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Price: EUR 3

(Continued overleaf)

⁽¹⁾ Text with EEA relevance

EN

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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION 2012/768/CFSP

of 9 March 2012

on the signing and conclusion of the Agreement between the European Union and the former Yugoslav Republic of Macedonia establishing a framework for the participation of the former Yugoslav Republic of Macedonia in European Union crisis management operations

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty on European Union, and in particular Article 37 thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(5) and (6) thereof,

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

Whereas:

- (1) Conditions regarding the participation of third States in European Union crisis management operations should be laid down in an agreement establishing a framework for such possible future participation, rather than defining those conditions on a case-by-case basis for each operation concerned.
- (2) Following the adoption of a Decision by the Council on 26 April 2010 authorising the opening of negotiations, the HR negotiated an agreement between the European Union and the former Yugoslav Republic of Macedonia establishing a framework for the participation of the former Yugoslav Republic of Macedonia in European Union crisis management operations ('the Agreement').
- (3) The Agreement should be approved,

Article 1

The Agreement between the European Union and the former Yugoslav Republic of Macedonia establishing a framework for the participation of the former Yugoslav Republic of Macedonia in the European Union crisis management operations ('the Agreement') is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in order to bind the Union.

Article 3

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 16(1) of the Agreement.

Article 4

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

Done at Brussels, 9 March 2012.

*For the Council**The President*

I. AUKEN



COUNCIL
OF THE EUROPEAN UNION

Brussels, 29 October 2012

H.E. Mr. Nikola POPOSKI,
Minister of Foreign Affairs
of the former Yugoslav Republic of Macedonia.

Sir,

I have the honour to propose that, if it is acceptable to your Government, this letter and your confirmation shall together take the place of signature of the Agreement between the European Union and the former Yugoslav Republic of Macedonia establishing a framework for the participation of the former Yugoslav Republic of Macedonia in European Union crisis management operations.

The text of the aforementioned Agreement, herewith annexed, has been approved for signature and conclusion, on behalf of the European Union, by a decision of the Council of the European Union on 9 March 2012 and is, consequently, binding on the Union. Pending its entry into force, this Agreement, in accordance with its Article 16.2, shall be provisionally applied from today's date.

Please accept, Sir, the assurance of my highest consideration.

For the European Union

A handwritten signature in dark ink, appearing to be 'P. Vimont', with a stylized flourish at the end.

Pierre VIMONT
Executive Secretary General
European External Action Service

Encl.

175 Rue de la Loi,
1048 Brussels, Belgium

AGREEMENT**between the European Union and the former Yugoslav Republic of Macedonia establishing a framework for the participation of the former Yugoslav Republic of Macedonia in European Union crisis management operations**

THE EUROPEAN UNION,

of the one part, and

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA,

of the other part,

hereinafter referred to as the 'Parties',

WHEREAS:

- (1) The European Union may decide to take action in the field of crisis management.
- (2) The European Union will decide whether third States will be invited to participate in an EU crisis management operation. The former Yugoslav Republic of Macedonia may accept the invitation by the European Union and offer its contribution. In such case, the European Union will decide on the acceptance of that proposed contribution.
- (3) Conditions regarding the participation of the former Yugoslav Republic of Macedonia in EU crisis management operations should be laid down in an agreement establishing a framework for such possible future participation, rather than defining these conditions on a case-by-case basis for each operation concerned.
- (4) Such an agreement should be without prejudice to the decision-making autonomy of the European Union, and should not prejudice the case-by-case nature of the decision to participate in an EU crisis management operation.
- (5) Such an agreement should only address future EU crisis management operations and should be without prejudice to any existing agreements regulating the participation of the former Yugoslav Republic of Macedonia in an EU crisis management operation that has already been deployed,

HAVE AGREED AS FOLLOWS:

SECTION I

GENERAL PROVISIONS

Article 1

Decisions relating to the participation

1. Following the decision of the European Union to invite the former Yugoslav Republic of Macedonia to participate in an EU crisis management operation, and once the latter State has decided to participate, such State shall provide information on its proposed contribution to the European Union.
2. The assessment by the European Union of the proposed contribution shall be conducted in consultation with the former Yugoslav Republic of Macedonia.
3. The European Union shall provide the former Yugoslav Republic of Macedonia with an early indication of the likely contribution to the common costs of the operation as soon as possible with a view to assisting the former Yugoslav Republic of Macedonia in the formulation of its offer.
4. The European Union shall communicate the outcome of that assessment to the former Yugoslav Republic of Macedonia

by letter with a view to securing its participation in accordance with the provisions of this Agreement.

Article 2

Framework

1. The former Yugoslav Republic of Macedonia shall associate itself with the Council Decision by which the Council of the European Union decides that the European Union will conduct the crisis management operation, and with any other decision by which the Council of the European Union decides to extend the EU crisis management operation, in accordance with the provisions of this Agreement and any required implementing arrangements.
2. The contribution of the former Yugoslav Republic of Macedonia to an EU crisis management operation shall be without prejudice to the decision-making autonomy of the EU.

Article 3

Status of personnel and forces

1. The status of personnel seconded to an EU civilian crisis management operation and/or of the forces contributed to an EU military crisis management operation by the former Yugoslav Republic of Macedonia shall be governed by the

agreement on the status of forces/mission, if concluded, between the European Union and the State(s) in which the operation is conducted.

2. The status of personnel contributed to headquarters or command elements located outside the State(s) in which the EU crisis management operation takes place, shall be governed by arrangements between the headquarters and command elements concerned and the former Yugoslav Republic of Macedonia.

3. Without prejudice to the agreement on the status of forces/mission referred to in paragraph 1, the former Yugoslav Republic of Macedonia shall exercise jurisdiction over its personnel participating in the EU crisis management operation. In cases where the forces of the former Yugoslav Republic of Macedonia operate on board a vessel or aircraft of an European Union Member State, the latter State shall exercise jurisdiction in accordance with its internal laws and procedures.

4. The former Yugoslav Republic of Macedonia shall be responsible for answering any claims linked to the participation in an EU crisis management operation, from or concerning any of its personnel and shall be responsible for bringing any action, in particular legal or disciplinary, against any of its personnel in accordance with its laws and regulations.

5. The Parties agree to waive any and all claims, other than contractual claims, against each other for damage to, loss of, or destruction of assets owned/operated by either Party, or injury or death to personnel of either Party, arising out of the performance of their official duties in connection with activities under this Agreement, except in the case of gross negligence or wilful misconduct.

6. The former Yugoslav Republic of Macedonia undertakes to make a declaration as regards the waiver of claims against any State participating in an EU crisis management operation in which the former Yugoslav Republic of Macedonia participates, and to do so when signing this Agreement.

7. The European Union undertakes to ensure that European Union Member States make a declaration as regards the waiver of claims, for any future participation of the former Yugoslav Republic of Macedonia in an EU crisis management operation, and to do so when signing this Agreement.

Article 4

Classified information

The Agreement between the government of the former Yugoslav Republic of Macedonia and the European Union on the security procedures for the exchange of classified information, done at Skopje on 25 March 2005, shall apply in the context of EU crisis management operations.

SECTION II

PROVISIONS ON PARTICIPATION IN CIVILIAN CRISIS MANAGEMENT OPERATIONS

Article 5

Personnel seconded to an EU civilian crisis management operation

1. The former Yugoslav Republic of Macedonia:
 - (a) shall ensure that its personnel seconded to the EU civilian crisis management operation undertake their mission in accordance with:
 - the Council Decision and subsequent amendments as referred to in Article 2(1),
 - the Operation Plan,
 - implementing measures.
 - (b) shall inform in due time the Head of Mission of the EU civilian crisis management operation (the 'Head of Mission') and the High Representative of the Union for Foreign Affairs and Security Policy (the 'HR') of any change to its contribution to the EU civilian crisis management operation.

2. Personnel seconded to the EU civilian crisis management operation shall undergo a medical examination, vaccination and be certified medically fit for duty by a competent authority from the former Yugoslav Republic of Macedonia. Personnel seconded to the EU civilian crisis management operation shall produce a copy of that certification.

Article 6

Chain of command

1. Personnel seconded by the participating State shall carry out their duties and conduct themselves solely with the interests of the EU civilian crisis management operation in mind.
2. All personnel shall remain under the full command of their national authorities.
3. National authorities shall transfer operational control to the European Union.
4. The Head of Mission shall assume responsibility and exercise command and control of the EU civilian crisis management operation at theatre level.
5. The Head of Mission shall lead the EU civilian crisis management operation and assume its day-to-day management.
6. The former Yugoslav Republic of Macedonia shall have the same rights and obligations in terms of day-to-day management of the operation as European Union Member States taking part in the operation, in accordance with the legal instruments referred to in Article 2(1).

7. The Head of Mission shall be responsible for disciplinary control over EU civilian crisis management operation personnel. Where required, disciplinary action shall be taken by the national authority concerned.

8. A national contingent point of contact (NPC) shall be appointed by the former Yugoslav Republic of Macedonia to represent its national contingent in the operation. The NPC shall report to the Head of Mission on national matters and shall be responsible for day-to-day discipline of the contingent.

9. The decision to end the operation shall be taken by the European Union, following consultation with the former Yugoslav Republic of Macedonia if it is still contributing to the EU civilian crisis management operation at the date of termination of the operation.

Article 7

Financial aspects

1. Without prejudice to Article 8, the participating State shall assume all the costs associated with its participation in the operation apart from the running costs, as set out in the operational budget of the operation.

2. In case of death, injury, loss or damage to natural or legal persons from the State(s) in which the operation is conducted, the former Yugoslav Republic of Macedonia shall, when its liability has been established, pay compensation under the conditions foreseen in the applicable status of mission agreement referred to in Article 3(1).

Article 8

Contribution to operational budget

1. The former Yugoslav Republic of Macedonia shall contribute to the financing of the operational budget of the EU civilian crisis management operation.

