, an undertaking or an association of undertakings to provide all market information necessary to enable the Commission to complete its assessment of the measure at stake taking due account of the principle of proportionality, in particular for small and medium-sized enterprises.

2. The Commission may request information only:
 - (a) if it is limited to formal investigation procedures that have been identified by the Commission as being ineffective to date; and
 - (b) in so far as aid beneficiaries are concerned, if the Member State concerned agrees to the request.

3. The undertakings or associations of undertakings providing information following a Commission's request for market information based on paragraphs 6 and 7 shall submit their answer simultaneously to the Commission and to the Member State concerned, to the extent that the documents provided do not include information that is confidential vis-à-vis that Member State.

The Commission shall steer and monitor the information transmission between the Member States, undertakings or associations of undertakings concerned, and verify the purported confidentiality of the information transmitted.

4. The Commission shall request only information that is at the disposal of the Member State, undertaking or association of undertakings concerned by the request.

5. Member States shall provide the information on the basis of a simple request and within a time limit prescribed by the Commission which should normally not exceed 1 month. Where a Member State does not provide the information requested within that period or provides incomplete information, the Commission shall send a reminder.

6. The Commission may, by simple request, require an undertaking or an association of undertakings to provide information. Where the Commission sends a simple request for information to an undertaking or an association of undertakings, it shall state the legal basis and the purpose of the request, specify what information is required and prescribe a proportionate time limit within which the information is to be provided. It shall also refer to the fines provided for in Article 8(1) for supplying incorrect or misleading information.

7. The Commission may, by decision, require an undertaking or an association of undertakings to provide information. Where the Commission, by decision, requires an undertaking or an association of undertakings to supply information, it shall state the legal basis, the purpose of the request, specify what information is required and prescribe a proportionate time limit within which the information is to be provided. It shall also indicate the fines provided for in Article 8(1) and shall indicate or impose the periodic penalties payments provided for in Article 8(2), as appropriate. In addition, it shall indicate the right of the undertaking or association of undertakings to have the decision reviewed by the Court of Justice of the European Union.

8. When issuing a request under paragraph 1 or 6 of this Article, or adopting a decision under paragraph 7, the Commission shall also simultaneously provide the Member State concerned with a copy thereof. The Commission shall indicate the criteria by which it selected the recipients of the request or decision.

9. The owners of the undertakings or their representatives, or, in the case of legal persons, companies, firms or associations without legal personality, the persons authorised to represent them by law or by their constitution, shall supply on their behalf the information requested or required. Persons duly authorised to act may supply the information on behalf of their clients. The latter shall nevertheless be held fully responsible if the information supplied is incorrect, incomplete or misleading.

Article 8

Fines and periodic penalty payments

1. The Commission may, if deemed necessary and proportionate, impose by decision on undertakings or associations of undertakings fines not exceeding 1 % of their total turnover in the preceding business year where they, intentionally or through gross negligence:

- (a) supply incorrect or misleading information in response to a request made pursuant to Article 7(6);
- (b) supply incorrect, incomplete or misleading information in response to a decision adopted pursuant to Article 7(7), or do not supply the information within the prescribed time limit.

2. The Commission may, by decision, impose on undertakings or associations of undertakings periodic penalty payments where an undertaking or association of undertakings fails to supply complete and correct information as requested by the Commission by decision adopted pursuant to Article 7(7).

The periodic penalty payments shall not exceed 5 % of the average daily turnover of the undertaking or association concerned in the preceding business year for each working day of delay, calculated from the date established in the decision, until it supplies complete and correct information as requested or required by the Commission.

3. In fixing the amount of the fine or periodic penalty payment, regard shall be had to the nature, gravity and duration of the infringement, taking due account of the principles of proportionality and appropriateness, in particular for small and medium-sized enterprises.

4. Where the undertakings or associations of undertakings have satisfied the obligation which the periodic penalty payment was intended to enforce, the Commission may reduce the definitive amount of the periodic penalty payment compared to that under the original decision imposing periodic penalty payments. The Commission may also waive any periodic penalty payment.

5. Before adopting any decision in accordance with paragraph 1 or 2 of this Article, the Commission shall set a final deadline of 2 weeks to receive the missing market information from the undertakings or associations of undertakings concerned and also give them the opportunity of making known their views.

6. The Court of Justice of the European Union shall have unlimited jurisdiction within the meaning of Article 261 TFEU to review fines or periodic penalty payments imposed by the Commission. It may cancel, reduce or increase the fine or periodic penalty payment imposed.

Article 9

Decisions of the Commission to close the formal investigation procedure

1. Without prejudice to Article 10, the formal investigation procedure shall be closed by means of a decision as provided for in paragraphs 2 to 5 of this Article.

2. Where the Commission finds that, where appropriate following modification by the Member State concerned, the notified measure does not constitute aid, it shall record that finding by way of a decision.

3. Where the Commission finds that, where appropriate following modification by the Member State concerned, the doubts as to the compatibility of the notified measure with the internal market have been removed, it shall decide that the aid is compatible with the internal market ('positive decision'). That decision shall specify which exception under the TFEU has been applied.

4. The Commission may attach to a positive decision conditions subject to which aid may be considered compatible with the internal market and may lay down obligations to enable compliance with the decision to be monitored ('conditional decision').

5. Where the Commission finds that the notified aid is not compatible with the internal market, it shall decide that the aid shall not be put into effect ('negative decision').

6. Decisions taken pursuant to paragraphs 2 to 5 shall be taken as soon as the doubts referred to in Article 4(4) have been removed. The Commission shall as far as possible endeavour to adopt a decision within a period of 18 months from the opening of the procedure. This time limit may be extended by common agreement between the Commission and the Member State concerned.

7. Once the time limit referred to in paragraph 6 of this Article has expired, and should the Member State concerned so request, the Commission shall, within 2 months, take a decision on the basis of the information available to it. If appropriate, where the information provided is not sufficient to establish compatibility, the Commission shall take a negative decision.

8. Before adopting any decision in accordance with paragraphs 2 to 5, the Commission shall give the Member State concerned the opportunity of making known its views, within a time-limit that shall not normally exceed 1 month, on the information received by the Commission and provided to the Member State concerned pursuant to Article 7(3).

9. The Commission shall not use confidential information provided by respondents, which cannot be aggregated or otherwise be anonymised, in any decision taken in accordance with paragraphs 2 to 5 of this Article, unless it has obtained their agreement to disclose that information to the Member State concerned. The Commission may take a reasoned decision, which shall be notified to the undertaking or association of undertakings concerned, finding that information provided by a respondent and marked as confidential is not protected, and setting a date after which the information will be disclosed. That period shall not be less than 1 month.

10. The Commission shall take due account of the legitimate interests of undertakings in the protection of their business secrets and other confidential information. An undertaking or an association of undertakings providing information pursuant to Article 7, and which is not a beneficiary of the State aid measure in question, may request, on grounds of potential damage, that its identity be withheld from the Member State concerned.

Article 10

Withdrawal of notification

1. The Member State concerned may withdraw the notification within the meaning of Article 2 in due time before the Commission has taken a decision pursuant to Article 4 or to Article 9.

2. In cases where the Commission initiated the formal investigation procedure, the Commission shall close that procedure.

Article 11

Revocation of a decision

The Commission may revoke a decision taken pursuant to Article 4(2) or (3), or Article 9(2), (3) or (4), after having given the Member State concerned the opportunity to submit its comments, where the decision was based on incorrect information provided during the procedure which was a determining factor for the decision. Before revoking a decision and taking a new decision, the Commission shall open the formal investigation procedure pursuant to Article 4(4). Articles 6, 9 and 12, Article 13(1) and Articles 15, 16 and 17 shall apply *mutatis mutandis*.

CHAPTER III

PROCEDURE REGARDING UNLAWFUL AID

Article 12

Examination, request for information and information injunction

1. Without prejudice to Article 24, the Commission may on its own initiative examine information regarding alleged unlawful aid from whatever source.

The Commission shall examine without undue delay any complaint submitted by any interested party in accordance with Article 24(2) and shall ensure that the Member State concerned is kept fully and regularly informed of the progress and outcome of the examination.

2. If necessary, the Commission shall request information from the Member State concerned. Article 2(2) and Article 5(1) and (2) shall apply *mutatis mutandis*.

After the initiation of the formal investigation procedure, the Commission may also request information from any other Member State, from an undertaking, or association of undertakings in accordance with Articles 7 and 8, which shall apply *mutatis mutandis*.

3. Where, despite a reminder pursuant to Article 5(2), the Member State concerned does not provide the information requested within the period prescribed by the Commission, or where it provides incomplete information, the Commission shall by decision require the information to be provided ('information injunction'). The decision shall specify what information is required and prescribe an appropriate period within which it is to be supplied.

Article 13

Injunction to suspend or provisionally recover aid

1. The Commission may, after giving the Member State concerned the opportunity to submit its comments, adopt a decision requiring the Member State to suspend any unlawful aid until the Commission has taken a decision on the compatibility of the aid with the internal market ('suspension injunction').

2. The Commission may, after giving the Member State concerned the opportunity to submit its comments, adopt a decision requiring the Member State provisionally to recover any unlawful aid until the Commission has taken a decision on the compatibility of the aid with the internal market ('recovery injunction'), if all the following criteria are fulfilled:

- (a) according to an established practice there are no doubts about the aid character of the measure concerned;
- (b) there is an urgency to act;
- (c) there is a serious risk of substantial and irreparable damage to a competitor.

Recovery shall be effected in accordance with the procedure set out in Article 16(2) and (3). After the aid has been effectively recovered, the Commission shall take a decision within the time limits applicable to notified aid.

The Commission may authorise the Member State to couple the refunding of the aid with the payment of rescue aid to the firm concerned.

The provisions of this paragraph shall be applicable only to unlawful aid implemented after the entry into force of Regulation (EC) No 659/1999.

Article 14

Non-compliance with an injunction decision

If the Member State fails to comply with a suspension injunction or a recovery injunction, the Commission shall be entitled, while carrying out the examination on the substance of the matter on the basis of the information available, to refer the matter to the Court of Justice of the European Union directly and apply for a declaration that the failure to comply constitutes an infringement of the TFEU.

Article 15

Decisions of the Commission

1. The examination of possible unlawful aid shall result in a decision pursuant to Article 4(2), (3) or (4). In the case of decisions to initiate the formal investigation procedure, proceedings shall be closed by means of a decision pursuant to Article 9. If a Member State fails to comply with an information injunction, that decision shall be taken on the basis of the information available.

2. In cases of possible unlawful aid and without prejudice to Article 13(2), the Commission shall not be bound by the time-limit set out in Articles 4(5), 9(6) and 9(7).
3. Article 11 shall apply *mutatis mutandis*.

Article 16

Recovery of aid

1. Where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary ('recovery decision'). The Commission shall not require recovery of the aid if this would be contrary to a general principle of Union law.
2. The aid to be recovered pursuant to a recovery decision shall include interest at an appropriate rate fixed by the Commission. Interest shall be payable from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its recovery.
3. Without prejudice to any order of the Court of Justice of the European Union pursuant to Article 278 TFEU, recovery shall be effected without delay and in accordance with the procedures under the national law of the Member State concerned, provided that they allow the immediate and effective execution of the Commission's decision. To this effect and in the event of a procedure before national courts, the Member States concerned shall take all necessary steps which are available in their respective legal systems, including provisional measures, without prejudice to Union law.

CHAPTER IV

LIMITATION PERIODS

Article 17

Limitation period for the recovery of aid

1. The powers of the Commission to recover aid shall be subject to a limitation period of 10 years.
2. The limitation period shall begin on the day on which the unlawful aid is awarded to the beneficiary either as individual aid or as aid under an aid scheme. Any action taken by the Commission or by a Member State, acting at the request of the Commission, with regard to the unlawful aid shall interrupt the limitation period. Each interruption shall start time running afresh. The limitation period shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.
3. Any aid with regard to which the limitation period has expired shall be deemed to be existing aid.

Article 18

Limitation period for the imposition of fines and periodic penalty payments

1. The powers conferred on the Commission by Article 8 shall be subject to a limitation period of 3 years.
2. The period provided for in paragraph 1 shall start on the day on which the infringement referred to in Article 8 is committed. However, in the case of continuing or repeated infringements, the period shall begin on the day on which the infringement ceases.

3. Any action taken by the Commission for the purpose of the investigation or proceedings in respect of an infringement referred to in Article 8 shall interrupt the limitation period for the imposition of fines or periodic penalty payments, with effect from the date on which the action is notified to the undertaking or association of undertakings concerned.

4. After each interruption, the limitation period shall start running afresh. However, the limitation period shall expire at the latest on the day on which a period of 6 years has elapsed without the Commission having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which the limitation period is suspended in accordance with paragraph 5 of this Article.

5. The limitation period for the imposition of fines or periodic penalty payments shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.

Article 19

Limitation periods for the enforcement of fines and periodic penalty payments

1. The powers of the Commission to enforce decisions adopted pursuant to Article 8 shall be subject to a limitation period of 5 years.

2. The period provided for in paragraph 1 shall start on the day on which the decision taken pursuant to Article 8 becomes final.

3. The limitation period provided for in paragraph 1 of this Article shall be interrupted:

- (a) by notification of a decision modifying the original amount of the fine or periodic penalty payment or refusing an application for modification;
- (b) by any action of a Member State, acting at the request of the Commission, or of the Commission, intended to enforce payment of the fine or periodic penalty payment.

4. After each interruption, the limitation period shall start running afresh.

5. The limitation period provided for in paragraph 1 shall be suspended for so long as:

- (a) the respondent is allowed time to pay;
- (b) the enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union.

CHAPTER V

PROCEDURE REGARDING MISUSE OF AID

Article 20

Misuse of aid

Without prejudice to Article 28, the Commission may, in cases of misuse of aid, initiate the formal investigation procedure pursuant to Article 4(4). Articles 6 to 9, 11 and 12, Article 13(1) and Articles 14 to 17 shall apply *mutatis mutandis*.

CHAPTER VI

PROCEDURE REGARDING EXISTING AID SCHEMES*Article 21***Cooperation pursuant to Article 108(1) TFEU**

1. The Commission shall obtain from the Member State concerned all necessary information for the review, in cooperation with the Member State, of existing aid schemes pursuant to Article 108(1) TFEU.
2. Where the Commission considers that an existing aid scheme is not, or is no longer, compatible with the internal market, it shall inform the Member State concerned of its preliminary view and give the Member State concerned the opportunity to submit its comments within a period of 1 month. In duly justified cases, the Commission may extend this period.

