

Official Journal

of the European Union

L 8



English edition

Legislation

Volume 55

12 January 2012

Contents

II *Non-legislative acts*

INTERNATIONAL AGREEMENTS

2012/22/EU:

- ★ **Council Decision of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof** 1

2012/23/EU:

- ★ **Council Decision of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as regards Articles 10 and 11 thereof** 13

REGULATIONS

- ★ **Council Implementing Regulation (EU) No 13/2012 of 6 January 2012 amending Regulation (EC) No 1292/2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India** 17
- ★ **Council Implementing Regulation (EU) No 14/2012 of 9 January 2012 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 511/2010 on imports of certain molybdenum wires originating in the People's Republic of China to imports of certain molybdenum wires consigned from Malaysia, whether declared as originating in Malaysia or not and terminating the investigation in respect of imports consigned from Switzerland** 22

Price: EUR 3

(Continued overleaf)

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.

★ Commission Implementing Regulation (EU) No 15/2012 of 10 January 2012 amending for the 162nd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network	27
★ Commission Regulation (EU) No 16/2012 of 11 January 2012 amending Annex II to Regulation (EC) No 853/2004 of the European Parliament and of the Council as regards the requirements concerning frozen food of animal origin intended for human consumption ⁽¹⁾	29
★ Commission Implementing Regulation (EU) No 17/2012 of 11 January 2012 amending Council Regulation (EC) No 32/2000 as regards the extension of the tariff quotas of the Union for jute and coconut-fibre products	31
Commission Implementing Regulation (EU) No 18/2012 of 11 January 2012 establishing the standard import values for determining the entry price of certain fruit and vegetables	32
Commission Implementing Regulation (EU) No 19/2012 of 11 January 2012 fixing an acceptance percentage for the issuing of export licences, rejecting export-licence applications and suspending the lodging of export-licence applications for out-of-quota sugar	34
Commission Implementing Regulation (EU) No 20/2012 of 11 January 2012 fixing the allocation coefficient to be applied to applications for import licences lodged from 1 to 6 January 2012 in the context of the tariff quota opened by Regulation (EC) No 2305/2003 for barley	35

DECISIONS

2012/24/EU:

★ Commission Decision of 11 January 2012 terminating the anti-dumping proceeding concerning imports of vinyl acetate originating in the United States of America and releasing the amounts secured by way of the provisional duties imposed	36
--	----



⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 12 December 2011

concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof

(2012/22/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2), in conjunction with point (a) of Article 218(6) and the first subparagraph of Article 218(8) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) The Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 ('Athens Protocol') represents a major improvement to the regime relating to the liability of carriers and the compensation of passengers carried by sea. In particular, it provides for a strict liability of the carrier, including compulsory insurance, with a right of direct action against insurers up to specified limits, and for rules on jurisdiction and the recognition and enforcement of judgments. The Athens Protocol is therefore in accordance with the Union's objective of improving the legal regime relating to carriers' liability.
- (2) The Athens Protocol modifies the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 ('Athens Convention') and establishes in Article 15 that the two instruments shall, as between the Parties to the Athens Protocol, be read and interpreted together as one single instrument.
- (3) The majority of the rules of the Athens Protocol have been incorporated into Union law by means of Regulation (EC) No 392/2009 of the European Parliament

and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents ⁽¹⁾. Thus, the Union exerted competence as regards the matters governed by that Regulation. Member States, however, retain their competence regarding a number of provisions of the Athens Protocol, such as the opt out clause whereby they are allowed to fix limits of liability higher than those prescribed under the Athens Protocol. The matters of Member State competence under the Athens Protocol and those falling under the exclusive competence of the Union are interdependent. Therefore, in matters of their competence under the Athens Protocol, Member States should act in a coordinated manner, taking into account their duty of sincere cooperation.

- (4) The Athens Protocol is open for ratification, acceptance, approval or accession by States and by Regional Economic Integration Organisations which are constituted by sovereign States that have transferred competence over certain matters governed by the Athens Protocol to those Organisations.
- (5) According to Article 17(2)(b) and Article 19 of the Athens Protocol, Regional Economic Integration Organisations may conclude the Athens Protocol.
- (6) The Legal Committee of the International Maritime Organization adopted in October 2006 the IMO Reservation and Guidelines for Implementation of the Athens Convention ('IMO Guidelines') to address certain issues within the Athens Convention, such as, in particular, compensation for terrorism-related damages.
- (7) Regulation (EC) No 392/2009 reproduces in its annexes the relevant provisions of the consolidated version of the Athens Convention as amended by the Athens Protocol and the IMO Guidelines.

⁽¹⁾ OJ L 131, 28.5.2009, p. 24.

- (8) Under the terms of Article 19 of the Athens Protocol, a Regional Economic Integration Organisation must declare at the time of signature, ratification, acceptance, approval or accession the extent of its competence in respect of the matters governed by the Athens Protocol.
- (9) The Union should consequently accede to the Athens Protocol and make the reservation contained in the IMO Guidelines. The making of such a reservation should not be interpreted as altering the current division of competence between the Union and the Member States in relation to certification and the controls by State authorities.
- (10) Certain provisions under the Athens Protocol concern judicial cooperation in civil matters and therefore fall within the scope of Title V of Part Three of the TFEU. A separate Decision relating to those provisions is to be adopted in parallel to this Decision.
- (11) Member States which are to ratify or accede to the Athens Protocol should, if possible, do so simultaneously. Member States should therefore exchange information on the state of their ratification or accession procedures in order to prepare as far as possible the simultaneous deposit of their instruments of ratification or accession. When ratifying or acceding to the Athens Protocol, Member States should make the reservation contained in the IMO Guidelines,

HAS ADOPTED THIS DECISION:

Article 1

The accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 ('Athens Protocol') is hereby approved on behalf of the European Union as regards matters falling within the Union's exclusive competence, with the exception of Articles 10 and 11 thereof.

The text of the Athens Protocol, with the exception of Articles 10 and 11, is reproduced in the Annex.

Article 2

1. The President of the Council is hereby authorised to designate the person or persons empowered to deposit the instrument of accession of the Union to the Athens Protocol in accordance with Articles 17(2)(c), 17(3) and 19 of that Protocol.
2. At the time of the deposit of the instrument of accession, the Union shall make the following declaration of competence:

'1. Article 19 of the Athens Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 provides that Regional Economic Integration Organisations which are constituted by sovereign States that have transferred competence over

certain matters governed by that Protocol to them may sign it, on condition that they make the declaration referred to in that Article. The Union has decided to accede to the Athens Protocol and is accordingly making that declaration.

2. The current Members of the European Union are the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.
3. This declaration is not applicable to the territories of the Member States of the European Union in which the Treaty on the Functioning of the European Union (TFEU) does not apply and is without prejudice to such acts or positions as may be adopted under the Protocol by the Member States concerned on behalf of, and in the interests of, those territories.
4. The Member States of the European Union have conferred exclusive competence to the Union as regards measures adopted on the basis of Article 100 of the TFEU. Such measures have been adopted as regards Articles 1 and 1 bis, Article 2(2), Articles 3 to 16 and Articles 18, 20 and 21 of the Athens Convention as amended by the Athens Protocol and the provisions of the IMO Guidelines, by means of Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents.
5. The exercise of competence which the Member States have transferred to the European Union pursuant to the TFEU is, by its nature, liable to continuous development. In the framework of the TFEU, the competent institutions may take decisions which determine the extent of the competence of the European Union. The European Union therefore reserves the right to amend this declaration accordingly, without this constituting a prerequisite for the exercise of its competence with regard to matters governed by the Athens Protocol. The European Union will notify the amended declaration to the Secretary-General of the International Maritime Organization.'

3. The person or persons designated under paragraph 1 of this Article shall make the reservation contained in the IMO Guidelines when depositing the instrument of accession of the Union to the Athens Protocol.

Article 3

The Union shall deposit its instrument of accession to the Athens Protocol by 31 December 2011.

Article 4

1. Member States shall take the necessary steps to deposit the instruments of ratification of, or accession to, the Athens Protocol within a reasonable time and, if possible, by 31 December 2011.
2. Member States shall make the reservation contained in the IMO Guidelines when depositing their instruments of ratification of, or accession to, the Athens Protocol.

Done at Brussels, 12 December 2011.

For the Council

The President

S. NOWAK

ANNEX

PROTOCOL OF 2002 TO THE ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING that it is desirable to revise the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, done at Athens on 13 December 1974, to provide for enhanced compensation, to introduce strict liability, to establish a simplified procedure for updating the limitation amounts, and to ensure compulsory insurance for the benefit of passengers,

RECALLING that the 1976 Protocol to the Convention introduces the Special Drawing Right as the Unit of Account in place of the gold franc,

HAVING NOTED that the 1990 Protocol to the Convention, which provides for enhanced compensation and a simplified procedure for updating the limitation amounts, has not entered into force,

HAVE AGREED as follows:

Article 1

For the purposes of this Protocol:

1. 'Convention' means the text of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.
2. 'Organization' means the International Maritime Organization.
3. 'Secretary-General' means the Secretary-General of the Organization.

Article 2

Article 1, paragraph 1 of the Convention is replaced by the following text:

- '1. (a) "carrier" means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by that person or by a performing carrier;
- (b) "performing carrier" means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage; and
- (c) "carrier who actually performs the whole or a part of the carriage" means the performing carrier, or, in so far as the carrier actually performs the carriage, the carrier.'

Article 3

1. Article 1, paragraph 10 of the Convention is replaced by the following:

- '10. "Organization" means the International Maritime Organization.'

2. The following text is added as Article 1, paragraph 11, of the Convention:

- '11. "Secretary-General" means the Secretary-General of the Organization.'

Article 4

Article 3 of the Convention is replaced by the following text:

*'Article 3***Liability of the carrier**

1. For the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, the carrier shall be liable to the extent that such loss in respect of that passenger on each distinct occasion does not exceed 250,000 units of account, unless the carrier proves that the incident:

- (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (b) was wholly caused by an act or omission done with the intent to cause the incident by a third party.

If and to the extent that the loss exceeds the above limit, the carrier shall be further liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

2. For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect shall lie with the claimant.

3. For the loss suffered as a result of the loss of or damage to cabin luggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.

4. For the loss suffered as a result of the loss of or damage to luggage other than cabin luggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

5. For the purposes of this Article:

- (a) "shipping incident" means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship;
- (b) "fault or neglect of the carrier" includes the fault or neglect of the servants of the carrier, acting within the scope of their employment;
- (c) 'defect in the ship' means any malfunction, failure or non-compliance with applicable safety regulations in respect of any part of the ship or its equipment when used for the escape, evacuation, embarkation and disembarkation of passengers; or when used for the propulsion, steering, safe navigation, mooring, anchoring, arriving at or leaving berth or anchorage, or damage control after flooding; or when used for the launching of life saving appliances; and
- (d) 'loss' shall not include punitive or exemplary damages.

6. The liability of the carrier under this Article only relates to loss arising from incidents that occurred in the course of the carriage. The burden of proving that the incident which caused the loss occurred in the course of the carriage, and the extent of the loss, shall lie with the claimant.

7. Nothing in this Convention shall prejudice any right of recourse of the carrier against any third party, or the defence of contributory negligence under Article 6 of this Convention. Nothing in this Article shall prejudice any right of limitation under Articles 7 or 8 of this Convention.

8. Presumptions of fault or neglect of a party or the allocation of the burden of proof to a party shall not prevent evidence in favour of that party from being considered.'

Article 5

The following text is added as Article 4bis of the Convention:

'Article 4bis

Compulsory insurance

1. When passengers are carried on board a ship registered in a State Party that is licensed to carry more than twelve

passengers, and this Convention applies, any carrier who actually performs the whole or a part of the carriage shall maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under this Convention in respect of the death of and personal injury to passengers. The limit of the compulsory insurance or other financial security shall not be less than 250,000 units of account per passenger on each distinct occasion.

2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party, such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This certificate shall be in the form of the model set out in the annex to this Convention and shall contain the following particulars:

- (a) name of ship, distinctive number or letters and port of registry;
- (b) name and principal place of business of the carrier who actually performs the whole or a part of the carriage;
- (c) IMO ship identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person providing financial security and, where appropriate, place of business where the insurance or other financial security is established; and
- (f) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other financial security.

3. (a) A State Party may authorize an institution or an Organization recognised by it to issue the certificate. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued, and shall undertake to ensure the necessary arrangements to satisfy this obligation.

(b) A State Party shall notify the Secretary-General of:

- (i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognised by it;

(ii) the withdrawal of such authority; and

(iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to 3 months from the date from which notification to that effect was given to the Secretary-General.

