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Contents

[1] Text with EEA relevance

EN

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

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

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2016/300

of 29 February 2016

determining the emoluments of EU high-level public office holders

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 243 and Article 286(7) thereof,

Whereas:

(1) It is for the Council to determine the salaries, allowances and pensions of EU high-level public office holders ('public office holders'), including the President of the European Council ([1]), the President and members of the Commission ([2]), the High Representative of the Union for Foreign Affairs and Security Policy ([3]), the Presidents, Judges, Advocates-General and Registrars of the Court of Justice of the European Union ([4]), the President and members of the Court of Auditors ([5]), and the Secretary-General of the Council ([6]), together with any payment to be made instead of remuneration.

(2) It is appropriate that the emoluments and other benefits of public office holders reflect their high responsibilities, and therefore such emoluments and other benefits may differ from those referred to in the Staff Regulations of Officials of the European Union ('Staff Regulations').

(3) Some adjustments to the current emoluments and other benefits of public office holders are nonetheless appropriate in order to reflect the institutional developments in the Union and to modernise the structure of emoluments, in particular by reflecting, where necessary, the amendments introduced by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council ([7]) ('Staff Regulations'). In light of the reforms to the Staff Regulations, several amendments need to be made to Regulation No 422/67/EEC, No 5/67/Euratom. Similarly, Regulation (EEC, Euratom, ECSC) No 2290/77 ([8]) also needs to be updated to take account of reforms to the Staff Regulations. In light of the number of substantial modifications to both Regulations (EEC, Euratom, ECSC) No 2290/77 and Regulation No 422/67/EEC, No 5/67/Euratom, regulating

([1]) Council Decision 2009/909/EU of 1 December 2009 laying down the conditions of employment of the President of the European Council (OJ L 322, 9.12.2009, p. 35).
([2]) Regulation No 422/67/EEC, No 5/67/Euratom of the Council of 25 July 1967 determining the emoluments of the President and Members of the Commission, of the President, Judges, Advocates-General and Registrar of the Court of Justice, of the President, Members and Registrar of the General Court and of the President, Members and Registrar of the European Union Civil Service Tribunal (OJ L 187, 8.8.1967, p. 1).
([3]) Council Decision 2009/910/EU of 1 December 2009 laying down the conditions of employment of the High Representative of the Union for Foreign Affairs and Security Policy (OJ L 322, 9.12.2009, p. 36).
([4]) Supra note 2.
([5]) Council Regulation (EEC, Euratom, ECSC) No 2290/77 of 18 October 1977 determining the emoluments of the members of the Court of Auditors (OJ L 268, 20.10.1977, p. 1).
([6]) Council Decision 2009/912/EU of 1 December 2009 laying down the conditions of employment of the Secretary-General of the Council of the European Union (OJ L 322, 9.12.2009, p. 38).
([7]) Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (OJ L 287, 29.10.2013, p. 15).
([8]) Supra note 5.

emoluments of various public office holders, it is appropriate, in the interests of clarity, transparency and good legislative practice, to merge the two Regulations.

(4) With a view to safeguarding a balance between EU staff members and public office holders, as regards emoluments, it is appropriate to include measures to align the treatment of public office holders with that of EU staff members in situations where the latter have benefited from a modernised structure of emoluments, such as with regard to automatic updates of allowances and to the possibility of joining the Joint Sickness Insurance Scheme, including after termination of a mandate.

(5) Furthermore, it is appropriate to adjust the annual pension accrual rate and to align the pensionable age with the amendments to the Staff Regulations and the applicable accrual rate to be determined with reference to the Staff Regulations, to ensure automatic adjustment with regard to future amendments to the Staff Regulations.

(6) Other amendments should ensure that the duration of the entitlement of former public office holders to the monthly transitional allowance should correspond directly to the period of service. However, this duration should not be less than 6 months and no more than 2 years, on the understanding that the purpose of the transitional allowance for public office holders is to ensure, for a limited period directly following their term of office, a certain level of financial security until their next paid employment with a similar level of remuneration, or other source of income such as their pension.

(7) It is also appropriate to align the allowances and reimbursement of costs due upon taking up duties and when ceasing to hold office with those paid to officials and other servants under the Staff Regulations, while providing for some flexibility when it is necessary, in particular in the case of the reimbursement of removal costs that takes into account the representative functions of public office holders.

(8) It is necessary to bring into line the conditions for sickness insurance cover for current and former public office holders by aligning them with the conditions of insurance cover applicable to officials and other servants under Articles 72 and 73 of the Staff Regulations.

(9) For the same reasons, since the rules established by this Regulation should replace those laid down in Regulation No 422/67/EEC, No 5/67/Euratom, Regulation (EEC, Euratom, ECSC) No 2290/77, and Decisions 2009/909/EU, 2009/910/EU, and 2009/912/EU with the exception of Article 5 thereof, those acts should be repealed without prejudice to their continuing application to all public office holders to whom one or more of those acts apply and whose mandates are ongoing on, or have ended before, the date of entry into force of this Regulation,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Regulation shall apply to the following EU high-level public office holders ('public office holders'):

(a) the President of the European Council;

(b) the President and members of the European Commission, including the High Representative of the Union for Foreign Affairs and Security Policy;

(c) the President and members, as well as the Registrar, of the Court of Justice of the European Union, including those of the General Court and of specialised tribunals;

(d) the Secretary-General of the Council;

(e) the President and members of the Court of Auditors.

2. This Regulation shall apply to all public office holders who are appointed or reappointed with effect after 4 March 2016.

3. For the purposes of this Regulation, non-marital partnerships shall be treated as marriage provided that all the conditions listed in Article 1(2)(c) of Annex VII to the Staff Regulations are fulfilled. The unmarried partner of a public office holder or former public office holder shall be considered as that holder's spouse under the sickness insurance scheme where the conditions set out in points (i), (ii) and (iii) of paragraph (2)(c) of that Article are met.

CHAPTER II

REMUNERATION

Article 2

Salaries

From the date of taking up their duties until the last day of the month in which they cease to hold office, public office holders shall be entitled to a basic salary equal to the amount resulting from application of the following percentages to the basic salary of an official of the Union on the third step of grade 16:

Salary						
Institution	President	Vice-President	High-Representative of the Union for Foreign Affairs and Security Policy	Member	Registrar	Secretary-General
European Council	138 %					
Council						100 %
European Commission	138 %	125 %	130 %	112,5 %		
Court of Justice	138 %	125 %		112,5 %	101 %	
General Court	112,5 %	108 %		104 %	95 %	
Specialised Tribunals	104 %			100 %	90 %	
Court of Auditors	115 %			108 %		

Article 3

Tax for the benefit of the Union — Solidarity levy

1. Council Regulation (EEC, Euratom, ECSC) No 260/68 ([9]) shall apply to public office holders.

([9]) Regulation (EEC, Euratom, ECSC) No 260/68 of the Council of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European Communities (OJ L 56, 4.3.1968, p. 8).

2. Article 66a of the Staff Regulations shall apply *mutatis mutandis* to public office holders.

CHAPTER III

ALLOWANCES

Article 4

Installation and resettlement allowances — Removal and travelling expenses

Public office holders shall be entitled to:

(a) an installation allowance on taking up their duties as provided for in Article 5 of Annex VII to the Staff Regulations which is to apply *mutatis mutandis*;

(b) a resettlement allowance on ceasing to hold office as provided for in Article 24(2) of the Conditions of Employment of Other Servants of the European Union which is to apply *mutatis mutandis*;

(c) reimbursement of travelling expenses incurred for themselves and for members of their family;

and

(d) reimbursement of the cost of removal of their personal effects and furniture, including insurance against ordinary risks, such as theft, breakage, and fire, up to the ceiling fixed for officials of the institution to which public office holders are appointed, pursuant to Article 9 of Annex VII to the Staff Regulations. Upon presentation of invoices, the institutions may provide for derogations for reimbursement of the effective removal costs that in any case shall not exceed by more than 50 % the ceiling fixed by the corresponding institutions for their staff.

If their term of office is renewed, public office holders shall not be entitled to any of the allowances set out in this Article. Nor shall they be so entitled if they are appointed as public office holders, or elected members, of another institution of the Union, if that institution has its seat in the town where they were formerly required to reside by reason of their office and if, at the time of the new appointment or election, they have not already effected their resettlement.

Article 5

Residence allowance

From the date of taking up their duties until the last day of the month in which they cease to hold office, public office holders shall be entitled to a residence allowance equal to 15 % of their basic salary.

Article 6

Family allowances

From the date of taking up their duties until the last day of the month in which they cease to hold office, public office holders shall be entitled to family allowances fixed by analogy with Article 67 of the Staff Regulations and Articles 1 to 3 of Annex VII to those Regulations.

Article 7

Entertainment allowance

Public office holders shall receive a monthly entertainment allowance, in euros, amounting to:

Institution	President	Vice-President	High-Representative of the Union for Foreign Affairs and Security Policy	Member	Registrar
European Council	1 418,07				
European Commission	1 418,07	911,38	911,38	607,71	
Court of Justice	1 418,07	911,38		607,71	554,17
General Court	607,71	573,98		554,17	471,37
Specialised Tribunals	554			500	400

Article 8

Special duty allowance

Presiding Judges of Chambers of the Court of Justice of the European Union and the First Advocate-General shall, in addition to the allowances set out in Articles 4 to 7, receive during their term of office a special duty allowance, in euros, per month as set out in the following table:

Special duty allowance		
Court of Justice	General Court	Specialised Tribunals
Presiding judges and First Advocate-General	Presiding judges	Presiding judges
810,74	739,47	500

Article 9

Mission expenses

Public office holders required in the course of their duties to travel away from the seat of their institution shall be entitled to:

(a) reimbursement of travelling expenses;

(b) reimbursement of hotel expenses (room, service and taxes only);

(c) daily subsistence allowance while on mission equal, for each complete day of absence, to 105 % of the daily subsistence allowance as laid down in the Staff Regulations.

Article 10

Transitional allowance

1. From the first day of the month following that in which a public office holder ceases to hold office, a monthly transitional allowance shall be paid. The duration of the entitlement to the monthly transitional allowance shall be equal to the length of the period of service. However, this duration shall not be less than 6 months or more than 2 years.

The amount of the allowance shall be determined on the basis of the basic salary which the public office holder was receiving when that holder ceased to hold office and be as follows:

— 40 % if that period of service is less than or equal to 2 years,

— 45 % if that period is over 2 years but less than or equal to 3 years,

— 50 % if that period is more than 3 years but less than or equal to 5 years,

— 55 % if that period is more than 5 years but less than or equal to 10 years,

— 60 % if that period is more than 10 years but less than or equal to 15 years,

— 65 % if that period is more than 15 years.

2. Entitlement to the transitional allowance shall cease if a former public office holder is reappointed to office in the institutions of the Union, is elected to the European Parliament, reaches the pensionable age as defined in Article 11, or upon death. In the event of reappointment or of election to the European Parliament, the allowance shall be paid up to the date of taking up duties and, in the event of death, the payment for the month in which death occurred shall be the last.

3. If, during the period for which they are entitled to the monthly transitional allowance, the former public office holders concerned take up any gainful activity, the amount by which their gross monthly remuneration (i.e. before deduction of taxes), together with the allowance provided for in paragraph 1 of this Article, exceeds the remuneration, before deduction of taxes, which they were receiving as active public office holders under Articles 2, 5 and 6, shall be deducted from the allowance. In calculating the amount of remuneration received for the new activity, all forms of remuneration shall be included, except those representing the reimbursement of expenses.

4. On the date when they cease to hold office, on 1 January of each year thereafter, and in the event of any changes in their financial situation, former public office holders shall declare to the President of the institution in which they were previously employed all forms of remuneration received for their services, except those representing the reimbursement of expenses.

That declaration shall be made in good faith and shall be treated as confidential. The information contained in that declaration shall not be used otherwise than for the purposes of this Regulation and shall not be communicated to third parties.

Additional remuneration legitimately received by former public office holders in the course of their duty as active public office holders shall not be deductible from the transitional allowance.

5. The former public office holders entitled to the transitional allowance shall also be entitled to family allowances provided for in Article 6 if they satisfy the conditions set out in that Article.

CHAPTER IV

PENSIONS

Article 11

Pensionable age

1. After ceasing to hold office, former public office holders shall be entitled to a pension for life payable from the date when they reached the pensionable age laid down in Article 77 of the Staff Regulations which shall apply *mutatis mutandis*.

2. Former public office holders may, however, ask to start drawing such pension not earlier than 6 years before reaching the age referred to in paragraph 1. In that case, a coefficient shall be applied to the pension at the moment of the request as follows:

Between 6 and 4 years earlier	0,70
Between less than 4 and 3 years earlier	0,75
Between less than 3 and 2 years earlier	0,80
Between less than 2 and 1 years earlier	0,87
Less than 1 year earlier	0,95

Article 12

Pension

The first sentence of the second paragraph of Article 77 of the Staff Regulations shall apply *mutatis mutandis*. The amount of the pension shall be equal to two times the rate referred to in the second sentence of the second paragraph of Article 77 of the Staff Regulations as applied to the basic salary last received for each full year in office and one-twelfth of that sum for each complete month.

When the public office holders concerned have performed various duties in the institutions of the Union, the salary on which their pension is to be calculated shall be directly proportional to the time they served in each duty respectively.

Article 13

Budgetary coverage

Payment of the benefits under the pension scheme provided for in this Regulation shall be entered in the general budget of the Union. Member States shall jointly guarantee payment of those benefits in accordance with the scale laid down for financing such expenditure.

CHAPTER V

SOCIAL PROVISIONS

Article 14

Disablement

Public office holders suffering from disablement deemed to be total which prevents them from performing their duties and who, on those grounds, resign or are compelled to resign shall be entitled, from the date of resignation or compulsory resignation, to the following benefits:

(a) where disablement is recognised as permanent, a pension for life calculated in accordance with Article 12, which shall be not less than 30 % of the basic salary last received. They shall be entitled to the maximum pension if the incapacity is the result of disablement that has occurred, or illness that has been contracted, in the performance of their duties;

(b) where disablement is temporary, for the duration of the disability, a pension at the rate of 60 % of the basic salary last received, if the disablement occurred, or illness was contracted, in the performance of their duties, and 30 % in other cases. When the recipient of such disability pension reaches the pensionable age laid down in Article 11 or the disability pension has been in effect for 7 years, it shall be replaced by a pension for life calculated in accordance with Article 12.