*Article 22***Proposal for appropriate measures**

Where the Commission, in the light of the information submitted by the Member State pursuant to Article 21, concludes that the existing aid scheme is not, or is no longer, compatible with the internal market, it shall issue a recommendation proposing appropriate measures to the Member State concerned. The recommendation may propose, in particular:

- (a) substantive amendment of the aid scheme; or
- (b) introduction of procedural requirements; or
- (c) abolition of the aid scheme.

*Article 23***Legal consequences of a proposal for appropriate measures**

1. Where the Member State concerned accepts the proposed measures and informs the Commission thereof, the Commission shall record that finding and inform the Member State thereof. The Member State shall be bound by its acceptance to implement the appropriate measures.
2. Where the Member State concerned does not accept the proposed measures and the Commission, having taken into account the arguments of the Member State concerned, still considers that those measures are necessary, it shall initiate proceedings pursuant to Article 4(4). Articles 6, 9 and 11 shall apply *mutatis mutandis*.

CHAPTER VII

INTERESTED PARTIES*Article 24***Rights of interested parties**

1. Any interested party may submit comments pursuant to Article 6 following a Commission decision to initiate the formal investigation procedure. Any interested party which has submitted such comments and any beneficiary of individual aid shall be sent a copy of the decision taken by the Commission pursuant to Article 9.
2. Any interested party may submit a complaint to inform the Commission of any alleged unlawful aid or any alleged misuse of aid. To that effect, the interested party shall duly complete a form that has been set out in an implementing provision referred to in Article 33 and shall provide the mandatory information requested therein.

Where the Commission considers that the interested party does not comply with the compulsory complaint form, or that the facts and points of law put forward by the interested party do not provide sufficient grounds to show, on the basis of a *prima facie* examination, the existence of unlawful aid or misuse of aid, it shall inform the interested party thereof and call upon it to submit comments within a prescribed period which shall not normally exceed 1 month. If the interested party fails to make known its views within the prescribed period, the complaint shall be deemed to have been withdrawn. The Commission shall inform the Member State concerned when a complaint has been deemed to have been withdrawn.

The Commission shall send a copy of the decision on a case concerning the subject matter of the complaint to the complainant.

3. At its request, any interested party shall obtain a copy of any decision pursuant to Articles 4 and 9, Article 12(3) and Article 13.

CHAPTER VIII

INVESTIGATIONS INTO SECTORS OF THE ECONOMY AND INTO AID INSTRUMENTS

Article 25

Investigations into sectors of the economy and into aid instruments

1. Where the information available substantiates a reasonable suspicion that State aid measures in a particular sector or based on a particular aid instrument may materially restrict or distort competition within the internal market in several Member States, or that existing aid measures in a particular sector in several Member States are not, or no longer, compatible with the internal market, the Commission may conduct an inquiry across various Member States into the sector of the economy or the use of the aid instrument concerned. In the course of that inquiry, the Commission may request the Member States and/or the undertakings or associations of undertakings concerned to supply the necessary information for the application of Articles 107 and 108 TFEU, taking due account of the principle of proportionality.

The Commission shall state the reasons for the inquiry and for the choice of addressees in all requests for information sent under this Article.

The Commission shall publish a report on the results of its inquiry into particular sectors of the economy or particular aid instruments across various Member States and shall invite the Member States and any undertakings or associations of undertakings concerned to submit comments.

2. Information obtained from sector inquiries may be used in the framework of procedures under this Regulation.

3. Articles 5, 7 and 8 of this Regulation shall apply *mutatis mutandis*.

CHAPTER IX

MONITORING

Article 26

Annual reports

1. Member States shall submit to the Commission annual reports on all existing aid schemes with regard to which no specific reporting obligations have been imposed in a conditional decision pursuant to Article 9(4).

2. Where, despite a reminder, the Member State concerned fails to submit an annual report, the Commission may proceed in accordance with Article 22 with regard to the aid scheme concerned.

*Article 27***On-site monitoring**

1. Where the Commission has serious doubts as to whether decisions not to raise objections, positive decisions or conditional decisions with regard to individual aid are being complied with, the Member State concerned, after having been given the opportunity to submit its comments, shall allow the Commission to undertake on-site monitoring visits.

2. The officials authorised by the Commission shall be empowered, in order to verify compliance with the decision concerned:

- (a) to enter any premises and land of the undertaking concerned;
- (b) to ask for oral explanations on the spot;
- (c) to examine books and other business records and take, or demand, copies.

The Commission may be assisted if necessary by independent experts.

3. The Commission shall inform the Member State concerned, in good time and in writing, of the on-site monitoring visit and of the identities of the authorised officials and experts. If the Member State has duly justified objections to the Commission's choice of experts, the experts shall be appointed in common agreement with the Member State. The officials of the Commission and the experts authorised to carry out the on-site monitoring shall produce an authorisation in writing specifying the subject-matter and purpose of the visit.

4. Officials authorised by the Member State in whose territory the monitoring visit is to be made may be present at the monitoring visit.

5. The Commission shall provide the Member State with a copy of any report produced as a result of the monitoring visit.

6. Where an undertaking opposes a monitoring visit ordered by a Commission decision pursuant to this Article, the Member State concerned shall afford the necessary assistance to the officials and experts authorised by the Commission to enable them to carry out the monitoring visit.

*Article 28***Non-compliance with decisions and judgments**

1. Where the Member State concerned does not comply with conditional or negative decisions, in particular in cases referred to in Article 16 of this Regulation, the Commission may refer the matter to the Court of Justice of the European Union directly in accordance with Article 108(2) TFEU.

2. If the Commission considers that the Member State concerned has not complied with a judgment of the Court of Justice of the European Union, the Commission may pursue the matter in accordance with Article 260 TFEU.

CHAPTER X

COOPERATION WITH NATIONAL COURTS*Article 29***Cooperation with national courts**

1. For the application of Article 107(1) and Article 108 TFEU, the courts of the Member States may ask the Commission to transmit to them information in its possession or its opinion on questions concerning the application of State aid rules.

2. Where the coherent application of Article 107(1) or Article 108 TFEU so requires, the Commission, acting on its own initiative, may submit written observations to the courts of the Member States that are responsible for applying the State aid rules. It may, with the permission of the court in question, also make oral observations.

The Commission shall inform the Member State concerned of its intention to submit observations before formally doing so.

For the exclusive purpose of preparing its observations, the Commission may request the relevant court of the Member State to transmit documents at the disposal of the court, necessary for the Commission's assessment of the matter.

CHAPTER XI

COMMON PROVISIONS

Article 30

Professional secrecy

The Commission and the Member States, their officials and other servants, including independent experts appointed by the Commission, shall not disclose information which they have acquired through the application of this Regulation and which is covered by the obligation of professional secrecy.

Article 31

Addressee of decisions

1. The decisions taken pursuant to Article 7(7), Article 8(1) and (2), and Article 9(9) shall be addressed to the undertaking or association of undertakings concerned. The Commission shall notify the decision to the addressee without delay and shall give the addressee the opportunity to indicate to the Commission which information it considers to be covered by the obligation of professional secrecy.

2. All other decisions of the Commission taken pursuant to Chapters II, III, V, VI and IX shall be addressed to the Member State concerned. The Commission shall notify them to the Member State concerned without delay and shall give that Member State the opportunity to indicate to the Commission which information it considers to be covered by the obligation of professional secrecy.

Article 32

Publication of decisions

1. The Commission shall publish in the *Official Journal of the European Union* a summary notice of the decisions which it takes pursuant to Article 4(2) and (3) and Article 22 in conjunction with Article 23(1). The summary notice shall state that a copy of the decision may be obtained in the authentic language version or versions.

2. The Commission shall publish in the *Official Journal of the European Union* the decisions which it takes pursuant to Article 4(4) in their authentic language version. In the *Official Journal* published in languages other than the authentic language version, the authentic language version shall be accompanied by a meaningful summary in the language of that *Official Journal*.

3. The Commission shall publish in the *Official Journal of the European Union* the decisions which it takes pursuant to Article 8(1) and (2) and Article 9.

4. In cases where Article 4(6) or Article 10(2) applies, a short notice shall be published in the *Official Journal of the European Union*.

5. The Council, acting unanimously, may decide to publish decisions pursuant to the third subparagraph of Article 108(2) TFEU in the *Official Journal of the European Union*.

*Article 33***Implementing provisions**

The Commission, acting in accordance with the procedure laid down in Article 34, shall have the power to adopt implementing provisions concerning:

- (a) the form, content and other details of notifications;
- (b) the form, content and other details of annual reports;
- (c) the form, content and other details of complaints submitted in accordance with Article 12(1) and Article 24(2);
- (d) details of time-limits and the calculation of time-limits; and
- (e) the interest rate referred to in Article 16(2).

*Article 34***Consultation of the Advisory Committee on State aid**

1. Before adopting any implementing provision pursuant to Article 33 the Commission shall consult the Advisory Committee on State aid set up by Council Regulation (EU) 2015/1588 ⁽¹⁾ ('the Committee').
2. Consultation of the Committee shall take place at a meeting called by the Commission. The drafts and documents to be examined shall be annexed to the notification. The meeting shall take place no earlier than 2 months after notification has been sent. This period may be reduced in the case of urgency.
3. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver an opinion on the draft, within a time-limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.
4. The opinion shall be recorded in the minutes. In addition, each Member State shall have the right to ask to have its position recorded in the minutes. The Committee may recommend the publication of the opinion in the *Official Journal of the European Union*.
5. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee on the manner in which its opinion has been taken into account.

*Article 35***Repeal**

Regulation (EC) No 659/1999 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

*Article 36***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*.

⁽¹⁾ Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (see page 1 of this Official Journal).

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

Done at Brussels, 13 July 2015.

For the Council

The President

F. ETGEN

ANNEX I

Repealed Regulation with list of its successive amendments

Council Regulation (EC) No 659/1999	(OJ L 83, 27.3.1999, p. 1).
Point 5(6) of Annex II to the 2003 Act of Accession	
Council Regulation (EC) No 1791/2006	(OJ L 363, 20.12.2006, p. 1).
Council Regulation (EU) No 517/2013	(OJ L 158, 10.6.2013, p. 1).
Council Regulation (EU) No 734/2013	(OJ L 204, 31.7.2013, p. 15).

ANNEX II

Correlation table

Regulation (EC) No 659/1999	This Regulation
Articles 1 to 6	Articles 1 to 6
Article 6a	Article 7
Article 6b	Article 8
Article 7	Article 9
Article 8	Article 10
Article 9	Article 11
Article 10	Article 12
Article 11(1)	Article 13(1)
Article 11(2), first subparagraph, introductory wording	Article 13(2), first subparagraph, introductory wording
Article 11(2), first subparagraph, first indent	Article 13(2), first subparagraph, point (a)
Article 11(2), first subparagraph, second indent	Article 13(2), first subparagraph, point (b)
Article 11(2), first subparagraph, third indent	Article 13(2), first subparagraph, point (c)
Article 11(2), second, third and fourth subparagraphs	Article 13(2), second, third and fourth subparagraphs
Article 12	Article 14
Article 13	Article 15
Article 14	Article 16
Article 15	Article 17
Article 15a	Article 18
Article 15b	Article 19
Article 16	Article 20
Article 17	Article 21
Article 18	Article 22
Article 19	Article 23
Article 20	Article 24
Article 20a	Article 25
Article 21	Article 26
Article 22	Article 27
Article 23	Article 28
Article 23a	Article 29
Article 24	Article 30
Article 25	Article 31
Article 26(1) and (2)	Article 32(1) and (2)
Article 26(2)a	Article 32(3)

Regulation (EC) No 659/1999	This Regulation
Article 26(3)	Article 32(3)
Article 26(4)	Article 32(4)
Article 26(5)	Article 32(5)
Article 27	Article 33
Article 28	—
Article 29	Article 34
—	Article 35
Article 30	Article 36
—	Annex I
—	Annex II

COMMISSION REGULATION (EU) 2015/1590**of 18 September 2015****establishing a prohibition of fishing for redfish in Greenland waters of NAFO 1F and Greenland waters of V and XIV as well as in international waters of the Redfish Conservation Area by vessels flying the flag of Germany**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) 2015/104 ⁽²⁾ lays down quotas for 2015.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2015.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2015 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

*Article 3***Entry into force**

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

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ Council Regulation (EU) 2015/104 of 19 January 2015 fixing for 2015 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union vessels, in certain non-Union waters, amending Regulation (EU) No 43/2014 and repealing Regulation (EU) No 779/2014 (OJ L 22, 28.1.2015, p. 1).

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

Done at Brussels, 18 September 2015.

*For the Commission,
On behalf of the President,
João AGUIAR MACHADO
Director-General for Maritime Affairs and Fisheries*

ANNEX

No	38/TQ104
Member State	Germany
Stock	RED/N1G14P and RED/*5-14P
Species	Redfish (<i>Sebastes spp.</i>)
Zone	Greenland waters of NAFO 1F and Greenland waters of V and XIV + international waters of the Redfish Conservation Area
Closing date	21.8.2015

COMMISSION REGULATION (EU) 2015/1591**of 18 September 2015****establishing a prohibition of fishing for mackerel in areas VIIIc, IX and X; Union waters of CECAF 34.1.1 and areas VIIla, VIIlb and VIIId by vessels flying the flag of Germany**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) 2015/104 ⁽²⁾ lays down quotas for 2015.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2015.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2015 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

*Article 3***Entry into force**

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

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ Council Regulation (EU) 2015/104 of 19 January 2015 fixing for 2015 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union vessels, in certain non-Union waters, amending Regulation (EU) No 43/2014 and repealing Regulation (EU) No 779/2014 (OJ L 22, 28.1.2015, p. 1).

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

Done at Brussels, 18 September 2015.

*For the Commission,
On behalf of the President,
João AGUIAR MACHADO
Director-General for Maritime Affairs and Fisheries*

ANNEX

No	35/TQ104
Member State	Germany
Stock	MAC/8C3411 and MAC/*8ABD.
Species	Mackerel (<i>Scomber scombrus</i>)
Zone	VIIIc, IX and X; Union waters of CECAF 34.1.1 + VIIIa, VIIIb and VIII d
Closing date	21.8.2015

COMMISSION REGULATION (EU) 2015/1592**of 18 September 2015****establishing a prohibition of fishing for redfish in Union and international waters of V;
international waters of XII and XIV by vessels flying the flag of Germany**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) 2015/104 ⁽²⁾, lays down quotas for 2015.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2015.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2015 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

*Article 3***Entry into force**

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

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ Council Regulation (EU) 2015/104 of 19 January 2015 fixing for 2015 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union vessels, in certain non-Union waters, amending Regulation (EU) No 43/2014 and repealing Regulation (EU) No 779/2014 (OJ L 22, 28.1.2015, p. 1).