2. Such contribution to the operational budget shall be calculated on the basis of either of the following formulae, whichever produces the lower amount:

(a) the share of the reference amount which is in proportion to the ratio of the former Yugoslav Republic of Macedonia's GNI to the total GNIs of all States contributing to the operational budget of the operation; or

(b) the share of the reference amount for the operational budget which is in proportion to the ratio of the number of personnel from the former Yugoslav Republic of Macedonia participating in the operation to the total number of personnel of all States participating in the operation.

3. Notwithstanding paragraphs 1 and 2, the participating State shall not make any contribution towards the financing of per diem allowances paid to personnel of the European Union Member States.

4. Notwithstanding paragraph 1, the European Union shall, in principle, exempt the participating State from financial contributions to a particular EU civilian crisis management operation when:

(a) the European Union decides that the former Yugoslav Republic of Macedonia provides a significant contribution which is essential for this operation; or

(b) the former Yugoslav Republic of Macedonia has a GNI per capita which does not exceed that of any Member State of the European Union.

5. An arrangement on the payment of the contributions of the former Yugoslav Republic of Macedonia to the operational budget of the EU civilian crisis management operation shall be signed between the Head of Mission and the relevant administrative services of the former Yugoslav Republic of Macedonia. That arrangement shall, inter alia, include the following provisions:

(a) the amount concerned;

(b) the arrangements for payment of the financial contribution;

(c) the auditing procedure.

SECTION III

PROVISIONS ON PARTICIPATION IN MILITARY CRISIS MANAGEMENT OPERATIONS

Article 9

Participation in the EU military crisis management operation

1. The former Yugoslav Republic of Macedonia shall ensure that its forces and personnel participating in the EU military crisis management operation undertake their mission in accordance with:

(a) the Council Decision and subsequent amendments as referred to in Article 2(1);

(b) the Operation Plan;

(c) implementing measures.

2. Personnel seconded by the participating States shall carry out their duties and conduct themselves solely with the interest of the EU military crisis management operation in mind.

3. The former Yugoslav Republic of Macedonia shall inform the EU Operation Commander in due time of any change to its participation in the operation.

Article 10

Chain of command

1. All forces and personnel participating in the EU military crisis management operation shall remain under the full command of their national authorities.

2. National authorities shall transfer the operational and tactical command and/or control of their forces and personnel to the EU Operation Commander, who is entitled to delegate his authority.

3. The former Yugoslav Republic of Macedonia shall have the same rights and obligations in terms of the day-to-day management of the operation as participating European Union Member States.

4. The EU Operation Commander may, following consultations with the former Yugoslav Republic of Macedonia, at any time request the withdrawal of the participating State's contribution.

5. A senior military representative (SMR) shall be appointed by the former Yugoslav Republic of Macedonia to represent its national contingent in the EU military crisis management operation. The SMR shall consult with the EU Force Commander on all matters affecting the operation and shall be responsible for the day-to-day discipline of the former Yugoslav Republic of Macedonia contingent.

Article 11

Financial aspects

1. Without prejudice to Article 12 of this Agreement, the participating State shall assume all the costs associated with its participation in the operation unless the costs are subject to common funding as provided for in the legal instruments referred to in Article 2(1), as well as in Council Decision 2011/871/CFSP of 19 December 2011 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena) ⁽¹⁾.

2. In case of death, injury, loss or damage to natural or legal persons from the State(s) in which the operation is conducted, the former Yugoslav Republic of Macedonia shall, when its liability has been established, pay compensation under the conditions foreseen in the applicable status of forces agreement referred to in Article 3(1).

Article 12

Contribution to the common costs

1. The former Yugoslav Republic of Macedonia shall contribute to the financing of the common costs of the EU military crisis management operation.

2. Such contribution to the common costs shall be calculated on the basis of either of the following two formulae, whichever produces the lower amount:

- (a) the share of the common costs which is in proportion to the ratio of the former Yugoslav Republic of Macedonia's GNI to the total GNIs of all States contributing to the common costs of the operation; or
- (b) the share of the common costs which is in proportion to the ratio of the number of personnel from the former Yugoslav Republic of Macedonia participating in the operation to the total number of personnel of all States participating in the operation.

Where the formula under point (b) of the first subparagraph is used and the former Yugoslav Republic of Macedonia contributes personnel only to the Operation or Force Headquarters, the ratio used shall be that of its personnel to that of the total number of the respective headquarters personnel. In other cases, the ratio shall be that of all personnel contributed by the participating State to that of the total personnel of the operation.

3. Notwithstanding paragraph 1 above, the European Union shall, in principle, exempt the participating State from financial contributions to the common costs of a particular EU military crisis management operation when:

- (a) the European Union decides that the former Yugoslav Republic of Macedonia provides a significant contribution to assets and/or capabilities which are essential for the operation; or
- (b) the former Yugoslav Republic of Macedonia has a GNI per capita which does not exceed that of any Member State of the European Union.

4. An arrangement shall be concluded between the Administrator provided for in Council Decision 2011/871/CFSP and the competent administrative authorities of the former Yugoslav Republic of Macedonia. This arrangement shall include, inter alia, provisions on:

- (a) the amount concerned;
- (b) the arrangements for payment of the financial contribution;
- (c) the auditing procedure.

SECTION IV

FINAL PROVISIONS

Article 13

Arrangements to implement the Agreement

Without prejudice to the provisions of Articles 8(5) and 12(4) any necessary technical and administrative arrangements in pursuance of the implementation of this Agreement shall be concluded between the HR and the appropriate authorities of the former Yugoslav Republic of Macedonia.

Article 14

Non-compliance

Should one of the Parties fail to comply with its obligations under this Agreement, the other Party shall have the right to terminate this Agreement by sending written notice of one month.

Article 15

Dispute settlement

Disputes concerning the interpretation or application of this Agreement shall be settled by diplomatic means between the Parties.

Article 16

Entry into force

1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other of the completion of the internal legal procedures necessary for its entry into force.

2. This Agreement shall be provisionally applied from the date of signature.

3. This Agreement shall be subject to regular review.

4. This Agreement may be amended on the basis of a mutual written agreement between the Parties.

⁽¹⁾ OJ L 343, 23.12.2011, p. 35.

5. This Agreement may be denounced by either Party by written notice of denunciation given to the other Party. Such denunciation shall take effect six months after receipt of notification by the other Party.

Done at Brussels, on the twenty-ninth day of October in the year two thousand and twelve in the English language in two copies.



РЕПУБЛИКА МАКЕДОНИЈА
МИНИСТЕРСТВО ЗА НАДВОРЕШНИ РАБОТИ
REPUBLIC OF MACEDONIA
MINISTRY OF FOREIGN AFFAIRS
Министер/ Minister

Brussels, 29 October 2012

Sir,

On behalf of the Government of the Republic of Macedonia I have the honour to acknowledge receipt of your letter dated 29 of October 2012 regarding the signature of the Agreement between the Republic of Macedonia and the European Union establishing a framework for the participation of the Republic of Macedonia in European Union crisis management operations.

I hereby confirm that the Government of the Republic of Macedonia agrees with the provisions of the aforementioned Agreement, and considers the said Agreement as being signed with your letter and this letter of confirmation.

However, I declare that the Republic of Macedonia does not accept the denomination used for my country in the text of the above-mentioned Agreement having in view that the constitutional name of my country is the Republic of Macedonia.

Please accept, Sir, the assurances of my highest consideration.

Nikola POPOSKI

To
Mr. Pierre Vimont
Executive Secretary General
European External Action Service
COUNCIL OF THE EUROPEAN UNION



COUNCIL
OF THE EUROPEAN UNION

Brussels, 29 October 2012

H.E. Mr. Nikola POPOSKI,
Minister of Foreign Affairs
of the former Yugoslav Republic of Macedonia.

Sir,

I have the honour to acknowledge receipt of your letter of today's date.

The European Union notes that the Exchange of Letters between the European Union and the former Yugoslav Republic of Macedonia, which takes the place of signature of the Agreement between the European Union and the former Yugoslav Republic of Macedonia establishing a framework for the participation of the former Yugoslav Republic of Macedonia in European Union crisis management operations, has been accomplished and that this cannot be interpreted as acceptance or recognition by the European Union in whatever form or content of a denomination other than the "former Yugoslav Republic of Macedonia".

Please accept, Sir, the assurance of my highest consideration.

For the European Union

Pierre VIMONT
*Executive Secretary General
European External Action Service*

175 Rue de la Loi,
1048 Brussels, Belgium

DECLARATIONS

Declaration by the EU Member States

The EU Member States applying an EU Council Decision on an EU crisis management operation in which the former Yugoslav Republic of Macedonia participates will endeavour, in so far as their internal legal systems so permit, to waive as far as possible claims against the former Yugoslav Republic of Macedonia for injury, death of their personnel, or damage to, or loss of, any assets owned by themselves and used by the EU crisis management operation if such injury, death, damage or loss:

- was caused by personnel from the former Yugoslav Republic of Macedonia in the execution of their duties in connection with the EU crisis management operation, except in case of gross negligence or wilful misconduct,
- or arose from the use of any assets owned by the former Yugoslav Republic of Macedonia, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of EU crisis management operation personnel from the former Yugoslav Republic of Macedonia using those assets.'