Article 15

Sickness and other forms of insurance, and benefits

1. Articles 72 and 73 of the Staff Regulations shall apply *mutatis mutandis* to public office holders. Public office holders entitled to the benefits under Article 72 of the Staff Regulations shall declare the amount of any reimbursements paid, or which they can claim, under any other sickness insurance scheme provided for by law or regulation for themselves or for persons covered by their insurance. Where the total which they would receive by way of reimbursement exceeds the sum of the reimbursements provided for in Article 72(1) of the Staff Regulations, the difference shall be deducted from the amount to be reimbursed pursuant to Article 72(1) of the Staff Regulations, with the exception of reimbursements obtained under a private supplementary sickness insurance scheme covering that part of the expenditure which is not reimbursable by the sickness insurance scheme of the Union.

2. Former public office holders who benefit under the pension scheme provided for in Article 12 of this Regulation, the transitional allowance provided for in Article 10 of this Regulation, or the disability pension scheme provided for in Article 14 of this Regulation, may request that the coverage under Article 72 of the Staff Regulations, as defined in paragraph 1 of this Article, also applies to them.

3. Former public office holders who do not benefit under the pension scheme provided for in Article 12 of this Regulation, the transitional allowance provided for in Article 10 of this Regulation, or the disability pension scheme provided for in Article 14 of this Regulation, may request to be covered by Article 72 of the Staff Regulations, as defined in paragraph 1 of this Article, on condition that they are not in gainful activity. They shall then pay the full amount of the contributions necessary for such coverage. These contributions shall be calculated on the basis of the amount of the monthly transitional allowance under Article 10 of this Regulation, with due regard being had to the successive updates of this amount.

4. Articles 74 and 75 of the Staff Regulations providing, inter alia, for birth and death benefits shall apply *mutatis mutandis* to public office holders.

Article 16

Death in service

Where a public office holder dies during the term of office, the surviving spouse or dependent children shall be entitled, until the end of the third month following that in which death occurs, to the remuneration to which the public office holder would have been entitled under Articles 2, 5 and 6.

Article 17

Subrogation of rights

Where a third party is responsible for the disablement or death of a public office holder, the rights of that public office holder, or those entitled under that public office holder to bring legal proceedings against the third party, shall devolve on the Union to the extent to which it incurs obligations under the pension scheme.

Article 18

Survivor's pension

1. The surviving spouse and children dependent at the time of death of the public office holder or former one to whom pension rights have accrued at the time of death shall be entitled to a survivor's pension.

That pension shall be equal to a percentage of the pension accruing to the public office holder or former one under Article 12 at the date of death, namely:

For a surviving spouse	60 %
For each child where either parent is dead	10 %
For each child where both parents are dead	20 %

However, when public office holders die during their term of office:

— the survivor's pension for the surviving spouse shall be equal to 36 % of the basic salary received at the time of death,

— the survivor's pension for a first orphan of both parents shall not be less than 12 % of the basic salary received at the time of death. Where several orphans of both parents are left, the total amount of the survivor's pension shall be divided equally among those orphans.

2. The total amount of these survivor's pensions shall not exceed the amount of the pension of the public office holder or former one on which they are calculated. The maximum total survivor's pensions payable shall be divided, where applicable, between the beneficiaries in accordance with the percentages set out in paragraph 1.

3. The survivor's pensions shall be granted from the first day of the calendar month following the date of death. However, where Article 16 is applied, eligibility shall not commence until the first day of the fourth month following that in which death occurred.

4. Entitlement to a survivor's pension shall cease at the end of the calendar month in which the person entitled dies. Moreover, entitlement to an orphan's pension shall cease at the end of the month in which the child reaches the age of 21 years. However, entitlement shall be extended while the child is receiving educational or vocational training, though not beyond the end of the month in which the child reaches the age of 25 years.

The pension shall remain payable to an orphan who is prevented, through illness or disablement, from earning a livelihood.

5. Where a former public office holder marries and at the date of marriage has accrued pension rights under this Regulation, the spouse and any children of the marriage shall not be entitled to a survivor's pension save where the marriage precedes the death of the former public office holder by 5 years or more.

6. A surviving spouse's entitlement to a survivor's pension shall cease on remarriage. The surviving spouse shall then be entitled to immediate payment of a lump sum equal to twice the annual amount of the survivor's pension.

7. Where public office holders leave a surviving spouse and also orphans of a previous marriage or other persons entitled under them, or orphans of other marriages, the total pension shall be apportioned by analogy with Articles 22, 27 and 28 of Annex VIII to the Staff Regulations.

8. The surviving spouse and dependent children of public office holders shall be entitled to sickness benefits under the social security scheme provided for in the Staff Regulations.

They shall declare the amount of any reimbursements paid or which they can claim under any other sickness insurance scheme provided for by law or regulation for themselves or for persons covered by their insurance. Where the total which they would receive by way of reimbursement exceeds the sum of the reimbursements provided for in Article 72(1) of the Staff Regulations, the difference shall be deducted from the amount to be reimbursed pursuant to Article 72(1) of the Staff Regulations, with the exception of reimbursements obtained under a private supplementary sickness insurance scheme covering that part of the expenditure which is not reimbursable by the sickness insurance scheme of the Union.

CHAPTER VI

UPDATES AND CALCULATION METHODS

Article 19

Benefits and pensions update

The allowances provided for in Articles 7 and 8 of this Regulation and pension benefits provided for in Articles 12, 14 and 18 of this Regulation shall be updated by the amount of the update resulting from the application of Article 65 of the Staff Regulations and Annex XI thereto which shall apply *mutatis mutandis*.

This provision shall apply to the pension benefits of public office holders whose mandates are ongoing on, or have ended before, 4 March 2016.

Article 20

Correction coefficients

The basic salaries referred to in Article 2 of this Regulation, the allowances referred to in Article 5 of this Regulation, and the family allowances referred to in Article 6 of this Regulation shall be weighted, where applicable, pursuant to Article 64 of the Staff Regulations.

Article 21

Non-accumulation

The transitional allowance provided for in Article 10, the pension provided for in Article 12 and the pensions provided for in Article 14 shall not be drawn concurrently by the same person. Where a public office holder is entitled to claim benefit under more than one of those provisions, only that provision which is the most favourable to the claimant shall be applied. However, when a public office holder reaches the pensionable age as defined in Article 11, entitlement to the transitional allowance shall cease.

CHAPTER VII

PAYMENT ARRANGEMENTS

Article 22

Place and operation of payment

1. Payment of the sums due under Articles 2, 4, 5, 6, 7, 15 and 16 shall be made in, and in the currency of, the country where the public office holders carry out their duties or, at their request, in euros into a bank account in the Union.

2. Article 17(2) to (4) of Annex VII to the Staff Regulations shall apply *mutatis mutandis* to public office holders.

3. No weighting shall be applied to the sums due under Articles 10, 12, 14 and 18. These sums shall be paid to beneficiaries residing in the Union in euro, into a bank account in the Union.

For beneficiaries residing outside the Union, pensions shall be paid, in euro, into a bank account in the Union or the country of residence. The pension may, by way of exception, be paid in a foreign currency in the country of residence of the pensioner, converted at the most up-to-date exchange rates used for the implementation of the general budget of the European Union.

CHAPTER VIII

FINAL PROVISIONS

Article 23

Disqualification

Public office holders who are relieved of their duties on grounds of serious misconduct in accordance with the relevant Treaty provisions may accordingly be deprived of any right to transitional allowance or pension. This shall not, however, affect those entitled under those public office holders.

Article 24

Opt-in clause — Transitional provisions

1. Without prejudice to Article 1(2), public office holders holding office before 4 March 2016, as well as former ones who held office before that date, may request that Article 15 applies to them. The request shall be made within the period of 6 months from 4 March 2016.

2. Articles 20, 24, 25, and the first sentence of Article 24a, of Annex XIII to the Staff Regulations shall apply *mutatis mutandis* to the beneficiaries of the sums due under Articles 10, 11, 12, 14 and 18 of this Regulation. However the date of 1 January 2014 referred to in Article 24a of Annex XIII to the Staff Regulations shall be deemed to be the date of 4 March 2016.

Article 25

Repealing provisions and provisions remaining in force

1. The following acts are hereby repealed without prejudice to their continuing application to public office holders whose mandates are ongoing on, or have ended before, 4 March 2016:

(a) Regulation No 422/67/EEC, No 5/67/Euratom;

(b) Regulation (EEC, Euratom, ECSC) No 2290/77;

(c) Decision 2009/909/EU;

(d) Decision 2009/910/EU;

(e) Decision 2009/912/EU, with the exception of Article 5 thereof.

2. References to the repealed acts shall be construed as references to this Regulation.

3. Council Regulations No 63 (EEC) ([10]) and No 14 (EAEC) ([11]), the Decision of the Special Council of Ministers of the European Coal and Steel Community of 22 May 1962 ([12]), and Regulation of the Councils No 62 (EEC), 13 (EAEC) ([13]), with the exception of Article 20 thereof, are hereby repealed.

([10]) Regulation No 63 of the Council determining the emoluments of members of the Commission (OJ 62, 19.7.1962, p. 1724/62).
([11]) Regulation No 14 of the Council determining the emoluments of members of the Commission (OJ 62, 19.7.1962, p. 1730/62).
([12]) Decision of the Special Council of Ministers of the European Coal and Steel Community determining the emoluments of members of the High Authority (OJ 62, 19.7.1962, p. 1734/62).
([13]) Regulation No 62/EEC, No 13/EAEC of the Councils determining the emoluments of members of the Court of Justice (OJ 62, 19.7.1962, p. 1713/62).

4. The Decision of the Special Council of Ministers of the European Coal and Steel Community of 13 and 14 October 1958 shall remain in force.

Article 26

Entry into force

This Regulation shall enter into force on 4 March 2016.

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

Done at Brussels, 29 February 2016.

For the Council
The President
H.G.J. KAMP

COMMISSION DELEGATED REGULATION (EU) 2016/301

of 30 November 2015

supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC [1], and in particular the third subparagraph of Article 13(7), the third subparagraph of Article 14(8) and the third subparagraph of Article 15(7) thereof,

Whereas:

(1) Directive 2003/71/EC harmonised requirements for the drawing up, approval and distribution of prospectuses. In order to ensure consistent harmonisation and to take account of technical developments on financial markets, it is necessary to specify those requirements, in particular those regarding the approval process, the publication and the information disseminated about the offer or admission to trading besides the prospectus, including advertisements.

(2) The process of prospectus review and approval is an iterative one, where the decision of the national competent authority to approve the prospectus involves repeated rounds of analysis and development of the draft prospectus on the part of the issuer, offerer or person asking for admission to trading on a regulated market to ensure that the prospectus meets the requirement of completeness, including the consistency of the information given and its comprehensibility. In order to provide greater certainty about the approval process to issuers, offerers or persons asking for admission to trading, it is necessary to specify which documents should be provided to national competent authorities at different moments in the prospectus approval cycle.

(3) A draft prospectus should always be submitted to the national competent authority in searchable electronic format and through electronic means acceptable to that authority. As a searchable electronic format allows national competent authorities to search for specific terms or words in the prospectus, it facilitates faster scrutiny and contributes to an efficient and timely review process.

(4) With the exception of the first draft prospectus, it is imperative that each draft of the prospectus submitted to the national competent authority clearly show changes made to the previously submitted draft and explain how such changes address any incompleteness notified by the national competent authority. Each submission of a draft prospectus to the national competent authority should include both a marked version, highlighting all changes to the previously submitted draft, and an unmarked version, where such changes are not highlighted.

(5) Where disclosure items contained in the relevant annexes to Commission Regulation (EC) No 809/2004 [2] are not applicable or, given the nature of the issue or issuer, are not relevant in the case of a specific prospectus, those disclosure items should be identified to the national competent authority in order to minimise any delays in the review process.

(6) To ensure an efficient use of resources, where it becomes evident to the national competent authority that the issuer, offerer or person asking for admission to trading is not in a position to comply with the requirements of the prospectus regime, the national competent authority should have the right to terminate the review process without approving the prospectus.

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[1] OJ L 345, 31.12.2003, p. 64.

[2] Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ L 149, 30.4.2004, p. 1).

(7) Electronic publication of prospectuses, including final terms, ensures that investors are provided with fast and easy access to the information contained therein. Requiring investors to agree to a disclaimer limiting legal liability, pay a fee or go through a registration process to gain access to the prospectus impedes easy accessibility and should not be permitted. Filters warning in which jurisdictions an offer is being made and requiring investors to disclose their country of residence or indicate that they are not resident in a particular country or jurisdiction should not be considered as disclaimers limiting legal liability.

(8) Advertisements relating to an offer to the public or an admission to trading can become inaccurate or misleading where a significant new factor, material mistake or inaccuracy relating to the information in the corresponding prospectus arises or is noted. Requirements should be established to ensure that when advertisements become inaccurate or misleading due to such a new factor, material mistake or inaccuracy, such advertisements are amended.

(9) As the prospectus is the authoritative source of information about an offer to the public or an admission to trading, all information circulated about such offers and admissions to trading, whether for advertising or other purposes and whether in oral or written form, should be consistent with the information contained in the prospectus. This should be ensured by requiring that any information circulated does not contradict, or refer to information which contradicts, the contents of the prospectus. Moreover, the information circulated should be prohibited from presenting a materially unbalanced view of the information contained in the prospectus. Furthermore, as alternative performance measures can disproportionally influence the investment decision, information about an offer to the public or an admission to trading circulated outside the prospectus should not be permitted to contain such measures, if they are not contained in the prospectus.

(10) Regulation (EC) No 809/2004 contains provisions regarding publication of the prospectus and dissemination of advertisements. To avoid duplication of requirements, certain provisions of Regulation (EC) No 809/2004 should be deleted.

(11) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission.

(12) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [1], ESMA has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS AND APPROVAL OF THE PROSPECTUS

Article 1

Subject matter

This Regulation establishes regulatory technical standards that further specify:

1. the arrangements for approval of the prospectus as referred to in Article 13 of Directive 2003/71/EC;

2. the arrangements for publication of the prospectus laid down in Article 14(1) to (4) of Directive 2003/71/EC;

3. the dissemination of advertisements referred to in Article 15 of Directive 2003/71/EC;

4. the consistency between information disclosed about an offer to the public or admission to trading on a regulated market, on the one hand, and the information contained in the prospectus, on the other, as laid down in Article 15(4) of Directive 2003/71/EC.

[1] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Article 2

Submission of an application for approval

1. The issuer, offerer or person asking for admission to trading on a regulated market shall submit all drafts of the prospectus in searchable electronic format via electronic means to the competent authority. A contact point to which the competent authority can submit all notifications in writing, via electronic means, shall be specified at the time the first draft of the prospectus is submitted.