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

Done at Brussels, 18 September 2015.

*For the Commission,
On behalf of the President,
João AGUIAR MACHADO
Director-General for Maritime Affairs and Fisheries*

ANNEX

No	37/TQ104
Member State	Germany
Stock	RED/51214D
Species	Redfish (<i>Sebastes spp.</i>)
Zone	Union and international waters of V; international waters of XII and XIV
Closing date	21.8.2015

COMMISSION REGULATION (EU) 2015/1593
of 18 September 2015
establishing a prohibition of fishing for blue whiting in Faroese waters by vessels flying the flag of Germany

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) 2015/104 ⁽²⁾, lays down quotas for 2015.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2015.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

Article 1

Quota exhaustion

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2015 shall be deemed to be exhausted from the date set out in that Annex.

Article 2

Prohibitions

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

Article 3

Entry into force

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

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ Council Regulation (EU) 2015/104 of 19 January 2015 fixing for 2015 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union vessels, in certain non-Union waters, amending Regulation (EU) No 43/2014 and repealing Regulation (EU) No 779/2014 (OJ L 22, 28.1.2015, p. 1).

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

Done at Brussels, 18 September 2015.

For the Commission,
On behalf of the President,
João AGUIAR MACHADO
Director-General for Maritime Affairs and Fisheries

ANNEX

No	36/TQ104
Member State	Germany
Stock	WHB/2A4AXF
Species	Blue whiting (<i>Micromesistius poutassou</i>)
Zone	Faroese waters
Closing date	21.8.2015

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1594**of 21 September 2015****approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Rocamadour (PDO))**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Pursuant to the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined France's application for the approval of amendments to the specification for the protected designation of origin 'Rocamadour', registered under Commission Regulation (EC) No 38/1999 ⁽²⁾ as amended by Regulation (EC) No 939/2008 ⁽³⁾.
- (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* ⁽⁴⁾ 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 'Rocamadour' (PDO) 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, 21 September 2015.

For the Commission,
On behalf of the President,
Phil HOGAN
Member of the Commission

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ Commission Regulation (EC) No 38/1999 of 8 January 1999 supplementing the Annex to Regulation (EC) No 2400/96 on the entry of certain names in the 'Register of protected designations of origin and protected geographical indications' provided for in Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 5, 9.1.1999, p. 62).

⁽³⁾ Commission Regulation (EC) No 939/2008 of 24 September 2008 approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Rocamadour (PDO)) (OJ L 257, 25.9.2008, p. 12).

⁽⁴⁾ OJ C 145, 1.5.2015, p. 15.

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1595**of 21 September 2015****approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications [Zgornjesavinjski želodec (PGI)]**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Pursuant to the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined Slovenia's application for the approval of amendments to the specification for the protected geographical indication 'Zgornjesavinjski želodec', registered under Commission Regulation (EU) No 1154/2011 ⁽²⁾.
- (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* ⁽³⁾ 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 'Zgornjesavinjski želodec' (PGI) 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, 21 September 2015.

For the Commission,
On behalf of the President,
Phil HOGAN
Member of the Commission

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ Commission Regulation (EU) No 1154/2011 of 10 November 2011 entering a name in the register of protected designations of origin and protected geographical indications (Zgornjesavinjski želodec (PGI)) (OJ L 296, 15.11.2011, p. 14).

⁽³⁾ OJ C 145, 1.5.2015, p. 22.

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1596**of 21 September 2015****approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications [Montes de Toledo (PDO)]**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Pursuant to the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined Spain's application for the approval of amendments to the specification for the protected designation of origin 'Montes de Toledo' registered under Commission Regulation (EC) No 1187/2000 ⁽²⁾, as amended by Regulation (EU) No 593/2010 ⁽³⁾.
- (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* ⁽⁴⁾ 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 'Montes de Toledo' (PDO) 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, 21 September 2015.

For the Commission,
On behalf of the President,
Phil HOGAN
Member of the Commission

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ Commission Regulation (EC) No 1187/2000 of 5 June 2000 supplementing the Annex to Regulation (EC) No 2400/96 on the entry of certain names in the Register of protected designations of origin and protected geographical indications provided for in Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 133, 6.6.2000, p. 19).

⁽³⁾ Commission Regulation (EU) No 593/2010 of 6 July 2010 approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications [Montes de Toledo (PDO)] (OJ L 172, 7.7.2010, p. 1).

⁽⁴⁾ OJ C 147, 5.5.2015, p. 16.

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1597**of 23 September 2015****derogating from Implementing Regulation (EU) No 615/2014 as regards the final date for the payment of the initial instalment of the advance to be paid to the beneficiary organisations in Greece in respect of work programmes in the olive oil and table olives sector for the year 2015**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular point (b) of Article 31 thereof,

Whereas:

- (1) In accordance with Article 7(1) of Commission Delegated Regulation (EU) No 611/2014 ⁽²⁾, the first 3-year work programme period for support to the olive-oil and table-olives sector referred to in Article 29(1) of Regulation (EU) No 1308/2013 started on 1 April 2015.
- (2) Pursuant to Article 3(2) of Commission Implementing Regulation (EU) No 615/2014 ⁽³⁾, Member States are to pay an initial instalment of the advance to be paid to the beneficiary organisations in respect of the first year of implementation of the approved work programmes by 31 May 2015. As stated in Article 4(1) of that Regulation, such advances are subject to the lodging of a security by the beneficiary organisation.
- (3) In Greece, the prevailing economic and banking conditions have put to a standstill certain approved work programmes, as their beneficiary organisations were not able to lodge the required security timely. Therefore, Greece could not pay them the initial instalment by 31 May 2015.
- (4) In view of this situation and in order to allow for the implementation of all the approved work programmes, it is necessary to provide for a derogation from Article 3(2) of Implementing Regulation (EU) No 615/2014 to enable Greece to pay the relevant initial instalment by 15 October 2015.
- (5) In the interest of an expedient implementation, this Regulation should apply from the day following that of its publication.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

For Greece and in respect of the year 2015, the final date referred to in the first sentence of Article 3(2) of Implementing Regulation (EU) No 615/2014 shall be 15 October 2015.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Delegated Regulation (EU) No 611/2014 of 11 March 2014 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the support programmes for the olive-oil and table-olives sector (OJ L 168, 7.6.2014, p. 55).

⁽³⁾ Commission Implementing Regulation (EU) No 615/2014 of 6 June 2014 laying down detailed rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council and Regulation (EU) No 1308/2013 of the European Parliament and of the Council in respect of work programmes to support the olive oil and table olives sectors (OJ L 168, 7.6.2014, p. 95).

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, 23 September 2015.

For the Commission

The President

Jean-Claude JUNKER

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1598**of 23 September 2015****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 Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾,

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

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 23 September 2015.

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

Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	147,9
	MK	49,2
	TR	81,7
	ZZ	92,9
0707 00 05	AR	98,4
	TR	137,2
	ZZ	117,8
0709 93 10	TR	138,3
	ZZ	138,3
0805 50 10	AG	150,3
	AR	138,6
	BO	138,3
	CL	99,5
	UY	105,9
	ZA	133,3
	ZZ	127,7
0806 10 10	EG	179,9
	TR	121,8
	ZZ	150,9
0808 10 80	AR	104,4
	BR	70,7
	CL	187,0
	NZ	131,4
	US	113,3
	ZA	143,5
	ZZ	125,1
0808 30 90	AR	88,2
	CL	148,3
	CN	96,7
	TR	120,6
	ZA	106,4
	ZZ	112,0
0809 30 10, 0809 30 90	MK	84,1
	TR	150,0
	ZZ	117,1
0809 40 05	BA	56,0
	MK	53,5
	XS	61,9
	ZZ	57,1

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

REGULATION (EU) 2015/1599 OF THE EUROPEAN CENTRAL BANK
of 10 September 2015
amending Regulation (EU) No 1333/2014 concerning statistics on the money markets
(ECB/2015/30)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 5 thereof,

Having regard to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank ⁽¹⁾, and in particular Articles 5(1) and 6(4) thereof,

Whereas:

- (1) Regulation (EU) No 1333/2014 of the European Central Bank (ECB/2014/48) ⁽²⁾ requires the reporting of statistical data by reporting agents in order that the European System of Central Banks, in the fulfilment of its tasks, may produce statistics on money market transactions.
- (2) A set of reporting instructions setting out detailed parameters for the reporting of statistical information under Regulation (EU) No 1333/2014 (ECB/2014/48) will be issued to national central banks. As the reporting instructions refine a number of significant terms appearing in that Regulation, consistency requires that it should also reflect those changes.
- (3) Therefore, Regulation (EU) No 1333/2014 (ECB/2014/48) should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments

1. Annex I to Regulation (EU) No 1333/2014 (ECB/2014/48) is replaced by Annex I to this Regulation.
2. Annexes II and III to Regulation (EU) No 1333/2014 (ECB/2014/48) are amended in accordance with Annex II to this Regulation.

Article 2

Final provisions

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Frankfurt am Main, 10 September 2015.

For the Governing Council of the ECB

The President of the ECB

Mario DRAGHI

⁽¹⁾ OJ L 318, 27.11.1998, p. 8.

⁽²⁾ Regulation (EU) No 1333/2014 of the European Central Bank of 26 November 2014 concerning statistics on the money markets (ECB/2014/48) (OJ L 359, 16.12.2014, p. 97).

ANNEX I

‘ANNEX I

Reporting scheme for money market statistics relating to secured transactions

PART 1

TYPE OF INSTRUMENTS

Reporting agents report to the European Central Bank (ECB) or the relevant national central bank (NCB) all repurchase agreements and transactions entered into thereunder, including tri-party repo transactions, which are denominated in euro with a maturity of up to and including one year (defined as transactions with a maturity date of not more than 397 days after the settlement date) between the reporting agent and other monetary financial institutions (MFIs), other financial intermediaries (OFIs), insurance corporations, pension funds, general government or central banks for investment purposes as well as with non-financial corporations classified as “wholesale” according to the Basel III LCR framework.

PART 2

TYPE OF DATA**1. Type of transaction-based data ⁽¹⁾ to be reported for each transaction:**

Field	Description of data	Alternative reporting option (if any) and other qualifications
Transaction identifier	The internal unique transaction identifier used by the reporting agent for each transaction.	The transaction identifier is unique for any transaction reported on a given reporting date for any money market segment.
Reporting date	The date on which the data are submitted to the ECB or the NCB.	
Electronic time stamp	The time at which a transaction is concluded or booked.	
Counterparty code	An identification code used to recognise the counterparty of the reporting agent for the reported transaction.	Where transactions are conducted via a central clearing counterparty (CCP), the CCP legal entity identifier (LEI) must be provided. Where transactions are undertaken with non-financial corporations, OFIs, insurance corporations, pension funds, general government, and central banks and for any other reported transaction for which the counterparty LEI is not provided, the counterparty class must be provided.
Counterparty code ID	An attribute specifying the type of individual counterparty code transmitted.	To be used in all circumstances. An individual counterparty code will be provided.

⁽¹⁾ The electronic reporting standards and the technical specifications for the data are laid down separately. They are available on the ECB's website at: www.ecb.europa.eu.

Field	Description of data	Alternative reporting option (if any) and other qualifications
Counterparty location	International Organisation for Standardisation (ISO) country code of the country in which the counterparty is incorporated.	Mandatory if the individual counterparty code is not provided. Otherwise optional.
Transaction nominal amount	The amount initially borrowed or lent.	
Collateral nominal amount	The nominal amount of the security pledged as collateral.	Except for tri-party repos and any other transaction in which the security pledged is not identified via a single International Securities Identification Number (ISIN).
Trade date	The date on which the parties enter into the financial transaction.	
Settlement date	The purchase date, i.e. the date on which the cash is due to be paid by the lender to the borrower and the security is to be transferred by the borrower to the lender.	In the case of open basis repurchase transactions, this is the date on which the roll-over settles (even if no exchange of cash takes place).
Maturity date	The repurchase date, i.e. the date on which the cash is due to be repaid by the borrower to the lender.	In the case of open basis repurchase transactions, this is the date on which principal and interest owed is to be repaid if the transaction is not rolled over further.
Transaction sign	Borrowing of cash in the case of repos or lending of cash in the case of reverse repos.	
ISIN of the collateral	The ISIN assigned to securities issued in financial markets, composed of 12 alphanumeric characters, which uniquely identifies a security (as defined by ISO 6166).	To be reported with exceptions for certain collateral types.
Collateral type	To identify the asset class pledged as collateral where no individual ISIN is provided.	To be provided in all cases where no individual ISIN is provided.
Collateral Issuer Sector	To identify the sector of the issuer of the collateral when no individual ISIN is provided	To be provided where no individual ISIN is provided.
Special collateral flag	To identify all repurchase transactions conducted against general collateral and those conducted against special collateral. Optional field to be provided only if it is feasible for the reporting agent.	Reporting of this field is optional.

Field	Description of data	Alternative reporting option (if any) and other qualifications
Deal rate	The interest rate expressed in accordance with the ACT/360 money market convention at which the repo was concluded and at which the cash lent is remunerated.	
Collateral haircut	A risk control measure applied to underlying collateral whereby the value of that underlying collateral is calculated as the market value of the assets reduced by a certain percentage (haircut). For reporting purposes the collateral haircut is calculated as 100 minus the ratio between the cash lent/borrowed and the market value including accrued interest of the collateral pledged.	Reporting of this field is only required for single collateral transactions.
Counterparty code of the tri-party agent	The counterparty code identifier of the tri-party agent.	To be reported for tri-party repos.
Tri-party agent code ID	An attribute specifying the type of individual tri-party agent code transmitted.	To be used in all circumstances where an individual tri-party agent code will be provided.

2. Materiality threshold

Transactions undertaken with non-financial corporations should only be reported when undertaken with non-financial corporations classified as wholesale on the basis of the Basel III LCR Framework ⁽¹⁾.

3. Exceptions

Intra-group transactions should not be reported.'

⁽¹⁾ See "Basel III: The liquidity coverage ratio and liquidity risk monitoring tools", Basel Committee on Banking Supervision, January 2013, pp. 23 to 27, available on the Bank for International Settlements' website at: www.bis.org.