(c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not complied with. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

4. The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages, and, where the State so decides, the official language of the State may be omitted.

5. The certificate shall be carried on board the ship, and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.

6. An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate, before 3 months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or other financial security no longer satisfying the requirements of this Article.

7. The State of the ship's registry shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.

8. Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or other financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate.

9. Certificates issued or certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other

States Parties as having the same force as certificates issued or certified by them, even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

10. Any claim for compensation covered by insurance or other financial security pursuant to this Article may be brought directly against the insurer or other person providing financial security. In such case, the amount set out in paragraph 1 applies as the limit of liability of the insurer or other person providing financial security, even if the carrier or the performing carrier is not entitled to limitation of liability. The defendant may further invoke the defences (other than the bankruptcy or winding up) which the carrier referred to in paragraph 1 would have been entitled to invoke in accordance with this Convention. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the assured, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the assured against the defendant. The defendant shall in any event have the right to require the carrier and the performing carrier to be joined in the proceedings.

11. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention, and any payments made of such sums shall discharge any liability arising under this Convention to the extent of the amounts paid.

12. A State Party shall not permit a ship under its flag to which this Article applies to operate at any time unless a certificate has been issued under paragraphs 2 or 15.

13. Subject to the provisions of this Article, each State Party shall ensure, under its national law, that insurance or other financial security, to the extent specified in paragraph 1, is in force in respect of any ship that is licensed to carry more than twelve passengers, wherever registered, entering or leaving a port in its territory in so far as this Convention applies.

14. Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 13, ships are not required to carry on board or to produce the certificate required by paragraph 2 when entering or leaving ports in its territory, provided that the State Party which issues the certificate has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 13.

15. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this Article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authorities of the State of the ship's registry, stating that the ship is owned by that State and that the liability is covered within the amount prescribed in accordance with paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.'

Article 6

Article 7 of the Convention is replaced by the following text:

'Article 7

Limit of liability for death and personal injury

1. The liability of the carrier for the death of or personal injury to a passenger under Article 3 shall in no case exceed 400,000 units of account per passenger on each distinct occasion. Where, in accordance with the law of the court seized of the case, damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.

2. A State Party may regulate by specific provisions of national law the limit of liability prescribed in paragraph 1, provided that the national limit of liability, if any, is not lower than that prescribed in paragraph 1. A State Party, which makes use of the option provided for in this paragraph, shall inform the Secretary-General of the limit of liability adopted or of the fact that there is none.'

Article 7

Article 8 of the Convention is replaced by the following text:

'Article 8

Limit of liability for loss of or damage to luggage and vehicles

1. The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 2,250 units of account per passenger, per carriage.

2. The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 12,700 units of account per vehicle, per carriage.

3. The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 shall in no case exceed 3,375 units of account per passenger, per carriage.

4. The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 330 units of account in the case of damage to a vehicle and not exceeding 149 units of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.'

Article 8

Article 9 of the Convention is replaced by the following text:

'Article 9

Unit of Account and conversion

1. The Unit of Account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph 1, and Article 8 shall be converted into the national currency of the State of the court seized of the case on the basis of the value of that currency by reference to the Special Drawing Right on the date of the judgment or the date agreed upon by the parties. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State Party.

2. Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the Unit of Account referred to in paragraph 1 shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1, and the conversion mentioned in paragraph 2 shall be made in such a manner as to express in the national currency of the States Parties, as far as possible, the same real value for the amounts in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph 1, and Article 8 as would result from the application of the first three sentences of paragraph 1. States shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 2, as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.'

Article 9

Article 16, paragraph 3, of the Convention is replaced by the following text:

'3. The law of the Court seized of the case shall govern the grounds for suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of any one of the following periods of time:

- (a) A period of 5 years beginning with the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later; or, if earlier
- (b) a period of 3 years beginning with the date when the claimant knew or ought reasonably to have known of the injury, loss or damage caused by the incident.’

Article 10

[not reproduced]

Article 11

[not reproduced]

Article 12

Article 18 of the Convention is replaced by the following text:

‘Article 18

Invalidity of contractual provisions

Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to the passenger’s luggage, purporting to relieve any person liable under this Convention of liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Convention except as provided in Article 8, paragraph 4, and any such provision purporting to shift the burden of proof which rests on the carrier or performing carrier, or having the effect of restricting the options specified in Article 17, paragraphs 1 or 2, shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of this Convention.’

Article 13

Article 20 of the Convention is replaced by the following text:

‘Article 20

Nuclear damage

No liability shall arise under this Convention for damage caused by a nuclear incident:

- (a) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or any amendment or Protocol thereto which is in force; or
- (b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects

as favourable to persons who may suffer damage as either the Paris or the Vienna Conventions or any amendment or Protocol thereto which is in force.’

Article 14

Model certificate

1. The model certificate set out in the annex to this Protocol shall be incorporated as an annex to the Convention.
2. The following text is added as Article 1bis of the Convention:

‘Article 1bis

Annex

The annex to this Convention shall constitute an integral part of the Convention.’

Article 15

Interpretation and application

1. The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.
2. The Convention as revised by this Protocol shall apply only to claims arising out of occurrences which take place after the entry into force for each State of this Protocol.
3. Articles 1 to 22 of the Convention, as revised by this Protocol, together with Articles 17 to 25 of this Protocol and the annex thereto, shall constitute and be called the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Article 16

The following text is added as Article 22bis of the Convention:

‘Article 22bis

Final clauses of the Convention

The final clauses of this Convention shall be Articles 17 to 25 of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. References in this Convention to States Parties shall be taken to mean references to States Parties to that Protocol.’

FINAL CLAUSES

Article 17

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at the Headquarters of the Organization from 1 May 2003 until 30 April 2004 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Protocol by:

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
- (c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Protocol with respect to all existing States Parties, or after the completion of all measures required for the entry into force of the amendment with respect to those States Parties shall be deemed to apply to this Protocol as modified by the amendment.

5. A State shall not express its consent to be bound by this Protocol unless, if Party thereto, it denounces:

- (a) the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, done at Athens on 13 December 1974;
- (b) the Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, done at London on 19 November 1976; and
- (c) the Protocol of 1990 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, done at London on 29 March 1990,

with effect from the time that this Protocol will enter into force for that State in accordance with Article 20.

Article 18

States with more than one system of law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Protocol, it may at the time of signature, ratification, acceptance, approval or accession declare that this Protocol shall extend to all its territorial units or only to one or more of them, and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the Secretary-General and shall state expressly the territorial units to which this Protocol applies.

3. In relation to a State Party which has made such a declaration:

- (a) references to the State of a ship's registry and, in relation to a compulsory insurance certificate, to the issuing or certifying State, shall be construed as referring to the territorial unit respectively in which the ship is registered and which issues or certifies the certificate;
- (b) references to the requirements of national law, national limit of liability and national currency shall be construed respectively as references to the requirements of the law, the limit of liability and the currency of the relevant territorial unit; and
- (c) references to courts, and to judgments which must be recognised in States Parties, shall be construed as references respectively to courts of, and to judgments which must be recognised in, the relevant territorial unit.

Article 19

Regional Economic Integration Organizations

1. A Regional Economic Integration Organization, which is constituted by sovereign States that have transferred competence over certain matters governed by this Protocol to that Organization, may sign, ratify, accept, approve or accede to this Protocol. A Regional Economic Integration Organization which is a Party to this Protocol shall have the rights and obligations of a State Party, to the extent that the Regional Economic Integration Organization has competence over matters governed by this Protocol.

2. Where a Regional Economic Integration Organization exercises its right of vote in matters over which it has competence, it shall have a number of votes equal to the number of its Member States which are Parties to this Protocol and which have transferred competence to it over the matter in question. A Regional Economic Integration Organization shall not exercise its right to vote if its Member States exercise theirs, and vice versa.

3. Where the number of States Parties is relevant in this Protocol, including but not limited to Articles 20 and 23 of this Protocol, the Regional Economic Integration Organization shall not count as a State Party in addition to its Member States which are States Parties.

4. At the time of signature, ratification, acceptance, approval or accession the Regional Economic Integration Organization shall make a declaration to the Secretary-General specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organization by its Member States which are signatories or Parties to this Protocol and any other relevant restrictions as to the scope of that competence. The Regional Economic Integration Organization shall promptly notify the Secretary-General of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph. Any such declarations shall be made available by the Secretary-General pursuant to Article 24 of this Protocol.

5. States Parties which are Member States of a Regional Economic Integration Organization which is a Party to this Protocol shall be presumed to have competence over all matters governed by this Protocol in respect of which transfers of competence to the Organization have not been specifically declared or notified under paragraph 4.

Article 20

Entry into force

1. This Protocol shall enter into force 12 months following the date on which 10 States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.

2. For any State which ratifies, accepts, approves or accedes to this Protocol after the conditions in paragraph 1 for entry into force have been met, this Protocol shall enter into force 3 months after the date of deposit by such State of the appropriate instrument, but not before this Protocol has entered into force in agreement with paragraph 1.

Article 21

Denunciation

1. This Protocol may be denounced by any State Party at any time after the date on which this Protocol comes into force for that State.

2. Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.

3. A denunciation shall take effect 12 months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

4. As between the States Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 25 thereof shall not be construed in any way as a denunciation of the Convention as revised by this Protocol.

Article 22

Revision and Amendment

1. A Conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2. The Organization shall convene a Conference of States Parties to this Protocol for revising or amending this Protocol at the request of not less than one-third of the States Parties.

Article 23

Amendment of limits

1. Without prejudice to the provisions of Article 22, the special procedure in this Article shall apply solely for the purposes of amending the limits set out in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph 1 and Article 8 of the Convention as revised by this Protocol.

2. Upon the request of at least one half, but in no case less than six, of the States Parties to this Protocol, any proposal to amend the limits, including the deductibles, specified in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph 1, and Article 8 of the Convention as revised by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all States Parties.

3. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (hereinafter referred to as 'the Legal Committee') for consideration at a date at least 6 months after the date of its circulation.

4. All States Parties to the Convention as revised by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

5. Amendments shall be adopted by a two-thirds majority of the States Parties to the Convention as revised by this Protocol present and voting in the Legal Committee expanded as provided for in paragraph 4, on condition that at least one half of the States Parties to the Convention as revised by this Protocol shall be present at the time of voting.

6. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.

7. (a) No amendment of the limits under this Article may be considered less than 5 years from the date on which this Protocol was opened for signature nor less than 5 years from the date of entry into force of a previous amendment under this Article.

(b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as revised by this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.

(c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as revised by this Protocol multiplied by three.

8. Any amendment adopted in accordance with paragraph 5 shall be notified by the Organization to all States Parties. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one fourth of the States that were States Parties at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

9. An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force eighteen months after its acceptance.

10. All States Parties shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 21, paragraphs 1 and 2 at least 6 months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

11. When an amendment has been adopted but the eighteen-month period for its acceptance has not yet expired, a State which becomes a State Party during that period shall be bound by the amendment if it enters into force. A State which becomes a State Party after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 24

Depositary

1. This Protocol and any amendments adopted under Article 23 shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(a) inform all States which have signed or acceded to this Protocol of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;

(ii) each declaration and communication under Article 9, paragraphs 2 and 3, Article 18, paragraph 1 and Article 19, paragraph 4 of the Convention as revised by this Protocol;

(iii) the date of entry into force of this Protocol;

(iv) any proposal to amend the limits which has been made in accordance with Article 23, paragraph 2 of this Protocol;

(v) any amendment which has been adopted in accordance with Article 23, paragraph 5 of this Protocol;

(vi) any amendment deemed to have been accepted under Article 23, paragraph 8 of this Protocol, together with the date on which that amendment shall enter into force in accordance with paragraphs 9 and 10 of that Article;

(vii) the deposit of any instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

(viii) any communication called for by any Article of this Protocol;

(b) transmit certified true copies of this protocol to all States which have signed or acceded to this Protocol.

3. As soon as this Protocol comes into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 25

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this first day of November two thousand and two.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments for that purpose, have signed this Protocol.