2. Along with the first draft of the prospectus submitted to the competent authority, or during the prospectus review process, the issuer, offerer or person asking for admission to trading on a regulated market shall also submit in searchable electronic format:

(a) where required by the competent authority of the home Member State in accordance with Article 25(4) of Regulation (EC) No 809/2004 or on their own initiative, a cross reference list which shall also identify any items from Annexes I to XXX to Regulation (EC) No 809/2004 that have not been included in the prospectus because, due to the nature of the issuer, offerer or person asking for admission to trading or the securities being offered to the public or admitted to trading, they were not applicable.

Where the cross reference list is not submitted, and where the order of the items in the draft prospectus does not coincide with the order of the information provided for in the annexes to Regulation (EC) No 809/2004, the draft prospectus shall be annotated in the margin to identify which sections of the prospectus correspond to the relevant disclosure requirements. A prospectus which is annotated in the margin shall be accompanied by a document identifying any items contained in the relevant annexes to Regulation (EC) No 809/2004 that have not been included in the prospectus because they were not applicable, due to the nature of the issuer, offerer or person asking for admission to trading or the securities being offered to the public or admitted to trading;

(b) where the issuer, offerer or person asking for admission to trading on a regulated market is requesting that the competent authority of the home Member State authorise the omission of information from the prospectus pursuant to Article 8(2) of Directive 2003/71/EC, a reasoned request to that effect;

(c) where the issuer, offerer or person asking for admission to trading on a regulated market requests that the competent authority of the home Member State notify the competent authority of a host Member State, upon approval of the prospectus, with a certificate of approval pursuant to Article 18(1) of Directive 2003/71/EC, a request to this effect;

(d) any information which is incorporated by reference into the prospectus, unless such information has already been approved by or filed with the same competent authority in accordance with Article 11 of Directive 2003/71/EC;

(e) any other information considered necessary, on reasonable grounds, for the review by the competent authority of the home Member State and expressly required by the competent authority for that purpose.

Article 3

Changes to the draft prospectus

1. Following submission of the first draft of the prospectus to the competent authority of the home Member State, where the issuer, offerer or person asking for admission to trading on a regulated market submits subsequent drafts of the prospectus, the subsequent drafts shall be marked to highlight all changes made to the preceding unmarked draft of the prospectus as submitted to the competent authority. Where only limited changes are made, marked extracts of the draft prospectus, showing all changes from the preceding draft, shall be considered acceptable. An unmarked draft of the prospectus shall always be submitted along with the draft highlighting all changes.

Where the issuer, offerer or person asking for admission to trading on a regulated market is unable to comply with the requirement set out in the first subparagraph due to technical difficulties related to the marking of the prospectus, each change made to the preceding draft of the prospectus shall be identified to the competent authority of the home Member State in writing.

2. Where the competent authority of the home Member State has, in accordance with Article 5(2) of this Regulation, notified the issuer, offerer or person asking for admission to trading on a regulated market that it considers that the draft prospectus does not meet the requirement of completeness, including consistency of the information given and its comprehensibility, the subsequently submitted draft of the prospectus shall be accompanied by an explanation as to how the incompleteness notified by the competent authority has been addressed.

Where changes made to a previously submitted draft prospectus are self–explanatory or clearly address the incompleteness notified by the competent authority, an indication of where the changes have been made to address the incompleteness shall be considered sufficient.

Article 4

Final submission

1. With the exception of the cross reference list mentioned in Article 2(2)(a), submission for approval of the final draft of the prospectus shall be accompanied by any information mentioned in Article 2(2) which has changed since a previous submission. The final draft of the prospectus shall not be annotated in the margin.

2. Where no changes have been made to the previously submitted information mentioned in Article 2(2), the issuer, offerer or person asking for admission to trading on a regulated market shall confirm in writing that no changes have been made to the previously submitted information.

Article 5

Receipt and processing of the application

1. The competent authority of the home Member State shall acknowledge receipt of the initial application for approval of a prospectus in writing via electronic means as soon as possible and no later than by close of business on the second working day following the receipt. The acknowledgement shall inform the issuer, offerer or person asking for admission to trading on a regulated market of any reference number of the application for approval and of the contact point within the competent authority to which queries regarding the application may be addressed. The date of acknowledgement shall not affect the date of submission of the draft prospectus, within the meaning of Article 13(2) of Directive 2003/71/EC, from which the time limits for notifications commence.

2. Where the competent authority of the home Member State considers, on reasonable grounds, that the documents submitted to it are incomplete or that supplementary information is needed, for instance due to inconsistencies or incomprehensibility of certain information provided, it shall notify the issuer, offerer or person asking for admission to trading of the need for supplementary information and the reasons therefor, in writing, via electronic means.

3. Where the competent authority of the home Member State considers the incompleteness to be of a minor nature or timing to be of utmost importance, the competent authority may notify the issuer, offerer or person asking for admission to trading orally, in which case there shall be no interruption of the time limits for approval of the prospectus as referred to in Article 13(4) of Directive 2003/71/EC..

4. Where the issuer, offerer or person asking for admission to trading on a regulated market is unable or unwilling to provide the supplementary information requested in accordance with paragraph 2, the competent authority of the home Member State shall be entitled to refuse the approval of the prospectus and terminate the review process.

5. The competent authority of the home Member State shall notify the issuer, offerer or person asking for admission to trading on a regulated market of its decision regarding the approval of the prospectus in writing, via electronic means, on the day of the decision. In the case of a refusal to approve the prospectus, the decision of the competent authority shall contain the reasons for such refusal.

CHAPTER II

PUBLICATION OF THE PROSPECTUS

Article 6

Publication of the prospectus in electronic form

1. When published in electronic form pursuant to points (c), (d) or (e) of Article 14(2) of Directive 2003/71/EC, the prospectus, whether a single document or comprising several documents, shall:

(a) be easily accessible when entering the website;

(b) be in searchable electronic format that cannot be modified;

(c) not contain hyperlinks with the exception of links to the electronic addresses where information incorporated by reference is available;

(d) be downloadable and printable.

2. Where a prospectus containing information incorporated by reference is published in electronic form, it shall include hyperlinks to each document containing information incorporated by reference or to each web page on which that document is published.

3. If a prospectus for offer of securities to the public is made available on the websites of issuers or financial intermediaries or of regulated markets, these shall take measures to avoid targeting residents in Member States or third countries where the offer of securities to the public does not take place, such as the insertion of a disclaimer as to who are the addressees of the offer.

4. Access to the prospectus published in electronic form shall not be subject to:

(a) completion of a registration process;

(b) acceptance of a disclaimer limiting legal liability;

(c) payment of a fee.

Article 7

Publication of final terms

The publication method for final terms related to a base prospectus does not have to be the same as the one used for the base prospectus as long as the publication method used is one of the methods indicated in Article 14 of Directive 2003/71/EC.

Article 8

Publication in newspapers

1. In order to comply with point (a) of Article 14(2) of Directive 2003/71/EC the publication of a prospectus shall be made in a general or financial information newspaper having national or supra-regional scope.

2. If the competent authority is of the opinion that the newspaper chosen for publication does not comply with the requirements set out in paragraph 1, it shall determine a newspaper whose circulation is deemed appropriate for this purpose taking into account, in particular, the geographic area, number of inhabitants and reading habits in each Member State.

Article 9

Publication of the notice

1. If a Member State makes use of the option, referred to in Article 14(3) of Directive 2003/71/EC, to require the publication of a notice stating how the prospectus has been made available and where it can be obtained by the public, that notice shall be published in a newspaper that fulfils the requirements for publication of prospectuses according to Article 8 of this Regulation.

If the notice relates to a prospectus published only for the purpose of admission of securities to trading on a regulated market where securities of the same class are already admitted, it may alternatively be inserted in the gazette of that regulated market, irrespective of whether that gazette is in paper copy or electronic form.

2. The notice shall be published no later than the next working day following the date of publication of the prospectus pursuant to Article 14(1) of Directive 2003/71/EC.

3. The notice shall contain the following information:

(a) the identification of the issuer;

(b) the type, class and amount of the securities to be offered and/or in respect of which admission to trading is sought, provided that these elements are known at the time of the publication of the notice;

(c) the intended time schedule of the offer/admission to trading;

(d) a statement that a prospectus has been published and where it can be obtained;

(e) the addresses where and the period of time during which a paper copy is available to the public;

(f) its date.

Article 10

List of approved prospectuses

The list of the approved prospectuses published on the website of the competent authority, in accordance with Article 14(4) of Directive 2003/71/EC, shall mention how such prospectuses have been made available and where they can be obtained.

CHAPTER III

ADVERTISEMENTS

Article 11

Dissemination of advertisements

1. Where an advertisement relating to an offer to the public or an admission to trading on a regulated market has been disseminated, and a supplement to the prospectus is subsequently published, due to the arising or noting of a significant new factor, material mistake or inaccuracy relating to the information included in the prospectus, an amended advertisement shall be disseminated if the significant new factor, material mistake or inaccuracy relating to the information included in the prospectus renders the contents of the previously disseminated advertisement inaccurate or misleading.

2. An amended advertisement shall make reference to the previous advertisement, specifying that the previous advertisement has been amended due to it containing inaccurate or misleading information and specifying the differences between the two versions of the advertisement.

3. An amended advertisement shall be disseminated without undue delay following the publication of the supplement. With the exception of orally disseminated advertisements, an amended advertisement shall be disseminated, at a minimum, through the same means as the original advertisement.

The obligation to amend an advertisement shall not apply after the final closing of the offer to the public or after the time when trading on a regulated market begins, whichever occurs later.

4. Where no prospectus is required in accordance with Directive 2003/71/EC, any advertisement shall include a warning to that effect unless the issuer, offerer or person asking for admission to trading on a regulated market chooses to publish a prospectus which complies with Directive 2003/71/EC, Regulation (EC) No 809/2004 and this Regulation.

Article 12

Consistency for the purposes of Article 15(4) of Directive 2003/71/EC

Information disclosed in an oral or written form about the offer to the public or admission to trading on a regulated market, whether for advertisement or other purposes, shall not:

(a) contradict the information contained in the prospectus;

(b) refer to information which contradicts that contained in the prospectus;

(c) present a materially unbalanced view of the information contained in the prospectus, including by way of omission or presentation of negative aspects of such information with less prominence than the positive aspects;

(d) contain alternative performance measures concerning the issuer, unless they are contained in the prospectus.

For the purposes of points (a) to (d), information contained in the prospectus shall consist of information included in the prospectus, where already published, or information to be included in the prospectus, where the prospectus is published at a later date.

For the purposes of point (d), alternative performance measures shall consist of performance measures which are financial measures of historical or future financial performance, financial position, or cash flows, other than financial measures defined in the applicable financial reporting framework.

CHAPTER IV

FINAL PROVISIONS

Articles 13

Amendments to Regulation (EC) No 809/2004

Regulation (EC) No 809/2004 is amended as follows:

1. in Article 1, paragraphs 5 and 6 are deleted;

2. Articles 29 to 34 are deleted.

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, 30 November 2015.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2016/302

of 25 February 2016

concerning the classification of certain goods in the Combined Nomenclature

THE EUROPEAN COMMISSION,

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

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

Whereas:

(1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.

(2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific provisions of the Union, with a view to the application of tariff and other measures relating to trade in goods.

(3) Pursuant to those general rules, the goods described in column (1) of the table set out in the Annex should be classified under the CN code indicated in column (2), by virtue of the reasons set out in column (3) of that table.

(4) It is appropriate to provide that binding tariff information issued in respect of the goods concerned by this Regulation which does not conform to this Regulation may, for a certain period, continue to be invoked by the holder in accordance with Article 12(6) of Council Regulation (EEC) No 2913/92 [2]. That period should be set at 3 months.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

Binding tariff information which does not conform to this Regulation may continue to be invoked in accordance with Article 12(6) of Regulation (EEC) No 2913/92 for a period of 3 months from the date of entry into force of this Regulation.

[1] OJ L 256, 7.9.1987, p. 1.
[2] Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

Article 3

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

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

Done at Brussels, 25 February 2016.

For the Commission,
On behalf of the President,
Stephen QUEST
Director-General for Taxation and Customs Union

ANNEX

Description of the goods	Classification (CN code)	Reasons
(1)	(2)	(3)
An article in the form of a plastic drawing board measuring approximately 31 cm × 32 cm, with a bright layered plastic magnetic surface for drawing and erasing. The surface is surrounded and held by a plastic frame. There is a drawing pen made of plastics with a metal tip attached by a string to the board which is pressed on the surface and produces pictures, letters, etc. using the magnetic property of the surface. There are four small magnetic stamps made of plastics loosely laid in the plastic frame, with which figures can be stamped on the surface. The erasing function works by lifting the upper layer of the plastics; the mechanism for lifting the upper layer is built-in at the bottom of the drawing board and disconnects the magnetic function. The article is designed for the entertainment of children. See image (*).	9503 00 95	Classification is determined by general rules 1, 3(a), 3(b) and 6 for the interpretation of the Combined Nomenclature (GIR) and by the wording of CN codes 9503 00 and 9503 00 95. Classification as a slate or board, with writing or drawing surfaces under heading 9610 is excluded, as the article is not to be used for writing or drawing with slate pencils, chalks, felt or fibre-tipped markers (see also the Harmonized System Explanatory Notes (HSEN) to heading 9610). The article has the characteristics of a toy of heading 9503. As heading 9503 provides the most specific description, classification under heading 3926 as other articles of plastics is also excluded. The article is a composite article within the meaning of GIR 3(b). It consists of plastics and a magnetic surface, which together form a whole (see also the HSEN to GIR 3(b), (IX)). The frame and surface are made of plastics. The plastic components dominate and give the article its essential character within the meaning of GIR 3(b). Consequently, the article is to be classified under CN code 9503 00 95 as other toys of plastics.

(*) The image is purely for information.

COMMISSION IMPLEMENTING REGULATION (EU) 2016/303

of 1 March 2016

entering a name in the register of protected designations of origin and protected geographical indications (Pane Toscano (PDO))

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [1], and in particular Article 52(3)(b) thereof,

Whereas:

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

(2) By the notice of opposition of 12 November 2013 and the reasoned statement of opposition of 10 December 2013, the United Kingdom opposed the registration under Article 51(2) of Regulation (EU) No 1151/2012. By the notice of opposition of 12 November 2013, registered in the mail register of the Commission on 19 November 2013, Belgium opposed the registration under Article 51(2) of Regulation (EU) No 1151/2012. The notice of opposition sent by Belgium already included all the elements of a reasoned statement of opposition. By letter of 15 January 2014, Belgium sent a more extensive reasoned statement of opposition under Article 51(2) of Regulation (EU) No 1151/2012. The two oppositions were deemed admissible.