ANNEX II

Annexes II and III to Regulation (EU) No 1333/2014 (ECB/2014/48) are amended as follows:

1. in Annex II, Part 1 is replaced by the following:

PART 1

TYPE OF INSTRUMENTS

1. Reporting agents report to the European Central Bank (ECB) or the relevant national central bank (NCB):
 - (a) all borrowing using the instruments defined in the table below, which are denominated in euro with a maturity of up to and including one year (defined as transactions with a maturity date of not more than 397 days after the settlement date), of the reporting agent from other monetary financial institutions (MFIs), other financial intermediaries (OFIs), insurance corporations, pension funds, general government or central banks for investment purposes as well as from non-financial corporations classified as “wholesale” according to the Basel III LCR framework;
 - (b) all lending to other credit institutions with a maturity of up to and including one year (defined as transactions with a maturity date of not more than 397 days after the settlement date) via unsecured deposits or call accounts, or via the purchase from the issuing credit institutions of commercial paper, certificates of deposit, floating rate notes and other debt securities with a maturity of up to one year.
2. The table below provides a detailed standard description of the instrument categories for transactions which reporting agents are required to report to the ECB. In the event that the reporting agents are required to report the transactions to their NCB, the relevant NCB should transpose these descriptions of instrument categories at national level in accordance with this Regulation.

Instrument type	Description
Deposits	Unsecured interest-bearing deposits (including call accounts but excluding current accounts) which are either redeemable at notice or have a maturity of not more than one year and which are either taken (borrowing) or placed by the reporting agent.
Call accounts	Cash accounts with daily changes in the applicable interest rate, giving rise to interest payments or calculations at regular intervals, and a notice period to withdraw money.
Certificate of deposit	A fixed-rate debt instrument issued by an MFI entitling the holder to a specific fixed rate of interest over a defined fixed term of up to one year.
Commercial paper	A debt instrument that is either unsecured or backed by collateral provided by the issuer, which has a maturity of not more than one year and is either interest-bearing or discounted.
Floating rate note	A debt instrument for which the periodic interest payments are calculated on the basis of the value, i.e. through fixing of an underlying reference rate such as Euribor on predefined dates known as fixing dates, and which has a maturity of not more than one year.

Instrument type	Description
Other short-term debt securities	<p>Unsubordinated securities other than equity of up to one year maturity issued by reporting agents, which are instruments usually negotiable and traded on secondary markets or which can be offset on the market and which do not grant the holder any ownership rights over the issuing institution. This item includes:</p> <p>(a) securities that give the holder an unconditional right to a fixed or contractually determined income in the form of coupon payments and/or a stated fixed sum at a specific date (or dates) or starting from a date defined at the time of issue;</p> <p>(b) non-negotiable instruments issued by reporting agents that subsequently become negotiable and are reclassified as “debt securities”.</p>

2. in Annex III, Part 1 is replaced by the following:

PART 1

TYPE OF INSTRUMENTS

Reporting agents report to the European Central Bank (ECB) or the relevant national central bank (NCB):

- (a) all foreign exchange swaps transactions, in which euro are bought/sold spot against a foreign currency and re-sold or re-bought at a forward date at a pre-agreed foreign exchange forward rate with a maturity of up to and including one year (defined as transactions with a maturity date of not more than 397 days after the settlement date of the spot leg of the foreign exchange swap transaction), between the reporting agent and other monetary financial institutions (MFIs), other financial intermediaries (OFIs), insurance corporations, pension funds, general government or central banks for investment purposes as well as with non-financial corporations classified as “wholesale” according to the Basel III LCR framework;
- (b) overnight index swaps (OIS) transactions denominated in euro between the reporting agent and other MFIs, OFIs, insurance corporations, pension funds, general government or central banks for investment purposes as well as with non-financial corporations classified as “wholesale” according to the Basel III LCR framework.;

3. in Annex III, the table in paragraph 1 of Part 2 is replaced by the following:

Field	Description of data	Alternative reporting option (if any) and other qualifications
Transaction identifier	The internal unique transaction identifier used by the reporting agent for each transaction.	The transaction identifier is unique for any transaction reported on a given reporting date for any money market segment.
Reporting date	The date on which the data are submitted to the ECB or the NCB.	
Electronic time stamp	The time at which a transaction is concluded or booked.	

Field	Description of data	Alternative reporting option (if any) and other qualifications
Counterparty code	An identification code to be used to recognise the counterparty of the reporting agent for the reported transaction.	Where transactions are conducted via a central clearing counterparty (CCP), the CCP legal entity identifier (LEI) must be provided. Where transactions are undertaken with non-financial corporations, OFIs, insurance corporations, pension funds, general government, and central banks and for any other reported transaction for which the counterparty LEI is not provided, the counterparty class must be provided.
Counterparty code ID	An attribute specifying the type of individual counterparty code transmitted.	To be used in all circumstances. An individual counterparty code will be provided.
Counterparty location	International Organisation for Standardisation (ISO) country code of the country in which the counterparty is incorporated.	Mandatory if the individual counterparty code is not provided. Otherwise optional.
Trade date	The date on which the parties enter into the reported financial transaction.	
Spot value date	The date on which one party sells to the other a specified amount of a specified currency against payment of an agreed amount of a specified different currency based on an agreed foreign exchange rate known as a foreign exchange spot rate.	
Maturity date	The date on which the foreign exchange swap transaction expires and the currency sold on the spot value date is repurchased.	
Transaction sign	To be used to identify whether the euro amount reported under the transactional nominal amount is bought or sold on the spot value date.	This should refer to euro spot, i.e. whether euro is bought or sold on the spot value date.
Transaction nominal amount	The amount of euro bought or sold on the spot value date.	
Foreign currency code	The international three-digit ISO code of the currency bought/sold in exchange for euro.	

Field	Description of data	Alternative reporting option (if any) and other qualifications
Foreign exchange spot rate	The foreign exchange rate between the euro and the foreign currency applicable to the spot leg of the foreign exchange swap transaction.	
Foreign exchange forward points	The difference between the foreign exchange spot rate and the foreign exchange forward rate expressed in basis points quoted in accordance with the prevailing market conventions for the currency pair.'	

DECISIONS

COUNCIL DECISION (EU, EURATOM) 2015/1600

of 18 September 2015

appointing the members of the European Economic and Social Committee for the period from 21 September 2015 to 20 September 2020

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 300(2) and Article 302 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to Council Decision (EU) 2015/1157 of 14 July 2015 determining the composition of the European Economic and Social Committee ⁽¹⁾,

Having regard to the proposals made by each Member State,

After consulting the European Commission,

Whereas:

- (1) Pursuant to Council Decision 2010/570/EU, Euratom ⁽²⁾, the term of office of the current members of the European Economic and Social Committee expires on 20 September 2015. Members should therefore be appointed for a period of five years as from 21 September 2015.
- (2) Each Member State was requested to submit to the Council a list of candidates, consisting of representatives of organisations of employers, of the employed and of other parties representative of civil society, notably in socio-economic, civic, professional and cultural areas, for appointment as members of the European Economic and Social Committee.
- (3) This Decision will be followed at a later date by a decision appointing those members whose nominations were not communicated to the Council before 8 September 2015,

HAS ADOPTED THIS DECISION:

Article 1

The persons listed in the Annex to this Decision are hereby appointed members of the European Economic and Social Committee for the period from 21 September 2015 to 20 September 2020.

Article 2

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

Done at Brussels, 18 September 2015.

For the Council

The President

J. ASSELBORN

⁽¹⁾ OJ L 187, 15.7.2015, p. 28.

⁽²⁾ Council Decision 2010/570/EU, Euratom of 13 September 2010 appointing the members of the European Economic and Social Committee for the period from 21 September 2010 to 20 September 2015 (OJ L 251, 25.9.2010, p. 8).

ANNEX

ПРИЛОЖЕНИЕ — ANEXO — PŘÍLOHA — BILAG — ANHANG — LISA
ΠΑΡΑΡΤΗΜΑ — ANNEX — ANNEXE — PRILOG — ALLEGATO — PIELIKUMS
PRIEDAS — MELLÉKLET — ANNESS — BIJLAGE — ZAŁĄCZNIK
ANEXO — ANEXĂ — PRÍLOHA — PRILOGA — LIITE — BILAGA
Членове/Miembros/Členové/Medlemmer/Mitglieder/Liikmed
Μέλη/Members/Membres/Članovi/Membri/Locekļi
Nariai/Tagok/Membri/Leden/Członkowie
Membros/Membri/Členovia/Člani/Jäsenet/Ledamöter

BELGIË/BELGIQUE/BELGIEN

Mr Rudi THOMAES

Représentant de la Fédération des Entreprises de Belgique (FEB)

Administrateur délégué honoraire

Mr Dominique MICHEL

Chief Executive Officer, COMEOS, Fédération belge du commerce et des services

Mr Philippe (Baron) de Buck Van Overstraeten

Président du Belgian Business for Europe (BBE)

Mr Daniel MAREELS

General Manager, Belgische Federatie van de Financiële sector (Febelfin)

Mr Bernard NOËL

Représentant de la Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)

Ancien-Secrétaire National

Mr Raymond COUMONT

Représentant de la Centrale nationale des employés/Confédération des Syndicats Chrétiens — (CNE/CSC)

Ancien-Secrétaire général

Ms Anne DEMELENNE

Représentante de la Fédération Générale du Travail de Belgique (FGTB)

Ancienne Secrétaire générale

Mr Rudy DE LEEUW

Voorzitter, Algemeen Belgisch Vakverbond (ABVV)

Mr Ferre WYCKMANS

Algemeen Secretaris, Landelijke Bediendencentrale-Nationaal Verbond voor Kaderleden (LBC-NVK)

Mr Alain COHEUR

Directeur des Affaires Européennes & Internationales, Union Nationale des Mutualités Socialistes

Mr Yves SOMVILLE

Directeur du Service d'Etudes de la Fédération wallonne de l'Agriculture

Mr Ronny LANNOO

Adviseur-generaal, Unie van Zelfstandige Ondernemers (UNIZO)

БЪЛГАРИЯ

Ms Milena ANGELOVA

Secretary — General of the Bulgarian Industrial Capital Association

Mr Bojidar DANEV

Executive President of the Bulgarian Industrial Association — Union of the Bulgarian Business

Mr Georgi STOEV

President of the Trade and Investment Committee and member of the Budgetary Committee of EUROCHAMBERS and Vice president of Bulgarian Chamber of Commerce and Industry

Mr Evgeniy IVANOV

CEO, Member of the Board

Confederation of Employers and Industrialists in Bulgaria 'The Voice of Bulgarian Business' — KRIB

Mr Dimitar MANOLOV

President of the Confederation of Labour 'PODKREPA'

Mr Veselin MITOV

International Secretary, Confederation of Labour 'PODKREPA'

Mr Plamen DIMITROV

President of the Confederation of Independent Trade Unions in Bulgaria

Mr Ivan KOKALOV

Vice-president of Confederation of Independent Trade Unions in Bulgaria

Mr Lalko DULEVSKI

President of the Economic and Social Council of the Republic of Bulgaria

Professor and Head of the Human Resources and Social Protection Department at the University of National and World Economy

Ms Dilyana SLAVOVA

National Coordinator of the Mountain Milk NGO, National Coordinator of Bulgarian Association of Farmers

Mr Bogomil NIKOLOV

Executive Director, Bulgarian National Association Active Consumers

Ms Diana INDJOVA

Chairperson of the Global Disability Movement

ČESKÁ REPUBLIKA

Ms Vladimíra DRBALOVÁ

EU Affairs Deputy Director and European Affairs Unit Head, Confederation of Industry of the Czech Republic

Mr Vladimír NOVOTNÝ

Member of Standing Committees for Energy and Environmental Policy, Confederation of Industry of the Czech Republic

Ms Marie ZVOLSKÁ

EU Affairs Advisor, Confederation of Employers' and Entrepreneurs' Associations of the Czech Republic

Mr Petr ZAHRADNÍK

Head, ČEZ Group Representation Office in Brussels; Advisor, Czech Chamber of Commerce

Mr Bohumír DUFEK

President, Independent Trade Unions Association of the Czech Republic; Vice-President, European Federation of Food, Agriculture and Tourism Trade Unions

Ms Hana POPELKOVÁ

Advisor, Czech-Moravian Confederation of the Trade Unions

Ms Lucie STUDNIČNÁ

Secretary for International Affairs, Czech-Moravian Confederation of the Trade Unions

Mr Jaroslav UNGERMAN

Expert on Macroeconomics, Czech-Moravian Confederation of the Trade Unions; Advisor, Minister of Finance of the Czech Republic; Vice-Chairman, Supervisory Board, Export Guarantee and Insurance Corporation (EGAP)

Ms Zuzana BRZOBOHATÁ

Non-profit institutions: Brontosaurus, Forum 50 %, Oranžový klub; Advisor, Office of Government of the Czech Republic

Mr Lukáš CURYLO

Director, Caritas Czech Republic; Member, Executive Board, Caritas Europe

Mr Roman HAKEN

Executive Director of the Regional Central Moravian Centre for Community Work

Mr Pavel TRANTINA

Freelance Trainer and Project Manager; EU Projects and Relations Manager, Czech Council of Children and Youth

DANMARK

Ms Dorthe ANDERSEN

Director EU Policy, Confederation of Danish Employers

Mr Anders LADEFOGED

Director of European Affairs at Confederation of Danish Industries

Mr Niels Lindberg MADSEN

Head of CAP-policy division, Landbrug & Fødevarer (Danish Agriculture & Food Council)

Ms Marie-Louise KNUPPERT

Elected Confederal Secretary, Danish Confederation of Trade Unions

Mr Bernt FALLENKAMP

Chief advisor, Danish Confederation of Trade Unions

Mr Mikkel DALSGAARD

EU Advisor, FTF — Confederation of Professionals in Denmark

Ms Benedicte FEDERSPIEL

Chief Counsel, the Danish Consumer Council

Ms Mette KINDBERG

Vice President, Kvinderådet (Women's Council Denmark)

Mr Ask Løvbjerg ABILDGAARD

Project Coordinator, Danish Association of the Blind

DEUTSCHLAND

Mr Christian BÄUMLER (PhD)

Member of the Executive Committee of CDA (European Union of Christian Democratic Workers)

Mr Dirk BERGRATH (PhD)

Director, EU-Liaison Office, IG Metall (German Metalworkers' Union)

Mr Egbert BIERMANN

Member, Managing Federal Board, IG BCE (industrial union)

Ms Gabriele BISCHOFF

Federal Executive of the German Confederation of Trade Unions (DGB)

Ms Tanja BUZEK

Trade Union Secretary (United Services Trade Union 'ver.di')