ANNEX TO ATHENS PROTOCOL

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF LIABILITY FOR THE DEATH OF AND PERSONAL INJURY TO PASSENGERS

Issued in accordance with the provisions of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002,

Name of Ship	Distinctive number or letters	IMO Ship Identification Number	Port of Registry	Name and full address of the principal place of business of the carrier who actually performs the carriage

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Type of security

Duration of Security

Name and address of the insurer(s) and/or guarantor(s)

Name

Address

This certificate is valid until

Issued or certified by the Government of
(Full designation of the State)

OR

The following text should be used when a State Party avails itself of Article 4bis, paragraph 3:

The present certificate is issued under the authority of the Government of

..... (full designation of the State) by
(name of institution or organisation)

At On
(Place) (Date)

.....
(Signature and Title of issuing or certifying official)

Explanatory Notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
3. If security is furnished in several forms, these should be enumerated.
4. The entry 'Duration of Security' must stipulate the date on which such security takes effect.
5. The entry 'Address' of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

COUNCIL DECISION

of 12 December 2011

concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as regards Articles 10 and 11 thereof

(2012/23/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(1) and points (a) and (c) of Article 81(2), in conjunction with point (a) of Article 218(6) and the first subparagraph of Article 218(8) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) The Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 ("Athens Protocol") represents a major improvement to the regime relating to the liability of carriers and the compensation of passengers carried by sea.

(2) The Athens Protocol modifies the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and establishes in Article 15 that the two instruments shall, as between the Parties to the Athens Protocol, be read and interpreted together as one single instrument.

(3) Articles 10 and 11 of the Athens Protocol affect Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁽¹⁾. The Union thus has exclusive competence as regards Articles 10 and 11 of the Athens Protocol.

(4) Upon accession of the Union to the Athens Protocol, the rules on jurisdiction set out in Article 10 thereof should take precedence over the relevant Union rules.

(5) However, the rules on recognition and enforcement of judgments laid down in Article 11 of the Athens

Protocol should not take precedence either over the relevant rules of the Union, as extended to Denmark by the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁽²⁾, or the rules of the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 16 September 1988⁽³⁾ or the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007⁽⁴⁾, since the effect of the application of these rules is to ensure that judgments are recognised and enforced at least to the same extent as under the rules of the Athens Protocol.

(6) The Athens Protocol is open for ratification, acceptance, approval or accession by States and by Regional Economic Integration Organisations which are constituted by sovereign States that have transferred competence over certain matters governed by the Athens Protocol to those Organisations.

(7) According to Article 17(2)(b) and Article 19 of the Athens Protocol, Regional Economic Integration Organisations may conclude the Athens Protocol.

(8) The United Kingdom and Ireland, to which the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, applies, will be bound as part of the European Union by Articles 10 and 11 of the Athens Protocol.

(9) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application in respect of Articles 10 and 11 of the Athens Protocol. It will be bound by these Articles only as a separate Contracting Party.

⁽¹⁾ OJ L 12, 16.1.2001, p. 1.

⁽²⁾ OJ L 299, 16.11.2005, p. 62.

⁽³⁾ OJ L 319, 25.11.1988, p. 9.

⁽⁴⁾ OJ L 339, 21.12.2007, p. 3.

- (10) The majority of the rules of the Athens Protocol have been incorporated into Union law by Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents⁽¹⁾. Thus, the Union exerted competence as regards the matters governed by that Regulation. A separate Decision relating to those provisions is to be adopted in parallel to this Decision.
- (11) Member States which are to ratify or accede to the Athens Protocol should, if possible, do so simultaneously. Member States should therefore exchange information on the state of their ratification or accession procedures in order to prepare as far as possible the simultaneous deposit of their instruments of ratification or accession. When ratifying or acceding to the Athens Protocol, Member States should make the reservation contained in the IMO Guidelines,

HAS ADOPTED THIS DECISION:

Article 1

The accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 ("Athens Protocol") is hereby approved on behalf of the European Union as regards Articles 10 and 11 thereof.

The text of these Articles is reproduced in the Annex.

Article 2

1. The President of the Council is hereby authorised to designate the person or persons empowered to deposit the instrument of accession of the Union to the Athens Protocol as regards Articles 10 and 11 thereof in accordance with Articles 17(2)(c), 17(3) and 19 of that Protocol.

2. At the time of the deposit of the instrument of accession, the Union shall make the following declaration of competence:

"As regards matters covered by Articles 10 and 11 of the Athens Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, which come under Article 81 of the Treaty on the Functioning of the European Union, the Member States of the European Union, with the exception of the Kingdom of Denmark, in accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, have conferred competences to the

Union. The Union exercised this competence by adopting Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters."

3. At the time of the deposit of the instrument of accession, the Union shall make the following declaration on Article 17bis(3) of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by Article 11 of the Athens Protocol:

"1. Judgments on matters covered by the Athens Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, when given by a court of the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden or the United Kingdom of Great Britain and Northern Ireland, shall be recognised and enforced in a Member State of the European Union in accordance with the relevant rules of the European Union on the subject.

2. Judgments on matters covered by the Athens Protocol, when given by a court of the Kingdom of Denmark, shall be recognised and enforced in a Member State of the European Union in accordance with the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

3. Judgments on matters covered by the Athens Protocol, when given by a court of a third State

(a) bound by the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007 shall be recognised and enforced in the Member States of the European Union in accordance with that Convention;

(b) bound by the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 16 September 1988 shall be recognised and enforced in the Member States of the European Union in accordance with that Convention."

⁽¹⁾ OJ L 131, 28.5.2009, p. 24.

4. The person or persons designated under paragraph 1 of this Article shall make the reservation contained in the IMO Guidelines when depositing the instrument of accession of the Union to the Athens Protocol as regards Articles 10 and 11 thereof.

Article 3

The Union shall deposit its instrument of accession to the Athens Protocol as regards Articles 10 and 11 thereof by 31 December 2011.

Article 4

Member States shall take the necessary steps to deposit the instruments of ratification of, or accession to, the Athens Protocol within a reasonable time and, if possible, by 31 December 2011.

Done at Brussels, 12 December 2011.

For the Council

The President

S. NOWAK

ANNEX

ARTICLES 10 AND 11 OF THE PROTOCOL OF 2002 TO THE ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974*Article 10*

Article 17 of the Convention is replaced by the following text:

*'Article 17***Competent jurisdiction**

1. An action arising under Articles 3 and 4 of this Convention shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court is located in a State Party to this Convention, and subject to the domestic law of each State Party governing proper venue within those States with multiple possible forums:

- (a) the court of the State of permanent residence or principal place of business of the defendant, or
- (b) the court of the State of departure or that of the destination according to the contract of carriage, or
- (c) the court of the State of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State, or
- (d) the court of the State where the contract of carriage was made, if the defendant has a place of business and is subject to jurisdiction in that State.

2. Actions under Article 4bis of this Convention shall, at the option of the claimant, be brought before one of the courts where action could be brought against the carrier or performing carrier according to paragraph 1.

3. After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.'

Article 11

The following text is added as Article 17bis of the Convention:

*'Article 17bis***Recognition and enforcement**

1. Any judgment given by a court with jurisdiction in accordance with Article 17 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognised in any State Party, except

- (a) where the judgment was obtained by fraud; or
- (b) where the defendant was not given reasonable notice and a fair opportunity to present the case.

2. A judgment recognised under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

3. A State Party to this Protocol may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognised and enforced at least to the same extent as under paragraphs 1 and 2.'

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 13/2012

of 6 January 2012

amending Regulation (EC) No 1292/2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community⁽¹⁾ ('the basic Regulation'), and in particular Article 9(4) and Article 11(3), (5) and (6) thereof,

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

Whereas:

A. PROCEDURE

1. Previous investigations and existing anti-dumping measures

- (1) In August 2001, by Regulation (EC) No 1676/2001⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, inter alia, in India. The measures consisted of an *ad valorem* anti-dumping duty ranging between 0 % and 62,6 % imposed on imports from individually named exporting producers, with a residual duty rate of 53,3 % on imports from all other companies.
- (2) In August 2001, the Commission, by Decision 2001/645/EC⁽³⁾, accepted price undertakings offered by five Indian producers. The acceptance of the undertakings was subsequently withdrawn⁽⁴⁾ in March 2006.
- (3) In March 2006, by Regulation (EC) No 366/2006⁽⁵⁾, the Council amended the measures imposed by Regulation (EC) No 1676/2001. The anti-dumping duty imposed ranged between 0 % and 18 %, taking into account the

findings of the expiry review of the definitive countervailing duties which are detailed in Council Regulation (EC) No 367/2006⁽⁶⁾.

- (4) In September 2006, by Regulation (EC) No 1424/2006⁽⁷⁾, the Council, following a new exporting producer request, amended Regulation (EC) No 1676/2001 in respect of one Indian exporter. The amended Regulation established a dumping margin of 15,5 % for cooperating companies not included in the sample and an anti-dumping duty rate of 3,5 % for the company concerned taking into account the company's export subsidy margin as ascertained in the anti-subsidy investigation which led to the adoption of Regulation (EC) No 367/2006. Since the company did not have an individual countervailing duty, the rate established for all other companies was applied.
- (5) In November 2007, by Regulation (EC) No 1292/2007⁽⁸⁾, the Council imposed a definitive anti-dumping duty on imports of PET film originating in India following an expiry review pursuant to Article 11(2) of the basic Regulation. By the same Regulation a partial interim review pursuant to Article 11(3) of the basic Regulation, limited in scope to the examination of dumping in respect of one Indian exporting producer was terminated.
- (6) Regulation (EC) No 1292/2007 also maintained the extension of the measures to Brazil and Israel with certain companies being exempted. The last amendment to Regulation (EC) No 1292/2007 in this regard was made by Council Implementing Regulation (EU) No 806/2010⁽⁹⁾.
- (7) In January 2009, by Regulation (EC) No 15/2009⁽¹⁰⁾, the Council, following a partial interim review initiated by the Commission on its own initiative concerning the subsidisation of five Indian PET film producers, amended the definitive anti-dumping duties imposed on these companies by Regulation (EC) No 1292/2007 and the definitive countervailing duties imposed on these companies by Regulation (EC) No 367/2006.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 227, 23.8.2001, p. 1.

⁽³⁾ OJ L 227, 23.8.2001, p. 56.

⁽⁴⁾ OJ L 68, 8.3.2006, p. 37.

⁽⁵⁾ OJ L 68, 8.3.2006, p. 6.

⁽⁶⁾ OJ L 68, 8.3.2006, p. 15.

⁽⁷⁾ OJ L 270, 29.9.2006, p. 1.

⁽⁸⁾ OJ L 288, 6.11.2007, p. 1.

⁽⁹⁾ OJ L 242, 15.9.2010, p. 6.

⁽¹⁰⁾ OJ L 6, 10.1.2009, p. 1.

(8) In May 2011, by Implementing Regulation (EU) No 469/2011⁽¹⁾, the Council amended Regulation (EC) No 1292/2007 and thus adjusted the anti-dumping duty rates in view of the expiry on 9 March 2011⁽²⁾ of the countervailing duty imposed by Regulation (EC) No 367/2006.

(9) The applicant of this interim review — Ester Industries Limited — is currently subject to a definitive anti-dumping duty of 29,3 %.

2. Request for a partial interim review

(10) In July 2010, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation. The request, limited in scope to the examination of dumping, was lodged by Ester Industries Limited, an exporting producer from India ('Ester' or 'the applicant'). In its request, the applicant claimed that the circumstances on the basis of which measures were imposed have changed and that these changes are of a lasting nature. The applicant provided *prima facie* evidence that the continued imposition of the measure at its current level was no longer necessary to offset injurious dumping.

3. Initiation of a review

(11) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced by a notice published on 29 October 2010 in the *Official Journal of the European Union* ⁽³⁾ ('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 applicant.

(12) The Notice of Initiation mentioned that the partial interim review would also assess the need, depending on the review findings, to amend the rate of duty applicable to imports of the product concerned from exporting producers in the country concerned not individually mentioned in Article 2(2) of Regulation (EC) No 1292/2007, i.e. the anti-dumping duty rate as applying to 'all other companies' in India.

4. Investigation

(13) The investigation of the level of dumping covered the period from 1 October 2009 to 30 September 2010 ('the review investigation period' or 'the RIP').

(14) The Commission officially informed the applicant, 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.

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

(16) 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 applicant.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(17) The product concerned by this review is the same as that defined in Regulation (EC) No 1292/2007, as last amended, imposing the measures in force, namely polyethylene terephthalate (PET) film, originating in India, currently falling within CN codes ex 3920 62 19 and ex 3920 62 90.

2. Like product

(18) As in previous investigations, this investigation has shown that PET film produced in India and exported to the Union and the PET film produced and sold domestically on the Indian market, as well as the PET film produced and sold in the EU by the Union producers, have the same basic physical and chemical characteristics and the same basic uses.

(19) These products are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

C. DUMPING

(a) Normal value

(20) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the applicant's domestic sales of the like product to independent customers were representative, i.e. whether the total volume of such sales was equal to at least 5 % of the total volume of the corresponding export sales to the Union.