Declaration by the former Yugoslav Republic of Macedonia

The former Yugoslav Republic of Macedonia applying an EU Council Decision on an EU crisis management operation will endeavour, in so far as its internal legal system so permit, to waive as far as possible claims against any other State participating in the EU crisis management operation for injury, death of its personnel, or damage to, or loss of, any assets owned by itself and used by the EU crisis management operation if such injury, death, damage or loss:

- was caused by personnel in the execution of their duties in connection with the EU crisis management operation, except in case of gross negligence or wilful misconduct, or
 - arose from the use of any assets owned by States participating in the EU crisis management operation, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of EU crisis management operation personnel using those assets.'
-

REGULATIONS

COMMISSION REGULATION (EU) No 1183/2012

of 30 November 2012

amending and correcting Regulation (EU) No 10/2011 on plastic materials and articles intended to come into contact with food

(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 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC ⁽¹⁾, and in particular points (a) and (e) of Article 5(1), and Articles 11(3) and 12(6) thereof,

Whereas:

- (1) Commission Regulation (EU) No 10/2011 of 14 January 2011 on plastic materials and articles intended to come into contact with food ⁽²⁾ establishes a Union list of monomers, other starting substances and additives which may be used in the manufacture of plastic materials and articles. Recently the European Food Safety Authority (the Authority) issued favourable scientific evaluations for additional substances which should now be added to the current list.
- (2) For certain other substances, the restrictions and/or specifications already established at the EU level should be amended on the basis of a new favourable scientific evaluation by the Authority.
- (3) Annex I to Regulation (EU) No 10/2011 should therefore be amended accordingly.
- (4) The substance with FCM Substance Number 257 and the name dipropyleneglycol is authorised to be used as an additive in plastics in Table 1 of Annex I to Regulation (EU) No 10/2011 and listed with the CAS No 0000110-98-5. In Commission Directive 2002/72/EC of 6 August 2002 relating to plastic materials and articles intended to come into contact with foodstuffs ⁽³⁾ this substance was referred to by CAS No 0025265-71-8. That reference was deleted upon the entry into force of Regulation (EU) No 10/2011, replacing Directive 2002/72/EC, because it was considered superfluous. However, taking

into account that CAS No 0025265-71-8 refers to the commercially used mixture of isomers rather than to the pure substance, it should be reinserted in Regulation (EU) No 10/2011. CAS No 0000110-98-5 should remain in Table 1.

- (5) Compliance Note No (4) in Table 3 of Annex I to Regulation (EU) No 10/2011 gives an ambiguous reference to simulant D, where a reference to simulant D2 is intended. Therefore, Note No (4) should refer to simulant D2.
- (6) Annex I to Regulation (EU) No 10/2011 should therefore be corrected accordingly.
- (7) In order to limit the administrative burden to business operators, plastic materials and articles which have been lawfully placed on the market based on the requirements set out in Regulation (EU) No 10/2011 and which do not comply with this Regulation should be able to be placed on the market until one year after entry into force of this Regulation. They should be able to remain on the market until exhaustion of stocks.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health, and neither the European Parliament nor the Council has opposed them,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EU) No 10/2011 is amended in accordance with the Annex to this Regulation.

Article 2

Plastic materials and articles which have been lawfully placed on the market before 1 January 2013 and which do not comply with this Regulation may continue to be placed on the market until 1 January 2014. Those plastic materials and articles may remain on the market until the exhaustion of stocks.

⁽¹⁾ OJ L 338, 13.11.2004, p. 4.

⁽²⁾ OJ L 12, 15.1.2011, p. 1.

⁽³⁾ OJ L 220, 15.8.2002, p. 18.

Article 3

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

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

Done at Brussels, 30 November 2012.

For the Commission
The President
José Manuel BARROSO

ANNEX

Annex I to Regulation (EU) No 10/2011 is amended as follows:

(1) in Table 1 for the following substance, the content of column (3) is replaced by the following:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
257	13550	0000110-98-5	dipropyleneglycol	yes	yes	no				
	16660	0025265-71-8								
	51760									

(2) in Table 1 for the following substance, the content of column (8) is replaced by the following:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
449	49840	0002500-88-1	dioctadecyl disulphide	yes	no	yes	0,05			

(3) in Table 1 for the following substance, the content of columns (8) and (9) is replaced by the following:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
180	17160	0000097-53-0	eugenol	no	yes	no		(33)		

(4) in Table 1 for the following substances, the content of column (10) is replaced by the following:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
807	93485	—	titanium nitride, nanoparticles	yes	no	no			No migration of titanium nitride nanoparticles. Only to be used in polyethylene terephthalate (PET) up to 20 mg/kg. In the PET, the agglomerates have a diameter of 100-500 nm consisting of primary titanium nitride nanoparticles; primary particles have a diameter of approximately 20 nm.	
865	40619	0025322-99-0	(butyl acrylate, methyl methacrylate, butyl methacrylate) copolymer	yes	no	no			Only to be used in: (a) rigid poly(vinyl chloride) (PVC) at a maximum level of 1 % w/w; (b) polylactic acid (PLA) at a maximum level of 5 % w/w.	
868	53245	0009010-88-2	(ethyl acrylate, methyl methacrylate) copolymer	yes	no	no			Only to be used in: (a) rigid poly(vinyl chloride) (PVC) at a maximum level of 2 % w/w; (b) polylactic acid (PLA) at a maximum level of 5 % w/w; (c) polyethylene terephthalate (PET) at a maximum level of 5 % w/w.	

(5) in Table 1 the following lines are inserted in numerical order of the FCM Substance numbers:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
858	38565	0090498-90-1	3,9-bis[2-(3-(3-tert-butyl-4-hydroxy-5-methylphenyl)propionyloxy)-1,1-dimethylethyl]-2,4,8,10-tetraoxaspiro[5,5]undecane	yes	no	yes	0,05		SML expressed as the sum of the substance and its oxidation product 3-[(3-(3-tert-butyl-4-hydroxy-5-methylphenyl)prop-2-enoyloxy)-1,1-dimethylethyl]-9-[(3-(3-tert-butyl-4-hydroxy-5-methylphenyl)propionyloxy)-1,1-dimethylethyl]-2,4,8,10-tetraoxaspiro[5,5]undecane in equilibrium with its paragraph quinone methid tautomer.	(2)
874	16265	0156065-00-8	α -dimethyl-3-(4'-hydroxy-3'-methoxyphenyl)propylsilyloxy, ω -3-dimethyl-3-(4'-hydroxy-3'-methoxyphenyl)propylsilyl polydimethylsiloxane	no	yes	no	0,05	(33)	Only to be used as comonomer in siloxane modified polycarbonate. The oligomeric mixture shall be characterised by the formula $C_{24}H_{38}Si_2O_5(SiOC_2H_5)_n$ ($50 > n \geq 26$).	
902		0000128-44-9	1,2-benzisothiazol-3(2H)-one 1,1-dioxide, sodium salt	yes	no	no			The substance shall comply with the specific purity criteria as set out in Commission Regulation (EU) No 231/2012 ⁽¹⁾ .	
979	79987	—	(polyethylene terephthalate, hydroxylated polybutadiene, pyromellitic anhydride) copolymer	yes	no	no			Only to be used in polyethylene terephthalate (PET) at a maximum level of 5 % w/w.	

⁽¹⁾ OJ L 83, 22.3.2012, p. 1.

(6) in Table 2 the following line is inserted in numerical order of the group restriction numbers:

(1)	(2)	(3)	(4)
Group Restriction No	FCM substance No	SML (T) [mg/kg]	Group restriction specification
33	180 874	ND	expressed as eugenol

(7) in Table 3 on verification of compliance the content of Note No (4) is replaced by the following:

(1)	(2)
Note No	Note on verification of compliance
(4)	Compliance testing when there is a fat contact should be performed using saturated fatty food simulants as simulant D2.

COMMISSION IMPLEMENTING REGULATION (EU) No 1184/2012**of 7 December 2012****approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Cecina de León (PGI))**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ⁽¹⁾, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) By virtue of the first subparagraph of Article 9(1) of Regulation (EC) No 510/2006 and having regard to Article 17(2) thereof, the Commission has examined Spain's application for the approval of amendments to the specification for the protected geographical indication 'Cecina de León' registered under Commission Regulation (EC) No 1107/96 ⁽²⁾.

- (2) Since the amendments in question are not minor within the meaning of Article 9 of Regulation (EC) No 510/2006, the Commission published the amendment application in the *Official Journal of the European Union* ⁽³⁾, as required by the first subparagraph of Article 6(2) of that Regulation. As no statement of objection under Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, the amendments should be approved,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 7 December 2012.

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

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ L 148, 21.6.1996, p. 1.

⁽³⁾ OJ C 81, 20.3.2012, p. 6.

ANNEX

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

Class 1.2. Meat products (cooked, salted, smoked, etc.)

SPAIN

Cecina de León (PGI)

COMMISSION IMPLEMENTING REGULATION (EU) No 1185/2012

of 11 December 2012

amending Regulation (EC) No 607/2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products

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⁾, and in particular Article 121, first paragraph, point (m), in conjunction with Article 4 thereof,

Whereas:

- (1) In accordance with Article 118y(1)(e) of Regulation (EC) No 1234/2007, labelling and presentation of sparkling wine, aerated sparkling wine, quality sparkling wine or quality aromatic sparkling wine must indicate the name of the producer or vendor. Article 56(3) of Commission Regulation (EC) No 607/2009 ⁽²⁾ states that this indication shall be supplemented by the words 'producer' or 'produced by' and 'vendor' or 'sold by', or equivalent. This provision also states that the Member States may decide to make compulsory the indication of the producer and that, in this case, they may authorise the replacement of the words 'producer' or 'produced by' by another word. If, for the labelling of sparkling wines, certain words are traditionally recognised and used in Member States, and if the latter decide to make compulsory the indication of the producer and authorise the replacement of the words 'producer' and 'produced by' by other words, these words should be

those traditionally used in the sector. Furthermore, in order to inform consumers about the terminology used in this field, it is necessary to specify the words which may be authorised in the various EU languages.

- (2) Regulation (EC) No 607/2009 should therefore be amended accordingly.
- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 607/2009 is amended as follows:

- 1) In the second subparagraph of Article 56(3), point (b) is replaced by the following:
- 'b) to authorise the replacement of the words 'producer' or 'produced by' by the words listed in Annex Xa to this Regulation.'
- 2) Annex Xa, the text of which is set out in the Annex hereto, is inserted.

Article 2

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

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

Done at Brussels, 11 December 2012.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 193, 24.07.2009, p. 60.

ANNEX

'ANNEX Xa

Words referred to in Article 56(3)(b)

Language	Words authorised instead of 'producer'	Words authorised instead of 'produced by'
BG	„преработвател“	„преработено от“
ES	"elaborador"	"elaborado por"
CS	„zpracovatel“ or "vinař"	„zpracováno v“ or "vyroběno v"
DA	»forarbejdningssvirksomhed« or »vinproducent«	»forarbejdet af«
DE	„Verarbeiter“	„verarbeitet von“ or "versektet durch"
ET	„töötleva“	„töödeldnud“
EL	«οινοποιός»	«οινοποιήθηκε από»,
EN	"processor" or "winemaker"	"processed by" or "made by"
FR	"élaborateur"	"élaboré par"
IT	"elaboratore" or "spumantizzatore"	"elaborato da" or "spumantizzato da"
LV	„izgatavotājs“	«vīndaris» or »ražotājs«
LT	„perdirbėjas“	„perdirbo“
HU	„feldolgozó:“	„feldolgozta:“
MT	"proċessur"	"ipproċessat minn"
NL	„verwerker“ or "bereider"	„verwerkt door“ or "bereid door"
PL	„przetwórcą“ or „wytwórcą“	„przetworzone przez“ or „wytworzone przez“
PT	"elaborador" or "preparador"	"elaborado por" or "preparado por"
RO	"elaborator"	"elaborat de"
SI	«pridelovalec»	«prideluje»
SK	„spracovateľ“	„spracúva“
FI	"valmistaja"	"valmistanut"
SV	"bearbetningsföretag"	"bearbetat av" '

COMMISSION IMPLEMENTING REGULATION (EU) No 1186/2012

of 11 December 2012

amending the Annex to Regulation (EU) No 37/2010 on pharmacologically active substances and their classification regarding maximum residue limits in foodstuffs of animal origin, as regards the substance phoxim

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

- (1) The maximum residue limit ('MRL') for pharmacologically active substances intended for use in the Union in veterinary medicinal products for food-producing animals or in biocidal products used in animal husbandry should be established in accordance with Regulation (EC) No 470/2009.
- (2) Pharmacologically active substances and their classification regarding MRLs in foodstuffs of animal origin are set out in the Annex to Commission Regulation (EU) No 37/2010 of 22 December 2009 on pharmacologically active substances and their classification regarding maximum residue limits in foodstuffs of animal origin ⁽²⁾.
- (3) Phoxim is currently included in Table 1 of the Annex to Regulation (EU) No 37/2010 as an allowed substance, for ovine species, applicable to muscle, fat and kidney, for porcine species, applicable to muscle, skin and fat, liver and kidney and for chicken, applicable to muscle, skin and fat, liver, kidney and eggs, excluding animals producing milk for human consumption.
- (4) An application for the extension of the existing entry for phoxim to include bovine species has been submitted to the European Medicines Agency.
- (5) According to Article 5 of Regulation (EC) No 470/2009 the European Medicines Agency is to consider using MRLs established for a pharmacologically active substance in a particular foodstuff for another foodstuff derived from the same species, or MRLs established for a pharmacologically active substance in one or more species for other species. The Committee for Medicinal Products for Veterinary Use recommended establishing a MRL for phoxim for bovine species applicable to muscle, fat, liver and kidney, excluding animals producing milk for human consumption, and the extrapolation of the MRLs for phoxim from ovine, bovine and porcine species, and chicken to all food-producing species except fin fish, applicable to muscle, fat, liver, kidney and eggs, excluding animals producing milk for human consumption.
- (6) The entry for phoxim in Table 1 of the Annex to Regulation (EU) No 37/2010 should therefore be amended to include all food-producing species except fin fish.
- (7) It is appropriate to provide for a reasonable period of time for the stakeholders concerned to take measures that may be required to comply with the newly set MRL.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Veterinary Medicinal Products,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

It shall apply from 13 February 2013.

⁽¹⁾ OJ L 152, 16.6.2009, p. 11.

⁽²⁾ OJ L 15, 20.1.2010, p. 1.

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

Done at Brussels, 11 December 2012.

For the Commission
The President
José Manuel BARROSO

ANNEX

The entry corresponding to phoxim in Table 1 of the Annex to Regulation (EU) No 37/2010 is replaced by the following:

Pharmacologically active substance	Marker residue	Animal Species	MRL	Target Tissues	Other Provisions (according to Article 14(7) of Regulation (EC) No 470/2009)	Therapeutic classification
'Phoxim	Phoxim	All food-producing species except fin fish.	25 µg/kg 550 µg/kg 50 µg/kg 30 µg/kg 60 µg/kg	Muscle Fat Liver Kidney Eggs	For porcine and poultry species the fat MRL relates to "skin and fat in natural proportions". Not for use in animals from which milk is produced for human consumption.	Antiparasitic agents/Agents against ectoparasites.'

COMMISSION IMPLEMENTING REGULATION (EU) No 1187/2012**of 11 December 2012****amending for the 184th 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(1) thereof,

Whereas:

- (1) Annex I to Regulation (EC) No 881/2002 lists the persons, groups and entities covered by the freezing of funds and economic resources under that Regulation.
- (2) On 5 December 2012 the Sanctions Committee of the United Nations Security Council decided to add one entity to its list of persons, groups and entities to whom the freezing of funds and economic resources should apply.
- (3) The European Commission's address should be updated.

(4) Annexes I and II to Regulation (EC) No 881/2002 should therefore be updated accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

- (1) Annex I is amended in accordance with Annex I to this Regulation.
- (2) Annex II is amended in accordance with Annex II 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 December 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 I

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

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

'Mouvement pour l'Unification et le Jihad en Afrique de l'Ouest (MUJAO). Address: (a) Mali, (b) Algeria. Date of designation referred to in Article 2a (4) (b): 5.12.2012.'

ANNEX II

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

The heading 'European Community' and the paragraph under 'European Community' shall be replaced by the following heading and paragraph:

'Address for notifications to the European Commission:

European Commission
Service for Foreign Policy Instruments (FPI)
Office EEAS 02/309
B-1049 Bruxelles/Brussel (Belgium)
E-mail: relex-sanctions@ec.europa.eu'

COMMISSION IMPLEMENTING REGULATION (EU) No 1188/2012**of 11 December 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 December 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	AL	56,9
	MA	83,2
	TN	94,1
	TR	80,9
	ZZ	78,8
0707 00 05	AL	87,0
	JO	174,9
	MA	133,1
	TR	107,8
	ZZ	125,7
0709 93 10	MA	155,9
	TR	100,7
	ZZ	128,3
0805 10 20	TR	47,5
	ZA	49,4
	ZW	43,2
	ZZ	46,7
0805 20 10	MA	69,5
	ZZ	69,5
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	JM	124,6
	MA	99,2
	TR	78,5
	ZZ	100,8
0805 50 10	TR	74,7
	ZZ	74,7
0808 10 80	CA	157,2
	MK	39,0
	US	125,4
	ZA	138,0
	ZZ	114,9
0808 30 90	CN	61,4
	TR	112,1
	US	150,9
	ZZ	108,1

⁽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'.

DECISIONS

COUNCIL IMPLEMENTING DECISION

of 4 December 2012

amending Decision 2009/790/EC authorising the Republic of Poland to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax

(2012/769/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 291(2) thereof,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽¹⁾, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) In a letter registered with the Secretariat-General of the Commission on 12 April 2012, Poland requested authorisation to extend the application of a measure derogating from point 14 of Article 287 of Directive 2006/112/EC in order to continue to exempt from value added tax (VAT) taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 30 000 at the conversion rate on the day of Poland's accession to the Union. Through that measure, those taxable persons would continue to be exempted from certain or all of the obligations in relation to VAT referred to in Chapters 2 to 6 of Title XI of Directive 2006/112/EC.

(2) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States by letters dated 17 and 18 July 2012 of the request made by Poland. By letter dated 19 July 2012, the Commission notified Poland that it had all the information necessary to consider the request.

(3) Under point 14 of Article 287 of Directive 2006/112/EC, Poland may exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 10 000 at the conversion rate on the day of its accession to the Union.

(4) By Council Decision 2009/790/EC of 20 October 2009 authorising the Republic of Poland to apply a measure derogating from Article 287 of Directive 2006/112/EC on the common system of value added tax ⁽²⁾, Poland was authorised, until 31 December 2012 and as a derogating measure, to exempt from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 30 000 at the conversion rate on the day of its accession to the Union. Given that this higher threshold has resulted in reduced VAT obligations for the smallest businesses, whilst the latter may still opt for the regular VAT arrangements in accordance with Article 290 of Directive 2006/112/EC, Poland should be authorised to apply the measure for a further limited period.

(5) In its proposal of 29 October 2004 for a Council Directive amending Directive 77/388/EEC, now Directive 2006/112/EC, with a view to simplifying value added tax obligations, the Commission included provisions aimed at allowing Member States to set the annual turnover ceiling for the VAT exemption scheme at up to EUR 100 000 or the equivalent in national currency, with the possibility of updating that amount each year. The extension request submitted by Poland is in line with that proposal.

(6) From the information provided by Poland, the measure has led to an estimated reduction of the overall amount of budget revenues from VAT of approximately 0,14 %.

(7) The derogating measure will have no adverse impact on the Union's own resources accruing from VAT.

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

⁽²⁾ OJ L 283, 30.10.2009, p. 53.

(8) Decision 2009/790/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In Article 2 of Decision 2009/790/EC the date '31 December 2012' is replaced by that of '31 December 2015'.

Article 2

This Decision shall take effect on the day of its notification.

Article 3

This Decision is addressed to the Republic of Poland.

Done at Brussels, 4 December 2012.

For the Council
The President
V. SHIARLY

COMMISSION IMPLEMENTING DECISION

of 11 December 2012

confirming the average specific emissions of CO₂ and specific emissions targets for manufacturers of passenger cars for the calendar year 2011 pursuant to Regulation (EC) No 443/2009 of the European Parliament and of the Council

(Text with EEA relevance)

(2012/770/EU)

THE EUROPEAN COMMISSION,

paragraph of Article 4 of that Regulation and take into account only the 65 % lowest emitting vehicles of each manufacturer.

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

Having regard to Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO₂ emissions from light-duty vehicles ⁽¹⁾, and in particular the second subparagraph of Article 8(5) and Article 10(1) thereof,

Whereas:

(1) The Commission is required, pursuant to Article 8(5) of Regulation (EC) No 443/2009, to confirm each year the average specific emissions of CO₂ and the specific emissions target for each manufacturer of passenger cars in the Union as well as for each pool of manufacturers formed in accordance with Article 7(7) of that Regulation. On the basis of that confirmation, the Commission is to determine whether manufacturers and pools have complied with the requirements of Article 4 of that Regulation. Where it is clear that a manufacturer or a pool has failed to meet its specific emissions target, the Commission is required, from 2013 onwards, pursuant to Article 9(1) of that Regulation, to issue excess emissions premiums by way of individual decisions addressed to the manufacturers or pool managers concerned.

(2) Pursuant to Article 4 of Regulation (EC) No 443/2009, the targets are binding on manufacturers and pools with effect from 2012. For the calendar years 2010 and 2011, the Commission should however calculate indicative targets and, pursuant to Article 8(6) of that Regulation, notify those manufacturers and pools whose average specific emissions of CO₂ exceed their indicative targets. As the targets for 2010 and 2011 will serve as indicators to manufacturers of the effort required to reach the mandatory target in 2012, it is appropriate to determine the average specific emissions of manufacturers for 2010 and 2011 in accordance with the second

(3) The data to be used for the calculation of the average specific emissions and the specific emissions targets is set out in Part C of Annex II to Regulation (EC) No 443/2009 and is based on Member States' registrations of new passenger cars during the preceding calendar year. The data is taken from the certificates of conformity issued by the manufacturers or from documents providing equivalent information in accordance with Article 3(1) of Commission Regulation (EU) No 1014/2010 of 10 November 2010 on monitoring and reporting of data on the registration of new passenger cars pursuant to Regulation (EC) No 443/2009 of the European Parliament and of the Council ⁽²⁾.

(4) The data for 2011 was transmitted to the Commission by the deadline of 28 February 2012 specified in Article 8(2) of Regulation (EC) No 443/2009 by a majority of the Member States. Due to the late delivery of the data by three Member States the complete dataset was, however, only available to the Commission by the end of May.

(5) Where, as a result of the verification of the data by the Commission, it was evident that certain data were missing or manifestly incorrect, the Commission contacted the Member States concerned and, subject to the agreement of those Member States, adjusted or completed the data accordingly. Where no agreement could be reached, the provisional data of that Member State was not adjusted.

(6) In September 2012, Germany informed the Commission that approximately 200 000 registrations for 2011 had been omitted from the dataset submitted to the Commission in February 2012. In view of the strict timetable for confirming the data, there was not sufficient time for the Commission to allow manufacturers to verify those missing registrations. As a consequence, the records relating to those registrations cannot be included in the final dataset and cannot be taken into account for the calculation of the average specific emissions of the manufacturers concerned or their specific emissions targets.

⁽¹⁾ OJ L 140, 5.6.2009, p. 1.

⁽²⁾ OJ L 293, 11.11.2010, p. 15.

- (7) On 20 June 2012, the Commission published the provisional data and notified 84 manufacturers of the provisional calculations of their average specific emissions of CO₂ in 2011 and their specific emissions targets in accordance with Article 8(4) of Regulation (EC) No 443/2009. Manufacturers were asked to verify the data and to notify the Commission of any errors within three months of receipt of the notification in accordance with the first subparagraph of Article 8(5) of that Regulation.
- (8) Thirty eight manufacturers submitted notifications of errors within the three-month deadline. Two manufacturers informed the Commission that there were errors in the datasets but did not notify corrections in accordance with Article 9(3) of Regulation (EU) No 1014/2010.
- (9) In the case of the 46 manufacturers that did not notify any errors in the datasets or did not notify in accordance with Article 9(3) of Regulation (EU) No 1014/2010 the provisional data and provisional calculations of the average specific emissions and the specific emissions targets should be confirmed without adjustments.
- (10) The Commission has verified the corrections notified by the manufacturers and the respective justifications as expressed through the error codes specified in Article 9(3) of Regulation (EU) No 1014/2010 and the dataset has been adjusted as appropriate.
- (11) In the case of records that have been identified by manufacturers with the error code B as set out in Article 9(3) of Regulation (EU) No 1014/2010, it is necessary to take into account the fact that manufacturers cannot verify or correct those records appropriately due to missing or incorrect identification parameters. Accordingly, an error margin should be applied to the CO₂ emission and mass values in those records.
- (12) The error margin should be calculated as the difference between the distances to the specific emissions target expressed as the average emissions subtracted from the specific emissions targets calculated including and excluding those registrations that cannot be verified by

the manufacturers. Regardless of whether that difference is positive or negative, the error margin should always improve the distance to the target of the manufacturer.

- (13) The average specific emissions of CO₂ from new passenger cars registered in 2011, the specific emissions targets and the difference between those two values should be confirmed accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following values specified in the Annex are confirmed for each manufacturer of passenger cars and for each pool of manufacturers in respect of the 2011 calendar year:

- (a) the specific emissions target;
- (b) the average specific emissions of CO₂, where appropriate adjusted by the relevant error margin;
- (c) the difference between the values referred to in points (a) and (b);
- (d) the average specific emissions of CO₂ for all new passenger cars in the Union;
- (e) the average mass for all new passenger cars in the Union.

Article 2

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

Done at Brussels, 11 December 2012.

For the Commission

The President

José Manuel BARROSO

ANNEX

Table 1

Values relating to the performance of manufacturers confirmed in accordance with Article 10(1) of Regulation (EC) No 443/2009

A	B	C	D	E	F	G	H	I
Manufacturer name	Pools and derogations	Number of registrations	Average CO ₂ (65 %) corrected	Specific emissions target	Distance to target	Distance to target adjusted	Average mass	Average CO ₂ (100 %)
Alpina Burkard Bovensiepen GmbH + Co. KG		572	177,439	147,733	29,706	29,706	1 760,03	203,024
Aston Martin Lagonda Ltd	D	1 306	293,478	320,000	– 26,522	– 26,522	1 778,25	320,737
Audi AG	P8	617 058	126,995	139,414	– 12,419	– 13,108	1 578,00	144,669
Audi Hungaria Motor KFT	P8	14 853	136,758	133,273	3,485	3,344	1 443,62	148,573
Automobiles Citroën		741 890	112,738	127,624	– 14,886	– 14,886	1 320,01	125,666
Automobiles Dangel		45	145,103	137,974	7,129	7,129	1 546,49	148,267
Automobiles Peugeot		871 307	115,971	129,369	– 13,398	– 13,398	1 358,19	128,318
Avtovaz JSC		2 877	206,591	125,487	81,104	81,104	1 273,25	214,379
Bayerische Motoren Werke AG		723 001	129,243	139,011	– 9,768	– 9,768	1 569,17	144,289
Bentley Motors Ltd	P8	1 281	385,470	181,852	203,618	203,618	2 506,62	389,560
BMW M GmbH		32 688	128,168	141,763	– 13,595	– 13,595	1 629,39	153,267
Caterham Cars Limited	D	146	164,936	210,000	– 45,064	– 45,064	707,19	182,973
Chongqing Lifan Passenger Vehicle CO Ltd		41	174	123,282	50,718	50,718	1 225,00	174,000
Chevrolet Italia		11 747	110,522	117,194	– 6,672	– 6,672	1 091,78	113,295
Chrysler Group LLC		40 418	172,738	158,926	13,812	13,812	2 004,95	192,096
CNG Technik	P1	126	114,000	118,073	– 4,073	– 4,073	1 111,01	114,000
Automobile Dacia SA		235 036	132,368	126,693	5,675	5,674	1 299,64	142,774
Daihatsu Motor Co. Ltd	P7	9 603	128,506	118,136	10,370	10,370	1 112,40	145,796

A	B	C	D	E	F	G	H	I
Manufacturer name	Pools and derogations	Number of registrations	Average CO ₂ (65 %) corrected	Specific emissions target	Distance to target	Distance to target adjusted	Average mass	Average CO ₂ (100 %)
Daimler AG Stuttgart	P2	626 079	132,125	139,031	– 6,906	– 6,985	1 569,61	152,765
Dr Motor Company SRL		2 783	121,075	118,756	2,319	2,319	1 125,95	134,736
Ferrari	D	2 318	299,849	303,000	– 3,151	– 3,151	1 721,13	321,016
Ford Motor Company	P1	651	117,104	120,917	– 3,813	– 3,858	1 173,24	123,097
Fiat Group Automobiles SpA		836 642	109,885	119,406	– 9,521	– 9,593	1 140,19	118,279
Ford-Werke GmbH	P1	1 004 863	119,012	127,825	– 8,813	– 8,895	1 324,41	131,951
Fuji Heavy Industries Ltd	ND	26 702	158,145	164,616	– 6,471	– 6,471	1 582,48	170,332
General Motors Company		958	224,111	153,828	70,283	70,283	1 893,39	293,342
GM Korea Company		156 775	125,945	127,643	– 1,698	– 1,698	1 320,43	142,195
GM Italia SRL		1 497	113,238	121,524	– 8,286	– 8,286	1 186,53	117,716
Great Wall Motor Company Limited	D	1 734	219,029	195,000	24,029	24,029	1 894,19	220,578
Honda Automobile China CO	P3	20 699	123,950	119,659	4,291	4,279	1 145,71	125,329
Honda Automobile Thailand CO	P3	203	146,221	120,814	25,407	25,407	1 171,00	150,567
Honda Motor CO	P3	80 194	123,371	130,019	– 6,648	– 6,970	1 372,42	142,092
Honda of the UK Manufacturing	P3	37 627	146,211	133,571	12,640	12,409	1 450,15	161,127
Honda Türkiye AS	P3	1 051	151,798	125,595	26,203	26,203	1 275,60	155,955
Hyundai Motor Company		363 165	118,966	126,578	– 7,612	– 7,612	1 297,12	132,139
Iveco SpA		51	213,636	179,988	33,648	33,648	2 465,84	220,510
Jaguar Cars Ltd	ND P6	21 980	169,666	178,025	– 8,359	– 8,359	1 899,75	189,103
KIA Motors Corporation		279 401	122,048	129,147	– 7,099	– 7,099	1 353,33	136,944

A	B	C	D	E	F	G	H	I
Manufacturer name	Pools and derogations	Number of registrations	Average CO ₂ (65 %) corrected	Specific emissions target	Distance to target	Distance to target adjusted	Average mass	Average CO ₂ (100 %)
KTM-Sportmotorcycle AG	D	31	181,7	200,000	– 18,300	– 18,300	875,00	184,161
Automobili Lamborghini SpA	P8	270	322,109	141,622	180,487	179,992	1 626,30	341,804
Land Rover	ND P6	68 080	188,659	178,025	10,634	10,634	2 291,53	210,911
Lotus Cars Limited	D	522	179,209	280,000	– 100,791	– 100,791	1 280,82	198,571
Magyar Suzuki Corporation Ltd	P5	96 175	118,469	120,435	– 1,966	– 1,966	1 162,71	127,816
Mahindra & Mahindra Ltd	D	12	236	205,000	31,000	31,000	2 012,50	238,000
Maruti Suzuki India Ltd	P5	22 813	102,997	109,967	– 6,970	– 6,970	933,65	104,430
Maserati SpA		1 330	351,103	158,453	192,650	192,650	1 994,61	360,656
Mazda Motor Corporation		125 367	131,622	130,645	0,977	0,724	1 386,11	146,625
McLaren Automotive Ltd	D	76	279,000	285,000	– 6,000	– 6,000	1 514,20	282,342
Mercedes-AMG GmbH, Affalterbach	P2	1 507	307,578	145,071	162,507	162,494	1 701,79	307,768
MG Motor UK Limited	D	426	183,156	184,000	– 0,844	– 0,844	1 513,43	183,667
MIA Electric SAS		249	0	108,388	– 108,388	– 108,388	899,09	0,000
Micro-Vett SpA		4	0	129,772	– 129,772	– 129,772	1 367,00	0,000
Mitsubishi Motors Corporation (MMC)	P4	78 039	128,395	139,904	– 11,509	– 12,224	1 588,71	153,864
Mitsubishi Motor Europe BV (MME)	P4	19 270	117,472	115,081	2,391	2,387	1 045,55	120,139
Morgan Motor Co. Ltd	D	452	155,382	180,000	– 24,618	– 24,618	1 113,11	176,626
Nissan International SA		443 400	127,348	130,153	– 2,805	– 2,805	1 375,34	142,469
O.M.C.I. SRL		51	156,061	119,537	36,524	36,524	1 143,04	169,431

A	B	C	D	E	F	G	H	I
Manufacturer name	Pools and derogations	Number of registrations	Average CO ₂ (65 %) corrected	Specific emissions target	Distance to target	Distance to target adjusted	Average mass	Average CO ₂ (100 %)
Adam Opel AG		952 117	122,860	132,649	– 9,789	– 9,790	1 429,97	134,205
OSV — Opel Special Vehicles GmbH		2	133	136,581	– 3,581	– 3,581	1 516,00	135,500
Perodua Manufacturing Sdn Bhd		526	136,941	114,004	22,937	22,937	1 021,98	141,848
PGO Automobiles		66	184,738	113,598	71,140	71,140	1 013,09	188,015
Dr.Ing.h.c.F. Porsche AG	P8	37 201	202,993	152,904	50,089	50,089	1 873,19	221,560
Potenza Sports Cars		22	178	99,975	78,025	78,025	715,00	178,000
Perusahaan Otomobil Nasional Sdn Bhd	D	442	144,78	185,000	– 40,220	– 40,220	1 394,86	154,495
Quattro GmbH	P8	3 307	232,028	149,311	82,717	81,792	1 794,57	258,705
Renault		1 004 850	114,816	126,391	– 11,575	– 11,580	1 293,02	128,566
Rolls-Royce Motors Cars Ltd		409	316,238	182,073	134,165	134,165	2 511,46	334,760
Saab Automobile AB		12 570	134,632	144,930	– 10,298	– 10,298	1 698,70	155,341
Santana Motor SA		22	217,929	149,065	68,864	68,864	1 789,18	245,591
Seat	P8	293 241	114,132	126,196	– 12,064	– 12,110	1 288,76	124,878
Secma		43	131,000	97,370	33,630	33,630	658,00	137,140
Shanghai Maple Automobile Co Ltd		15	212	154,130	57,870	57,870	1 900,00	216,200
Shijiazhuang Shuanghuan Automobile Company		51	269,242	153,977	115,265	115,265	1 896,67	269,510
Skoda Auto AS	P8	448 804	122,323	127,444	– 5,121	– 5,453	1 316,07	134,649
Sovab		9	211,8	163,955	47,845	47,845	2 115,00	215,000
Ssangyong Motor Company	D	6 258	165,95	180,000	– 14,050	– 14,050	1 820,03	184,144
Suzuki Motor Corporation	P5	58 442	129,792	124,059	5,733	5,733	1 241,99	148,166
Tata Motors Limited	ND P6	2 075	132,499	178,025	– 45,526	– 45,526	1 323,63	145,692

A	B	C	D	E	F	G	H	I
Manufacturer name	Pools and derogations	Number of registrations	Average CO ₂ (65 %) corrected	Specific emissions target	Distance to target	Distance to target adjusted	Average mass	Average CO ₂ (100 %)
Tesla Motors Ltd		76	0	128,354	– 128,354	– 128,354	1 335,99	0,000
Think		224	0	119,830	– 119,830	– 119,830	1 149,47	0,000
Toyota Motor Europe NV SA	P7	522 865	109,293	128,141	– 18,848	– 18,905	1 331,32	126,194
Volkswagen AG	P8	1 574 053	121,739	131,971	– 10,232	– 10,399	1 415,14	134,918
Volvo Car Corporation		225 326	132,245	145,021	– 12,776	– 12,776	1 700,69	151,452
Wiesmann GmbH	D	5	270,333	274,000	– 3,667	– 3,667	1 434,60	277,000

Table 2

Values relating to the performance of pools confirmed in accordance with Article 10(1) of Regulation (EC) No 443/2009

A	B	C	D	E	F	G	H	I
Pool name	Pool	Number of registrations	Average CO ₂ (65 %) corrected	Specific emissions target	Distance to target	Distance to target adjusted	Average mass	Average CO ₂ (100 %)
Ford Werke GMBH	P1	1 005 640	119,007	127,82	– 8,813	– 8,893	1 324,29	131,943
Daimler AG	P2	627 586	132,189	139,045	– 6,856	– 6,933	1 569,93	153,137
Honda Motor Europe Ltd	P3	139 774	127,001	129,394	– 2,393	– 2,703	1 358,75	144,850
Mitsubishi Motors	P4	97 309	123,768	134,988	– 11,220	– 11,651	1 481,15	147,185
Suzuki	P5	177 430	116,184	120,283	– 4,099	– 4,099	1 159,37	131,512
Tata Motors Ltd, Jaguar Cars Ltd, Land Rover	P6	92 135	177,629	178,025	– 0,396	– 0,396	2 176,27	204,240
Toyota-Daihatsu Group	P7	532 468	109,496	127,96	– 18,464	– 18,506	1 327,37	126,547
VW Group PC	P8	2 990 068	121,99	132,57	– 10,580	– 10,707	1 428,23	137,316

Explanatory notes to Tables 1 and 2

Column A:

In Table 1: 'Manufacturer name' means the name of the manufacturer as notified to the Commission by the manufacturer concerned or, where no such notification has taken place, the name registered by the registration authority of the Member State.

In Table 2: 'Pool name' means the name of the pool declared by the pool manager.

Column B:

'D' means that a derogation relating to a small volume manufacturer has been granted in accordance with Article 11(3) of Regulation (EC) No 443/2009 with effect from 2012;

'ND' means that a derogation relating to a niche manufacturer has been granted in accordance with Article 11(4) of Regulation (EC) No 443/2009 with effect from 2012;

'P' means that the manufacturer is a member of a pool (listed in Table 2) formed in accordance with Article 7 of Regulation (EC) No 443/2009.

Column C:

'Number of registrations' means the total number of new cars registered by Member States in a calendar year, not counting those registrations that relate to records where the values for both mass and CO₂ are missing and those records which the manufacturer does not recognise (identified in the error notification with error code C as set out in Article 9(3) of Regulation (EU) No 1014/2010). The number of registrations reported by Member States may otherwise not be changed.

Column D:

'Average CO₂ (65 %) corrected' means the average specific emissions of CO₂ that have been calculated on the basis of the 65 % lowest emitting vehicles in the manufacturer's fleet in accordance with the first indent of the second subparagraph of Article 4 of Regulation (EC) No 443/2009 and point 4 of Commission Communication COM(2010) 657 final. Where appropriate, the average specific emissions have been adjusted to take into account the corrections notified to the Commission by the manufacturer concerned. The records used for the calculation include those that contain a valid value for mass and CO₂ emissions.

Column E:

'Specific emissions target' means the emissions target calculated on the basis of the average mass of all vehicles attributed to a manufacturer applying the formula set out in Annex I to Regulation (EC) No 443/2009.

Column F:

'Distance to target' means the difference between the average specific emissions specified in column D and the specific emissions target in column E. Where the value in column F is preceded by '-' it means that the average emissions are lower than the target.

Column G:

'Distance to target adjusted' means that where the values in this column are different from those in column F, the values in that column have been adjusted to take into account an error margin. An error margin applies for those records that are included in the calculation of the average specific emissions and the target but the manufacturer cannot verify whether those values are correct due to the lack of appropriate identifiers. The error margin only applies if the manufacturer has notified the Commission of any records with the error code B as set out in Article 9(3) of Regulation (EU) No 1014/2010. The error margin is calculated in accordance with the following formula:

Error = absolute value of [(AC1 – TG1) – (AC2 – TG2)]

AC1 = the average specific emissions of CO₂ including the unidentifiable vehicles (as set out in column D);

TG1 = the specific emissions target including the unidentifiable vehicles (as set out in column E);

AC2 = the average specific emissions of CO₂ excluding the unidentifiable vehicles;

TG2 = the specific emissions target excluding the unidentifiable vehicles.