Mr Peter CLEVER

Member of the management board of the Confederation of German Employers' Associations (BDA)

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Mr Vladimír BÁLEŠ

Professor, Slovak University of Technology in Bratislava

Mr Juraj SIPKO

Director of the Institute of Economic Research, Slovak Academy of Science

Mr Rudolf KROPIL

President of the Slovak Rectors' Conference

SUOMI

Ms Tellervo KYLÄ-HARAKKA-RUONALA

Director, Infrastructure and Environment, Confederation of Finnish Industries

Mr Jukka AHTELA

LL.M., Chairman of the Board, Senior Advisor, Ahtela Consulting Oy

Mr Timo VUORI

Executive Vice President, Finland Chamber of Commerce

Mr Markus PENTTINEN

Head of International Affairs, Confederation of Professional and Managerial Staff in Finland Akava

Mr Pekka RISTELÄ

Director, FinUnions — Finnish Trade Union Representation to the EU

Ms Marianne MUONA

Senior Advisor on International Affairs, Finnish Confederation of Professionals STTK

Ms Pirkko RAUNEMAA

M.Sc. (Agriculture and Forestry), Council of Home Economics and Consumer Associations

Mr Simo TIAINEN

Director, Office of Finnish Agriculture and Cooperatives, Central Union of Agricultural Producers and Forest Owners
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Mr Pasi MOISIO

Director, Permanent Representative to the EU of the Finnish transport and logistics organisations

SVERIGE

Ms Karin Ebba Sofia EKENGER

Director/Senior Advisor, Confederation of Swedish Enterprise

Mr Nils-Olof Krister ANDERSSON

Head of the Tax Policy Department, Confederation of Swedish Enterprise

Mr Thord Stefan BACK

Director Sustainable Logistics, Swedish Confederation of Transport Enterprises

Mr Erik Rolf Lennart SVENSSON

Board Member, Almega AB

Ms Ellen Paula NYGREN

Ombudsman, Swedish Trade Union Confederation

Mr Frank Thomas ABRAHAMSSON

Swedish Trade Union for Service and Communications Employees

Ms Berivan Muhriban ÖNGÖRUR

International Secretary, Swedish Confederation of Professional Employees

Mr Bo Gunnar Alexander JANSSON

President, National Union of Teachers in Sweden

Ms Ariane Elisabeth RODERT

EU Policy Advisor, National Forum for Voluntary Organizations

Mr Oskar Kristersson WALLNER

Expert, National Council of Swedish Youth Organisations (LSU)

Ms Sofia Karin Anna BJÖRNSSON

Acting director, Federation of Swedish Farmers (LRF), Brussels Office

Ms Ulrika WESTERLUND

President, Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (RFSL)

UNITED KINGDOM

Mr George Traill LYON

Independent Lawyer — formerly BAE Systems

Mr Roger Martin BARKER

Director, Corporate Governance and Professional Standards, Institute of Directors

Ms Brenda KING

Director, African and Caribbean Diversity

Dr David John SEARS

Consultant and former Deputy Director-General British Chamber of Commerce

Ms Madi SHARMA

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Mr Jonathan PEEL

Business and Trade Consultant

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Management Consultant and Financial Investor

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Mr Amarjite SINGH

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Ms Jane MORRICE

Communications Consultant, Deputy Chief Equality Commissioner — Northern Ireland

Sir Stuart ETHERINGTON

Chief Executive for the National Council for Voluntary Organisations (NCVO)

Mr Michael SMYTH

Economist, Academic, University of Ulster

Mr Tom JONES

Farmer; Vice-President of the Wales Council for Voluntary Action (WCVA)

Ms Irene OLDFATHER

Director, Health and Social Care Alliance

Ms Marina YANNAKOUDAKIS

Consultant on Women's Rights

Sir Graham WATSON

Managing Director, Consultant, Honorary President and co-founder of Climate Parliament (London) and Chairman of Europe Active, the European Health and Fitness Association

COUNCIL DECISION (EU) 2015/1601
of 22 September 2015
establishing provisional measures in the area of international protection for the benefit of Italy
and Greece

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(3) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) According to Article 78(3) of the Treaty on the Functioning of the European Union (TFEU), in the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission and after consulting the European Parliament, may adopt provisional measures for the benefit of the Member State(s) concerned.
- (2) According to Article 80 TFEU, the policies of the Union in the area of border checks, asylum and immigration and their implementation are to be governed by the principle of solidarity and fair sharing of responsibility between the Member States, and Union acts adopted in this area are to contain appropriate measures to give effect to this principle.
- (3) The recent crisis situation in the Mediterranean prompted the Union institutions to immediately acknowledge the exceptional migratory flows in that region and call for concrete measures of solidarity towards the frontline Member States. In particular, at a joint meeting of Foreign and Interior Ministers on 20 April 2015, the Commission presented a ten-point plan of immediate action to be taken in response to the crisis, including a commitment to consider options for an emergency relocation mechanism.
- (4) At its meeting of 23 April 2015, the European Council decided, inter alia, to reinforce internal solidarity and responsibility and committed itself in particular to increasing emergency assistance to frontline Member States and to considering options for organising emergency relocation between Member States on a voluntary basis, as well as to deploying European Asylum Support Office (EASO) teams in frontline Member States for the joint processing of applications for international protection, including registration and fingerprinting.
- (5) In its resolution of 28 April 2015, the European Parliament reiterated the need for the Union to base its response to the latest tragedies in the Mediterranean on solidarity and fair sharing of responsibility and to step up its efforts in this area towards those Member States which receive the highest number of refugees and applicants for international protection in either absolute or relative terms.
- (6) Besides measures in the area of asylum, Member States at the frontline should increase their efforts to set up measures to cope with mixed migration flows at the external borders of the European Union. Such measures should safeguard the rights of those in need of international protection and prevent irregular migration.
- (7) At its meeting of 25 and 26 June 2015, the European Council decided, inter alia, that three key dimensions should be advanced in parallel: relocation/resettlement, return/readmission/reintegration and cooperation with countries of origin and transit. The European Council agreed in particular, in the light of the current emergency situation and the commitment to reinforce solidarity and responsibility, on the temporary and exceptional relocation over 2 years, from Italy and from Greece to other Member States of 40 000 persons in clear need of international protection, in which all Member States would participate.

⁽¹⁾ Opinion of 17 September 2015 (not yet published in the Official Journal).

- (8) The specific situations of the Member States result in particular from migratory flows in other geographical regions, such as the Western Balkans migratory route.
- (9) Several Member States were confronted with a significant increase in the total number of migrants, including applicants for international protection, arriving on their territories in 2014 and some continue to be so confronted in 2015. Emergency financial assistance by the Commission and operational support by EASO were provided to several Member States to help them cope with this increase.
- (10) Among the Member States witnessing situations of considerable pressure and in light of the recent tragic events in the Mediterranean, Italy and Greece in particular have experienced unprecedented flows of migrants, including applicants for international protection who are in clear need of international protection, arriving on their territories, generating significant pressure on their migration and asylum systems.
- (11) On 20 July 2015, reflecting the specific situations of Member States, a Resolution of the representatives of the Governments of the Member States meeting within the Council on relocating from Greece and Italy 40 000 persons in clear need of international protection was adopted by consensus. Over a period of 2 years, 24 000 persons will be relocated from Italy and 16 000 persons will be relocated from Greece. On 14 September 2015, the Council adopted Decision (EU) 2015/1523 ⁽¹⁾, which provided for a temporary and exceptional relocation mechanism from Italy and Greece to other Member States of persons in clear need of international protection.
- (12) During recent months, the migratory pressure at the southern external land and sea borders has again sharply increased, and the shift of migration flows has continued from the central to the eastern Mediterranean and towards the Western Balkans route, as a result of the increasing number of migrants arriving in and from Greece. In view of the situation, further provisional measures to relieve the asylum pressure from Italy and Greece should be warranted.
- (13) According to data of the European Agency for the Management of Operational Cooperation at the External Borders (Frontex), the central and eastern Mediterranean routes were the main areas for irregular border crossing into the Union in the first 8 months of 2015. Since the beginning of 2015, approximately 116 000 migrants arrived in Italy in an irregular manner, (including approximately 10 000 irregular migrants who have been registered by local authorities, but have yet to be confirmed in Frontex data). During May and June 2015, 34 691 irregular border crossings were detected by Frontex and during July and August, 42 356, an increase of 20 %. A strong increase was also witnessed by Greece in 2015, with more than 211 000 irregular migrants reaching the country (including approximately 28 000 irregular migrants who have been registered by local authorities, but have yet to be confirmed in Frontex data). During May and June 2015, 53 624 irregular border crossings were detected by Frontex and during July and August 137 000, an increase of 250 %. A significant proportion of the total number of irregular migrants detected in those two regions included migrants of nationalities which, based on the Eurostat data, meet a high Union-level recognition rate.
- (14) According to Eurostat and EASO figures, 39 183 persons applied for international protection in Italy between January and July 2015, compared to 30 755 in the same period of 2014 (an increase of 27 %). A similar increase in the number of applications was witnessed by Greece with 7 475 applicants (an increase of 30 %).
- (15) Many actions have been taken so far to support Italy and Greece in the framework of the migration and asylum policy, including by providing them with substantial emergency assistance and EASO operational support. Italy and Greece were the second and third largest beneficiaries of funding disbursed during the period 2007-2013 under the General Programme 'Solidarity and Management of Migration Flows' (SOLID), and, in addition, received substantial emergency funding. Italy and Greece will likely continue to be the main beneficiaries of the Asylum, Migration and Integration Fund (AMIF) in 2014-2020.
- (16) Due to the ongoing instability and conflicts in the immediate neighbourhood of Italy and Greece, and the repercussions in migratory flows on other Member States, it is very likely that a significant and increased pressure will continue to be put on their migration and asylum systems, with a significant proportion of the

⁽¹⁾ Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece (OJ L 239, 15.9.2015, p. 146).

migrants who may be in need of international protection. This demonstrates the critical need to show solidarity towards Italy and Greece and to complement the actions taken so far to support them with provisional measures in the area of asylum and migration.

- (17) On 22 September 2015, the Council noted the willingness and readiness of Member States to take part, in accordance with the principles of solidarity and fair sharing of responsibility between the Member States, which govern the Union policy on asylum and migration, in the relocation of 120 000 persons in clear need of international protection. The Council therefore decided to adopt this Decision.
- (18) It should be recalled that Decision (EU) 2015/1523 sets out an obligation for Italy and Greece to provide structural solutions to address exceptional pressures on their asylum and migration systems, by establishing a solid and strategic framework for responding to the crisis situation and intensifying the ongoing reform process in these areas. The roadmaps which Italy and Greece have presented to that end should be updated to take this Decision into account.
- (19) Bearing in mind that the European Council agreed on a set of interlinked measures, the Commission should be entrusted with the power to suspend, where appropriate and having given the Member State concerned the opportunity to present its views, the application of this Decision for a limited period where Italy or Greece does not respect its commitments in this regard.
- (20) As of 26 September 2016, 54 000 applicants should be proportionally relocated from Italy and Greece to other Member States. The Council and the Commission should keep under constant review the situation regarding massive inflows of third country nationals into Member States. The Commission should submit, as appropriate, proposals to amend this Decision in order to address the evolution of the situation on the ground and its impact upon the relocation mechanism, as well as the evolving pressure on Member States, in particular frontline Member States. In doing so, it should take into account the views of the likely beneficiary Member State.

Should this Decision be amended for the benefit of another Member State, that Member State should, on the date of entry into force of the relevant Council amending Decision, present a roadmap to the Council and the Commission which should include adequate measures in the area of asylum, first reception and return, enhancing the capacity, quality and efficiency of its systems in those areas, as well as measures to ensure appropriate implementation of this Decision with a view to allowing it better to cope, after the end of the application of this Decision, with a possible increased inflow of migrants on its territory.

- (21) If any Member State should be confronted with a similar emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, and after consulting the European Parliament, may adopt provisional measures for the benefit of the Member State concerned, on the basis of Article 78(3) TFEU. Such measures may include, where appropriate, a suspension of the obligations of that Member State provided for in this Decision.
- (22) In accordance with Article 78(3) TFEU, the measures envisaged for the benefit of Italy and of Greece should be of a provisional nature. A period of 24 months is reasonable in view of ensuring that the measures provided for in this Decision have a real impact in respect of supporting Italy and Greece in dealing with the significant migration flows on their territories.
- (23) The measures to relocate from Italy and from Greece, provided for in this Decision, entail a temporary derogation from the rule set out in Article 13(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council ⁽¹⁾ according to which Italy and Greece would otherwise have been responsible for the examination of an application for international protection based on the criteria set out in Chapter III of that Regulation, as well as a temporary derogation from the procedural steps, including the time limits, laid down in Articles 21, 22 and 29 of that Regulation. The other provisions of Regulation (EU) No 604/2013, including the implementing rules set

⁽¹⁾ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31).

out in Commission Regulation (EC) No 1560/2003 ⁽¹⁾ and Commission Implementing Regulation (EU) No 118/2014 ⁽²⁾, remain applicable, including the rules contained therein on the obligation for the transferring Member States to meet the costs necessary to transfer an applicant to the Member State of relocation and on the cooperation on transfers between Member States, as well as on transmission of information through the Dublinet electronic communication network. This Decision also entails a derogation from the consent of the applicant for international protection as referred to in Article 7(2) of Regulation (EU) No 516/2014 of the European Parliament and of the Council ⁽³⁾.