(3) By letters dated 24 January 2014 and 13 February 2014, the Commission invited Italy and the United Kingdom on one side and Italy and Belgium on the other side to engage in appropriate consultations to seek agreement among themselves in accordance with their internal procedures.

(4) No agreement was reached between the parties.

(5) Given that no agreement was reached, the Commission should adopt a decision in accordance with the procedure referred to in Article 52(3)(b) of Regulation (EU) No 1151/2012.

(6) In accordance with Article 10(1)(a) and (d) of Regulation (EU) No 1151/2012, the opponents alleged that the registration of 'Pane Toscano' as a protected designation of origin is contrary to Articles 5 and 7(1) of Regulation (EU) No 1151/2012 and that the name 'Pane Toscano' is generic.

(7) The opponents claim that the soft wheat harvested in Tuscany consists of varieties that are commonly grown in most parts of the country. These varieties cannot be considered as indigenous varieties or specific Tuscan varieties. The processing of the grain to obtain the wholegrain flour type '0' that takes place in the defined geographical area is typically similar to the one that takes place everywhere in Italy and in Europe in general. Since the blending of various qualities of soft wheat is necessary to achieve the right mix suited to the intended use of the required flour, it is the flour's technical characteristics that characterise the product rather than the origin of the soft wheat. The technical characteristics of type '0' soft-wheat wholegrain flour whose use is mandatory in the production of 'Pane Toscano', are generic and not specific to Tuscany. The application is in contradiction in point 5.2 where it is argued that the high nutritional value and digestibility of the product is due to the use of a mixture of flours, while point 3.3 had specified the use of only one specific type '0' soft-wheat wholegrain flour. The application did not demonstrate the causal link between the geographical area and the quality or characteristics of the product. This is confirmed by the circumstance that the single document is

[1] OJ L 343, 14.12.2012, p. 1.
[2] OJ C 235, 14.8.2013, p. 19.

obliged to refer to the 'profound knowledge' of the 'bakers' craft', seen as 'the most important' in a 'context of various interacting elements'. The storage of flour at the mill for a suitable period of time to ensure the process of so-called 'maturazione' is not specific. This is common practice widely used throughout the European Union. The proposed name for registration 'Pane Toscano' is commonly used throughout Tuscany for several types of bread, which are presumably not produced according to the process defined in the application. In addition, in Italy, 'Pane Toscano' is deemed synonymous with bread without salt.

(8) In the follow-up of the opposition procedure, the opponents also alleged that the product specification should have included rules on the origin of the seeds, and that the influence of the temperature on the characteristics of the flours, as claimed by the applicant, is not proven by any scientific evidence.

(9) Despite the abovementioned allegations submitted by the opponents, it is appropriate to register the name 'Pane Toscano' as a protected designation of origin for the following reasons.

(10) The name to be registered refers to the product 'bread' and not to flour or wheat. It is therefore the product 'bread' that is to be focused on, in order to verify whether it possesses the quality or characteristics essentially or exclusively due to a particular geographical environment with its inherent natural and human factors.

(11) The qualities and characteristics of the product named 'Pane Toscano' essentially due to the particular geographical environment are exhaustively described in the single document and in the product specification: its keeping qualities, its aroma of roasted hazelnuts, the 'neutral', i.e. unsalted, flavour of its crumb, its crunchy crust, its crumb's irregular holes and white-to-ivory colour, its high nutritional value and digestibility due to the use of a mixture of different varieties of wheat low in gluten and with the nutritional value of the flour naturally containing the original wheat germ (unlike today's normal practice of adding the wheat germ during processing), and to the historic absence of salt in its ingredients.

(12) These specific qualities and characteristics are essentially due to the natural and human factors prevailing in the geographical environment of the defined geographical area.

(13) As indicated by the applicant, the link between the geographical area and the quality and product characteristics of 'Pane Toscano' PDO is inherent in the long time taken to process the bread, which allows the sourdough to extract from the unsalted wheat germ including flour the components which, when the bread is baked, give it its typical flavour, appearance and keeping qualities. The wheat germ, naturally present in the flour following the milling process described in detail in the product specification, influences at the same time the nutritional value of 'Pane Toscano' and the raising process, the wheat germ being rich in enzymes which help break down the compound sugars. The knowledgeable use of sourdough creates the conditions for lactic-acid fermentation, resulting in compounds which, during baking, give the bread its typical aroma and flavour. In particular, the sourdough starter must interact with flours with precise characteristics set out in the product specification (low hardness, low W value and medium P/L value). Due to a significant climatic specificity, such characteristics are found in flours made with wheat varieties grown in Tuscany rather than in neighbouring areas. The non-use of salt influences the fermentation processes and it also clearly characterises the related flavour. In this context of various interacting elements, the bakers' craft and knowledge, as regards in particular the quality parameters, the preparation of the sourdough and the raising and baking phases, is of the utmost importance. Human and natural factors are deeply interlinked and combined in a dynamic structure that globally constitutes the link between the area and the qualities of the product.

(14) Against this picture submitted by the applicant, the opponents developed an unconvincing reasoning, which is not liable to undermine the soundness of the application.

(15) The fact that the varieties of soft wheat used to produce the product named 'Pane Toscano' are not specific to Tuscany and are found in other Italian and European regions is not relevant. The wheat varieties admitted for the production of 'Pane Toscano' are not mentioned in the product specification as an element of specificity in themselves. Several wheat varieties allowed to be used for making the flour for the 'Pane Toscano' have, in fact, their origin in Tuscany, but this is not the crucial issue. The product specification and the single document explain that the most important element is the impact of the environment on the wheat. While sharing the same genetic heritage, wheat varieties develop specific characteristics because of the influence of climatic conditions. The same varieties grown in other areas, even those neighbouring Tuscany, do not have the same commercial

and technical parameters necessary to produce 'Pane Toscano'. In the specific case, the Tuscan phenotypes of these wheat varieties, due to the action of climate conditions and in particular with reference to the minimal temperatures, result in flours having specific parameters (the hardness, the W value and the P/L value) that are suitable for the production of 'Pane Toscano'.

(16) In the light of the above, also the observation that the technical characteristics of the soft-wheat flour required for the production of 'Pane Toscano', which is not wholegrain flour — as stated by the opponents — but just flour including wheat germ, are generic, proves baseless.

(17) The definition of a protected designation of origin does not require the product to be produced via a process which is specific to the defined geographical area. Therefore, the mill processing of the grain to obtain the flour and the storage of flour at the mill cannot be challenged in this respect. They are described in the product specification because it is necessary to put the producers in the position to be aware of the concrete details concerning these processes. In any event, in this specific case, the milling process has a specific character since it contributes to one of the main qualities of the final product allowing the maintaining of the original wheat germ in the flour.

(18) The rule on the blending of the wheat varieties to achieve the appropriate mix required for the production of 'Pane Toscano' does not challenge the importance of the origin of the wheat. In contrast, it can be taken as a confirmation that varieties are not relevant in themselves. In addition, the knowledge in variety blending is to be qualified as human factor being part of the geographical environment.

(19) There is no contradiction in point 5.2 of the single document: the words 'due to the use of a mixture of flours low in gluten' are to be read as 'due to the use of a mixture of wheat varieties', as clearly can be deduced from global reading of both the single document and the product specification and in particular from point 5.1 of the latter.

(20) It is not accurate that the bakers' craft and knowledge is defined as 'the most important' element of the link. It is actually a translation mistake in the English version of the single document. The single document states that in the context of various interacting elements, bakers' craft is of crucial importance. It cannot be challenged that the high importance of the human factor as a component of the link among the qualities of a product covered by a protected designation of origin and its defined geographical area is in line with Article 5 of Regulation (EU) No 1151/2012.

(21) The allegation that the proposed name 'Pane Toscano' is commonly used throughout Tuscany for several types of bread which are presumably not produced according to the process defined in the application is groundless. The fact that a name for which an application for registration is submitted is found to be used with reference to products that are not covered by the rules included in the proposed product specification does not prevent the registration of that name. The purpose of the registration may lawfully be the harmonisation of the methods of production of the product marketed under a certain name. The allegation that, in Italy, the name 'Pane Toscano' is synonymous with bread without salt is not supported by any evidence. In addition, it is to be noted that no opposition was lodged against the registration of the name 'Pane Toscano' as a protected designation of origin during the national opposition procedure.

(22) The need of rules on origin of seeds is not sufficiently reasoned. The conclusions on the influence of the temperature on the characteristics of the wheat grown in Tuscany result from a study on climate effects based on statistical data collected in a period of 29 years. The opponents did not give positive evidence liable to refute that study.

(23) In the light of the above, the name 'Pane Toscano' should be entered in the Register of protected designations of origin and protected geographical indications.

(24) The measures provided for in this Regulation are in accordance with the opinion of the Agricultural Product Quality Policy Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Pane Toscano' (PDO) is registered.

The name in the first paragraph identifies a product from Class 2.3 Bread, pastry, cakes, confectionery, biscuits and other baker's wares of Annex XI of Commission Implementing Regulation (EU) No 668/2014 ([1]).

Article 2

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

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

Done at Brussels, 1 March 2016.

For the Commission
The President
Jean-Claude JUNCKER

([1]) Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

COMMISSION IMPLEMENTING REGULATION (EU) 2016/304

of 2 March 2016

entering a name in the register of traditional specialities guaranteed (Heumilch/Haymilk/Latte fieno/Lait de foin/Leche de heno (TSG))

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [1], and in particular Article 15(1) and Article 52(3)(a) thereof,

Whereas:

(1) Pursuant to Article 50(2)(b) of Regulation (EU) No 1151/2012, the application from Austria to register the names 'Heumilch'/'Haymilk'/'Latte fieno'/'Lait de foin'/'Leche de heno' was published in the *Official Journal of the European Union* [2].

(2) On 17 December 2014, the Commission received three notices of opposition from Germany (lodged by Naturland — Verband für ökologischen Landbau e.V., Gläeserne Molkerei GmbH and Bauernverband Mecklenburg-Vorpommern e.V.) which contained also the respective reasoned statements of opposition. On 30 December 2014, a notice of opposition was lodged directly to the Commission by the German association VHM (Verband für handwerkliche Milchverarbeitung im ökologischen Landbau e.V.). On 5 January 2015 Germany sent to the Commission another notice of opposition (lodged by Deutsche Heumilchgesellschaft mbH).

(3) The opposition procedure based on the notice sent directly to the Commission by VHM was not initiated. According to Article 51(1), second subparagraph, of Regulation (EU) No 1151/2012, natural or legal persons having a legitimate interest, established or resident in a Member State other than that from which the application was submitted, may lodge a notice of opposition with the Member State in which it is established. Therefore, VHM was not allowed to lodge a notice or a statement of opposition directly to the Commission.

(4) The opposition procedure based on the notice sent by Germany on 5 January 2015 was not initiated. According to Article 51(1), first subparagraph, of Regulation (EU) No 1151/2012, the lodging of a notice of opposition should be made within three months from the date of publication in the *Official Journal of the European Union*. The notice of opposition received on 5 January 2015 exceeded this deadline.

(5) The Commission examined the three oppositions sent by Germany on 17 December 2014 and found them admissible. By letter of 19 February 2015 it therefore invited the interested parties to engage in appropriate consultations to seek agreement among themselves in accordance with their internal procedures.

(6) The opposition based on the notice sent by Germany on 17 December 2014 with reference to the opposition lodged by Naturland — Verband für ökologischen Landbau e.V. was withdrawn.

(7) The deadline for consultation was extended for three additional months.

(8) Austria and Germany reached an agreement, which was notified to the Commission on 10 August 2015.

(9) As it complies with the provisions of Regulation (EU) No 1151/2012 and Union legislation, the content of the agreement concluded between Austria and Germany should be taken into account.

[1] OJ L 343, 14.12.2012, p. 1.
[2] OJ C 340, 30.9.2014, p. 6.

(10) Some details in the product specification have been modified. They concern the possibility to separate producer holdings into separate units, the inclusion of auxiliary forms of feed in the 75 % compulsory roughage to be calculated as an annual average, the permission to use green compost for fertilisation and a mitigation of the conditions for the production of moist hay, fermented hay and for the production and storage of silage.

(11) These elements do not constitute substantial amendments under Article 51(4) of Regulation (EU) No 1151/2012. Therefore, the modified product specification should not be published for opposition. It should be, however, annexed to this Regulation for due information.

(12) The agreement reached by the concerned parties also concludes that a two-year transitional period should be granted to the current producers of products bearing the names 'Heumilch'/'Haymilk'/'Latte fieno'/'Lait de foin'/'Leche de heno' in order to let them progressively conform to the product specification. In addition, the products not yet marketed at that date should be allowed to be put on the market until the stocks are exhausted.

(13) The Commission considers that the protection of traditional specialities guaranteed should be modulated taking into account the interest of producers and operators who have been lawfully using such names so far. Therefore, taking into account the abovementioned conclusions agreed by the parties and the objectives of Regulation (EU) No 1151/2012, on the basis of Article 15(1) of Regulation (EU) No 1151/2012, applicable by analogy also to traditional specialities guaranteed, a transitional period of two years for the producers to use the names 'Heumilch'/'Haymilk'/'Latte fieno'/'Lait de foin'/'Leche de heno' without complying with the product specification, combined with the authorisation to continue, after the two-year period has expired, to put on the market products not complying with the product specification until the stocks are exhausted, should be granted with the view to allowing progressive adaptation to the product specification. Such products should however not be marketed accompanied by the indication 'traditional speciality guaranteed', the abbreviation 'TSG' nor the associated Union symbol.

(14) In the light of the above, the names 'Heumilch'/'Haymilk'/'Latte fieno'/'Lait de foin'/'Leche de heno' should be entered in the 'register of traditional specialities guaranteed'.

(15) The measures provided for in this Regulation are in accordance with the opinion of the Agricultural Product Quality Policy Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The names 'Heumilch'/'Haymilk'/'Latte fieno'/'Lait de foin'/'Leche de heno' (TSG) are registered.

The names in the first paragraph identify a product from Class 1.4 Other products of animal origin (eggs, honey, various dairy products except butter, etc.) set out in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ([1]).

Article 2

The consolidated product specification is set out in the Annex to this Regulation.