(21) The Commission subsequently identified those types of the like product sold domestically by the company that were identical or directly comparable to the types sold for export to the Union.

(22) It was further examined whether the domestic sales of the applicant were representative for each product type, i.e. whether domestic sales of each product type constituted at least 5 % of the sales volume of the same product type to the Union. For the product types sold in representative quantities it was then examined whether such sales were made in the ordinary course of trade, in accordance with Article 2(4) of the basic Regulation.

(23) The examination as to whether the domestic sales of each product type, sold domestically in representative quantities, could be regarded as having been made in the ordinary course of trade was made by establishing the proportion of the profitable sales to independent customers of the type in question. In all cases where

⁽¹⁾ OJ L 129, 17.5.2011, p. 1.

⁽²⁾ Notice of expiry (OJ C 68, 3.3.2011, p. 6).

⁽³⁾ OJ C 294, 29.10.2010, p. 10.

the domestic sales of the particular product type were made in sufficient quantities and in the ordinary course of trade, normal value was based on the actual domestic price, calculated as a weighted average of all the domestic sales of that type made during the RIP.

- (24) For the remaining product types where domestic sales were not representative or not sold in the ordinary course of trade, normal value was constructed in accordance with Article 2(3) of the basic Regulation. Normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses and a reasonable margin for profit, on the basis of actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporting producer under investigation in accordance with the first sentence of Article 2(6) of the basic Regulation.

(b) Export price

- (25) In the previous interim review leading to the adoption of Regulation (EC) No 366/2006, it was determined that price undertakings influenced the past export prices and made them unreliable for the determination of future export behaviour. In that interim review, given that Ester was selling the product concerned in substantial quantities on the world market, it was decided to establish the export price on the basis of prices actually paid or payable to all third countries.

- (26) It is recalled that the acceptance of price undertakings was withdrawn in March 2006, i.e. more than three years before the current RIP. Therefore, Ester's export prices to the Union in the current RIP were not influenced by any price undertakings. It can be thus concluded that they can be considered reliable for the determination of future export behaviour.

- (27) Since all export sales of the applicant to the Union were made directly to independent customers, the export price was established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

(c) Comparison

- (28) The comparison between the weighted average normal value and the weighted average export price was made on an ex-works basis and at the same level of trade. In order to ensure a fair comparison between normal value and the export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which affected prices and price comparability. For this purpose, due allowance in the form of adjustments was made, where applicable and justified, for differences in transport, insurance, handling, loading and ancillary costs, commissions, financial costs and packing costs paid by the applicant.

- (29) The applicant claimed that, compared to the previous interim review investigation, it is offering its customers a wider variation of chemical coatings and this aspect should be taken into account when classifying the product concerned into different product types. However, the company did not demonstrate that the different types of chemical coatings affected price comparability and, in particular, that the customers consistently paid different prices on the domestic market and on the EU export market depending on the type of chemical coating. Therefore, the product classification applied in the previous investigations should be maintained and the claim must be rejected.

- (30) The applicant also claimed an adjustment on the export price, based on the benefits received upon exportation under the Duty Entitlement Passbook Scheme (DEPB) on a post-export basis. In this respect, it was found that under this scheme, the credits received when exporting the product concerned could be used to offset customs duties due on imports of any goods or could be freely sold to other companies. In addition, there is no constraint that the imported goods should only be used in the production of the exported product concerned. Ester did not demonstrate that the benefit under the DEPB scheme affected price comparability and, in particular, that the customers consistently paid different prices on the domestic market because of the DEPB scheme benefits. Therefore, the claim was rejected.

- (31) The applicant further claimed an adjustment on the export price, based on the benefits received under the Export Promotion Capital Goods Scheme (EPCG) and under 'Export Credits' Scheme. In this regard it has to be noted that, similarly as with the other schemes mentioned above, there is no constraint that the imported goods under the EPCG Scheme should only be used in the production of the exported product concerned. Secondly, the applicant did not submit any evidence of an explicit link between pricing of the exported goods and the benefits received under the EPCG and 'Export Credits' Schemes. Finally, the applicant did not demonstrate that the benefits under these two schemes affected price comparability and, in particular, that the customers consistently paid different prices on the domestic market because of the EPCG and 'Export Credits' Schemes benefits. Therefore, the claim has to be rejected.

(d) Dumping margin

- (32) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned. Following the comments on disclosure set out in recitals 44 and 45 below, the dumping margin, expressed as a percentage of the cif Union frontier price, duty unpaid, is 8,3 %.

D. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (33) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances could reasonably be considered to be of a lasting nature.
- (34) In this regard the investigation showed that Ester indeed has taken a number of measures for cost reduction and efficiency improvements. Notably, the company modernised and built a new production line. Further, as a result of significant increase in production, the overhead costs substantially declined. The company also started sourcing its raw materials more efficiently (from a closer location) and managed thereby to considerably reduce freight costs. This cost reduction has a direct impact on the dumping margin. This change in circumstances can therefore be considered to be of a lasting nature.
- (35) As regards export price, the investigation showed a certain stability in Ester's pricing policies over a long period, between 2006 (the year when the undertaking was repealed) and 2010 (almost the end of the RIP). Given that change in the methodology for the determination of Ester's export price to the Union as described in recitals 24 and 25 above and the above-mentioned stability in prices, the newly calculated dumping margin is likely to be of a lasting nature.
- (36) It was therefore considered that the circumstances that led to the initiation of this interim review are unlikely to change in the foreseeable future in a manner that would affect the findings of the interim review. Therefore it was concluded that the changed circumstances are of a lasting nature and that the application of the measure at its current level is no longer justified.

E. ANTI-DUMPING MEASURES

- (37) One exporting producer argued that the average dumping margin of the sample should be recalculated, in case the current interim review resulted in a lower dumping margin for Ester (which was one of the companies in the sample) than previously established. It should be recalled that the scope of the current partial interim review pursuant to Article 11(3) of the basic Regulation is explicitly limited to the review of the margin of dumping of the applicant, an individual exporter, namely Ester. Therefore, the investigation was limited to the specific circumstances of the applicant, taking into account all relevant and duly documented evidence⁽¹⁾. The conclusions reached on this basis are not pertinent for the other companies in the sample or any other exporting producer in the country concerned.
- (38) It is considered that the determination of a new sample average margin of dumping pursuant to Article 9(6) of the basic Regulation in such circumstances is neither

legally possible nor economically appropriate for the following reasons. Indeed, it should be recalled that the calculation of a sample average margin of dumping will only resorted to when, in the context of one given investigation, it is considered that the number of exporters is so large that individually investigating all cooperating exporters would unduly burden the Institutions and jeopardise the completion of the investigation within the mandatory deadline laid out in the basic Regulation. It is then assumed that the computation of a weighted average margin on the basis of the margins of dumping of the sampled exporters is representative of the dumping margin of the non-sampled cooperating exporters. This can only be the case if such calculation is made on the basis of margins of dumping relating to the same period of time. None of the above circumstances are present in the context of a partial interim review limited to one company originally in the sample such as the current investigation. As a consequence, it is concluded that the factual circumstances of the current partial interim review are such that the disciplines of Article 9(6) clearly do not apply.

- (39) It is to be recalled that the statement in the Notice of Initiation according to which 'if it is determined that measures should be removed or amended for the applicant, it may be necessary to amend the rate of duty currently applicable to imports of the products concerned from other companies in India' means that, as result of the review, the residual duty may go up in order to avoid circumvention⁽²⁾. Since the applicant's duty is revised downwards, the abovementioned provision of the Notice of Initiation is not relevant.
- (40) In light of the reasons described in recitals 37 to 39, the claim that the average dumping margin of the sample should be recalculated has to be rejected.
- (41) 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 applicant and were given the opportunity to comment.
- (42) The applicant reiterated its claims concerning the product classification referred to in recital 29 as well as its claims concerning duty drawback adjustment on the export price due to the DEPB, EPCG and 'Export Credits' benefits as described in recitals 30 and 31. However, since no new elements have been provided that could alter the Commission's findings, the claims had to be rejected.

⁽¹⁾ Judgment of the General Court of 17 December 2010, EWRIA and Others v Commission, Case T-369/08, points 7 and 79 and the jurisprudence quoted there.

⁽²⁾ Council Implementing Regulation (EU) No 270/2010 of 29 March 2010 amending Regulation (EC) No 452/2007 imposing a definitive anti-dumping duty on imports of ironing boards originating, *inter alia*, in the People's Republic of China. (OJ L 84, 31.3.2010, p. 13).

- (43) The applicant further contested the method of calculating the cif value of those transactions which have been made on FOB basis. When establishing the unit cif value the Commission related the total freight cost paid by the company to all export transactions including the FOB transactions. The company claimed that the total freight cost should have been related to the cif transactions only. This claim has been accepted.
- (44) The applicant finally claimed that not all sample sales have been excluded from the determination of the dumping margin. This claim has also been accepted.
- (45) 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 Ester Industries Limited amounts to 8,3 %,

HAS ADOPTED THIS REGULATION:

Article 1

The entry concerning Ester Industries Limited, in the table in Article 2(2) of Regulation (EC) No 1292/2007, shall be replaced by the following:

'Ester Industries Limited, DLF City, Phase II, Sector 25, Gurgaon, Haryana — 122022, India	8,3	A026'
--	-----	-------

Article 2

This Regulation shall enter into force on the day following 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, 6 January 2012.

For the Council
The President
N. WAMMEN

COUNCIL IMPLEMENTING REGULATION (EU) No 14/2012**of 9 January 2012**

extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 511/2010 on imports of certain molybdenum wires originating in the People's Republic of China to imports of certain molybdenum wires consigned from Malaysia, whether declared as originating in Malaysia or not and terminating the investigation in respect of imports consigned from Switzerland

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Article 13 thereof,

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

Whereas:

A. PROCEDURE**1. Existing measures**

- (1) By Implementing Regulation (EU) No 511/2010 ⁽²⁾ ('the original Regulation'), the Council imposed a definitive anti-dumping duty of 64,3 % on imports of certain molybdenum wires as defined in Article 1(1) of the said Regulation ('the product concerned') originating in the People's Republic of China ('PRC' or 'country concerned'). These measures will hereinafter be referred to as 'the measures in force' and the investigation that led to the measures imposed by the original Regulation will be hereinafter referred to as 'the original investigation'.

2. Request

- (2) On 4 April 2011, the Commission received a request pursuant to Article 13(3) of the basic Regulation to investigate the alleged circumvention of the measures in force. The request was submitted by the European Association of Metals (Eurometaux) on behalf of a Union producer of certain molybdenum wires ('the applicant').
- (3) The request alleged that following the imposition of the measures in force, there had been a significant change in the pattern of trade between PRC, Malaysia and Switzerland on the one hand and the Union on the other. The applicant claimed that this change was due to transshipment of molybdenum wires via Malaysia or Switzerland.
- (4) The request concluded that there was insufficient due cause or economic justification for the transshipment other than the existence of the measures in force.

- (5) Finally, the applicant alleged that the remedial effects of the measures in force were being undermined both in terms of quantities and prices and that the prices of molybdenum wires from Malaysia and Switzerland were dumped when related to the normal value established in the original investigation.

3. Initiation

- (6) Having determined, after consulting the Advisory Committee, that sufficient prima facie evidence existed for initiation of an investigation pursuant to Article 13 of the basic Regulation, the Commission initiated an investigation by Regulation (EU) No 477/2011 ⁽³⁾ ('the initiating Regulation'). Pursuant to Articles 13(3) and 14(5) of the basic Regulation, the Commission, by the initiating Regulation, also directed the customs authorities to register imports of the product concerned consigned from Malaysia or Switzerland, whether declared as originating in Malaysia or Switzerland or not, as of 19 May 2011.

4. Investigation

- (7) The Commission officially advised the authorities of the PRC, Malaysia and Switzerland, the exporting producers and traders in those countries, the importers in the Union known to be concerned as well as the Union producers of the initiation of the investigation.
- (8) Questionnaires were sent to the producers/exporters in Malaysia, Switzerland and the PRC as well as to Union importers known to be concerned and/or mentioned in the request. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation. All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and to findings being based on the facts available.
- (9) One Union importer contacted the Commission, declaring that it had never purchased any molybdenum wires from outside the Union.
- (10) Two Malaysian companies submitted that during the IP referred to in recital (14) they neither manufactured nor exported to the Union any molybdenum wires.
- (11) One Swiss company declared that they were not involved in producing or selling the molybdenum wires over the past three years.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 150, 16.6.2010, p. 17.