- (24) Relocation measures do not absolve Member States from applying Regulation (EU) No 604/2013 in full, including the provisions related to family reunification, the special protection of unaccompanied minors, and the discretionary clause on humanitarian grounds.
- (25) A choice had to be made in respect of the criteria to be applied when deciding which and how many applicants are to be relocated from Italy and from Greece, without prejudice to decisions at national level on asylum applications. A clear and workable system is envisaged based on a threshold of the average rate at Union level of decisions granting international protection in the procedures at first instance, as defined by Eurostat, out of the total number at Union level of decisions on applications for international protection taken at first instance, based on the latest available statistics. On the one hand, this threshold would have to ensure, to the maximum extent possible, that all applicants in clear need of international protection would be in a position to fully and swiftly enjoy their protection rights in the Member State of relocation. On the other hand, it would have to prevent, to the maximum extent possible, applicants who are likely to receive a negative decision on their application from being relocated to another Member State, and therefore from prolonging unduly their stay in the Union. A threshold of 75 %, based on the latest available updated Eurostat quarterly data for decisions at first instance, should be used in this Decision.
- (26) The provisional measures are intended to relieve the significant asylum pressure on Italy and on Greece, in particular by relocating a significant number of applicants in clear need of international protection who will have arrived in the territory of Italy or Greece following the date on which this Decision becomes applicable. Based on the overall number of third-country nationals who have entered Italy and Greece irregularly in 2015, and the number of those who are in clear need of international protection, a total of 120 000 applicants in clear need of international protection should be relocated from Italy and Greece. This number corresponds to approximately 43 % of the total number of third-country nationals in clear need of international protection who have entered Italy and Greece irregularly in July and August 2015. The relocation measure foreseen in this Decision constitutes fair burden sharing between Italy and Greece on the one hand and the other Member States on the other, given the overall available figures on irregular border crossings in 2015. Given the figures at stake, 13 % of these applicants should be relocated from Italy, 42 % from Greece and 45 % should be relocated as provided for in this Decision.
- (27) Within 3 months of the entry into force of this Decision, a Member State may, in exceptional circumstances and giving duly justified reasons compatible with the fundamental values of the Union enshrined in Article 2 of the Treaty on European Union, notify the Council and the Commission that it is unable to take part in the relocation process of up to 30 % of applicants allocated to it in accordance with this Decision. Such exceptional circumstances include, in particular, a situation characterised by a sudden and massive inflow of nationals of third countries of such a magnitude as to place extreme pressure even on a well prepared asylum system otherwise functioning in line with the relevant Union *acquis* on asylum or a risk of sudden and massive inflow of nationals of third countries of such a high probability that it warrants an immediate action. Following an assessment, the Commission should submit proposals to the Council for an implementing decision regarding a temporary suspension of the relocation of up to 30 % of applicants allocated to the Member State concerned. Where justified, the Commission may propose to extend the time limit for relocation of the remaining allocation by up to 12 months beyond the duration of this Decision.

⁽¹⁾ Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 222, 5.9.2003, p. 3).

⁽²⁾ Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 39, 8.2.2014, p. 1).

⁽³⁾ Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decision No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC (OJ L 150, 20.5.2014, p. 168).

- (28) In order to ensure uniform conditions for the implementation of the relocation in the case of proportional relocation of 54 000 applicants from Italy and Greece to the other Member States, in the case where the participation of one or more Member States in the relocation of applicants should be suspended, or in the case where, following relevant notifications to the Council, other Member State(s) or Associated States take part in the relocation, implementing powers should be conferred on the Council.

The conferral of those powers upon the Council is justified in view of the politically sensitive nature of such measures, which touch on national powers regarding the admission of third country nationals on the territory of the Member States and the need to be able to adapt swiftly to rapidly evolving situations.

- (29) The Asylum, Migration and Integration Fund (AMIF) set up by Regulation (EU) No 516/2014 provides support to burden-sharing operations agreed between Member States, and is open to new policy developments in that field. Article 7(2) of Regulation (EU) No 516/2014 provides for the possibility for Member States to implement actions related to the transfer of applicants for international protection as part of their national programmes, while Article 18 of that Regulation provides for the possibility of a lump sum payment of EUR 6 000 for the transfer of beneficiaries of international protection from another Member State.
- (30) With a view to implementing the principle of solidarity and fair sharing of responsibility, and taking into account that this Decision constitutes a further policy development in this field, it is appropriate to ensure that the Member States that relocate, pursuant to this Decision, applicants from Italy and Greece who are in clear need of international protection, receive a lump sum for each relocated person which is identical to the lump sum provided for in Article 18 of Regulation (EU) No 516/2014, namely EUR 6 000, and is implemented by applying the same procedures. This entails a limited, temporary derogation from Article 18 of that Regulation because the lump sum should be paid in respect of relocated applicants rather than in respect of beneficiaries of international protection. Such a temporary extension of the scope of potential recipients of the lump sum appears indeed to be an integral part of the emergency scheme set up by this Decision. Moreover, with regard to the costs for the transfer of persons relocated pursuant to this Decision, it is appropriate to provide that Italy and Greece receive a lump sum of at least EUR 500 for each person relocated from their respective territories, taking into account the actual costs necessary to transfer an applicant to the Member State of relocation. Member States should be entitled to receive additional pre-financing to be paid in 2016 following the revision of their national programmes under the Asylum, Migration and Integration Fund to implement actions under this Decision.
- (31) It is necessary to ensure that a swift relocation procedure is put in place and to accompany the implementation of the provisional measures by close administrative cooperation between Member States and operational support provided by EASO.
- (32) National security and public order should be taken into consideration throughout the relocation procedure, until the transfer of the applicant is implemented. In full respect of the fundamental rights of the applicant, including the relevant rules on data protection, where a Member State has reasonable grounds for regarding an applicant as a danger to its national security or public order, it should inform the other Member States thereof.
- (33) When deciding which applicants in clear need of international protection should be relocated from Italy and from Greece, priority should be given to vulnerable applicants within the meaning of Articles 21 and 22 of Directive 2013/33/EU of the European Parliament and of the Council⁽¹⁾. In this respect, any special needs of applicants, including health, should be of primary concern. The best interests of the child should always be a primary consideration.
- (34) The integration of applicants in clear need of international protection into the host society is the cornerstone of a properly functioning Common European Asylum System. Therefore, in order to decide which specific Member State should be the Member State of relocation, specific account should be given to the specific qualifications and characteristics of the applicants concerned, such as their language skills and other individual indications based on demonstrated family, cultural or social ties which could facilitate their integration into the Member State of relocation. In the case of particularly vulnerable applicants, consideration should be given to the capacity of the Member State of relocation to provide adequate support to those applicants and to the necessity

⁽¹⁾ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29.6.2013, p. 96).

of ensuring a fair distribution of those applicants among Member States. With due respect for the principle of non-discrimination, Member States of relocation may indicate their preferences for applicants based on the above information on the basis of which Italy and Greece, in consultation with EASO and, where applicable, liaison officers, may compile lists of possible applicants identified for relocation to that Member State.

- (35) The legal and procedural safeguards set out in Regulation (EU) No 604/2013 remain applicable in respect of applicants covered by this Decision. In addition, applicants should be informed of the relocation procedure set out in this Decision and be notified with the relocation decision which constitutes a transfer decision within the meaning of Article 26 of Regulation (EU) No 604/2013. Considering that an applicant does not have the right under Union law to choose the Member State responsible for his or her application, the applicant should have the right to an effective remedy against the relocation decision in line with Regulation (EU) No 604/2013, only in view of ensuring respect for his or her fundamental rights. In line with Article 27 of that Regulation, Member States may provide in their national law that the appeal against the transfer decision does not automatically suspend the transfer of the applicant but that the person concerned has the opportunity to request a suspension of the implementation of the transfer decision pending the outcome of his or her appeal.
- (36) Before and after being transferred to the Member States of relocation, applicants enjoy the rights and guarantees provided for in Directive 2013/32/EU ⁽¹⁾ and Directive 2013/33/EU ⁽²⁾ of the European Parliament and of the Council, including in relation to their special reception and procedural needs. In addition, Regulation (EU) No 603/2013 of the European Parliament and of the Council ⁽³⁾ remains applicable in respect of applicants covered by this Decision, and Directive 2008/115/EC of the European Parliament and of the Council ⁽⁴⁾ is applicable for the returning of third-country nationals not having the right to remain on the territory. The above is subject to the limitations in the application of those Directives.
- (37) In line with the Union *acquis*, a robust mechanism of identification, registration and fingerprinting for the relocation procedure should be ensured by Italy and Greece so as to quickly identify the persons in need of international protection who are eligible for relocation and to identify the migrants who do not qualify for international protection and should therefore be returned. This should also apply to persons who arrived on the territory of Italy or Greece between 24 March and 25 September 2015 in order for them to be eligible for relocation. When voluntary return is not practicable and other measures provided for in Directive 2008/115/EC are not adequate to prevent secondary movements, detention measures in line with Chapter IV of that Directive should be applied urgently and effectively. Applicants that elude the relocation procedure should be excluded from relocation.
- (38) Measures should be taken in order to avoid secondary movements of relocated persons from the Member State of relocation to other Member States which could hamper the efficient application of this Decision. In particular, Member States should take the necessary preventive measures in the field of access to social benefits and legal remedies, in accordance with Union law. In addition, applicants should be informed of the consequences of irregular onward movement within the Member States and of the fact that, if the Member State of relocation grants them international protection, they are entitled to the rights attached to international protection only in that Member State.
- (39) Additionally, in line with the objectives set out in Directive 2013/33/EU, the harmonisation of reception conditions amongst Member States should help to limit secondary movements of applicants for international protection influenced by the variety of conditions for their reception. With a view to reaching the same objective, Member States should consider imposing reporting obligations, and providing applicants for international protection with material reception conditions that include housing, food and clothing only in kind, as well as,

⁽¹⁾ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).

⁽²⁾ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (OJ L 180, 29.6.2013, p. 96).

⁽³⁾ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).

⁽⁴⁾ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

where appropriate, ensuring that applicants are directly transferred to the Member State of relocation. Likewise, during the period of the examination of applications for international protection, as provided for in the asylum and Schengen *acquis*, except for serious humanitarian reasons, Member States should neither provide applicants with national travel documents, nor give them other incentives, such as financial ones, which could facilitate their irregular movements to other Member States. In case of irregular movements to other Member States, applicants for or beneficiaries of international protection should be required to go back to the Member State of relocation, and that Member State should take those persons back without delay.

- (40) In order to avoid secondary movements of beneficiaries of international protection, Member States should also inform the beneficiaries about the conditions under which they may legally enter and stay in another Member State, and should be able to impose reporting obligations. Pursuant to Directive 2008/115/EC, Member States should require a beneficiary of international protection who is staying irregularly on their territories to go back immediately to the Member State of relocation. In case the person refuses to return voluntarily, return to the Member State of relocation should be enforced.
- (41) Furthermore, if provided for in national law, in the case of enforced return to the Member State of relocation, the Member State which enforced the return may decide to issue a national entry ban that would prevent the beneficiary, for a certain period of time, from re-entering the territory of that specific Member State.
- (42) As the purpose of this Decision is to address an emergency situation and to support Italy and Greece in reinforcing their asylum systems, it should allow them to make, with the assistance of the Commission, bilateral arrangements with Iceland, Liechtenstein, Norway and Switzerland on the relocation of persons falling within the scope of this Decision. Such arrangements should also reflect the core elements of this Decision, in particular those relating to the relocation procedure and the rights and obligations of applicants as well as those relating to Regulation (EU) No 604/2013.
- (43) The specific support provided to Italy and to Greece through the relocation scheme should be complemented by additional measures, from the arrival of third-country nationals on the territory of Italy or of Greece until the completion of all applicable procedures, coordinated by EASO and other relevant Agencies, such as Frontex coordinating the return of third-country nationals not having the right to remain on the territory, in accordance with Directive 2008/115/EC.
- (44) Since the objectives of this Decision cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.
- (45) This Decision respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union.
- (46) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (47) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (48) In case where, following a notification made pursuant to Article 4 of Protocol No 21 by a Member State covered by that Protocol, the Commission confirms in accordance with Article 331(1) TFEU the participation of that Member State in this Decision, the Council should fix the number of applicants to be relocated to that Member State. The Council should also accordingly adapt the allocations of other Member States by reducing them in proportion.

- (49) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (50) In view of the urgency of the situation, this Decision should enter into force on the date following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter

1. This Decision establishes provisional measures in the area of international protection for the benefit of Italy and of Greece, in view of supporting them in better coping with an emergency situation characterised by a sudden inflow of nationals of third countries in those Member States.
2. The Commission shall keep under constant review the situation regarding massive inflows of third country nationals into Member States.

The Commission will submit, as appropriate, proposals to amend this Decision in order to take into account the evolution of the situation on the ground and its impact upon the relocation mechanism, as well as the evolving pressure on Member States, in particular frontline Member States.

Article 2

Definitions

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

- (a) 'application for international protection' means an application for international protection as defined in point (h) of Article 2 of Directive 2011/95/EU of the European Parliament and of the Council ⁽¹⁾;
- (b) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;
- (c) 'international protection' means refugee status and subsidiary protection status as defined in points (e) and (g), respectively, of Article 2 of Directive 2011/95/EU;
- (d) 'family members' means family members as defined in point (g) of Article 2 of Regulation (EU) No 604/2013;
- (e) 'relocation' means the transfer of an applicant from the territory of the Member State which the criteria laid down in Chapter III of Regulation (EU) No 604/2013 indicate as responsible for examining his or her application for international protection to the territory of the Member State of relocation;
- (f) 'Member State of relocation' means the Member State which becomes responsible for examining the application for international protection pursuant to Regulation (EU) No 604/2013 of an applicant following his or her relocation in the territory of that Member State.

⁽¹⁾ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9).

*Article 3***Scope**

1. Relocation pursuant to this Decision shall take place only in respect of an applicant who has lodged his or her application for international protection in Italy or in Greece and for whom those States would have otherwise been responsible pursuant to the criteria for determining the Member State responsible set out in Chapter III of Regulation (EU) No 604/2013.

2. Relocation pursuant to this Decision shall be applied only in respect of an applicant belonging to a nationality for which the proportion of decisions granting international protection among decisions taken at first instance on applications for international protection as referred to in Chapter III of Directive 2013/32/EU of the European Parliament and of the Council ⁽¹⁾ is, according to the latest available updated quarterly Union-wide average Eurostat data, 75 % or higher. In the case of stateless persons, the country of former habitual residence shall be taken into account. Quarterly updates shall be taken into account only in respect of applicants who have not already been identified as applicants who could be relocated in accordance with Article 5(3) of this Decision.

*Article 4***Relocation of 120 000 applicants to Member States**

1. 120 000 applicants shall be relocated to the other Member States as follows:

- (a) 15 600 applicants shall be relocated from Italy to the territory of the other Member States in accordance with the table set out in Annex I;
- (b) 50 400 applicants shall be relocated from Greece to the territory of the other Member States in accordance with the table set out in Annex II;
- (c) 54 000 applicants shall be relocated to the territory of the other Member States, proportionally to the figures laid down in Annexes I and II, either in accordance with paragraph 2 of this Article or through an amendment of this Decision, as referred to in Article 1(2) and in paragraph 3 of this Article.

2. As of 26 September 2016, 54 000 applicants, referred to in point (c) of paragraph 1, shall be relocated from Italy and Greece, in proportion resulting from points (a) and (b) of paragraph 1, to the territory of other Member States and proportionally to the figures laid down in Annexes I and II. The Commission shall submit a proposal to the Council on the figures to be allocated accordingly per Member State.