Column I:

'Average CO₂ (100 %)' means the average specific emissions of CO₂ that have been calculated on the basis of 100 % of the vehicles attributed to the manufacturer. Where appropriate, the average specific emissions have been adjusted to take into account the corrections notified to the Commission by the manufacturer concerned. The records used for the calculation include those that contain a valid value for mass and CO₂ emissions.

RECOMMENDATIONS

COMMISSION RECOMMENDATION

of 6 December 2012

regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters

(2012/771/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) In an international context, the existence of differing tax legislation is generally accepted as a consequence of fiscal sovereignty. In this context, some, typically small, third countries with limited financial needs have opted for a low level of income tax which applies generally, both to individuals and to companies, or even no income tax at all. Such tax policies are not necessarily undesirable as such, as long as the State participates in international cooperation in order to allow other States to enforce their tax policy.
- (2) However, policies which entail a low level of income tax or none at all often go along with a lack of transparency or exchange of information with other States. The States concerned attract investment by offering non-residents a shelter for some types of mobile income or capital and allowing them to conceal the existence of such income or capital from the tax administration of their State of residence.
- (3) Various initiatives have been taken in international forums, such as the Organisation for Economic Cooperation and Development or G20, to address these concerns. Moreover, the Global Forum on Transparency and Exchange of Information for Tax Purposes (hereinafter 'the Global Forum') has developed standards of transparency and exchange of information for tax purposes. In 2009, the Global Forum agreed to review the implementation of those standards. It has engaged in a comprehensive peer review process and many traditional low tax jurisdictions have agreed to conclude bilateral agreements on exchange of information on tax matters.

- (4) Within the Union, issues of transparency and exchange of information are addressed by Council Directive

2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC ⁽¹⁾. Moreover, there is a consensus in the Union, expressed in the Code of conduct for business taxation referred to in Annex 1 to Conclusions of the Ecofin Council meeting on 1 December 1997 concerning taxation policy ⁽²⁾, that harmful tax measures are not acceptable, which makes it difficult for Member States to maintain or introduce such measures. In addition, a number of measures potentially falling under the Code of conduct are subject to scrutiny under the rules on State aid set out in the Treaty on the Functioning of the European Union (TFEU).

- (5) In its relations with third countries the Union has sought to convince them to subscribe to the Union principles concerning transparency and exchange of information (similar to the broadly accepted international standards for transparency and exchange of information) and the abolition of harmful tax measures as described in Commission Communication on promoting good governance in tax matters ⁽³⁾ and Commission Communication on tax and development cooperation with developing countries on promoting good governance in tax matters ⁽⁴⁾.
- (6) Member States whose tax base has been negatively affected by a lack of transparency or by harmful tax measures on the part of third countries have taken steps to remedy that situation. However, taxpayers respond to such measures by routing business or transactions through another jurisdiction with a lower level of protection. This risk is particularly relevant within the Union given the freedom of economic operators to do business anywhere in the Union. Consequently, the level of protection available within the Union against such erosion of the tax base tends to correspond to the lowest level of protection offered by any Member State.
- (7) The distortions that this situation brings about within the Union can lead to artificial capital flows and movements of taxpayers within the internal market and thus harm its

⁽¹⁾ OJ L 64, 11.3.2011, p. 1.

⁽²⁾ OJ C 2, 6.1.1998, p. 1.

⁽³⁾ COM(2009) 201 final of 28 April 2009.

⁽⁴⁾ COM(2010) 163 final of 21 April 2010.

proper functioning, as well as erode Member States' tax bases. Such distortions should be remedied through an approach shared by all Member States.

- (8) Therefore, it is necessary to clearly spell out minimum standards of good governance in tax matters, both in regard to transparency and exchange of information and in regard to harmful tax measures, and a number of measures to be taken vis-à-vis third countries, with a view to encouraging those countries to comply with those standards.
- (9) In regard to transparency and exchange of information, an internationally recognised standard has been set out in the Terms of Reference agreed by the Global Forum in 2009. Those terms should therefore form the basis of this Recommendation. As far as harmful tax measures are concerned, the Code of conduct for business taxation has proven to be a pertinent reference within the Union. Member States have committed themselves to promoting principles of that Code in third countries. It is therefore appropriate to refer to the criteria of that Code for the purposes of this Recommendation. In this regard, it is also appropriate to refer to the work of the Code of Conduct Group (business taxation), set up within the framework of the Council to assess the tax measures that may fall within scope of the Code of conduct for business taxation⁽¹⁾. The cases assessed by this group can be of assistance when it comes to examine whether a given measure is to be considered as harmful.
- (10) This Recommendation should indicate a set of measures to be applied in relation to third countries that do not meet the minimum standards of good governance in tax matters. By applying these measures together, Member States would significantly increase the overall effectiveness of the measures taken by each of them. Losses of tax revenues could therefore be reduced, along with administrative costs for tax administrations and the compliance burden on taxpayers.
- (11) In order to promote the application of the minimum standards of good governance in tax matters, it is also necessary to indicate positive measures to encourage third countries that meet these standards or that are committed to meeting them but need assistance to achieve this.
- (12) The measures indicated in this Recommendation and applied by Member States must be compatible with Union law, in particular with the fundamental freedoms enshrined in the TFEU,

HAS ADOPTED THIS RECOMMENDATION:

1. Subject matter

This Recommendation provides criteria making it possible to identify third countries which do not meet minimum

standards of good governance in tax matters. It also lists a series of actions that Member States may take in relation to third countries that do not meet those standards and in favour of third countries that do comply with them.

This Recommendation concerns income taxation.

2. Definitions

For the purpose of this Recommendation, the following definitions apply:

- (a) 'income tax' means any tax on income, whether levied from individuals or from legal entities and irrespective of the manner in which it is levied, imposed on behalf of a State, its political subdivisions or its local authorities;
- (b) 'third country' means any jurisdiction that is not a Member State;
- (c) 'national blacklist' means a list adopted by a Member State which identifies other jurisdictions in regard to whom the Member State applies predefined tax measures or tax policies.

3. Minimum standards of good governance in tax matters

A third country only complies with minimum standards of good governance in tax matters where:

- (a) it has adopted legal, regulatory and administrative measures intended to comply with the standards of transparency and exchange of information set out in the Annex, and effectively applies those measures;
- (b) it does not operate harmful tax measures in the area of business taxation.

Tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the third country in question are to be regarded as potentially harmful. Such a level of taxation may operate by virtue of the nominal tax rate, the tax base or any other relevant factor.

When assessing whether such measures are harmful, account should be taken of inter alia:

- (a) whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents; or
- (b) whether advantages are ring-fenced from the domestic market, so they do not affect the national tax base; or

⁽¹⁾ OJ C 99, 1.4.1998, p. 1.

- (c) whether advantages are granted even without any real economic activity and substantial economic presence within the third country offering such tax advantages; or
- (d) whether the rules for profit determination in respect of activities within a multinational group of companies departs from internationally accepted principles, notably the rules agreed upon within the Organisation for Economic Cooperation and Development; or
- (e) whether the tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way.

When applying those criteria, Member States should take account of the conclusions reached in the Code of Conduct Group (business taxation) in regard to tax measures it has assessed as harmful.

- 4. Measures directed against third countries not complying with minimum standards set out in point 3
- 4.1. Member States should publish blacklists of third countries not complying with minimum standards set out in point 3, with a view to the application of point 4.3. Those blacklists should make reference to this Recommendation.
- 4.2. Member States that have adopted national blacklists should include in such lists third countries not complying with minimum standards set out in point 3.
- 4.3. Each Member State having concluded a double taxation convention with a third country not complying with minimum standards as set out in point 3 should, as most appropriate with a view to improve compliance by that third country with these standards, either seek to renegotiate the convention, suspend or terminate the convention.
- 5. Measures in favour of third countries complying with minimum standards set out in point 3
- 5.1. Member States should remove third countries which comply with minimum standards set out in point 3 from the blacklists referred to in point 4.1.
- 5.2. Member States should consider removing third countries which comply with minimum standards set out in point 3 from any existing national blacklists referred to in point 4.2.

- 5.3. Member States should consider initiating bilateral negotiations for the conclusion of double tax conventions with third countries which comply with minimum standards set out in point 3.

- 6. Measures in favour of third countries which are committed to comply with minimum standards set out in point 3.
- 6.1. Member States should consider offering closer cooperation and assistance to third countries, especially developing ones, which are committed to complying with minimum standards set out in point 3, in order to assist those third countries in fighting effectively against tax evasion and aggressive tax planning. To this end, they could second tax experts to such countries for a limited period of time.

When judging third countries' commitment to complying with those minimum standards, Member States should take into account all concrete indications to this effect, in particular steps towards compliance already taken by the third country concerned.

- 6.2. As long as a third country benefits from assistance in accordance with point 6.1 and accomplishes the expected progress towards compliance with the said minimum standards, Member States should abstain from applying the measures referred to in point 4, except for the renegotiation of double tax conventions.

7. Follow-up

Member States should inform the Commission on the measures taken in order to comply with the present Recommendation, as well as any changes made to such measures.

The Commission will publish a report on the application of this Recommendation within three years after its adoption.

8. Addressees

This Recommendation is addressed to the Member States.

Done at Brussels, 6 December 2012.

For the Commission
Algirdas ŠEMETA
Member of the Commission

ANNEX

STANDARDS OF TRANSPARENCY AND EXCHANGE OF INFORMATION**A. AVAILABILITY OF INFORMATION**

- A.1. The third country concerned ensures that ownership and identity information for all relevant entities and arrangements is available to its competent authorities.
- A.2. The third country concerned ensures that reliable accounting records are kept for all relevant entities and arrangements.
- A.3. Banking information is available for all account holders.