⁽³⁾ OJ L 131, 18.5.2011, p. 14.

(12) One PRC producer replied to the questionnaire indicating that, from 2009 onwards, they exported molybdenum wires neither to the Union nor to Malaysia or Switzerland.

(13) The Commission received no comments from the PRC, Malaysian or Swiss authorities.

5. Investigation Period

(14) The investigation period covered the period from 1 April 2010 to 31 March 2011 ('the IP'). Data was collected for the period from 2007 to the end of the IP ('period considered') to investigate the alleged change in the pattern of trade.

B. RESULTS OF THE INVESTIGATION

1. General considerations/degree of cooperation

(15) As mentioned in recital (10), only two companies in Malaysia cooperated but they did not export the product concerned to the Union during the IP. As mentioned in recital (11), only one Swiss company submitted information according to which they were not involved in producing or selling the product concerned over the past three years. Consequently, findings in the present investigation had to be based on facts available in accordance with Article 18 of the basic Regulation.

(16) In accordance with Article 13(1) of the basic Regulation, the assessment of possible circumvention practices was made by analyzing successively: (1) whether there was a change in the pattern of trade between PRC, Malaysia and Switzerland on the one hand and the Union on the other; (2) if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty; (3) if there was evidence of injury or that the remedial effects of the duty were being undermined in terms of the prices and/or quantities of the like product; and (4) whether there was evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2 of the basic Regulation.

2. Product concerned and like product

(17) The product concerned is as defined in the original investigation, i.e. molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the PRC, currently falling within CN code ex 8102 96 00.

(18) The product under investigation is the same as that defined in recital (17) but consigned from Malaysia or Switzerland, whether declared as originating in Malaysia or Switzerland or not.

(19) As far as imports declared as originating in Switzerland are concerned, it was established, on the basis of data from Surveillance II database, that there were no imports of the product concerned to the Union during the IP.

(20) As far as imports declared as originating in Malaysia are concerned, in the absence of cooperation, the comparison of molybdenum wires exported to the Union from PRC against molybdenum wires consigned from Malaysia to the Union was based on information available in accordance with Article 18 of the basic Regulation, including information provided in the request. No information obtained during the present investigation suggested that molybdenum wires exported to the Union from the PRC and molybdenum wires consigned from Malaysia to the Union would not have the same basic physical characteristics and the same uses. Therefore, they are considered as like products within the meaning of Article 1(4) of the basic Regulation. No submissions to the contrary were made during the investigation.

3. Change in the pattern of trade

Imports of molybdenum wires into the Union

3.1. PRC and Malaysia

(21) Due to lack of cooperation from the PRC exporting producers, in order to assess the level of imports for the year 2010 and the IP different statistical sources have been compared. Those included both publicly available sources like Eurostat as well as other sources like the database pursuant to Article 14(6) of the basic Regulation and Surveillance II database.

(22) As stated in recital (27) of the original Regulation, imports from the PRC amounted to 87 tonnes in 2007, 100 tonnes in 2008 and 97 tonnes in the original IP (1 April 2008 to 31 March 2009).

(23) The imports of the product concerned from the PRC dropped significantly after the imposition of the measures (from 97 tonnes in the original IP to below 10 tonnes in the IP). On the other hand Malaysian imports increased from none in 2009 to around 6 tonnes in the IP.

3.2. PRC and Switzerland

(24) According to the Eurostat data, i.e. data at the CN code level, the imports from Switzerland increased from virtually none in 2009 and preceding years to 5 tonnes in both 2010 and 2011. However, the investigation established that no imports of the product concerned from Switzerland, declared as originating in Switzerland, into the Union were made during the IP. Furthermore, no such imports were made in the whole year 2010 while original provisional measures were in force since December 2009.

3.3. Imports from the PRC into Malaysia and Switzerland

- (25) The PRC statistical sources indicate that exports of the product concerned to Malaysia started in 2010, while only negligible quantities were exported in 2009 and 2008.

- (26) The Swiss statistical sources show that imports from the PRC into Switzerland started in 2010 and continued in 2011 although negligible quantities were imported in 2009 and 2008. However, this import data relates at the level of CN code and hence has a scope broader than the definition of the product concerned in the present investigation. As noted above it was established that there were no exports of the product concerned from Switzerland, declared as originating in Switzerland, to the Union. Consequently, the investigation could not establish any transshipment practices of molybdenum wires originating in the PRC via Switzerland.

3.4. Conclusion on the change of pattern of trade

Malaysia

- (27) The overall decrease of exports of the product concerned from the PRC to the Union as from 2010 and the parallel increase of exports from Malaysia and of exports from the PRC to Malaysia after the imposition of the original measures constituted a change in the pattern of trade between the above mentioned countries on the one hand and the Union on the other hand.

Switzerland

- (28) As far as Switzerland is concerned, no change in the pattern of trade between the PRC, Switzerland and the Union could be established with regard to imports of the product concerned. Consequently, the investigation of possible circumvention of anti-dumping measures by imports of molybdenum wires consigned from Switzerland should be terminated.

4. Nature of the circumvention practice and insufficient due cause or economic justification

- (29) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process or work includes, inter alia, the consignment of the product subject to measures via third countries.
- (30) The comparison of trade flows between the PRC and Malaysia on the one hand and Malaysia and the Union

on the other hand indicates the existence of transshipment practices. The allegation in the request has not been contested by any operator; neither those from the PRC or Malaysia nor from the Union. It is recalled that no producers of molybdenum wires from Malaysia cooperated with this investigation.

- (31) The investigation did not bring to light any other due cause or economic justification for the transshipment than the avoidance of the measures in force. No elements were found, other than the avoidance of the payment of the duty, which could be considered as a compensation for the costs of transshipment of the product concerned from the PRC via Malaysia.

- (32) This conclusion is further corroborated by the fact that no producer of molybdenum wires from Malaysia came forward during the present investigation.

- (33) In addition, it is noted that imports from Malaysia had discontinued around the time of the publication of the initiating Regulation.

- (34) It is therefore concluded that, in the absence of any other sufficient due cause or economic justification within the meaning of the second sentence of Article 13(1) of the basic Regulation, the change in the pattern of trade between the PRC and Malaysia on the one hand and the Union on the other hand was due to the imposition of the measures in force.

5. Undermining of the remedial effects of the duty in terms of the prices and/or the quantities of the like product

- (35) To assess whether the imported products from Malaysia had, in terms of quantities and prices, undermined the remedial effects of the measures in force, data from available statistical sources as described in recital (21) were used as the best data available concerning quantities and prices of exports from Malaysia.

- (36) The increase of imports from Malaysia was considered to be significant in terms of quantities. The level of imports from Malaysia in the IP amounts to around 6 % of the level of imports of the product originating in the PRC to the Union before the imposition of measures.

- (37) The comparison of the injury elimination level as established in the original Regulation and the weighted average export price showed significant underselling. It was therefore concluded that the remedial effects of the measures in force are being undermined both in terms of quantities and prices.

6. Evidence of dumping in relation to the normal value previously established for the like product

- (38) In the absence of cooperation from any exporting producer, export prices were based on facts available pursuant to Article 18 of the basic Regulation. The prices available from statistical sources as described in recital (21) were considered to be the most reliable.
- (39) In accordance with Article 13(1) of the basic Regulation, it was considered appropriate that the normal value to be used in an anti-circumvention investigation is the normal value established during the original investigation. In the absence of cooperation and pursuant to Article 18 of the basic Regulation, for the purpose of comparing the export price and normal value, it was considered appropriate to assume that the product mix of the goods observed during the present investigation was the same as in the original investigation.
- (40) In the original investigation, the USA was considered to be an appropriate market economy analogue country. Since the analogue country producer made only marginal sales on the domestic US market, it was found unreasonable to use US domestic sales data for the purposes of determining or constructing normal value. Consequently, the normal value for the PRC was established on the basis of export prices from the USA to other third countries, including the Union.
- (41) In accordance with Article 2(11) and 2(12) of the basic Regulation, dumping was calculated by comparing the weighted average normal value as established in the original Regulation and the weighted average export prices established during this investigation's IP, expressed as a percentage of the net, free-at-Union-frontier price, before customs duty.
- (42) The comparison of the weighted average normal value and the weighted average export prices showed dumping.

C. MEASURES

- (43) In view of the findings above, it was concluded that the definitive anti-dumping duty imposed on imports of molybdenum wires originating in the PRC was circumvented by transshipment via Malaysia.
- (44) In accordance with the first sentence of Article 13(1) of the basic Regulation, the existing anti-dumping measures on imports of the product concerned originating in the PRC, should be extended to imports of the same product consigned from Malaysia, whether declared as originating in Malaysia or not.
- (45) The measures to be extended should be the ones established in Article 1(2) of Implementing Regulation

(EU) No 511/2010, which are a definitive anti-dumping duty of 64,3 % applicable to the net, free-at-Union-frontier price, before customs duty.

- (46) In accordance with Articles 13(3) and 14(5) of the basic Regulation, which provides that any extended measure should apply to imports which entered the Union under registration imposed by the initiating Regulation, duties should be collected on those registered imports of molybdenum wires consigned from Malaysia.

D. TERMINATION OF THE INVESTIGATION IN RESPECT OF IMPORTS FROM SWITZERLAND

- (47) In view of the findings regarding Switzerland, the investigation concerning the possible circumvention of anti-dumping measures by imports of the product concerned consigned from Switzerland should be terminated and the registration of imports of molybdenum wires consigned from Switzerland, introduced by the initiating Regulation, should be discontinued.

E. REQUESTS FOR EXEMPTION

- (48) It is recalled that during the present investigation no producer/exporter of molybdenum wires to the Union made itself known or was found to exist in Malaysia. Nevertheless, any producer from Malaysia which did not export the product under investigation to the Union during the IP and which considers lodging a request for an exemption from the extended anti-dumping duty pursuant to Articles 11(4) and 13(4) of the basic Regulation will be required to complete a questionnaire in order to enable the Commission to determine whether an exemption may be warranted. Such exemption may be granted after the assessment of the market situation of the product concerned, production capacity and capacity utilisation, procurement and sales and the likelihood of continuation of practices for which there is insufficient due cause or economic justification and the evidence of dumping. The Commission would normally also carry out an on-the-spot verification visit. The request should be addressed to the Commission forthwith, with all relevant information, in particular any modification in the company's activities linked to the production and sales.
- (49) Where an exemption is warranted, the Commission will, after consultation of the Advisory Committee, propose the amendment of the extended measures in force accordingly. Subsequently, any exemption granted will be monitored to ensure compliance with the conditions set therein.

F. DISCLOSURE

- (50) Interested parties were informed of the essential facts and considerations leading to the above conclusions and were given the opportunity to comment and to be heard,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty imposed by Implementing Regulation (EU) No 511/2010 on imports of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, currently falling within CN code ex 8102 96 00 and originating in the People's Republic of China, is hereby extended to imports of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, currently falling within CN code ex 8102 96 00 (TARIC code 8102 96 00 11), consigned from Malaysia, whether declared as originating in Malaysia or not.

2. The duties extended by paragraph 1 shall be collected on imports consigned from Malaysia, whether declared as originating in Malaysia or not, registered in accordance with Article 2 of Regulation (EU) No 477/2011, and Articles 13(3) and 14(5) of Regulation (EC) No 1225/2009.

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. Requests for exemption from the duties extended by Article 1 shall be made in writing in one of the official languages of the Union and must be signed by a person authorized to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate H
Office: N105 4/92
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Fax +32 2297 98 81

Email: TRADE-13-3-MOLYBDENUM@ec.europa.eu

2. In accordance with Article 13(4) of Regulation (EC) No 1225/2009, the Commission, after consulting the Advisory Committee, may authorise by decision the exemption of imports which do not circumvent the anti-dumping measures imposed by Implementing Regulation (EU) No 511/2010 from the duty extended by Article 1 of the present Regulation.

Article 3

The investigation initiated by Regulation (EU) No 477/2011 concerning the possible circumvention of the of anti-dumping measures imposed by Implementing Regulation (EU) No 511/2010 on imports of certain molybdenum wires originating in the People's Republic of China by imports of certain molybdenum wires consigned from Switzerland, whether declared as originating in Switzerland or not, is hereby terminated.

Article 4

Customs authorities are hereby directed to discontinue the registration of imports, established in accordance with Article 2 of Regulation (EU) No 477/2011.

Article 5

This Regulation shall enter into force on the day following 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, 9 January 2012.