3. If by 26 September 2016, the Commission considers that an adaptation of the relocation mechanism is justified by the evolution of the situation on the ground or that a Member State is confronted with an emergency situation characterised by a sudden inflow of nationals of third countries due to a sharp shift of migration flows and taking into account the views of the likely beneficiary Member State, it may submit, as appropriate, proposals to the Council, as referred to in Article 1(2).

Likewise, a Member State may, giving duly justified reasons, notify the Council and the Commission that it is confronted with a similar emergency situation. The Commission shall assess the reasons given and submit, as appropriate, proposals to the Council, as referred to in Article 1(2).

4. In case where, following a notification made pursuant to Article 4 of Protocol No 21 by a Member State covered by that Protocol, the Commission confirms in accordance with Article 331(1) TFEU the participation of that Member State in this Decision, the Council shall, on a proposal from the Commission, fix the number of applicants to be relocated to the Member State concerned. In the same implementing decision, the Council shall also accordingly adapt the allocations of other Member States by reducing them in proportion.

⁽¹⁾ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).

5. A Member State may, in exceptional circumstances, by 26 December 2015, notify the Council and the Commission that it is temporarily unable to take part in the relocation process of up to 30 % of applicants allocated to it in accordance with paragraph 1, giving duly justified reasons compatible with the fundamental values of the Union enshrined in Article 2 of the Treaty on European Union.

The Commission shall assess the reasons given and submit proposals to the Council regarding a temporary suspension of the relocation of up to 30 % of applicants allocated to the Member State concerned in accordance with paragraph 1. Where justified, the Commission may propose to extend the time limit for relocating the applicants in the remaining allocation by up to 12 months beyond the date referred to in Article 13(2).

6. The Council shall, within 1 month, decide on the proposals referred to in paragraph 5.

7. For the purpose of application of paragraphs 2, 4 and 6 of this Article, and of Article 11(2), the Council shall, on a proposal from the Commission, adopt an implementing decision.

Article 5

Relocation procedure

1. For the purpose of the administrative cooperation required to implement this Decision, each Member State shall appoint a national contact point, whose address it shall communicate to the other Member States and to EASO. Member States shall, in liaison with EASO and other relevant agencies, take all the appropriate measures to establish direct cooperation and an exchange of information between the competent authorities, including about the grounds referred to in paragraph 7.

2. Member States shall, at regular intervals, and at least every 3 months, indicate the number of applicants who can be relocated swiftly to their territory and any other relevant information.

3. Based on this information, Italy and Greece shall, with the assistance of EASO and, where applicable, of Member States' liaison officers referred to in paragraph 8, identify the individual applicants who could be relocated to the other Member States and, as soon as possible, submit all relevant information to the contact points of those Member States. Priority shall be given for that purpose to vulnerable applicants within the meaning of Articles 21 and 22 of Directive 2013/33/EU.

4. Following approval of the Member State of relocation, Italy and Greece shall, as soon as possible, take a decision to relocate each of the identified applicants to a specific Member State of relocation, in consultation with EASO, and shall notify the applicant in accordance with Article 6(4). The Member State of relocation may decide not to approve the relocation of an applicant only if there are reasonable grounds as referred to in paragraph 7 of this Article.

5. Applicants whose fingerprints are required to be taken pursuant to the obligations set out in Article 9 of Regulation (EU) No 603/2013 may be proposed for relocation only if their fingerprints have been taken and transmitted to the Central System of Eurodac, pursuant to that Regulation.

6. The transfer of the applicant to the territory of the Member State of relocation shall take place as soon as possible following the date of the notification to the person concerned of the transfer decision referred to in Article 6(4) of this Decision. Italy and Greece shall transmit to the Member State of relocation the date and time of the transfer as well as any other relevant information.

7. Member States retain the right to refuse to relocate an applicant only where there are reasonable grounds for regarding him or her as a danger to their national security or public order or where there are serious reasons for applying the exclusion provisions set out in Articles 12 and 17 of Directive 2011/95/EU.

8. For the implementation of all aspects of the relocation procedure described in this Article, Member States may, after exchanging all relevant information, decide to appoint liaison officers to Italy and to Greece.

9. In line with the Union *acquis*, Member States shall fully implement their obligations. Accordingly, identification, registration and fingerprinting for the relocation procedure shall be guaranteed by Italy and by Greece. To ensure that the process remains efficient and manageable, reception facilities and measures shall be duly organised so as to temporarily accommodate people, in line with the Union *acquis*, until a decision is quickly taken on their situation. Applicants that elude the relocation procedure shall be excluded from relocation.

10. The relocation procedure provided for in this Article shall be completed as swiftly as possible and not later than 2 months from the time of the indication given by the Member State of relocation as referred to in paragraph 2, unless the approval by the Member State of relocation referred to in paragraph 4 takes place less than 2 weeks before the expiry of that 2-month period. In such case, the time limit for completing the relocation procedure may be extended for a period not exceeding a further 2 weeks. In addition, the time limit may also be extended, for a further 4-week period, as appropriate, where Italy or Greece show objective practical obstacles that prevent the transfer from taking place.

Where the relocation procedure is not completed within these time limits and unless Italy and Greece agree with the Member State of relocation to a reasonable extension of the time limit, Italy and Greece shall remain responsible for examining the application for international protection pursuant to Regulation (EU) No 604/2013.

11. Following the relocation of the applicant, the Member State of relocation shall take and transmit to the Central System of Eurodac the fingerprints of the applicant in accordance with Article 9 of Regulation (EU) No 603/2013 and update the data sets in accordance with Article 10 of, and, where applicable, Article 18 of that Regulation.

Article 6

Rights and obligations of applicants for international protection covered by this Decision

1. The best interests of the child shall be a primary consideration for Member States when implementing this Decision.
2. Member States shall ensure that family members who fall within the scope of this Decision are relocated to the territory of the same Member State.
3. Prior to the decision to relocate an applicant, Italy and Greece shall inform the applicant in a language which the applicant understands or is reasonably supposed to understand of the relocation procedure as set out in this Decision.
4. When the decision to relocate an applicant has been taken and before the actual relocation, Italy and Greece shall notify the person concerned of the decision to relocate him in writing. That decision shall specify the Member State of relocation.
5. An applicant or beneficiary of international protection who enters the territory of a Member State other than the Member State of relocation without fulfilling the conditions for stay in that other Member State shall be required to return immediately. The Member State of relocation shall take back the person without delay.

Article 7

Operational support to Italy and to Greece

1. In order to support Italy and Greece better to cope with the exceptional pressure on their asylum and migration systems caused by the current increased migratory pressure at their external borders, Member States shall increase their operational support in cooperation with Italy and Greece in the area of international protection through relevant activities coordinated by EASO, Frontex and other relevant Agencies, in particular by providing, as appropriate, national experts for the following support activities:
 - (a) the screening of the third-country nationals arriving in Italy and Greece, including their clear identification, fingerprinting and registration, and, where applicable, the registration of their application for international protection and, upon request by Italy or Greece, their initial processing;

- (b) the provision to applicants or potential applicants that could be subject to relocation pursuant to this Decision of information and specific assistance that they may need;
- (c) the preparation and organisation of return operations for third-country nationals who either did not apply for international protection or whose right to remain on the territory has ceased.

2. In addition to the support provided under paragraph 1, and for the purpose of facilitating the implementation of all steps of the relocation procedure, specific support shall be provided as appropriate to Italy and to Greece through relevant activities coordinated by EASO, Frontex and other relevant Agencies.

Article 8

Complementary measures to be taken by Italy and Greece

1. Italy and Greece, shall, bearing in mind the obligations set out in Article 8(1) of Decision (EU) 2015/1523, and by 26 October 2015, notify to the Council and the Commission an updated roadmap taking into account the need to ensure appropriate implementation of this Decision.
2. Should this Decision be amended for the benefit of another Member State in accordance with Article 1(2) and Article 4(3), that Member State shall, on the date of entry into force of the relevant Council amending decision, present a roadmap to the Council and the Commission which shall include adequate measures in the area of asylum, first reception and return, enhancing the capacity, quality and efficiency of its systems in these areas as well as measures to ensure appropriate implementation of this Decision. That Member State shall fully implement that roadmap.
3. If Italy or Greece does not comply with the obligations referred to in paragraph 1, the Commission may decide, having given the Member State concerned the opportunity to present its views, to suspend the application of this Decision with regard to that Member State for a period of up to 3 months. The Commission may decide once to extend such suspension for a further period of up to 3 months. Such suspension shall not affect the transfers of applicants that are pending following approval of the Member State of relocation pursuant to Article 5(4).

Article 9

Further emergency situations

In the event of an emergency situation characterised by a sudden inflow of nationals of third countries in a Member State, the Council, on a proposal from the Commission and after consulting the European Parliament, may adopt provisional measures for the benefit of the Member State concerned, pursuant to Article 78(3) TFEU. Such measures may include, where appropriate, a suspension of the participation of that Member State in the relocation as provided for in this Decision, as well as possible compensatory measures for Italy and for Greece.

Article 10

Financial support

1. For each person relocated pursuant to this Decision:
 - (a) the Member State of relocation shall receive a lump sum of EUR 6 000;
 - (b) Italy or Greece shall receive a lump sum of at least EUR 500.
2. This financial support shall be implemented by applying the procedures laid down in Article 18 of Regulation (EU) No 516/2014. By way of exception from the pre-financing arrangements set out in that Regulation, Member States shall, in 2016, be paid a pre-financing amount of 50 % of their total allocation pursuant to this Decision.

*Article 11***Cooperation with associated States**

1. With the assistance of the Commission, bilateral arrangements may be made between, Italy and, respectively Iceland, Liechtenstein, Norway and Switzerland, and between Greece and, respectively, Iceland, Liechtenstein, Norway and Switzerland, on the relocation of applicants from the territory of Italy and of Greece to the territory of those latter States. The core elements of this Decision, in particular those relating to the relocation procedure and the rights and obligations of applicants, shall be duly taken into account in those arrangements.

2. In case such bilateral arrangements are made, Italy or Greece shall notify to the Council and the Commission the number of applicants who are to be relocated to the associated States. The Council shall accordingly adapt, on a proposal from the Commission, the allocations of Member States by reducing them in proportion.

*Article 12***Reporting**

On the basis of the information provided by the Member States and by the relevant agencies, the Commission shall report to the Council every 6 months on the implementation of this Decision.

On the basis of the information provided by Italy and by Greece, the Commission shall also report to the Council every 6 months on the implementation of the roadmaps referred to in Article 8.

*Article 13***Entry into force**

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

2. It shall apply until 26 September 2017.

3. It shall apply to persons arriving on the territory of Italy and Greece from 25 September 2015 until 26 September 2017, as well as to applicants having arrived on the territory of those Member States from 24 March 2015 onwards.

Done at Brussels, 22 September 2015.

For the Council
The President
J. ASSELBORN

ANNEX I

Allocations from Italy

	Allocation per Member State (15 600 applicants relocated)
Austria	462
Belgium	579
Bulgaria	201
Croatia	134
Cyprus	35
Czech Republic	376
Estonia	47
Finland	304
France	3 064
Germany	4 027
Hungary	306
Latvia	66
Lithuania	98
Luxembourg	56
Malta	17
Netherlands	922
Poland	1 201
Portugal	388
Romania	585
Slovakia	190
Slovenia	80
Spain	1 896
Sweden	567

ANNEX II

Allocations from Greece

	Allocation per Member State (50 400 applicants relocated)
Austria	1 491
Belgium	1 869
Bulgaria	651
Croatia	434
Cyprus	112
Czech Republic	1 215
Estonia	152
Finland	982
France	9 898
Germany	13 009
Hungary	988
Latvia	215
Lithuania	318
Luxembourg	181
Malta	54
Netherlands	2 978
Poland	3 881
Portugal	1 254
Romania	1 890
Slovakia	612
Slovenia	257
Spain	6 127
Sweden	1 830

COMMISSION DELEGATED DECISION (EU) 2015/1602**of 5 June 2015****on the equivalence of the solvency and prudential regime for insurance and reinsurance undertakings in force in Switzerland based on Articles 172(2), 227(4) and 260(3) of Directive 2009/138/EC of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ⁽¹⁾, and in particular Articles 172(2), 227(4) and 260(3) thereof,

Whereas:

- (1) Directive 2009/138/EC establishes a risk-based prudential regime for insurance and reinsurance undertakings in the Union. Full application of Directive 2009/138/EC to insurers and reinsurers in the Union will commence on 1 January 2016.
- (2) Even though the Solvency II Directive will be fully applied from 1 January 2016, the Commission may already adopt the present Delegated Decision as indicated under Article 311 of the Solvency II Directive.
- (3) Article 172 of Directive 2009/138/EC relates to equivalence of the solvency regime of a third country applied to reinsurance activities of undertakings with their head office in that third country. A positive equivalence determination allows reinsurance contracts concluded with undertakings having their head office in that third country to be treated in the same manner as reinsurance contracts concluded with undertakings authorised in accordance with that Directive.
- (4) Article 227 of Directive 2009/138/EC relates to equivalence for third-country insurers that are part of groups headquartered in the Union. A positive equivalence determination allows such groups, when deduction and aggregation is used as the consolidation method for their group reporting, to take into account the calculation of capital requirements and available capital (own funds) under the rules of the non-Union jurisdiction rather than calculating them on the basis of Directive 2009/138/EC, for the purposes of calculating the group solvency requirement and eligible own funds.
- (5) Article 260 of Directive 2009/138/EC relates to equivalence of insurance and reinsurance undertakings, the parent undertaking of which has its head office outside the Union. In accordance with Article 261(1) of Directive 2009/138/EC, in case of a positive equivalence determination, Member States rely on the equivalent group supervision exercised by the third-country group supervisory authorities.
- (6) A third country's legal regime is to be considered as fully equivalent to that established by Directive 2009/138/EC if it complies with requirements which provide a comparable level of policyholder and beneficiary protection. Full equivalence determinations under Articles 172(2), 227(4) and 260(3) are of unlimited duration unless repealed.
- (7) On 9 March 2015, the European Insurance and Occupational Pensions Authority (EIOPA) provided advice according to Article 33(2) of Regulation (EU) No 1094/2010 of the European Parliament and of the Council ⁽²⁾ to the Commission on the regulatory and supervisory system for (re)insurance undertakings and groups in force in Switzerland. EIOPA's advice is based on the Swiss relevant legislative framework, including the Swiss Financial Market Supervisory Act of 22 June 2007 (FINMASA), which entered into force on 1 January 2009, the Insurance Supervision Act (ISA) of 17 December 2004 and the Insurance Supervision Ordinance (ISO) ⁽³⁾. The Commission has based its assessment on the information provided by EIOPA.