B. ACCESS TO INFORMATION

- B.1. Competent authorities of the third country concerned have the power to obtain and provide information that is the subject of a request under an agreement on exchange of information, from any person within their territorial jurisdiction who is in possession or control of such information.
- B.2. The rights and safeguards that apply to persons in the requested third country concerned are compatible with effective exchange of information.

C. EXCHANGING INFORMATION

- C.1. Mechanisms for the exchange of information with Member States are such that this exchange is carried out in an effective manner.
 - C.2. The network of information exchange mechanisms of the third country concerned covers all Member States.
 - C.3. The mechanisms for exchange of information of the third country concerned contain adequate provisions to ensure the confidentiality of information received from Member States.
 - C.4. The exchange of information mechanisms of the third country concerned respect the rights and safeguards of taxpayers and third parties.
 - C.5. The third country concerned provides information under its network of agreements with Member States in a timely manner.
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COMMISSION RECOMMENDATION**of 6 December 2012****on aggressive tax planning**

(2012/772/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Countries around the world have traditionally treated tax planning as a legitimate practice. Over time, however, the tax planning structures have become ever-more sophisticated. They develop across various jurisdictions and effectively, shift taxable profits towards States with beneficial tax regimes. A key characteristic of the practices in question is that they reduce tax liability through strictly legal arrangements which however contradict the intent of the law.
- (2) Aggressive tax planning consists in taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability. Aggressive tax planning can take a multitude of forms. Its consequences include double deductions (e.g. the same loss is deducted both in the State of source and residence) and double non-taxation (e.g. income which is not taxed in the source State is exempt in the State of residence).
- (3) Member States find it difficult to protect their national tax bases from erosion through aggressive tax planning, despite important efforts. National provisions in this area are often not fully effective, especially due to the cross-border dimension of many tax planning structures and the increased mobility of capital and persons.
- (4) With a view to moving to a better functioning of the internal market, it is necessary to encourage all Member States to take the same general approach towards aggressive tax planning, which would help diminishing existing distortions.
- (5) To this end, it is necessary to address instances in which a taxpayer derives fiscal benefits through engineering its tax affairs in such a way that income is not taxed by any of the tax jurisdictions involved (double non-taxation).

The persistence of such situations can lead to artificial capital flows and movements of taxpayers within the internal market and thus harm its proper functioning as well as erode Member States' tax bases.

- (6) In 2012 the Commission carried out a public consultation on double non-taxation in the internal market. Since it is not possible to address all the issues covered by that consultation through one single solution, it is appropriate, as a first step, to deal with the issue which is linked to certain frequently used tax planning structures that take advantage of mismatches between two or more tax systems and often lead to double non-taxation.
- (7) States often undertake, in their double taxation conventions, not to tax certain items of income. In providing for such treatment, they may not necessarily take account of whether such items are subject to tax in the other party to that convention, and thus whether there is a risk of double non-taxation. Such risk may also occur if Member States unilaterally exempt items of foreign income, irrespective of whether they are subject to tax in the source State. It is important to address both situations in this Recommendation.
- (8) As tax planning structures are ever more elaborate and national legislators are frequently left with insufficient time for reaction, specific anti-abuse measures often turn out to be inadequate for successfully catching up with novel aggressive tax planning structures. Such structures can be harmful to national tax revenues and to the functioning of the internal market. Therefore, it is appropriate to recommend the adoption by Member States of a common general anti-abuse rule, which should also avoid the complexity of many different ones. In this context, it is necessary to take account of the limits imposed by Union law with regard to anti-abuse rules.
- (9) So as to preserve the autonomous operation of existing Union acts in the area concerned, this Recommendation does not apply within the scope of Council Directive 2009/133/EC ⁽¹⁾, of Council Directive 2011/96/EU ⁽²⁾ and of Council Directive 2003/49/EC ⁽³⁾. A revision of those Directives with a view to implement the principles underlying this Recommendation is currently considered by the Commission,

⁽¹⁾ OJ L 310, 25.11.2009, p. 34.

⁽²⁾ OJ L 345, 29.12.2011, p. 8.

⁽³⁾ OJ L 157, 26.6.2003, p. 49.

HAS ADOPTED THIS RECOMMENDATION:

1. Subject matter and scope

This Recommendation addresses aggressive tax planning in the area of direct taxation.

It does not apply within the scope of Union acts whose operation could be affected by its terms.

2. Definitions

For the purpose of this Recommendation, the following definitions apply:

(a) 'tax' means income tax, corporation tax and, where applicable, capital gains tax, as well as withholding tax of a nature equivalent to any of these taxes;

(b) 'income' means all items which are defined as such under the domestic law of the Member State which applies the term and, where applicable, the items defined as capital gains.

3. Limitation to the application of rules intended to avoid double taxation

3.1. Where Member States, in double taxation conventions which they have concluded among themselves or with third countries, have committed not to tax a given item of income, Member States should ensure that such commitment only applies where the item is subject to tax in the other party to that convention.

3.2. To give effect to point 3.1, Member States are encouraged to include an appropriate clause in their double taxation conventions. Such clause could read as follows:

'Where this Convention provides that an item of income shall be taxable only in one of the contracting States or that it may be taxed in one of the contracting States, the other contracting State shall be precluded from taxing such item only if this item is subject to tax in the first contracting State'.

In case of multilateral conventions, the reference to the 'other contracting State' should be replaced by a reference to the 'other contracting States'.

3.3. Where, with a view to avoid double taxation through unilateral national rules, Member States provide for a tax exemption in regard to a given item of income sourced in another jurisdiction, in which this item is not subject to tax, Member States are encouraged to ensure that the item is taxed.

3.4. For the purposes of points 3.1, 3.2 and 3.3 an item of income should be considered to be subject to tax where it

is treated as taxable by the jurisdiction concerned and is not exempt from tax, nor benefits from a full tax credit or zero-rate taxation.

4. General anti-abuse rule

4.1. To counteract aggressive tax planning practices which fall outside the scope of their specific anti-avoidance rules, Member States should adopt a general anti-abuse rule, adapted to domestic and cross-border situations confined to the Union and situations involving third countries.

4.2. To give effect to point 4.1, Member States are encouraged to introduce the following clause in their national legislation:

'An artificial arrangement or an artificial series of arrangements which has been put into place for the essential purpose of avoiding taxation and leads to a tax benefit shall be ignored. National authorities shall treat these arrangements for tax purposes by reference to their economic substance'.

4.3. For the purposes of point 4.2 an arrangement means any transaction, scheme, action, operation, agreement, grant, understanding, promise, undertaking or event. An arrangement may comprise more than one step or part.

4.4. For the purposes of point 4.2 an arrangement or a series of arrangements is artificial where it lacks commercial substance. In determining whether the arrangement or series of arrangements is artificial, national authorities are invited to consider whether they involve one or more of the following situations:

(a) the legal characterisation of the individual steps which an arrangement consists of is inconsistent with the legal substance of the arrangement as a whole;

(b) the arrangement or series of arrangements is carried out in a manner which would not ordinarily be employed in what is expected to be a reasonable business conduct;

(c) the arrangement or series of arrangements includes elements which have the effect of offsetting or cancelling each other;

(d) transactions concluded are circular in nature;

(e) the arrangement or series of arrangements results in a significant tax benefit but this is not reflected in the business risks undertaken by the taxpayer or its cash flows;

(f) the expected pre-tax profit is insignificant in comparison to the amount of the expected tax benefit.

4.5. For the purposes of point 4.2, the purpose of an arrangement or series of arrangements consists in avoiding taxation where, regardless of any subjective intentions of the taxpayer, it defeats the object, spirit and purpose of the tax provisions that would otherwise apply.

4.6. For the purposes of point 4.2, a given purpose is to be considered essential where any other purpose that is or could be attributed to the arrangement or series of arrangements appears at most negligible, in view of all the circumstances of the case.

4.7. In determining whether an arrangement or series of arrangements has led to a tax benefit as referred to in point 4.2, national authorities are invited to compare the amount of tax due by a taxpayer, having regard to those arrangement(s), with the amount that the same taxpayer would owe under the same circumstances in the absence of the arrangement(s). In that context, it is useful to consider whether one or more of the following situations occur:

(a) an amount is not included in the tax base;

(b) the taxpayer benefits from a deduction;

(c) a loss for tax purposes is incurred;

(d) no withholding tax is due;

(e) foreign tax is offset.

5. Follow-up

Member States should inform the Commission on the measures taken in order to comply with the present Recommendation, as well as on any changes made to such measures.

The Commission will publish a report on the application of this Recommendation within three years after its adoption.

6. Addressees

This Recommendation is addressed to the Member States.

Done at Brussels, 6 December 2012.

For the Commission

Algirdas ŠEMETA

Member of the Commission

CORRIGENDA**Corrigendum to Commission Regulation (EU) No 488/2012 of 8 June 2012 amending Regulation (EC) No 658/2007 concerning financial penalties for infringement of certain obligations in connection with marketing authorisations granted under Regulation (EC) No 726/2004 of the European Parliament and of the Council**

(Official Journal of the European Union L 150 of 9 June 2012)

On page 69, in Article 1, point 7:

for: 'the obligation to provide, at the request of the Agency, any data demonstrating that the risk-benefit balance remains favourable, as provided for in Article 16(4) and Article 41(4) of Regulation (EC) No 726/2004;',

read: 'the obligation to provide, at the request of the Agency, any data demonstrating that the risk-benefit balance remains favourable, as provided for in Articles 16(3a) and 41(4) of Regulation (EC) No 726/2004;';

on page 69, in Article 1, point 12:

for: 'the obligation to submit, at the request of the Agency, a copy of the pharmacovigilance system master file, as provided for in Article 16(4) of Regulation (EC) No 726/2004;',

read: 'the obligation to submit, at the request of the Agency, a copy of the pharmacovigilance system master file, as provided for in Article 16(3a) of Regulation (EC) No 726/2004;'.

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