For the Council
The President
N. WAMMEN

COMMISSION IMPLEMENTING REGULATION (EU) No 15/2012**of 10 January 2012****amending for the 162nd 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 7a(5) 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 28 December 2011 the Sanctions Committee of the United Nations Security Council decided to remove six entities from the list of persons, groups and entities to whom the freezing of funds and economic resources

should apply after considering the de-listing request submitted by these entities and the Comprehensive Report of the Ombudsperson established pursuant to United Nations Security Council Resolution 1904(2009). Furthermore, on 30 December 2011, the Sanctions Committee decided to remove one natural person from the list.

- (3) Annex I to Regulation (EC) No 881/2002 should therefore be updated accordingly.

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, 10 January 2012.

*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 under the heading 'Legal persons, groups and entities' are deleted:

- '(a) Barakaat North America, Inc., 925, Washington Street, Dorchester, Massachussets, USA; 2019, Bank Street, Ottawa, Ontario, Canada.
- (b) Barakat Computer Consulting (BCC), Mogadishu, Somalia.
- (c) Barakat Consulting Group (BCG), Mogadishu, Somalia.
- (d) Barakat Global Telephone Company, Mogadishu, Somalia; Dubai, UAE.
- (e) Barakat Post Express (BPE), Mogadishu, Somalia.
- (f) Barakat Refreshment Company, Mogadishu, Somalia; Dubai, UAE.'

(2) The following entry under the heading 'Natural persons' is deleted:

'Sajid Mohammed Badat (alias (a) Abu Issa, (b) Saajid Badat, (c) Sajid Badat, (d) Muhammed Badat, (e) Sajid Muhammad Badat, (f) Saajid Mohammad Badet, (g) Muhammed Badet, (h) Sajid Muhammad Badet, (i) Sajid Mahomed Badat). Date of birth: 28.3.1979. Place of birth: Gloucester, United Kingdom. Nationality: British. Passport No: (a) 703114075 (United Kingdom passport), (b) 026725401 (United Kingdom passport, expired on 22.4.2007), (c) 0103211414 (United Kingdom passport). Other information: Released from prison in the United Kingdom in November 2010. Date of designation referred to in Article 2a (4) (b): 15.12.2005.'

COMMISSION REGULATION (EU) No 16/2012**of 11 January 2012****amending Annex II to Regulation (EC) No 853/2004 of the European Parliament and of the Council
as regards the requirements concerning frozen food of animal origin intended for human
consumption****(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 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin ⁽¹⁾, and in particular Article 10(1) thereof,

Whereas:

- (1) Regulation (EC) No 853/2004 lays down rules on the hygiene of food of animal origin for food business operators. Food business operators are required to comply with the requirements set out in Annex II thereto.
- (2) Experience gained since the date of application of Regulation (EC) No 853/2004 has exposed certain difficulties as regards the storage of food of animal origin. If the date of initial freezing of such food was indicated, food business operators would be better able to judge the suitability of the food for human consumption.
- (3) Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs ⁽²⁾ concerns the labelling of foodstuffs to be delivered as such to the final consumer and certain aspects relating to the presentation and advertising thereof. However, that Directive does not apply to prior stages of food production.

(4) In addition, the enforcement of compliance with the provisions of Regulation (EC) No 853/2004 by the competent authorities has revealed that more detailed requirements regarding the production and freezing of food of animal origin in the stages of production prior to its delivery as such to the final consumer are necessary.

(5) Accordingly, Annex II to Regulation (EC) No 853/2004 should be amended in order to include requirements applicable to frozen food of animal origin.

(6) Regulation (EC) No 853/2004 should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 853/2004 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 July 2012.

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

Done at Brussels, 11 January 2012.

*For the Commission
The President*

José Manuel BARROSO

⁽¹⁾ OJ L 139, 30.4.2004, p. 55.

⁽²⁾ OJ L 109, 6.5.2000, p. 29.

ANNEX

The following Section IV is added to Annex II to Regulation (EC) No 853/2004:

‘SECTION IV: REQUIREMENTS APPLICABLE TO FROZEN FOOD OF ANIMAL ORIGIN

1. For the purposes of this Section, “date of production” means:

- (a) the date of slaughter in the case of carcasses, half carcasses or quarter carcasses;
- (b) the date of killing in the case of bodies of wild game;
- (c) the date of harvesting or catching, in the case of fishery products;
- (d) the date of processing, cutting, mincing or preparation, as appropriate, for any other food of animal origin.

2. Until the stage at which a food is labelled in accordance with Directive 2000/13/EC or used for further processing, food business operators must ensure that in the case of frozen food of animal origin intended for human consumption, the following information is made available to the food business operator to whom the food is supplied and, upon request, to the competent authority:

- (a) the date of production; and
- (b) the date of freezing, if different from the date of production.

Where a food is made from a batch of raw materials with different dates of production and of freezing, the oldest dates of production and/or of freezing, as appropriate, must be made available.

3. The appropriate form in which the information must be made available is up to the choice of the supplier of the frozen food, as long as the information requested in paragraph 2 will be clearly and unequivocally available to and retrievable by the business operator to whom the food is supplied.’

COMMISSION IMPLEMENTING REGULATION (EU) No 17/2012**of 11 January 2012****amending Council Regulation (EC) No 32/2000 as regards the extension of the tariff quotas of the Union for jute and coconut-fibre products**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 32/2000 of 17 December 1999 opening and providing for the administration of Community tariff quotas bound in GATT and certain other Community tariff quotas and establishing detailed rules for adjusting the quotas, and repealing Regulation (EC) No 1808/95 ⁽¹⁾, and in particular the second indent of Article 9(1)(b) thereof,

Whereas:

- (1) In accordance with the offer it made within the United Nations Conference on Trade and Development (Unctad) and alongside its scheme of generalised preferences (GSP), the Community introduced tariff preferences in 1971 for jute and coconut-fibre products originating in certain developing countries. Those preferences took the form of a gradual reduction of Common Customs Tariff duties and, from 1978 to 31 December 1994, the complete suspension of these duties.
- (2) Since the entry into force of the GSP scheme in 1995, the Community has, alongside the GATT, opened autonomous zero-duty Community tariff quotas for specific quantities of jute and coconut-fibre products. The tariff quotas opened for those products under Regulation (EC) No 32/2000 were extended until 31 December 2011 by Commission Regulation (EC) No 204/2009 ⁽²⁾.

(3) As the GSP scheme has been extended until 31 December 2013 by Regulation (EU) No 512/2011 of the European Parliament and of the Council of 11 May 2011 amending Council Regulation (EC) No 732/2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 ⁽³⁾, the tariff quota arrangement for jute and coconut-fibre products should also be extended until 31 December 2013.

(4) Regulation (EC) No 32/2000 should therefore be amended accordingly.

(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

For order numbers 09.0107, 09.0109 and 09.0111, in the fifth column ('Quota period') of Annex III to Regulation (EC) No 32/2000, the words 'from 1.1.2009 to 31.12.2009', 'from 1.1.2010 to 31.12.2010' and 'from 1.1.2011 to 31.12.2011' are replaced by 'from 1.1.2012 to 31.12.2012' and 'from 1.1.2013 to 31.12.2013'.

Article 2

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

It shall apply from 1 January 2012.

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

Done at Brussels, 11 January 2012.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 5, 8.1.2000, p. 1.

⁽²⁾ OJ L 71, 17.3.2009, p. 13.

⁽³⁾ OJ L 145, 31.5.2011, p. 28.

COMMISSION IMPLEMENTING REGULATION (EU) No 18/2012**of 11 January 2012****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

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

Whereas:

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 11 January 2012.

*For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	62,1
	TN	101,1
	TR	107,7
	ZZ	90,3
0707 00 05	EG	206,0
	TR	160,5
	ZZ	183,3
0709 91 00	EG	208,4
	ZZ	208,4
0709 93 10	MA	74,1
	TR	143,7
	ZZ	108,9
0805 10 20	EG	55,7
	MA	65,9
	TR	65,7
	ZZ	62,4
0805 20 10	MA	94,1
	ZZ	94,1
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	IL	67,0
	MA	62,0
	TR	83,5
	ZZ	70,8
0805 50 10	TR	50,6
	ZZ	50,6
0808 10 80	CA	125,9
	US	134,7
	ZZ	130,3
0808 30 90	CN	99,0
	US	133,6
	ZZ	116,3

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

COMMISSION IMPLEMENTING REGULATION (EU) No 19/2012**of 11 January 2012****fixing an acceptance percentage for the issuing of export licences, rejecting export-licence applications and suspending the lodging of export-licence applications for out-of-quota sugar**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector ⁽²⁾, and in particular Article 7e in conjunction with Article 9(1) thereof,

Whereas:

- (1) According to Article 61, first subparagraph, point (d) of Regulation (EC) No 1234/2007 the sugar produced during the marketing year in excess of the quota referred to in Article 56 of that Regulation may be exported only within the quantitative limit fixed by the Commission.
- (2) Commission Implementing Regulation (EU) No 372/2011 of 15 April 2011 fixing the quantitative limit for the exports of out-of-quota sugar and isoglucose until the end of the 2011/2012 marketing year ⁽³⁾ sets the abovementioned limits.

- (3) The quantities of sugar covered by applications for export licences exceed the quantitative limit fixed by Implementing Regulation (EU) No 372/2011. An acceptance percentage should therefore be set for quantities applied for from 2 to 6 January 2012. All export-licence applications for sugar lodged after 6 January 2012 should accordingly be rejected and the lodging of export-licence applications should be suspended,

HAS ADOPTED THIS REGULATION:

Article 1

1. Export licences for out-of-quota sugar for which applications were lodged from 2 to 6 January 2012 shall be issued for the quantities applied for, multiplied by an acceptance percentage of 38,474060 %.
2. Applications for out-of-quota sugar export licences submitted on 9, 10, 11, 12 and 13 January 2012 are hereby rejected.
3. The lodging of applications for out-of-quota sugar export licences shall be suspended for the period 16 January 2012 to 30 September 2012.

Article 2

This Regulation shall enter into force on the day following 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, 11 January 2012.

*For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 102, 16.4.2011, p. 8.

COMMISSION IMPLEMENTING REGULATION (EU) No 20/2012**of 11 January 2012****fixing the allocation coefficient to be applied to applications for import licences lodged from 1 to 6 January 2012 in the context of the tariff quota opened by Regulation (EC) No 2305/2003 for barley**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,

Whereas:

- (1) Commission Regulation (EC) No 2305/2003 ⁽³⁾ opens an annual tariff quota for the import of 307 105 tonnes of barley (order number 09.4126).
- (2) The notification made in accordance with Article 3(3) of Regulation (EC) No 2305/2003 shows that the applications lodged from 1 January 2012 to 6 January 2012 at 13.00 (Brussels time), in accordance with Article 3(1) of that Regulation, exceed the quantities available. The extent to which import licences may be issued should therefore be determined and the allocation coefficient to be applied to the quantities applied for should be fixed.

- (3) No further import licences should be issued under Regulation (EC) No 2305/2003 for the current quota period.

- (4) In order to ensure sound management of the procedure for issuing import licences, this Regulation should enter into force immediately after its publication,

HAS ADOPTED THIS REGULATION:

Article 1

1. Each application for an import licence for barley under the quota referred to in Article 1(1) of Regulation (EC) No 2305/2003, lodged from 1 January 2012 to 6 January 2012 at 13.00 (Brussels time), shall be accepted for the quantities applied for multiplied by an allocation coefficient of 3,989135 %.

2. The issue of licences for the quantities applied for from 6 January 2012 at 13.00 (Brussels time) is hereby suspended for the current quota period.

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, 11 January 2012.

*For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 238, 1.9.2006, p. 13.

⁽³⁾ OJ L 342, 30.12.2003, p. 7.

DECISIONS

COMMISSION DECISION

of 11 January 2012

terminating the anti-dumping proceeding concerning imports of vinyl acetate originating in the United States of America and releasing the amounts secured by way of the provisional duties imposed

(2012/24/EU)

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 9 thereof,

After consulting the Advisory Committee,

Whereas:

(4) The Commission, by Regulation (EU) No 821/2011 ⁽³⁾ (the provisional Regulation), imposed a provisional anti-dumping duty on imports of vinyl acetate currently falling within CN code 2915 32 00 and originating in the USA.

B. WITHDRAWAL OF THE COMPLAINT AND TERMINATION OF THE PROCEEDING

(5) By a letter of 4 November 2011 to the Commission, the complainant formally withdrew its complaint.

(6) In accordance with Article 9(1) of the basic Regulation, the proceeding may be terminated where the complaint is withdrawn, unless such termination would not be in the Union interest.

