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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION (EU) 2016/776

of 29 April 2016

on the signing, on behalf of the European Union, and provisional application of the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands and the Implementation Protocol thereto

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43 in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Union and the Government of the Cook Islands have negotiated a Sustainable Fisheries Partnership Agreement ('the Agreement') and an Implementation Protocol thereto ('the Protocol'), granting Union vessels fishing opportunities in the waters over which the Cook Islands has sovereign rights or jurisdiction in respect of fisheries.
- (2) Negotiations were successfully finalised and the Agreement and the Protocol were initialled on 21 October 2015.
- (3) Article 16 of the Agreement and Article 12 of the Protocol provide for the provisional application of the Agreement and of the Protocol from the date of their signature.
- (4) The Agreement and the Protocol should be signed, and applied on a provisional basis, pending the completion of the procedures necessary for their conclusion,

HAS ADOPTED THIS DECISION:

Article 1

The signing, on behalf of the Union, of the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands and of the Implementation Protocol thereto is hereby authorised, subject to the conclusion of the said Agreement and Protocol.

The texts of the Agreement and the Protocol are attached to this Decision.

Article 2

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

Article 3

The Agreement and the Protocol shall be applied on a provisional basis as from the date of their signature, pending the completion of the procedures necessary for their conclusion ⁽¹⁾.

Article 4

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

Done at Brussels, 29 April 2016.

For the Council
The President
A.G. KOENDERS

⁽¹⁾ The date of provisional application of the Agreement and of the Protocol will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

SUSTAINABLE FISHERIES PARTNERSHIP AGREEMENT
between the European Union and the Government of the Cook Islands

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

THE GOVERNMENT OF THE COOK ISLANDS, hereinafter referred to as 'the Cook Islands',

Both referred to as 'the Parties',

CONSIDERING the close working relationship between the Union and the Cook Islands, particularly in the context of the Cotonou Agreement, and their mutual desire to strengthen that relationship,

CONSIDERING the desire of the two Parties to promote the sustainable exploitation of fisheries resources by means of cooperation,

HAVING REGARD TO the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks,

RECOGNISING that the Cook Islands exercises its sovereign rights or jurisdiction over a zone extending up to 200 nautical miles from the baseline in accordance with the United Nations Convention on the Law of the Sea,

DETERMINED to apply the decisions and recommendations taken by the relevant regional fisheries organisations of which the Parties are members,

AWARE of the importance of the principles established by the Code of Conduct for Responsible Fisheries adopted at the Food and Agriculture Organisation (FAO) Conference in 1995,

DETERMINED to cooperate, in their mutual interest, in promoting the introduction of responsible fisheries to ensure the long-term conservation and sustainable exploitation of marine living resources,

CONVINCED that such cooperation must take the form of initiatives and measures which, whether taken jointly or separately, are complementary and ensure consistent policies and synergy of effort,

INTENDING, for the purposes of such cooperation, to initiate a dialogue to implement the fishing policies of the Cook Islands by involving civil society operators,

DESIROUS of establishing terms and conditions governing the fishing activities of Union vessels in the Cook Islands' fishery waters and the Union support for responsible fishing in those waters,

RESOLVED to pursue closer economic cooperation in the fishing industry and related activities by promoting cooperation between companies from both Parties,

HEREBY AGREE AS FOLLOWS:

Article 1

Definitions

For the purposes of this Agreement:

- (a) 'Cook Islands authorities' means the Ministry of Marine Resources of the Cook Islands;
- (b) 'Union authorities' means the European Commission;

- (c) 'fishing' means (i) searching for, catching, taking or harvesting fish; (ii) the attempted searching for, catching, taking and harvesting of fish; (iii) engaging in any activity which can reasonably be expected to result in locating, catching, taking or harvesting fish; (iv) placing, searching for or recovering any fishing aggregating device or associated equipment including radio beacons; (v) any operation at sea in support of or in preparation for any activity described in this paragraph; or (vi) the use of an aircraft in relation to any activity described in this paragraph;
- (d) 'fishing vessel' means any vessel, ship or other craft which is used for, equipped to be used for or of a type that is normally used for commercial fishing or related activities;
- (e) 'Union vessel' means a fishing vessel flying the flag of a Member State of the Union and registered in the Union;
- (f) 'Cook Islands' fishery waters' means the waters over which the Cook Islands have sovereign rights or fisheries jurisdiction;
- (g) 'Cook Islands' fishing areas' means the part of the Cook Islands' fishery waters where the Cook Islands authorise Union vessels to engage in fishing activities, as described in the Protocol to this Agreement and its Annex;
- (h) 'shipowner' means the person legally responsible for a fishing vessel, in its charge and control;
- (i) 'Unusual circumstances' means circumstances other than natural phenomena which are beyond the reasonable control of one of the Parties and are such as to prevent fishing activities in the Cook Islands' fishing areas.

Article 2

Scope

This Agreement establishes the principles, rules and procedures governing:

- (a) the conditions under which Union vessels may engage in fishing activities in the Cook Islands' fishing areas;
- (b) economic, financial, technical and scientific cooperation in the fisheries sector with a view to promoting responsible fishing in the Cook Islands' fishery waters in order to guarantee the conservation and sustainable exploitation of fisheries resources and develop the Cook Islands' fisheries sector;
- (c) cooperation on the management, control and surveillance measures for policing fisheries in the Cook Islands' fishery waters with a view to ensuring that the above rules and conditions are complied with, that the measures for the conservation of fish stocks and management of fishing activities are effective, in particular to combat illegal, unreported and unregulated fishing.

Article 3

Principles and objectives underlying the implementation of this Agreement

1. The Parties hereby undertake to promote responsible fishing in the Cook Islands' waters as provided for in FAO's Code of Conduct for Responsible Fishing on the basis of the principle of non-discrimination.
2. The Cook Islands authorities undertake not to give more favourable conditions than those granted under this Agreement to other foreign fleets operating in the Cook Islands' fishing areas which have the same characteristics and target the same species as those covered by this Agreement.
3. In the interest of transparency, the Cook Islands undertake to render public the existence of any agreement authorising foreign fleets to fish in the waters under its jurisdiction. The Joint Committee will review relevant information on fishing capacity in Cook Islands waters.
4. The Parties undertake to implement the Agreement in accordance with Article 9 of the Cotonou Agreement regarding human rights, democratic principles and the rule of law and following the procedure set out in Articles 8 and 96 thereof.

5. The Parties undertake to ensure that this Agreement is implemented in accordance with the principles of good economic and social governance, respecting the state of fish stocks.
6. The Declaration of the International Labour Organisation (ILO) on fundamental principles and rights at work shall be fully applicable to all seamen signed on to Union vessels, in particular as regards the freedom of association and collective bargaining of workers and the elimination of discrimination in respect of employment and occupation.
7. The Parties shall consult one another prior to adopting any decision that may affect the activities of Union vessels under this Agreement.

Article 4

Access by Union vessels to the Cook Islands' fishing areas

1. Union vessels may fish in the Cook Islands' fishing areas only if they are in possession of a fishing authorisation issued under this Agreement. Any fishing activity outside the framework of this Agreement shall be prohibited.
2. The Cook Islands authorities shall not deliver authorisations to fish to Union vessels other than under this Agreement. The issuing of any fishing authorisation to Union vessels outside the framework of this agreement, in particular in the form of private licences shall be prohibited.
3. The procedure for obtaining a fishing authorisation for a vessel, the fees applicable and the method of payment to be used by shipowners shall be as set out in the Annex to the Protocol.

Article 5

Financial contribution

1. The Union shall grant the Cook Islands a financial contribution in accordance with the terms and conditions laid down in the Protocol and Annex to this Agreement in order to:
 - (a) cover part of the access costs of Union vessels to the Cook Islands' fishing areas and fisheries resources, without prejudice to the access costs borne by the shipowners, and
 - (b) reinforce the Cook Islands' capacity to develop a sustainable fisheries policy through sectoral support.
2. The financial contribution for sectoral support referred to in paragraph 1(b) shall be:
 - (a) dissociated from the payments regarding access costs referred to in paragraph 1(a),
 - (b) determined and conditioned by the achievement of the objectives of Cook Islands sectoral support in accordance with the Protocol, and the annual and multiannual programming for its implementation.
3. The financial contribution granted by the Union shall be paid each year in accordance with the Protocol:
 - (a) the amount of the financial contribution referred to in paragraph 1(a) may be revised by the Joint Committee in respect of:
 - (1) a reduction in the fishing opportunities granted to Union vessels for the purposes of managing the stocks concerned, where this is considered necessary for the conservation and sustainable exploitation of resources on the basis of the best available scientific advice; or
 - (2) an increase in the fishing opportunities granted to Union vessels where the best available scientific advice concurs that the state of resources so permits;

- (b) the amount of the financial contribution referred to in paragraph 1(b) may be revised as a result of a reassessment of the terms of financial support for implementing a sectoral fisheries policy in the Cook Islands, where this is warranted by the specific results of the annual and multiannual programming observed by the Joint Committee;
- (c) the financial contribution may be suspended as a result of the application of Articles 13 and 14.

Article 6

Joint Committee

1. A Joint Committee made up of appropriate representatives of the Union and the Cook Islands shall be set up. It is responsible for the monitoring of the application of this Agreement and it may adopt modifications to the Protocol, Annex and Appendices.
2. The Joint Committee's monitoring role consists in particular in:
 - (a) monitoring the performance, interpretation and application of this Agreement and, in particular, the definition of the annual and multiannual programming referred to in Article 5(2) and evaluation of its implementation;
 - (b) providing the necessary liaison for matters of mutual interest relating to fisheries;
 - (c) acting as a forum for the amicable settlement of any disputes regarding the interpretation or application of the Agreement.
3. The Joint Committee's decision-making role consists in approving modifications of the Protocol, Annexes and Appendices to this Agreement regarding:
 - (a) the review of the level of fishing opportunities and, consequently, of the relevant financial contribution;
 - (b) the sectoral support procedures;
 - (c) the technical conditions and modalities under which Union vessels carry out their fishing activities.
4. The Joint Committee shall exercise its functions in accordance with the objectives of this Agreement, with the rules adopted by the relevant regional fisheries organisations, and with regard to the results of the scientific consultation referred to in Article 8.
5. The Joint Committee shall meet at least once a year, alternately in the Cook Islands and in the Union, or as otherwise agreed by both Parties, and shall be chaired by the Party hosting the meeting. It shall hold a special meeting at the request of either Party. Decisions shall be taken by consensus and shall be attached to the agreed minutes of the meeting. They shall enter into force on the date on which the Parties notify each other of the completion of the procedures necessary for their adoption.
6. The Joint Committee may adopt its own rules of procedure.

Article 7

Promoting cooperation among economic operators and civil society

1. The Parties shall encourage economic, scientific and technical cooperation in the fisheries sector and related sectors. They shall consult one another with a view to facilitating and promoting the different measures that might be taken to this end.
2. The Parties undertake to promote the exchange of information on fishing techniques and gear, preservation methods and the industrial processing of fisheries products.

3. The Parties shall endeavour, when appropriate, to create conditions favourable to the promotion of relations between their enterprises in the technical, economic and commercial spheres, by encouraging the establishment of an environment favourable to the development of business and investment.
4. The Parties shall encourage, when appropriate, the setting-up of joint enterprises in their mutual interest which shall systematically comply with the Cook Islands and Union legislation.

Article 8

Scientific cooperation

1. During the period covered by this Agreement, the Union and the Cook Islands shall endeavour to cooperate in monitoring the evolution of resources in Cook Islands waters.
2. The Parties undertake, if necessary, to consult one another by means of a joint scientific working group or within the regional and international organisations concerned, with a view to strengthen the management and conservation of marine living resources in the Western and Central Pacific Ocean and to cooperate in the relevant scientific research.

Article 9

Cooperation in the area of monitoring, control and surveillance (MCS) and combating illegal, unreported and unregulated fishing

The Parties undertake to collaborate to combat illegal, unreported and unregulated fishing with a view to the implementation of responsible and sustainable fishing.

Article 10

Area of application

This Agreement shall apply, on the one hand, to the territories in which the Treaty on European Union applies, under the conditions laid down in that Treaty, and, on the other, to the Cook Islands.

Article 11

Applicable law

1. The Union vessels operating in the Cook Islands' fishery areas shall comply with the applicable laws and regulations of the Cook Islands, unless otherwise provided in the Agreement. The Cook Islands authorities shall provide the Union authorities with the applicable laws and regulations.
2. The Cook Islands undertake to take all the appropriate steps required for the effective application of the fisheries monitoring, control and surveillance provisions in this Agreement. Union vessels must cooperate with the Cook Islands authorities responsible for carrying out such monitoring, control and surveillance.
3. The Union undertakes to take all the appropriate steps required to ensure that its vessels comply with this Agreement and the legislation governing fisheries in the Cook Islands' fishery waters.
4. The Parties shall consult one another prior to adopting any decision that may affect the activities of Union vessels under this Agreement. Both Parties shall notify each other of any changes in their respective fisheries policy or legislation with a potential impact on the activities of Union vessels under this Agreement. Any changes to or new legislation of the Cook Islands with an impact on the activities of Union vessels shall be enforceable with respect to Union vessels from the 60th day following the day when the notification is received by the Union authorities from the Cook Islands.

Article 12

Duration

This Agreement shall apply for eight years from the date of the start of its provisional application. It shall be tacitly renewed for additional periods of eight years, unless notice of termination is given in accordance with Article 14.

Article 13

Suspension

1. Application of this Agreement may be suspended at the initiative of either one of the Parties in the event of:
 - (a) unusual circumstances that prevent fishing activities in the Cook Islands' fishing areas; or
 - (b) a dispute between the Parties over the interpretation of this Agreement or its implementation arises; or
 - (c) a breach of the Agreement by either one of the Parties in particular Article 3(4) on the respect of human rights; or
 - (d) a significant change in the policy guidelines which led to the conclusion of this Agreement, triggering a request by either one of the Parties to amend it.
2. Suspension of application of the Agreement shall be notified by the interested Party to the other Party in writing and shall take effect three months after receipt of notification. Dispatch of this notification shall open consultations between the Parties with a view to finding an amicable solution to their dispute within three months.
3. In the event differences are not resolved amicably and suspension is implemented, the Parties shall continue to consult each other with a view to finding a settlement to their dispute. Where such settlement is reached, implementation of the Agreement shall resume and the amount of the financial contribution referred to in Article 5 shall be reduced proportionately and *pro rata temporis* according to the period during which implementation of the Agreement was suspended, unless otherwise agreed.

Article 14

Termination

1. This Agreement may be terminated by one of the Parties, notably in the event of:
 - (a) unusual circumstances,
 - (b) a degradation of the stocks concerned,
 - (c) a reduced level of exploitation of the fishing opportunities granted to Union vessels, or
 - (d) a failure to comply with undertakings made by the Parties with regard to combating illegal, unreported and unregulated fishing.
2. Termination of the Agreement shall be notified by the interested Party concerned to the other Party in writing and shall take effect six months after receipt of notification except if the Parties decide by common accord to extend this period.
3. The Parties shall consult each other from the moment of notification of termination in view of finding an amicable settlement to their dispute within the six month period.
4. Payment of the financial contribution referred to in Article 5 for the year in which the termination takes effect shall be reduced proportionately and *pro rata temporis*.

*Article 15***Protocol and Annex**

The Protocol, the Annex and Appendices hereto form an integral part of this Agreement.

*Article 16***Provisional application**

Signature of this Agreement by the Parties entails its provisional application prior to its entry into force.

*Article 17***Entry into force**

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

It shall enter into force when the Parties have notified each other of the completion of the necessary procedures.

PROTOCOL
on the implementation of the Sustainable Fisheries Partnership Agreement between the
European Union and the Government of the Cook Islands

Article 1

Period of application and fishing opportunities

1. For a period of four years from the date of its provisional application, the fishing opportunities granted under Article 4 of the Sustainable Fisheries Partnership Agreement (hereafter 'the Agreement') shall be as follows:

Four (4) tuna purse seine vessels to fish for highly migratory species as listed in Annex 1 of the 1982 United Nations Convention on the Law of the Sea.

2. Paragraph 1 shall apply subject to Articles 5 and 6 of this Protocol.

3. Pursuant to Article 4 of the Agreement, Union vessels may engage in fishing activities in the Cook Islands' fishery areas only if they are in possession of a fishing authorisation issued under this Protocol in accordance with the Annex.

Article 2

Financial contribution — Methods of payment

1. For the period referred to in Article 1, the total financial contribution referred to in Article 5 of the Agreement shall be EUR two million eight hundred seventy thousand (2 870 000) for the whole duration of this Protocol.

2. This total financial contribution shall comprise two dissociated elements:

- (a) an annual amount for access to the Cook Islands' fishery areas of EUR three hundred and eighty five thousand (385 000) for the first and second year, and of EUR three hundred and fifty thousand (350 000) for the third and fourth year, equivalent to a reference tonnage of 7 000 tonnes per year, and
- (b) a specific annual amount of EUR three hundred and fifty thousand (350 000) for the support and implementation of the Cook Islands' sectoral fisheries policy.

3. Paragraph 1 shall apply subject to Articles 3, 5, and 6 of this Protocol.

4. The Union shall pay the amounts fixed in paragraph 2(a) no later than ninety (90) days after the start of provisional application for the first year, and, for the following years, no later than the anniversary date of the provisional application of this Protocol.

5. The Cook Islands authorities shall monitor the development of the fishing activities of Union vessels to ensure appropriate management of the fishing opportunities available to the Union taking into account the state of the stock and relevant conservation and management measures.

- (a) The Cook Islands shall notify the Union authorities when the total catches of Union vessels reported in the Cook Islands' fishing areas reach 80 % of the reference tonnage. On receipt of this notification, the Union authorities shall immediately notify the Member States.
- (b) Once the level of 80 % of the reference tonnage has been reached, the Cook Islands shall monitor on a daily basis the level of catches of the Union vessels and inform the Union authorities immediately when the reference tonnage level is reached. The Union authorities shall also immediately inform the Member States on receipt of the notification from the Cook Islands.

- (c) When catches of Union vessels have reached 80 % of the reference tonnage, the Parties shall immediately consult each other and analyse the relationship between the catches of the Union vessels and the fishing limits specified in the Cook Islands national legislation in view of ensuring that such legislation is respected. In the frame of such consultation the Joint Committee may agree that Union vessels may fish for additional tonnage.
- (d) From the date of notification by the Cook Islands to the Union that the reference tonnage has been reached, the unit rate paid by the shipowners for the catches beyond the reference tonnage of seven thousand (7 000) shall be increased by an additional 80 % of the unit rate for the year in question until the end of the period of the annual fishing authorisations. The Union share shall remain unchanged. The total annual amount paid by the Union shall not be more than twice the amount indicated in paragraph 2(a) of Article 2. Where the quantities caught by Union vessels exceed the quantities corresponding to twice the total amount of the annual payment from the Union, the amount due for the quantity exceeding that limit shall be paid in the following year.

6. The Cook Islands authorities shall have full discretion regarding the use to which the financial contribution specified in Article 2 paragraph 2(a) is put.

7. Each element of the financial contribution referred to in paragraph 2 shall be paid into a nominated Government bank account in the Cook Islands. The financial contribution referred to in paragraph 2(b) shall be made available to the relevant entity implementing fisheries sectoral support. The Cook Islands authorities shall provide in due time to the Union authorities with the bank account details and information on the relevant line in the national budgetary law. The bank account details shall at least include: name of beneficial entity, name of bank account holder, address of bank account holder; bank name; SWIFT code; IBAN number.

Article 3

Sectoral support

1. No later than 120 days after the start of the provisional application of the Protocol, the Joint Committee shall agree on a multiannual sectoral programme and detailed implementing rules covering, in particular:

- (a) annual and multiannual guidelines for using the specific amount of the financial contribution referred to in Article 2 paragraph 2(b);
- (b) the objectives, both annual and multiannual, to be achieved, over time, with a view to establish the governance framework, including the development and maintenance of the necessary scientific and research institutions, to promote consultation processes with interest groups, to enhance the monitoring, control and surveillance capability and other capacity-building items to assist Cook Islands to further enhance their national sustainable fisheries policy. The objectives shall take into account the priorities expressed by the Cook Islands in its national policies relating to or having an impact on the promotion of responsible fishing and sustainable fisheries, including marine protected areas;
- (c) criteria and procedures, including, where appropriate, budgetary and financial indicators, for evaluating the results obtained each year.

2. Any proposed amendments to the multiannual sectoral programme shall be approved by the Joint Committee.

3. If either Party requests a special meeting of the Joint Committee, it shall send a written request at least 14 days before the date of the proposed meeting.

4. Each year, in the frame of the Joint Committee, the two Parties shall evaluate the achievement of specific results in the implementation of the multiannual sectoral programme agreed.

- (a) Each year, the Cook Islands shall present a progress report on the actions implemented and the results achieved with sectoral support, which shall be examined by the Joint Committee. The Cook Islands shall also produce a final report before expiry of the Protocol. If necessary the Parties may continue to monitor the implementation of the sectoral support after the expiry of the Protocol.

- (b) The specific amount of the financial contribution referred to in Article 2 paragraph 2(b) shall be paid in instalments. For the first year of the Protocol, the instalment shall be paid on the basis of the needs identified as part of the agreed programming. For the subsequent years of application, the instalments shall be paid on the basis of the needs identified as part of the agreed programming and on the basis of an analysis of the results achieved in the implementation of the sectoral support. Payment of the instalments shall occur no later than 45 days after the decision of the Joint Committee.
5. The Union reserves the right to revise and/or suspend, in part or in full, payment of the specific financial contribution provided for in Article 2 paragraph 2(b):
- (a) if the results obtained diverge significantly from the programming, following an evaluation by the Joint Committee;
- (b) in the event of failure to implement this financial contribution as determined by the Joint Committee.
6. Payment of the financial contribution shall resume after consultation between the Parties and agreement by the Joint Committee when it is justified on the basis of the results of the implementation of the agreed programming referred to in paragraph 1. Nevertheless, the specific financial contribution provided for in Article 2 paragraph 2(b) may not be paid out beyond a period of six (6) months after the Protocol expires.
7. Each year, the Cook Islands may allocate, if necessary, an additional amount to the financial contribution referred to in Article 2 paragraph 2(b) from the amount referred to in Article 2 paragraph 2(a) with a view to implementing the multiannual programme. This allocation shall be notified to the Union within two (2) months of the anniversary date of the start of provisional application of this Protocol.
8. The Parties undertake to ensure visibility of the measures implemented with sectoral support.

Article 4

Scientific cooperation on responsible fishing

1. During the period covered by this Protocol, recognising the sovereignty of the Cook Islands over its fisheries resources, the Parties shall cooperate in monitoring the state of fishery resources in the Cook Islands' fishery waters.
2. The Parties shall also cooperate, as may be required, to exchange relevant statistical, biological, conservation and environmental information affecting the activities of Union vessels in the Cook Islands' fishery waters for the purpose of managing and conserving the marine living resources.
3. The Parties undertake to promote cooperation on conservation and responsible management of fisheries within the Western and Central Pacific Fisheries Commission (WCPFC) and any other relevant sub-regional, regional and international organisation, and the Joint Committee may adopt measures to ensure sustainable management of the Cook Islands' fisheries resources.

Article 5

Review of fishing opportunities and technical provisions by the Joint Committee

1. The Joint Committee may reassess and decide to review the fishing opportunities referred to in Article 1 insofar as the resolutions and conservation and management measures of the WCPFC support that such an adjustment will secure the sustainable management of tuna and tuna-like species in the Western and Central Pacific Ocean, noting that the Parties have a special interest in managing the bigeye tuna stock.
2. In this case the financial contribution referred to in Article 2 paragraph 2(a) shall be adjusted proportionately and *pro rata temporis*. However, the total annual amount paid by the Union shall not be more than twice the figure indicated in Article 2, paragraph 2(a).

3. The Joint Committee may also, as necessary, examine and decide to adapt by mutual agreement technical provisions of the Protocol and the Annex.

Article 6

New fishing opportunities and experimental fisheries

1. In the event that Union fishing vessels become interested in engaging in fisheries not provided for in Article 1 of this Protocol, the Parties shall consult each other in the frame of the Joint Committee before any possible authorisation is granted for any such activities and, where appropriate, agree on the conditions for such fishing including effecting corresponding amendments to this Protocol and the Annex thereto.
2. At the request of one Party, the Joint Committee shall determine on a case-by-case basis the species, conditions and other parameters that are relevant.
3. Union vessels shall carry out experimental fishing in accordance with parameters that will be agreed by the Joint Committee, including, where appropriate, in an administrative arrangement. The authorisations for experimental fishing shall be granted for a maximum period of 6 months subject to the stock status.
4. In the event that the Parties consider that experimental campaigns have given positive results, the Cook Islands authorities shall allocate a proportion, commensurate with the contribution of Union vessels to experimental fisheries, of the fishing possibilities of the new species to the Union until the expiration of this Protocol. The financial compensation referred to in Article 2 paragraph 2(a) of this Protocol shall consequently be increased. Shipowners' fees and conditions as provided for in the Annex shall be amended accordingly. The Joint Committee shall make corresponding amendments to this Protocol and its Annex.

Article 7

Suspension

1. This Protocol, including payment of the financial contribution as referred to in Article 2 paragraphs 2(a) and (b), may be suspended at the initiative of either one of the Parties in the cases and under the conditions referred to in Article 13 of the Agreement.
2. Without prejudice to Article 3, payment of the financial contribution may resume as soon as the situation existing prior to the events mentioned in Article 13 of the Agreement has been re-established or a settlement has been reached in accordance with the Agreement.

Article 8

Termination

This Protocol may be terminated at the initiative of either one of the Parties in the cases and under the conditions referred to in Article 14 of the Agreement.

Article 9

Confidentiality

1. The Cook Islands shall maintain the confidentiality and security of the commercially sensitive data concerning the Union fishing activities in its fishery waters in a manner no less stringent than the standards established by the WCPFC Commission for the WCPFC Secretariat in its Information Security Policy.

2. Both Parties shall ensure that only public-domain aggregated data for the fishing activities of the Union vessels in the Cook Islands' fishery waters may be disseminated, in accordance with the WCPFC Rules and Procedures for the Protection, Access to, and Dissemination of Data Compiled by the Commission. Data defined as non-public domain by Section 4.1 of those WCPFC Rules and Procedures and data that may be considered as otherwise confidential shall be used exclusively for the application of the Agreement.

Article 10

Electronic exchanges of data

1. The Cook Islands and the Union will undertake to implement the necessary systems for the electronic exchange of all information and documents related to the implementation of the Agreement and the Protocol. The electronic form of a document at any point will be considered equivalent to the paper version.

2. Both Parties will immediately notify the other Party of any disruption of a computer system impeding such exchanges. In these circumstances, the information and documents related to the implementation of the Agreement and the Protocol shall be automatically replaced by their paper version in the manner defined in the Annex.

Article 11

Obligation on expiry of protocol or termination

In the case of the expiry of the Protocol or its termination as provided by Article 14 of the Agreement, Union shipowners shall continue to be liable for any breach of the provisions of the Agreement or the Protocol or any laws of the Cook Islands which occurred before the expiry or termination of the Protocol, or for any licence fee or any outstanding dues not paid at the time of expiry or termination.

Article 12

Provisional application

Signature of this Protocol by the Parties entails its provisional application prior to its entry into force.

Article 13

Entry into force

This Protocol shall enter into force when the Parties have notified each other of the completion of the necessary procedures.

ANNEX

**CONDITIONS FOR THE PURSUIT OF FISHING ACTIVITIES BY EUROPEAN UNION VESSELS UNDER THE
PROTOCOL SETTING OUT THE FISHING OPPORTUNITIES AND THE FINANCIAL CONTRIBUTION
PROVIDED FOR BY THE SUSTAINABLE FISHERIES PARTNERSHIP AGREEMENT BETWEEN THE
EUROPEAN UNION AND THE COOK ISLANDS****Chapter I***General provisions*

Section 1

Definitions

1. 'Competent authority' means:

- (a) for the European Union (hereafter 'the Union'): European Commission;
- (b) for the Cook Islands: Ministry of Marine Resources.

The contact details of the respective competent authorities are in Appendix 1.

- 2. 'Fishing authorisation' means a valid entitlement or licence to engage in fishing activities, for specific species, using specific gears, within the specified fishing areas in accordance with the terms provided under this Annex.
- 3. 'Delegation' means the Delegation of the European Union in Suva, Fiji.
- 4. '*Force majeure*' means the loss or prolonged immobilisation of a vessel due to a serious technical failure.

Section 2

Fishing areas

- 1. Union vessels in possession of a fishing authorisation issued by the Cook Islands under the Agreement shall be authorised to engage in fishing activities in the Cook Islands' fishing areas, meaning the Cook Islands' fishery waters except protected or prohibited areas. The coordinates of the Cook Islands' fishery waters and of protected areas or closed fishing areas shall be communicated by the Cook Islands to the Union prior to the start of provisional application of the Agreement.
- 2. The Cook Islands shall communicate to the Union any modification to the said areas in line with the provisions of Article 11 of the Agreement.

Section 3

Vessel agent

All Union vessels applying for a fishing authorisation may be represented by an agent (company or individual) resident in the Cook Islands, duly notified to the Cook Islands' competent authority.

Section 4

Eligible Union vessels

For a Union vessel to be eligible to obtain a fishing authorisation, neither the owner, the master nor the vessel itself must be prohibited from fishing in the Cook Islands' fishery waters. They must be in order with the laws of the Cook Islands and they must have fulfilled all prior obligations arising from their fishing activities in the Cook Islands under fisheries agreements concluded with the Union. Moreover, they shall comply with the relevant Union legislation regarding fishing authorisations, be on the WCPFC record of fishing vessels, be on the FFA good standing register and not be on a RFMO IUU vessels list.

Chapter II

Management of fishing authorisations

Section 1

Period of validity of the fishing authorisation

1. The fishing authorisation issued under the Protocol shall be valid for a 12-month period and be renewable. In order to establish the start of the period of validity, annual period shall mean:
 - (a) for the year during which the Protocol enters into provisional application, the period between the date of its entry into provisional application and 31 December of the same year;
 - (b) then, each complete calendar year;
 - (c) for the year during which the Protocol expires, the period between 1 January and the date of expiry of the Protocol.
2. For the first and for the last annual period the payment due by shipowners under Section 5, point 2 should be calculated on the *pro rata temporis* basis.

Section 2

Application for fishing authorisation

1. Only eligible Union vessels, as defined in Chapter I, Section 4 of this Annex, may obtain a fishing authorisation.
2. The Union competent authority shall submit electronically to the competent authority of the Cook Islands, with a copy to the Delegation, a fishing authorisation application for each vessel wishing to fish under the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands (hereafter 'the Agreement') at least 20 working days before the start of the annual period of validity of the fishing authorisation as specified in Section 1 of this Chapter.
3. Where a fishing authorisation application has not been submitted prior to the start of the annual period of validity, the shipowner may still do so no later than 20 working days before the requested start of fishing activities. In such cases, the fishing authorisation will be valid only until the end of the annual period during which it has been requested. The shipowners shall pay the advance fees due for the full validity period of the fishing authorisation.
4. For each initial application for a fishing authorisation, or following a major technical change to the vessel concerned, the application shall be submitted by email by the Union to the competent authority of the Cook Islands using the form in Appendix 2 and shall be accompanied by the following documents:
 - (a) proof of payment of the advance fee for the period of validity of the fishing authorisation;
 - (b) recent (12 months or less) date-stamped digital colour photographs of the vessel of a resolution 72dpi, 1 400 × 1 050 pic. showing a lateral view of the vessel including the vessel's name in ISO basic Latin alphabet;
 - (c) copy of the safety equipment certificate of the vessel;
 - (d) copy of the registration certificate of the vessel;
 - (e) copy of the ship sanitation control certificate;
 - (f) copy of certificate of registration under the FFA good standing register;
 - (g) stowage plan.
5. For the renewal of the fishing authorisation of a vessel whose technical specifications have not been modified, the renewal application shall only be accompanied by the proof of payment of the advance fee, current certificate of registration under the FFA Good standing register and copies of any renewed certificates as listed in point 4(c), (d) and (e).

6. The advance fee shall be paid into the bank account provided by the Cook Islands authorities. The inherent costs linked to bank transfers shall be borne by shipowners.
7. Payments shall include all national and local charges except for port taxes and service charges.
8. Should an application happen to be incomplete or otherwise does not satisfy the conditions under points 4, 5, 6 and 7 above, the Cook Islands authorities shall, within 7 working days of receipt of the electronic application, notify the competent authority of the Union, with a copy to the Delegation, of the reasons for the application to be considered incomplete or otherwise not satisfying the conditions under points 4, 5, 6 and 7.

Section 3

Issue of fishing authorisation

1. The fishing authorisation shall be issued by the Cook Islands within 15 working days of receipt of the complete application by email.
2. The fishing authorisation shall be transmitted without delay by electronic means by the competent authority of the Cook Islands to the shipowner and to the competent authority of the Union with a copy to the Delegation. At the same time, a fishing authorisation in paper form shall be sent to the shipowner.
3. Upon issuing the fishing authorisation, the Cook Islands' competent authority shall include the vessel on a list of Union vessels authorised to fish in the Cook Islands' fishing areas. This list shall be made available to all relevant monitoring, control and surveillance entities of the Cook Islands and to the Union competent authority with a copy to the Delegation.
4. The electronic form of the fishing authorisation will be replaced by a paper form at the earliest opportunity.
5. A fishing authorisation shall be issued for a specific vessel and shall not be transferable except in cases of force majeure, as outlined in Section 4 below.
6. The fishing authorisation (in electronic or paper form when available) must be kept on board the vessel at all times.

Section 4

Transfer of fishing authorisation

1. Where force majeure is proven and at the request of the Union, a vessel's fishing authorisation may be transferred, for the remaining period of its validity, to another eligible vessel with similar characteristics, without payment of a new advance payment.
2. Should the Cook Islands' competent authority authorise the transfer, the shipowner of the first vessel, or the vessel agent, shall return its fishing authorisation to the competent authority of the Cook Islands and inform the Union authority and the Delegation.
3. The new fishing authorisation shall take effect on the day the fishing licence of the vessel affected by force majeure is received by the competent authority of the Cook Islands. The returned authorisation shall be considered cancelled. The Union authority and the Delegation shall be informed by the Cook Islands authority of the fishing authorisation transfer.

Section 5

Fishing authorisation conditions – fees and advance payments

1. The fees to be paid by shipowners shall be calculated on the basis of the following rate per tonne of fish caught:
 - (a) for the first year of application of the Protocol, EUR fifty five (55) per tonne;

- (b) for the second year of application of the Protocol, EUR sixty five (65) per tonne;
 - (c) for subsequent years of application of the Protocol, EUR seventy (70) per tonne.
2. The fishing authorisations shall be issued once the following amounts have been paid by shipowners to the Cook Islands:
- (a) an annual advance payment fee:
 - (i) for the first year of application of the Protocol, the advance payment shall be EUR twenty-two thousand (22 000), which is the equivalent of EUR fifty-five (55) per tonne for four hundred (400) tonnes of tuna and tuna-like species caught within the Cook Islands' fishing areas;
 - (ii) for the second year of application of the Protocol, the advance payment shall be EUR twenty-six thousand (26 000), which is the equivalent of EUR sixty-five (65) per tonne for four hundred (400) tonnes of tuna and tuna-like species caught within the Cook Islands' fishing areas;
 - (iii) for subsequent years of application of the Protocol, the advance payment shall be EUR twenty-eight thousand (28 000), which is the equivalent of EUR seventy (70) per tonne for four hundred (400) tonnes of tuna and tuna-like species caught within Cook Islands' fishing areas;
 - (b) a special annual contribution for fishing authorisation of the amount of EUR thirty-eight thousand five-hundred (EUR 38 500) per Union vessel.

The first year of application of the Protocol means the period from the starting date of its provisional application until 31 December of that year. The final year is the period between 1 January and the anniversary date of the provisional application. For the first and the final year the shipowners' contribution shall be calculated on a *pro rata temporis* basis.

Section 6

Final statement of fees

1. The Cook Islands authority shall draw up a statement of fees due in respect of the previous calendar year on the basis of catch declarations submitted by Union vessels.
2. The statement shall be sent to the Union authority with a copy to the Delegation before 31 March of the current year. The Union authority shall transmit it before 15 April simultaneously to shipowners and national authorities of the concerned Member States.
3. Where the shipowners do not agree with the statement submitted by the Cook Islands authority, they may request the Union authority to consult the scientific institutes competent for verifying catch statistics such as the IRD (*Institut de Recherche pour le Développement*), the IEO (*Instituto Español de Oceanografía*) and IPIMAR (*Instituto de Investigação das Pescas e do Mar*), and thereafter discuss together with the Cook Islands authority, and keep informed the Union authority and the Delegation thereof, to establish the final statement before 31 May of the current year. In the absence of observations by the shipowners at that date, the statement submitted by the Cook Islands authority shall be considered as the final one. Where the final statement is less than the advance payment referred to in Section 5 point 2, the balance shall not be recoverable by the shipowner.

Chapter III

Monitoring

Section 1

Catch recording and reporting

1. The Union vessels authorised to fish in the Cook Islands' fishing areas under the Agreement shall communicate their catches to the competent authority of the Cook Islands in the following manner, until such time as an electronic catch-reporting system ('ERS') is implemented by both Parties.

2. The Union vessels authorised to fish in the Cook Islands' fishing areas shall fill in a fishing logbook sheet as set out in Appendix 3 for each day of presence in the Cook Islands' fishing areas. In the absence of catches or when the vessel is only transiting, the form shall still be filled in. The form shall be filled in legibly and signed by the master of the vessel or his representative.
3. While in the Cook Islands' fishing areas, Union vessels shall report to the competent authority of the Cook Islands every seven days a summary of the fishing logbook under point 2 using the Template N°3 of Appendix 4.
4. As far as the submission of the fishing logbook sheets referred to in point 2 is concerned, the Union vessels shall:
 - (a) in the case they call into a Cook Islands port of entry (Avarua, Avatui, Arutanga, Tuanganui, Omoka, Tauhunu, Tukao, Yato), submit the completed form to the respective Cook Islands authority within five (5) days of arrival, or in any event before they leave port, whichever occurs first. The Cook Islands authority shall deliver a written receipt;
 - (b) when leaving the Cook Islands' fishing areas without first passing through a Cook Islands port of entry, copies of logbook sheets shall be sent within a period of fifteen (15) working days after leaving the Cook Islands fishing areas by the following means:
 - (i) by email, to the email address of the Cook Islands' competent authority; or
 - (ii) by fax, to the number given by the Cook Islands' competent authority.

The original of each fishing logbook should be sent within a period of seven (7) working days following the first call in a port after leaving the Cook Islands' fishing areas.

5. Copies of these fishing logbook sheets must simultaneously be sent to the scientific institutes referred to in Chapter II, Section 6, point 3, within the same timeframe as provided in point 4 above.
6. The words 'Cook Islands' fishing areas' shall be entered in the abovementioned logbook sheets in respect of periods during which the vessel is in the Cook Islands' fishing areas.
7. The two Parties will endeavour to implement an ERS related to the fishing activities of the Union vessels in the Cook Islands' fishing areas, subject to a common agreement on guidelines for the management and implementation of an ERS.
8. Once the electronic system of catch declaration is implemented it will fully replace the recording provisions outlined in points 2 to 4 above, except in case of technical problems or malfunction, where declarations of catches shall be made pursuant to points 2 to 4 above.

Section 2

Communication on entering and leaving the Cook Islands' fishery waters

1. Without prejudice to the obligations in Section 1 of this Chapter, Union vessels authorised to fish under the Agreement shall notify the Cook Islands authority at least 24 hours in advance of their intention to enter or exit the Cook Islands' fishing areas.
2. When notifying entry/exit, vessels shall also communicate the volume and species in catches kept on board. The vessel shall also communicate its estimated position at the time of estimated entry/exit. These communications shall be made in the format set out in Appendix 4, Templates N°1 and N°2, by fax or email, to the contacts provided therein.
3. Union fishing vessels found to be fishing without the prior notification of entry under point 2 of this Section, shall be deemed as vessels without a fishing authorisation. The sanctions referred to in Chapter V will be applicable in such cases.

Section 3

Landing

1. The designated ports for landing activities in the Cook Islands are the Ports of Avatui and Omoka.

2. Union vessels in possession of a Cook Islands fishing authorisation wishing to land catches in the Cook Islands' designated ports shall notify the following information to the competent authority of the Cook Islands at least 72 hours in advance:
 - (a) the landing port;
 - (b) the name and IRCS of the landing fishing vessel;
 - (c) the date and time of landing;
 - (d) the quantity in kg, rounded to the nearest 100 kg, by species to be landed;
 - (e) the product presentation.
3. Vessels must submit their landing declarations to the competent authority of the Cook Islands, no later than 48 hours after completion of the landing, or in any event, before the vessel leaves port, whichever occurs first.

Section 4

Transshipment

1. Union vessels in possession of a Cook Islands fishing authorisation wishing to tranship catches in the Cook Islands' fishery waters shall do so only within the Cook Islands' designated ports as stated in Chapter III, Section 1, point 4(a). Transshipment at sea outside ports is prohibited and any person infringing this provision shall be liable to the penalties provided for by Cook Islands law.
2. The shipowner or the vessel agent must notify the following information to the competent authority of the Cook Islands at least 72 hours in advance:
 - (a) the transshipment port where the operation will occur;
 - (b) the name and IRCS of the donor fishing vessel;
 - (c) the name and IRCS of the receiving fishing vessel;
 - (d) the date and time of transshipment;
 - (e) the quantity in kg, rounded to the nearest 100 kg, by species to be transhipped;
 - (f) the product presentation.
3. Vessels shall submit their transshipment declarations to the competent authorities of the Cook Islands, no later than 48 hours after completion of the transshipment, or in any event, before the donor vessel leaves port, whichever occurs first.

Section 5

Vessel Monitoring System (VMS)

Without prejudice to the competence of the Flag State and the obligations of Union vessels towards their Flag State Fishing Monitoring Centre, each Union vessel shall comply with the FFA Vessel Monitoring System (FFA VMS) currently applicable in the Cook Islands' fishing areas.

Section 6

Observers

1. Union fishing vessels in possession of a Cook Islands' fishing authorisation, while operating in the Cook Islands' fishing areas shall ensure observer coverage in accordance with the relevant WCPFC conservation and management measures and the relevant Cook Islands' legislation.

2. Union vessels shall carry on board an authorised observer from the WCPFC Regional Observer Programme or an IATTC observer authorised through the Memorandum of Understanding agreed between the WCPFC and IATTC on the cross-endorsement of observers.

Chapter IV

Control

1. Union vessels shall comply with the relevant provisions of the national legislation of the Cook Islands regarding fishing activities, as well as with the conservation and management measures adopted by the WCPFC.
2. Control procedures:
 - (a) Masters of Union vessels engaged in fishing activities in the Cook Islands' fishing areas shall cooperate with any Cook Islands authorised and duly identified officer carrying out inspection and control of fishing activities;
 - (b) without prejudice to the provisions of the national legislation of the Cook Islands, boarding should be conducted in such a way that the inspection platform and the inspectors can be identified as Cook Islands authorised officers;
 - (c) The Cook Islands shall make available to the Union competent authority the list of all inspection platforms used for sea inspections. This list should contain at least:
 - (i) Fisheries Patrol Vessels (FPV) names;
 - (ii) FPV Vessel details;
 - (iii) FPV photography;
 - (d) The Cook Islands may, on the request of the Union or a body designated by it, allow Union inspectors to observe the activities of Union vessels, including transshipments, during onshore-based controls;
 - (e) once an inspection has been completed and the inspection report signed by the inspector, the report shall be made available for signature and comments, if any, by the master. This signature shall not prejudice the rights of the Parties in the context of alleged infringement procedures. A copy of the inspection report shall be given to the master of the vessel before the inspector leaves the vessel;
 - (f) inspectors shall not remain on board for longer than is necessary for the discharge of their duties.
3. Masters of Union vessels engaged in landing or transshipment operations in a port of the Cook Islands shall allow and facilitate the inspection of such operations by the Cook Islands' authorised officers.
4. Where the provisions set out in this Chapter are not complied with, the Cook Islands authority reserves the right to suspend the fishing authorisation of the offending vessel until formalities have been completed and to apply the penalty laid down in existing Cook Islands legislation. The flag Member State and the Union competent authority shall be immediately informed.

Chapter V

Enforcement

1. Sanctions
 - (a) Failure to observe any one of the provisions of the above chapters, of the conservation and management measures adopted by relevant regional fisheries management organisations, or of the Cook Islands' national law, shall be subject to penalties as laid down by the Cook Islands' national law.
 - (b) The flag Member State and the Union competent authority shall be immediately and fully informed of any sanction and of all relevant facts related thereto.

- (c) Where a sanction takes the form of suspension or revocation of a fishing authorisation, during the remaining period for which the authorisation has been granted, the Union competent authority may request another fishing authorisation which would have otherwise been applicable, for a vessel from another shipowner.

2. Arrest and detention of fishing vessels

- (a) The Cook Islands shall inform immediately the Union and the flag Member State of the arrest and/or detention of any fishing vessel in possession of a fishing authorisation under the Agreement.
- (b) The Cook Islands shall transmit a copy of the inspection report, detailing the circumstances and reasons of the arrest and/or detention within twelve (12) hours to the Union and the flag Member State.

3. Information-exchange procedure in the event of arrest and/or detention

- (a) Whilst respecting the deadlines and legal proceedings as provided for by the national laws of the Cook Islands relating to arrest and/or detention, a consultation meeting shall be held, upon receipt of the above information, between representatives of the Union and the Cook Islands, possibly attended by a representative of the Member State concerned.
- (b) At the meeting, the Parties shall exchange any relevant documentation or information helping to clarify the facts. The shipowner or its agent shall be informed of the outcome of the meeting and of any measure resulting from the arrest and/or detention.

4. Settlement of arrest and/or detention

- (a) An attempt shall be made to resolve the presumed infringement amicably. This procedure shall be completed no later than three (3) working days after the arrest and/or detention, in conformity with the national legislation of the Cook Islands.
 - (b) In the event of an amicable settlement, the amount to be paid shall be determined by referring to the national legislation of the Cook Islands. If such an amicable settlement is not possible, the legal proceedings shall take its course.
 - (c) The vessel shall be released and its master discharged as soon as the obligations arising under the amicable settlement have been fulfilled or the legal bail has been paid.
5. The Union authority and the Delegation shall be kept informed of any proceedings initiated and penalties imposed.

Chapter VI

Cooperation in fighting IUU fishing

1. In order to strengthen the monitoring of fisheries and the fight against IUU fishing, captains of Union fishing vessels will endeavour to signal the presence in the Cook Islands' fishery waters of any other fishing vessel.
 2. When the captain of a Union fishing vessel observes a fishing vessel engaged in activities that may constitute IUU fishing, he will gather as much information as possible about the vessel and its activity at the time it was sighted. Observation reports are sent without delay to the competent authority of the Cook Islands with a copy to the Flag State FMC.
 3. The Cook Islands authority will submit as soon as possible to the Union any observation report in their possession relating to fishing vessels engaged in activities that may constitute IUU activity in the fishery waters of Cook Islands.
-

Appendices to this Annex

- Appendix 1 — Competent Authorities' Contact Details
 - Appendix 2 — Fishing Authorisation Application Form
 - Appendix 3 — Fishing Logbook Sheet
 - Appendix 4 — Communication Format Reports Templates
-

Appendix 1

Competent Authorities Contact Details

EU Contact Details

1. Union Authorities

Address: Mare B3 — Bilateral Agreements and Fisheries Control in International Waters
Rue Joseph II, 79, 01/079
1049 Brussels

E-mail: mare-b3@ec.europa.eu

Telephone: (+32) 229 69 493

Fax: (+32) 229 514 33

2. Union Licensing Unit

Address: D4 — Unité Gestion intégrée des données halieutiques
Rue Joseph II, 99
B-1049 Bruxelles

E-mail: mare-licences@ec.europa.eu

Telephone: (+32) 229 91 262

3. Spanish Fishing Monitoring Centre (FMC)

Address: Centro de Seguimiento Pesquero
Sección Sistema Localización Buques
Subdirección General de Control e Inspección — Secretaria General de Pesca
C/ Velazquez 147, planta baja. Madrid

Telephone: (+34) 913 471 559

E-mail: csp@magrama.es

Cook Islands Contact Details

1. Fishing Authority

Address: Ministry of Marine Resources
Avarua, PO Box 85, Rarotonga
Cook Islands

E-mail: rar@mmr.gov.ck

Telephone: (+682) 29 730

Fax: (+682) 29 721

2. Licensing Authority

Address: Ministry of Marine Resources
Avarua, PO Box 85, Rarotonga
Cook Islands

E-mail: licensing@mmr.gov.ck

Telephone: (+682) 29 730

Fax: (+682) 29 721

3. Fishing Monitoring Centre (FMC)

Address: Ministry of Marine Resources
Avarua, PO Box 85, Rarotonga
Cook Islands

E-mail: a.jones@mmr.gov.ck

Telephone: (+682) 29 730

Fax: (+682) 29 721

4. Cook Islands Focal point

Name: Ben Ponia, Secretary of Marine Resources

E-mail: b.ponia@mmr.gov.ck

Mobile Phone: (+682) 555 24

Appendix 2

FORM A

GOVERNMENT OF THE COOK ISLANDS



Marine Resources Act 2005

APPLICATION FOR A FISHING VESSEL LICENSE

(Marine Resources (Licensing) Regulations 2012 — Regulation 4)

- INSTRUCTIONS:**
- * Clearly mark the boxes ☒ where appropriate
 - * Answer all the questions on this form either by filling in the spaces provided or checking the appropriate answer
 - * Underline surname or family name
 - * Address means complete mailing address
 - * All units Metric; Please specify if other units used

-
1. ☐ Cook Islands Fishing Vessel Licence ☐ Foreign Fishing Vessel Licence
(or 'Local/Cook Islands Owned' Fishing Vessel License (or Charter Fishing Vessel License))
-

2. Vessel Details

Name of Vessel:

Country of Registration (Flag):

International Radio Call Sign:

Flag State Registration Number:

PREVIOUS VESSEL DETAILS (IF APPLICABLE)

Previous Name of Vessel:

Last Country of Registration (Flag):

Last Radio Call Sign:

Last Flag State Registration Number:

Year Change Occurred:

VESSEL SPECIFICATIONS

Gross Registered Tonnage (GRT):

Length Overall:

Country Built:

Year Built:

Hull Material:

☐
☐

Aluminium

☐
☐

Fibreglass

☐
☐

Steel

☐
☐

Wood

Other — specify

Engine Make/Model:

Total Engine Power:

Total Fuel Carrying Capacity:

Rated Speed (knots):

Total Storage Capacity:

Normal Crew Complement:

Storage Methods:

☐

Brine

☐

Freezer/Air Coils

☐

Ice

☐

Refrigerated Sea Water

Warning: It is an offence, punishable by a fine, to make a false, incomplete or misleading statement. A license will not be issued, or a license issued on the basis of this application is liable to cancellation, if any of the information given is false, incomplete or misleading.

VESSEL TYPE☐

Single Purse Seiner

☐

Longliner

☐

Fish Carrier

Group Purse Seiner:☐

Pole and Line

☐

Other — specify:

☐

Mothership

☐

Trawler

☐

Net Boat

☐

Troller

☐

Search Boat

☐

Bottom/Deep Sea Fishing

VESSEL CHARTERER/OPERATOR/OWNER/MASTER/CAPTAIN

Charterer/Operator:

Name	<input type="text"/>
Address	<input type="text"/>
	<input type="text"/>
	<input type="text"/>

Owner:

Name	<input type="text"/>
Address	<input type="text"/>
	<input type="text"/>
	<input type="text"/>

Master/Captain:

Name	<input type="text"/>
Address	<input type="text"/>
	<input type="text"/>
	<input type="text"/>

Fishing Master:

Name	<input type="text"/>
Address	<input type="text"/>
	<input type="text"/>
	<input type="text"/>

- | | Yes | No |
|--|--------------------------|--------------------------|
| 1. Is the owner or charterer the subject of proceedings under the bankruptcy laws of any jurisdiction? If 'Yes', please give details (attach details on a separate sheet). | <input type="checkbox"/> | <input type="checkbox"/> |
| | Yes | No |
| 2. Has the vessel ever been used in an offence against the Marine Resources Act? If 'Yes', please give details (attach details on a separate sheet). | <input type="checkbox"/> | <input type="checkbox"/> |
| | Yes | No |
| 3. Does the vessel hold current fishing licenses elsewhere in the region? If 'Yes', please specify the licensing country(ies) and license number(s). | <input type="checkbox"/> | <input type="checkbox"/> |
| Country | | |
| Licence No. | | |
| 4. Provide details of any joint ventures or other contractual arrangements with Government of the Cook Islands or any Cook Islands Nationals in connection with the proposed fishing operations such that; | | |
| a) the Companies shall supply a statement, setting out full details of the joint venture between the Companies, jointly or severally, relating to the Company's vessels (attach details); | | |
| b) the Companies shall supply the Minister for Marine Resources with a business plan, showing full details of the proposed fishing, export and marketing operations of the Companies including projected costs and financial statements (attach details). | | |
| | Yes | No |
| 5. Is there currently in force an access agreement between the Government of the Cook Islands and the Government of the Flag State of the vessel in respect of which this application is made or with an association representing foreign fishing vessel owners or charterers of which the owner or charterer of the vessel is a member? | <input type="checkbox"/> | <input type="checkbox"/> |
-

VESSEL INMARSAT ALC DETAILS

	Yes	No
Is there a FFA VMS type approved ALC installed on the vessel? If 'Yes', give details below.	<input type="checkbox"/>	<input type="checkbox"/>
Inmarsat mobile unit number:	<input type="text"/>	Name of Installer: <input type="text"/>
Inmarsat unit serial number:	<input type="text"/>	Contact Details: <input type="text"/>
Make/Model:	<input type="text"/>	<input type="text"/>
Software Version:	<input type="text"/>	<input type="text"/>

Warning: It is an offence, punishable by a fine, to make a false, incomplete or misleading statement. A license will not be issued, or a license issued on the basis of this application is liable to cancellation, if any of the information given is false, incomplete or misleading.

APPLICANT DETAILS

Name:	<input type="text"/>	Tick as appropriate:	Authorised Agent <input type="checkbox"/>
Address:	<input type="text"/>		Charterer/Operator <input type="checkbox"/>
	<input type="text"/>		Owner <input type="checkbox"/>
	<input type="text"/>		
Phone:	<input type="text"/>	Fax:	<input type="text"/>
E-mail:	<input type="text"/>		

APPLICANT DECLARATION

I hereby apply for a fishing vessel licence in respect of the
(Cook Islands Fishing Vessel / Foreign Fishing Vessel) described above. I declare that the above information is true, complete and correct. I understand I am required to report immediately to the Secretary of Marine Resources any changes to the information given on this form within seven (7) days and further understand that failure to do so may render me liable to prosecution.

Applicant**Date****3. Attachments Checklist**

Attach the following documentation to your application:

- Cook Islands Shipping Registration Certificate
- FFA Certificate of Registration
- Demise Charter Agreement / Fishing Charter Agreement
- Recent Photograph of the vessel and markings and identification (port and starboard shots of the whole vessel and a stern shot — not older than six months)
- Certified Schematic and Stowage Plans (a.k.a. *General Arrangements Plan*)
- Crew list and details
- Copies of any other fishing license/permit currently valid in another zone

This application is to be forwarded to the Secretary, Ministry of Marine Resources at the address shown below and is to be accompanied by the prescribed application fee.

The Secretary
Ministry of Marine Resources
P.O. Box 85
Avarua
Cook Islands

Telephone: (682) 28721
Fax: (682) 29721

Warning: It is an offence, punishable by a fine, to make a false, incomplete or misleading statement. A license will not be issued, or a license issued on the basis of this application is liable to cancellation, if any of the information given is false, incomplete or misleading.

PAGE OF

NAME OF VESSEL		FISHING PERMIT OR LICENCE NUMBER(S)		YEAR	TRIP No. THIS YEAR
NAME OF FISHING COMPANY	FFA VESSEL REGISTER NUMBER	NAME OF AGENT IN PORT OF UNLOADING	PORT OF DEPARTURE	PLACE OF UNLOADING	
COUNTRY OF REGISTRATION	UNIQUE VESSEL IDENTIFICATION (UVI)	<ul style="list-style-type: none"> • ALL DATES AND TIMES MUST BE IN NAUTICAL TIME • RECORD SMALL AND LARGE YELLOWFIN AND BIGEYE SEPARATELY 	DATE AND TIME OF DEPARTURE	DATE AND TIME OF ARRIVAL IN PORT	
REGISTRATION NUMBER IN COUNTRY OF REGISTRATION	INTERNATIONAL RADIO CALLSIGN		AMOUNT OF FISH ONBOARD AT START OF TRIP	AMT OF FISH ONBOARD AFTER UNLOADING	

[illegible]

		PAGE TOTAL													
		TRIP TOTAL													
ACTIVITY CODES RECORD ALL SETS IF NO FISHING SET MADE IN A DAY, RECORD THE MAIN ACTIVITY FOR THAT DAY 1 FISHING SET 2 SEARCHING 3 TRANSIT 4 NO FISHING — BREAKDOWN 5 NO FISHING — BAD WEATHER 6 IN PORT — PLEASE SPECIFY 7 NET CLEANING SET 10 DEPLOYING OR RETREIVINGRAFTS, FADS OR PAYAOS		SCHOOL ASSOCIATION CODES 1 UNASSOCIATED 2 FEEDING ON BAITFISH 3 DRIFTING LOG, DEBRIS OR DEAD ANIMAL 4 DRIFTING RAFT, FAD OR PAYAO 5 ANCHORED RAFT, FAD OR PAYAO TUNA DISCARD CODES 1 FISH DAMAGED / UNFIT FOR CONSUMPTION 2 VESSEL FULLY LOADED 3 GEAR FAILURE	UNLOADINGS TO CANNERY, COLD STORAGE, CARRIER OR OTHER VESSEL												
		START DATE	END DATE	CANNERY OR VESSEL DESTINATION			INTL RADIO CALL SIGN	SKIPJACK	YELLOW FIN	BIGEYE	MIXED	OTHERS	REJECT		
		NAME OF CAPTAIN			SIGNATURE OF CAPTAIN								DATE		

Appendix 4

Communication Format Reports Templates

1. Entry Report (COE) ⁽¹⁾

Content	Transmission
Destination of message	
Action code	COE
Vessel Name	
IRCS	
Position of entry	LT/LG
Date and Time (UTC) of entry	DD/MM/YYYY — HH:MM
Quantity (Mt) of fish on board per specie:	
Yellowfin (YFT)	(Mt)
Bigeye Tuna (BET)	(Mt)
Skipjack (SKJ)	(Mt)
Others (Specify)	(Mt)

2. Exit Report (COX) ⁽²⁾

Content	Transmission
Destination of message	
Action code	COX
Vessel Name	
IRCS	
Position of exit	LT/LG
Date and Time (UTC) of exit	DD/MM/YYYY — HH:MM
Quantity (Mt) of fish on board per specie:	
Yellowfin (YFT)	(Mt)
Bigeye Tuna (BET)	(Mt)
Skipjack (SKJ)	(Mt)
Others (Specify)	(Mt)

⁽¹⁾ Sent twenty four (24) hours before entering fishing areas within the fishery waters of the Cook Islands.

⁽²⁾ Sent twenty four (24) hours before exiting fishing areas within the fishery waters of the Cook Islands.

3. Catch Report (CAT) Format once inside fishing areas within Cook Islands waters ⁽¹⁾

Content	Transmission
Destination of message	
Action code	CAT
Vessel Name	
IRCS	
Date and Time (UTC) of report	DD/MM/YYYY — HH:MM
Quantity (Mt) of fish on board per specie:	
Yellowfin (YFT)	(Mt)
Bigeye Tuna (BET)	(Mt)
Skipjack (SKJ)	(Mt)
Others (Specify)	(Mt)
Number of sets made since last report	

4. All reports shall be transmitted to the competent authority through the following contacts:

- (a) E-mail: a.jones@mmr.gov.ck
- (b) Fax: (+682) 29721

⁽¹⁾ Weekly after entering fishing areas within the fishery waters of the Cook Islands.

AGREEMENT

in the form of an Exchange of Diplomatic Notes with Japan in accordance with Article 15(3)(b) of the Agreement on Mutual Recognition (MRA) in order to amend Part B of the Sectoral Annex on Good Manufacturing Practice (GMP) for medicinal products

LETTER FROM JAPAN

Brussels, April 22, 2016

Sir,

I have the honour to propose, on behalf of the Government of Japan, that Sections I and II of Part B of the Sectoral Annex on Good Manufacturing Practice (GMP) for Medicinal Products of the Agreement on Mutual Recognition between Japan and the European Community, done at Brussels on April 4, 2001 (hereinafter referred to as the 'Agreement') be replaced by the Sections I and II of Part B attached to this Note, in accordance with subparagraph 3(b) of Article 15 of the Agreement.

I have further the honour to propose that, if the above proposal is acceptable to the European Union, it is suggested that this Note and your reply to that effect shall be regarded as constituting an agreement between the Government of Japan and the European Union on this matter which shall enter into force on the date of your reply.

I avail myself of this opportunity to extend to you the assurance of my high consideration.

Keiichi KATAKAMI

*Ambassador Extraordinary and Plenipotentiary of Japan to
the European Union*

Mr Jean-Luc DEMARTY

*Director-General**Directorate-General for Trade European Commission*

LETTER FROM THE EUROPEAN UNION

Brussels, April 22, 2016

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date, which reads as follows.

'I have the honour to propose, on behalf of the Government of Japan, that Sections I and II of Part B of the Sectoral Annex on Good Manufacturing Practice (GMP) for Medicinal Products of the Agreement on Mutual Recognition between Japan and the European Community, done at Brussels on April 4, 2001 (hereinafter referred to as the "Agreement") be replaced by the Sections I and II of Part B attached to this Note, in accordance with subparagraph 3(b) of Article 15 of the Agreement.

I have further the honour to propose that, if the above proposal is acceptable to the European Union, it is suggested that this Note and your reply to that effect shall be regarded as constituting an agreement between the Government of Japan and the European Union on this matter which shall enter into force on the date of your reply.'

I have the honour to inform Your Excellency, on behalf of the European Union, that the European Union accepts the above proposal of the Government of Japan and to confirm that Your Excellency's Note and this reply shall be regarded as constituting an agreement between the European Union and the Government of Japan on this matter which shall enter into force on the date of this reply.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Jean-Luc DEMARTY

Director-General

Directorate-General for Trade European Commission

His Excellency

Mr Keiichi KATAKAMI

*Ambassador Extraordinary and Plenipotentiary of Japan to
the European Union*

ANNEX

PART B

Section I

The applicable laws, regulations and administrative provisions stipulating medicinal products, GMP requirements for medicinal products, verification and confirmation

European Union	Japan
1. Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67) and amendments thereto	1. The Law on Securing Quality, Efficacy and Safety of Products including Pharmaceuticals and Medical Devices (Law No 145, 1960) and amendments thereto
2. Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use (OJ L 121, 1.5.2001, p. 34) and amendments thereto	2. Cabinet Order of the Law on Securing Quality, Efficacy and Safety of Products including Pharmaceuticals and Medical Devices (Cabinet Order No 11, 1961) and amendments thereto
3. Commission Directive 2005/28/EC of 8 April 2005 laying down principles and detailed guidelines for good clinical practice as regards investigational medicinal products for human use, as well as the requirements for authorisation of the manufacturing or importation of such products (OJ L 91, 9.4.2005, p. 13) and amendments thereto	3. Ordinance of the Law on Securing Quality, Efficacy and Safety of Products including Pharmaceuticals and Medical Devices (Ordinance of the Ministry of Health and Welfare No 1, 1961) and amendments thereto
4. Regulation (EU) No 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC (OJ L 158, 27.5.2014, p. 1) and amendments thereto	4. Pharmaceuticals Designated by the Minister for Health, Labour and Welfare under the provisions of subparagraphs 6 and 7 of Article 20-1 of the Cabinet Order of the Law on Securing Quality, Efficacy and Safety of Products including Pharmaceuticals and Medical Devices, and under the provisions of subparagraphs 6 and 7 of Article 96 of Ordinance of the Law on Securing Quality, Efficacy and Safety of Products including Pharmaceuticals and Medical Devices (Notice of Ministry of Health, Labour and Welfare No 431, 2004) and amendments thereto
5. Commission Directive 2003/94/EC of 8 October 2003 laying down the principles and guidelines of good manufacturing practice in respect of medicinal products for human use and investigational medicinal products for human use (OJ L 262, 14.10.2003, p. 22) and amendments thereto	5. Ordinance for Facilities and Equipments for Pharmacies etc. (Ordinance of the Ministry of Health and Welfare No 2, 1961) and amendments thereto
6. Commission Delegated Regulation (EU) No 1252/2014 of 28 May 2014 supplementing Directive 2001/83/EC of the European Parliament and of the Council with regard to principles and guidelines of good manufacturing practice for active substances for medicinal products for human use (OJ L 337, 25.11.2014, p. 1) and amendments thereto	6. Ministerial Ordinance for the Standard of Manufacturing Control and Quality Control for Drugs and Quasi Drugs (Ordinance of the Ministry of Health, Labour and Welfare No 179, 2004) and amendments thereto
7. Current versions of the Guide to good manufacturing practices contained in volume IV of Rules governing medicinal products in the European Union and Compilation of the European Union Procedures on Inspections and exchange of Information	

Section II

Competent authorities

European Union	Japan
Competent Authorities of the European Union are the following authorities of the Member States of the European Union or authorities succeeding them:	Ministry of Health, Labour and Welfare or an authority succeeding this ministry
Austria Österreichische Agentur für Gesundheit und Ernährungssicherheit GmbH	
Belgium Federaal Agentschap voor geneesmiddelen en gezondheidsproducten/Agence fédérale des médicaments et produits de santé	
Bulgaria Изпълнителна агенция по лекарствата	
Croatia Agencija za lijekove i medicinske proizvode (HALMED)	
Cyprus Φαρμακευτικές Υπηρεσίες, Υπουργείο Υγείας	
Czech Republic Státní ústav pro kontrolu léčiv (SÚKL)	
Denmark Lægemiddelstyrelsen	
Estonia Ravimiamet	
Finland Lääkealan turvallisuus- ja kehittämiskeskus	
France Agence nationale de sécurité du médicament et des produits de santé (ANSM)	
Germany Bundesinstitut für Arzneimittel und Medizinprodukte (BfArM) Paul-Ehrlich-Institut (PEI) Bundesinstitut für Impfstoffe und biomedizinische Arzneimittel (biologicals only)	
Greece Ethnikos Organismos Farmakon (EOF) (ΕΘΝΙΚΟΣ ΟΡΓΑΝΙΣΜΟΣ ΦΑΡΜΑΚΩΝ)	
Hungary Országos Gyógyszerészeti és Élelmezés-egészségügyi Intézet (OGYÉI)	
Ireland Health Products Regulatory Authority (HPRA)	

European Union	Japan
Italy Agenzia Italiana del Farmaco	
Latvia Zāļu valsts aģentūra	
Lithuania Valstybinė vaistų kontrolės tarnyba	
Luxembourg Ministère de la Santé, Division de la Pharmacie et des Médicaments	
Malta Medicines Authority	
Netherlands Inspectie voor de Gezondheidszorg (IGZ)	
Poland Główny Inspektorat Farmaceutyczny (GIF)	
Portugal INFARMED — Autoridade Nacional do Medicamento e Produtos de Saúde, I.P	
Romania Agenția Națională a Medicamentului și a Dispozitivelor Medicale	
Slovakia Štátny ústav pre kontrolu liečiv (SUKL)	
Slovenia Javna agencija Republike Slovenije za zdravila in medicinske pripomočke (JAZMP)	
Spain Agencia Española de Medicamentos y Productos Sanitarios	
Sweden Läkemedelsverket	
United Kingdom Medicines and Healthcare Products Regulatory Agency	
European Union European Medicines Agency	

REGULATIONS

COUNCIL REGULATION (EU) 2016/777

of 29 April 2016

concerning the allocation of fishing opportunities under the Implementation Protocol to the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 21 October 2015 the Union and the Government of the Cook Islands initialled a Sustainable Fisheries Partnership Agreement ('the Agreement') and an Implementation Protocol thereto ('the Protocol'), granting Union vessels fishing opportunities in the waters over which the Cook Islands has sovereign rights or jurisdiction in respect of fisheries.
- (2) On 29 April 2016 the Council adopted Decision (EU) 2016/776 ⁽¹⁾ on the signing and provisional application of the Agreement and the Protocol.
- (3) The method for allocating the fishing opportunities among the Member States should be defined, both for the period of provisional application and for the duration of the Protocol.
- (4) Pursuant to Article 10(1) of Council Regulation (EC) No 1006/2008 ⁽²⁾, the Commission is to inform the Member States concerned if it appears that the fishing opportunities allocated to the Union under the Protocol are not fully utilised. The absence of a reply within a deadline to be set by the Council should be considered as confirmation that the vessels of the Member State concerned are not making full use of their fishing opportunities in the given period.
- (5) Article 12 of the Protocol provides for the provisional application of the Protocol from the date of its signature. This Regulation should therefore apply from the date of signature of the Protocol,

HAS ADOPTED THIS REGULATION:

Article 1

1. The fishing opportunities set out in the Implementation Protocol to the Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands shall be allocated among the Member States as follows:

Tuna purse seiners:

Spain:	3 vessels
France:	1 vessel

⁽¹⁾ Council Decision (EU) 2016/776 of 29 April 2016 on the signing, on behalf of the European Union, and provisional application of a Sustainable Fisheries Partnership Agreement between the European Union and the Government of the Cook Islands and the Implementation Protocol thereto (see page 1 of this Official Journal).

⁽²⁾ Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, amending Regulations (EEC) No 2847/93 and (EC) No 1627/94 and repealing Regulation (EC) No 3317/94 (OJ L 286, 29.10.2008, p. 33).

2. Regulation (EC) No 1006/2008 applies without prejudice to the Agreement.
3. If applications for fishing authorisations from the Member States referred to in paragraph 1 do not exhaust the fishing opportunities set out in the Protocol, the Commission shall consider applications for fishing authorisations from any other Member State in accordance with Article 10 of Regulation (EC) No 1006/2008.
4. The deadline within which the Member States are to confirm that they are not fully utilising the fishing opportunities granted to them under the Protocol, as provided by Article 10(1) of Regulation (EC) No 1006/2008, shall be set at 10 working days as from the date on which the Commission requests such confirmation.

Article 2

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

It shall apply from the date of signature of the Protocol.

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

Done at Brussels, 29 April 2016.

For the Council

The President

A.G. KOENDERS

COMMISSION DELEGATED REGULATION (EU) 2016/778**of 2 February 2016**

supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to the circumstances and conditions under which the payment of extraordinary *ex post* contributions may be partially or entirely deferred, and on the criteria for the determination of the activities, services and operations with regard to critical functions, and for the determination of the business lines and associated services with regard to core business lines

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council ⁽¹⁾, and in particular Article 2(2), and Article 104(4) thereof,

Whereas:

- (1) The deferral of extraordinary *ex post* contributions, referred to in Article 104 of Directive 2014/59/EU, should be granted by the resolution authority upon an institution's request in order to facilitate the assessment by the resolution authority that that institution meets the conditions for the deferral set out in Article 104(3) of Directive 2014/59/EU. The concerned institution should provide any information deemed necessary by the resolution authority to conduct such assessment. The resolution authority should take into account all information available to the national competent authorities to avoid any duplication of notification requirements.
- (2) When assessing the impact of the payment of extraordinary *ex post* contributions on the solvency or liquidity of the institution, the resolution authority should analyse the impact of the payment on the institution's capital and liquidity position. The analysis should assume a loss on the institution's balance sheet equal to the amount payable at the point in time when it is due and make a projection of the institution's capital ratios following this loss for an appropriate time frame. Moreover, it should assume an outflow of funds equal to the amount payable at the point in time when it is due and should assess the liquidity risk.
- (3) Recovery and resolution plans require institutions and resolution authorities to be able to identify and ensure the continuance of critical functions of institutions or groups.
- (4) The continuity of critical functions of the institution under resolution is one of the main resolution objectives. It aims at safeguarding financial stability and the real economy and therefore plays a key role in the recovery and resolution planning process. Critical functions can include deposit taking, lending and loan services, payment, clearing, custody and settlement services, wholesale funding markets activities, and capital markets and investments activities.
- (5) Critical functions of an institution or group are set out in its recovery plan. The recovery plan should be assessed by the resolution authority and form the basis of the resolution plan. The resolution authority should conduct its own assessment of critical functions when establishing the resolution plan and should demonstrate how critical functions and core business lines could be legally and economically separated from other functions so as to ensure continuity upon the failure of the institution.

⁽¹⁾ OJ L 173, 12.6.2014, p. 190.

- (6) When assessing the resolvability of an institution, resolution authorities should take into account whether the chosen strategy ensures the continuity of critical functions, and whether the power to address or remove impediments to resolvability relates to critical functions. Similarly, in a bail-in scenario, liabilities could be exempted from the scope of the bail-in where the exclusion is strictly necessary and proportionate to achieve the continuity of critical functions. Critical functions also become relevant in the operation of a bridge bank tool since a bridge bank institution should maintain critical functions.
- (7) Critical functions should be identified in a two-step procedure: first, the institutions perform a self-assessment when establishing their recovery plans. Secondly, the resolution authorities critically review the recovery plans of the individual institutions to ensure consistency and coherence in the approaches used by banks. Since the resolution authorities benefit from the overarching view as to which functions are essential to maintain financial stability as a whole, they should take the final decision as regards the designation of critical functions for the purpose of resolution planning and execution.
- (8) Critical services should be the underlying operations, activities and services performed for one (dedicated services) or more business units or legal entities (shared services) within the group which are needed to provide one or more critical functions. Critical services can be performed by one or more entities (such as a separate legal entity or an internal unit) within the group (internal service) or be outsourced to an external provider (external service). A service should be considered critical where its disruption can present a serious impediment to, or completely prevent, the performance of critical functions as they are intrinsically linked to the critical functions that an institution performs for third parties. Their identification follows the identification of a critical function.
- (9) Institutions and resolution authorities should also identify the critical services in the recovery and resolution plans. To the extent that critical services are outsourced to third parties, the resolution authority should be able to limit its assessment to that which is necessary to verify whether the institution has an appropriate business continuity plan in place.
- (10) The determination of a service as critical should enable institutions to ensure the continued availability of those services by providing them through entities or units that are resilient in a failure, or establishing appropriate arrangements where they are supplied by an external provider.
- (11) The main difference between a critical function and a core business line lies in the impact of the activities concerned. While critical functions should be assessed from a perspective of their importance for the functioning of the real economy and financial markets and therefore for financial stability as a whole, core business lines should be assessed on the basis of the importance for the institution itself such as the level of their contributions to revenues and profits of the institution.
- (12) Insofar as the recovery plan should contain a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the institution, also the resolution plan should contain a mapping of the institution's critical operations and core business lines and a demonstration of how critical functions and core business lines could be legally and economically separated from other functions so as to ensure continuity upon the failure of the institution. In resolution, the continuity of critical functions and core business lines may justify an exemption of certain liabilities from the application of the bail-in tool and may also justify its transference to a bridge bank.
- (13) While core business lines are often linked to how much they contribute to the financial results of the institution, such an approach may not completely capture all core business lines because an institution may provide a service which is not directly profitable (or may even generate losses) but creates significant franchise value and is therefore important to its business as a whole,

HAS ADOPTED THIS REGULATION:

CHAPTER I

COMMON PROVISIONS

Article 1

Subject matter

This Regulation lays down rules specifying:

- (a) the circumstances and conditions under which the payment of extraordinary *ex-post* contributions may be partially or entirely deferred pursuant to Article 104(3) of Directive 2014/59/EU;
- (b) the criteria for the determination of the activities, services and operations referred to in point (35) of Article 2(1) of Directive 2014/59/EU;
- (c) the criteria for the determination of the business lines and associated services referred to in point (36) of Article 2(1) of Directive 2014/59/EU.

Those rules shall be applied by a resolution authority designated by a Member State in accordance with Article 3 of Directive 2014/59/EU.

Article 2

Definitions

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

- (1) 'deferral period' means a period of up to six months;
- (2) 'function' means a structured set of activities, services or operations that are delivered by the institution or group to third parties irrespective from the internal organisation of the institution;
- (3) 'business line' means as a structured set of activities, processes or operations that are developed by the institution or group for third parties to achieve the organisation's goals.

CHAPTER II

DEFERRAL OF EX POST CONTRIBUTIONS

Article 3

Deferral of extraordinary *ex post* contributions

1. The deferral of *ex post* contributions referred to in Article 104(3) of Directive 2014/59/EU may be granted by the resolution authority upon an institution's request. That institution shall provide any information deemed necessary by the resolution authority to conduct the assessment of the impact of the payment of extraordinary *ex post* contributions on its financial position. The resolution authority shall take into account all information available to the national competent authorities to establish whether that institution meets the conditions for deferral referred to in paragraph 3.

2. When determining whether that institution meets the conditions for deferral, the resolution authority shall assess the impact a payment of extraordinary *ex post* contributions would have on the solvency and liquidity position of that institution. Where that institution is part of a group, the assessment shall also include the impact of solvency and liquidity of the group as a whole.

3. The resolution authority may defer payment of extraordinary *ex post* contributions where it concludes that the payment results in any of the following:
- (a) a likely breach, within the following six months, of the institution's minimum own funds requirements set out in Article 92 of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽¹⁾;
 - (b) a likely breach, within the following six months, of the institution's minimum liquidity coverage requirement set out in Article 412(1) of Regulation (EU) No 575/2013 and specified in Article 4 of the Commission Delegated Regulation (EU) 2015/61 ⁽²⁾;
 - (c) a likely breach, within the following six months, of the institution's specific liquidity requirement set out in Article 105 of Directive 2013/36/EU of the European Parliament and of the Council ⁽³⁾.
4. The resolution authority shall limit the deferral period to the extent it is necessary to avoid risks to the financial position of that institution or its group. The resolution authority shall regularly monitor whether the conditions for the deferral referred to in paragraph 3 continue to apply during the deferral period.
5. Upon request of that institution, the resolution authority may renew the deferral period, where it determines that the conditions for the deferral referred to in paragraph 3 continue to apply. This renewal shall not exceed 6 months.

Article 4

Assessment of the impact of the deferral on solvency

1. The resolution authority shall assess the impact of the payment of extraordinary *ex post* contributions on the institution's regulatory capital position. That assessment shall include an analysis of the impact the payment of extraordinary *ex post* contributions would have on the institution's compliance with the minimum own funds requirements set out in Article 92 of Regulation (EU) No 575/2013.
2. For the purpose of this assessment, the amount of *ex post* contributions shall be deducted from the institution's own funds position.
3. The analysis referred to in paragraph 1 shall cover at least the period up to the next reporting remittance date for the own funds requirement set out in Article 3 of Commission Implementing Regulation (EU) No 680/2014 ⁽⁴⁾.

Article 5

Assessment of the impact of deferral on liquidity

1. The resolution authority shall assess the impact of the payment of extraordinary *ex post* contributions on the institution's liquidity position. That assessment shall include an analysis of the impact a payment of extraordinary *ex post* contributions would have on the institution's ability to meet the liquidity coverage requirement provided for in Article 412(1) of Regulation (EU) No 575/2013 and specified in Article 4 of Delegated Regulation (EU) 2015/61.

⁽¹⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁽²⁾ Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1).

⁽³⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

⁽⁴⁾ Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council, (OJ L 191, 28.6.2014, p. 1).

2. For the purposes of the analysis described in paragraph 1, the resolution authority shall add a liquidity outflow, equal to 100 % of the amount payable at the point in time when the payment of extraordinary *ex post* contributions is due, to the calculation of net liquidity outflows as set out in Article 20(1) of Delegated Regulation (EU) 2015/61.
3. The resolution authority shall also assess the impact of such outflow established under paragraph 2 on the specific liquidity requirements set out in Article 105 of Directive 2013/36/EU.
4. The analysis referred to in paragraph 1 shall cover at least the period up to the next reporting remittance date for the liquidity coverage requirement set out in Article 3 of Implementing Regulation (EU) No 680/2014.

CHAPTER III

CRITERIA RELATING TO THE DETERMINATION OF CRITICAL FUNCTIONS AND CORE BUSINESS LINES

Article 6

Criteria relating to the determination of critical functions

1. A function shall be considered critical, where it fulfils both of the following:
 - (a) the function is provided by an institution to third parties not affiliated to the institution or group; and
 - (b) the sudden disruption of that function would likely have a material negative impact on the third parties, give rise to contagion or undermine the general confidence of market participants due to the systemic relevance of the function for the third parties and the systemic relevance of the institution or group in providing the function.
2. When assessing the material negative impact on third parties, the systemic relevance of the function for third parties and the systemic relevance of the institution or group providing the function, the institution and the resolution authority shall take into account the size, market share, external and internal interconnectedness, complexity, and cross-border activities of the institution or group.

The assessment criteria for the impact on third parties shall include at least the following elements:

- (a) the nature and reach of the activity, the global, national or regional reach, volume and number of transactions; the number of customers and counterparties; the number of customers for which the institution is the only or principal banking partner;
 - (b) the relevance of the institution, on a local, regional, national or European level, as appropriate for the market concerned. The relevance of the institution may be assessed on the basis of the market share, the interconnectedness, the complexity and cross border activities;
 - (c) the nature of the customers and stakeholders affected by the function, such as but not limited to retail customers, corporate customers, interbank customers, central clearing houses and public entities;
 - (d) the potential disruption of the function on markets, infrastructures, customers and public services. In particular, the assessment may include the effect on the liquidity of markets concerned, the impact and extent of disruption to customer business, and short-term liquidity needs; the perceptibility to counterparties, customers and the public; the capacity and speed of customer reaction; the relevance to the functioning of other markets; the effect on the liquidity, operations, structure of another market; the effect on other counterparties related to the main customers and the interrelation of the function with other services.
3. A function that is essential to the real economy and financial markets shall be considered substitutable where it can be replaced in an acceptable manner and within a reasonable time frame thereby avoiding systemic problems for the real economy and the financial markets.

When assessing the substitutability of a function the following criteria shall be taken into account:

- (a) the structure of the market for that function and the availability of substitute providers;
- (b) the ability of other providers in terms of capacity, the requirements for performing the function, and potential barriers to entry or expansion;
- (c) the incentive of other providers to take on these activities;
- (d) the time required by users of the service to move to the new service provider and costs of that move, the time required for other competitors to take over the functions and whether that time is sufficient to prevent significant disruption depending on the type of service.

4. A service is considered critical where its disruption can present a serious impediment to, or prevent the performance of, one or more critical functions. A service is not considered critical where it can be provided by another provider within a reasonable time frame to a comparable extent as regards its object, quality and cost.

5. The disruption of functions or services shall consist in functions and services that are no longer provided to a comparable extent, under comparable conditions and of comparable quality, unless the change in providing the function or service concerned takes place in an orderly manner.

Article 7

Criteria relating to the determination of core business lines

1. Business lines and associated services which represent material sources of revenue, profit or franchise value for an institution or for a group of which an institution forms part shall be considered core business lines.

2. Core business lines shall be identified on the basis of an institution's internal organisation, its corporate strategy and how much those core business lines contribute to the financial results of the institution. Indicators of core business lines include, but are not limited to, the following:

- (a) revenues generated by the core business line as percentage of overall revenues;
- (b) profit generated by the core business line as percentage of overall profit;
- (c) return on capital or assets;
- (d) total assets, revenue and earnings;
- (e) the customer base, geographic footprint, brand and operational synergies of the business with other group businesses;
- (f) impact of ceasing the core business line on costs and earnings, where it is a source of funding or liquidity;
- (g) the growth outlook of the core business line;
- (h) the attractiveness of the business to competitors as a potential acquisition;
- (i) market potential and franchise value.

Future expected revenues, growth outlooks and franchise value may be considered in the identification of a core business line where they are supported by plausible, evidenced projections setting out the assumptions on which they are based.

3. Core business lines may rely on activities which do not by themselves generate direct profit for the institution, but which support core business lines of the institution thereby contributing indirectly to the institution's profits.

CHAPTER IV

FINAL PROVISIONS*Article 8***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, 2 February 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2016/779**of 18 May 2016****laying down uniform rules as regards the procedures for determining whether a tobacco product has a characterising flavour****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC ⁽¹⁾, and in particular Article 7(3) thereof,

Whereas:

- (1) Article 7(1) of Directive 2014/40/EU provides that Member States are to prohibit the placing on the market of tobacco products with a characterising flavour.
- (2) In order to ensure that such prohibitions are applied in a uniform manner throughout the Union, it is appropriate to lay down, in accordance with Article 7(3) of Directive 2014/40/EU, common procedures for the determination as to whether or not a tobacco product has a characterising flavour.
- (3) Where a Member State ('the initiating Member State') or the Commission considers that a tobacco product might have a characterising flavour, it should request the manufacturer or importer to communicate its assessment of the product. The procedure for determining the existence of a product with characterising flavour should be initiated by Member States in respect of products that are marketed only in one or a small number of Member States. Where a Member State considers that a product is marketed widely across a number of different Member States, it should be able to request the Commission to initiate the procedure.
- (4) In order to avoid parallel procedures, Member States and the Commission should inform each other on the initiation of procedures. Where a Member State initiates a procedure, all other Member States should refrain from initiating a procedure for the same product. Member States may alternatively agree that another Member State become the initiating Member State. All procedures initiated in Member States other than the initiating Member State should be suspended pending the adoption of the decision by the initiating Member State.
- (5) The Commission should be able to initiate a procedure at any time, including after adoption of a decision concluding that a product has no characterising flavour. Where the Commission initiates a procedure, all national procedures concerning the same product should cease.
- (6) If the manufacturer or importer does not dispute that the product has a characterising flavour, or fails to submit a reply to a request for its assessment as to whether or not a product has a characterising flavour, it should be possible to make a determination on the basis of a simplified procedure.
- (7) If the manufacturer or importer contests that the product has a characterising flavour, the initiating Member State or the Commission should launch an in depth assessment. To this end the independent advisory panel may be consulted and information from other sources may be gathered. Information may also be exchanged with other Member States and the Commission.
- (8) Following the in-depth assessment and before a decision is taken as to whether a product has a characterising flavour, the manufacturer or importer of the product should be provided with an opportunity to submit written observations. In its written observations the manufacturer or importer should also indicate, where applicable, whether its parent company has been consulted. Importers should also be encouraged to consult the manufacturer.

⁽¹⁾ OJ L 127, 29.4.2014, p. 1.

- (9) The initiating Member State should submit a draft of its decision to the Commission including where applicable a copy of the opinion of the independent advisory panel. A copy of those documents should be sent to all the other Member States, accompanied by a summary in a language that is widely understood.
- (10) The Commission and the other Member States may comment on the draft decision. An effort should be made to reach consensus on the draft decision and the key reasoning underpinning the decision. In the event that the opinions of Member States diverge as to whether or not a product has a characterising flavour, the Commission should aim to establish consensus. In the absence of consensus, and where necessary to ensure that the prohibition laid down in Article 7(1) of Directive 2014/40/EU is applied uniformly, the Commission should proceed to make a determination as to the existence of a characterising flavour in the product concerned.
- (11) In view of the public health considerations underpinning the prohibition on products having a characterising flavour, and with due regard to the precautionary principle, it is appropriate for the initiating Member State to be able to adopt prohibition measures as soon as it is satisfied, in accordance with the procedure provided for in this Regulation, that a product has a characterising flavour. Nevertheless, where the Commission subsequently adopts a decision in respect of that product, the initiating Member State should then take immediate measures to ensure its law and practice is aligned with that decision in order that the prohibition laid down in Article 7(1) of Directive 2014/40/EU is applied uniformly throughout the Union.
- (12) Member States and the Commission should make publically available non-confidential versions of decisions adopted according to this Regulation. Due account should be given to requests that commercially sensitive information remain confidential. Where such requests are considered justified, the information concerned should only be communicated using secure means of data transmission.
- (13) The measures provided for in this Regulation are in accordance with the opinion of the Committee referred to in Article 25 of Directive 2014/40/EU,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down uniform rules as regards the procedures for determining whether a tobacco product has a characterising flavour.

Article 2

Definition

For the purpose of this Regulation, 'same product' means products with the same ingredients in the same proportions in the tobacco blend composition, irrespective of the brand name or design.

CHAPTER II

INITIATION OF THE PROCEDURE

Article 3

Initiation by a Member State or the Commission

1. Where a Member State ('the initiating Member State') or the Commission considers that a tobacco product might have a characterising flavour, it may initiate the procedure for determining whether a tobacco product has a characterising flavour. A Member State may also request the Commission to initiate a procedure.

2. The Commission may initiate the procedure referred to in paragraph 1 even where one or more procedures were initiated or concluded by one or more Member States, in particular, when it is necessary to ensure the uniform application of Article 7 of Directive 2014/40/EU.

Article 4

Initial request to the manufacturer or importer

1. The initiating Member State or the Commission shall inform the manufacturer and importer of the product of its view that a tobacco product might have a characterising flavour and request the manufacturer or the importer to provide its assessment.

2. The manufacturer or importer shall reply to and submit its written observations to the request within a period of four weeks from the receipt of the request referred to in paragraph 1, or by another date agreed with the initiating Member State or the Commission as applicable. In its reply, the manufacturer or importer shall identify, to the extent possible, any other Member States in which the same product has been placed on the market. The manufacturer shall also set out the views of its parent company, where applicable. The importer shall also set out the views of the manufacturer.

3. The manufacturer or importer shall, in its reply under paragraph 2, indicate if it considers that same products placed on the market in other Member States have different flavours in one or more of the Member States concerned. In such a case, the manufacturer or importer shall set out the grounds upon which this claim is based.

Article 5

Initial coordination

1. Where the procedure has been initiated by a Member State, that State shall notify the Commission and all other Member States of the initiation of the procedure without delay.

Where the Commission has initiated the procedure, it shall inform all the Member States of such initiation without delay.

The initiating Member State or the Commission shall communicate the information received from the manufacturer or importer in accordance with Article 4(2) to the other Member States and, where applicable, the Commission.

2. Where a Member State has initiated a procedure, other Member States shall refrain from initiating a parallel procedure concerning the same product. Where procedures concerning the same product have already been initiated in two or more Member States, only the Member State in which the procedure was initiated first shall continue the procedure. By way of derogation, Member States concerned may agree that another Member State shall act as initiating Member State. All procedures initiated in Member States other than the initiating Member State shall be suspended pending the adoption of the decision by the initiating Member State.

3. Where the Commission has initiated a procedure all Member States shall refrain from initiating procedures and, except insofar as provided for in the second subparagraph of Article 9(3), all pending national procedures shall cease.

4. Information already gathered shall be exchanged between Member States and with the Commission, upon request.

Article 6

Assessment of the manufacturer or importer

1. Where the manufacturer or importer does not dispute that a tobacco product has a characterising flavour, it shall inform the initiating Member State or the Commission accordingly in its reply submitted pursuant to Article 4(2).

Where, in its reply, the manufacturer or importer has not disputed that a tobacco product has a characterising flavour, or where it has failed to provide a reply in accordance with Article 4(2), the initiating Member State or the Commission, as applicable, may proceed to make a determination in accordance with Article 9 or 10 respectively in cases where it considers that the information at its disposal is sufficient to make a determination.

Insofar as the Member State or the Commission considers it necessary to obtain further information in order to be able to make a conclusive determination on whether the product has a characterising flavour, it may gather further information in accordance with Article 7 before making a determination in accordance with Article 9 or 10.

2. Where the manufacturer or importer disputes that the product has a characterising flavour, the initiating Member State or the Commission shall continue the procedure in accordance with Articles 7 and 8.

CHAPTER III

INVESTIGATION

Article 7

Gathering of further information and consultation of the advisory panel

1. The initiating Member State or the Commission may request further information from the manufacturer or importer concerned, to be provided within a time limit to be specified in the request. It may also request information from other sources, exchange information with other Member States and, where applicable, the Commission and consult the independent advisory panel (hereafter the 'panel') established pursuant to Commission Implementing Decision (EU) 2016/786 ⁽¹⁾.

2. Where the panel is consulted, it shall submit its opinion within the time-frame applicable under Article 10(6) of Implementing Decision (EU) 2016/786.

Article 8

Right for manufacturers and importers to submit observations

1. Where, on the basis of Article 6(2), the initiating Member State or the Commission has carried out further investigation under Article 7, and where having due regard to information obtained from that investigation, the initiating Member State or the Commission considers that a product has a characterising flavour it shall, before adopting a decision, provide the manufacturer or importer with an opportunity to submit written observations.

The Member State or the Commission shall provide the manufacturer or importer with a summary of the grounds upon which the proposed decision is to be adopted. Where the panel was consulted, its opinion shall be made available to the manufacturer or importer. The manufacturer or importer shall have four weeks to submit its observations. That time limit may be extended by agreement with the initiating Member State or the Commission as applicable. In its observations the manufacturer shall also indicate, where applicable, whether its parent company has been consulted. The importer shall indicate whether the manufacturer has been consulted.

2. Where the initiating Member State or the Commission deems it necessary to gather additional information after receipt of the observations from the manufacturer or importer, it shall provide the manufacturer or importer with the additional information gathered and shall give it the opportunity to submit additional written observations.

⁽¹⁾ Commission Implementing Decision (EU) 2016/786 of 18 May 2016 laying down the procedure for the establishment and operation of an independent advisory panel assisting Member States and the Commission in determining whether tobacco products have a characterising flavours (see page 79 of this Official Journal).

CHAPTER IV

DETERMINATION

*Article 9***Coordination before a decision is taken by a Member State**

1. The initiating Member State shall, on the basis of the information at its disposal, including any information obtained in accordance with Articles 6, 7 and 8, as applicable, prepare a draft decision as to whether or not the product is to be regarded as having a characterising flavour prohibited under Article 7(1) of Directive 2014/40/EU.

The draft decision shall be reasoned, having due regard to the opinion of the panel, where applicable, and other available information as appropriate.

The initiating Member State shall submit that draft decision to the Commission and the other Member States. It shall also submit the opinion of the panel, in case the panel was consulted, and provide details, to the extent possible, of any other Member States in which the same product has been placed on the market.

The final decision may only be adopted after a period of four weeks has elapsed since the submission of the draft decision. That period may be extended by agreement between the initiating Member State and the Commission.

2. The Commission and the other Member States may provide comments on the draft decision within a period of three weeks from the submission of the draft decision. Any objections to the conclusion reached in the draft decision shall be duly justified.

3. The initiating Member State shall consider the comments received. In the event of divergence as to whether or not a product has a characterising flavour, the initiating Member State, the other Member States and the Commission, as applicable, shall endeavour to reach consensus. In the absence of consensus, where it is considered necessary to ensure the uniform application of Article 7(1) of Directive 2014/40/EU, the Commission shall initiate the procedure in accordance with Article 3(1).

The initiation of the procedure by the Commission in accordance with the first subparagraph shall not affect the entitlement of the initiating Member State to proceed to adopt a decision prohibiting the product on the basis of Article 7(1). In that case, the initiating Member State shall notify the decision to the manufacturer or importer. It shall also submit a copy of the decision to the other Member States and the Commission, as appropriate, highlighting, to the extent possible, the Member State(s) in which the same product is placed on the market. Once the Commission has adopted its decision, the Member State shall immediately take any measures necessary to ensure that its national law complies with that decision.

4. In the event that the Member States and Commission have not submitted objections in respect of the draft decision of the initiating Member State, that State shall adopt the decision and notify it to the manufacturer or importer. A copy shall be made available to the other Member States and the Commission, as appropriate, highlighting, to the extent possible, the Member State(s) in which the same product is placed on the market.

*Article 10***Decision by the Commission**

1. Where the manufacturer or importer has informed the Commission that it does not dispute that a tobacco product has a characterising flavour, or where the manufacturer has not provided a reply in accordance with Article 4(2), the Commission shall, having due regard to information available at its disposal including any additional information or data obtained under Article 7, adopt a decision pursuant to Article 7(2) of Directive 2014/40/EU on whether or not a product has a characterising flavour.

2. Where on the basis of Article 6(2), the Commission has proceeded to carry out an in-depth investigation in accordance with Articles 7 and 8, it shall, on the basis of the information obtained as a result of that investigation, adopt a decision pursuant to Article 7(2) of Directive 2014/40/EU on whether or not a product has a characterising flavour.

*Article 11***Parallel procedures**

1. As soon as the initiating Member State has adopted a decision, the suspended national procedures relating to the same product may resume. If a Member State where the same product is placed on the market does not agree with the decision of the initiating Member State, it shall communicate its position to the Commission. The Commission shall consult the initiating Member State and the other Member States where the same product is placed on the market. If, based on this consultation, it is considered necessary to ensure the uniform application of Article 7(1) of Directive 2014/40/EU, the Commission shall initiate a procedure in accordance with Article 3(1).
2. Where the Commission has taken a decision, all Member States shall ensure that the decision is adequately implemented.

CHAPTER V

INFORMATION*Article 12***Confidential information**

1. In their communications, manufacturers and importers may request that certain information be kept confidential on the grounds that it constitutes a trade secret or is otherwise commercially sensitive. In such case, they shall clearly identify the information concerned and set out the reasons justifying their request.
2. Where the request is considered justified, the Member States and the Commission shall ensure that the information received on the basis of this regulation is adequately protected. All communication of such information shall take place using mechanisms that permit the secure transmission of confidential information.

*Article 13***Publication of decisions**

The Member States and the Commission shall make publically available non-confidential versions of all decisions adopted pursuant to this Regulation.

CHAPTER VI

FINAL PROVISIONS*Article 14***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, 18 May 2016.

For the Commission

The President

Jean-Claude JUNKER

COMMISSION IMPLEMENTING REGULATION (EU) 2016/780**of 19 May 2016****amending Council Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 329/2007 of 27 March 2007 concerning restrictive measures against the Democratic People's Republic of Korea ⁽¹⁾, and in particular Article 13(1)(e) thereof,

Whereas:

- (1) Annex V to Regulation (EC) No 329/2007 lists persons, entities and bodies who, not having been listed in Annex IV, have been listed by the Council, and are covered by the freezing of funds and economic resources under that Regulation.
- (2) On 19 May 2016, the Council decided to add 18 natural persons and 1 entity to the list of persons and entities subject to restrictive measures. Entries concerning 2 persons have also been updated. Annex V should therefore be amended accordingly.
- (3) In order to ensure that the measures provided for in this Regulation are effective, this Regulation must enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

Annex V to Regulation (EC) No 329/2007 is amended in accordance with 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, 19 May 2016.

*For the Commission,
On behalf of the President,
Head of the Service for Foreign Policy Instruments*

⁽¹⁾ OJ L 88, 29.3.2007, p. 1.

ANNEX

Annex V to Regulation (EC) No 329/2007 is amended as follows:

(1) the following entries under the heading 'Natural persons referred to in Article 6(2)(a)' are added:

'15.	CHOE Kyong-song		Colonel General in the army of the DPRK. Former member of the Central Military Commission of the Workers Party of Korea, which is a key body for national defence matters in DPRK. As such, responsible for supporting or promoting the DPRK's nuclear related, ballistic missile related or other weapons of mass destruction related programmes.
16.	CHOE Yong-ho		Colonel General in the army of the DPRK. Former member of the Central Military Commission of the Workers Party of Korea, which is a key body for national defence matters in DPRK. Commander of the air forces. As such, responsible for supporting or promoting the DPRK's nuclear related, ballistic missile related or other weapons of mass destruction related programmes.
17.	HONG Sung Mu (alias HUNG Sung Mu)	DOB: 1.1.1942	Deputy-director of the Munitions Industry Department (MID). In charge of the development of programmes concerning conventional arms and missiles, including ballistic missiles. One of the main persons responsible for the industrial development programmes for nuclear arms. As such, responsible for DPRK nuclear-related, ballistic-missile-related, or other weapons of mass destruction-related programmes.
18.	JO Chun Ryong (aliases CHO Chun Ryo'ng, JO Chun Ryong, JO Cho Ryong)	DOB: 4.4.1960	Chairman of the Second Economic Committee (SEC) since 2014 and responsible for managing the DPRK's munitions factories and production sites. The SEC was designated under UNSCR 2270 (2016) for its involvement in key aspects of the DPRK's missile programme, its responsibility for overseeing the production of the DPRK's ballistic missiles, and for directing the activities of KOMID — DPRK's primary arms trading entity. Member of the National Defence Commission. Has participated in several ballistic-missile-related programmes. One of the key principals in the arms industry of the DPRK. As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.
19.	JO Kyongchol		General in the army of the DPRK. Former member of the Central Military Commission of the Workers Party of Korea, which is a key body for national defence matters in DPRK. Director of the Military Security Command. As such, responsible for supporting or promoting the DPRK's nuclear related, ballistic missile related or other weapons of mass destruction related programmes.

20.	KIM Chun sam		Lieutenant General, former member of the Central Military Commission of the Workers Party of Korea, which is a key body for national defence matters in DPRK. Director of the Operations Department of the Military Headquarters of the Army of the DPRK and first vice chief of the Military Headquarters. As such, responsible for supporting or promoting the DPRK's nuclear related, ballistic missile related or other weapons of mass destruction related programmes.
21.	KIM Chun sop		Member of the National Defense Commission, which is a key body for national defence matters in DPRK. As such, responsible for supporting or promoting the DPRK's nuclear related, ballistic missile related or other weapons of mass destruction related programmes.
22.	KIM Jong gak	DOB: 20.7.1941 POB: Pyongyang	Vice Marshal in the army of the DPRK, former member of the Central Military Commission of the Workers Party of Korea, which is a key body for national defence matters in DPRK. As such, responsible for supporting or promoting the DPRK's nuclear related, ballistic missile related or other weapons of mass destruction related programmes.
23.	KIM Rak Kyom (alias KIM Rak gyom)		Four Star General, Commander of the Strategic Forces (aka Strategic Rocket Forces) which now reportedly command 4 strategic and tactical missile units, including the KN08 (ICBM) brigade. The United States has designated the Strategic Forces for engaging in activities that have materially contributed to the proliferation of weapons of mass destruction or their means of delivery. Former member of the Central Military Commission of the Workers Party of Korea, which is a key body for national defence matters in DPRK. Media reports identified KIM as attending the April 2016 ICBM engine test with KIM Jung Un. As such, responsible for supporting or promoting the DPRK's nuclear related, ballistic missile related or other weapons of mass destruction related programmes.
24.	KIM Won hong	DOB: 7.1.1945 POB: Pyongyang Passport no.: 745310010	General, Director of the State Security Department. Minister of State Security. Member of the Central Military Commission of the Workers Party of Korea and National Defense Commission, which are the key bodies for national defence matters in DPRK. As such, responsible for supporting or promoting the DPRK's nuclear related, ballistic missile related or other weapons of mass destruction related programmes.
25.	PAK Jong chon		Colonel General in the army of the DPRK, Chief of the Korean People's Armed Forces, Deputy Chief of Staff and Director of the Firepower Command Department. Chief of the Military Headquarters and Director of the Artillery Command Department. Former member of the Central Military Commission of the Workers Party of Korea, which is a key body for national defence matters in DPRK. As such, responsible for supporting or promoting the DPRK's nuclear related, ballistic missile related or other weapons of mass destruction related programmes.

26.	RI Jong su		Vice Admiral. Former member of the Central Military Commission of the Workers Party of Korea, which is a key body for national defence matters in DPRK. Commander in chief of the Korean Navy, which is involved in the development of ballistic missile programmes and in the development of the nuclear capacities of the DPRK naval forces. As such, responsible for supporting or promoting the DPRK's nuclear related, ballistic missile related or other weapons of mass destruction related programmes.
27.	SON Chol ju		Colonel General of the Korean People's Armed Forces and Political director of the Air and Anti Air Forces, which oversees the development of modernised anti-aircraft rockets. As such, responsible for supporting or promoting the DPRK's nuclear related, ballistic missile related or other weapons of mass destruction related programmes.
28.	YUN Jong rin		General, former member of the Central Military Commission of the Workers Party of Korea and member of the National Defense Commission, which are the key bodies for national defence matters in DPRK. As such, responsible for supporting or promoting the DPRK's nuclear related, ballistic missile related or other weapons of mass destruction related programmes.
29.	PAK Yong sik		Four Star General, member of the State Security Department, Minister of defence. Member of the Central Military Commission of the Workers Party of Korea and of the National Defense Commission, which are the key bodies for national defence matters in DPRK. Was present at the testing of ballistic missiles in March 2016. As such, responsible for supporting or promoting the DPRK's nuclear related, ballistic missile related or other weapons of mass destruction related programmes.
30.	HONG Yong Chil		Deputy Director of the Munitions Industry Department (MID). The Munitions Industry Department — designated by the UNSC on 2 March 2016 is involved in key aspects of the DPRK's missile program. MID is responsible for overseeing the development of the DPRK's ballistic missiles, including the Taepo Dong 2, weapons production and R&D programmes. The Second Economic Committee and the Second Academy of Natural Sciences — also designated in August 2010 — are subordinate to the MID. The MID in recent years has worked to develop the KN08 road mobile ICBM. HONG has accompanied KIM Jong Un to a number of events related to the development of the DPRK's nuclear and ballistic missile programmes and is thought to have played a significant role in the DPRK's nuclear test on 6 January 2016. Vice –Director of the Workers Party of Korea Central Committee. As such, responsible for supporting or promoting the DPRK's nuclear related, ballistic missile related or other weapons of mass destruction related programmes.

31.	RI Hak Chol (aliases RI Hak Chul, RI Hak Cheol)	DOB: 19.1.1963 or 8.5.1966 Passport nos: 381320634, PS 563410163	President of Green Pine Associated Corporation ("Green Pine"). According to the UN Sanctions Committee, Green Pine has taken over many of the activities of the Korea Mining Development Trading Corporation (KOMID). KOMID was designated by the Committee in April 2009 and is the DPRK's primary arms dealer and main exporter of goods and equipment related to ballistic missiles and conventional weapons. Green Pine is also responsible for approximately half of the arms and related materiel exported by the DPRK. Green Pine has been identified for sanctions for exporting arms or related material from North Korea. Green Pine specializes in the production of maritime military craft and armaments, such as submarines, military boats and missile systems, and has exported torpedoes and technical assistance to Iranian defence related firms. Green Pine has been designated by the United Nations Security Council.
32.	YUN Chang Hyok	DOB: 9.8.1965	Deputy Director of the Satellite Control Centre, National Aerospace Development Administration (NADA). NADA is subject to sanctions under UNSCR 2270 (2016) for involvement in the DPRK's development of space science and technology, including satellite launches and carrier rockets. UNSCR 2270 (2016) condemned the DPRK's satellite launch of 7 February 2016 for using ballistic missile technology and being in serious violation of resolutions 1718 (2006), 1874 (2009), 2087 (2013), and 2094 (2013). As such, responsible for supporting or promoting the DPRK's nuclear related, ballistic missile related or other weapons of mass destruction related programmes.'

(2) the following entry under the heading 'Legal persons, entities and bodies referred to in Article 6(2)(a)' is added:

'17.	Strategic Rocket Forces		Within the DPRK national armed forces, this entity is involved in the development and operational implementation of ballistic missile related or other weapons of mass destruction related programmes.'
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(3) the following entries under the heading 'Natural persons referred to in Article 6(2)(a)' are replaced:

'3.	CHU Kyu Chang (alias JU Kyu Chang)	DOB: 25.11.1928 POB: South Hamgyo'ng Province	Member of the National Defense Commission, which is a key body for national defence matters in DPRK. Former director of the department of munitions of the Central Committee of the Korean Workers' Party. As such, responsible for supporting or promoting the DPRK's nuclear related, ballistic missile related or other weapons of mass destruction related programmes.'
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'9.	PAEK Se bong	Year of birth: 1946	Former Chairman of the Second Economic Committee (responsible for the ballistics programme) of the Central Committee of the Korean Workers' Party. Member of the National Defence Commission.'
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COMMISSION IMPLEMENTING REGULATION (EU) 2016/781**of 19 May 2016****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, 19 May 2016.

*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	95,8
	TR	63,7
	ZZ	79,8
0707 00 05	TR	105,8
	ZZ	105,8
0709 93 10	TR	110,2
	ZZ	110,2
0805 10 20	EG	40,9
	IL	62,6
	MA	56,8
	TR	41,8
	ZA	80,4
	ZZ	56,5
	AR	177,5
0805 50 10	TR	111,0
	ZA	185,1
	ZZ	157,9
	AR	111,7
0808 10 80	BR	101,9
	CL	121,8
	CN	79,2
	NZ	154,6
	US	196,9
	ZA	108,7
	ZZ	125,0

⁽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'.

COMMISSION IMPLEMENTING REGULATION (EU) 2016/782**of 19 May 2016****fixing the allocation coefficient to be applied to the quantities covered by applications for import licences lodged from 1 to 7 May 2016 under the tariff quotas opened by Regulation (EC) No 891/2009 in the sugar sector and suspending submission of applications for such licences**

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 Article 188(1) and (3) thereof,

Whereas:

- (1) Commission Regulation (EC) No 891/2009 ⁽²⁾ opened annual tariff quotas for imports of sugar products.
- (2) The quantities covered by import licence applications lodged from 1 to 7 May 2016 for the subperiod from 1 to 31 May 2016 exceed the quantities available under order number 09.4321. The extent to which import licences may be issued should therefore be determined by fixing the allocation coefficient to be applied to the quantities requested, calculated in accordance with Article 7(2) of Commission Regulation (EC) No 1301/2006 ⁽³⁾. Submission of further applications for import licences under this order number should be suspended until the end of the quota period.
- (3) In order to ensure the efficient management of the measure, 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

1. The quantities covered by import licence applications lodged under Regulation (EC) No 891/2009 from 1 to 7 May 2016 shall be multiplied by the allocation coefficient set out in the Annex to this Regulation.
2. Submission of further applications for import licences under the order numbers indicated in the Annex shall be suspended until the end of the 2015/2016 quota period.

Article 2

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

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Regulation (EC) No 891/2009 of 25 September 2009 opening and providing for the administration of certain Community tariff quotas in the sugar sector (OJ L 254, 26.9.2009, p. 82).

⁽³⁾ Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences (OJ L 238, 1.9.2006, p. 13).

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

Done at Brussels, 19 May 2016.

*For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development*

ANNEX

‘CXL concessions sugar’

2015/2016 Quota period

Applications lodged from 1 to 7 May 2016

Order No	Country	Allocation coefficient (%)	Further applications
09.4317	Australia	—	Suspended
09.4318	Brazil	—	—
09.4319	Cuba	—	Suspended
09.4320	Any third country	—	—
09.4321	India	50,825046	Suspended

‘Balkans sugar’

2015/2016 Quota period

Applications lodged from 1 to 7 May 2016

Order No	Country	Allocation coefficient (%)	Further applications
09.4324	Albania	—	—
09.4325	Bosnia and Herzegovina	—	—
09.4326	Serbia	—	—
09.4327	Former Yugoslav Republic of Macedonia	—	—

‘Exceptional import sugar’ and ‘industrial sugar’

2015/2016 Quota period

Applications lodged from 1 to 7 May 2016

Order No	Type	Allocation coefficient (%)	Further applications
09.4380	Exceptional import	—	—
09.4390	Industrial sugar	—	—

DECISIONS

COUNCIL DECISION (EU) 2016/783

of 12 May 2016

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms (Budget Line 12.02.01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area ⁽¹⁾, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area ⁽²⁾ ('the EEA Agreement') entered into force on 1 January 1994.
- (2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Protocol 31 to the EEA Agreement ('Protocol 31').
- (3) Protocol 31 contains provisions on cooperation in specific fields outside the four freedoms.
- (4) It is appropriate to continue the cooperation of the Contracting Parties to the EEA Agreement in Union actions funded from the general budget of the European Union regarding the implementation and development of the single market for financial services.
- (5) Protocol 31 should therefore be amended in order to allow for this extended cooperation to continue beyond 31 December 2015.
- (6) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on the Union's behalf, within the EEA Joint Committee on the proposed amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms, shall be based on the draft decision of the EEA Joint Committee attached to this Decision.

⁽¹⁾ OJ L 305, 30.11.1994, p. 6.

⁽²⁾ OJ L 1, 3.1.1994, p. 3.

Article 2

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

Done at Brussels, 12 May 2016.

For the Council
The President
F. MOGHERINI

DRAFT

DECISION OF THE EEA JOINT COMMITTEE No .../2016

of ...

amending Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Articles 86 and 98 thereof,

Whereas:

- (1) It is appropriate to continue the cooperation of the Contracting Parties to the EEA Agreement in Union actions funded from the general budget of the European Union regarding the implementation and development of the single market for financial services.
- (2) Protocol 31 to the EEA Agreement should therefore be amended in order to allow for this extended cooperation to take place from 1 January 2016,

HAS ADOPTED THIS DECISION:

Article 1

Article 7 of Protocol 31 to the EEA Agreement shall be amended as follows:

1. In paragraphs 3 and 4, the words 'paragraphs 5 to [11]' are replaced by the words 'this Article'.
2. The following paragraph is added:
 - '12. The EFTA States shall, as from 1 January 2016, participate in the Union actions related to the following budget line, entered into the general budget of the European Union for the financial year 2016:

— **Budget line 12 02 01:** 'Implementation and development of the single market for financial services'.'

Article 2

This Decision shall enter into force on the day following the last notification under Article 103(1) of the EEA Agreement (*).

It shall apply from 1 January 2016.

(*) [No constitutional requirements indicated.] [Constitutional requirements indicated.]

Article 3

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels,

For the EEA Joint Committee
The President

The Secretaries
to the EEA Joint Committee

COUNCIL DECISION (EU) 2016/784**of 12 May 2016****on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms (Budget Line 04 03 01 03)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 46 and 48 in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area ⁽¹⁾, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area ⁽²⁾ ('the EEA Agreement') entered into force on 1 January 1994.
- (2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Protocol 31 to the EEA Agreement ('Protocol 31').
- (3) Protocol 31 contains specific provisions on cooperation in specific fields outside the four freedoms.
- (4) It is appropriate to continue the cooperation of the Contracting Parties to the EEA Agreement to include cooperation concerning free movement of workers, coordination of social security systems and measures for migrants, including migrants from third countries.
- (5) Protocol 31 should therefore be amended in order to allow for this extended cooperation to continue beyond 31 December 2015.
- (6) The position of the Union in the EEA Joint Committee should therefore be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on the Union's behalf, within the EEA Joint Committee on the proposed amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms, shall be based on the draft Decision of the EEA Joint Committee attached to this Decision.

⁽¹⁾ OJ L 305, 30.11.1994, p. 6.

⁽²⁾ OJ L 1, 3.1.1994, p. 3.

Article 2

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

Done at Brussels, 12 May 2016.

For the Council

The President

F. MOGHERINI

DRAFT

DECISION OF THE EEA JOINT COMMITTEE No .../2016
amending Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Articles 86 and 98 thereof,

Whereas:

- (1) It is appropriate to extend the cooperation of the Contracting Parties to the EEA Agreement to include cooperation concerning free movement of workers, coordination of social security systems and measures for migrants, including migrants from third countries.
- (2) Protocol 31 to the EEA Agreement should therefore be amended in order to allow for this extended cooperation to take place from 1 January 2016,

HAS ADOPTED THIS DECISION:

Article 1

In paragraphs 5 and 13 of Article 5 of Protocol 31 to the EEA Agreement, the words 'and 2015' are replaced by the words ', 2015 and 2016'.

Article 2

This Decision shall enter into force on the day following the last notification under Article 103(1) of the EEA Agreement (*).

It shall apply from 1 January 2016.

Article 3

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels,

For the EEA Joint Committee
The President

The Secretaries
to the EEA Joint Committee

(*) [No constitutional requirements indicated.] [Constitutional requirements indicated.]

COUNCIL DECISION (CFSP) 2016/785**of 19 May 2016****amending Decision 2013/183/CFSP concerning restrictive measures against the Democratic People's Republic of Korea**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union,

Having regard to Council Decision 2013/183/CFSP of 22 April 2013 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2010/800/CFSP ⁽¹⁾, and in particular Article 19(2) thereof,

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

Whereas:

- (1) On 22 April 2013, the Council adopted Decision 2013/183/CFSP.
- (2) In view of the gravity of the situation in the Democratic People's Republic of Korea, eighteen persons and one entity should be added to the list of natural and legal persons, entities and bodies subject to restrictive measures in Annex II to Decision 2013/183/CFSP. Entries concerning two persons included in that Annex should also be updated.
- (3) Annex II to Decision 2013/183/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Annex II to Decision 2013/183/CFSP is amended as set out in the Annex to this Decision.

Article 2

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

Done at Brussels, 19 May 2016.

For the Council
The President
A.G. KOENDERS

⁽¹⁾ OJ L 111, 23.4.2013, p. 52.

ANNEX

- (1) In Part I (A) of Annex II to Decision 2013/183/CFSP, the persons listed below are added to the list of persons and entities responsible for the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes or persons or entities acting on their behalf or at their direction, or entities owned or controlled by them, subject to restrictive measures:

	Name (and possible aliases)	Identifying information	Reasons
15.	CHOE Kyong-song		Colonel General in the army of the DPRK. Former member of the Central Military Commission of the Workers Party of Korea, which is a key body for national defence matters in DPRK. As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.
16.	CHOE Yong-ho		Colonel General in the army of the DPRK. Former member of the Central Military Commission of the Workers Party of Korea, which is a key body for national defence matters in DPRK. Commander of the air forces. As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.
17.	HONG Sung-Mu (alias HUNG Sung Mu)	DOB: 1.1.1942	Deputy-director of the Munitions Industry Department (MID). In charge of the development of programmes concerning conventional arms and missiles, including ballistic missiles. One of the main persons responsible for the industrial development programmes for nuclear arms. As such, responsible for DPRK nuclear-related, ballistic-missile-related, or other weapons of mass destruction-related programmes.
18.	JO Chun Ryong (aliases CHO Chun Ryo'ng, JO Chun-Ryong, JO Cho Ryong)	DOB: 4.4.1960	Chairman of the Second Economic Committee (SEC) since 2014 and responsible for managing the DPRK's munitions factories and production sites. The SEC was designated under UNSCR 2270 (2016) for its involvement in key aspects of the DPRK's missile programme, its responsibility for overseeing the production of the DPRK's ballistic missiles, and for directing the activities of KOMID — DPRK's primary arms trading entity. Member of the National Defence Commission. Has participated in several ballistic-missile-related programmes. One of the key principals in the arms industry of the DPRK. As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.
19.	JO Kyongchol		General in the army of the DPRK. Former member of the Central Military Commission of the Workers Party of Korea, which is a key body for national defence matters in DPRK. Director of the Military Security Command. As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.

	Name (and possible aliases)	Identifying information	Reasons
20.	KIM Chun-sam		Lieutenant General, former member of the Central Military Commission of the Workers Party of Korea, which is a key body for national defence matters in DPRK. Director of the Operations Department of the Military Headquarters of the Army of the DPRK and first vice chief of the Military Headquarters. As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.
21.	KIM Chun-sop		Member of the National Defence Commission, which is a key body for national defence matters in DPRK. As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.
22.	KIM Jong-gak	DOB: 20.7.1941 POB: Pyongyang	Vice Marshal in the army of the DPRK, former member of the Central Military Commission of the Workers Party of Korea, which is a key body for national defence matters in DPRK. As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.
23.	KIM Rak Kyom (alias KIM Rak-gyom)		Four Star General, Commander of the Strategic Forces (aka Strategic Rocket Forces) which now reportedly command 4 strategic and tactical missile units, including the KN08 (ICBM) brigade. The United States has designated the Strategic Forces for engaging in activities that have materially contributed to the proliferation of weapons of mass destruction or their means of delivery. Former member of the Central Military Commission of the Workers Party of Korea, which is a key body for national defence matters in DPRK. Media reports identified KIM as attending the April 2016 ICBM engine test with KIM Jung Un. As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.
24.	KIM Won-hong	DOB: 7.1.1945 POB: Pyongyang Passport No: 745310010	General, Director of the State Security Department. Minister of State Security. Member of the Central Military Commission of the Workers Party of Korea and National Defence Commission, which are the key bodies for national defence matters in DPRK. As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.
25.	PAK Jong-chon		Colonel General in the army of the DPRK, Chief of the Korean People's Armed Forces, Deputy Chief of Staff and Director of the Firepower Command Department. Chief of the Military Headquarters and Director of the Artillery Command Department. Former member of the Central Military Commission of the Workers Party of Korea, which is a key body for national defence matters in DPRK. As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.

	Name (and possible aliases)	Identifying information	Reasons
26.	RI Jong-su		Vice Admiral. Former member of the Central Military Commission of the Workers Party of Korea, which is a key body for national defence matters in DPRK. Commander in chief of the Korean Navy, which is involved in the development of ballistic missile programmes and in the development of the nuclear capacities of the DPRK naval forces. As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.
27.	SON Chol-ju		Colonel General of the Korean People's Armed Forces and Political director of the Air and Anti-Air Forces, which oversees the development of modernised anti-aircraft rockets. As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.
28.	YUN Jong-rin		General, former member of the Central Military Commission of the Workers Party of Korea and member of the National Defence Commission, which are the key bodies for national defence matters in DPRK. As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.
29.	PAK Yong-sik		Four Star General, member of the State Security Department, Minister of defence. Member of the Central Military Commission of the Workers Party of Korea and of the National Defence Commission, which are the key bodies for national defence matters in DPRK. Was present at the testing of ballistic missiles in March 2016. As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.
30.	HONG Yong Chil		Deputy Director of the Munitions Industry Department (MID). The Munitions Industry Department — designated by the UNSC on 2 March 2016 — is involved in key aspects of the DPRK's missile program. MID is responsible for overseeing the development of the DPRK's ballistic missiles, including the Taepo Dong-2, weapons production and R & D programmes. The Second Economic Committee and the Second Academy of Natural Sciences — also designated in August 2010 — are subordinate to the MID. The MID in recent years has worked to develop the KN08 road-mobile ICBM. HONG has accompanied KIM Jong Un to a number of events related to the development of the DPRK's nuclear and ballistic missile programmes and is thought to have played a significant role in the DPRK's nuclear test on 6 January 2016. Vice –Director of the Workers Party of Korea Central Committee. As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.

	Name (and possible aliases)	Identifying information	Reasons
31.	RI Hak Chol (aliases RI Hak Chul, RI Hak Cheol)	DOB: 19.1.1963 or 8.5.1966 Passport Nos: 381320634, PS- 563410163	President of Green Pine Associated Corporation ('Green Pine'). According to the UN Sanctions Committee, Green Pine has taken over many of the activities of the Korea Mining Development Trading Corporation (KOMID). KOMID was designated by the Committee in April 2009 and is the DPRK's primary arms dealer and main exporter of goods and equipment related to ballistic missiles and conventional weapons. Green Pine is also responsible for approximately half of the arms and related materiel exported by the DPRK. Green Pine has been identified for sanctions for exporting arms or related material from North Korea. Green Pine specializes in the production of maritime military craft and armaments, such as submarines, military boats and missile systems, and has exported torpedoes and technical assistance to Iranian defence-related firms. Green Pine has been designated by the United Nations Security Council.
32.	YUN Chang Hyok	DOB: 9.8.1965	Deputy Director of the Satellite Control Centre, National Aerospace Development Administration (NADA). NADA is subject to sanctions under UNSCR 2270 (2016) for involvement in the DPRK's development of space science and technology, including satellite launches and carrier rockets. UNSCR 2270 (2016) condemned the DPRK's satellite launch of 7 February 2016 for using ballistic missile technology and being in serious violation of resolutions 1718 (2006), 1874 (2009), 2087 (2013), and 2094 (2013). As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.

- (2) In Part I (B) of Annex II to Decision 2013/183/CFSP, the entity listed below is added to the list of entities responsible for the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes subject to restrictive measures:

	Name (and possible aliases)	Identifying information	Reasons
13.	Strategic Rocket Forces		Within the DPRK national armed forces, this entity is involved in the development and operational implementation of ballistic-missile-related or other weapons of mass destruction-related programmes.

- (3) In Part I (A) of Annex II to Decision 2013/183/CFSP, the entries for the following persons are replaced in the list of persons and entities responsible for the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes or persons or entities acting on their behalf or at their direction, or entities owned or controlled by them, subject to restrictive measures:

	Name (and possible aliases)	Identifying information	Reasons
3.	CHU Kyu-Chang (alias JU Kyu-Chang)	DOB: 25.11.1928 POB: South Hamgyo'ng Province	Member of the National Defence Commission, which is a key body for national defence matters in DPRK. Former director of the department of munitions of the Central Committee of the Korean Workers' Party. As such, responsible for supporting or promoting the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes.

	Name (and possible aliases)	Identifying information	Reasons
8.	PAEK Se-bong	Year of birth: 1946	Former Chairman of the Second Economic Committee (responsible for the ballistics programme) of the Central Committee of the Korean Workers' Party. Member of the National Defence Commission.

COMMISSION IMPLEMENTING DECISION (EU) 2016/786**of 18 May 2016****laying down the procedure for the establishment and operation of an independent advisory panel assisting Member States and the Commission in determining whether tobacco products have a characterising flavour***(notified under document C(2016) 2921)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC ⁽¹⁾, and in particular Article 7(4) thereof,

Whereas:

- (1) Article 7 of Directive 2014/40/EU prohibits the placing on the market of tobacco products with a characterising flavour. Uniform rules for the procedures for determining whether a tobacco product has a characterising flavour are laid down in Commission Implementing Regulation (EU) 2016/779 ⁽²⁾.
- (2) Article 7(4) of Directive 2014/40/EU provides that, when determining whether a tobacco product has a characterising flavour, Member States and the Commission may consult an independent advisory panel ('the panel'). It further empowers the Commission to adopt implementing acts laying down the procedure for the establishment and operation of that panel.
- (3) The panel should be composed of highly qualified, specialised and independent experts with relevant expertise in the fields of sensory, statistical and chemical analysis. They should perform their functions impartially and in the public interest. They should be selected on the basis of objective criteria through a public call for applications and be appointed in a personal capacity. They should have the range of skills and expertise necessary for the panel to be able to perform its functions.
- (4) The panel should be assisted by a technical group recruited by means of a public procurement procedure. The technical group should carry out sensory and chemical assessments based on a comparison of the smelling properties of the test product with those of reference products. Sensory, including smelling, analysis is an established scientific discipline that applies principles of experimental design and statistical analysis to assess and describe perceptions of the human senses, including smell, for the purpose of evaluating consumer products. It has been found to be a suitable method for producing valid, robust, reliable and reproducible results when assessing whether a tobacco product has a characterising flavour. Such analysis should be conducted on the basis of an established methodology and produce results using statistical tools. Where it is considered appropriate, sensory analysis should be complemented by chemical analysis of the products.
- (5) In carrying out its advisory functions, the panel should examine, as applicable, data provided by the technical group, as well as any other information at its disposal that it may consider relevant, including information obtained as a result of the reporting obligations laid down in Article 5 of Directive 2014/40/EU. It should advise the Member States and the Commission in a timely manner as to whether it considers that the tested products have a characterising flavour within the meaning of Article 7(1) of Directive 2014/40/EU.
- (6) As scientific methods and techniques for determining the existence of a characterising flavour may evolve with time and experience gained, it is appropriate for the Commission to monitor developments in the field with a view to assessing whether the methodologies used to carry out such a determination should be revised.

⁽¹⁾ OJ L 127, 29.4.2014, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) 2016/779 of 18 May 2016 laying down uniform rules as regards the procedures for determining whether a tobacco product has a characterising flavour (see page 48 of this Official Journal).

- (7) The panel and the process by which it assesses the existence of a characterising flavour should be protected against external interference from any entities or associations with an interest in the outcome of its assessment. Confidential information should be protected against inadvertent and deliberate disclosure. Members of the panel and the technical group who can no longer perform their duties or cease to comply with the requirements of this Decision should be replaced.
- (8) The work of the panel should be based on the principles of a high level of expertise, independence and transparency. It should be organised and conducted in conformity with best practice and high scientific standards.
- (9) The panel should contribute effectively to improving the functioning of the internal market while ensuring a high level of public health, in particular by helping the Member States and the Commission to assess tobacco products that potentially have a characterising flavour. The panel's activities are necessary to ensure the effective and uniform implementation of Directive 2014/40/EU and the advice provided by the members of the panel is essential to reach the relevant Union policy objectives. Therefore, it is appropriate to provide the panel with adequate financial support in the form of a special allowance for its members, beyond the reimbursement of their expenses.
- (10) Personal data should be collected, processed and published in accordance with Regulation (EC) No 45/2001 of the European Parliament and the Council ⁽¹⁾.
- (11) The measures provided for in this Decision are in accordance with the opinion of the committee referred to in Article 25 of Directive 2014/40/EU,

HAS ADOPTED THIS DECISION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Decision lays down the procedure for the establishment and operation of an independent advisory panel ('the panel') assisting Member States and the Commission in determining whether or not a tobacco product has a characterising flavour.

Article 2

Definition

For the purposes of this Decision, 'test product' means a product referred to the panel by a Member State or the Commission for an opinion as to whether or not it has a characterising flavour within the meaning of Article 7(1) of Directive 2014/40/EU.

Article 3

Tasks

The panel shall provide opinions as to whether test products have a characterising flavour within the meaning of Article 7(1) of Directive 2014/40/EU.

⁽¹⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

CHAPTER II

ESTABLISHMENT OF THE INDEPENDENT ADVISORY PANEL

*Article 4***Appointment**

1. The panel shall consist of six members.
2. The Director-General for Health and Food Safety acting on behalf of the Commission ('the Director-General') shall appoint the members of the panel from a list of suitable candidates established following publication of a call for applications on the Commission's website and in the Register of Commission expert groups and other similar entities ('Register of expert groups'). The members shall be selected on the basis of their expertise and experience in the fields of sensory, statistical and chemical analysis, and with due regard to the need to ensure independence and absence of conflicts of interests.
3. Persons on the list of suitable candidates who are not appointed to the panel shall be included in a reserve list of suitable candidates to replace members whose membership has ceased in accordance with Article 5(3). The Director-General shall ask applicants for their consent before including their names on the reserve list.
4. The list of panel members shall be published in the Register of expert groups and be made available on the relevant Commission website.

*Article 5***Terms of office**

1. The members of the panel shall be appointed for a renewable term of five years.
2. If, at the end of a term, the renewal or replacement of the panel has not been confirmed, the existing members shall remain in office.
3. An individual shall cease to be a member of the panel if:
 - (a) he or she dies or becomes incapacitated to such an extent that he or she is incapable of performing his or her functions under this Decision;
 - (b) he or she resigns;
 - (c) the Director-General suspends his or her membership pursuant to paragraph 5, in which case he or she shall cease to be a member for the duration of the suspension; or
 - (d) the Director-General terminates his or her membership pursuant to paragraph 5.
4. A member wishing to resign shall notify the Director-General by e-mail or registered post, giving at least six months' notice. Where he or she is in a position to execute his or her tasks and a replacement process is ongoing, he or she may, at the request of the Director-General, remain in office until the replacement is confirmed.
5. The Director-General may temporarily suspend or permanently terminate the membership of a member where it has been found, or there are reasonable grounds to consider, that:
 - (a) the member no longer complies with, or has acted in breach of, the conditions set out in this Decision or in Article 339 of the Treaty on the Functioning of the European Union;
 - (b) the member no longer complies with one or more essential conditions set out in the call for applications, or with the principles of independence, impartiality and confidentiality referred to in Article 16, or that the member's conduct or position is incompatible with declarations made in accordance with Articles 16, 17 and 18;

- (c) the member is incapable of performing his or her tasks under this Decision;
- (d) other significant factors are putting the functioning of the panel into question.

6. Where the membership of a member has ceased in accordance with paragraph 3, the Director-General shall appoint a replacement for the remainder of the term or for the period of the temporary suspension. The Commission shall launch a new call for applications once the reserve list is exhausted.

CHAPTER III

OPERATION OF THE PANEL

Article 6

Election of the Chair and Vice-Chair

1. At the beginning of each term, the panel shall elect a Chair and a Vice-Chair from among its members. The election shall take place by a simple majority of its total membership. In the event of parity, the Director-General shall select the Chair from the members with most votes, on the basis of an assessment of their qualifications and experience.
2. The term of office of the Chair and Vice-Chair shall coincide with the term of the panel and shall be renewable. Any replacement of the Chair or Vice-Chair shall be for the remainder of the term of the panel.

Article 7

Voting rules

1. For votes in cases other than referred to in Article 6 and Article 8(3)(a), the panel shall only take decisions when at least four members are participating in the vote, one of whom must be either the Chair or the Vice-Chair. Decisions shall be taken by a simple majority.
2. In the event of parity, the person chairing the vote shall have the casting vote.
3. Persons who have ceased to be members or whose membership is temporarily suspended pursuant to Article 5(5) shall not be taken into account for the calculation of the majority referred to in paragraph 1.

Article 8

Rules of procedure

1. The panel shall adopt, and update as appropriate, its rules of procedure on a proposal by and in agreement with the Director-General.
2. The rules of procedure shall ensure that the panel performs its tasks in compliance with the principles of scientific excellence, independence and transparency.
3. In particular, the rules of procedure shall provide for:
 - (a) the procedure for the election of the Chair and Vice-Chair of the panel, in accordance with Article 6;
 - (b) application of the principles laid down in Chapter IV;
 - (c) procedures for the adoption of an opinion;
 - (d) relations with third parties, including scientific bodies;
 - (e) other detailed rules on the functioning of the panel.

*Article 9***Methodology**

1. The panel shall specify and, as appropriate, update the methodology for the technical assessment of test products. The methodology for sensory analysis shall be based on a comparison of the smelling properties of the test product with those of reference products. In developing the methodology, the panel shall take into consideration, as appropriate, input from the technical group referred to in Article 12.
2. The draft methodology, and any subsequent draft update, shall be submitted to the Director-General for approval and shall only become applicable after such approval has been given.

*Article 10***Advice on test products**

1. Where the panel is asked to provide an opinion on a test product, the Chair of the panel shall inform all members. He or she may appoint a rapporteur from among the members to coordinate the examination of a particular product. The Chair shall submit a final report to the Commission and, where applicable, the requesting Member State.
2. Where the panel considers it necessary for the purposes of providing an opinion, it shall request input from the technical group established in accordance with Article 12. In forming its opinion, the panel shall have regard to the information and data obtained from the technical group. It may also have regard to any other information at its disposal that it considers authoritative and relevant, including information resulting from reporting obligations pursuant to Article 5 of Directive 2014/40/EU.
3. With respect to the data and information provided by the technical group, the panel shall, in particular:
 - (a) verify whether the technical group respected applicable rules and scientific standards;
 - (b) assess the data and information, in particular to determine whether they are sufficient to reach a conclusion or whether additional data and information are needed;
 - (c) request such clarifications from the technical group as may be necessary to reach a conclusion.
4. If the panel considers the data or information to be insufficient or has doubts as to whether the applicable rules and standards were respected, it shall consult the Commission and, where applicable, the requesting Member State. Where it is considered necessary, the panel may ask the technical group to repeat certain tests taking into account the panel's comments.
5. Where the panel is satisfied that applicable rules and standards were respected, including, where applicable, following the procedure laid down in paragraph 4, and that the data and information are sufficient to reach a conclusion, it shall proceed to deliver an opinion in accordance with paragraph 2.
6. The panel shall submit its opinion to the Commission and any referring Member States within three months of the date of receipt of the request or by a date agreed with the Commission or the requesting Member State.

*Article 11***Consultation on other matters**

1. The Commission may consult the panel on other matters relating to the determination of a characterising flavour in accordance with Article 7 of Directive 2014/40/EU. In such cases, it shall decide, in consultation with the Chair, whether to convene a meeting or proceed by means of a written procedure.

2. The Chair may appoint a rapporteur from among the panel members to coordinate the task and shall submit a final report to the Commission.
3. In its deliberations, the panel shall consider, as appropriate, data and information provided to it by the technical group and other relevant information at its disposal.

Article 12

Technical group of sensory and chemical assessors

1. A technical group of sensory and chemical assessors ('the technical group') shall be set up to provide the panel with an assessment of the sensory and, where appropriate, chemical properties of the test product as part of the procedure laid down in Article 10. The technical group shall be composed of:
 - (a) two qualified persons selected on the basis of their knowledge, skills and experience in sensory analysis who shall be responsible for recruitment, training and supervision of the sensory assessors;
 - (b) sensory assessors recruited on the basis of their olfactory discrimination ability and their capacity to perceive, analyse and interpret smells, and who have reached the age of majority as laid down in applicable national legislation; and
 - (c) two persons selected on the basis of their knowledge and skills in chemical and laboratory analysis who shall be responsible for the chemical analysis of test products.
2. A public procurement procedure shall be established for the selection of a contractor with responsibility for setting up the technical group. The contractor shall have at its disposal the minimum technical expertise and equipment as specified in the call for tender and include the persons referred to in paragraph 1(a) and (c).

The call for tender and associated contractual documentation shall specify that the technical group is under an obligation to act independently and protect confidential information and personal data. It shall further contain a requirement that each group member return a duly completed declaration of interest before engaging in any work for the technical group. In addition, the call for tender and associated contractual documentation shall contain, at least, the following elements:

- (a) a description of the technical group's main functions;
 - (b) specifications relating to the establishment, management and operation of the technical group, including technical specifications applicable to the performance of the group's functions;
 - (c) specifications concerning the technical expertise and equipment that must be available to the contractor;
 - (d) specifications relating to the recruitment of sensory assessors. Such specifications shall include a requirement that sensory assessors may only be recruited following approval by the Commission of the candidates proposed.
3. The technical group's sensory analysis shall be based on the methodology established pursuant to Article 9.
4. The sensory analysis shall be complemented, where appropriate, by a chemical assessment of the product composition through chemical analyses. This assessment shall be carried out in a manner that produces accurate, consistent and reproducible results. The process and results of the chemical assessment shall be documented.
5. The technical group shall deliver the results of the product testing to the panel by a date agreed by the panel.
6. The work of the technical group shall be subject to the limits of the annual budget allocated to it by the Commission.

*Article 13***Secretariat**

1. The Commission shall provide a secretariat for the panel and for all other activities relating to the application of this Decision.
2. The secretariat shall be responsible for providing administrative support to facilitate the efficient functioning of the panel and to monitor compliance with the rules of procedure.

*Article 14***Special allowance**

1. The members of the panel shall be entitled to a special allowance compensating them for their preparatory work and participation, in person or remotely by electronic means, in the meetings of the panel and other activities relating to the application of this Decision and organised by the Commission, and for serving as rapporteur on a specific question.
2. The special allowance shall consist of a maximum of EUR 450 in the form of a daily unit cost for each full working day. The total allowance shall be calculated and rounded up to the amount corresponding to the nearest half working day.
3. The Commission shall reimburse travel and, where appropriate, subsistence expenses incurred by members and external experts in connection with the panel's activities in accordance with internal Commission provisions.
4. All allowances and reimbursements shall be subject to the annual budget allocated to the panel by the Commission.

CHAPTER IV

INDEPENDENCE, CONFIDENTIALITY AND TRANSPARENCY*Article 15***Communication**

1. The Chair of the panel shall act as the contact person for the Member States and the Commission.
2. The Chair shall immediately report to the Commission any circumstances that could jeopardise the functioning of the panel.

*Article 16***Independence**

1. The members of the panel shall be appointed in a personal capacity. They shall not delegate their responsibilities to any other person. In performing their functions, they shall respect the principles of independence, impartiality and confidentiality and act in the public interest.
2. Experts applying to be appointed as members of the panel shall be required to submit a declaration indicating any interest that may compromise or reasonably be perceived to compromise their independence, including any relevant circumstances relating to their close family members or partners. Submission of a duly completed declaration of interests shall be necessary in order for an expert to be eligible to be appointed as a member of the panel. If the Commission concludes that no conflict of interest exists, the applicant shall be eligible for appointment, provided he or she is considered to possess the required expertise.

3. Panel members shall promptly inform the Commission if there is any change in the information provided in their declaration, in which case they must immediately submit a new declaration showing relevant changes.
4. At each meeting, panel members shall declare any specific interest that may compromise or reasonably be perceived to compromise their independence in relation to any item on the agenda. In such cases, the Chair may request that the member concerned withdraw from the meeting or from parts of the meeting. The Chair shall inform the Commission of such declaration and actions taken.
5. The panel members shall refrain from having any direct or indirect contact with the tobacco industry or its representatives.

Article 17

Confidentiality and protection of personal data

1. The panel members shall not divulge information, including commercially sensitive or personal data, acquired as a result of the panel's work or of other activities relating to the application of this Decision, even after they have ceased to be members. They shall sign a declaration of confidentiality to this effect.
2. The panel members shall comply with the Commission's security rules on the protection of EU classified and sensitive non-classified information, as set out in Commission Decisions (EU, Euratom) 2015/443 ⁽¹⁾ and (EU, Euratom) 2015/444 ⁽²⁾. Should they fail to respect these obligations, the Commission may take all appropriate measures.

Article 18

Commitment

The panel members shall undertake to contribute actively to the work of the panel. They shall sign a declaration of commitment to this effect.

Article 19

Transparency

1. The activities of the panel shall be carried out with a high level of transparency. The Commission shall publish all relevant documents on a dedicated website and provide a link to this website from the register of expert groups. In particular, it shall make available to the public, without undue delay:
 - (a) the members' names;
 - (b) the members' declarations of interests, confidentiality and commitment;
 - (c) the panel's rules of procedure;
 - (d) the opinions adopted by the panel pursuant to Article 10;
 - (e) the agendas and minutes of the panel's meetings;
 - (f) the methodology established in accordance with Article 9.

⁽¹⁾ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

⁽²⁾ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

2. By way of derogation from paragraph 1, publication shall not be required where disclosure of a document would undermine the protection of a public or private interest as defined in Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽¹⁾.

CHAPTER V

FINAL PROVISIONS

Article 20

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 18 May 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

COMMISSION IMPLEMENTING DECISION (EU) 2016/787**of 18 May 2016****laying down a priority list of additives contained in cigarettes and roll-your-own tobacco subject to enhanced reporting obligations***(notified under document C(2016) 2923)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC ⁽¹⁾, and in particular Article 6(1) thereof,

Whereas:

- (1) Article 6(1) of Directive 2014/40/EU provides that the Commission shall adopt implementing acts laying down and updating a priority list of additives contained in cigarettes and roll-your-own tobacco. The same article also lays down enhanced reporting obligation for the additives listed in that priority list. Member States are to require manufacturers and importers of cigarettes and roll-your-own tobacco to carry out comprehensive studies on additives contained in those products which have been included in the priority list.
- (2) The priority list should be established on the basis of available data suggesting that an additive may contribute to toxic, addictive or carcinogenic, mutagenic or reprotoxic properties ('CMR properties') of cigarettes and roll-your-own tobacco, result in a characterising flavour, or facilitate inhalation or nicotine uptake.
- (3) The additives laid down in the list should also be amongst the most commonly used in cigarettes and roll-your-own tobacco as reported in accordance with Article 5 of Directive 2014/40/EU. As the reporting obligations referred to in Article 5 will only take effect once Directive 2014/40/EU becomes applicable, it is appropriate to establish the first list of substances on the basis of data received from the Member States under Directive 2001/37/EC of the European Parliament and Council ⁽²⁾.
- (4) In the identification of priority additives to be listed, account has also been taken of a scientific opinion delivered by The Scientific Committee for Emerging and Newly Identified Health Risks (SCENIHR) ⁽³⁾.
- (5) Additives may exist in several different forms. In order to facilitate their identification, it is appropriate to specify for each additive listed, its chemical formula, where applicable, and the Chemical Abstracts Service (CAS) numbers of the different forms in which the additives may be found in tobacco products.
- (6) In fulfilling their obligation to ensure that manufacturers and importers of cigarettes and roll-your-own tobacco submit comprehensive studies on the additives listed, Member States should be able to require those studies to be presented following a uniform format and methodology. A coordinated approach to the elaboration and presentation of those studies facilitates data analysis and ensures comparability. In order to ensure that Member States are afforded sufficient time to develop study protocols, without limiting the time afforded to manufacturers and importers for carrying out the studies, this Decision should only apply from 1 January 2017. Therefore, in

⁽¹⁾ OJ L 127, 29.4.2014, p. 1.

⁽²⁾ Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products (OJ L 194, 18.7.2001, p. 26).

⁽³⁾ SCENIHR: Additives used in tobacco products. 25 January 2016 http://ec.europa.eu/health/scientific_committees/emerging/opinions/index_en.htm

accordance with Article 6(4) of Directive 2014/40/EU, manufacturers and importers should only be required to submit enhanced reports in respect of the first set of identified additives by 1 July 2018.

- (7) The measures provided for in this Decision are in accordance with the opinion of the Committee referred to in Article 25 of Directive 2014/40/EU,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter

The priority list of additives referred to in Article 6 of Directive 2014/40/EU is laid down in the Annex to this Decision.

Article 2

Application

This Decision shall apply from 1 January 2017.

Article 3

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 18 May 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX

Priority list of additives used in cigarettes and roll-your-own tobacco subject to enhanced reporting obligations

Additive	Chemical formula (if applicable)	CAS number(s) applicable to the substance (not exhaustive)
Carob bean		9000-40-2, 84961-45-5
Cocoa		84649-99-0, 84649-99-3, 95009-22-6, 8002-31-1
Diacetyl	$C_4H_6O_2$	431-03-8
Fenugreek		68990-15-8, 977018-53-3, 84625-40-1
Fig		90028-74-3
Geraniol	$C_{10}H_{18}O$	106-24-1, 8000-46-2
Glycerol	$C_3H_8O_3$	56-81-5
Guaiacol	$C_6H_4(OH)(OCH_3)$	90-05-1
Guar gum		9000-30-0
Liquorice		68916-91-6
Maltol	$C_6H_6O_3$	118-71-8
Menthol	$C_{10}H_{20}O$	2216-51-5, 15356-60-2, 89-78-1, 1490-04-6, 8006-90-4, 68606-97-3, 84696-51-5, 8008-79-5
Propylene glycol	$C_3H_8O_2$	57-55-6
Sorbitol	$C_6H_{14}O_6$	50-70-4
Titanium dioxide	TiO_2	13463-67-7, 1317-70-0