([1]) Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

Article 3

The names 'Heumilch'/'Haymilk'/'Latte fieno'/'Lait de foin'/'Leche de heno' may be used to designate products not complying with the product specification for 'Heumilch'/'Haymilk'/'Latte fieno'/'Lait de foin'/'Leche de heno' for a period of two years from the date of entry into force of this Regulation. When used with reference to products not complying with the product specification such names may not be accompanied by the indication 'traditional speciality guaranteed', the abbreviation 'TSG' or by the associated Union symbol.

After the expiration of the two years period, the producers of 'Heumilch'/'Haymilk'/'Latte fieno'/'Lait de foin'/'Leche de heno' shall be authorised to continue to put on the market products bearing these names, made prior to the end of such period and not complying with the product specification referred to in Article 2, until the stocks are exhausted.

Article 4

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 March 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

APPLICATION FOR REGISTRATION OF A TSG

Council Regulation (EC) No 509/2006 of 20 March 2006 on agricultural products and foodstuffs as traditional specialities guaranteed (*)

'HEUMILCH'/'HAYMILK'/'LATTE FIENO'/'LAIT DE FOIN'/'LECHE DE HENO'

EC No: AT-TSG-0007-01035 — 27.8.2012

1. **Name and address of the applicant group**

Name: ARGE Heumilch Österreich

Address: Grabenweg 68, 6020 Innsbruck, AUSTRIA

Telephone: +43 512345245

E-mail: office@heumilch.at

2. **Member state or third country**

Austria

3. **Product specification**

3.1. *Names to be registered*

'Heumilch' (de); 'Haymilk' (en); 'Latte fieno' (it); 'Lait de foin' (fr); 'Leche de heno' (es)

3.2. *Whether the name*

☐ is specific in itself

☒ expresses the specific character of the agricultural product or foodstuff

Haymilk production is the most natural form of milk production. The milk comes from animals on traditional, sustainable dairy farms. The key difference between standard milk and haymilk, and haymilk's traditional character, stems from the fact that as in the earliest form of milk production, animals are not fed fermented fodder. Since the 1960s, and due to mechanisation, the industrialisation of farming has increasingly relied upon the production of silage (fermented fodder), thus reducing fresh-fodder farming. Moreover, regulations forbid the use of animals and feed which are to be identified as 'genetically modified' under prevailing legislation.

The feeding procedure is adapted to match seasonal changes: in the 'green-feeding period', animals are fed fresh grass and foliage and some hay and forms of feed permitted under point 3.6; in the winter period, animals are fed hay, or other forms of feed permitted under point 3.6.

3.3. *Whether reservation of the name is sought under Article 13(2) of Regulation (EC) No 509/2006*

☒ Registration, with reservation of the name

☐ Registration without reservation of the name

3.4. *Type of product*

Class 1.4 Other products of animal origin

(*) OJ L 93, 31.3.2006, p. 1. Replaced by Regulation (EU) No 1151/2012.

3.5. *Description of the agricultural product or foodstuff to which the name under point 3.1 applies*

Cow's milk in accordance with the applicable legislation.

3.6. *Description of the production method of the agricultural product or foodstuff to which the name under point 3.1 applies*

Haymilk is produced according to traditional production conditions that comply with the 'Heumilchregulativ' (regulations on haymilk production). This form of milk is distinguished by rules forbidding the use of fermented fodder, such as silage, and rules forbidding the use of animals and feed which are to be identified as 'genetically modified' under prevailing legislation.

'Heumilchregulativ'

'Haymilk' is a form of cow's milk extracted from lactating cows, produced by dairy farmers who have undertaken to comply with the following criteria. In order to preserve the traditional production of haymilk, no animals or feed which are to be identified as 'genetically modified' under prevailing legislation may be used.

The entire agricultural holding must be managed according to the rules of haymilk production.

(a) A holding can however be divided into clearly defined production units, which do not all have to be managed according to these rules. They must be divided according to distinct production sectors.

(b) If, pursuant to point (a), not all units of the holding are managed according to the rules of haymilk production, the operator must keep the animals used in haymilk production units separate from the animals used in the other units, and keep appropriate records to show the separation.

Permitted types of feed

— The animals are mainly fed fresh grass, leguminous plants and foliage during the 'green-feeding period', and hay in the winter period.

— The following are included and permitted as further roughage: green rapeseed, green maize, green rye and fodder beets, as well as hay, lucerne and maize pellets and similar types of feed.

— Roughage must make up at least 75 % of the yearly ration of dry feed.

— The following cereal crops are also permitted, in their conventional marketed form and in composites with bran, pellets, etc.: wheat, barley, oats, triticale, rye and maize.

— The following may also be used as feed: beans, field peas, lupins, oleaginous fruits, and extraction meal or cakes.

Forbidden types of feed

— The following types of feed are prohibited: silage (fermented fodder), moist hay and fermented hay.

— Animals may not be fed by-products from breweries, distilleries, fruit pressing, or other by-products from the food industry, such as wet brewer's grains or wet cuttings. Exception: dry cuttings and molasses as a by-product of sugar manufacturing, and dry protein feed produced during grain processing.

— Lactating animals may not be fed any form of wet fodder.

— Animals may not be fed products of animal origin (milk, whey, meat-and-bone meal, etc.), except for young cows, which may be fed milk and whey.

— Animals may not be fed garden waste, fallen fruit, potatoes or urea.

Fertilisation conditions

— The use of sewage sludge, sewage sludge products, or compost from municipal treatment plants, with the exception of green compost, is prohibited on all areas agriculturally exploited by the milk supplier.

— Milk suppliers must wait at least three weeks after manure spreading before use of land to graze livestock.

Use of chemical auxiliary substances

— Only the selective use of synthetic chemical pesticides under the expert supervision of agronomic specialists, and the targeting of specific sites in any of the green fodder areas of the dairy farm is permitted.

— Permitted fly sprays may be used in dairy stalls only when the lactating cows are absent.

Delivery prohibitions

— Milk may not be delivered as 'haymilk' within ten days after calving.

— When cows that have been fed silage (fermented fodder) are used, there must be a waiting period of least 14 days.

— As regards alpine animals on their farms which have been fed silage (fermented fodder), either they must be fed silage-free food for 14 days before they are driven up to alpine pastures, or their milk can be classed as 'haymilk' only once they have spent 14 days on alpine pastures (owned by the haymilk supplier). No silage may be produced or used as feed on the alpine pasture.

Prohibition of genetically modified food and feed

— In order to preserve the traditional production of haymilk, no animals or feed which are to be identified as 'genetically modified' under prevailing legislation may be used.

Other regulations

— No silage (fermented fodder) may be produced or stored.

— No film-wrapped round bales of any type may be produced or stored.

— No moist hay or fermented hay may be produced.

3.7. *Specific character of the agricultural product or foodstuff*

Haymilk is different from standard cow's milk on account of its special production conditions pursuant to point 3.6 of the 'Heumilchregulativ'.

Studies by Dr Ginzinger et al. of the Bundesanstalt für alpenländische Milchwirtschaft (Federal Agency for alpine dairy farming) in Rotholz, in 1995 and 2001, showed that 65 % of the silage-milk samples analysed had over 1 000 clostridia spores per litre. Analysis of milk delivered to a large cheese manufacturer showed that 52 % of the samples had over 10 000 clostridia spores per litre. Studies showed that 85 % of the silage-free haymilk samples analysed had less than 200 spores per litre, and 15 % of the samples contained between 200 and 300 spores per litre. Haymilk has a particularly low level of clostridia spores on account of special feeding methods. When hard cheese is manufactured from raw haymilk, there are fewer major problems regarding holes and flavour.

As part of the research project on 'the influence of silage on milk quality', the taste of milk from animals that had and had not been fed on silage was analysed (Ginzinger and Tschager, Bundesanstalt für alpenländische Milchwirtschaft, Rotholz, 1993). 77 % of the examined milk samples from hay-fed animals did not have taste problems. As regards milk samples from silage-fed animals (standard milk), only 29 % of the sampled milk was free from taste problems. There was also a significant difference between tests on milk from delivery lorry tanks. 94 % of the tests on silage-free haymilk had no taste problems. However, the proportion of silage-milk samples free from taste problems was only 45 %.

A thesis study at the University of Vienna (by Schreiner, Seiz and Ginzinger, 2011) proved that haymilk has approximately double the content of omega-3 fatty acids and conjugated linoleic acids when compared to standard milk, on account of the feeding based on roughage and pasture associated with that form of milk.

3.8. *Traditional character of the agricultural product or foodstuff*

Haymilk production and processing is as old as the tradition of dairy farming (dating back to around the 5th century BCE). In the Middle Ages, in the foothills of the Alps and the Tyrolean mountains, cheese was already being produced from haymilk on 'Schwaighöfen' (small-scale Alpine dairy farms). The word 'Schwaig' comes from Middle High German and denotes a special form of settlement and, in particular, farming in the Alpine region. 'Schwaighof' farms were often established as permanent settlements by land-owners and their cattle stock was primarily used for dairy farming (particularly for cheese production). They have existed in the Tyrol and Salzburg since the twelfth century. In the mountainous areas, haymilk was originally linked to the production of hard cheese from raw milk. As early as around 1900, laws (milk regulations) were already passed regarding silage-free milk suitable for the production of hard cheese. In Austria, such laws formed the basis of the 'Milchregulative' (milk regulations) of the provinces of Vorarlberg, the Tyrol and Salzburg around 1950. In 1975 these 'Milchregulative' were streamlined and defined as the prerequisites for milk suitable for the production of hard cheese by the Austrian dairy farming body (see: '*Bestimmungen über die Übernahme von hartkäsetauglicher Milch*' (rules on milk suitable for producing hard cheese), Österreichische Milchwirtschaft Heft 14, Beilage 6 Nr. 23c, 21.7.1975). The former dairy farming authority in Austria regulated certain production areas known as 'silage-free zones' up until 1993, in order to preserve the raw material 'haymilk' (also known as 'silage-free milk' and 'milk suitable for the production of hard cheese') for cheese manufacturers reliant on raw milk. In 1995, the silage-free zone for haymilk was further protected by the Federal Ministry of Agriculture, Forestry, Water and Environment Management in its 'non-use of silage measure', contained in the 'special guidelines to promote an environmentally friendly, extensive form of agriculture that protects natural living space' (the Austrian programme for environmentally friendly agriculture, known as 'ÖPUL').

In alpine regions animals have always traditionally been fed according to the haymilk criteria. There are documents and certificates dating from 1544 charting alpine cheese production for the Wildschönauer Holzalm alpine pasture in the Tyrol.

Since the start of the 1980s, some haymilk farmers have also been farming according to organic/ecological criteria.

3.9. *Minimum requirements and procedures to check the specific character*

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4. Authorities or bodies verifying compliance with the product specification

4.1. *Name and address*

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4.2. *Specific tasks of the authority or body*

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COMMISSION IMPLEMENTING REGULATION (EU) 2016/305

of 3 March 2016

amending Regulation (EU) No 37/2010 as regards the substance 'gentamicin'

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and the Council ([1]), and in particular Article 14 in conjunction with Article 17 thereof,

Having regard to the opinion of the European Medicines Agency formulated by the Committee for Medicinal Products for Veterinary Use,

Whereas:

(1) Article 17 of Regulation (EC) No 470/2009 requires that the maximum residue limit (hereinafter 'MRL') for pharmacologically active substances intended for use in the Union in veterinary medicinal products for food-producing animals or in biocidal products used in animal husbandry is established in a Regulation.

(2) Table 1 of the Annex to Commission Regulation (EU) No 37/2010 ([2]) sets out the pharmacologically active substances and their classification regarding MRLs in foodstuffs of animal origin.

(3) Gentamicin is already included in that table as an allowed substance, for bovine and porcine species, applicable to muscle, fat, liver and kidney, and in bovine milk.

(4) In accordance with Article 27(2) of Regulation (EC) No 470/2009, the Commission submitted to the European Medicines Agency (hereinafter 'EMA') a request for extrapolation of the existing MRLs for gentamicin to other species or tissues.

(5) The EMA, based on the opinion of the Committee for Medicinal Products for Veterinary Use, has recommended the extrapolation of the MRLs for gentamicin to all mammalian food producing species and fin fish.

(6) Regulation (EU) No 37/2010 should therefore be amended accordingly.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Veterinary Medicinal Products,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EU) No 37/2010 is amended as set out in the Annex to this Regulation.

([1]) OJ L 152, 16.6.2009, p. 11.
([2]) Commission Regulation (EU) No 37/2010 of 22 December 2009 on pharmacologically active substances and their classification regarding maximum residue limits in foodstuffs of animal origin (OJ L 15, 20.1.2010, p. 1).

Article 2

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

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

Done at Brussels, 3 March 2016.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

In Table 1 of the Annex to Regulation (EU) No 37/2010, the entry for the substance 'gentamicin' is replaced by the following:

Pharmacologically active Substance	Marker residue	Animal Species	MRLs	Target Tissues	Other Provisions (according to Article 14(7) of Regulation (EC) No 470/2009)	Therapeutic Classification
'Gentamicin	Sum of gentamicin C1, gentamicin C1a, gentamicin C2 and gentamicin C2a	All mammalian food producing species and fin fish	50 µg/kg 50 µg/kg 200 µg/kg 750 µg/kg 100 µg/kg	Muscle Fat Liver Kidney Milk	For fin fish the muscle MRL relates to "muscle and skin in natural proportions" For porcine species the fat relates to "skin and fat in natural proportions"	Anti-infectious agents/ Antibiotics'

COMMISSION IMPLEMENTING REGULATION (EU) 2016/306

of 3 March 2016

amending Implementing Regulation (EU) No 1283/2014 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the Republic of Korea and Malaysia following an interim review pursuant to Article 11(3) of Council Regulation (EC) No 1225/2009

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE

1.1. Previous investigations and existing anti-dumping measures

(1) The anti-dumping measures in force on imports of certain tube and pipe fittings originating, inter alia, in the Republic of Korea were imposed by Council Regulation (EC) No 1514/2002 ([2]) ('the original investigation' and 'the original measures').

(2) In October 2008, these measures were extended by Council Regulation (EC) No 1001/2008 ([3]) following an expiry review pursuant to Article 11(2) of the basic Regulation.

(3) In December 2014, the measures were further extended by Commission Implementing Regulation (EU) No 1283/2014 ([4]) following a second expiry review pursuant to Article 11(2) of the basic Regulation ('the measures in force').

(4) The anti-dumping duty currently applicable to exports from all companies in the Republic of Korea is 44 %, based on the injury margin determined in the original investigation.

1.2. Request for a partial interim review

(5) In January 2015, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation. The request is limited in scope to the examination of dumping as far as TK Corporation, a Korean exporting producer, is concerned and it was lodged by that exporting producer. In its request, the exporting producer claimed that the circumstances on the basis of which measures were imposed have changed and that these changes are of a lasting nature. The exporting producer provided prima facie evidence that the continued imposition of the measure at its current level was no longer necessary to offset injurious dumping.

1.3. Initiation of a partial interim review

(6) Having determined, after informing the Member States, that sufficient evidence existed to justify the initiation of a partial interim review limited to the examination of dumping as far as the exporting producer is concerned, the Commission announced by a notice published on 18 February 2015 in the *Official Journal of the European Union* ([5]) ('the Notice of Initiation') the initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of dumping in respect of the exporting producer.

([1]) OJ L 343, 22.12.2009, p. 51.
([2]) OJ L 228, 24.8.2002, p. 1.
([3]) OJ L 275, 16.10.2008, p. 18 as last amended by Implementing Regulation (EU) No 363/2010 (OJ L 107, 29.4.2010, p. 1).
([4]) OJ L 347, 3.12.2014, p. 17.
([5]) OJ C 58, 18.2.2015, p. 9.

(7) The Commission officially informed the exporting producer, the authorities of the exporting country and the Union industry of the initiation of the partial interim review investigation. Interested parties were given the opportunity to make their views known in writing and to be heard.

1.4. **Investigation**

(8) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to the exporting producer and received a reply within the deadline set for that purpose.

(9) The Commission sought and verified all information it deemed necessary for the determination of dumping. A verification visit was carried out at the premises of the exporting producer.

1.5. **Review investigation period**

(10) The investigation of the level of dumping covered the period from 1 January 2014 to 31 December 2014 ('the review investigation period').

(11) In addition to those data, the exporting producer also provided cost and sales data for 2013 and proposed extending the review investigation period by adding the year 2013 to increase the representativeness of its sales volumes to the Union. However, the Commission established that adding 2013 Union sales would not increase the representativeness in terms of volume (as compared to overall sales or production volume) or types of sales (see recital 29 below). Therefore, the Commission had no sufficient reason to deviate from the usual 12-month period to serve as a review investigation period for a representative finding with regard to dumping.

(12) Following final disclosure, the exporting producer reiterated its claim that 2013 should be added to the review investigation period to increase its representativeness. It argued that comparisons with factors such as total production volume were not relevant and that by adding 2013 to the review investigation period it became more representative in terms of additional product types, sales volume and turnover.

(13) The basic Regulation does not specifically state how the representativeness of the review investigation period should be measured. In this case, the volumes allegedly sold by the exporting producer on the Union market during 2013 were less than half of the volumes allegedly sold on the Union market during the review investigation period, whereas its total sales and production volumes were in the same range for both years. It is thus clear in this case that in relative terms the addition of 2013 would decrease the representativeness of the exporting producer's Union sales whereas in absolute terms it would only provide limited improvement.

(14) Therefore, the Commission confirms that there is no valid justification for extending the review investigation period beyond the one-year period usually applied by the Commission.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(15) The product under review is tube and pipe fittings (other than cast fittings, flanges and threaded fittings), of iron or steel (not including stainless steel), with a greatest external diameter not exceeding 609,6 mm, of a kind used for butt-welding or other purposes, originating in the Republic of Korea, currently falling within CN codes ex 7307 93 11, ex 7307 93 19 and ex 7307 99 80 ('the product concerned').

2.2. **Like product**

(16) The review investigation confirmed that the product produced by the exporting producer, sold domestically and exported to the Union and other export markets, has the same basic physical, technical and chemical characteristics and basic uses as the products sold in the Union by the Union industry.

(17) The Commission decided that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

3. **DUMPING**

(a) *Normal value*

(18) The Commission first examined whether the total volume of domestic sales for the exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product concerned to the Union during the investigation period. On this basis, the total sales by the exporting producer of the like product on the domestic market were representative.

(19) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union.

(20) The Commission then examined whether the domestic sales by the exporting producer on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union. The Commission established that most product types were representative.

(21) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.

(22) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:

(a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and

(b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.

(23) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the review investigation period.

(24) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the review investigation period, if:

(a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or

(b) the weighted average price of this product type is below the unit cost of production.

(25) The analysis of domestic sales showed that a large majority of all domestic sales were profitable and that the weighted average sales price was higher than the cost of production. Accordingly, the normal value was calculated as a weighted average of the profitable sales only.

(26) Where there were no or insufficient sales of a product type of the like product in the ordinary course of trade, or where a product type was not sold in representative quantities on the domestic market, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.

(27) Normal value was constructed by adding the following to the average cost of production of the like product of the exporting producer during the review investigation period:

(a) the weighted average selling, general and administrative ('SG&A') expenses incurred by the exporting producer on domestic sales of the like product, in the ordinary course of trade, during the review investigation period; and

(b) the weighted average profit realised by the exporting producer on domestic sales of the like product, in the ordinary course of trade, during the review investigation period.

(28) For the product types not sold in representative quantities on the domestic market, the average SG&A expenses and profit of transactions made in the ordinary course of trade on the domestic market for those types were added. For the product types not sold at all on the domestic market, the weighted average SG&A expenses and profit of all transactions made in the ordinary course of trade on the domestic market were added.

(b) *Export price*

(29) In the review investigation period only negligible volumes of the product concerned were sold by the exporting producer to the Union, representing between 0,1 % and 0,3 % of its production volume (range given for reasons of confidentiality). In addition, for a number of transactions the exporting producer could not convincingly demonstrate that the anti-dumping duty had been effectively paid, which casts doubt on whether the goods had been released for free circulation in the Union customs territory. Moreover, those sales were all made to three customers for specific projects with their own specifications for fittings. In addition, the sales were made as a 'package' with other fittings and products that were not product concerned. In this context, the risk of cross-compensation was deemed substantial. For the above reasons, no meaningful analysis of dumping based on Union sales of the product concerned from the exporting producer during the review investigation period could be made.

(30) In the absence of sufficient export volumes to the Union, exports to other third countries were considered for the determination of the export price. It was found that the exporting producer has four major export markets, which together cover over 50 % of the exporting producer's export sales to third countries during the review investigation period. The remainder consists of 39 other export destinations, each accounting for between 0,1 % to 5 % of the exporting producer's export sales. The export prices to these countries vary enormously reflecting the disparate nature of each market. Many of these disparate factors (such as the conditions of competition on each market) are not known. Therefore, it was further analysed whether one of the exporting producer's major export destinations could be used as a proxy for the Union market.

(31) The United Arab Emirates ('UAE') is the largest export market for the exporting producer and accounted for 15 %-18 % of the exporting producer's export sales in weight and 15 %-18 % in value during the review investigation period. However, the UAE does not have domestic producers of the product concerned. It is therefore deemed to be rather different in terms of economic structure compared to the Union market.

(32) As in the expiry review resulting in Regulation (EU) No 1283/2014, it was considered appropriate to analyse the exporting producer's sales to the United States ('US'), which was the exporting producer's second biggest export destination in the review investigation period. The investigation confirmed that the US market is of a similar size to the Union market, with many domestic producers but also with a large proportion of imports. It also confirmed that the US market, in the review investigation period, had low import tariff rates and that no anti-dumping duties were applicable on imports from Korea, making it a very competitive market. Furthermore, the US is indeed a major destination for exports from Korea in general and also for the exporting producer concerned, representing 7 % to 12 % of its production volume and 11 % to 14 % of its export sales during the review investigation period.

(33) Therefore, based on the merits and specificities of this case it was considered that in this particular investigation the US would constitute a reasonable basis for establishing an export price in the absence of sufficient export volumes to the Union. The verified export price of the exporting producer to the US was thus used for establishing an export price, adjusted back to an ex-works level by taking into account, where appropriate, for the costs of, inter alia, transport, duties and taxes.

(34) Following final disclosure, the exporting producer contested that its Union sales transactions could not be used for establishing a representative export price, both on legal and on factual grounds.

(35) Firstly, the exporting producer claimed that the export price can only be considered as unreliable by the Commission if it is established pursuant to Article 2(9) of the basic Regulation that there is an association or compensatory arrangement between the exporting producer and the importer or a third party. In all other cases, the Commission would have to base the calculation of dumping on the (Union) export price and not to do so would entail a breach under Article 2.3 of the WTO Anti-dumping Agreement.

(36) In this regard, the Commission does not agree with the narrow interpretation of Article 2(9) of the basic Regulation, which is not supported by case-law. There is indeed nothing in the provision of Article 2(9) of the basic Regulation that prescribes an investigating authority to rely on unrepresentative volumes of export sales whose level of prices could in any event not be regarded as meaningful given the circumstances explained in recital 29 and further discussed in detail in this section. Therefore, the claims of the exporting producer should be rejected.

(37) Secondly, the exporting producer claimed, from a factual point of view, that its Union sales were not negligible, pointing to the number of transactions, product types and Member States involved in their alleged sales to the Union in 2013 and 2014. However, in the review investigation period only 14 invoices for sales to the Union were issued by the exporting producer. The very low tonnage represented by these alleged Union sales, as mentioned in recital 29 above, was not contested by the exporting producer.

(38) Thirdly, the exporting producer claimed, from a factual point of view, that the fact that its export sales to the Union were for specific projects with their own specifications is not relevant and that it had provided positive evidence that no cross-compensation had taken place. In this respect it should be pointed out that it was stated in the disclosure that the nature of the sales on the Union market meant that there was a risk of cross-compensation with other products, although it is conceded that no evidence was identified to prove or disprove that cross-compensation actually took place during the review investigation period. Bearing in mind that the cross-compensation issue was raised in the disclosure as merely a risk, it was only one of the factors the Commission took into consideration when determining the representativeness of the Union sales (see recital 29).

(39) Fourthly, the exporting producer claimed, from a factual point of view, that the Commission had received evidence that all goods had been released for free circulation on the Union market and that anti-dumping duties were paid or payable.

(40) Following the disclosure the exporting producer replied to a request from the Commission to clarify its view on this matter in relation to the source documents available to the Commission. The provided documents confirmed that for transactions covering around half of the sales volume to the Union there were unexplained irregularities concerning the payment of duties. In particular, those transactions for which no evidence could be provided as regards the payment of the anti-dumping duty of 44 %, render these Union sales prices clearly unreliable as these sales, in all likelihood, have thus been made on the false assumption that anti-dumping duties are not payable.

(41) Fifthly, TK Corporation argued that as the interim review was initiated using prima facie evidence concerning export sales to the Union that indicated a lower dumping margin, then it must have been possible (as part of the final determination of dumping) to calculate dumping margin based on Union sales. This claim was rejected. First, the evidence required for the initiation of an interim review is by nature substantially different from that on which the investigating authority based its final findings. Second, the investigation established that those sales could not be validly used for all the reasons discussed in this section. It is also noted that the mere possibility to calculate a dumping margin does not render the dumping margin compliant with the relevant provisions of the basic Regulation.

(42) Hence, bearing in mind that the Union sales were of such low quantities in absolute and comparable terms and that, moreover, there were legitimate reasons to doubt the reliability of a significant share of these sales for other than volume-related reasons, the claim that the Commission wrongly ignored export sales to the Union for the determination of the export price is rejected.

(43) Finally, the analysis and findings in recitals 32 and 33 above, which were not contested by the exporting producer, clearly demonstrate that due care was taken in the construction of the export price and that the US can be considered a reasonable basis for establishing export prices in the absence of reliable Union prices.

(c) *Comparison*

(44) The Commission compared the normal value and the export price of the exporting producer on an ex-works basis.

(45) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for inland and ocean freight, insurance, handling, loading and ancillary costs.

(d) *Dumping margin*

(46) For the exporting producer, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.

(47) On this basis, the weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, is 32,4 %.

4. **LASTING NATURE OF CHANGED CIRCUMSTANCES**

(48) In accordance with Article 11(3) of the basic Regulation, the Commission also examined whether the changed circumstances could reasonably be considered to be of a lasting nature.

(49) In this regard the investigation showed that TK Corporation indeed has undergone structural changes that led to cost reduction and efficiency improvements. Notably, the company added a second factory in 2010 and a third in 2012. As a result of significant increase in capacity, the production lines and warehouses could be reorganised in a more efficient manner and costs substantially declined. This cost reduction has a direct impact on the dumping margin. The circumstance here described is unlikely to change in the foreseeable future in a manner that would affect these findings.

(50) This change in circumstances can therefore be considered to be of a lasting nature and the application of the measure at its current level is no longer justified.

(51) The Defence Committee of the EU Steel Butt-Welding Fittings Industry commented that despite the structural changes by which TK Corporation was said to have decreased costs and improved efficiency, TK Corporation's profitability (for the overall company) did not improve during the period 2012-2014. Therefore, the Defence Committee of the EU Steel Butt-Welding Fittings Industry expressed doubts on the lasting nature of changed circumstances and the impact thereof on the dumping margin.

(52) The Commission analysed this argument. First, it needs to be noted that the lasting nature of changed circumstances is assessed with reference to the original investigation in 2002. Secondly, the profitability of a company and the trend thereof is determined by a range of factors, of which efficiency is only one. Thirdly, the cost reduction as mentioned in recital 49 relates only to costs that can be associated with the structural changes mentioned in the same recital. For example, the trend of average raw material costs, labour costs and energy costs is not directly associable with the efficiency gains brought about by the establishment of the two factories. Lastly, the Defence Committee of the EU Steel Butt-Welding Fittings Industry supported its claim by reference to the overall profitability figures of TK Corporation and not to those specifically related to the product concerned. The Commission therefore rejected this claim.

5. **ANTI-DUMPING MEASURES**

(53) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to propose to amend the duty rate applicable to the exporting producer and were given the opportunity to comment.

(54) Following the review investigation, the proposed revised dumping margin and anti-dumping duty rate that would be applicable to imports of the product concerned manufactured by TK Corporation amounts to 32,4 %.

(55) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EC) No 1225/2009,

HAS ADOPTED THIS REGULATION:

Article 1

The table in Article 1(2) of Regulation (EU) No 1283/2014 shall be amended by adding the following:

Country	Company	Rate of duty (%)	TARIC additional code
Republic of Korea	TK Corporation, 1499-1, Songjeong-Dong, Gangseo-Gu, Busan	32,4	C066
	All other companies	44,0	C999

Article 2

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

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

Done at Brussels, 3 March 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2016/307

of 3 March 2016

amending for the 243rd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network ([1]), and in particular Article 7(1)(a) and Article 7a(1) thereof,

Whereas:

(1) Annex I to Regulation (EC) No 881/2002 lists the persons, groups and entities covered by the freezing of funds and economic resources under that Regulation.

(2) On 29 February 2016, the Sanctions Committee of the United Nations Security Council (UNSC) decided to add eleven natural persons and one entity to the list of persons, groups and entities to whom the freezing of funds and economic resources should apply. Annex I to Regulation (EC) No 881/2002 should therefore be updated accordingly.

(3) In order to ensure that the measures provided for in this Regulation are effective, this Regulation should enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 881/2002 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, 3 March 2016.

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

([1]) OJ L 139, 29.5.2002, p. 9.

ANNEX

Annex I to Regulation (EC) No 881/2002 is amended as follows:

(1) The following entries shall be added to Annex I to regulation (EC) No 881/2002 under the heading 'Natural persons':

(a) 'Abd Al-Baset Azzouz (alias (a) Abdelbassed Azouz, (b) Abdul Baset Azouz, (c) AA (initials)). Date of birth: 7.2.1966. Place of birth: Doma, Libya. Nationality: Libyan. Passport No: (a) 223611 (Libyan passport number) (b) C00146605 (British passport number). Address: Libya (last known location). Date of designation referred to in Article 7d(2)(i): 29.2.2016.'

(b) 'Gulmurod Khalimov. Date of birth (a) 14.5.1975, (b) approximately 1975. Place of birth: (a) Varzob area, Tajikistan, (b) Dushanbe, Tajikistan. Nationality: Tajikistan. Address: Syrian Arab Republic (location as at September 2015). Date of designation referred to in Article 7d(2)(i): 29.2.2016.'

(c) 'Nusret Imamovic (alias Nusret Sulejman Imamovic). Date of birth: (a) 26.9.1971, (b) 26.9.1977. Nationality: Bosnia and Herzegovina Passport No: (a) 349054 (Bosnia and Herzegovina passport number), b) 3490054 (Bosnia and Herzegovina passport number). Address: Syrian Arab Republic (location as at September 2015). Date of designation referred to in Article 7d(2)(i): 29.2.2016.'

(d) 'Muhannad Al-Najdi (alias (a) 'Ali Manahi 'Ali al-Mahaydali al-'Utaybi, (b) Ghassan al-Tajiki. Date of birth: 19.5.1984. Place of birth: al-Duwadmi, Saudi Arabia. Nationality: Saudi Arabian. Date of designation referred to in Article 7d(2)(i): 29.2.2016.'

(e) 'Morad Laaboudi (alias (a) Abu Ismail, (b) Abu Ismail al-Maghribi. Date of birth: 26.2.1993. Place of birth: Morocco. Nationality: Moroccan. Passport No: (a) UZ6430184 (Moroccan passport number), (b) CD595054 (Moroccan national identity number). Address: Turkey. Date of designation referred to in Article 7d(2)(i): 29.2.2016.'

(f) 'Ali Musa Al-Shawakh (alias (a) 'Ali Musa al-Shawagh, (b) 'Ali Musa al-Shawagh, (c) Ali al-Hamoud al-Shawakh, (d) Ibrahim al-Shawwakh, (e) Muhammad 'Ali al-Shawakh, (f) Abu Luqman, (g) Ali Hammud, (h) Abdullah Shuwar al-Aujayd, (i) Ali Awas, (j) 'Ali Derwish, (k) 'Ali al-Hamud, (l) Abu Luqman al- Sahl, (m) Abu Luqman al-Suri, (n) Abu Ayyub. Date of birth: 1973. Place of birth: Sahl Village, Raqqa Province, Syrian Arab Republic. Nationality: Syrian. Address: Syrian Arab Republic. Date of designation referred to in Article 7d(2)(i): 29.2.2016.'

(g) 'Hasan Al-Salahayn Salih Al-Sha'ari (alias (a) Husayn al-Salihin Salih al-Sha'iri, (b) Abu Habib al-Libi, (c) Hasan Abu Habib). Date of birth: 1975. Place of birth: Derna, Libya. Nationality: Libyan. Passport No: (a) 542858 (Libyan passport number), (b) 55252 (Libyan national identification number, issued in Derna, Libya). Address: Libya. Date of designation referred to in Article 7d(2)(i): 29.2.2016.'

(h) 'Mounir Ben Dhaou Ben Brahim Ben Helal (alias (a) Mounir Helel, (b) Mounir Hilel, (c) Abu Rahmah, (d) Abu Maryam al-Tunisi. Date of birth: 10.5.1983. Place of birth: Ben Guerdane, Tunisia. Nationality: Tunisian. Date of designation referred to in Article 7d(2)(i): 29.2.2016.'

(i) 'Mohammed Abdel-Halim Hemaida Saleh (alias (a) Muhammad Hameida Saleh, (b) Muhammad Abd-al-Halim Humaydah, (c) Faris Baluchistan). Date of birth: (a) 22.9.1988, (b) 22.9.1989. Place of birth: Alexandria, Egypt. Nationality: Egyptian. Address: Egypt. Date of designation referred to in Article 7d(2)(i): 29.2.2016.'

(j) 'Salim Benghalem. Date of birth: 6.7.1980. Place of birth: Bourg la Reine, France. Nationality: French. Address: Syrian Arab Republic (as at September 2015). Date of designation referred to in Article 7d(2)(i): 29.2.2016.'

(k) 'Abu Ubaydah Yusuf Al-Anabi (alias (a) Abou ObeJda Youssef AI-Annabi, (b) Abu- Ubaydah Yusuf Al-lnabi, (c) Mebrak Yazid, (d) Youcef Abu Obeida, (e) Mibrak Yazid, (f) Yousif Abu Obayda Yazid, (g) Yazid Mebrak, (h) Yazid Mabrak, (i) Yusuf Abu Ubaydah, (j) Abou Youcef). Date of birth: 7.2.1969. Place of birth: Annaba, Algeria. Nationality: Algerian. Address: Algeria. Other information: Photo available for inclusion in the INTERPOL-UN Security Council Special Notice. Date of designation referred to in Article 7d(2)(i): 29.2.2016.'

(2) The following entry shall be added under the heading 'Legal persons, groups and entities':

'Harakat Sham Al-Islam (alias (a) Haraket Sham al-Islam, (b) Sham al- Islam, (c) Sham al-Islam Movement. Address: Syrian Arab Republic. Date of designation referred to in Article 7d(2)(i): 29.2.2016.'

COMMISSION IMPLEMENTING REGULATION (EU) 2016/308

of 3 March 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, 3 March 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	EG	371,5
	IL	154,0
	MA	95,7
	SN	174,9
	TN	110,7
	TR	106,0
	ZZ	168,8
0707 00 05	JO	194,1
	MA	84,0
	TR	165,9
	ZZ	148,0
0709 93 10	MA	55,5
	TR	163,7
	ZZ	109,6
0805 10 20	EG	47,2
	IL	76,2
	MA	60,2
	TN	55,6
	TR	66,0
	ZZ	61,0
0805 50 10	MA	119,2
	TN	91,8
	TR	97,7
	ZZ	102,9
0808 10 80	CL	92,5
	US	133,9
	ZZ	113,2
0808 30 90	CL	213,7
	CN	59,3
	ZA	98,7
	ZZ	123,9

(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'.

DECISIONS

COMMISSION DELEGATED DECISION (EU) 2016/309

of 26 November 2015

on the equivalence of the supervisory regime for insurance and reinsurance undertakings in force in Bermuda to the regime laid down in Directive 2009/138/EC of the European Parliament and of the Council and amending Comission Delegated Decision (EU) 2015/2290

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ([1]), and in particular Articles 172(2), 227(4) and (5) and 260(3) thereof,

Whereas:

(1) Directive 2009/138/EC establishes a risk-based prudential regime for insurance and reinsurance undertakings in the Union. Full application of Directive 2009/138/EC to insurers and reinsurers in the Union will commence on 1 January 2016.

(2) In accordance with Article 311 of Directive 2009/138/EC the Commission may adopt delegated acts provided for in that Directive also prior to the date of its application.

(3) Article 172 of Directive 2009/138/EC relates to equivalence of the solvency regime of a third country applied to reinsurance activities of undertakings with their head office in that third country. A positive equivalence determination allows reinsurance contracts concluded with undertakings having their head office in that third country to be treated in the same manner as reinsurance contracts concluded with undertakings authorised in accordance with that Directive.

(4) Article 227 of Directive 2009/138/EC relates to equivalence for third-country insurers that are part of groups headquartered in the Union. A positive equivalence determination allows such groups, when deduction and aggregation is used as the consolidation method for their group reporting, to take into account the calculation of capital requirements and available capital (own funds) under the rules of the non-Union jurisdiction rather than calculating them on the basis of Directive 2009/138/EC, for the purposes of calculating the group solvency requirement and eligible own funds.

(5) Article 260 of Directive 2009/138/EC relates to equivalence of insurance and reinsurance undertakings, the parent undertaking of which has its head office outside the Union. In accordance with Article 261(1) of Directive 2009/138/EC, in case of a positive equivalence determination, Member States rely on the equivalent group supervision exercised by the third-country group supervisory authorities.

(6) A third country's legal regime is to be considered as fully equivalent to that established by Directive 2009/138/EC if it complies with requirements which provide a comparable level of policyholder and beneficiary protection.

([1]) OJ L 335, 17.12.2009, p. 1.

(7) On 11 March 2015, the European Insurance and Occupational Pensions Authority (EIOPA) provided advice in accordance with Article 33(2) of Regulation (EU) No 1094/2010 of the European Parliament and of the Council ([1]) to the Commission on the regulatory and supervisory system for reinsurance and insurance undertakings and groups in force in Bermuda. Following the adoption of amended insurance legislation by Bermuda in July 2015, EIOPA adopted an update of its advice on 31 July 2015. EIOPA's advice is based on the Bermudan relevant legislative framework, including the Insurance Amendment (No 2) Act 2015 (hereafter the 'Act'), adopted in July 2015 and entering into force on 1 January 2016, the Insurance Code of Conduct, which has been amended with effect from July 2015, and the revised insurance prudential rules adopted by the Bermuda Monetary Authority (the 'BMA' hereafter) and entering into force on 1 January 2016. The Commission has based its assessment on the information provided by EIOPA.

(8) Taking into account the provisions of Commission Delegated Regulation (EU) 2015/35 ([2]), in particular Articles 378, 379 and 380, as well as EIOPA's advice, a number of criteria are to be applied to assess equivalence under Articles 172(2), 227(4) and 260(3) of Directive 2009/138/EC.

(9) Those criteria include certain requirements which are common to two or more of Articles 378, 379 and 380 of Delegated Regulation (EU) 2015/35, which are valid at the level of solo insurance or reinsurance undertakings and at the level of insurance or reinsurance groups. We specify indeed in the current act whether we consider insurance undertakings at the individual ('solo') or group level, as solo undertakings may or may not be part of groups. The criteria cover the areas of powers, solvency, governance, transparency, cooperation between authorities and handling of confidential information, and impact of the decisions on financial stability.

(10) Regarding the means, powers and responsibilities, the local supervisor, the BMA, has the power to effectively supervise insurance or reinsurance activities and impose sanctions or take enforcement action where necessary, such as revoking an undertaking's business licence or replacing all or part of its management. The BMA has the necessary financial and human means, expertise, capacities and mandate to effectively protect all policyholders and beneficiaries.

(11) Regarding solvency, the Bermuda Solvency Capital Requirement (BSCR) assessment of the financial position of insurance or reinsurance undertakings or groups relies on sound economic principles, and solvency requirements are based on an economic valuation of all assets and liabilities called the Economic Balance Sheet. This ensures comparability between insurers. The BSCR requires insurance or reinsurance undertakings to hold adequate financial resources and lays down criteria on technical provisions, investments, capital requirements (including minimum level of capital) and own funds, requiring timely intervention by the BMA if capital requirements are not complied with or if policyholders' interests are threatened. The capital requirements are risk-based, aiming at capturing quantifiable risks. The main capital requirement, known as Enhanced Capital Requirement (ECR), is calculated to cover unexpected losses arising from existing business. In addition, the absolute minimum capital requirement, called Minimum Solvency Margin, is currently not risk-based, but the BMA will modify it and apply a floor of 25 % of the ECR to all life insurers with effect from 1 January 2017. The BMA will put in place these statutory capital and surplus requirements from the end of 2015 to all classes of insurers, except for captives and special purpose insurers. Regarding models, insurance undertakings may use a standard formula or an internal model.

(12) In the area of governance, the Bermudan solvency regime requires insurance or reinsurance undertakings to have an effective system of governance in place, imposing on them in particular a clear organisational structure, fit and proper requirements for those effectively running the undertakings, effective process for transmission of information within the undertakings and to the BMA. In addition, the BMA effectively supervises outsourced functions and activities.

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

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

(13) The BSCR also requires insurance or reinsurance undertakings and groups to maintain risk-management, compliance, internal audit and actuarial functions. The BSCR imposes a risk-management system capable of identifying, measuring, monitoring, managing and reporting risks, and an effective internal control system.

(14) The regime in force in Bermuda requires that changes to the business policy or management of insurance or reinsurance undertakings or groups or qualifying holdings in such undertakings or groups must be consistent with sound and prudent management. In particular, acquisitions, changes in the business plan or in qualifying holdings of insurance or reinsurance undertakings or insurance groups are notified to the BMA, which may take appropriate sanctions if justified, such as prohibiting an acquisition. In particular, the Act includes rules extending the requirements for shareholders to notify the disposal of shares in public and private companies.

(15) Concerning transparency, insurance or reinsurance undertakings and groups are required to provide the BMA with any information necessary to supervision, and publish, at least annually, a report on their solvency and financial condition. The types of qualitative and quantitative information to be disclosed are in line with Directive 2009/138/EC. The requirements on insurers and groups to publish a report mirrors to a large extent the provisions in Directive 2009/138/EC. Exemptions can be granted if disclosure would result in a competitive disadvantage for the undertakings. However, even in this case, the essential information on the solvency and financial condition would be published under the Bermudan rules.

(16) Regarding professional secrecy and cooperation and exchange of information, the regime in force in Bermuda has professional secrecy obligations in place for all persons who work or have worked for the BMA, including auditors and experts acting on behalf of the BMA. Those obligations also stipulate that confidential information may not be divulged except in aggregate or summary form, without prejudice to cases covered by criminal law. Furthermore, the BMA will only use confidential information received from other supervisory authorities to perform its duties and for the purposes provided for by the law. The regime in force in Bermuda also requires that in case an insurance or reinsurance undertaking is declared bankrupt or compulsorily wound up, confidential information may be disclosed if it does not concern third parties involved in rescuing that undertaking. The BMA may share confidential information received from another supervisory authority with authorities, bodies or persons covered by professional secrecy obligations in Bermuda only after the express agreement of that supervisory authority. It has signed Memoranda of Understanding with the International Association of Insurance Supervisors and with all Member States of the Union to coordinate international cooperation, in particular on exchange of confidential information.

(17) Regarding the impact of its decisions, the BMA and the other Bermudan authorities which have the mandate to ensure the proper functioning of financial markets are equipped to appreciate how decisions will affect the stability of financial systems globally, in particular during emergency situations, and to take into account their potential procyclical effects where exceptional movements in the financial markets occur. Under the regime in force in Bermuda, regular meetings take place between the abovementioned authorities to exchange information on financial stability risks and coordinate action. The same takes place at international level, where Bermudian authorities exchange for instance with the supervisory colleges of the Member States of the Union and EIOPA on financial stability matters.

(18) Articles 378 and 380 of Delegated Regulation (EU) 2015/35 also set out specific criteria regarding equivalence for reinsurance activities and for group supervision.

(19) Regarding the specific criteria for reinsurance activities under Article 378 of Delegated Regulation (EU) 2015/35, the taking-up of business of reinsurance is subject to prior authorisation by the BMA.

(20) Regarding the specific criteria for group supervision under Article 380 of Delegated Regulation (EU) 2015/35, the BMA has the power to determine which undertakings fall under the scope of supervision at group level and supervise insurance or reinsurance undertakings which are part of a group. The BMA supervises all insurance or reinsurance undertakings over which a participating undertaking, as defined in Article 212(1)(a) of Directive 2009/138/EC, exercises a dominant or significant influence.

(21) The BMA is capable of assessing the risk profile, financial position and solvency of insurance or reinsurance undertakings that are part of a group and the business strategy of that group.

(22) Reporting and accounting rules allow monitoring of intra-group transactions and risk concentrations, which insurance or reinsurance groups must report at least on an annual basis.

(23) The BMA restricts the use of own funds of an insurance or reinsurance undertaking if they cannot effectively be made available to cover the capital requirement of the participating undertaking for which group solvency is calculated. The calculation of group solvency leads to results at least equivalent to the results of the methods set in Articles 230 and 233 of Directive 2009/138/EC, without double counting of own funds and after eliminating the intra-group creation of capital through reciprocal financing.

(24) Accordingly, as it fulfils all the criteria laid down in Articles 378, 379 and 380 of Delegated Regulation (EU) 2015/35, the regulatory and supervisory regime in force in Bermuda for insurance or reinsurance undertakings and groups should be considered to meet the criteria for full equivalence laid down in Articles 172(2), 227(4) and 260(3) of Directive 2009/138/EC, with the exception of rules on captives and special purpose insurers, which are subject to a different regulatory regime.

(25) Directive 2009/138/EC applies from 1 January 2016. This Decision should therefore also grant equivalence as of that date to the solvency and prudential regime in force in Bermuda.

(26) Commission Delegated Decision (EU) 2015/2290 [1] of 5 June 2015 granted provisional equivalence as regards the solvency regimes in force in Australia, Bermuda, Brazil, Canada, Mexico and the United States. For reasons of legal certainty and given that the solvency regime in force in Bermuda for insurance or reinsurance undertakings and groups meets the criteria for full equivalence, with the exception of rules on captives and special purpose insurers, it is necessary to amend that Decision,

HAS ADOPTED THIS DECISION:

Article 1

The solvency regime in force in Bermuda that applies to the reinsurance activities of undertakings with their head offices in Bermuda shall be considered as equivalent to the regime laid down in Title I of Directive 2009/138/EC, with the exception of rules on captives and special purpose insurers.

Article 2

The supervisory regime in force in Bermuda that applies to the insurance activities of undertakings with their head offices in Bermuda shall be considered as equivalent to the regime laid down in Chapter VI of Title I of Directive 2009/138/EC, with the exception of rules on captives and special purpose insurers.

Article 3

The prudential regime in force in Bermuda that applies to the supervision of insurance or reinsurance undertakings in a group shall be considered as equivalent to the regime laid down in Title III of Directive 2009/138/EC, with the exception of rules on captives and special purpose insurers.

[1] Commission Delegated Decision (EU) 2015/2290 of 5 June 2015 on the provisional equivalence of the solvency regimes in force in Australia, Bermuda, Brazil, Canada, Mexico and the United States and applicable to insurance and reinsurance undertakings with head offices in those countries (OJ L 323, 9.12.2015, p. 22).

Article 4

Delegated Decision (EU) 2015/2290 of 5 June 2015 on the provisional equivalence of the solvency regimes in force in Australia, Bermuda, Brazil, Canada, Mexico and the United States and applicable to insurance and reinsurance undertakings with head offices in those countries, is amended as follows:

(1) the title is replaced by the following:

'Commission Delegated Decision (EU) 2015/2290 of 5 June 2015 on the provisional equivalence of the solvency regimes in force in Australia, Brazil, Canada, Mexico and the United States and applicable to insurance and reinsurance undertakings with head offices in those countries';

(2) Article 1 is replaced by the following:

'*Article 1*

The solvency regimes in force in Australia, Brazil, Canada, Mexico and the United States and applicable to insurance and reinsurance undertakings with head offices in those countries shall be considered as provisionally equivalent to the regime laid down in Chapter VI of Title I of Directive 2009/138/EC.'

Article 5

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

It shall apply from 1 January 2016.

Done at Brussels, 26 November 2015.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION DELEGATED DECISION (EU) 2016/310

of 26 November 2015

on the equivalence of the solvency regime for insurance and reinsurance undertakings in force in Japan to the regime laid down in Directive 2009/138/EC of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) [1], and in particular Articles 172(4) and 227(5) thereof,

Whereas:

(1) Directive 2009/138/EC establishes a risk-based solvency regime for insurance and reinsurance undertakings in the Union. Full application of Directive 2009/138/EC to insurers and reinsurers in the Union will commence on 1 January 2016.

(2) In accordance with Article 311 of Directive 2009/138/EC the Commission may also adopt delegated acts provided for in that Directive prior to the date of its application.

(3) Article 172 of Directive 2009/138/EC relates to equivalence of the solvency regime of a third country or jurisdiction applied to reinsurance activities of undertakings with their head office in that third country. A positive equivalence determination allows reinsurance contracts concluded with undertakings having their head office in that jurisdiction to be treated in the same manner as reinsurance contracts concluded with undertakings authorised in accordance with that Directive.

(4) Paragraph 4 of Article 172 of Directive 2009/138/EC provides for a determination of fixed-duration temporary equivalence for third countries or jurisdictions whose reinsurance solvency regimes meet certain criteria. A determination of temporary equivalence is valid until 31 December 2020 with possibility of renewal for a maximum of one year, as laid down in Article 172(5).

(5) Article 227 of Directive 2009/138/EC relates to equivalence for third-country insurers that are part of groups headquartered in the Union. A positive equivalence determination allows such groups, when deduction and aggregation is authorised as the consolidation method for their group reporting, to take into account the calculation of capital requirements and available capital (own funds) under the rules of the non-Union jurisdiction rather than calculating them on the basis of Directive 2009/138/EC, for the purposes of calculating the group solvency requirement and eligible own funds.

(6) Paragraph 5 of Article 227 of Directive 2009/138/EC provides for a determination of fixed-duration provisional equivalence for third countries or jurisdictions whose insurance solvency regimes meet certain criteria. A determination of provisional equivalence is valid for a period of 10 years with possibility of renewal.

(7) A number of criteria are to be considered to assess temporary equivalence under Article 172(4) of Directive 2009/138/EC and provisional equivalence under Article 227(5) of Directive 2009/138/EC. Those criteria include certain common requirements, particularly concerning the solvency regime in place and the powers resources and responsibilities of the supervisor. Other criteria are different for the two types of equivalence, in particular those concerning the convergence towards an entirely equivalent regime, the exchange of information with supervisory authorities, and professional secrecy.

[1] OJ L 335, 17.12.2009, p. 1.

(8) The Japanese solvency regime is laid down in the Insurance Business Act and Insurance Business Ordinance, as last amended in 2010. A comprehensive licencing regime exists for authorisation of insurers. To carry out the business of reinsurance in Japan, a non-life insurance license is necessary. Governance, risk management and disclosure standards are partly laid down in Supervisory Guidelines of Japan Financial Services Agency (JFSA). Supervisory Guidelines do not have the force of law, but are closely monitored by the JFSA, which has the power to impose remedial actions if it deems them appropriate.

(9) In March 2015, the European Insurance and Occupational Pensions Authority (EIOPA) delivered advice according to Article 33(2) of Regulation (EU) No 1094/2010 of the European Parliament and of the Council [1] to the Commission on the regulatory and supervisory system for reinsurance and insurance undertakings in force in Japan. Subsequently, EIOPA has also assisted the Commission and provided further input with regard to the assessment of the Japanese insurance sector under Article 227(5) of Directive 2009/138/EC. The Commission has based its assessment on the information provided by EIOPA.

(10) Japan has an independent insurance supervisor, the JFSA, with the necessary powers and resources to carry out its tasks. In 2013 the JFSA had about 100 staff dedicated full-time to insurance supervision, with others available from elsewhere in the organisation. Investigative powers include on-site inspections, and sanctions include administrative orders going as far as license withdrawal and individual sanctions. JFSA can also submit files to public prosecutors.

(11) Insurers and reinsurers must submit extensive reporting material to the JFSA, and the JFSA has wide-ranging powers to restructure or wind-up insurers and reinsurers in difficulties, which were used effectively to deal with a number of life insurers in severe difficulties during the recent decades.

(12) The JFSA has a number of cooperation arrangements in place with other supervisors around the world. Since 2011, it is a signatory to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding on exchange of information between insurance supervisors. It has a number of bilateral or multilateral cooperation agreements in place with other supervisors, including several supervisors in the Union.

(13) JFSA staff are subject to stringent professional secrecy requirements. JFSA rules and practices adequately protect confidential information provided by foreign supervisors. All present or former JFSA staff are required to keep confidential any information which they receive in the course of their duties. Unauthorised disclosure can result in disciplinary sanctions, criminal investigations and punishment. Information received from foreign supervisors and indicated as confidential is treated accordingly, and will only be used for the purposes agreed with the foreign supervisor.

(14) The valuation of assets for both life and non-life insurance companies is done in accordance with Japanese Generally Accepted Accounting Principles. Most but not all assets are valued at fair value. Under certain circumstances, some assets classes (such as bonds and loans) are valued at book value. When assets are valued at historical cost, most of the unrealised gains and losses are taken into account for determining the available own funds. Technical provisions of life and long term non-life are discounted. The discount rate that is to be used for discounting the technical provisions is periodically set by the JFSA. Starting from the contract date onwards, technical provisions can only be reassessed upwards (they are never valued below the value determined at contract date). So market and other developments that would result in a decrease in technical provisions (such as an increase in interest rates), are disregarded. Insurance undertakings are also required to carry out future cash flow analysis at every fiscal year from the perspective of the appropriateness of technical provisions and, where deemed necessary, to accumulate additional reserves.

(15) For both life and non-life undertakings, supervisory intervention can be triggered by three different thresholds, defined as different 'Solvency Margin Ratios' (SRM), expressed as a ratio of double the own funds divided by a capital requirement named the 'Total Risk'. The 'Total Risk' metric covers underwriting risks, interest rate and market risks, operational risk and the catastrophe risk. Internal models are accepted for catastrophe and minimum guarantee risks. The JFSA has the power to impose certain remedial measures even if the highest threshold for supervisory intervention (SRM above 200 %) is not breached, for instance by requiring insurers to

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

adopt measures in order to improve their profitability, credit risk, stability or liquidity risk. When the SRM is below 0 %, the JFSA may order the total or partial suspension of the business.

(16) Via an enterprise risk management plan Japanese insurers are required to manage risks individually and comprehensively. Insurers are required to conduct appropriate risk management in a systematic and comprehensive manner. This includes looking at whether relevant risks are addressed, verifying the objectivity and appropriateness of the standards for quantification, and analysing future capital adequacy in the light of matters related to medium and long-term business strategies and the business environment. JFSA also requires insurers to carry out an Own Risk and Solvency Assessment and to report its results to the board of directors.

(17) Japanese insurers are required by law to submit semi-annual and annual business reports to the JFSA. In addition each year an insurer is required to prepare some explanatory documents and keep them available to the public at its head office.

(18) The Japanese solvency regime is evolving. Group-level solvency requirements were introduced in 2010. Since the start of the equivalence assessment of the Japanese supervisory system in relation to Article 172 of Directive 2009/138/EC in 2011 by EIOPA, Japan is engaged in reforms which will improve its solvency regime. Several reports and field tests have been carried out in 2011, 2012 and 2014 on a balance sheet based on economic valuations. Amendments under consideration give reasons to believe that future evolutions of the Japanese solvency regime will produce enhanced convergence with Directive 2009/138/EC.

(19) Following this assessment, the insurance and reinsurance solvency regime of Japan should be considered to meet the criteria for temporary equivalence laid down in Article 172(4) of Directive 2009/138/EC, and for provisional equivalence laid down in Article 227(5) of Directive 2009/138/EC.

(20) The period of the temporary equivalence determined by this Decision is to end on 31 December 2020, in accordance with Article 172(5) of Directive 2009/138/EC.

(21) The period of the provisional equivalence determined by this Decision should be 10 years, in accordance with Article 227(6) of Directive 2009/138/EC,

HAS ADOPTED THIS DECISION:

Article 1

The solvency regime in force in Japan that applies to the reinsurance activities of undertakings with their head offices in Japan and regulated by the Insurance Business Act shall be considered as temporarily equivalent to the regime laid down in Title I of Directive 2009/138/EC.

The temporary equivalence referred to in the first paragraph shall end on 31 December 2020.

Article 2

The solvency regime in force in Japan that applies to the insurance activities of undertakings with their head offices in Japan and regulated by the Insurance Business Act shall be considered as provisionally equivalent to the regime laid down in Chapter VI of Title I of Directive 2009/138/EC.

The provisional equivalence referred to in the first paragraph shall be granted for a period of 10 years from 1 January 2016.

Article 3

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

Done at Brussels, 26 November 2015.

For the Commission
The President
Jean-Claude JUNCKER

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