A. PROCEDURE

1. Initiation of the proceeding and imposition of provisional measures

(1) On 22 October 2010, the Commission received a complaint pursuant to Article 5 of the Basic Regulation, concerning alleged injurious dumping by imports of vinyl acetate (hereinafter 'the product concerned') origination in the United States of America (USA).

(2) The complaint was lodged by Ineos Oxide Ltd (the complainant) representing a major proportion, in this case more than 25 % of the total Union industry production of the product concerned.

(3) On 4 December 2010, the Commission announced, by a notice published in the *Official Journal of the European Union* ⁽²⁾, the initiation of an anti-dumping proceeding with regard to imports into the Union of vinyl acetate originating in the USA.

(7) The Commission considered that the present proceeding should be terminated since the investigation had not brought to light any considerations showing that such termination would not be in the Union interest. Interested parties were informed accordingly and were given the opportunity to comment. No comments were received indicating that such termination would not be in the Union interest.

(8) Following disclosure, one party argued that it should not have been excluded from the definition of the Union industry or that, alternatively, the provisional Regulation should be amended so as to include the party in that definition. In this respect, it should be pointed out that the findings of the provisional Regulation, on the basis of information obtained in the course of the investigation, were only provisional, as stated in recital 31 of the provisional Regulation itself. As the anti-dumping proceedings are terminated without the imposition of definitive measures, following the withdrawal of the complaint, it is not appropriate, in a terminating decision, neither to provide definitive determinations nor to amend a provisional Regulation.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 327, 4.12.2010, p. 23.

⁽³⁾ OJ L 209, 17.8.2011, p. 24.

- (9) It is recalled that the findings at hand were provisional in nature. It follows that any future case relating to the product or the parties concerned by this proceeding will be assessed on its own merits.

Article 2

Regulation (EU) No 821/2011 is hereby repealed.

- (10) The Commission therefore concludes that the anti-dumping proceeding concerning imports into the Union of the product concerned originating in the USA should be terminated without the imposition of anti-dumping measures.

Article 3

The amounts secured by way of provisional anti-dumping duties pursuant to Regulation (EU) No 821/2011 on imports of vinyl acetate currently falling within CN code 2915 32 00 and originating in the United States of America shall be released.

- (11) Any duties provisionally secured on the basis of Regulation (EU) No 821/2011 should be released,

Article 4

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

HAS ADOPTED THIS DECISION:

Done at Brussels, 11 January 2012.

Article 1

The anti-dumping proceeding concerning imports of vinyl acetate, currently falling within CN code 2915 32 00 and originating in the United States of America, is hereby terminated without the imposition of anti-dumping measures.

For the Commission

The President

José Manuel BARROSO

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2011 OF THE JOINT COMMITTEE ESTABLISHED UNDER THE INTERBUS AGREEMENT ON THE INTERNATIONAL OCCASIONAL CARRIAGE OF PASSENGERS BY COACH AND BUS

of 11 November 2011

**adopting its rules of procedure and adapting Annex 1 to the Agreement regarding the conditions
applying to road passenger transport operators, Annex 2 to the Agreement concerning the technical
standards applying to buses and coaches and the requirements concerning the social provisions
referred to in Article 8 of the Agreement**

(2012/25/EU)

THE JOINT COMMITTEE,

HAS DECIDED AS FOLLOWS:

Having regard to the Interbus Agreement on the international occasional carriage of passengers by coach and bus ⁽¹⁾, and in particular Articles 23 and 24 thereof,

Article 1

The rules of procedure of the Joint Committee as set out in Annex I to this Decision are hereby adopted.

Whereas:

Article 2

(1) Pursuant to Article 23(3) of the Interbus Agreement on the international occasional carriage of passengers by coach and bus (hereinafter referred to as 'the Agreement'), the Joint Committee is required to establish its rules of procedure.

Annex 1 to the Agreement regarding the conditions applying to road passenger transport operators, Annex 2 to the Agreement concerning the technical standards applying to buses and coaches and the requirements concerning the social provisions referred to in Article 8 of the Agreement are hereby adapted as set out in Annex II to this Decision.

(2) The Joint Committee is responsible, in accordance with Article 24(2)(c) of the Agreement, for adapting Annex 1 to the Agreement regarding the conditions applying to road passenger transport operators and Annex 2 to the Agreement concerning the technical standards applying to buses and coaches. Furthermore, the Joint Committee is responsible, in accordance with Article 24(2)(e) of the Agreement, for adapting the requirements concerning the social provisions referred to in Article 8 of the Agreement in order to incorporate the new measures taken in the Union,

Done at Brussels, 11 November 2011.

The Chairman
Sz. SCHMIDT

The Secretary
G. PATRIS

⁽¹⁾ OJ L 321, 26.11.2002, p. 13.

ANNEX I

Rules of procedure of the Joint Committee established under the Interbus Agreement on the international occasional carriage of passengers by coach and bus*Article 1***Name of Joint Committee**

The Joint Committee established under Article 23 of the Interbus Agreement on the international occasional carriage of passengers by coach and bus shall hereinafter be referred to as 'the Committee'.

*Article 2***Chairmanship**

1. The Committee shall be chaired by a representative of the European Commission (hereinafter referred to as 'the Commission'), on behalf of the European Union.
2. The head of the Union delegation, or where necessary his deputy, shall carry out the duties of the Chairman of the Committee.
3. The Chairman shall direct the work of the Committee.

*Article 3***Delegations**

1. The parties for which the Agreement has entered into force (hereinafter referred to as 'the parties') shall appoint their representatives on the Committee. The Union delegation shall be made up of representatives of the Commission, assisted by representatives of the Member States.
2. Each party shall appoint the head and, where necessary, deputy head of its delegation.
3. Each party may appoint new representatives on the Committee. The Secretary of the Committee shall be informed forthwith in writing of any such changes.
4. Representatives of the General Secretariat of the Council of the European Union may take part as observers in the meetings of the Committee. The Chairman, with the agreement of the other heads of delegation, may invite persons who are not members of delegations to attend a meeting of the Committee in order to provide information on specific subjects.
5. At least 1 week before the meeting, the parties shall notify the Secretary of the Committee of the composition of their delegation.

*Article 4***Secretariat**

1. A representative of the Commission shall provide the secretariat for the Committee. The Secretary shall be appointed by the Chairman of the Committee and shall carry out his duties until a new Secretary is appointed. The Chairman shall notify the name and details of the Secretary to the other parties.
2. The Secretary shall be responsible for communication between the delegations, including the transmission of documents, and shall supervise secretarial duties.

*Article 5***Meetings of the Committee**

1. The Committee shall meet at the request of at least one party. It shall be convened by the Chairman.
2. The Chairman shall send the notice of the meeting, together with the draft agenda and the meeting documents, to the heads of the other delegations at least 15 working days before the beginning of the meeting.
3. A party may request the Chairman to shorten the periods of notice referred to in paragraph 2 to take account of the urgency of a particular matter.
4. Unless otherwise decided by the heads of delegations, the meetings of the Committee shall not be public.
5. The Committee shall meet in Brussels, unless the parties agree to meet elsewhere.

*Article 6***Agenda**

1. The Chairman, assisted by the Secretary, shall draw up the draft agenda for each meeting and shall fix the date and venue of the meeting after consulting the heads of the other delegations. The Chairman shall send the provisional agenda to the other heads of delegation at least 15 working days before the beginning of the meeting. The agenda shall be accompanied by all the necessary working documents.
2. The period of notice laid down in paragraph 1 shall not apply to urgent meetings convened in accordance with Article 5(3).
3. Each party may propose one or more items to be added to the provisional agenda at the latest 24 hours before the beginning of the meeting. Requests to have items added to the agenda shall be sent in writing to the Chairman, indicating the reason therefore.
4. At the beginning of the meeting, the Committee shall adopt the agenda. The Committee may decide to add to the agenda an item which is not contained in the provisional agenda.

*Article 7***Adoption of acts**

1. The decisions of the Committee shall be adopted by unanimous vote of the parties represented, in accordance with Article 23(5) and (6) of the Agreement. The recommendations, and in particular those referred to in Article 24(2)(g) of the Agreement, shall be taken by consensus between the delegations of the parties represented. The decisions and recommendations shall bear the title 'Decision' or 'Recommendation' followed by a serial number, the date of their adoption and an indication of their content.
2. The decisions and recommendations of the Committee shall bear the signature of the Chairman and the Secretary. They shall be sent by the Secretary to the other heads of delegation.
3. Each party may decide to publish any act adopted by the Committee.
4. The acts of the Committee may be adopted by written procedure where this has been agreed by the heads of delegation. The Chairman shall submit the draft act to the other heads of delegation who shall indicate in reply whether or not they accept the draft, whether they propose amendments to the draft or whether they require more time to consider it. If the draft is adopted, the Chairman shall finalise the decision or recommendation in accordance with paragraphs 1 and 2.
5. The recommendations and decisions shall be drawn up in English, French and German, these texts being authentic. Each party shall be responsible for the correct translation of recommendations and decisions into its official language or languages. Translation into other Union languages shall be carried out by the Commission.

*Article 8***Minutes**

1. The Secretary shall draw up, under the responsibility of the Chairman, draft minutes of each meeting of the Committee within 15 working days following the meeting.
2. The minutes shall, as a general rule, indicate in respect of each item on the agenda:
 - details of the documents submitted to the Committee,
 - statements which a party has asked to be recorded,
 - the decisions taken, recommendations made and conclusions adopted.
3. The draft minutes shall be submitted to the Committee for approval in accordance with the written procedure referred to in Article 7(4). If this procedure is not completed, the minutes shall be adopted by the Committee at its next meeting.
4. Once adopted by the Committee, the minutes shall be signed by the Chairman and the Secretary and kept by the Secretary. A copy shall be sent by the Secretary to the other heads of delegation.

*Article 9***Confidentiality**

Notwithstanding the provision on the publication of acts laid down in Article 7(3), the deliberations of the meetings and the documents of the Committee shall be governed by professional secrecy.

*Article 10***Expenses**

1. Each party shall bear the expenses it incurs in taking part in the meetings of the Committee.
2. The Committee shall decide on the reimbursement of expenses connected with missions assigned to persons called in by the Chairman in accordance with Article 3(4).

*Article 11***Correspondence**

All correspondence with or from the Chairman of the Committee shall be sent to the Secretary of the Committee. The Secretary shall send a copy of all correspondence relating to the Agreement to all delegations.

*Article 12***Languages**

The languages used in meetings of the Committee and in documents shall be decided by the Committee. There shall be no obligation on the party hosting the meeting to provide interpretation for other languages.

ANNEX II

Adaptation of Annex 1 to the Agreement regarding the conditions applying to road passenger transport operators, of Annex 2 to the Agreement concerning the technical standards applying to buses and coaches and of the requirements concerning the social provisions referred to in Article 8 of the Agreement ⁽¹⁾*1. Adaptation of Annex 1 to the Agreement regarding the conditions applying to road passenger transport operators*

The following Union act is added to Annex 1 to the Agreement:

'Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51)'.

*2. Adaptation of Annex 2 to the Agreement concerning the technical standards applying to buses and coaches**1. In Article 1 of Annex 2 to the Agreement, points (a), (b), (c) and (d) are replaced by the following:*

(a) roadworthiness tests for motor vehicles and their trailers:

- Directive 2009/40/EC of the European Parliament and of the Council of 6 May 2009 on roadworthiness tests for motor vehicles and their trailers (OJ L 141, 6.6.2009, p. 12),
- Directive 2000/30/EC of the European Parliament and of the Council of 6 June 2000 on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community (OJ L 203, 10.8.2000, p. 1) as amended by Commission Directive 2003/26/EC (OJ L 90, 8.4.2003, p. 37);

(b) speed limitation devices:

- Council Directive 92/6/EEC of 10 February 1992 on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community (OJ L 57, 2.3.1992, p. 27) as last amended by Directive 2002/85/EC of the European Parliament and of the Council (OJ L 327, 4.12.2002, p. 8);

(c) maximum dimensions and maximum weights:

- Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorized dimensions in national and international traffic and the maximum authorized weights in international traffic (OJ L 235, 17.9.1996, p. 59) as last amended by Directive 2002/7/EC of the European Parliament and of the Council (OJ L 67, 9.3.2002, p. 47),
- Directive 97/27/EC of the European Parliament and of the Council of 22 July 1997 relating to the masses and dimensions of certain categories of motor vehicles and their trailers and amending Directive 70/156/EEC (OJ L 233, 25.8.1997, p. 1) as amended by Commission Directive 2003/19/EC (OJ L 79, 26.3.2003, p. 6);

(d) recording equipment in road transport:

- Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ L 370, 31.12.1985, p. 8) as last amended by Commission Regulation (EU) No 1266/2009 (OJ L 339, 22.12.2009, p. 3) or equivalent rules established by the AETR Agreement including its Protocols'.