⁽¹⁾ OJ L 335, 17.12.2009, p. 1.

⁽²⁾ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

⁽³⁾ The ISO was adopted by the Swiss Federal Council on 25 March 2015 and enters into force on 1 July 2015.

- (8) Taking into account the provisions of Commission Delegated Regulation (EU) 2015/35 ⁽¹⁾, in particular Articles 378, 379 and 380, as well as EIOPA's advice, a number of criteria are to be applied to assess equivalence under Article 172(2), 227(4) and 260(3) of Directive 2009/138/EC, respectively.
- (9) Those criteria include certain requirements which are common to two or more of Articles 378, 379 and 380 of Delegated Regulation (EU) 2015/35, which are valid at the level of solo ⁽²⁾ (re)insurance undertakings and at the level of (re)insurance groups, and which cover the areas of powers, solvency, governance, transparency, cooperation between authorities and handling of confidential information, and impact of the decisions on financial stability.
- (10) First, regarding the means, powers and responsibilities, the Swiss financial market supervisor (FINMA) has the power to effectively supervise (re)insurance activities and impose sanctions or take enforcement action where necessary, such as revoking an undertaking's business licence or replace all or part of its management. FINMA has the necessary financial and human means, expertise, capacities and mandate to effectively protect all policyholders and beneficiaries.
- (11) Second, regarding solvency, the Swiss Solvency Test (SST) assessment of the financial position of (re)insurance undertakings or groups relies on sound economic principles, and solvency requirements are based on an economic valuation of all assets and liabilities. The SST requires (re)insurance undertakings to hold adequate financial resources and lays down criteria on technical provisions, investments, capital requirements (including minimum level of capital) and own funds, requiring timely intervention by FINMA if capital requirements are not complied with or if policyholders' interests are threatened. The capital requirements are risk-based, aiming at capturing quantifiable risks. Where a risk is not quantified, it is addressed through other measures: for instance operational risks are addressed qualitatively through the Swiss Quality Assessment (SQA). The main capital requirement, known as the target capital under the SST, is calculated to cover unexpected losses arising from the existing business. In addition, the absolute minimum capital requirement (minimum capital) for insurers varies under the SST depending on the insurance business line. Both requirements are at least as strong as the corresponding Directive 2009/138/EC requirements for all current Swiss insurers' combinations of business lines. Regarding models, insurance undertakings may use a standard model or, if required by FINMA or upon their own initiative, an internal model.
- (12) Third, regarding governance, the Swiss solvency regime requires (re)insurance undertakings to have an effective system of governance in place, imposing on them in particular a clear organisational structure, fit and proper requirements for those effectively running the undertakings, effective process for transmission of information within the undertakings and to FINMA. In addition, FINMA effectively supervises outsourced functions and activities.
- (13) The SST also requires (re)insurance undertakings and groups to maintain risk-management, compliance, internal audit and actuarial functions. The SST imposes a risk management system capable of identifying, measuring, monitoring, managing and reporting risks, and an effective internal control system. The requirements of Directive 2009/138/EC regarding internal audit and compliance for solo undertakings are satisfactorily addressed by the ISO, since it reinforces risk management requirements and in particular the obligation to have a compliance function.
- (14) The regime in force in Switzerland requires that changes to the business policy or management of (re)insurance undertakings or groups or qualifying holdings in such undertakings or groups must be consistent with sound and prudent management. In particular, acquisitions, changes in the business plan or in qualifying holdings of (re)insurance undertakings or insurance groups are notified to FINMA, which may take appropriate sanctions if justified, such as prohibiting an acquisition.
- (15) Fourth, regarding transparency, (re)insurance undertakings and groups are required to provide FINMA with any information necessary to supervision, and publish, at least annually, a report on their solvency and financial condition. The requirements of Directive 2009/138/EC regarding public disclosure are satisfactorily addressed by the ISO, since the types of qualitative and quantitative information to be disclosed are in line with

⁽¹⁾ Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

⁽²⁾ We specify in the current act whether we consider insurance undertakings at the individual ('solo') or group level. Solo undertakings may or may not be part of groups.

Directive 2009/138/EC. Under the ISO, (re)insurance undertakings and groups have to disclose their business activities, performance, risk management, risk profile, methods used for assessment regarding in particular provisions, capital management and solvency.

- (16) Fifth, regarding professional secrecy and cooperation and exchange of information, the regime in force in Switzerland has professional secrecy obligations in place for all persons who work or have worked for FINMA, including auditors and experts acting on behalf of FINMA. Those obligations also stipulate that confidential information may not be divulged except in aggregate or summary form, without prejudice to cases covered by criminal law. Furthermore, FINMA will only use confidential information received from other supervisory authorities to perform its duties and for the purposes provided for by the law. The regime in force in Switzerland also requires that in case a (re)insurance undertaking is declared bankrupt or compulsorily wound up, confidential information may be disclosed if it does not concern third parties involved in rescuing that undertaking. FINMA may share confidential information received from another supervisory authority with authorities, bodies or persons covered by professional secrecy obligations in Switzerland only after the express agreement of that supervisory authority. It has signed Memoranda of Understanding with all Member States of the Union to coordinate international cooperation, in particular on exchange of confidential information.
- (17) Sixth, regarding the impact of its decisions, FINMA and the other Swiss authorities which have the mandate to ensure the proper functioning of financial markets, such as the Swiss National Bank and the Ministry of Finance are equipped to appreciate how decisions will affect the stability of financial systems globally, in particular during emergency situations, and to take into account their potential procyclical effects where exceptional movements in the financial markets occur. Under the regime in force in Switzerland, regular meetings take place between the abovementioned authorities to exchange information on financial stability risks and coordinate action. The same takes place at international level, where Swiss authorities exchange for instance with the supervisory colleges of the Member States of the Union and EIOPA on financial stability matters.
- (18) Articles 378 and 380 of Delegated Regulation (EU) 2015/35 also set out specific criteria regarding equivalence for reinsurance activities and for group supervision.
- (19) Regarding the specific criteria for reinsurance activities under Article 378 of Delegated Regulation (EU) 2015/35, the taking-up of business of reinsurance is subject to prior authorisation by FINMA conditional on detailed standards set in law. Reinsurance captive companies are covered by the solvency regime in force in Switzerland under the ISO.
- (20) Regarding the specific criteria for group supervision under Article 380 of Delegated Regulation (EU) 2015/35, FINMA has the power to determine which undertakings fall under the scope of supervision at group level and supervise insurance and reinsurance undertakings which are part of a group. FINMA supervises all (re)insurance undertakings over which a participating undertaking, as defined in Article 212(1)(a) of Directive 2009/138/EC, exercises a dominant or significant influence.
- (21) FINMA is capable of assessing the risk profile, financial position and solvency of (re)insurance undertakings that are part of a group and the business strategy of that group.
- (22) Under the regime in force in Switzerland, reporting and accounting rules allow monitoring of intra-group transactions and risk concentrations, which (re)insurance groups must report at least on an annual basis.
- (23) Under the regime in force in Switzerland, FINMA restricts the use of own funds of a (re)insurance undertaking if they cannot effectively be made available to cover the capital requirement of the participating undertaking for which group solvency is calculated. The calculation of group solvency leads to results at least equivalent to the results of the methods set in Articles 230 and 233 of Directive 2009/138/EC, without double counting of own funds and after eliminating the intra-group creation of capital through reciprocal financing. More in detail, even if there is no group solvency ratio as under Articles 230 and 233 of Directive 2009/138/EC but a series of solvency ratios per entity within a group, that series captures all interactions between entities of the group and is thus taking the group structure into account.
- (24) Accordingly, as it fulfils all the criteria laid down in Articles 378, 379 and 380 of Delegated Regulation (EU) 2015/35, the regulatory and supervisory regime in force in Switzerland for (re)insurance undertakings and groups is considered to meet the criteria for full equivalence laid down in Articles 172(2), 227(4) and 260(3) of Directive 2009/138/EC.

- (25) The Commission may undertake a specific review relating to an individual third country or territory at any time outside the general review, where relevant developments make it necessary for the Commission to re-assess the recognition granted by this decision. The Commission should continue to monitor, with the technical assistance of ELOPA, the evolution of the regime in force in Switzerland and the fulfilment of the conditions on the basis of which this Decision has been taken,
- (26) Directive 2009/138/EC applies from 1 January 2016. This Decision should therefore also grant equivalence as of that date to the solvency and prudential regime in force in Switzerland,

HAS ADOPTED THIS DECISION:

Article 1

From 1 January 2016, the solvency regime in force in Switzerland that applies to the reinsurance activities of undertakings with their head office in Switzerland shall be considered equivalent to the requirements of Title I of Directive 2009/138/EC.

Article 2

From 1 January 2016, the solvency regime in force in Switzerland that applies to insurance and reinsurance undertakings with head offices in Switzerland shall be considered equivalent to the requirements of Chapter VI of Title I of Directive 2009/138/EC.

Article 3

From 1 January 2016, the prudential regime in force in Switzerland that applies to the supervision of insurance and reinsurance undertakings in a group shall be considered equivalent to the requirements of Title III of Directive 2009/138/EC.

Article 4

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

Done at Brussels, 5 June 2015.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION DECISION (EU) 2015/1603

of 13 August 2015

on a measure taken by Spain in accordance with Article 7 of Council Directive 89/686/EEC withdrawing from the market a type of buoyant aids for swimming instructions

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment ⁽¹⁾, and in particular Article 7 thereof,

Whereas:

- (1) The Spanish authorities notified to the Commission and to the other Member States a measure of withdrawal from the market relating to buoyant aids for swimming instructions type *Delphin Schwimmscheiben- Typ Super*, manufactured by Delphin Vertriebs- und Service GmbH, D-61192 Niddatal, Germany. The product bore the CE marking in accordance with Directive 89/686/EEC, having been tested and type-examined in accordance with the harmonised standard EN 13138-1:2008 *Buoyant aids for swimming instruction — Part 1: Safety requirements and test methods for buoyant aids to be worn* by the German Notified Body TÜV Rheinland LGA Products GmbH (NB 0197). The product is considered personal protective equipment classified in category II.
- (2) The notification followed an accident report: after a swimming session, when parents were gathering their belongings before going home, a child bit one of the discs, detaching and swallowing a small piece of it, being necessary medical assistance and hospitalisation.
- (3) The Spanish authorities ordered the withdrawal of the product from the market. The measure was motivated by the unsatisfactory application of the standards referred to in Article 5 of Directive 89/686/EEC, in particular the harmonised standard EN 13138-1:2008 *Buoyant aids for swimming instruction — Part 1: Safety requirements and test methods for buoyant aids to be worn*, clause 5.4.2 *Small parts*, related to the basic health and safety requirement of point 1.2.1 of Annex II to Directive 89/686/EEC, *Absence of risks and other 'inherent' nuisance factors*. Clause 5.4.2 of standard EN 13138-1 requires that attached small parts withstand a pull of (90 ± 2) N in the direction most likely to cause failure without becoming detached from the device. Parts which can become detached should not fit wholly into the small parts cylinder, the testing of which is to be in accordance with standard EN 71-1.
- (4) The Spanish authorities indicated that, after carrying out tensile tests in accordance with the harmonised standard EN 13138-1:2008, it was revealed that small parts can be detached from the product, and swallowed by small children for which the product is intended. The level of pull where such small parts were detached resulted always less than 90 N and fit wholly into the small parts cylinder. The Spanish authorities considered that clause 5.4.2 of that standard is not limited to test only attached small parts, but small parts in general. They used a 'bite tester' equipment according to the tests defined in standards EN 12227:2010 *Playpens for domestic use — Safety requirements and test methods* and EN 716-2:2008 *Furniture — Children's cots and folding cots for domestic use — Part 2: Test methods*.
- (5) The German authorities did not agree with the risk assessment carried out by the Spanish authorities, considering that the test method used was not compatible with the practical use of the equipment. In their opinion, clause 5.4.2 of standard EN 13138-1 only covers attached small parts. The German authorities argued that the product does not present any serious risk, since it is not a toy and the risk scenario, as described by the Spanish authorities, would be unrealistic.
- (6) The manufacturer also questioned the test method used by the Spanish authorities. In the EC type-examination of the product, the notified body did not perform a test in accordance with clause 5.4.2 of standard EN 13138-1 with the remark that the product does not have any attached small parts.
- (7) After the notification, the manufacturer asked the notified body to perform an additional tensile test in accordance with clause 8.5.2.2 of standard EN 1888:2012 *Child care articles — Wheeled child conveyances — Safety requirements and test methods*, using the 'bite tester' described in clause 5.7 of that standard, identical to the 'bite

⁽¹⁾ OJ L 399, 30.12.1989, p. 18.

tester' described in standards EN 716-2 and EN 12227. No small parts could be generated from the body of the product. Furthermore, the Notified Body carried out a follow-up test which showed that no parts came loose when the device was subjected to a tensile force of 90N, a test resembling the test method for small parts in standard EN 71-1 *Safety of toys — Part 1: Mechanical and physical properties*.

- (8) The Commission sought expert technical assistance in order to assess the main questions involved in the case. An external study was carried out by technical experts which concluded that testing with only attached small parts is enough to demonstrate compliance with the basic health and safety requirement set out in point 1.2.1 of Annex II to Directive 89/686/EEC.
- (9) The standard EN 13138-1 does not provide for a clear test method for testing attached small parts. In view of this ambiguity, a choice had to be made amongst appropriate available test method, taking into consideration the nature of the product. The Spanish authorities applied the test method they found the most appropriate to assess the risks posed the product. The technical experts, nevertheless, concluded that the test method applied by the Spanish authorities was not appropriate.
- (10) The tensile test carried out by the German notified body can be considered as the only relevant test method in the present case. Therefore, the EC-type examination test method is valid and the EC-type examination assessment granted by the notified body was made correctly.
- (11) According to the available statistics on inherent swimming aids on the market and accidents, the conclusion can be drawn that swimming aids made of inherent material do not pose any particular risks of choking when used in accordance with their intended purpose and under their foreseeable conditions of use. These products are meant to be used only in the water,

HAS ADOPTED THIS DECISION:

Article 1

The measure taken by the Spanish authorities withdrawing from the market the buoyant aids for swimming instructions type *Delphin Schwimmscheiben- Typ Super*, manufactured by Delphin Vertriebs- und Service GmbH, D-61192 Niddatal, Germany, is not justified.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 13 August 2015.

For the Commission
Elżbieta BIENKOWSKA
Member of the Commission