2. Article 2 of Annex 2 to the Agreement is amended as follows:

(a) the following text is inserted after the first paragraph and before the table:

'Exhaust emissions:

- Council Directive 88/77/EEC of 3 December 1987 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous and particulate pollutants from compression ignition engines for use in vehicles, and the emission of gaseous pollutants from positive ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles (OJ L 36, 9.2.1988, p. 33) as last amended by Commission Directive 2001/27/EC (OJ L 107, 18.4.2001, p. 10),

⁽¹⁾ The updating of the acts takes account of the new measures adopted by the European Union up to 31 December 2009.

— Directive 2005/55/EC of the European Parliament and of the Council of 28 September 2005 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles (OJ L 275, 20.10.2005, p. 1) as last amended by Commission Directive 2008/74/EC (OJ L 192, 19.7.2008, p. 51),

— Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (EURO VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC (OJ L 188, 18.7.2009, p. 1);

Smoke:

— Council Directive 72/306/EEC of 2 August 1972 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of pollutants from diesel engines for use in vehicles (OJ L 190, 20.8.1972, p. 1) as last amended by Commission Directive 2005/21/EC (OJ L 61, 8.3.2005, p. 25);

Noise emissions:

— Council Directive 70/157/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the permissible sound level and the exhaust system of motor vehicles (OJ L 42, 23.2.1970, p. 16) as last amended by Commission Directive 2007/34/EC (OJ L 155, 15.6.2007, p. 49);

Braking devices:

— Council Directive 71/320/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to the braking devices of certain categories of motor vehicles and of their trailers (OJ L 202, 6.9.1971, p. 37) as last amended by Commission Directive 2002/78/EC (OJ L 267, 4.10.2002, p. 23);

Tyres:

— Council Directive 92/23/EEC of 31 March 1992 relating to tyres for motor vehicles and their trailers and to their fitting (OJ L 129, 14.5.1992, p. 95) as last amended by Commission Directive 2005/11/EC (OJ L 46, 17.2.2005, p. 42);

Lighting and light-signalling devices:

— Council Directive 76/756/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to the installation of lighting and light-signalling devices on motor vehicles and their trailers (OJ L 262, 27.9.1976, p. 1) as last amended by Commission Directive 2008/89/EC (OJ L 257, 25.9.2008, p. 14);

Fuel tank:

— Council Directive 70/221/EEC of 20 March 1970 on the approximation of the laws of the Member States relating to liquid fuel tanks and rear protective devices for motor vehicles and their trailers (OJ L 76, 6.4.1970, p. 23) as last amended by Commission Directive 2006/20/EC (OJ L 48, 18.2.2006, p. 16);

Rear-view mirrors:

— Directive 2003/97/EC of the European Parliament and of the Council of 10 November 2003 on the approximation of the law of the Member States relating to the type-approval of devices for indirect vision and of vehicles equipped with these devices, amending Directive 70/156/EEC and repealing Directive 71/127/EEC (OJ L 25, 29.1.2004, p. 1) as last amended by Commission Directive 2005/27/EC (OJ L 81, 30.3.2005, p. 44);

Safety belts — Installation:

— Council Directive 77/541/EEC of 28 June 1977 on the approximation of the laws of the Member States relating to safety belts and restraint systems of motor vehicles (OJ L 220, 29.8.1977, p. 95) as last amended by Directive 2005/40/EC of the European Parliament and of the Council (OJ L 255, 30.9.2005, p. 146);

Safety belts — Anchorages for safety belts:

- Council Directive 76/115/EEC of 18 December 1975 on the approximation of the laws of the Member States relating to anchorages for motor-vehicle safety belts (OJ L 24, 30.1.1976, p. 6) as last amended by Directive 2005/41/EC of the European Parliament and of the Council (OJ L 255, 30.9.2005, p. 149);

Seats:

- Council Directive 74/408/EEC of 22 July 1974 on the approximation of the laws of the Member States relating to the interior fittings of motor vehicles (strength of seats and of their anchorages) (OJ L 221, 12.8.1974, p. 1) as last amended by Directive 2005/39/EC of the European Parliament and of the Council (OJ L 255, 30.9.2005, p. 143);

Interior construction (prevention of the risk of fire spreading):

- Directive 95/28/EC of the European Parliament and of the Council of 24 October 1995 relating to the burning behaviour of materials used in the interior construction of certain categories of motor vehicle (OJ L 281, 23.11.1995, p. 1);

Interior arrangement (Emergency exits, accessibility, seating dimension, superstructure resistance, etc.):

- Directive 2001/85/EC of the European Parliament and of the Council of 20 November 2001 relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver's seat, and amending Directives 70/156/EEC and 97/27/EC (OJ L 42, 13.2.2002, p. 1).;

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

Heading	UN-ECE Regulation/last series of amendments	Union act (original-latest)
Exhaust emissions	49/01 49/02, type approval A 49/02, type approval B	Directive 88/77/EEC Directive 2001/27/EC Directive 2005/55/EC Directive 2008/74/EC Regulation (EC) No 595/2009
Smoke	24/03	Directive 72/306/EEC Directive 2005/21/EC
Noise emissions	51/02	Directive 70/157/EEC Directive 2007/34/EC
Braking devices	13/11	Directive 71/320/EEC Directive 2002/78/EC
Tyres	54	Directive 92/23/EEC Directive 2005/11/EC
Lighting and light-signalling devices	48/01	Directive 76/756/EEC Directive 2008/89/EC
Fuel tank	34/02 67/01 110	Directive 70/221/EEC Directive 2006/20/EC

Heading	UN-ECE Regulation/last series of amendments	Union act (original-latest)
Rear-view mirrors	46/01	Directive 2003/97/EC Directive 2005/27/EC
Safety belts — Installation	16/06	Directive 77/541/EEC Directive 2005/40/EC
Safety belts — Anchorages	14/07	Directive 76/115/EEC Directive 2005/41/EC
Seats	17/08 80/01	Directive 74/408/EEC Directive 2005/39/EC
Interior construction (prevention of the risk of fire spreading)	118	Directive 95/28/EC
Interior arrangement (emergency exits, accessibility, seating dimension)	107.02	Directive 2001/85/EC
Roll-over protection	66.01	Directive 2001/85/EC'

3. *Adaptation of the requirements concerning the social provisions referred to in Article 8 of the Agreement*

1. Following the inclusion of Directive 2000/30/EC, Article 8 of Annex 2 to the Agreement, Annex IIa to the Agreement and Annex IIb to the Agreement are deleted.

2. The Union acts listed in Article 8 of the Agreement are replaced by the following Union acts ⁽¹⁾:

- Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1) as last amended by Regulation (EC) No 1073/2009 (OJ L 300, 14.11.2009, p. 88),
- Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ L 370, 31.12.1985, p. 8) as last amended by Commission Regulation (EU) No 1266/2009 (OJ L 339, 22.12.2009, p. 3),
- Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35) as last amended by Commission Directive 2009/5/EC (OJ L 29, 31.1.2009, p. 45),
- Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9),
- Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35),
- Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC (OJ L 226, 10.9.2003, p. 4):.

⁽¹⁾ The updating of the acts takes account of the new measures adopted by the European Union up to 31 December 2009.

**RECOMMENDATION No 1/2011 OF THE JOINT COMMITTEE SET UP UNDER THE INTERBUS
AGREEMENT ON THE INTERNATIONAL OCCASIONAL CARRIAGE OF PASSENGERS BY
COACH AND BUS**

of 11 November 2011

**concerning the use of a technical report for coaches and buses with a view to facilitating the
monitoring of the provisions of Articles 1 and 2 of Annex 2 to the Agreement**

THE JOINT COMMITTEE,

Having regard to the Interbus Agreement on the international occasional carriage of passengers by coach and bus, and in particular Articles 23 and 24 thereof,

Whereas:

- (1) The Interbus Agreement on the international occasional carriage of passengers by coach and bus (hereinafter referred to as 'the Agreement') entered into force on 1 January 2003.
- (2) In accordance with Article 24(1) of the Agreement, the Joint Committee shall ensure the proper implementation of the Agreement. To this end, a recommendation should be made advocating the use of a technical report for

coaches and buses with a view to facilitating the monitoring of the provisions of Articles 1 and 2 of Annex 2 to the Agreement,

RECOMMENDS THAT:

The Contracting Parties to the Agreement other than the Union should use a technical report for coaches and buses in the form set out in the Annex to this Recommendation, subject to the requirements set out in Articles 1 and 2 of Annex 2 to the Agreement.

Done at Brussels, 11 November 2011.

The Chairman
Sz. SCHMIDT

The Secretary
G. PATRIS

ANNEX

TECHNICAL REPORT FOR COACHES AND BUSES

Vehicle make and type:		Registration number and country code:		
Date of first registration:		Chassis number:		

	Union legislation	UN-ECE Regulation	Approval number	Mark/indication on vehicle
Speed limitation device	Directive 92/6/EEC as last amended by Directive 2002/85/EC	—		
Maximum dimensions	Directive 96/53/EC as last amended by Directive 2002/7/EC Directive 97/27/EC as last amended by Directive 2003/19/EC	—		
Tachograph	Regulation (EEC) No 3821/85 as last amended by Regulation (EU) No 1266/2009	—		
Exhaust emissions	Directive 88/77/EEC as last amended by Directive 2001/27/EC Directive 2005/55/EC as last amended by Directive 2008/74/EC Regulation (EC) No 595/2009	49/01 49/02, type approval A 49/02, type approval B		
Smoke	Directive 72/306/EEC as last amended by Directive 2005/21/EC	24/03		
Noise emissions	Directive 70/157/EEC as last amended by Directive 2007/34/EC	51/02		
Braking devices	Directive 71/320/EEC as last amended by Directive 2002/78/EC	13/11		
Tyres	Directive 92/23/EEC as last amended by Directive 2005/11/EC	54		
Lighting and light-signalling devices	Directive 76/756/EEC as last amended by Directive 2008/89/EC	48/01		
Fuel tank	Directive 70/221/EEC as last amended by Directive 2006/20/EC	34/02 67/01 110		
Rear-view mirrors	Directive 2003/97/EC as last amended by Directive 2005/27/EC	46/01		

	Union legislation	UN-ECE Regulation	Approval number	Mark/indication on vehicle
Safety belts — Installation	Directive 77/541/EEC as last amended by Directive 2005/40/EC	16/06		
Safety belts — Anchorages	Directive 76/115/EEC as last amended by Directive 2005/41/EC	14/07		
Seats	Directive 74/408/EEC as last amended by Directive 2005/39/EC	17/08 80/01		
Interior construction (prevention of the risk of fire spreading)	Directive 95/28/EC	118		
Interior arrangement (emergency exits, accessibility, seating dimension)	Directive 2001/85/EC	107/02		
Roll-over protection	Directive 2001/85/EC	66/01		

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

2012/25/EU:

★ **Decision No 1/2011 of the Joint Committee established under the Interbus Agreement on the international occasional carriage of passengers by coach and bus of 11 November 2011 adopting its rules of procedure and adapting Annex 1 to the Agreement regarding the conditions applying to road passenger transport operators, Annex 2 to the Agreement concerning the technical standards applying to buses and coaches and the requirements concerning the social provisions referred to in Article 8 of the Agreement 38**

Recommendation No 1/2011 of the Joint Committee set up under the Interbus Agreement on the international occasional carriage of passengers by coach and bus of 11 November 2011 concerning the use of a technical report for coaches and buses with a view to facilitating the monitoring of the provisions of Articles 1 and 2 of Annex 2 to the Agreement 46

2012 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 1 200 per year
EU Official Journal, L + C series, paper + annual DVD	22 official EU languages	EUR 1 310 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 840 per year
EU Official Journal, L + C series, monthly DVD (cumulative)	22 official EU languages	EUR 100 per year
Supplement to the Official Journal (S series), tendering procedures for public contracts, DVD, one edition per week	multilingual: 23 official EU languages	EUR 200 per year
EU Official Journal, C series — recruitment competitions	Language(s) according to competition(s)	EUR 50 per year

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual DVD.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

Sales and subscriptions

Subscriptions to various priced periodicals, such as the subscription to the *Official Journal of the European Union*, are available from our sales agents. The list of sales agents is available at:

http://publications.europa.eu/others/agents/index_en.htm

EUR-Lex (<http://eur-lex.europa.eu>) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: <http://europa.eu>



Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN