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Legislation

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⁽¹⁾ Text with EEA relevance

EN

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

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II

(Non-legislative acts)

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2015/217

of 10 April 2014

authorising Member States to adopt certain derogations pursuant to Directive 2008/68/EC of the European Parliament and of the Council on the inland transport of dangerous goods*(notified under document C(2014) 2292)*

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods ⁽¹⁾, and in particular Article 6(2) and (4) thereof,

Whereas:

- (1) Annex I, Section I.3, Annex II, Section II.3 and Annex III, Section III.3 to Directive 2008/68/EC contain lists of national derogations, allowing specific national circumstances to be taken into account. New national derogations were requested by certain Member States.
- (2) These derogations should be authorised.
- (3) As Annex I, Section I.3, Annex II, Section II.3 and Annex III, Section III.3 have therefore to be adapted, it is appropriate, for reasons of clarity, to replace them in their entirety.
- (4) Directive 2008/68/EC should therefore be amended accordingly.
- (5) The measures provided for in this Decision are in accordance with the opinion of the committee on the transport of dangerous goods set up by Directive 2008/68/EC,

HAS ADOPTED THIS DECISION:

Article 1

The Member States listed in the Annex are authorised to implement the derogations set out therein regarding the transport of dangerous goods within their territory.

These derogations shall be applied without discrimination.

Article 2

Annex I, Section I.3, Annex II, Section II.3 and Annex III, Section III.3 to Directive 2008/68/EC are amended in accordance with the Annex to this Decision.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 10 April 2014.

For the Commission

Siim KALLAS

Vice-President

⁽¹⁾ OJ L 260, 30.9.2008, p. 13.

ANNEX

Annex I, Annex II and Annex III to Directive 2008/68/EC are amended as follows:

- (1) In Annex I, Section I.3 is replaced by the following:

I.3. National derogations

Derogations for Member States for the transport of dangerous goods within their territory on the basis of Article 6 (2) of Directive 2008/68/EC.

Numbering of derogations: RO-a/bi/bii-MS-nn

RO = Road

a/bi/bii = Article 6(2) a/bi/bii

MS = Abbreviation of Member State

nn = order number

Based on Article 6(2)(a) of Directive 2008/68/EC

BE Belgium

RO-a-BE-1

Subject: Class 1 — Small quantities.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 1.1.3.6

Content of the Annex to the Directive: 1.1.3.6 limits to 20 kg the quantity of mining explosives which can be transported in an ordinary vehicle.

Content of the national legislation: Operators of depots remote from supply points may be authorised to transport 25 kg of dynamite or powerful explosives and 300 detonators at the most in ordinary motor vehicles, subject to conditions to be set by the explosives service.

Initial reference to the national legislation: *Article 111 de l'arrêté royal 23 septembre 1958 sur les produits explosifs.*

Expiry date: 30 June 2015

RO-a-BE-2

Subject: Transport of uncleaned empty containers having contained products of different classes.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.4.1.1.6

Content of the national legislation: Indication on the transport document "uncleaned empty packages having contained products of different classes".

Initial reference to the national legislation: *Dérogation 6-97.*

Comments: Derogation registered by the Commission as No 21 (under Article 6(10) of Directive 94/55/EC).

Expiry date: 30 June 2015

RO-a-BE-3

Subject: Adoption of RO-a-UK-4.

Initial reference to the national legislation: *Arrêté royal relatif au transport des marchandises dangereuses par route (1-2009)*

Expiry date: 30 June 2015

RO-a-BE-4

Subject: exemption of all ADR requirements for the national transport of maximum 1 000 used ionic smoke detectors from private households to the treatment facility in Belgium via the collection points foreseen in the scenario for the selective collection of smoke detectors.

Reference to ADR: all requirements

Reference to Annex I, Section I.1, to Directive 2008/68/EC:

Content of the national legislation: The domestic use of ionic smoke detectors is not submitted to regulatory control from a radiological point of view once the smoke detector is of an approved type. The transport of these smoke detectors to the end user is also exempted from ADR requirements (see 2.2.7.1.2(d)).

Directive 2002/96/EC (on waste electric and electronic equipments) requires the selective collection of used smoke detectors for treatment of the circuit boards and, for the ionic smoke detectors, to take out the radioactive substances. To make this selective collection possible a scenario has been developed to stimulate private households to bring their used smoke detectors to a collection point from which these detectors can be carried to a treatment facility sometimes via a second collection point or an intermediate storage place.

At the collection points metal packagings will be made available wherein a maximum of 1 000 smoke detectors can be packed. From these points one such package with the smoke detectors can be transported together with others wastes to an intermediate storage or the treatment facility. The package will be labelled with the word "smoke detector".

Initial reference to the national legislation: scenario for the selective collection of smoke detectors makes part of the conditions for removal of approved instruments foreseen in article 3.1.d.2 of the royal decree of 20.7.2001: the general radiation protection regulation.

Comments: This derogation is necessary to make the selective collection of used ionic smoke detectors possible.

Expiry date: 30 June 2015

DE Germany

RO-a-DE-1

Subject: Mixed packing and mixed loading of car parts with classification 1.4G together with certain dangerous goods (n4).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 4.1.10 and 7.5.2.1

Content of the Annex to the Directive: Provisions on mixed packing and mixed loading.

Content of the national legislation: UN 0431 and UN 0503 may be loaded together with certain dangerous goods (products related to car manufacturing) in certain amounts, listed in the exemption. The value 1 000 (comparable with 1.1.3.6.4) shall not be exceeded.

Initial reference to the national legislation: *Gefahrgut-Ausnahmereordnung — GGAV 2002 vom 6.11.2002 (BGBl. I S. 4350); Ausnahme 28.*

Comments: The exemption is needed to provide fast delivery of safety car parts depending on local demand. Due to the wide product range storage of these products using local garages is not common.

Expiry date: 30 June 2015

RO-a-DE-2

Subject: Exemption from the requirement to carry a transport document and a shippers' declaration for certain quantities of dangerous goods as defined in 1.1.3.6 (n1).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.4.1.1.1 and 5.4.1.1.6

Content of the Annex to the Directive: contents of the transport document.

Content of the national legislation: For all classes except Class 7: no transport document is needed if the quantity of the goods transported does not exceed the quantities given in 1.1.3.6.

Initial reference to the national legislation: *Gefahrgut-Ausnahmereverordnung — GGAV 2002 vom 6.11.2002 (BGBl. I S. 4350); Ausnahme 18.*

Comments: The information provided by the marking and labelling of packages is considered sufficient for national transport, as a transport document is not always appropriate where local distribution is involved.

Derogation registered by the Commission as No 22 (under Article 6(10) of Directive 94/55/EC).

Expiry date: 30 June 2015

RO-a-DE-3

Subject: Transportation of measurement standards and fuel pumps (empty, non-cleaned).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: Provisions for UN numbers 1202, 1203 and 1223.

Content of the Annex to the Directive: Packaging, marking, documents, transport and handling instructions, instructions for vehicle crews.

Content of the national legislation: Specification of applicable regulations and ancillary provisions for applying the derogation; up to 1 000 l: comparable with empty, non-cleaned packaging; above 1 000 l: Compliance with certain regulations for tanks; transportation empty and non-cleaned only.

Initial reference to the national legislation: *Gefahrgut-Ausnahmereverordnung — GGAV 2002 vom 6.11.2002 (BGBl. I S. 4350); Ausnahme 24.*

Comments: List No 7, 38, 38a.

Expiry date: 30 June 2015

RO-a-DE-5

Subject: Combined packaging authorisation.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 4.1.10.4 MP2

Content of the Annex to the Directive: Prohibition of combined packaging.

Content of the national legislation: Classes 1.4S, 2, 3 and 6.1; authorisation of combined packaging of objects in Class 1.4S (cartridges for small weapons), aerosols (Class 2) and cleaning and treatment materials in Classes 3 and 6.1 (UN numbers listed) as sets to be sold in combined packaging in packaging group II and in small quantities.

Initial reference to the national legislation: *Gefahrgut-Ausnahmereverordnung — GGAV 2002 vom 6.11.2002 (BGBl. I S. 4350); Ausnahme 21.*

Comments: List No 30*, 30a, 30b, 30c, 30d, 30e, 30f, 30g.

Expiry date: 30 June 2015

DK Denmark

RO-a-DK-2

Subject: Road transport of packaging containing explosive substances and packaging containing detonators on the same vehicle.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 7.5.2.2

Content of the Annex to the Directive: Mixed packing provisions.

Content of the national legislation: The rules in the ADR must be observed when transporting dangerous goods by road.

Initial reference to the national legislation: *Bekendtgørelse nr. 729 of 15. august 2001 om vejtransport af farligt gods § 4, stk. 1.*

Comments: There is a practical need for being able to pack explosive substances together with detonators on the same vehicle when transporting such goods from where they are stored to the workplace and back again.

When the Danish legislation concerning the transport of dangerous goods is amended, the Danish authorities will allow such transport under the following conditions:

1. Not more than 25 kg explosive substances under group D are being transported.
2. Not more than 200 pieces of detonators under group B are being transported.
3. Detonators and explosive substances must be packed separately in UN-certified packaging in accordance with the rules set out in Directive 2000/61/EC amending Directive 94/55/EC.
4. The distance between packaging that contains detonators and packaging that contains explosive substances must be at least 1 metre. This distance has to be observed even after a sudden application of the brakes. Packaging containing explosive substances and packaging containing detonators must be placed in a way that makes it possible quickly to remove them from the vehicle.
5. All other rules concerning the transport of dangerous goods by road must be observed.

Expiry date: 30 June 2015

RO-a-DK-3

Subject: Road transport of packagings and articles containing wastes or residues of dangerous goods of certain classes from households and enterprises for the purpose of disposal.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: Parts and chapters 2, 3, 4.1, 5.1, 5.2, 5.4, 6, 8.1 and 8.2.

Content of the Annex to the Directive: Classification provisions, special provisions, packing provisions, consignment procedures, requirements for the construction and testing of packagings, general requirements concerning transport units and equipment on board and training requirements.

Content of the national legislation: Inner packagings and articles containing waste or residues of dangerous goods of certain classes collected from private households or enterprises for the purpose of disposal may be packed together in certain outer packagings and/or overpacks and carried under special consignment procedures including special packing and marking restrictions. The quantity of dangerous goods per inner packaging, per outer packaging and/or per transport unit is restricted.

Initial reference to the national legislation: *Bekendtgørelse nr. 818 af 28. juni 2011 om vejtransport af farligt gods § 4, stk. 3.*

Comments: It is not possible for waste managers to apply all provisions of Annex I, Section I.1 to Directive 2008/68/EC when wastes with residual amounts of dangerous goods have been collected from private households and enterprises to be carried for disposal. The waste is usually contained in packagings that have been sold in retail.

Expiry date: 1 January 2019

FI Finland

RO-a-FI-1

Subject: Transport of dangerous goods in certain amounts in buses and low active radioactive materials in small quantities for the purposes of health care and research.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 4.1, 5.4.

Content of the Annex to the Directive: Packaging provisions, documentation.

Content of the national legislation: Transport of dangerous goods in certain amounts under the limit of 1.1.3.6 with a maximum net mass of not more than 200 kg in buses is allowed without using the transport document and without fulfilling all the packaging requirements. When transporting the low active radioactive materials with a weight of max 50 kg for the purposes of health care and research, the vehicle need not be marked and equipped according to the ADR.

Initial reference to the national legislation: *Liikenne- ja viestintäministeriön asetus vaarallisten aineiden kuljetuksesta tiellä (277/2002; 313/2003; 312/2005).*

Expiry date: 30 June 2015

RO-a-FI-2

Subject: Description of empty tanks in the transport document.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.4.1.1.6

Content of the Annex to the Directive: Special provisions for empty uncleaned packagings, vehicles, containers, tanks, battery-vehicles and multiple element gas containers ("MEGCs").

Content of the national legislation: In the case of empty, uncleaned tank vehicles in which two or more substances with UN numbers 1202, 1203 and 1223 have been carried, the description in the transport documents may be completed by the words "Last load" together with the name of the product having the lowest flashpoint; "Empty tank vehicle, 3, last load: UN 1203 Motor spirit, II".

Initial reference to the national legislation: *Liikenne- ja viestintäministeriön asetus vaarallisten aineiden kuljetuksesta tiellä (277/2002; 313/2003).*

Expiry date: 30 June 2015

RO-a-FI-3

Subject: Labelling and marking of the transport unit for explosives.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.3.2.1.1

Content of the Annex to the Directive: General orange-coloured plate marking provisions.

Content of the national legislation: Transport units transporting (normally in vans) small amounts of explosives (maximum 1 000 kg (net)) to quarries and working sites may be labelled at the front and at the rear, using the placard in model No 1.

Initial reference to the national legislation: *Liikenne- ja viestintäministeriön asetus vaarallisten aineiden kuljetuksesta tiellä (277/2002; 313/2003).*

Expiry date: 30 June 2015

FR France

RO-a-FR-2

Subject: Transport of waste arising from care activities involving a risk of infection covered by UN 3291 with a mass less than or equal to 15 kg.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: Annexes A and B.

Content of the national legislation: Exemption from the requirements of the ADR for the transport of waste arising from care activities presenting a risk of infection covered by UN 3291 with a mass less than or equal to 15 kg.

Initial reference to the national legislation: *Arrêté du 1^{er} juin 2001 relatif au transport des marchandises dangereuses par route — Article 12.*

Expiry date: 30 June 2015

RO-a-FR-5

Subject: Transport of dangerous goods in public passenger transport vehicles (18).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 8.3.1.

Content of the Annex to the Directive: Transport of passengers and dangerous goods.

Content of the national legislation: Transport of dangerous goods other than those of class 7, authorised in public transport vehicles as hand luggage: only the provisions relating to the packaging, marking and labelling of parcels set out in 4.1, 5.2 and 3.4 apply.

Initial reference to the national legislation: *Arrêté du 29 mai 2009 relatif au transport des marchandises dangereuses par voies terrestres, annexe I paragraphe 3.1.*

Comments: Only dangerous goods for personal or own professional use are permitted to be carried in hand luggage. Portable gas receptacles are allowed for patients with respiratory problems in the necessary amount for one journey.

Expiry date: 29 February 2016

RO-a-FR-6

Subject: Own-account transport of small quantities of dangerous goods (18).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.4.1.

Content of the Annex to the Directive: Obligation to have a transport document.

Content of the national legislation: Own-account transport of small quantities of dangerous goods other than class 7, not exceeding the limits set in 1.1.3.6 is not subject to the obligation to have a transport document provided for in 5.4.1.

Initial reference to the national legislation: *Arrêté du 29 mai 2009 relatif au transport des marchandises dangereuses par voies terrestres annexe I, paragraphe 3.2.1.*

Expiry date: 29 February 2016

RO-a-FR-7

Subject: Road transport of samples of chemical substances, mixtures and articles containing dangerous goods for the purpose of market surveillance

Reference to Annex I, Section I.1, to Directive 2008/68/EC: Parts 1 to 9

Content of the Annex to the Directive: General provisions, classification, special provisions and exemptions concerning the carriage of dangerous goods packed in limited quantities, provisions concerning the use of packaging and tanks, consignment procedures, packaging construction requirements, provisions concerning transport conditions, handling, loading and unloading, requirements concerning transport equipment and transport operations, requirements concerning the construction and approval of vehicles.

Content of the national legislation: Samples of chemical substances, mixtures and articles containing dangerous goods and carried for analysis as a part of market surveillance activity shall be packed in combination packagings. They shall comply with the rules concerning maximum quantities for inner packaging depending on the type of the dangerous good involved. The outer packaging shall comply with the requirements for solid plastic boxes (4H2, Chapter 6.1 of Annex I, Section I.1 to Directive 2008/68/EC). The outer packaging must bear the marking of Section 3.4.7, Annex I, Section I.1 to Directive 2008/68/EC and the text "Samples for analysis" (in French: "Echantillons destinés à l'analyse"). Provided that these provisions are complied with, the carriage is not subject to the provisions of Annex I, Section I.1 to Directive 2008/68/EC.

Initial reference to the national legislation: *Arrêté du 12 décembre 2012 modifiant l'arrêté du 29 mai 2009 relatif aux transports de marchandises dangereuses par voies terrestres*

Comments: The exemption of Section 1.1.3, Annex I, Section I.1 to Directive 2008/68/EC does not provide for the transport of samples of dangerous goods for analysis taken by or on behalf of the competent authorities. To ensure effective market surveillance, France has introduced a procedure based on the system applicable to limited quantities for ensuring the safety of transport of samples containing dangerous goods. As it is not always feasible to apply the provisions of table A the quantity limit for the inner packaging has been defined in a more operational way.

Expiry date: 1 January 2019

IE Ireland

RO-a-IE-1

Subject: Exemption from the requirement of 5.4.0 of the ADR for a transport document for the carriage of pesticides of ADR Class 3, listed under 2.2.3.3 as FT2 pesticides (f.p. < 23 °C) and ADR Class 6.1, listed under 2.2.61.3 as T6 pesticides, liquid (flash point not less than 23 °C), where the quantities of dangerous goods being carried do not exceed the quantities set out in 1.1.3.6 of the ADR.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.4

Content of the Annex to the Directive: Requirement for transport document.

Content of the national legislation: A transport document is not required for the carriage of pesticides of ADR Classes 3 and 6.1, where the quantity of dangerous goods being carried does not exceed the quantities set out in 1.1.3.6 of the ADR.

Initial reference to the national legislation: *Regulation 82(9) of the "Carriage of Dangerous Goods by Road Regulations 2004"*.

Comments: Unnecessary, onerous requirement for local transport and delivery of such pesticides.

Expiry date: 30 June 2015

RO-a-IE-4

Subject: Exemption from the requirements of 5.3, 5.4, 7 and Annex B of the ADR, in relation to the carriage of gas cylinders of dispensing agents (for beverages) where they are carried on the same vehicle as the beverages (for which they are to be used).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.3, 5.4, 7 and Annex B.

Content of the Annex to the Directive: The marking of the vehicles, the documentation to be carried and the provisions concerning transport equipment and transport operations.

Content of the national legislation: Exemption from the requirements of 5.3, 5.4, 7 and Annex B of the ADR for cylinders of gases, used as dispensing agents for beverages, where these cylinders of gases are carried on the same vehicle as the beverages (for which they are to be used).

Initial reference to the national legislation: *Proposed amendment to “Carriage of Dangerous Goods by Road Regulations, 2004”.*

Comments: The main activity consists of the distribution of packages of beverages, which are not substances according to the ADR, together with small quantities of small cylinders of associated dispensing gases.

Previously under Article 6(10) of Directive 94/55/EC.

Expiry date: 30 June 2015

RO-a-IE-5

Subject: Exemption, for national transport within Ireland, from the construction and testing requirements for receptacles, and their provisions on use, contained in 6.2 and 4.1 of the ADR, for cylinders and pressure drums of gases of Class 2 that have undergone a multimodal transport journey, including maritime carriage, where (i) these cylinders and pressure drums are constructed, tested and used in accordance with the IMDG Code, (ii) these cylinders and pressure drums are not refilled in Ireland but returned nominally empty to the country of origin of the multimodal transport journey, and (iii) these cylinders and pressure drums are distributed locally in small quantities.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 1.1.4.2, 4.1 and 6.2.

Content of the Annex to the Directive: Provisions relating to multimodal transport journeys, including maritime carriage, use of cylinders and pressure drums for gases of ADR Class 2, and construction and testing of these cylinders and pressure drums for gases of ADR Class 2.

Content of the national legislation: The provisions of 4.1 and 6.2 do not apply to cylinders and pressure drums of gases of Class 2, provided (i) these cylinders and pressure drums are constructed and tested in accordance with the IMDG Code, (ii) these cylinders and pressure drums are used in accordance with the IMDG Code, (iii) these cylinders and pressure drums were transported to the consignor by means of multimodal transport, including maritime carriage, (iv) the transport of these cylinders and pressure drums to the final user consists only of a single transport journey, completed within the same day, from the consignee of the multimodal transport operation (referred to in (iii)), (v) these cylinders and pressure drums are not refilled within the State and are returned nominally empty to the country of origin of the multimodal transport operation (referred to in (iii)), and (vi) these cylinders and pressure drums are distributed locally within the State in small quantities.

Initial reference to the national legislation: *Proposed amendment to “Carriage of Dangerous Goods by Road Regulations, 2004”.*

Comments: The gases contained in these cylinders and pressure drums are of a specification, required by the final user, which results in the need to import them from outside the ADR area. Following use, these nominally empty cylinders and pressure drums are required to be returned to the country of origin, for refilling with the specially specified gases — they are not to be refilled within Ireland or indeed within any part of the ADR area. Though not in compliance with the ADR, they are in compliance with and accepted for the purposes of the IMDG Code. The multimodal transport, beginning from outside the ADR area, is intended to finish at the importer's premises, from where it is intended that these cylinders and pressure drums be distributed to the final user locally within Ireland in small quantities. This carriage, within Ireland, would fall within the amended Article 6(9) of Directive 94/55/EC.

Expiry date: 30 June 2015

RO-a-IE-6

Subject: Exemption from some of the provisions of Annex I, Section I.1, to Directive 2008/68/EC on the packaging, marking and labelling of small quantities (below the limits in 1.1.3.6) of time expired pyrotechnic articles of classification codes 1.3G, 1.4G and 1.4S of Class 1 of Annex I, Section I.1, to Directive 2008/68/EC, bearing the respective substance identification numbers UN 0092, UN 0093, UN 0191, UN 0195, UN 0197, UN 0240, UN 0312, UN 0403, UN 0404, UN 0453, UN 0505, UN 0506 or UN 0507 for carriage to a military barracks or range for disposal.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: Parts 1, 2, 4, 5 and 6

Content of the Annex to the Directive: General provisions. Classification. Packaging provisions. Consignment provisions. Construction and testing of packages.

Content of the national legislation: The provisions of Annex I, Section I.1, to Directive 2008/68/EC on the packaging, marking and labelling of time expired pyrotechnic articles bearing the respective UN numbers UN 0092, UN 0093, UN 0191, UN 0195, UN 0197, UN 0240, UN 0312, UN 0403, UN 0404, UN 0453, UN 0505, UN 0506 or UN 0507 for carriage to a military barracks or range do not apply provided the general packaging provisions of Annex I, Section I.1, to Directive 2008/68/EC are complied with and additional information is included in the transport document. The derogation applies only to the local transport, to a military barracks or range, of small quantities of these time-expired pyrotechnics for safe disposal.

Initial reference to the national legislation: *S.I. 349 of 2011 Regulation 57(f) and (g)*

Comments: The carriage of small quantities of “time expired” marine pyrotechnics, especially from pleasure boat owners and ship chandlers, to a military barracks or range for their safe disposal has created difficulties, particularly in relation to packaging requirements. The derogation is for small quantities (below those specified in 1.1.3.6) for local transport, encompassing all UN numbers assigned to maritime pyrotechnics.

Expiry date: 30 January 2020

LT Lithuania

RO-a-LT-1

Subject: Adoption of RO-a-UK-6

Initial reference to the national legislation: *Lietuvos Respublikos Vyriausybės 2000 m. kovo 23 d. nutarimas Nr. 337 “Dėl pavojingų krovinių vežimo kelių transportu Lietuvos Respublikoje”* (Government resolution No 337 on the Transport of Dangerous Goods by Road in the Republic of Lithuania, adopted on 23 March 2000).

Expiry date: 30 June 2015

HU Hungary

RO-a-HU-1

Subject: Adoption of RO-a-DE-2

Initial reference to the national legislation: *A nemzeti fejlesztési miniszter rendelete az ADR Megállapodás A és B Mellékletének belföldi alkalmazásáról*

Expiry date: 30 January 2020

RO-a-HU-2

Subject: Adoption of RO-a-UK-4

Initial reference to the national legislation: *A nemzeti fejlesztési miniszter rendelete az ADR Megállapodás A és B Mellékletének belföldi alkalmazásáról*

Expiry date: 30 January 2020

UK United Kingdom

RO-a-UK-1

Subject: Carriage of certain items containing low-hazard radioactive material, such as clocks, watches, smoke detectors, compass dials (E1).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: Most requirements of the ADR

Content of the Annex to the Directive: Requirements concerning the carriage of Class 7 material.

Content of the national legislation: Total exemption from the provisions of the national regulations for certain commercial products containing limited quantities of radioactive material. (A luminous device intended to be worn by a person; in any one vehicle or railway vehicle no more than 500 smoke detectors for domestic use with an individual activity not exceeding 40 kBq; or in any one vehicle or railway vehicle no more than five gaseous tritium light devices with an individual activity not exceeding 10 GBq).

Initial reference to the national legislation: *The Radioactive Material (Road Transport) Regulations 2002: Regulation 5(4)(d). The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004: Regulation 3(10).*

Comments: This derogation is a short-term measure, which will no longer be required when similar amendments to the International Atomic Energy Agency ("IAEA") regulations have been incorporated into the ADR.

Expiry date: 30 June 2015

RO-a-UK-2

Subject: Exemption from the requirement to carry a transport document for certain quantities of dangerous goods (other than Class 7) as defined in 1.1.3.6 (E2).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 1.1.3.6.2 and 1.1.3.6.3.

Content of the Annex to the Directive: Exemptions from certain requirements for certain quantities per transport unit.

Content of the national legislation: Transport document is not required for limited quantities, except where these form part of a larger load.

Initial reference to the national legislation: *The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004: Regulation 3(7)(a).*

Comments: This exemption is suited to national transport, where a transport document is not always appropriate in cases where local distribution is involved.

Expiry date: 30 June 2015

RO-a-UK-3

Subject: Exemption from the requirement for vehicles carrying low-level radioactive material to carry fire-fighting equipment (E4).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 8.1.4.

Content of the Annex to the Directive: Requirement for vehicles to carry fire-fighting appliances.

Content of the national legislation: Removes requirement to carry fire extinguishers when carrying only excepted packages (UN 2908, 2909, 2910 and 2911).

Restricts the requirement where only a small number of packages are carried.

Initial reference to the national legislation: *The Radioactive Material (Road Transport) Regulations 2002: Regulation 5(4)(d).*

Comments: Carriage of fire-fighting equipment is in practice irrelevant to the transport of UN 2908, 2909, 2910, UN 2911, which may often be carried in small vehicles.

Expiry date: 30 June 2015

RO-a-UK-4

Subject: Distribution of goods in inner packagings to retailers or users (excluding those of classes 1, 4.2, 6.2 and 7) from local distribution depots to retailers or users and from retailers to end users (N1).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 6.1.

Content of the Annex to the Directive: Requirements for the construction and testing of packaging.

Content of national legislation: Packaging is not required to have been allocated an RID/ADR or UN mark or to be otherwise marked if it contains goods as set out in Schedule 3.

Initial reference to the national legislation: *The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004: Regulation 7(4) and Regulation 36 Authorisation Number 13.*

Comments: The requirements of the ADR are inappropriate for the final stages of carriage from a distribution depot to a retailer or user or from a retailer to an end user. The purpose of this derogation is to allow the inner receptacles of goods for retail distribution to be carried on the final leg of a local distribution journey without an outer packaging.

Expiry date: 30 June 2015

RO-a-UK-5

Subject: To allow different “maximum total quantity per transport unit” for Class 1 goods in categories 1 and 2 of table in 1.1.3.6.3 (N10).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 1.1.3.6.3 and 1.1.3.6.4.

Content of the Annex to the Directive: Exemptions related to quantities carried per transport unit.

Content of the national legislation: Lays down rules regarding exemptions for limited quantities and mixed loading of explosives.

Initial reference to the national legislation: *Carriage of Explosives by Road Regulations 1996, reg. 13 and Schedule 5; reg. 14 and Schedule 4.*

Comments: To allow different quantity limits for Class 1 goods, viz “50” for Category 1 and “500” for category 2. For the purpose of calculating mixed loads, the multiplication factors to read “20” for Transport Category 1 and “2” for Transport Category 2.

Previously under Article 6(10) of Directive 94/55/EC.

Expiry date: 30 June 2015

RO-a-UK-6

Subject: Increase of maximum net mass of explosive articles permissible in EX/II vehicles (N13).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 7.5.5.2.

Content of the Annex to the Directive: Limitations on quantities carried for explosive substances and articles.

Content of the national legislation: Limitations on quantities carried for explosive substances and articles.

Initial reference to the national legislation: *Carriage of Explosives by Road Regulations 1996, reg. 13, Schedule 3.*

Comments: UK Regulations allow a maximum net mass of 5 000 kg in Type II vehicles for Compatibility Groups 1.1C, 1.1D, 1.1E and 1.1 J.

Many articles of Class 1.1C, 1.1D, 1.1E and 1.1 J being moved in the Union are large or bulky and exceed about 2,5 m in length. They are primarily explosive articles for military use. The limitations on the construction for EX/III vehicles (which are required to be closed vehicles) make it very difficult to load and unload such articles. Some articles would require specialist loading and unloading equipment at both ends of the journey. In practice, this equipment rarely exists. There are few EX/III vehicles in use in the UK and it would be extremely onerous on industry to require further specialist EX/III vehicles to be constructed to carry this type of explosive.

In the UK military explosives are mostly carried by commercial carriers and are thus unable to take advantage of the exemption for military vehicles in Directive 2008/68/EC. To overcome this problem, the UK has always permitted the carriage of up to 5 000 kg of such articles on EX/II vehicles. The present limit is not always sufficient because an article may contain more than 1 000 kg of explosive.

Since 1950 there have been only two incidents (both in the 1950s) involving blasting explosives with a weight above 5 000 kg. The incidents were caused by a tyre fire and a hot exhaust system setting fire to the sheeting. The fires could have occurred with a smaller load. There were no fatalities or injuries.

There is empirical evidence to suggest that correctly packaged explosive articles would be unlikely to ignite due to impact, e.g. from vehicle collisions. Evidence from military reports and from trials data on missile impact tests shows that it needs an impact velocity in excess of that created by the 12 metre drop test to bring about the ignition of cartridges.

Present safety standards would not be affected.

Expiry date: 30 June 2015

RO-a-UK-7

Subject: Exemption from supervision requirements for small quantities of certain Class 1 goods (N12).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 8.4 and 8.5 S1(6).

Content of the Annex to the Directive: Supervision requirements for vehicles carrying certain quantities of dangerous goods.

Content of the national legislation: Provides for safe parking and supervision facilities but does not require that certain Class 1 loads be supervised at all times as required in the ADR 8.5 S1(6).

Initial reference to the national legislation: *Carriage of Dangerous Goods by Road Regulations 1996, reg. 24.*

Comments: The supervision requirements of the ADR are not always feasible in a national context.

Expiry date: 30 June 2015

RO-a-UK-8

Subject: Easing of restrictions on transporting mixed loads of explosives, and explosives with other dangerous goods, in wagons, vehicles and containers (N4/5/6).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 7.5.2.1 and 7.5.2.2.

Content of the Annex to the Directive: Restrictions on certain types of mixed loading.

Content of the national legislation: National legislation is less restrictive regarding mixed loading of explosives, providing such carriage can be accomplished without risk.

Initial reference to the national legislation: *Carriage of Dangerous Goods by Road Regulations 1996, Regulation 18.*

Comments: The UK wishes to permit some variations on the rules for mixing explosives with other explosives and for explosives with other dangerous goods. Any variation will have a quantity limitation on one or more constituent parts of the load and would only be permitted provided that "all reasonably practicable measures have been taken to prevent the explosives being brought into contact with, or otherwise endangering or being endangered by, any such goods".

Examples of variations the UK may want to permit are:

1. Explosives allocated on classification to UN Numbers 0029, 0030, 0042, 0065, 0081, 0082, 0104, 0241, 0255, 0267, 0283, 0289, 0290, 0331, 0332, 0360 or 0361 may be carried in the same vehicle with dangerous goods allocated on classification to UN Number 1942. The quantity of UN 1942 permitted to be carried shall be limited by deeming it to be an explosive of 1.1D.
2. Explosives allocated on classification to UN Numbers 0191, 0197, 0312, 0336, 0403, 0431 or 0453 may be carried in the same vehicle with dangerous goods (except flammable gases, infectious substances and toxic substances) in transport category 2 or dangerous goods in transport category 3, or any combination of them, provided the total mass or volume of dangerous goods in transport category 2 does not exceed 500 kg or l and the total net mass of such explosives does not exceed 500 kg.
3. Explosives of 1.4G may be carried with flammable liquids and flammable gases in transport category 2 or non-flammable, non-toxic gases in transport category 3, or in any combination of them in the same vehicle, provided the total mass or volume of dangerous goods when added together does not exceed 200 kg or l and the total net mass of explosives does not exceed 20 kg.

4. Explosive articles allocated on classification to UN Numbers 0106, 0107 or 0257 may be carried with explosive articles in Compatibility Group D, E or F for which they are components. The total quantity of explosives of UN Numbers 0106, 0107 or 0257 shall not exceed 20 kg.

Expiry date: 30 June 2015

RO-a-UK-9

Subject: Alternative to display of orange plates for small consignments of radioactive material in small vehicles.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.3.2.

Content of the Annex to the Directive: Requirement for orange plates to be displayed on small vehicles carrying radioactive material.

Content of the national legislation: Permits any derogation approved under this process. The derogation requested is:

Vehicles must either:

- (a) be placarded according to the applicable provisions of ADR paragraph 5.3.2; or
- (b) in the case of a vehicle carrying not more than ten packages containing non-fissile or fissile excepted radioactive material and where the sum of the transport indexes of these packages does not exceed 3, may alternatively carry a notice complying with the requirements laid down in national legislation.

Initial reference to the national legislation: *The Radioactive Material (Road Transport) Regulations 2002, Regulation 5(4)(d)*.

Comments:

Expiry date: 30 June 2015

RO-a-UK-10

Subject: Transport of waste arising from care activities involving a risk of infection covered by UN 3291 with a mass less than or equal to 15 kg.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: all provisions

Content of national legislation: Exemption from the requirements of Annex I, Section I.1 for the transport of waste arising from care activities involving a risk of infection covered by UN 3291 with a mass less than or equal to 15 kg.

Initial reference to the national legislation: This derogation is intended to be issued under *The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2011*.

Expiry date: 1 January 2017

Based on Article 6(2)(b)(i) of Directive 2008/68/EC

BE Belgium

RO-bi-BE-4

Subject: Transport of dangerous goods in tanks for elimination by incineration.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 3.2.

Content of the national legislation: By derogation from the table in 3.2 it is permitted to use a tank-container with tank-code L4BH instead of tank-code L4DH for the carriage of water reactive liquid, toxic, III, n.o.s. under certain conditions.

Initial reference to the national legislation: *Dérogation 01 — 2002*.

Comments: This regulation may only be used for the short-distance transport of hazardous waste.

Expiry date: 30 June 2015

RO–bi–BE–5

Subject: Carriage of waste to waste disposal plants.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.2, 5.4, 6.1 (old regulation: A5, 2X14, 2X12).

Content of the Annex to the Directive: Classification, marking and requirements concerning the packaging.

Content of the national legislation: Instead of classifying waste according to the ADR, waste is assigned to different groups (flammable solvents, paints, acids, batteries, etc.) to avoid dangerous reactions within one group. The requirements for the manufacture of packaging are less restrictive.

Initial reference to the national legislation: *Arrêté royal relatif au transport des marchandises dangereuses par route (1-2009)*

Comments: This regulation may be used for the carriage of small quantities of waste to disposal plants.

Expiry date: 30 June 2015

RO–bi–BE–6

Subject: Adoption of RO–bi–SE–5

Initial reference to the national legislation: *Arrêté royal relatif au transport des marchandises dangereuses par route (1-2009)*

Expiry date: 30 June 2015

RO–bi–BE–7

Subject: Adoption of RO–bi–SE–6

Initial reference to the national legislation: *Arrêté royal relatif au transport des marchandises dangereuses par route (2-2008)*

Expiry date: 30 June 2015

RO–bi–BE–8

Subject: Adoption of RO–bi–UK–2

Initial reference to the national legislation: *Arrêté royal relatif au transport des marchandises dangereuses par route*

Expiry date: 30 June 2015

RO–bi–BE–9

Subject: Adoption of RO–bi–SE–3.

Initial reference to the national legislation: *Arrêté royal relatif au transport des marchandises dangereuses par route*

Expiry date: 15 January 2018

RO–bi–BE–10

Subject: Transport in close proximity of industrial sites including transport on public road.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: Annexes A and B.

Content of the Annex to the Directive: Annexes A and B.

Content of the national legislation: The derogations concern the documentation, labelling and marking of packages and the driver's certificate.

Initial reference to the national legislation: *Arrêté royal relatif au transport des marchandises dangereuses par route*

Comments: The following list provides the derogation number in national legislation, the distance allowed and the dangerous goods involved.

derogation 2-89: crossing a public road (chemicals in packages)

derogation 4-97: 2 km (ingots of pig-iron at elevated temperatures)

derogation 2-2001: 300 m (classes 3, 6.1 and 8)

derogation 6-2004: maximum 5 km (chemicals in packages)

derogation 12-2004: 800 m (UN 3082)

derogation 16-2004: maximum 55 km (limited quantities)

derogation 7-2005: crossing a public road (UN 1202)

derogation 9-2005: 1 200 m (UN 3077)

derogation 1-2006: 600 m (chemicals in packages)

derogation 13-2007: 8 km (chemicals in packages)

derogation 7-2008: maximum 1,5 km (empty uncleaned tanks and tanks for class 9)

derogation 8-2008: 800 m (UN 2735 and UN 3082)

derogation 2-2009: 350 m (chemicals in packages)

derogation 3-2009: maximum 4,5 km (chemicals in packages)

derogation 5-2009: maximum 4,5 km (chemicals in packages)

derogation 9-2009: maximum 20 km (class 2 in packages)

derogation 16-2009: 200 m (IBC)

Expiry date: 15 January 2018

DE Germany

RO–bi–DE–1

Subject: Waiving of certain indications in the transport document (n2).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.4.1.1.1.

Content of the Annex to the Directive: Contents of the transport document.

Content of the national legislation: For all classes except classes 1 (except 1.4S), 5.2 and 7:

No indication needed in the transport document:

- (a) for the consignee in case of local distribution (except for full load and for transport with certain routings);
- (b) for the amount and types of packaging, if 1.1.3.6 is not applied and if the vehicle is in conformity with all the provisions of Annex A and B;
- (c) for empty uncleaned tanks the transport document of the last load is sufficient.

Initial reference to the national legislation: *Gefahrgut-Ausnahmereverordnung — GGAV 2002 vom 6.11.2002 (BGBl. I S. 4350); Ausnahme 18.*

Comments: Applying all provisions would not be practicable as regards the kind of traffic concerned.

Derogation was registered by the Commission as No 22 (under Article 6(10) of Directive 94/55/EC).

Expiry date: 30 June 2015

RO-bi-DE-2

Subject: Transportation of Class 9 PCB-contaminated materials in bulk.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 7.3.1.

Content of the Annex to the Directive: Transportation in bulk.

Content of the national legislation: Authorisation for transportation in bulk in vehicle swap bodies or containers sealed to be impermeable to fluids or dust.

Initial reference to the national legislation: *Gefahrgut-Ausnahmereverordnung — GGAV 2002 vom 6.11.2002 (BGBl. I S. 4350); Ausnahme 11.*

Comments: Derogation 11 limited to 31.12.2004; as from 2005, same provisions in the ADR and RID.

See also Multilateral Agreement M137.

List No 4*.

Expiry date: 30 June 2015

RO-bi-DE-3

Subject: Transportation of packaged hazardous waste.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 1 to 5.

Content of the Annex to the Directive: Classification, packaging and marking.

Content of the national legislation: Classes 2 to 6.1, 8 and 9: Combined packaging and transportation of hazardous waste in packs and IBCs; waste must be packaged in internal packaging (as collected) and categorised in specific waste groups (avoidance of dangerous reactions within a waste group); use of special written instructions relating to the waste groups and as a waybill; collection of domestic and laboratory waste, etc.

Initial reference to the national legislation: *Gefahrgut-Ausnahmereverordnung — GGAV 2002 vom 6.11.2002 (BGBl. I S. 4350); Ausnahme 20.*

Comments: List No 6*.

Expiry date: 30 June 2015

RO-bi-DE-4

Subject: Adoption of RO-bi-BE-1

Initial reference to the national legislation: —

Expiry date: 1 January 2017

RO-bi-DE-5

Subject: Local transport of UN 3343 (nitroglycerine mixture, desensitised, liquid, flammable, not otherwise specified, with not more than 30 % nitroglycerine by mass) in tank-containers, derogating from sub-section 4.3.2.1.1 to Annex I, Section I.1 to Directive 2008/68/EC.

Reference to Annex I, section I.1 to Directive 2008/68/EC: 3.2, 4.3.2.1.1.

Content of the Annex to the Directive: Provisions on the use of tank-containers

Content of the national legal provisions: local transport of nitroglycerin (UN 3343) in tank-containers, over short distances, subject to compliance with the following conditions:

1. Requirements for the tank-containers

- 1.1. Only tank-containers specifically authorised for this purpose may be used, which in other respects comply with the provisions on construction, equipment, authorisation of the construction model, tests, labelling and operation in Chapter 6.8 of Annex I, Section I.1 to Directive 2008/68/EC.
- 1.2. The tank-container's closing mechanism must have a pressure-release system which yields to an internal pressure of 300 kPa (3 bar) above normal pressure and in so doing frees an upward-facing opening with a pressure-release area of at least 135 cm² (diameter 132 mm). The opening must not re-close after being activated. As a safety installation, one or more safety elements with the same activation behaviour and a corresponding pressure-release area can be used. The construction type of the safety installation must have successfully undergone type testing and type approval by the authority responsible.

2. Labelling

Each tank-container is to be labelled on both sides with a danger label in accordance with model 3 in sub-section 5.2.2.2.2 of Annex I, Section I.1 to Directive 2008/68/EC.

3. Operating provisions

- 3.1. It must be ensured that during transport the nitroglycerine is evenly distributed in the phlegmatisation medium and no de-mixing can take place.
- 3.2. During loading and unloading it is not permitted to remain in or on a vehicle, except in order to operate the loading and unloading equipment.
- 3.3. At the place of unloading, the tank-containers are to be completely emptied. If they cannot be completely emptied, they are to be closed tight after unloading until they are filled again.

Original reference to national legal provisions: derogation North Rhine-Westphalia

Remarks: This concerns local transport in tank-containers by road over short distances as part of an industrial process between two fixed production locations. In order to manufacture a pharmaceutical product, production location A delivers as part of a rule-compliant transport in 600 l tank-containers a resin solution, flammable (UN 1866), packaging group II, to production location B. Here a nitroglycerine solution is added and mixing takes place, producing a glue mixture containing nitroglycerine, desensitised, liquid, flammable, not otherwise specified, with not more than 30 % nitroglycerine by mass (UN 3343) for further use. The return transport of this substance to production location A also takes place in the said tank-containers, which have been specially checked and approved by the relevant authority for this specific transport operation and bear the tank code L10DN.

End of the period of validity: 1 January 2017

RO-bi-DE-6

Subject: Adoption of RO-bi-SE-6.

Initial reference to the national legislation: § 1 Absatz 3 Nummer 1 der Gefahrgutverordnung Straße, Eisenbahn und Binnenschifffahrt (GGVSEB)

Expiry date: 30 June 2015

DK Denmark

RO-bi-DK-1

Subject: UN 1202, 1203, 1223 and Class 2 — no transport document.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.4.1.

Content of the Annex to the Directive: Transport document needed.

Content of the national legislation: When transporting mineral oil products in Class 3, UN 1202, 1203 and 1223 and gases in Class 2 in connection with distribution (goods to be delivered to two or more recipients and collection of returned goods in similar situations), a transport document is not required provided the written instructions besides the information requested in the ADR, contain information relating to the UN-No, name and class.

Initial reference to the national legislation: *Bekendtgørelse nr. 729 af 15.8.2001 om vejtransport af farligt gods.*

Comments: The reason for having that national derogation is that the development of electronic equipment makes it possible for e.g. the oil companies using such equipment to transmit continuously to the vehicles information about the customers. As this information is not available at the beginning of the transport operation and will be forwarded to the vehicle during the transport journey, it is not possible — before the transport begins — to draw up the transport documents. These kinds of transport are restricted to limited areas.

Derogation for Denmark for a similar provision under Article 6(10) of Directive 94/55/EC.

Expiry date: 30 June 2015

RO–bi–DK–2

Subject: Adoption of RO–bi–SE–6

Initial reference to the national legislation: *Bekendtgørelse nr. 437 af 6. juni 2005 om vejtransport af farligt gods, as amended.*

Expiry date: 30 June 2015

RO–bi–DK–3

Subject: Adoption of RO–bi–UK–1

Initial reference to the national legislation: *Bekendtgørelse nr. 437 af 6. juni 2005 om vejtransport af farligt gods, as amended.*

Expiry date: 30 June 2015

RO–bi–DK–4

Subject: Road transport of dangerous goods of certain classes from private households and enterprises to nearby waste collecting points or intermediate processing facilities for the purpose of disposal.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: Parts 1 to 9

Content of the Annex to the Directive: General provisions, classification provisions, special provisions, packing provisions, consignment procedures, requirements for the construction and testing of packagings, provisions concerning the conditions of carriage, loading, unloading and handling, requirements for vehicle crews, equipment, operation and documentation and requirements concerning the construction and approval of vehicles.

Content of the national legislation: Dangerous goods from private households and enterprises may under certain conditions be carried to nearby waste collecting points or intermediate processing facilities for the purpose of disposal. Different provisions shall be complied with depending on the character and risks related to the transport; such as the quantity of dangerous goods per inner packaging, per outer packaging and/or per transport unit, and whether carriage of dangerous goods is ancillary to the main activity of the enterprises or not.

Initial reference to the national legislation: *Bekendtgørelse nr. 818 af 28. juni 2011 om vejtransport af farligt gods § 4, stk. 3.*

Comments: It is not possible for waste managers and enterprises to apply all provisions of Annex I, Section I.1 to Directive 2008/68/EC when wastes that may contain residues of dangerous goods are carried from private households and/or enterprises to nearby waste collecting points for the purpose of disposal. The waste is typically packagings that have been originally carried according to the exemption of sub-section 1.1.3.1(c) of Annex I, Section I.1 to Directive 2008/68/EC and/or sold in retail. However, exemption 1.1.3.1(c) does not apply to carriage to waste collecting points, and provisions of chapter 3.4 of Annex I, Section I.1 to Directive 2008/68/EC are not appropriate for carriage of waste inner packagings.

Expiry date: 1 January 2019

EL Greece

RO-bi-EL-1

Subject: Derogation from the safety requirements for fixed tanks (tank-vehicles), registered before 31 December 2001, for the local transport or small quantities of some categories of dangerous goods.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 1.6.3.6, 6.8.2.4.2, 6.8.2.4.3, 6.8.2.4.4, 6.8.2.4.5, 6.8.2.1.17-6.8.2.1.22, 6.8.2.1.28, 6.8.2.2, 6.8.2.2.1, 6.8.2.2.2.

Content of the Annex to the Directive: Requirements for construction, equipment, type approval, inspections and tests, and marking of fixed tanks (tank-vehicles), removable tanks and tank containers and tank swap bodies, with shells made of metallic materials, and battery-vehicles and MEGCs.

Content of the national legislation: Transitional provision: Fixed tanks (tank-vehicles), removable tanks and tank containers first registered in Greece between 1 January 1985 and 31 December 2001 may be used until 31 December 2010. This transitional provision concerns vehicles for the transport of the following dangerous materials (UN: 1202, 1268, 1223, 1863, 2614, 1212, 1203, 1170, 1090, 1193, 1245, 1294, 1208, 1230, 3262, 3257). It is intended to cover small quantities or local transport for vehicles registered during that period. This transitional provision will be in force for tank vehicles adapted according to:

1. Paragraphs of the ADR for inspection and tests: 6.8.2.4.2, 6.8.2.4.3, 6.8.2.4.4, 6.8.2.4.5, (ADR 1999: 211.151, 211.152, 211.153, 211.154).
2. Minimum shell thickness of 3 mm for tanks with a shell compartment capacity of up to 3 500 l, and at least 4 mm thickness of mild steel for tanks with compartments with a capacity of up to 6 000 l, regardless of the type or thickness of the partitions.
3. If the material used is aluminium or another metal, tanks should fulfil the requirements for thickness and other technical specifications derived from technical drawings approved by the local authority of the country where they were previously registered. In the absence of technical drawings, tanks shall fulfil the requirements of 6.8.2.1.17 (211.127).
4. Tanks shall fulfil the requirements of marginal paragraphs 211.128, 6.8.2.1.28 (211.129), paragraph 6.8.2.2 with subparagraphs 6.8.2.2.1 and 6.8.2.2.2 (211.130, 211.131).

More precisely, tank-vehicles with a mass of less than 4 t used for the local transport of gas oil only (UN 1202), first registered before 31 December 2002, whose shell thickness is less than 3 mm, may be used only if they are transformed according to marginal paragraph 211.127 (5)b4 (6.8.2.1.20).

Initial reference to the national legislation: Τεχνικές Προδιαγραφές κατασκευής, εξοπλισμού και ελέγχων των δεξαμενών μεταφοράς συγκεκριμένων κατηγοριών επικινδύνων εμπορευμάτων για σταθερές δεξαμενές (οχήματα-δεξαμενές), αποσυρµολογούµενες δεξαµενές που βρίσκονται σε κυκλοφορία (Requirements for construction, equipment, inspections and tests of fixed tanks (tank-vehicles) and removable tanks in circulation, for some categories of dangerous goods).

Expiry date: 30 June 2015

RO-bi-EL-2

Subject: Derogation from base vehicle construction requirements, regarding vehicles intended for the local transport of dangerous goods first registered before 31 December 2001.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: ADR 2001: 9.2, 9.2.3.2, 9.2.3.3.

Content of the Annex to the Directive: Requirements concerning the construction of Base Vehicles.

Content of the national legislation: The derogation applies to vehicles intended for the local transport of dangerous goods (categories UN 1202, 1268, 1223, 1863, 2614, 1212, 1203, 1170, 1090, 1193, 1245, 1294, 1208, 1230, 3262 and 3257) which were first registered before 31 December 2001.

The vehicles must comply with the requirements of 9 (9.2.1 to 9.2.6) of Annex B to Directive 94/55/EC with the following exceptions.

Compliance with the requirements of 9.2.3.2 is necessary only if the vehicle has been equipped with an anti-lock braking system by the manufacturer; it must be fitted with an endurance braking system as defined in 9.2.3.3.1, but not necessarily complying with 9.2.3.3.2 and 9.2.3.3.3.

The electrical supply to the tachograph must be provided via a safety barrier connected directly to the battery (marginal 220 514) and the electrical equipment of the mechanism for lifting a bogie axle must be installed where it was originally installed by the vehicle manufacturer and must be protected in an appropriate sealed housing (marginal 220 517).

Specifically, tank-vehicles with a maximum mass of less than 4 tonnes intended for local transport of diesel-heating oil (UN: 1202) must comply with the requirements of 9.2.2.3, 9.2.2.6, 9.2.4.3 and 9.2.4.5 but not necessarily with the other ones.

Initial reference to the national legislation: Τεχνικές Προδιαγραφές ήδη κυκλοφορούντων οχημάτων που διενεργούν εθνικές μεταφορές ορισμένων κατηγοριών επικινδύνων εμπορευμάτων (Technical requirements of vehicles already in use, intended for local transport of certain dangerous goods categories).

Comments: The number of the vehicles concerned is small when compared with the total number of vehicles already registered and in addition they are intended for local transport only. The form of the derogation requested, the size of the vehicle fleet in question and the type of goods transported do not create a road safety problem.

Expiry date: 30 June 2015

ES Spain

RO-bi-ES-2

Subject: Special equipment for distribution of anhydrous ammonia.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 6.8.2.2.2.

Content of the Annex to the Directive: In order to avoid any loss of contents in the event of damage to the external fittings (pipes, lateral shut-off devices), the internal stop valve and its seating must be protected against the danger of being wrenched off by external stresses or be so designed as to resist such stresses. The filling and discharge devices (including flanges or threaded plugs) and protective caps (if any) must be capable of being secured against any unintended opening.

Content of the national legislation: Tanks used for agricultural purposes for the distribution and application of anhydrous ammonia which were brought into service before 1 January 1997 may be equipped with external, instead of internal, safety fittings, provided they offer protection at least equivalent to the protection provided by the wall of the tank.

Initial reference to the national legislation: *Real Decreto 551/2006. Anejo 1. Apartado 3.*

Comments: Before 1 January 1997 a type of tank equipped with external safety fittings was used exclusively in agriculture to apply anhydrous ammonia directly onto the land. Various tanks of this kind are still in use today. They are rarely driven, laden, on the road, but are used solely for fertiliser on large farms.

Expiry date: 29 February 2016

FI Finland

RO-bi-FI-1

Subject: Modification of information in the transport document for explosive substances.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.4.1.2.1(a)

Content of the Annex to the Directive: Special provisions for Class 1.

Content of the national legislation: In the transport document, it is permissible to use the number of detonators (1 000 detonators correspond to 1 kg explosives) instead of the actual net mass of explosive substances.

Initial reference to the national legislation: *Liikenne- ja viestintäministeriön asetus vaarallisten aineiden kuljetuksesta tiellä (277/2002; 313/2003).*

Comments: The information is considered sufficient for national transport. This derogation is used mainly for the blasting industry in respect of small amounts transported locally.

Derogation is registered by the Commission as No 31.

Expiry date: 30 June 2015

RO–bi–FI–2

Subject: Adoption of RO–bi–SE–10

Initial reference to the national legislation:

Expiry date: 30 June 2015

RO–bi–FI–3

Subject: Adoption of RO–bi–DE–1

Initial reference to the national legislation:

Expiry date: 29 February 2016

FR France

RO–bi–FR–1

Subject: Utilisation of maritime document as transport document for short-distance trips following unloading of vessel.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.4.1

Content of the Annex to the Directive: Information to appear in the document used as transport document for hazardous goods.

Content of the national legislation: The maritime document is used as transport document within a radius of 15 km.

Initial reference to the national legislation: *Arrêté du 1^{er} juin 2001 relatif au transport des marchandises dangereuses par route — Article 23-4.*

Expiry date: 30 June 2015

RO–bi–FR–3

Subject: Transport of fixed LPG storage tanks (18).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: Annexes A and B.

Content of the national legislation: The transport of fixed LPG storage tanks is subject to specific rules. Applicable only to short distances.

Initial reference to the national legislation: *Arrêté du 1^{er} juin 2001 relatif au transport des marchandises dangereuses par route — Article 30.*

Expiry date: 30 June 2015

RO–bi–FR–4

Subject: Specific conditions relating to driver training and the approval of vehicles used for agricultural transport (short distances).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 6.8.3.2; 8.2.1 and 8.2.2.

Content of the Annex to the Directive: Tank equipment and driver training.

Content of the national legislation:

Specific provisions concerning the approval of vehicles.

Special training for drivers.

Initial reference to the national legislation: *Arrêté du 1^{er} juin 2001 relatif au transport des marchandises dangereuses par route — Article 29-2 — Annex D4.*

Expiry date: 30 June 2015

HU Hungary

RO–bi–HU–1

Subject: Adoption of RO–bi–SE–3

Initial reference to the national legislation: *A nemzeti fejlesztési miniszter rendelete az ADR Megállapodás A és B Mellékletének belföldi alkalmazásáról*

Expiry date: 30 January 2020

IE Ireland

RO–bi–IE–3

Subject: Exemption to allow the loading and unloading of dangerous goods, to which the special provision CV1 in 7.5.11 or S1 in 8.5 is assigned, in a public place without special permission from the competent authorities.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 7.5 and 8.5.

Content of the Annex to the Directive: Additional provisions concerning loading, unloading and handling.

Content of the national legislation: Loading and unloading of dangerous goods in a public place is permitted without special permission from the competent authority, in derogation from the requirements of 7.5.11 or 8.5.

Initial reference to the national legislation: *Regulation 82(5) of the “Carriage of Dangerous Goods by Road Regulations, 2004”.*

Comments: For national transport within the state, this provision places a very onerous burden on the competent authorities.

Expiry date: 30 June 2015

RO–bi–IE–6

Subject: Exemption from requirement in 4.3.4.2.2, which requires flexible filling and discharge pipes that are not permanently connected to the shell of a tank-vehicle to be empty during transport.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 4.3

Content of the Annex to the Directive: Use of tank-vehicles.

Content of the national legislation: Flexible hose reels (including fixed pipelines associated with them) attached to tank-vehicles engaged in the retail distribution of petroleum products with substance identification numbers UN 1011, UN 1202, UN 1223, UN 1863 and UN 1978 are not required to be empty during carriage by road, provided adequate measures are taken to prevent any loss of contents.

Initial reference to the national legislation: *Regulation 82(8) of the "Carriage of Dangerous Goods by Road Regulations, 2004"*.

Comments: Flexible hoses fitted to home delivery tank-vehicles must remain full at all times even during transport. The discharge system is known as a "wet-line" system that requires the tank-vehicle's meter and hose to be primed so as to ensure the customer receives the correct quantity of product.

Expiry date: 30 June 2015

RO-bi-IE-7

Subject: Exemption from some requirements of 5.4.0, 5.4.1.1.1 and 7.5.11 of the ADR for the transport in bulk of Ammonium Nitrate Fertilizer UN 2067 from ports to consignees.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.4.0, 5.4.1.1.1 and 7.5.11.

Content of the Annex to the Directive: The requirement for a separate transport document, with the correct total quantity for the particular load included, for each transport journey; and the requirement for the vehicle to be cleaned before and after the journey.

Content of the national legislation: Proposed derogation to allow modifications to the requirements of the ADR on the transport document and vehicle cleaning; to take account of the practicalities of bulk transport from port to consignee.

Initial reference to the national legislation: *Proposed amendment to "Carriage of Dangerous Goods by Road Regulations, 2004"*.

Comments: The provisions of the ADR require (a) a separate transport document, containing the total mass of dangerous goods carried for the particular load, and (b) the Special Provision "CV24" on cleaning for each and every load being transported between the port and the consignee during the unloading of a bulk ship. As the transport is local and as it concerns the unloading of a bulk ship, involving multiple transport loads (on the same or consecutive days) of the same substance between the bulk ship and the consignee, a single transport document, with an approximate total mass of each load, should suffice and it should not be necessary to require the Special Provision "CV24".

Expiry date: 30 June 2015

RO-bi-IE-8

Subject: Transport of dangerous goods between private premises and another vehicle in the immediate vicinity of the premises, or between two parts of private premises situated in the immediate vicinity of each other but separated by a public road.

Reference to the Annex of the Directive: Annex I, Section 1.1, to Directive 2008/68/EC: Annexes A and B.

Content of the Annex to the Directive: Requirements for the carriage of dangerous goods by road.

Content of the national legislation: Disapplication of the regulations where a vehicle is being used to transfer dangerous goods

- (a) between private premises and another vehicle in the immediate vicinity of those premises, or
- (b) between two parts of private premises in the immediate vicinity of each other but which may be separated by a public road,

provided that the transport is carried out by means of the most direct route.

Initial reference to the national legislation: *European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) Regulations 2011 and 2013, Regulation 56.*

Comments: Various situations can occur where goods are transferred between two parts of private premises or between private premises and an associated vehicle which are separated by a public road. This form of transport does not constitute the carriage of dangerous goods in the usual sense, and thus the regulations pertaining to the carriage of dangerous goods do not need to be applied. See also RO-bi-SE-3 and RO-bi-UK-1.

Expiry date: 30 January 2020

LT Lithuania

RO-bi-LT-1

Subject: Adoption of RO-bi-EL-1

Initial reference to the national legislation: *Lietuvos Respublikos Vyriausybės 2000 m. kovo 23 d. nutarimas Nr. 337 “Dėl pavojingų krovinių vežimo kelių transportu Lietuvoje”* (Government resolution No 337 on the Transport of Dangerous Goods by Road in the Republic of Lithuania, adopted on 23 March 2000).

Expiry date: 30 June 2015

RO-bi-LT-2

Subject: Adoption of RO-bi-EL-2.

Initial reference to the national legislation: *Lietuvos Respublikos Vyriausybės 2000 m. kovo 23 d. nutarimas Nr. 337 “Dėl pavojingų krovinių vežimo kelių transportu Lietuvoje”* (Government resolution No 337 on the Transport of Dangerous Goods by Road in the Republic of Lithuania, adopted on 23 March 2000).

Expiry date: 30 June 2015

NL The Netherlands

RO-bi-NL-13

Subject: Scheme for transport of domestic hazardous waste 2004.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 1.1.3.6, 3.3, 4.1.4, 4.1.6, 4.1.8, 4.1.10, 5.1.2, 5.4.0, 5.4.1, 5.4.3, 6.1, 7.5.4, 7.5.7, 7.5.9, 8 and 9.

Content of the Annex to the Directive: Exemptions for certain quantities; special provisions; use of packaging; use of over-packaging; documentation; construction and testing of packaging; loading, unloading and handling; manning; equipment; operation; vehicles and documentation; construction and approval of vehicles.

Content of the national legislation: 17 substantive provisions relating to the transport of small collected domestic hazardous waste. Given the small quantities involved in each instance and given the diverse nature of the various substances, it is not possible to conduct the transport operations in total compliance with ADR rules. Accordingly, a simplified variant deviating from a number of provisions in the ADR is therefore stipulated under the abovementioned scheme.

Initial reference to the national legislation: *Scheme for transport of domestic hazardous waste 2004.*

Comments: The scheme was set up to enable individuals to deposit small chemical waste at a single location. The substances in question therefore consist of residues such as paint waste. The danger level is minimised by the choice of means of transport, involving, inter alia, the use of special transport elements and “no smoking” notices plus a yellow flashing light clearly visible to members of the public. The crucial point as far as transport is concerned is that safety is guaranteed. This can be achieved by, for instance, having the substances transported in sealed packagings so as to avoid dispersal, or the risk of toxic vapours leaking or accumulating in the vehicle. Incorporated in the vehicle are units suitable for storing the various categories of waste and providing protection against shunting and accidental displacement as well as inadvertent opening. At the same time, notwithstanding the small quantities of waste presented, the transport operator must have a certificate of professional competence, given the diverse nature of the substances involved. Because of the lack of knowledge on the part of private individuals regarding the danger levels associated with these substances, written instructions should be provided, as stipulated in the Annex to the scheme.

Expiry date: 30 June 2015

PT Portugal

RO-bi-PT-1

Subject: Transport documentation for UN 1965

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.4.1.

Content of the Annex to the Directive: Requirements for transport documentation.

Content of the national legislation: The proper shipping name to be indicated in the transport document, as provided for in Section 5.4.1 of the RPE (Regulamento Nacional de Transporte de Mercadorias Perigosas por Estrada), for commercial butane and propane gases covered by the collective heading “UN No 1965 hydrocarbon gas mixture, liquefied, n.o.s.”, transported in cylinders, may be replaced by other trade names as follows:

“UN 1965 Butane” in the case of mixtures A, A01, A02 and A0, as described in subsection 2.2.2.3 of the RPE, transported in cylinders;

“UN 1965 Propane” in the case of mixture C, as described in subsection 2.2.2.3 of the RPE, transported in cylinders.

Initial reference to the national legislation: *Despacho DGTT 7560/2004, 16 April 2004, under Article 5, No 1, of Decreto-Lei No 267-A/2003 of 27 October.*

Comments: The importance of making it easier for economic operators to fill in transport documents for dangerous goods is recognised, provided that the safety of these operations is not affected.

Expiry date: 30 June 2015

RO-bi-PT-2

Subject: Transport documentation for empty uncleaned tanks and containers.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.4.1.

Content of the Annex to the Directive: Requirements for transport documentation

Content of the national legislation: For the return journeys of empty tanks and containers that have transported dangerous goods, the transport document referred to in Section 5.4.1 of the RPE may be replaced by the transport document issued for the immediately preceding journey made to deliver the goods.

Initial reference to the national legislation: *Despacho DGTT 15162/2004, 28 July 2004, under Article 5, No 1, of Decreto-Lei No 267-A/2003, of 27 October.*

Comments: The obligation that the transport of empty tanks and containers that have contained dangerous goods be accompanied by a transport document in accordance with the RPE causes, in certain cases, practical difficulties, which can be kept to the minimum without prejudice to safety.

Expiry date: 30 June 2015

SE Sweden

RO-bi-SE-1

Subject: Carriage of hazardous waste to hazardous waste disposal plants.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 2, 5.2 and 6.1.

Content of the Annex to the Directive: Classification, marking and labelling, and requirements for the construction and testing of packaging.

Content of the national legislation: The legislation consists of simplified classification criteria, less restrictive requirements for the construction and testing of packaging, and modified labelling and marking requirements.

Instead of classifying hazardous waste according to the ADR, it is assigned to different waste groups. Each waste group contains substances that can, in accordance with the ADR, be packed together (mixed packing).

Each package must be marked with the relevant waste group code instead of the UN number.

Initial reference to the national legislation: *Särskilda bestämmelser om vissa inrikes transporter av farligt gods på väg och i terräng.*

Comments: These regulations may only be used for the carriage of hazardous waste from public recycling sites to hazardous waste disposal plants.

Expiry date: 30 June 2015

RO-bi-SE-2

Subject: The name and address of the consignor in the transport document.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.4.1.1.

Content of the Annex to the Directive: General information required in the transport document.

Content of the national legislation: National legislation states that the name and address of the consignor is not required if empty, uncleaned packaging is returned as part of a distribution system.

Initial reference to the national legislation: *Särskilda bestämmelser om vissa inrikes transporter av farligt gods på väg och i terräng.*

Comments: Empty uncleaned packaging being returned will in most cases still contain small quantities of dangerous goods.

This derogation is mainly used by industries when returning empty uncleaned gas receptacles in exchange for full ones.

Expiry date: 30 June 2015

RO-bi-SE-3

Subject: Transport of dangerous goods in the close proximity of industrial site(s), including transport on public roads between various parts of the site(s).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: Annexes A and B.

Content of the Annex to the Directive: Requirements for the transport of dangerous goods on public roads.

Content of the national legislation: Transport in the close proximity of industrial site(s), including transport on public roads between various parts of the site(s). The derogations concern the labelling and marking of packages, transport documents, driver's certificate and certificate of approval according to 9.

Initial reference to the national legislation: *Särskilda bestämmelser om vissa inrikes transporter av farligt gods på väg och i terräng.*

Comments: There are several situations in which dangerous goods are transferred between premises situated on opposite sides of a public road. This form of transport does not constitute carriage of dangerous goods on a private road and should therefore be associated with the relevant requirements. Compare also with Article 6(14) of Directive 96/49/EC.

Expiry date: 30 June 2015

RO-bi-SE-4

Subject: Transport of dangerous goods that have been seized by the authorities.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: Annex A and B.

Content of the Annex to the Directive: Requirements for the transport of dangerous goods by road.

Content of the national legislation: Deviations from the regulations may be permitted if they are motivated by reasons of labour protection, unloading risks, submission of evidence etc.

Deviations from the regulations are permitted only if satisfactory safety levels are met during normal conditions of carriage.

Initial reference to the national legislation: *Särskilda bestämmelser om vissa inrikes transporter av farligt gods på väg och i terräng.*

Comments: These derogations may be applied only by authorities seizing dangerous goods.

This derogation is intended for local transport e.g. of goods that have been seized by the police, such as explosives or stolen property. The problem with these types of goods is that one can never be sure of classifications. In addition, the goods are often not packed, marked or labelled in accordance with the ADR. There are several hundred such transportations carried out by the police every year. In the case of smuggled liquor, this must be transported from the place where it is seized to a facility where evidence is stored and then on to a facility for destruction; the latter two may be quite far apart from each other. The deviations permitted are: a) each package does not need to be labelled, and b) approved packages do not need to be used. However, each pallet containing such packages must be correctly labelled. All other requirements must be fulfilled. There are approximately 20 such transportations each year.

Expiry date: 30 June 2015

RO-bi-SE-5

Subject: Transport of dangerous goods in and in close proximity to ports.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 8.1.2, 8.1.5, 9.1.2

Content of the Annex to the Directive: Documents to be carried on the transport unit; every transport unit carrying dangerous goods must be equipped with the specified equipment; vehicle approval.

Content of the national legislation:

Documents (except for the driver's certificate) need not be carried on the transport unit.

A transport unit need not be equipped with the equipment specified in 8.1.5.

Tractors need not have a certificate of approval.

Initial reference to the national legislation: *Särskilda bestämmelser om vissa inrikes transporter av farligt gods på väg och i terräng.*

Comments: Compare Directive 96/49/EC, Article 6(14).

Expiry date: 30 June 2015

RO-bi-SE-6

Subject: Inspectors' ADR training certificate.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 8.2.1.

Content of the Annex to the Directive: Drivers of vehicles must attend training courses.

Content of the national legislation: Inspectors who perform the yearly technical inspection of the vehicle do not need to attend the training courses mentioned in 8.2 or hold the ADR training certificate.

Initial reference to the national legislation: *Särskilda bestämmelser om vissa inrikes transporter av farligt gods på väg och i terräng.*

Comments: In some cases, vehicles being tested in the technical inspection may be carrying dangerous goods as load, e.g. uncleaned, empty tanks.

The requirements in 1.3 and 8.2.3 are still applicable.

Expiry date: 30 June 2015

RO-bi-SE-7

Subject: Local distribution of UN 1202, 1203 and 1223 in tankers.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.4.1.1.6, 5.4.1.4.1.

Content of the Annex to the Directive: For empty uncleaned tanks and tank-containers the description shall be in accordance with 5.4.1.1.6. The name and address of multiple consignees may be entered in other documents.

Content of the national legislation: For empty, uncleaned tanks or tank-containers the description in the transport document according to 5.4.1.1.6 is not needed if the amount of the substance in the loading plan is marked with 0. The name and address of the consignees are not required in any document on board the vehicle.

Initial reference to the national legislation: *Särskilda bestämmelser om vissa inrikes transporter av farligt gods på väg och i terräng.*

Expiry date: 30 June 2015

RO-bi-SE-9

Subject: Local transport in relation to agricultural sites or construction sites.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 5.4, 6.8 and 9.1.2.

Content of the Annex to the Directive: Transport document; Construction of tanks; Certificate of approval.

Content of the national legislation: Local transport in relation to agricultural sites or construction sites need not comply with some regulations:

- (a) the dangerous goods declaration is not required;
- (b) older tanks/containers not constructed according to 6.8 but according to older national legislation and fitted on crew wagons may still be used;
- (c) older tankers, not fulfilling the requirements in 6.7 or 6.8, intended for the transport of substances of UN 1268, 1999, 3256 and 3257, with or without road surface coating equipment, may still be used for local transport and in close proximity to road work places;
- (d) certificates of approval for crew wagons and tankers with or without road surface coating equipment are not required.

Initial reference to the national legislation: *Särskilda bestämmelser om vissa inrikes transporter av farligt gods på väg och i terräng.*

Comments: A crew wagon is a kind of caravan for a work crew with a crew room and fitted with a non-approved tank/container for diesel fuel intended for the operation of forestry tractors.

Expiry date: 30 June 2015

RO-bi-SE-10

Subject: Tank transport of explosives.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 4.1.4.

Content of the Annex to the Directive: Explosives may be packaged only in accordance with 4.1.4.

Content of the national legislation: The competent national authority will approve vehicles intended for tank transport of explosives. Tank transport is permissible only for those explosives listed in the regulation or by special authorisation from the competent authority.

A vehicle loaded with explosives in tanks must be marked and labelled in accordance with 5.3.2.1.1, 5.3.1.1.2 and 5.3.1.4. Only one vehicle in the transport unit may contain dangerous goods.

Initial reference to the national legislation: *Appendix S — Specific regulations for the domestic transport of dangerous goods by road issued in accordance with the Transport of Dangerous Goods Act and the Swedish regulation SÄIFS 1993:4.*

Comments: This is applicable only to domestic transport and when the transport operation is mostly of a local nature. The regulations in question were in force before Sweden joined the European Union.

Only two companies perform transport operations with explosives in tank-vehicles. In the near future transition to emulsions is expected.

Old derogation No 84.

Expiry date: 30 June 2015

RO-bi-SE-11

Subject: Driver's licence

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 8.2.

Content of the Annex to the Directive: Requirements concerning the training of the vehicle crew.

Content of the national legislation: Driver training is not permitted with any vehicle referred to in 8.2.1.1.

Initial reference to the national legislation: *Appendix S — Specific regulations for the domestic transport of dangerous goods by road issued in accordance with the Transport of Dangerous Goods Act.*

Comments: Local transport.

Expiry date: 30 June 2015

RO-bi-SE-12

Subject: Carriage of UN 0335 fireworks.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: Annex B, 7.2.4, V2 (1)

Content of the Annex to the Directive: Provisions for the use of EX/II and EX/III vehicles.

Content of the national legislation: When carrying UN 0335 fireworks, Special Provision V2 (1) in 7.2.4 is applicable only to a net explosive content of more than 3 000 kg (4 000 kg with trailer), provided the fireworks have been assigned to UN 0335 according to the default fireworks classification table in 2.1.3.5.5 of the fourteenth revised edition of the UN Recommendations on the Transport of Dangerous Goods.

Such assignment shall be made with the agreement of the competent authority. A verification of the assignment shall be carried on the transport unit.

Initial reference to the national legislation: *Appendix S — Specific regulations for the domestic transport of dangerous goods by road issued in accordance with the Transport of Dangerous Goods Act.*

Comments: The carriage of fireworks is limited in time to two short periods of the year, the turn of the year and the turn of the month April/May. The carriage from consignors to terminals can be effected by the present fleet of EX-approved vehicles without great problems. However, the distribution both of fireworks from terminals to shopping areas and of the surplus back to the terminal is limited due to a lack of EX-approved vehicles. The carriers are not interested in investing in such approvals because they cannot recover their costs. This places the whole existence of consignors of fireworks in jeopardy because they cannot get their products on the market.

When using this derogation, the classification of the fireworks must be made on the basis of the default list in the UN Recommendations, in order to get the most up-to-date classification possible.

A similar type of exception exists for UN 0336 fireworks incorporated in Special Provision 651, 3.3.1 of the ADR 2005.

Expiry date: 30 June 2015

UK United Kingdom

RO-bi-UK-1

Subject: Crossing of public roads by vehicles carrying dangerous goods (N8).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: Annexes A and B.

Content of the Annex to the Directive: Requirements for the carriage of dangerous goods on public roads.

Content of the national legislation: Disapplication of the dangerous goods regulations to carriage within private premises separated by a road. For Class 7 this derogation does not apply to any provisions of the Radioactive Material (Road Transport) Regulations 2002.

Initial reference to the national legislation: *Carriage of Dangerous Goods by Road Regulations 1996, reg. 3 Schedule 2(3)(b); Carriage of Explosives by Road Regulations 1996, reg. 3(3)(b).*

Comments: A situation can easily occur where goods are transferred between private premises situated on both sides of a road. This does not constitute carriage of dangerous goods on a public road in the normal sense of the term, and none of the provisions of the dangerous goods regulations should apply in such a case.

Expiry date: 30 June 2015

RO-bi-UK-2

Subject: Exemption from prohibition on driver or driver's assistant opening packages of dangerous goods in a local distribution chain from a local distribution depot to a retailer or end user and from the retailer to the end user (except for Class 7) (N11).

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 8.3.3.

Content of the Annex to the Directive: Prohibition on driver or driver's assistant opening packages of dangerous goods.

Content of the national legislation: Prohibition of opening packages is qualified by the proviso "Unless authorised to do so by the operator of the vehicle".

Initial reference to the national legislation: *Carriage of Dangerous Goods by Road Regulations 1996, reg. 12(3).*

Comments: If taken literally, the prohibition in the Annex as worded can create serious problems for retail distribution.

Expiry date: 30 June 2015

RO-bi-UK-3

Subject: Alternative carriage provisions for wooden casks containing UN 3065 of Packing Group III.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: 1.4, 4.1, 5.2 and 5.3.

Content of the Annex to the Directive: Packaging and labelling requirements.

Content of the national legislation: Permits the carriage of alcoholic beverages of more than 24 %, but not more than 70 % alcohol by volume (Packing Group III) in non — UN approved wooden casks without danger labels, subject to more stringent loading and vehicle requirements.

Initial reference to the national legislation: *The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004: Regulation 7(13) and (14).*

Comments: This is a high-value product subject to government excise duty which must be moved between the distillery and bonded warehouses in secure sealed vehicles bearing government duty seals. The relaxation on packaging and labelling is taken into account in the additional requirements to ensure safety.

Expiry date: 30 June 2015

RO-bi-UK-4

Subject: Adoption of RO-bi-SE-12

Initial reference to the national legislation: *The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007 Part 1.*

Expiry date: 30 June 2015

RO-bi-UK-5

Subject: Collection of used batteries for disposal or recycling.

Reference to Annex I, Section I.1, to Directive 2008/68/EC: Annexes A and B.

Content of the Annex to the Directive: Special Provision 636

Content of the national legislation: Permits the following alternative conditions for Special Provision 636 of Chapter 3.3:

Used lithium cells and batteries (UN 3090 and UN 3091) collected and presented for carriage for disposal between the consumer collecting point and the intermediate processing facility, together with other non-lithium cells or batteries (UN 2800 and UN 3028), are not subject to the other provisions of ADR if they meet the following conditions:

They shall be packed in IH2 drums or 4H2 boxes conforming to the packing group II performance level for solids;

Not more than 5 % of each package shall be lithium and lithium ion batteries;

The maximum gross mass of each package shall not exceed 25 kg;

The total quantity of packages per Transport Unit shall not exceed 333 kg;

No other dangerous goods may be carried.

Initial reference to the national legislation: *The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment 2007 part 1.*

Comments: Consumer collection points are usually in retail outlets and it is not practical to train large numbers of people to sort and package used batteries in accordance with ADR. The UK system would operate under guidelines set by the UK Waste and Resources Action Programme and would involve the supplying suitable ADR compliant packaging and appropriate instructions.

Expiry date: 30 June 2015'

- (2) In Annex II, Section II.3 is replaced by the following:

'II.3. National derogations

Derogations for Member States for the transport of dangerous goods within their territory on the basis of Article 6 (2) of Directive 2008/68/EC.

Numbering of derogations: RA-a/bi/bii-MS-nn

RA = Rail

a/bi/bii = Article 6(2) a/bi/bii

MS = Abbreviation of Member State

nn = order number

Based on Article 6(2)(a) of Directive 2008/68/EC

DE Germany

RA-a-DE-2

Subject: Combined packaging authorisation.

Reference to Annex II, Section II.1, to Directive 2008/68/EC: 4.1.10.4 MP2.

Content of the Annex to the Directive: Prohibition of combined packaging.

Content of the national legislation: Class 1.4S, 2, 3 and 6.1; authorisation of combined packaging of objects in Class 1.4S (cartridges for small weapons), aerosols (Class 2) and cleaning and treatment materials in Class 3 and 6.1 (UN numbers listed) as sets to be sold in combined packaging in packaging group II and in small quantities.

Initial reference to the national legislation: *Gefahrgut-Ausnahmeverordnung — GGAV 2002 vom 6.11.2002 (BGBl. I S. 4350); Ausnahme 21.*

Comments: List No 30*, 30a, 30b, 30c, 30d, 30e, 30f, 30g.

Expiry date: 30 June 2015

FR France

RA-a-FR-3

Subject: Transport for the needs of the rail carrier.

Reference to Annex II, Section II.1, to Directive 2008/68/EC: 5.4.1.

Content of the Annex to the Directive: Information concerning hazardous materials to be indicated on the consignment note.

Content of the national legislation: Transport for the needs of the rail carrier of quantities not exceeding the limits set in 1.1.3.6 is not subject to the load declaration obligation.

Initial reference to the national legislation: *Arrêté du 5 juin 2001 relatif au transport des marchandises dangereuses par chemin de fer — Article 20.2.*

Expiry date: 30 June 2015

RA-a-FR-4

Subject: Exemption from the labelling of certain mail wagons.

Reference to Annex II, Section II.1, to Directive 2008/68/EC: 5.3.1.

Content of the Annex to the Directive: Obligation to affix labels on the walls of wagons.

Content of the national legislation: Only mail wagons carrying over 3 tonnes of a material in the same class (other than 1, 6.2 or 7) must be labelled.

Initial reference to the national legislation: *Arrêté du 5 juin 2001 relatif au transport des marchandises dangereuses par chemin de fer — Article 21.1.*

Expiry date: 30 June 2015

SE Sweden

RA-a-SE-1

Subject: A railway carriage carrying dangerous goods, as express goods, need not be marked with labels.

Reference to Annex II, Section II.1, to Directive 2008/68/EC: 5.3.1.

Content of the Annex to the Directive: Railway carriages carrying dangerous goods must display labels.

Content of the national legislation: A railway carriage carrying dangerous goods, as express goods, need not be marked with labels.

Initial reference to the national legislation: *Särskilda bestämmelser om vissa inrikes transporter av farligt gods på väg och i terräng.*

Comments: There are quantity limits in the RID for goods designated as express goods. Therefore it is a small quantity issue.

Expiry date: 30 June 2015

UK United Kingdom

RA-a-UK-1

Subject: Carriage of items containing certain low-hazard radioactive material such as clocks, watches, smoke detectors, compass dials.

Reference to Annex II, Section II.1, to Directive 2008/68/EC: Most requirements of the RID.

Content of the Annex to the Directive: Requirements concerning the carriage of Class 7 material.

Content of the national legislation: Total exemption from the provisions of the national regulations for certain commercial products containing limited quantities of radioactive material.

Initial reference to the national legislation: *Packaging, Labelling and Carriage of Radioactive Material by Rail Regulations 1996, reg. 2(6) (as amended by Schedule 5 of the Carriage of Dangerous Goods (Amendment) Regulations 1999).*

Comments: This derogation is a short-term measure, which will no longer be required when similar amendments to the IAEA regulations are incorporated into the RID.

Expiry date: 30 June 2015

RA-a-UK-2

Subject: Easing of restrictions on transporting mixed loads of explosives, and explosives with other dangerous goods, in wagons, vehicles and containers (N4/5/6).

Reference to Annex II, Section II.1, to Directive 2008/68/EC: 7.5.2.1 and 7.5.2.2.

Content of the Annex to the Directive: Restrictions on certain types of mixed loading.

Content of the national legislation: National legislation is less restrictive regarding mixed loading of explosives, providing such carriage can be accomplished without risk.

Initial reference to the national legislation: *Packaging, Labelling and Carriage of Radioactive Material by Rail Regulations 1996, reg. 2(6) (as amended by Schedule 5 of the Carriage of Dangerous Goods (Amendment) Regulations 1999).*

Comments: The UK wishes to permit some variations on the mixing rules for explosives with other explosives and for explosives with other dangerous goods. Any variation will have a quantity limitation on one or more constituent parts of the load and would be permitted only if "all reasonably practicable measures have been taken to prevent the explosives being brought into contact with, or otherwise endangering or being endangered by, any such goods".

Examples of variations the UK may want to permit are:

1. Explosives allocated on classification to UN Numbers 0029, 0030, 0042, 0065, 0081, 0082, 0104, 0241, 0255, 0267, 0283, 0289, 0290, 0331, 0332, 0360 or 0361 may be carried in the same vehicle with the dangerous goods allocated on classification UN Number 1942. The quantity of UN 1942 that may be carried shall be limited by deeming it to be an explosive of 1.1D.

2. Explosives allocated on classification to UN Numbers 0191, 0197, 0312, 0336, 0403, 0431 or 0453 may be carried in the same vehicle with dangerous goods (except flammable gases, infectious substances and toxic substances) in transport category 2 or dangerous goods in transport category 3, or any combination of them, provided the total mass or volume of dangerous goods in transport category 2 does not exceed 500 kg or l and the total net mass of such explosives does not exceed 500 kg.
3. Explosives of 1,4G may be carried with flammable liquids and flammable gases in transport category 2 or non-flammable, non-toxic gases in transport category 3, or in any combination of them in the same vehicle, provided the total mass or volume of dangerous goods when added together does not exceed 200 kg or l and the total net mass of explosives does not exceed 20 kg.
4. Explosive articles allocated on classification to UN Numbers 0106, 0107 or 0257 may be carried with explosive articles in Compatibility Group D, E or F for which they are components. The total quantity of explosives of UN Numbers 0106, 0107 or 0257 shall not exceed 20 kg.

Expiry date: 30 June 2015

RA-a-UK-3

Subject: To allow different maximum total quantity per transport unit for Class 1 goods in categories 1 and 2 of table in 1.1.3.1.

Reference to Annex II, Section II.1, to Directive 2008/68/EC: 1.1.3.1.

Content of the Annex to the Directive: Exemptions related to the nature of the transport operation.

Content of the national legislation: To lay down rules regarding exemptions for limited quantities and mixed loading of explosives.

Initial reference to the national legislation: *The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004: Regulation 3(7)(b)*.

Comments: To allow different limited quantity limits and mixed loading multiplication factors for Class 1 goods, namely "50" for Category 1 and "500" for Category 2. For the purpose of calculating mixed loads, the multiplication factors are to read "20" for Transport Category 1 and "2" for Transport Category 2.

Expiry date: 30 June 2015

RA-a-UK-4

Subject: Adoption of RA-a-FR-6.

Reference to Annex II, Section II.1, to Directive 2008/68/EC: 5.3.1.3.2.

Content of the Annex to the Directive: Relaxation of placarding requirement for piggyback carriage.

Content of the national legislation: The placarding requirement does not apply in cases where the vehicle placards are clearly visible.

Initial reference to the national legislation: *The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004: Regulation 7(12)*.

Comments: This has always been a UK national provision.

Expiry date: 30 June 2015

RA-a-UK-5

Subject: Distribution of goods in inner packagings to retailers or users (excluding those of classes 1, 4.2, 6.2, and 7) from local distribution depots to retailers or users and from retailers to end users.

Reference to Annex II, Section II.1, to Directive 2008/68/EC: 6.1.

Content of the Annex to the Directive: Requirements for the construction and testing of packagings.

Content of the national legislation: Packagings are not required to have been allocated an RID/ADR or UN mark.

Initial reference to the national legislation: *The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007: Regulation 26.*

Comments: RID requirements are inappropriate for the final stages of carriage from a distribution depot to a retailer or user or from a retailer to an end user. The purpose of this derogation is to allow the inner receptacles of goods for retail distribution to be carried on the rail leg of a local distribution journey without an outer packaging.

Expiry date: 30 June 2015

Based on Article 6(2)(b)(i) of Directive 2008/68/EC

DE Germany

RA-bi-DE-2

Subject: Transportation of packaged hazardous waste.

Reference to Annex II, Section II.1, to Directive 2008/68/EC: 1 to 5.

Content of the Annex to the Directive: Classification, packaging and marking.

Content of the national legislation: Classes 2 to 6.1, 8 and 9: Combined packaging and transportation of hazardous waste in packs and IBCs; waste must be packaged in internal packagings (as collected) and categorised in specific waste groups (avoidance of dangerous reactions within a waste group); use of special written instructions relating to the waste groups and as a waybill; collection of domestic and laboratory waste, etc.

Initial reference to the national legislation: *Gefahrgut-Ausnahmeverordnung — GGAV 2002 vom 6.11.2002 (BGBl. I S. 4350); Ausnahme 20.*

Comments: List No 6*.

Expiry date: 30 June 2015

RA-bi-DE-3

Subject: Local transport of UN 1381 (phosphorus, yellow, under water), Class 4.2, packaging group I, in railway tank wagons.

Reference to Annex II, section II.1 to Directive 2008/68/EC: 6.8, 6.8.2.3.

Content of the Annex to the Directive: Provisions for the construction of tanks and tank wagons. Chapter 6.8, subsection 6.8.2.3, requires type approval for tanks carrying UN 1381 (phosphorus, yellow, under water).

Content of the national legislation: Local transport of UN 1381 (phosphorus, yellow, under water), Class 4.2, packaging group I, over short distances (from Sassnitz-Mukran to Lutherstadt Wittenberg-Piesteritz and Bitterfeld) in railway tank wagons built according to Russian standards. The transport of the goods is subject to additional operational provisions laid down by the competent safety authorities.

Initial reference to the national legislation: *Ausnahme Eisenbahn-Bundesamt Nr. E 1/92.*

Expiry date: 30 January 2020 (authorisation extended)

DK Denmark

RA-bi-DK-1

Subject: Carriage of dangerous goods in tunnels

Reference to Annex II, Section II.1, to Directive 2008/68/EC: 7.5

Content of the Annex to the Directive: Loading, unloading and protective distances

Content of the national legislation: The legislation provides for alternative provisions than provided for in Annex II, Section II.1 to Directive 2008/68/EC regarding carriage through the rail tunnel of the fixed link across the Great Belt. These alternative provisions relate only to load volume and the distance between dangerous goods loads.

Initial reference to the national legislation: *Bestemmelser om transport af eksplosiver i jernbanetunnelerne på Storebælt og Øresund, 15 February 2005.*

Comments:

Expiry date: 30 June 2015

RA-bi-DK-2

Subject: Carriage of dangerous goods in tunnels

Reference to Annex II, Section II.1, to Directive 2008/68/EC: 7.5

Content of the Annex to the Directive: Loading, unloading and protective distances

Content of the national legislation: The legislation provides for alternative provisions than provided for in Annex II, Section II.1 to Directive 2008/68/EC regarding carriage through the rail tunnel of the fixed link across Øresund. These alternative provisions relate only to load volume and the distance between dangerous goods loads.

Initial reference to the national legislation: *Bestemmelser om transport af eksplosiver i jernbanetunnelerne på Storebælt og Øresund, 15 February 2005.*

Comments:

Expiry date: 29 February 2016

CZ Czech Republic

(derogation expired)

SE Sweden

RA-bi-SE-1

Subject: Carriage of hazardous waste to hazardous waste disposal plants.

Reference to Annex II, Section II.1, to Directive 2008/68/EC: 2, 5.2, and 6.1.

Content of the Annex to the Directive: Classification, marking and labelling, and requirements for the construction and testing of packaging.

Content of the national legislation: The legislation consists of simplified classification criteria, less restrictive requirements for the construction and testing of packaging, and modified labelling and marking requirements. Instead of classifying hazardous waste according to the RID, it is assigned to different waste groups. Each waste group contains substances that can, in accordance with the RID, be packed together (mixed packing). Each package must be marked with the relevant waste group code instead of the UN number.

Initial reference to the national legislation: *Särskilda bestämmelser om vissa inrikes transporter av farligt gods på väg och i terräng.*

Comments: These regulations may be used only for the carriage of hazardous waste from public recycling sites to hazardous waste disposal plants.

Expiry date: 30 June 2015

Based on Article 6(2)(b)(ii) of Directive 2008/68/EC

DE Germany

RA-bii-DE-1

Subject: Local transport of UN 1051 hydrogen cyanide, stabilised, liquid, containing 1 % or less water by mass, in railway tank wagons, derogating from sub-section 4.3.2.1.1 of Annex II, Section II.1 to Directive 2008/68/EC.

Reference to Annex II, Section II.1 to Directive 2008/68/EC: 3.2, 4.3.2.1.1

Content of the Annex to the Directive: ban on the transport of UN 1051 (hydrogen cyanide), stabilised, liquid, containing 1 % or less water by mass

Content of the national legal provisions: local transport by rail on particular designated routes as part of a defined industrial process and closely controlled under clearly specified conditions. Transport takes place in tank wagons which are licensed specifically for this purpose and whose construction and fittings are continually adapted in line with the latest safety technology (e.g. equipping with crash buffers in accordance with TE 22). The transport process is regulated in detail by additional operational safety provisions in agreement with the relevant safety and danger-aversion authorities and is monitored by the relevant supervisory authorities.

Original reference to national legal provisions: derogation No E 1/97 (4th amended version), Federal Office for Railways

End of the period of validity: 1 January 2017

DE Germany

RA-bii-DE-2

Subject: local transport on designated routes of UN 1402 (calcium carbide), packaging group I, in containers on wagons.

Reference to Annex II, section II.1 to Directive 2008/68/EC: 3.2, 7.3.1.1

Content of the Annex to the Directive: General provisions for transport in bulk. Chapter 3.2, Table A, does not allow calcium carbide to be carried in bulk.

Content of the national legislation: Local transport by rail of UN 1402 (calcium carbide), packaging group I, on specifically designated routes, as part of a defined industrial process and closely controlled under clearly specified conditions. The loads are transported in purpose-built containers in wagons. The transport of the goods is subject to additional operational provisions laid down by the competent safety authorities.

Initial reference to the national legislation: *Ausnahme Eisenbahn-Bundesamt Nr. E 3/10.*

Expiry date: 15 January 2018'

- (3) In Annex III, Section III.3 is replaced by the following:

III.3. National derogations

Derogations for Member States for the transport of dangerous goods within their territory on the basis of Article 6 (2) of Directive 2008/68/EC.

Numbering of derogations: IW-a/bi/bii-MS-nn

IW = Inland waterways

a/bi/bii = Article 6(2) a/bi/bii

MS = Abbreviation of Member State

nn = order number

Based on Article 6(2)(b)(i) of Directive 2008/68/EC

BG Bulgaria

IW–bi–BG–I

Subject: Classification and inspection of bunker vessels

Reference to Annex III, Section III.1, to Directive 2008/68/EC: Chapter 1.15

Content of the Annex to the Directive: The provisions of Chapter 1.15, Recognition of classification societies, require that a classification society to be recognised under the provisions shall undertake the procedure for their recognition specified in Section 1.15.2.

Content of the national legislation: Classification and inspection of bunker vessels for petroleum products operating in the waters of Bulgarian river ports or other areas under the direct jurisdiction of these ports carried out by classification society not recognised according to Chapter 1.15 of Annex III, Section III.1 to Directive 2008/68/EC is authorised provided that safety is not compromised.

Initial reference to the national legislation: Наредба № 16 от 20 юни 2006 г. за обработка и превоз на опасни товари по море и по вътрешни водни пътища; Наредба № 4 от 9 януари 2004 г. за признаване на организации за извършване на прегледи на кораби и корабоприетатели (Ordinance No 16 of 20 June 2006 on the handling of dangerous goods and the carriage thereof by sea and by inland waterway; Ordinance No 4 of 9 January 2004 on the recognition of ship survey and ship owners examination societies).

Comments: The derogation applies only to vessels operating in port areas or other areas under the direct jurisdiction of these ports.

Expiry date: 15 January 2018'

COMMISSION DECISION (EU) 2015/218**of 7 May 2014****on the State aid Nos SA.29786 (ex N 633/09), SA.33296 (11/N), SA.31891 (ex N 553/10), N 241/09, N 160/10 and SA.30995 (ex C 25/10) implemented by Ireland for the restructuring of Allied Irish Banks plc and EBS Building Society***(notified under document C(2014) 2638)***(Only the English text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾,

Whereas:

1. PROCEDURE

- (1) Allied Irish Banks, plc ('AIB') and the EBS Building Society ('EBS') have each received State aid individually, which was notified to the Commission in separate procedures. EBS and AIB merged on 1 July 2011 ('the Bank'), and the Commission assessed the aid granted to the Bank in a separate procedure. Hence there are three State aid procedures relating to AIB, EBS and the merged entity, respectively.

1.1. AIB

- (2) By decision dated 12 May 2009, the Commission temporarily approved ⁽²⁾ a EUR 3,5 billion capital injection into AIB in the form of Core Tier 1 New Preference Shares, on the basis of several commitments including the submission of a restructuring plan within 6 months following the recapitalisation.
- (3) Following this initial capital injection, the Irish authorities submitted an initial restructuring plan for AIB on 13 November 2009, followed by a number of exchanges. On 4 May 2010, the Irish authorities submitted an updated restructuring plan, which again was followed by a number of exchanges between the Commission and Ireland.
- (4) By decision dated 21 December 2010, the Commission temporarily approved ⁽³⁾ a EUR 9,8 billion rescue capital injection in the form of ordinary shares, pending the approval by the Commission of a revised restructuring plan taking into account the further aid provided to AIB. The capital injection was planned to take place in two stages: (i) EUR 3,7 billion to be injected by 31 December 2010, and (ii) EUR 6,1 billion to be injected in February 2011 ⁽⁴⁾.
- (5) While the first instalment of the approved recapitalisation was carried out by the Irish State at the end of December 2010, the second injection planned to be undertaken in February 2011 never took place ⁽⁵⁾.

⁽¹⁾ OJ C 214, 7.8.2010, p. 3.

⁽²⁾ Commission Decision in Case N 241/09, Recapitalisation of Allied Irish Bank by the Irish State (OJ C 223, 16.9.2009, p. 2).

⁽³⁾ Commission Decision in Case N 553/10, Second emergency recapitalisation in favour of Allied Irish Banks plc (OJ C 76, 10.3.2011, p. 4).

⁽⁴⁾ The gross capital injections were respectively EUR 3,9 billion and EUR 6,3 billion, including each EUR 0,2 billion of fees repaid by AIB to the Irish government.

⁽⁵⁾ The Commission decision allowed the recapitalisation as a rescue measure for 6 months subject to the submission of an updated restructuring plan. The second instalment of the recapitalisation was not paid in February.

1.2. EBS

- (6) By decision dated 2 June 2010 ⁽⁶⁾, the Commission temporarily authorised a recapitalisation of EBS as emergency aid pending the approval by the Commission of a restructuring plan. The Irish authorities submitted the plan on 31 May 2010.
- (7) On 11 October 2010, the Commission decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('the Treaty') with regard to the restructuring plan for EBS submitted by Ireland ('the Opening Decision') ⁽⁷⁾, since the Commission had doubts as to the compatibility of that restructuring plan and the associated aid measures with the internal market in the light of the Commission's Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current financial crisis under the State aid rules ⁽⁸⁾ ('the Restructuring Communication').
- (8) The Commission received comments from EBS and two other interested parties.
- (9) In July 2011, EBS merged with AIB and became a fully integrated subsidiary of the Bank. As a result, EBS ceased to exist on a standalone basis. Therefore, the Opening Decision, which related to EBS as a standalone entity, became nugatory and the Commission decided not pursue the procedure any further.

1.3. JOINT PROCEDURE

- (10) On 31 March 2011, the Irish Minister for Finance announced that the Irish banking system was to be reorganised around two pillar banks, Bank of Ireland ('BoI') and AIB ⁽⁹⁾. He also announced that in that context EBS would be merged into AIB to constitute this second pillar institution.
- (11) By decision dated 15 July 2011, the Commission approved ⁽¹⁰⁾ a combined rescue package for the Bank of up to EUR 13,1 billion pending the approval of a restructuring plan for the Bank which should take into account the further aid provided.
- (12) On 28 September 2012, Ireland notified a restructuring plan for the Bank ⁽¹¹⁾.
- (13) Between October 2012 and March 2014, the Commission and the Irish authorities exchanged information regularly. The Commission repeatedly requested information, and Ireland provided a number of supplementary submissions ⁽¹²⁾.

2. FACTS

2.1. DESCRIPTION OF THE BENEFICIARIES

2.1.1. AIB

- (14) A detailed description of AIB is provided in Section II.1 of the Commission decision concerning the first recapitalisation of the Bank of 12 May 2009 ⁽¹³⁾. A short summary is provided below.
- (15) In the years preceding the financial crisis, AIB was a diversified financial services group which offered a full range of personal and corporate banking services. In 2008, it had a balance sheet size of EUR 182 billion. It was one of the two largest banks in Ireland and had market shares of about 35 % of personal current accounts, 27 % of mortgages, 46 % of savings and 41 % of SME current accounts.

⁽⁶⁾ Commission Decision in Case N 160/10, Recapitalisation of EBS (OJ C 217, 11.8.2010, p. 2).

⁽⁷⁾ Commission Decision in Case C 25/10 (ex N 212/10), Restructuring of Educational Building Society (OJ C 300, 6.11.2010, p. 17).

⁽⁸⁾ OJ C 195, 19.8.2009, p. 9.

⁽⁹⁾ In April 2012, it was decided that Permanent TSB should remain active as the third domestic lender alongside AIB and BoI.

⁽¹⁰⁾ Commission Decision in Case SA.33296, Emergency recapitalisation in favour of the merged entity Educational Building Society/Allied Irish Banks plc (OJ C 268, 10.9.2011, p. 3).

⁽¹¹⁾ The plan was registered under case number SA.29786.

⁽¹²⁾ The most important supplementary contributions were submitted on 10 and 11 January, 13 February and 20 and 27 March 2014 and concerned financial projections.

⁽¹³⁾ See footnote 2.

- (16) Prior to that crisis, AIB expanded fast, with a particular focus on new lending to the Irish property market and a strong reliance on wholesale funding. When the global financial crisis broke out, which hit the Irish economy and notably the Irish property market particularly hard, the vulnerability of AIB's business model became evident and the need for State support unavoidable.
- (17) In July 2011, AIB was merged with EBS.

2.1.2. EBS

- (18) A detailed description of EBS is provided in Section 2.1.2 of the Commission Decision concerning the emergency recapitalisation of EBS/AIB of 15 July 2011 ⁽¹⁴⁾. A short summary is provided in the following recitals.
- (19) In the years preceding the financial crisis, EBS was Ireland's largest building society and the eighth largest financial institution operating in Ireland with total assets of EUR 21,5 billion in 2009. Building societies are mutual organisations which have no shareholders but instead are owned by their members, who are also their clients. Their objective is to collect deposits and provide loans. Profits are used to adapt interest rates to the advantage of the members, or are accumulated as reserves.
- (20) EBS offered traditional retail banking products to its members (savings and mortgages) in line with its goal as a building society. It also had a treasury department offering boutique services to corporate clients, professional firms and credit unions. From 2005 onwards, EBS expanded its activities in commercial property lending, building up a substantial loan book in that segment. EBS suffered from the downturn in the Irish economy at large and in particular from the collapse of commercial real estate prices. Access to funding gradually deteriorated and massive impairments on its commercial and mortgage loan books led to a reduction of EBS's capital.
- (21) Since 1 July 2011, EBS has been a fully owned subsidiary of AIB. It offers mainly mortgage and deposit services on the Irish market. EBS continues to operate under its own brand name.

2.1.3. The Bank (AIB and EBS merged)

- (22) The result of the PCAR/PLAR exercise ⁽¹⁵⁾, carried out under the Economic Adjustment Programme for Ireland ('the Programme') ⁽¹⁶⁾ and announced on 31 March 2011, identified a capital need for AIB of EUR 13,3 billion and for EBS of EUR 1,5 billion (for both institutions the figure combines common equity ⁽¹⁷⁾ and contingent capital ⁽¹⁸⁾).
- (23) Under the terms of the Programme, the participating credit institutions had to prepare recapitalisation plans to comply with the additional capital specified by the PCAR/PLAR and the required amount of capital had to be in place by the end of July 2011.
- (24) On 31 March 2011, the Irish Minister for Finance announced the restructuring of the whole Irish banking sector. It was decided to merge AIB and EBS; the thus newly created Bank was to become a pillar bank of the reformed Irish banking landscape.
- (25) On 26 May 2011, the Minister, AIB and EBS signed an acquisition agreement providing for the acquisition by AIB of EBS (following its conversion into a private company and receipt of all requisite regulatory approvals). Under the terms of this agreement, EBS is a fully owned subsidiary and benefits from AIB's full support while continuing to operate under the EBS brand. The merger of the two entities involved the demutualisation of EBS and its conversion into a fully licensed bank, followed by the acquisition by AIB of its share capital for a nominal consideration. Following merger control clearance on 27 June 2011, the merger was completed on 1 July 2011.

⁽¹⁴⁾ See footnote 10.

⁽¹⁵⁾ Prudential Capital Assessment Review and Prudential Liquidity Assessment Review. Described in detail in recitals 25 to 31 of Decision in Case SA.33296.

⁽¹⁶⁾ The Economic Adjustment Programme for Ireland was formally agreed in December 2010. It included a joint financing package of EUR 85 billion and covered the period 2010 to 2013.

⁽¹⁷⁾ Capital instruments meeting the requirements of Articles 28, 29 and 31 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁽¹⁸⁾ Contingent capital is debt that converts into equity when certain triggers are met.

- (26) As of 15 July 2011, 99,8 % of the Bank's share capital is held by the Irish State.
- (27) The Bank is positioned as a full-service bank, primarily focused on Ireland and offering a wide range of banking products and services through an extensive distribution network. The Bank has a limited overseas presence in Great Britain. In the latter part of 2012 AIB commenced organising its internal structure to a more customer centric model comprising the following key segments: Domestic Core Bank, AIB UK and Financial Solutions Group ('FSG'). Reporting on this new segment basis commenced in 2013.
- (28) The *Domestic Core Bank* operates through a range of delivery channels comprising 274 branches ⁽¹⁹⁾. The branch network is under restructuring and the closure of a number of branches is ongoing. The Bank also provides banking services through the national post offices. EBS is managed within the Domestic Core Bank structure. It maintains its own banking licence and operates as a separately branded subsidiary retaining its own branch network. Its focus is on the mortgage and deposit business.
- (29) *AIB UK* operates in Great Britain and Northern Ireland. In Great Britain, the Bank operates under the trading name Allied Irish Bank (GB) and offers a full banking service through 20 full service branches as well as online banking. The main target markets are SMEs. Under the brand Allied Irish Bank (GB) Savings Direct, the Bank also provides deposit services ⁽²⁰⁾. In Northern Ireland, AIB UK operates under the trading name First Trust Bank ('FTB') and through 32 branches. A full banking service is offered to business and individuals.
- (30) *The Financial Solutions Group* was established in 2012 to assist SME and personal customers facing difficulties in complying with their loan commitments and to execute the Bank's asset deleveraging plan.
- (31) Today, the Bank is one of the three large domestic banks in Ireland, together with BoI and Permanent TSB ('PTSB'). The Bank's total assets amounted to EUR 118 billion at 31 December 2013 compared to BoI's total assets of EUR 132 billion and PTSB's total assets of EUR 38 billion at 31 December 2013. The Bank is a diversified financial services group which offers a full range of personal and corporate banking services with an emphasis on the Irish retail banking market. The Bank has a particularly strong presence in the SME segment.

Table 1

The Bank — Selected Financial Data 2013

	31.12.2013
Total assets (EUR)	118 bn
Loans and receivables to customers (EUR)	66 bn
Operating profit/loss before provisions (EUR)	0,445 bn
Customer deposits (EUR)	66 bn
Loan to deposit ratio (%)	100 %
Risk weighted assets (EUR)	62 bn

⁽¹⁹⁾ 200 branches for AIB and 74 branches for EBS as per December 2013.

⁽²⁰⁾ In February 2011, customer deposits previously held by Anglo Irish Bank were transferred to Allied Irish Bank (GB) which now provides deposit service to approximately 60 000 mass market customers in Great Britain.

	31.12.2013
Core Tier 1 Ratio (%)	14,3 %
Total staff (Full Time Equivalent)	11 431

Source: The Bank's restructuring plan, September 2012; AIB 2013 Annual Report.

Table 2

The Bank's positioning in SME, personal, mortgage and savings markets

	(%)
	Market shares
SME main current account	40
Personal main current account	37
Mortgage sector — outstanding balances	31
Savings market (AIB and EBS combined)	40

Source: Complementary submission of March 2014; market shares pertain to December 2013.

2.2. THE DIFFICULTIES OF AIB AND EBS

- (32) AIB's need for State aid was the result of the impact of the global financial crisis, combined with AIB's excessive growth, strong reliance on wholesale funding, its exposure to the Irish property market and inadequate risk management.
- (33) In the years preceding the financial crisis, AIB decided to keep pace with the unprecedented growth in the Irish economy and in the Irish property sector. On an absolute basis, AIB's property and construction loans increased by 336 % between 2002 and 2006 and its exposure to this sector rose from 19 % in 2002 to 36 % in 2008. In pursuit of volume and in the absence of funding constraints, the bank took excessive risks in terms of exposure (i.e. concentration on the property and construction sector), but also in terms of the types of mortgages offered (i.e. tracker mortgages ⁽²¹⁾).
- (34) The deterioration of the Irish property market, the subsequent falls in property prices as well as the slowdown of the Irish economy as of 2008, led to a significant deterioration of AIB's asset quality and considerable impairments of its loan book, which reduced the bank's capital cushion.
- (35) To fund its rapid expansion, the bank increased its dependence on wholesale funding from around 35 % in 2004 to 42 % in 2006, while the ratio of the loans to deposits ('LDR') increased from 101 % in 2002 to 157 % in 2007.
- (36) Following the collapse of Lehman Brothers Holdings Inc. in September 2008, the turbulence in the global financial markets limited AIB's access to funding (as with other Irish banks) and affected its ability to continue normal operations. Hence, the State intervened in a first step by providing funding guarantees. In an environment of increased cost of funding (i.e. high deposit pricing and guarantee fees) and a significantly decreased European Central Bank ('ECB') base rate ⁽²²⁾, the bank's tracker mortgages (about 45 % of AIB's 2011 mortgage loan book) resulted in a substantially reduced net interest margin ('NIM') for the Bank.

⁽²¹⁾ Tracker mortgages are a type of variable rate mortgages. The mortgage interest rate tracks the European Central Bank base rate at a set margin above it.

⁽²²⁾ The ECB rate which was at 4,25 % in July 2008 went down to 1 % in May 2009.

- (37) The material deterioration of AIB's financial position led it to participate in all the support measures put in place by the Irish State to safeguard the financial stability in the country. In addition to the State guarantees, AIB received State capital injections and benefitted from asset transfers to the National Asset Management Agency ('NAMA') ⁽²³⁾ to clean up its balance sheet.
- (38) Similarly, the financial crisis impacted EBS's financial position, in particular as a consequence of the sharp reduction in property values in Ireland. Prior to that crisis, EBS had built up a considerable loan book in the segment of commercial property lending.
- (39) EBS had to take large impairments on its commercial and mortgage loan books. EBS's access to funding gradually deteriorated and ultimately reached a complete shutdown. Consequently, due to its vulnerable position, EBS was forced to make demands on the State's support measures. EBS needed funding guarantees, asset transfers to NAMA and capital injections.

2.3. THE AID MEASURES

- (40) Due to the difficulties faced by AIB and EBS, the State had to provide considerable support to AIB and EBS individually, as well as to the Bank (the merged entity).
- (41) On an individual basis, both AIB and EBS were granted guarantees on liability instruments under the Credit Institutions Financial Support ('CIFS') scheme ⁽²⁴⁾ and the Eligible Liability Guarantee ('ELG') scheme ⁽²⁵⁾ respectively, and asset relief measures consisting of the transfer of bad assets to NAMA.
- (42) In addition, AIB and EBS received repeated capital support ⁽²⁶⁾.
- (43) Moreover, the State granted guarantees on Emergency Liquidity Assistance provided by the Central Bank of Ireland.
- (44) The Bank continued to benefit from the ELG scheme and was recapitalised in July 2011 ⁽²⁷⁾ through an equity placing, a capital contribution ⁽²⁸⁾ and contingent capital notes.
- (45) The Bank's combined total recapitalisation measures (including preference shares and contingent capital instruments) amount to EUR 20,775 billion. As a result of the different capital injections, the Irish State, through the National Pension Reserve Fund Commission ('NPRFC'), owns 99,8 % of the ordinary shares of the Bank.
- (46) The NPRFC also holds preference shares in the amount of EUR 3,5 billion, which were originally injected into AIB in 2009 and approved by the Commission Decision in case N 241/09 ⁽²⁹⁾. Redemption/repurchase of those shares is at the discretion of the Bank. As of May 2014 (i.e. 5 years after injection), a step up of 25 % will be applied to those shares and redemption will be at 125 % of par value.

⁽²³⁾ See Commission Decision in Case N 725/09, Establishment of a National Asset Management Agency (NAMA) (OJ C 94, 14.4.2010, p. 10).

⁽²⁴⁾ See Commission Decision in Case NN 48/08, Guarantee Scheme for Banks in Ireland (OJ C 312, 6.12.2008, p. 2).

⁽²⁵⁾ See Commission Decision in Case N 349/09, Credit Institutions Eligible Liability Guarantee Scheme (OJ C 72, 20.3.2010, p. 6) and its prolongations.

⁽²⁶⁾ AIB: Commission Decision in Case N 241/09, and Commission Decision in Case SA.31891 (N 533/10)
EBS: Commission Decision in Case N 160/10.

⁽²⁷⁾ See footnote 10.

⁽²⁸⁾ The capital contribution by the Minister for Finance and the National Pension Reserve Fund Commission amounted to EUR 6,1 billion; no new shares were issued and no consideration was given in return for this capital contribution.

⁽²⁹⁾ Described in recitals 18 to 33 of Decision N 241/09.

(47) Table 3 provides a summary of all aid measures granted to AIB, EBS and the Bank (the merged entity).

Table 3

Overview of aid measures granted to AIB, EBS and the Bank (merged entity AIB/EBS)
(amounts approved and actually granted differ in some cases)

	Type of measure	Amount (in EUR bn)	Remuneration
	Measures in favour of AIB (standalone)		
a	Guarantees under the CIFS scheme (amount of guaranteed liabilities)	up to 133	In accordance with the CIFS scheme
b	Guarantees under the ELG scheme (amount of guaranteed liabilities)	up to 62,5	In accordance with the ELG scheme
c	Asset relief measure — transfers to NAMA	20,4 (estimated aid amount = 1,6) ⁽¹⁾	n.a. — average discount was approxi- mately 56 %
d	Recapitalisation in the form of prefer- ence shares, May 2009	3,5	8 % p.a. or ordinary shares in lieu
e	Recapitalisation in the form of new equity capital, December 2010	3,7	
f	State guarantee on Emergency Liquidity Assistance ('ELA') until Q2 2011	[5-15] (*)	
	Measures in favour of EBS		
g	Guarantees under the CIFS scheme (amount of guaranteed liabilities)	up to 14,4	In accordance with the CIFS scheme
h	Guarantees under the ELG scheme (amount of guaranteed liabilities)	up to 8,0	In accordance with the ELG scheme
i	Asset relief measure — transfers to NAMA	0,9 (estimated aid amount = 0,1) ⁽¹⁾	n.a. — average discount was approxi- mately 57 %
j	Recapitalisation in the form of Special Investment Shares (SIS), May and December 2010	0,625	Can be remunerated through the pay-out of a dividend if there are sufficient distri- butable reserves
k	Recapitalisation through a direct grant in the form of a promissory note, December 2010	0,250	Not remunerated separately
l	State guarantee on ELA	[0-5]	

	Type of measure	Amount (in EUR bn)	Remuneration
	Measures in favour of the Bank (the merged entity)		
m	Recapitalisation in the form of ordinary shares ('placing'), July 2011	5,0	
n	Recapitalisation in the form of contingent capital notes, July 2011	1,6	Fixed mandatory interest rate of 10 % p.a.
o	Recapitalisation in the form of a capital contribution, July 2011	6,1	Nil consideration
	Combined total recapitalisation (d + e + j + k + m + n + o)	20,775	

Source: Irish authorities and restructuring plans for AIB and EBS and the Bank.

(¹) The aid amounts related to the impaired asset relief measures for both AIB and EBS are estimated amounts since the latest tranches of assets transferred to NAMA must yet be approved by the Commission. Those estimations are based on information provided by Ireland on 14 February 2013.

(*) Business secret

2.4. THE INDIVIDUAL RESTRUCTURING PLANS

- (48) In November 2009, the Irish authorities submitted a first restructuring plan for AIB which set out first proposals on how AIB should return to viability. Ireland submitted an updated version of the plan in May 2010 which, among other things, provided for further disposals (AIB's Polish, UK and US subsidiaries) to meet the new minimum regulatory capital requirements announced by the Financial Regulator under the PCAR in March 2010.
- (49) The EBS restructuring plan, submitted on 31 May 2010, provided for an internal restructuring of EBS to ensure viability, combined with a quick sale to a third party. According to that plan, EBS would exit from commercial property lending and refocus its activities on retail savings and mortgage business. EBS would reduce its reliance on (short-term) wholesale funding and instead focus on retail deposits.

2.5. RESTRUCTURING MEASURES ALREADY IMPLEMENTED BY THE BANK (AIB AND EBS MERGED)

- (50) The Bank has already implemented a wide range of restructuring measures before submitting the final version of the restructuring plan, with a view to achieving the aims of long-term viability, own contribution and burden sharing. Those measures comprise business divestments, asset deleveraging, Liability Management Exercises (³⁰) and cost reduction actions, as follows (³¹):

— *Business divestments* that have generated EUR 3,3 billion of Core Tier 1 Capital:

Sep 10 Sale of Goodbody Stockbrokers

Nov 10 Sale of 23,9 % stake in M&T Corporation

Feb 11 Transfer of Anglo Irish Banks EUR 9 billion deposits to AIB

(³⁰) Liability Management Exercises: buy back or conversion of subordinated debt into capital instruments (Common Equity Tier 1), usually at a discount. These exercises could also take the form of a reduction in the face value of the debt or an early redemption at other than face value.

(³¹) Situation as at 30 June 2013.

Apr 11	Sale of 70,36 % stake in Polish BZWBK
Apr 11	Sale of 50,00 % stake in Polish BZWBK Asset Management
May 11	Sale of 49,99 % interest in Bulgarian American Credit Bank
Aug 11	Sale of AIB International Financial Services
Aug 11	Sale of AIB Jersey Trust
Jan 12	AIB announces decision to end joint venture with Aviva Life Holdings Ireland Ltd
Apr 12	AIB announces decision to cease operations in the Isle of Man and Jersey
Apr 12	Sale of business of AIB Baltics
Jun 12	Sale of AIB Investment Managers
Aug 12	Sale of interests in Polish property funds

- *Asset transfers* of EUR 21,3 billion to NAMA,
- *Asset deleveraging* arising from PLAR 2011 of EUR 20,5 billion (complete),
- *Liability Management Exercises/Debt Buy back* carried out in 2009, 2010 and 2011 respectively, contributed EUR 5,4 billion of Core Tier 1 Capital:

Jun 09	Tier 1 Hybrid buy back + EUR 1,1 billion capital contribution
Mar 10	Tier 2 bond buy back + EUR 0,4 billion capital contribution
Jan 11	Tier 2 bond buy back + EUR 1,5 billion capital contribution
Jul 11	Tier 1 and Tier 2 bond buy back + EUR 2,1 billion capital contribution
Jun 10– Feb 11	Series of EBS Tier 1 and 2 bond buy backs + EUR 0,3 billion capital contribution

- *Branch closures* (68 in Ireland, 22 EBS outlet closures, 22 AIB UK branches),
- *Early retirement and voluntary severance programme*: a reduction of +/- 2 877 FTE ⁽³²⁾ at 31 December 2013, with further exits planned,
- *Complete replacement of Board and senior management* positions (as compared to the pre-September 2008 profile),
- *Refocus of business* on Ireland, offering corporate and retail banking services.

2.6. THE RESTRUCTURING PLAN FOR THE BANK (AIB AND EBS MERGED)

- (51) On 28 September 2012, the Irish authorities submitted a restructuring plan for the Bank covering the period 2012 to 2015. The Irish authorities amended and supplemented that plan repeatedly, and the restructuring period was eventually fixed to comprise the years 2014 to 2017.
- (52) The Irish authorities submitted a base scenario, an alternative base scenario based on more prudent assumptions, and an adverse scenario with the aim of demonstrating the Bank's ability to achieve long-term viability.

⁽³²⁾ Full-time equivalent.

- (53) By the end of the restructuring period, the Bank plans to return to being a solid, profitable and well-funded institution with sound capital ratios and a more traditional business model. The plan sets out a business strategy that positions the Bank as a smaller full-service bank, primarily focused on Ireland, as compared to the internationally diversified financial services group that it used to be in pre-crisis times. The Bank's operating structure is based on three points of focus — the Domestic Core Bank, AIB UK (the UK business comprising business in Great Britain and Northern Ireland), and the Financial Solutions Group, created in 2012.
- (54) The main drivers of the Bank's return to viability are:
- (a) the re-orientation of the Bank into a smaller bank with an improved funding profile, primarily focused on Ireland;
 - (b) improved levels of profitability through NIM enhancement, cost reduction measures and significantly reduced impairment charges;
 - (c) a strong capital buffer.

2.6.1. The Base Case

2.6.1.1. Macroeconomic assumptions and key financial projections

- (55) In the base case, it is assumed that Gross Domestic Product ('GDP') in Ireland will grow by 2,2 % in 2014 and accelerate in 2015, 2016 and 2017 to 2,8 %, 3,2 % and 3,2 % respectively. GDP in the United Kingdom is expected to grow by 1,9 % in 2014, 2,1 % in 2015, 2,5 % in 2016 and 2,5 % in 2017.
- (56) Employment is expected to improve throughout the restructuring period, with an expected growth rate of 0,8 % in 2014, 1,5 % in 2015, 2 % in 2016 and 2 % in 2017.
- (57) Housing and construction are expected to rebound from very depressed activity levels. House prices are forecasted to increase by 3 % in 2014, by 3 % in 2015, by 2,5 % in 2016 and 2,5 % in 2017.
- (58) The restructuring plan of the Bank results in the following financial projections under the base case scenario:

Table 4

The Bank's financial results and financial projections under the base scenario

Key financial indicators	2012 Actual	2013 Actual	2014 Plan	2015 Plan	2016 Plan	2017 Plan
— Capital and Risk Weighted Assets ('RWAs')						
— Core Tier 1 ('CT1') ratio or Common Equity Tier 1 ('CET1') ratio (%)	15,2 %	14,3 %	[10-20 %]	[10-20 %]	[10-20 %]	[10-20 %]
— Capital buffer (EUR m) vs. 8 % CT1/CET1	5 133	3 934	[0-5 000]	[5 000-10 000]	[5 000-10 000]	[5 000-10 000]
— RWAs (EUR m)	71 417	62 395	[55 000-65 000]	[55 000-65 000]	[55 000-65 000]	[55 000-65 000]
— Profitability						
— NIM — excluding ELG (%)	1,22 %	1,37 %	[1,5-2,25 %]	[1,5-2,25 %]	[1,5-2,25 %]	[1,5-2,25 %]

Key financial indicators	2012 Actual	2013 Actual	2014 Plan	2015 Plan	2016 Plan	2017 Plan
— Cost income ratio	123 %	77 %	[60-70 %]	[50-60 %]	[45-55 %]	[45-55 %]
— Profit after tax (EUR m)	(3 557)	(1 597)	[0-750]	[0-750]	[250-1 250]	[250-1 250]
— Return on equity ('ROE') ⁽¹⁾	– 37,0 %	– 21,5 %	[0,5-10 %]	[0,5-10 %]	[5-15 %]	[5-15 %]
— Funding						
— LDR	115 %	100 %	[95-120 %]	[95-120 %]	[95-120 %]	[95-120 %]
— ECB reliance (% of total liabilities ⁽²⁾)	20 %	12 %	[10-20 %]	[< 10 %]	[< 10 %]	[< 10 %]
— Others						
— Gross loans and advances to customers (EUR m)	89 872	82 851	[70 000-80 000]	[65 000-75 000]	[65 000-75 000]	[65 000-75 000]
— Total Assets (EUR m)	122 501	117 734	[100 000-150 000]	[100 000-150 000]	[100 000-150 000]	[100 000-150 000]
— FTE (number)	13 429	11 431	[10 000-15 000]	[8 000-13 000]	[8 000-13 000]	[8 000-13 000]

Source: The Bank's restructuring plan and complementary submission of 10 January 2014, AIB 2013 annual report.

⁽¹⁾ ROE includes Preference Shares in average equity.

⁽²⁾ Excluding equity.

2.6.1.2. Main drivers of the Bank's return to viability

(i) a smaller domestically focussed bank with an improved funding profile

- (59) Through important non-core asset deleveraging ⁽³³⁾, the Bank aims to become a materially smaller institution when compared to the period preceding the financial crisis. The Bank has already completed important deleveraging through the disposal of several of its businesses, asset deleveraging and the transfer of 'high-risk property' related assets to NAMA (EUR 21,3 billion), which has enabled it to reduce significantly the size of its balance sheet. AIB Group's total assets have reduced from EUR 136,7 billion at the end of 2011 to EUR 117,7 billion at 31 December 2013 (a 14 % reduction) ⁽³⁴⁾.
- (60) This important deleveraging/downsizing programme undertaken by the Bank, combined with a growing customer deposit base (as from 2011), has contributed to improve the funding profile of the Bank. The proportion of customer deposits over the total source of funds (i.e. total liabilities ⁽³⁵⁾) improved from 49,7 % at the end of 2011 to 61,2 % at the end of 2013, while the LDR decreased from 138 % at the end of 2011 to 100 % at 31 December 2013.

⁽³³⁾ The PLAR 2011 deleveraging targets of EUR 20,5 billion have been completed.

⁽³⁴⁾ The reduction is even greater — amounting to 38 % — if measured against 2009 figures, prior to AIB and EBS merger, where AIB's and EBS's total assets respectively amounted to EUR 174,3 billion and EUR 21,5 billion.

⁽³⁵⁾ Excluding equity.

- (61) During the restructuring period, the Bank projects to further increase the proportion of customer deposits over the total source of its funds (i.e. total liabilities), while the proportion of ECB funding is expected to decrease significantly over the restructuring plan period, from 20 % in 2012 to [< 10 %] in 2017 (i.e. a decrease of EUR 15-25 billion), as a combination of projected lower loan volumes ⁽³⁶⁾, NAMA bond ⁽³⁷⁾ redemptions and increased deposits by banks.
- (62) The Bank is progressively regaining access to the wholesale market. In January and September 2013, the Bank issued two Mortgage Bank bonds of EUR 500 million each. In October 2013, the Bank issued a credit card securitisation for EUR 500 million, which was the first ever of its kind issued by an Irish bank. In November 2013, the Bank managed to place EUR 500 million of 3 year debt fully unsecured. This was the Bank's first unguaranteed debt transaction since 2009. In March 2014 the Bank issued a EUR 500 million 7 year secured Asset Covered Securities bond. This is the longest dated benchmark public Asset Covered Securities bond by AIB since 2007.
- (63) As regards forecasted liquidity ratios, considering the information available at this stage on the composition of the Liquidity Coverage Ratio ('LCR') which is still at a consultative stage at European Union level ⁽³⁸⁾, the Bank forecasts a LCR ratio during the restructuring period well above the minimum requirements (see Table 5).

Table 5

The Bank's liquidity ratios

(%)				
Liquidity ratios	2014 Plan	2015 Plan	2016 Plan	2017 Plan
LCR	[75-150]	[75-170]	[75-170]	[75-170]
Minimum LCR included in Regulation (EU) No 575/2013		60	70	80
Net Stable Funding Ratio	[70-120]	[70-120]	[70-120]	[70-120]

Source: the Bank's restructuring plan.

(ii) an improved level of profitability

- (64) The Bank projects to return to profitability in 2014, with a forecast profit after taxation of EUR [0-750] million, which will reach EUR [250-1 250] million in 2017. The return on equity ('ROE') is expected to be [0,5-10 %] in 2014 and [5-15 %] in 2017. This will be achieved in the following way.
- (65) First, the restructuring plan sets out a number of actions to drive the recovery of the NIM, excluding ELG costs, from 1,22 % in 2012 to [1,5-2,25 %] in 2017. Those actions comprise new lending of EUR [20-30] billion from 2014 to 2017 at higher interest rates, further improvement in the pricing of back-book ⁽³⁹⁾ loans and a further reduction of the cost of deposit products until 2015 (see Table 6). Furthermore, the Bank's proportion of low yielding assets (i.e. tracker mortgages and NAMA bonds) compared to total assets is projected to decrease over the restructuring period from [20-30 %] in 2014 to [10-20 %] in 2017 as a result of the redemption of NAMA bonds and the amortisation of the tracker mortgage portfolio for which no new lending is planned.

⁽³⁶⁾ The contraction of the loan portfolio results from write-offs and redemptions being jointly higher than the new production.

⁽³⁷⁾ Bonds issued by NAMA in return for the (bad) assets transferred to it from the participating credit institutions. More particularly, the purchase price of the assets transferred to NAMA has been paid through the issuance by NAMA of State-guaranteed senior debt securities/bonds for 95 % of the purchase price and the issuance of (non-State-guaranteed) subordinated debt securities for 5 %.

⁽³⁸⁾ The projected LCR ratios consider the NAMA bonds held by the Bank as High Quality Liquid Assets, as proposed by the European Banking Authority in its report on liquidity measures of December 2013. The final composition of the Net Stable Funding Ratio will be discussed in the future.

⁽³⁹⁾ Existing loan portfolio as compared to new production.

Table 6

The Bank's forecasted evolution of average yields on assets and liabilities

(%)

Average yield	2013 Actual	2014 Plan	2015 Plan	2016 Plan	2017 Plan
Average yield — New lending	[3-7]	[3-7]	[3-7]	[3-7]	[3-7]
Average yield — Back-book loans	[2-5]	[2-5]	[2-5]	[2-5]	[2-5]
Average yield — Total loans	2,74	[2-6]	[2-6]	[2-6]	[2-6]
Average yield — Deposits (including current accounts)	– 1,54	[– 0,5 to – 2,5]	[– 0,5 to – 2,5]	[– 0,5 to – 2,5]	[– 0,5 to – 2,5]

Source: The Bank's restructuring plan and complementary submission of 20 March 2014.

- (66) Second, the discontinuation of the ELG scheme as per 28 March 2013 will bring an improvement in the NIM after ELG costs since the guarantee fees paid to the State will be reduced. They amounted to EUR 0,4 billion in 2012 and are forecasted to be only EUR 8 million in 2017.
- (67) Third, with a view to reaching sustainable pre-provision operating profits, the Bank plans a further reduction of its operating costs from EUR 1,8 billion in 2012 to EUR [1,0-1,5] billion in 2015 and to EUR [1,0-1,5] billion in 2017. The two key initiatives underpinning this projected reduction are the Retirement and Voluntary Severance Scheme and the pay and benefits review announced in 2012. In this respect, the Bank projects a reduction of its staff of respectively [20-40] % by 2015 and of [20-40] % by 2017 as compared to 2012 levels, leading to a total decrease of [2 000 to 5 000] staff.
- (68) Finally, concerning the operating profit after provision and before exceptional items, the Bank plans a sharp reduction in loan impairment charges, from EUR 2,5 billion in 2012 to EUR [0-0,5] billion in 2014 and EUR [0-0,5] billion in 2017, as the plan assumes an economic recovery in Ireland. AIB expects this recovery to result in a slowdown in new defaulted loans. The provision plan also envisages more effective credit management activities, reflected in the establishment of the Financial Solution Group, and the Mortgage Arrears Resolution Strategy ⁽⁴⁰⁾ ('MARS') rollout. Those activities aim to improve the Bank's loans collection and restructuring effectiveness, thereby increasing the number of cured loans.

(iii) Maintaining a strong capital buffer

- (69) The Bank expects to maintain a strong capital buffer during the restructuring period, through increased retained earnings and reduced Risk Weighted Assets ('RWAs'). The Bank plans to increase its profits, which it plans to fully retain, through the actions described in recitals 65 to 68. RWAs are expected to decrease by around EUR [5-10] billion from 2013 to 2016, basically as a result of the continued contraction of the loan book (including write-offs, restructured impaired loans and loan amortisation), new treatment of deferred tax assets ('DTAs') ⁽⁴¹⁾, and the Bank's planned deployment of (a) an Internal Ratings-Based ('IRB') approach to the EBS loan book and (b) updated IRB models for the AIB loan book.
- (70) Furthermore, the Irish authorities have provided information that the CBI will reduce the minimum regulatory capital requirement ⁽⁴²⁾ from 10,5 % to [...] % in the near term, which has the effect of increasing the Bank's capital buffer by EUR [0-5] billion in 2014, all other things remaining equal. The target of 10,5 % that the CBI set in November 2010 in the context of the PCAR exercise will therefore no longer be relevant.

⁽⁴⁰⁾ The Bank's MARS was launched in 2012 and followed consultations with the Irish Government and the Central Bank of Ireland concerning potential solutions to the issue of mortgage arrears. Under this strategy, the Bank provides new forbearance options for mortgage customers. The MARS programme is now fully operational with more than 300 specialist staff in place to engage with mortgage customers experiencing financial difficulty.

⁽⁴¹⁾ As from 1 January 2014, under Basel III rules.

⁽⁴²⁾ For the purpose of this decision, 'minimum regulatory capital' means the capital required by the CBI for the Irish banks.

- (71) Considering a minimum regulatory capital requirement of 8 % Common Equity Tier 1 ('CET1') throughout the period, the capital buffer of the Bank is forecasted to be EUR [0-5] billion in 2014 and around EUR [5-10] billion in 2017. With a capital threshold of 5,5 % ⁽⁴³⁾ the capital buffer would be EUR [5-10] billion in 2014.
- (72) In addition, the Bank has Contingent Capital Instruments ⁽⁴⁴⁾ ('CoCos') of EUR 1,6 billion that could be converted into ordinary shares, if needed. Taking into account the CoCos, the capital buffer in 2014 would be EUR [5-10] billion with a minimum regulatory capital requirement of 8 %, and EUR [5-10] billion with a 5,5 % capital threshold.
- (73) The figures provided for the CET1 in recitals 71 and 72 include the appropriate phased-in deduction of DTAs ⁽⁴⁵⁾. The Bank's recognised DTAs, arising from unused tax losses, amount to EUR 3,9 billion at 31 December 2013.

2.6.2. The alternative base scenario

- (74) On 11 February 2014 the Bank submitted to the Commission an alternative base scenario (the 'alternative base case') based on more prudent assumptions as compared to the base case scenario. The more prudent assumptions concerned the evolution of RWAs, the Balance Sheet Assessment (BSA) results ⁽⁴⁶⁾, the volume of new lending, a different funding mix, higher cost of funds and higher provision charges as summarised in Table 7. As to the macroeconomic assumptions underpinning this alternative base scenario, they are the same as those underpinning the base scenario described in recitals 55 and 56.

Table 7

Alternative Base Scenario: main changes in the assumptions as compared to the base scenario

Variable	Alternative base scenario (change as compared to the base scenario)
RWAs	Includes the results of the BSA and ignores, for prudence reasons, the impact of the planned deployment of both new and updated IRB models, still needed to be approved by the CBI ⁽¹⁾ . As a result of those two changes, RWAs have increased by EUR [3-8] billion, EUR [3-8] billion and EUR [3-8] billion, as compared to the base scenario for the years 2014, 2015, 2016 and 2017 respectively.
Provisions for loan impairment	Includes the results of the BSA exercise fully. The BSA exercise identified an additional provisioning need of EUR 1,1 billion, of which only EUR [...] billion were reflected under the base scenario. This means that the provisions are EUR [...] billion higher under the alternative base scenario than in the base scenario in 2013, and reflects a more linear decrease towards pre-crisis level. This implied an additional provision charge of EUR [500-1 000] million in 2014, EUR [500-1 000] million in 2015, EUR [0-500] million in 2016 and [0-500] million in 2017 as compared to the base scenario.
New lending	Considers that new lending for the Commercial, Corporate and SME's portfolio for each forecasted year is limited to the forecasted GDP growth. This implies that the cumulated new production over the restructuring period is EUR [2-4] billion less than in the base scenario. (The new lending assumptions impacts RWAs by EUR [0-3] billion, EUR [0-3] billion, EUR [0-3] billion and EUR [0-3] billion for the years 2014, 2015, 2016 and 2017 respectively).

⁽⁴³⁾ In the context of the Comprehensive Assessment currently being carried out by the European Central Bank and the European Banking Authority, a threshold of 5,5 % of CET1 will be applied under an adverse scenario.

⁽⁴⁴⁾ The Bank's outstanding Contingent Capital Instruments are immediately and mandatorily redeemable and will convert to ordinary shares in the event that the Core Tier 1 capital ratio (respectively the CET1 Ratio after the CRD IV implementation date) falls below the trigger ratio of 8,25 %. CRD IV package (Capital Requirements Directive and Regulation) (OJ L 176, 27.6.2013, p. 1).

⁽⁴⁵⁾ The new rules under CRD IV package will, inter alia, require the Bank to deduct from its CET1 the value of most of its deferred tax assets, including all deferred tax assets arising from unused tax losses. The deduction from CET1 is to be phased-in evenly over 10 years.

⁽⁴⁶⁾ The CBI conducted a BSA exercise of the credit institutions subject to the PCAR (AIB, BoI and PTSB) in 2013. The requirement to complete such an assessment was agreed with the International Monetary Fund, the Commission and the European Central Bank as part of the Programme. This exercise, which is a point in time exercise as it did not take into account future earnings or losses not yet realised, aims at re-estimating provisions and RWAs to assess the banks' capital adequacy at June 2013.

Variable	Alternative base scenario (change as compared to the base scenario)
Funding mix	Includes a higher proportion (by 2 % to 3 %) of long term funding until 2016 as compared to the base scenario.
Cost of funds	Considers that the evolution of the cost of deposits for retail fix term accounts, SME and Corporate deposits follows more closely the evolution of the projected ECB base rate, as compared to the base scenario.

Source: The Bank's restructuring plan and complementary submission of 11 February and 27 March 2014.

(¹) See recital 69.

- (75) According to those more prudent assumptions, the Bank will not return to profitability before 2016, with a forecasted profit after tax of EUR [0-750] million, which will reach EUR [250-1 250] million in 2017. ROE is expected to be [0,5-10] % in 2016 and [5-15] % in 2017.
- (76) The Bank's capital buffer is forecast to be around EUR [2-6] billion in 2014 and EUR [2-6] billion in 2017 considering an 8 % minimum regulatory capital requirement. Taking into account the CoCos, the capital buffer in 2014 would be EUR [3-8] billion with 8 % capital requirements (and EUR [3-8] billion with 5,5 % capital threshold).

Table 8

The Bank's financial projections under the alternative base scenario

Key financial indicators	2014 Plan	2015 Plan	2016 Plan	2017 Plan
— Capital and RWAs				
— CT1 ratio or CET1 ratio (%)	[10-20 %]	[10-20 %]	[10-20 %]	[10-20 %]
— Capital buffer (EUR m) vs. 8 % CT1/CET1	[2 000-6 000]	[2 000-6 000]	[2 000-6 000]	[2 000-6 000]
— Capital buffer (EUR m) vs. 8 % CT1/CET1 including the conversion of CoCos	[3 000-8 000]	[3 000-8 000]	[3 000-8 000]	[3 000-8 000]
— RWAs (EUR m)	[55 000-65 000]	[55 000-65 000]	[55 000-65 000]	[50 000-60 000]
— Profitability				
— NIM — excluding ELG costs (%)	[1,5-2,25 %]	[1,5-2,25 %]	[1,5-2,25 %]	[1,5-2,25 %]
— Cost income ratio	[60-70 %]	[60-70 %]	[50-60 %]	[45-55 %]
— Profit after tax (EUR m)	[EUR -ve 0-750]	[EUR -ve 0-750]	[0-750]	[250-1 250]
— ROE	[Not meaningful]	[Not meaningful]	[0,5-10 %]	[5-15 %]

Key financial indicators	2014 Plan	2015 Plan	2016 Plan	2017 Plan
— Funding				
— LDR	[95-120 %]	[95-120 %]	[95-120 %]	[95-120 %]
— Others				
— Gross loans and advances to customers (EUR m)	[70 000-80 000]	[65 000-75 000]	[65 000-75 000]	[65 000-75 000]
— Total Assets (EUR m)	[100 000-150 000]	[100 000-150 000]	[100 000-150 000]	[100 000-150 000]

Source: The Bank restructuring plan and complementary submission of 11 February and 27 March 2014.

2.6.3. The adverse case

- (77) In the adverse case submitted by the Bank, GDP in Ireland is expected to grow by 1 % in 2014, 1,5 % in 2015, 2,2 % in 2016 and 2,2 % in 2017. The employment growth is delayed until 2015, when it is expected to grow by 0,5 %, 1 % in 2016 and 1 % in 2017. House prices are forecasted to increase by 1,2 % in 2014, and by 1,7 % in 2015 by 1,9 % in 2016 and by 1,9 % in 2017. GDP in the UK is expected to increase by 0,8 % in 2014, by 1 % in 2015, by 1,5 % in 2016 and by 1,5 % in 2017.
- (78) The adverse case is based on more severe macroeconomic assumptions as compared to both the base scenario and the alternative base scenario. Nevertheless, the alternative base scenario leads to lower profitability and a lower capital buffer as compared to the adverse scenario because the assumptions underpinning the Bank's financial projections regarding the evolution of its business are more severe in the alternative base case than in the adverse scenario.
- (79) The Bank's operating income in the adverse case is forecasted to increase from EUR [1-3] billion in 2014 to EUR [1-3] billion in 2017. Operating profit before provisions is projected to increase from EUR [0-1] billion in 2014 to EUR [0,75-1,75] billion in 2017. In the adverse case, the Bank is expected to return to profitability in [2014-2016], with a profit before tax of EUR [0-750] million.
- (80) The cost income ratio is forecasted to improve from [60-70] % in 2014 to [45-55] % in 2017.
- (81) In the adverse case, the Bank's CET1 ratios are forecasted to be at [10-20] % in 2014, [10-20] % in 2015, [10-20] % in 2016 and [10-20] % in 2017. This would mean a capital buffer of EUR [3-8] billion in 2014, EUR [3-8] billion in 2015, EUR [3-8] billion in 2016 and EUR [3-8] billion in 2017, considering a minimum regulatory capital requirement of 8 %.

2.7. REPAYMENT SCHEDULE

- (82) Prior to the end of the restructuring period, the Bank will start to repay the State aid via the payment of dividends or other means, provided that it has at least 1-4 % surplus capital above the regulatory minimum CET1 ratio (on a Basel III fully implemented basis) as set by the CBI on 31 December 2016. The repaid amount will equal the surplus above the regulatory minimum CET1 ratio plus 1-4 %.
- (83) To facilitate this repayment, the Bank will not take any steps that would lead to a capital outflow prior to [...] unless [...].
- (84) The Bank retains the options to partially or fully convert the NPRFC Preference Shares at par up to 13 May 2014 and thereafter at 125 % of the subscription price, in advance of, or as part of an exit (or partial exit) event which arises for the State involving the private sector.

- (85) In principle, the Bank can dispose of the State's CoCos at any time. However, Ireland has given the commitment that the Bank will not redeem the CoCos until after the results of the Asset Quality Review/Stress Test ('AQR/ST') ⁽⁴⁷⁾, performed by the ECB and the European Banking Authority ('EBA') have been made public, and subject to regulatory approval.

2.8. COMMITMENTS PROPOSED BY IRELAND

- (86) The Irish authorities have given a number of commitments that will be observed by the Bank during the restructuring period. Those commitments relate to:
- restructuring of the mortgages and SME loan portfolios
 - meeting quantitative restructuring targets for restructuring/proposing sustainable solutions,
 - the optimal restructuring option will be based on Net Present Value maximisation,
 - new lending to [...] is limited to [...] in [...] and [...]. New lending may exceed the limits provided the aggregate closing gross loan balance does not exceed [...] at the end of [...] and [...] at the end of [...], respectively,
 - the repayment of the State aid (through dividends if the capital ratio of the bank exceeds the minimum regulatory capital requirement plus 1-4 %, as of 2016),
 - the contingent capital notes (CoCos, EUR 1,6 billion) will not be redeemed before the results of the AQR/ST become known,
 - a cost reduction of EUR [200-600] million by 2015 as compared to 2012, and a cost income ratio of [45-65] % or [50-70] %, respectively, if GDP growth is below 2 %,
 - the limitation of exposure to Irish Sovereign bonds to EUR [10-20] billion,
 - behavioural commitments on limiting acquisitions, marketing and advertising and sponsorship in Ireland, dividend ban, coupon ban on existing instruments,
 - measures to enhance competition in the Irish banking market ('market opening measures', comprising a services package and a customer mobility package),
 - the appointment of a monitoring trustee to watch over the respect of those commitments.
- (87) Ireland has undertaken to ensure that the restructuring plan submitted on 28 September 2012, as supplemented, is implemented in full, including the commitments set out in detail in the Annex.

3. THE OPENING DECISION REGARDING EBS

- (88) On 31 May 2010, the Irish authorities submitted a restructuring plan for EBS. The Commission initiated an in-depth investigation because it had doubts on the compatibility of that restructuring plan with the internal market. In particular, the Commission expressed doubts as to whether:
- (i) the restructuring plan was apt to restore EBS's long-term viability;
 - (ii) the aid was limited to the minimum necessary;
 - (iii) sufficient measures limiting distortions of competition existed.
- (89) The Commission noted that the financial forecasting in the restructuring plan was inconsistent and lacked sufficient information on the macroeconomic assumptions under the adverse case scenario. In addition, the Commission doubted the assumptions underlying the calculations of EBS as to the evolution of mortgage lending in Ireland in the medium-term. The Commission also sought additional clarification as to the assumptions of

⁽⁴⁷⁾ Comprehensive Assessment, performed by the European Central Bank and the European Banking Authority, including an Asset Quality Review and Stress Test of major European banks. Results are expected for October 2014.

EBS as regards the corporate deposit market. The Commission took the view that the EBS restructuring plan underestimated the level of impairment of mortgage loans for the specified period, and lacked a thorough analysis with regard to impairments on commercial loan book in run-off. Finally, the Commission expressed doubts concerning the calculation of EBS's cost income ratio and the cost of wholesale funding in the medium-term.

- (90) Regarding the limitation of aid to the minimum, the Commission observed that it had insufficient information to conclude whether that requirement would be fulfilled, given the discrepancy between the objective of the recapitalisation and the forecasts of the restructuring plan which set out that EBS would largely exceed the minimum regulatory capital requirement.
- (91) Finally, the Commission expressed doubts whether the measures to limit distortions of competition set out in the plan were sufficient. Specifically, the Commission criticised that the proposed balance sheet reduction was far less substantial than the Commission would normally have expected from a bank having received such a high amount of aid, both in absolute terms and in terms of risk weighted assets.
- (92) The Commission received comments from EBS, who provided additional elements to support the restructuring plan. In addition, two interested parties submitted comments which largely confirmed the Commission's doubts as to the adequacy of the proposed measures to address distortions of competition and burden sharing. Ireland did not provide any comments.
- (93) In July 2011, EBS merged with AIB and became a fully integrated subsidiary of the Bank. As a result, EBS ceased to exist on a standalone basis. Therefore, the Opening Decision, which related to EBS as a standalone entity, became nugatory and the Commission decided not pursue the procedure any further. Moreover, since the comments submitted by EBS and the two interested parties relate to measures to address distortions of competition and burden sharing under a restructuring plan submitted for EBS which will no longer be implemented, those comments are not relevant as regards the restructuring plan submitted for the Bank (AIB and EBS merged), so that there is no reason for the Commission to examine them in the present decision. Instead, in Section 5.2 of this Decision the Commission examines the compatibility of the aid measures originally granted in favour of EBS, along with the measures originally granted in favour of AIB and those granted in favour of the Bank, in light of the restructuring plan submitted for the Bank, including the viability of the Bank, the limitation of the aid to the minimum, and the appropriateness of the measures to limit distortions of competition.

4. POSITION OF THE IRISH AUTHORITIES

- (94) Ireland accepts that the measures constitute State aid and is of the view that the measures are compatible with the internal market on the basis of Article 107(3)(b) of the Treaty as they are necessary to remedy a serious disturbance in the Irish economy.
- (95) As described in Section 2.7 of this Decision, Ireland has given a series of commitments, which are set out in detail in the Annex.

5. ASSESSMENT

5.1. EXISTENCE OF STATE AID

- (96) The Commission must first assess whether the measures granted to the beneficiaries constitute State aid within the meaning of Article 107(1) of the Treaty. According to that provision, State aid is any aid granted by a Member State or through State resources in any form whatsoever which distorts, or threatens to distort, competition by favouring certain undertakings, in so far as it affects trade between Member States.
- (97) The qualification of a measure as State aid requires the following conditions to be met: (i) the measure must be financed through State resources; (ii) it must grant an advantage upon its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States. Those conditions being cumulative, they must all be present before a measure is characterised as State aid.

- (98) The Commission has already established in previous decisions ⁽⁴⁸⁾ that the conditions set out in Article 107(1) of the Treaty are met for all restructuring aid measures listed in Table 3 and that those measures therefore constitute aid within the meaning of that provision. The Commission maintains that view and notes that the total aid amount of the recapitalisation and impaired asset measures has been calculated at EUR 22,475 billion. That amount comprises recapitalisations for AIB and EBS and the merged entity of EUR 20,775 billion and impaired asset measures for AIB and EBS of EUR 1,7 billion (estimated amount). Moreover, the Commission has taken into account guarantees in favour of AIB and EBS ⁽⁴⁹⁾.
- (99) In addition, the Commission considers that the redemption of the 2009 Preference Shares (before or after the step up) and the subsequent reinjection of the same amount in the form of ordinary shares do not constitute new aid. The Commission has already approved that measure in the Decisions in cases N 241/09 and SA.32891 (N 553/10).

5.2. COMPATIBILITY

5.2.1. Application of Article 107(3)(b) of the Treaty

- (100) Article 107(3)(b) of the Treaty sets out that State aid can be regarded as compatible with the internal market where it is granted to *'remedy a serious disturbance in the economy of a Member State'*.
- (101) Despite a slow economic recovery which was observed since 2013, the Commission still considers that the requirements for State aid to be approved pursuant to Article 107(3)(b) of the Treaty continue to be fulfilled in view of the persisting stress in financial markets. In July 2013, the Commission confirmed that view by adopting the Communication on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ⁽⁵⁰⁾.
- (102) The CBI has already confirmed on earlier occasions that the Bank has systemic importance for the financial market in Ireland ⁽⁵¹⁾. Without the restructuring aid measures granted, the supervisory authority might have closed the Bank, or AIB and EBS pre-merger, due to a breach of minimum regulatory capital requirements.

5.2.2. Compatibility assessment

- (103) All measures identified as State aid have been provided in the context of the restructuring of the Bank (the merged entity). The Restructuring Communication sets out the rules applicable to the granting of restructuring aid to financial institutions in the current crisis. According to the Restructuring Communication, to be compatible with the internal market under Article 107(3)(b) of the Treaty, the restructuring of a financial institution in the context of the current financial crisis has to (i) lead to the restoration of the viability of the bank, (ii) include sufficient own contribution by the beneficiary (burden-sharing) and ensure that the aid is limited to the minimum necessary and (iii) contain sufficient measures limiting the distortion of competition.
- (104) For its compatibility assessment, the Commission has based itself on the alternative base scenario proposed by the Bank, which relies on more prudent assumptions than the base scenario.

Restoration of long-term viability

- (105) As the Commission has indicated in the Restructuring Communication, the Member State needs to provide a comprehensive restructuring plan which shows how the long-term viability of the entity will be restored without State aid within a reasonable period of time and within a maximum of 5 years. According to point 13 of the Restructuring Communication, long-term viability is achieved when a bank is able to compete in the marketplace for capital on its own merits in compliance with the relevant regulatory requirements. For a bank to do so,

⁽⁴⁸⁾ For recapitalisation measures see: Decision in case N 160/10, recitals 40 to 47; Decision in case N 241/09, recitals 43 to 48; Decision in case SA.31891 (N 553/10), recitals 59 to 65 and Decision in case SA.33296, recitals 54 to 60. In addition, the Commission has established in prior decisions that support granted under the CIFS and ELG schemes as well as under NAMA constitute State aid (see recitals 37 and 41).

⁽⁴⁹⁾ See Table 3 for the respective amounts under the CIFS and ELG schemes.

⁽⁵⁰⁾ OJ C 216, 30.7.2013, p. 1 (see in particular point 6).

⁽⁵¹⁾ Letter from the Governor of the Central Bank of Ireland to the Minister for Finance on 19 November 2010.

it must be able to cover all its costs and provide an appropriate return on equity, taking into account the risk profile of the bank. Point 14 of the Restructuring Communication stipulates that long-term viability requires that any State aid received is either redeemed over time or is remunerated according to normal market conditions, thereby ensuring that any form of additional State aid is terminated.

- (106) The Irish authorities have submitted a restructuring plan which sets out the Bank's strategy to return to viability without further State aid by focusing on (i) the re-orientation of the Bank into a smaller institution, focused on Ireland, with an improved funding profile; (ii) improved levels of profitability through NIM enhancement, cost reductions measures and gradually reduced impairment charges; and (iii) maintaining a strong capital buffer.

(i) a smaller institution, focused on Ireland, with an improved funding profile

- (107) The Bank has already undertaken far-reaching restructuring measures which led to a considerably smaller balance sheet as compared to pre-crisis levels, which were the result of uncontrolled growth (EUR 118 billion in 2013 compared to EUR 136,7 billion in 2011 ⁽⁵²⁾). The reduction was notably achieved through foreign business disposals, transfers of 'high-risk property' assets to NAMA and other asset deleveraging ⁽⁵³⁾. As a result, the Bank's current exposure to the property and construction sector has been reduced and is expected to further decrease in relative terms until the end of the restructuring period. The Commission considers that the new strategy is prudent and appropriate in a post-crisis environment. The Bank has given a commitment to limit lending to [...] to underpin its more prudent business strategy.

- (108) The Bank is also strengthening its return to a more conservative traditional banking model where it will substantially fund its loan portfolio through customer deposits with a projected LDR below [95-120] % at the end of the restructuring period under the alternative base scenario. That target is the result of the ambitious and well-achieved deleveraging plan and relatively prudent assumptions regarding the evolution of the volume of deposits. The Commission notes positively that the Bank projects not to be overly dependent on wholesale funding and institutional funding sources, such as ECB funding, according to the alternative base scenario.

(ii) improved levels of profitability

- (109) With regard to the return to profitability, the plan sets out an appropriate mix of planned actions. New lending will be granted at higher interest rates. In addition, the pricing of (back-book) loans and deposits will be improved where possible. These measures, together with the discontinuation of the ELG scheme guarantee fees, will enable the Bank to progressively drive the recovery of its NIM.

- (110) Furthermore, the Bank's planned actions, notably the staff severance programme ⁽⁵⁴⁾ and the pay and benefits review, which aim at reducing its operating costs (by EUR [200-600] million by 2015 as compared to 2012 levels) will enable it to reach a more sustainable operating cost base in light of the Bank's prospects/ability to generate revenue. Those actions, combined with the planned increase in income, will help the Bank to significantly improve its cost income ratio (forecasted at [45-55] % in 2017 as compared to 123 % in 2012). In that respect, the Commission welcomes the commitment given by Ireland on the reduction of the Bank's operating costs by EUR [200-600] million by 2015 as compared to 2012 and the commitment that the cost income ratio will not exceed [45-65] % (unless GDP growth is below 2 %, in which event the cost income ratio will not exceed [50-70] %).

- (111) The Bank forecasts progressively decreasing impairment charges over the restructuring period under the alternative base scenario. This decreasing trend is considered appropriate given that (i) the expected economic recovery in Ireland should slowdown the pace of new defaulted loans, (ii) the projected increase in house prices should limit loss severity on mortgage loans and (iii) the Bank's strengthened credit management activities ⁽⁵⁵⁾ should accelerate/improve loans collections and loans restructuring. In that respect, the Commission welcomes the commitment given by Ireland in relation to the Bank's qualitative and quantitative restructuring targets relating to the SME and mortgage loan portfolio.

⁽⁵²⁾ The size of the balance sheet reduction is even greater when looking at the 2009 balance sheet sizes of AIB and EBS pre-merger. Together, the two institutions had assets exceeding EUR 195 billion in 2009.

⁽⁵³⁾ See Section 2.5 of this Decision.

⁽⁵⁴⁾ Early retirement and voluntary severance programme.

⁽⁵⁵⁾ As described in recital 68.

- (112) Under the alternative base scenario, the Bank will not return to profitability before 2016. Notwithstanding the impact of impairment charges, the Bank's profitability is structurally weak due to a large legacy portfolio of low-yielding assets (tracker mortgages and NAMA bonds). As a result, the ROE will remain low until the end of the restructuring period, reaching only [5-15] % in 2017. The Commission considers nevertheless that the Bank is on the right path to reach more competing ROE levels/profitability in the future, as the new lending with higher margins and the re-priced (back-book) loans will progressively compensate the drag on profitability stemming from those low-yielding legacy assets. Therefore, profitability is expected to gradually improve.

(iii) a strong capital buffer

- (113) Finally, the Commission notes positively that the Bank is a well-capitalised institution which has a comfortable capital buffer up until the end of the restructuring period. Under the alternative base scenario, the Bank will maintain a capital buffer of EUR [2-6] billion in 2017 with a minimum regulatory capital requirement of 8 % (and EUR [3-8] billion with a 5,5 % threshold), which would enable the Bank to absorb further losses if the economic recovery of Ireland is lower than forecasted. Furthermore, the Bank has EUR 1,6 billion of CoCos available to strengthen its capital base if needed. In this respect, Ireland has given the commitment that the Bank will not redeem the CoCos until the results of the AQR/ST have been made public.

- (114) The Commission takes note that the Bank plans to redeem the 2009 Preference shares ⁽⁵⁶⁾ before the end of the restructuring period. Until 13 May 2014, redemption is at par, and after that date a step up of 25 % will be applied. It is envisaged that the amount of the Preference Shares would be redeemed to the State, who would immediately reinvest the same amount in the form of equity (ordinary shares) in the Bank. As a consequence, there will be no change to the size of the Bank's balance sheet. However, the Bank's capital structure will be improved in light of the new Basel III rules ⁽⁵⁷⁾. Moreover, the State's stake in the Bank will increase marginally from its current level of 99,8 % as a consequence of that operation.

(iv) conclusion

- (115) The initiatives already undertaken by AIB (i.e. deleveraging, cost reductions, improved funding profile) combined with those planned throughout the restructuring period in order to restore its profitability (i.e. new lending at higher price/re-pricing of back-book loans and deposits, further staff related cost reductions and strengthened credit management activities ⁽⁵⁸⁾) are appropriate regarding the nature of the Bank's financial difficulties ⁽⁵⁹⁾.
- (116) Accordingly, the restructuring plan convincingly sets out the right strategy for the Bank's return to long-term viability. The combination of the actions described above appears apt to ensure the Bank's future viability without further State support.
- (117) However, the Bank's return to profitability might be protracted until the end of the restructuring period due to the Bank's low-yielding legacy assets. Therefore, the Bank's ROE, under the alternative base case scenario, remains at a comparatively low level, even at the end of the restructuring period, but shows a moderate upward trend.
- (118) Taking into account the above elements, the Commission concludes overall that the restructuring plan of the Bank convincingly sets out the path to restoring its long-term viability.

Limiting aid to the minimum: own contribution and burden sharing

- (119) Section 3 of the Restructuring Communication indicates that an appropriate contribution by the beneficiary is necessary to limit the aid to a minimum and to address distortions of competition and moral hazard. To that end, it provides that (i) the amount of aid should be limited and (ii) a significant own contribution is necessary.

⁽⁵⁶⁾ See recital 46.

⁽⁵⁷⁾ Preference shares will no longer count as CET1 capital as of 1 January 2018.

⁽⁵⁸⁾ As described in recital 68.

⁽⁵⁹⁾ See recitals 32 to 39.

- (120) The Restructuring Communication further provides that, to keep the aid limited to the minimum, the bank should first use its own resources to finance the restructuring. The costs associated with the restructuring should not only be borne by the State but also by those who invested in the bank. That objective is achieved in particular by absorbing losses with available capital.
- (121) Quasi full burden sharing has been achieved from the former owners of AIB. Shareholders have been wiped out and the State currently owns 99,8 % of the Bank. The Commission therefore considers that the amount of burden-sharing from the former owners is significant and adequate.
- (122) With regard to subordinated debt holders, a series of Liability Management Exercises/Debt Buy Backs were carried out between 2009 and 2011, which have contributed EUR 5,4 billion of Core Tier 1 capital (buy back of Tier 1 and Tier 2 instruments). Currently, only a marginal amount of subordinated debt remains in the Bank (i.e. around EUR 34 million at 31 December 2012) [...]. Therefore, subordinated creditors have adequately contributed to bearing the restructuring costs.
- (123) Moreover, the Bank has contributed significantly to bearing the restructuring cost by selling subsidiaries and participations ⁽⁶⁰⁾. By doing so, the Bank contributed EUR 3,3 billion of Core Tier 1 Capital to limit the aid to the minimum necessary.
- (124) The Bank pays a fixed remuneration of 10 % on the CoCos and 8 % on the preference shares (in cash or through the issuance of new ordinary shares in lieu). In addition, a step up of 25 % is applied on the preference shares if the Bank does not repurchase them up to 13 May 2014. The Commission considered that remuneration as appropriate, albeit at a low level, in the light of AIB's/the Bank's distressed situation ⁽⁶¹⁾.
- (125) Considering the above, the Commission concludes that the Bank's restructuring plan provides for appropriate own contribution and burden-sharing.

Measures limiting the distortions of competition

- (126) Section 4 of the Restructuring Communication requires that the restructuring plan contains measures limiting distortions of competition. Such measures should address the distortions on the markets where the beneficiary operates after restructuring. In the present case it needs to be ensured that potential new entrants can easily enter the concentrated Irish banking market to boost competition.
- (127) The Bank commits to operate between July 2014 and June 2017 certain competition measures, namely the provision to relevant competitors ⁽⁶²⁾ of a Services Package and a Customer Mobility Package.
- (128) The Service Package aims at reducing the cost of entry or the cost of expansion of a competitor. In particular, the beneficiary of the Service Package will receive support for several back-up functions (such as clearing, treatment of paper transactions) at incremental cost by the Bank (costs directly incurred by the provision of that service), and may then decide to invest in its own infrastructure only at a later stage when its customer base is large enough to absorb fixed costs. That beneficiary will also access the Bank's ATM network at incremental cost, immediately offering a national coverage to its customers.
- (129) The Customer Mobility Package will reduce the costs of customer acquisition for its beneficiaries. The beneficiaries will contact the Bank's customers, via the Bank, and will present them with alternative products for their current accounts, personal credit card products, business current accounts, business credit cards, mortgages and SME and corporate loans. Although it is difficult to predict how many customers of the Bank will decide to switch their banking products to the beneficiaries of the measure, this customer approach is more targeted and less costly than general advertising measures.
- (130) The measures described above provide a framework to stimulate new entry on the Irish banking market and hence limit the distortions of competition caused by the aid granted to the Bank.

⁽⁶⁰⁾ See Section 2.5 of this Decision.

⁽⁶¹⁾ See recitals 62 to 82 of the Decision in case N 241/09, and recitals 76 to 78 of the Decision in case SA.33296.

⁽⁶²⁾ For the purpose of that commitment, 'relevant competitor' is defined as a credit institution operating in Ireland which is not under a State aid restructuring period when requesting measures under the Services or Customer Mobility Package.

- (131) In addition, the Commission views positively the commitments given by Ireland which relate to certain business restrictions during the restructuring period, in particular the cap on lending to [...] in [...] and [...]. The acquisition ban will also ensure that the State aid will not be used to take over competitors, but to serve its intended purpose, namely to finance the restructuring process. Moreover, the Bank will respect behavioural commitments relating to a ban on advertising and sponsorship ⁽⁶³⁾.

Implementation and monitoring

- (132) Finally, Section 5 of the Restructuring Communication requires that detailed regular reports are made available to the Commission so that it can verify that the restructuring plan is being implemented properly.
- (133) A monitoring trustee will be appointed who will provide regular reports to the Commission on the implementation of the restructuring plan by the Bank and the respect of the commitments given.
- (134) Taking into account the commitments, the far-reaching restructuring measures already implemented by the Bank and in light of the appropriateness of the own contribution and burden-sharing as set out above, the Commission considers that there are sufficient safeguards to limit potential distortions of competition despite the high amount of aid granted to AIB and EBS before and after their merger.

5.3. CONCLUSION ON THE EXISTENCE OF AID AND COMPATIBILITY

- (135) The measures 'a' to 'o' listed in Table 3 are considered to be restructuring aid within the meaning of Article 107(1) of the Treaty. In view of the commitments made by Ireland, the Commission concludes that the restructuring plan for the Bank is in line with the Restructuring Communication, the restructuring aid is limited to the minimum necessary and competition distortions are sufficiently addressed. The restructuring aid is thus compatible with the internal market pursuant to Article 107(3)(b) of the Treaty. Accordingly, the Commission,

HAS ADOPTED THIS DECISION:

Article 1

1. The following measures constitute State aid pursuant to Article 107(1) of the Treaty:

— Measures granted in favour of AIB

- (a) guarantees under the CIFS scheme of up to EUR 133 billion;
- (b) guarantees under the ELG scheme of up to EUR 62,5 billion;
- (c) an asset relief measure (transfers to NAMA of EUR 20,4 billion), constituting and estimated aid amount of EUR 1,6 billion;
- (d) a recapitalisation in the form of preference shares in May 2009 for an amount of EUR 3,5 billion;
- (e) a recapitalisation in the form of new equity capital in December 2010 for an amount of EUR 3,7 billion;
- (f) a State guarantee on Emergency Liquidity Assistance until Q2 2011 for an amount of [EUR 5-15 billion];

— Measures granted in favour of EBS

- (g) guarantees under the CIFS scheme of up to EUR 14,4 billion;
- (h) guarantees under the ELG scheme of up to EUR 8,0 billion;
- (i) an asset relief measure (transfers to NAMA of EUR 0,9 billion), constituting and estimated aid amount of EUR 0,1 billion;

⁽⁶³⁾ See recital 86 and the Annex.

- (j) a recapitalisation in the form of Special Investment Shares in May and December 2010 for an amount of EUR 0,625 billion;
 - (k) a recapitalisation through a direct grant in the form of a promissory note in December 2010 for an amount of EUR 0,25 billion;
 - (l) a State guarantee on Emergency Liquidity Assistance for an amount of [EUR 0-5 billion];
- Measures granted in favour of the Bank (the merged entity)
- (m) a recapitalisation in the form of ordinary shares in July 2011 for an amount of EUR 5 billion;
 - (n) a recapitalisation in the form of contingent capital notes in July 2011 for an amount of EUR 1,6 billion;
 - (o) a recapitalisation in the form of a capital contribution in July 2011 for an amount of EUR 6,1 billion.
2. The State aid referred to in paragraph 1 is compatible with the internal market in accordance with Article 107(3) of the Treaty in the light of the restructuring plan and the commitments set out in the Annex.

Article 2

Ireland shall ensure that the restructuring plan submitted on 28 September 2012, including the subsequent modifications made thereto, is implemented in full, including the commitments set out in the Annex.

Article 3

This Decision is addressed to Ireland.

Done at Brussels, 7 May 2014.

For the Commission
Joaquín ALMUNIA
Vice-President

ANNEX

TERM SHEET — CASE SA.29786 — IRELAND — RESTRUCTURING OF AIB

Ireland undertakes to ensure that the Restructuring Plan for AIB, submitted in September 2012, as amended and supplemented by written communications, is correctly and fully implemented. This document (the 'Term Sheet') sets out the terms (the 'Commitments') for the restructuring of AIB, which Ireland has committed to implement.

1. Definitions

In this document, unless the context requires otherwise, the singular shall include the plural (and vice versa) and the capitalised terms used herein have the following meanings:

- 1.1. 'Acquisition' shall have the meaning ascribed to it in Clause 6.1 herein.
- 1.2. 'AIB' means Allied Irish Banks, p.l.c., including its subsidiary and associated companies.
- 1.3. 'Annual Operating Expenses' means the aggregate of (1) personnel expenses, (2) general and administrative expenses, and (3) depreciation, impairment and amortisation.
- 1.4. 'Business Day' means a day between and including Monday to Friday but does not include any public holiday in Ireland.
- 1.5. 'Capital Outflow' means the payment of dividends to the State on Ordinary Stock and the repurchase of Ordinary Stock from the State.
- 1.6. 'Central Bank' means the Central Bank of Ireland.
- 1.7. 'CIR' means Cost to Income Ratio, calculated as operating expenses divided by operating income.
- 1.8. 'Clause' means a clause in this document only and such a clause forms part of the document. However, headings to Clauses are for convenience only and are not binding.
- 1.9. 'Comprehensive Assessment' means the 2014 EU-wide stress test being undertaken by the European Central Bank and the European Banking Authority which will enhance the transparency of the balance sheets of significant banks, including AIB.
- 1.10. 'Contingent Capital Instrument' means the contingent EUR 1,6 billion Tier 2 debt instrument issued by AIB to the State and described in more detail in the Listing Particulars dated 27 October 2011.
- 1.11. 'Customer Mobility Package' means the package of measures described in Clause 11.5 herein.
- 1.12. 'Date of the Final Decision' means the day on which the European Commission adopts the Final Decision with regard to AIB's Restructuring Plan.
- 1.13. 'Date of the Request' means the day on which a Relevant Competitor requests validly in writing to AIB in connection with the Customer Mobility package set out in Clause 11.5 herein.
- 1.14. 'Distressed SME Portfolio' means a specific portfolio of SME Loans within AIB which are managed by AIB Financial Solutions Group as at 31 December 2012 and which are subject to resolution targets set by the Central Bank.
- 1.15. 'EBS' means EBS Limited, including its subsidiary and associated companies.
- 1.16. 'Final Decision' means the decision in which the European Commission takes a decision regarding the Restructuring Plan and all the State aid granted to AIB and EBS before and after their merger.
- 1.17. 'FRAND' means fair, reasonable and non-discriminatory.
- 1.18. 'GDP' means the Gross Domestic Product of Ireland as reported by the Central Statistics Office of Ireland.

- 1.19. 'Impaired' in relation to a loan means there is objective evidence of impairment as a result of one or more events that occurred after the initial recognition of the assets (a 'loss event') and that loss event (or events) has an impact such that the present value of future cash flows is less than the current carrying value of the financial asset or group of assets and requires an impairment provision to be recognised in the income statement.
- 1.20. 'Incremental Cost' means additional costs incurred by AIB as a direct consequence of the provision of services to Relevant Competitors in application of the Measures. In particular, Incremental Costs do not cover any fixed or variable costs that AIB would bear in the absence of the Measures.
- 1.21. 'Ireland' or 'State' means the Republic of Ireland and includes Irish governmental authorities from time to time including, without limitation, the Department of Foreign Affairs, the Department of Finance and the Central Bank.
- 1.22. 'Late Arrears Loans' means loans where at least 90 days have passed since a contractually due payment was made in full and includes loans in the course of restructure where the original loan facility remains outside its original terms for more than 90 days. When a loan or exposure is past due, the entire exposure is reported as past due, not just the amount of any excess or arrears.
- 1.23. 'Mailing Date' shall have the meaning ascribed to it in Clause 11.5.2.2 herein.
- 1.24. 'Market Share' means the proportion of the market, expressed in percentage terms, for (i) stock or (ii) flow, held by an undertaking in any particular market in Ireland (being a market for a Relevant Product) and as measured on a suitable practical basis by an independent external research source, including regulatory returns proposed by AIB and approved by the Monitoring Trustee (which approval shall not be unreasonably withheld) on a case by case basis before the Date of the Request.
- 1.25. 'Marketing, Advertising and Sponsorship' means the promotion of the business (or part of the business) of AIB by means of communication such as television, radio, newsprint, internet and other similar means of communication.
- 1.26. 'Material' shall have the meaning ascribed to it in Clause 11.5.1.4 herein.
- 1.27. 'Measures' means the obligations imposed on AIB by virtue of the commitments made by Ireland in Clauses 3 to 11 herein.
- 1.28. 'Monitoring Trustee' means one or more natural or legal person(s), independent from AIB who is approved by the European Commission and appointed by AIB, and who has the duty to monitor AIB's compliance with the commitments attached to the Final Decision and whose role is more fully described in the Schedule hereto.
- 1.29. 'Mortgages' means all loans secured on residential property in Ireland issued by a credit institution or building society where the purpose of the advance, typically, is to either finance the change of ownership of, or improvements to, the residential property on which the loan is secured but which may also include non-property related purposes. Any references to Mortgages include both owner occupier and buy-to-let property.
- 1.30. 'NAMA' means the National Asset Management Agency established pursuant to the National Asset Management Agency Act 2009.
- 1.31. 'Net Exposure' means in relation to a client, the gross lending exposure to that client less any provision made by AIB in respect of that client.
- 1.32. 'Notification Date' shall mean the date on which AIB notifies the Relevant Competitor that the latter's Material is to be mailed by AIB.
- 1.33. 'NPRFC' means the National Pension Reserve Fund Commission.
- 1.34. 'NPRFC Preference Shares' means the preference stock arising from the NPRFC Investment.
- 1.35. 'NPRFC Investment' means the subscription by the NPRFC for EUR 3,5 billion of preference stock in AIB and the issue of warrants for ordinary stock completed on 31 May 2009.

- 1.36. 'Ordinary Stock' means the ordinary shares of EUR 0,01 each in the capital of AIB.
- 1.37. [...]
- 1.38. 'Relevant Competitor' means an undertaking which at the Date of the Request (1) is licensed in Ireland or elsewhere to operate as a credit institution in Ireland; (2) is not in receipt of State aid (i.e. banks which have received State aid and which are still in the restructuring period are not considered 'Relevant Competitors'; however, banks which have received State aid but whose restructuring period has ended, are considered 'Relevant Competitors'); and (3) has (by virtue of all related undertakings) a Market Share of less than 15 % of stock or flow of the Relevant Product market in which AIB has a Market Share in excess of 30 % of stock or flow of the Relevant Product market, based on a Market Share measurement by an independent external research source, including regulatory returns proposed by AIB and approved by the Monitoring Trustee.
- 1.39. 'Relevant Product' means: (i) personal current accounts; (ii) personal credit cards; (iii) business current accounts; (iv) business credit cards, (v) Mortgages; and (vi) SME Loans and corporate loans.
- 1.40. 'Restructuring Period' refers to the period from the Date of the Final Decision to 31 December 2017.
- 1.41. 'Restructuring Plan' means the plan submitted by AIB to the European Commission, via Ireland, in September 2012, as amended and supplemented from time to time by written communications.
- 1.42. 'Schedule' means a schedule to this document only and such a schedule forms part of the document. The Schedule is an integral part of the term sheet and equally binding.
- 1.43. 'SME Loans' means all lending to any small and medium-sized enterprise as defined by the European Commission Recommendation ⁽¹⁾ in Ireland engaged in an economic activity, irrespective of legal form (e.g. corporation, partnership, sole-trader), which employs fewer than 250 persons and whose annual turnover does not exceed EUR 50 million or whose annual balance sheet does not exceed EUR 43 million. Such lending includes secured and unsecured lending via term loans, commercial mortgage loans repayable over a defined period of up to 15 years and asset finance and commercial finance and invoice discounting, whether the interest rate for the loan concerned is variable, or a fixed margin over a specified reference interest rate, or an interest rate fixed for all or part of the term of the loan. Excluded from this definition is any lending to non-SME commercial entities, persons acting as consumers, 'government' and 'other financial' customer categories.
- 1.44. 'State aid' shall, for the purposes of this term sheet, have the meaning ascribed to it in Clause 2.1 herein.
- 1.45. 'Valid Application' means an application made by an undertaking who is a Relevant Competitor who is, on the Date of the Request, a Relevant Competitor for a service contained in Clause 11.5 herein and which sets out in reasonable detail sufficient information to enable AIB to provide the service.

2. Basis of the Measures

- 2.1. The Measures set out below are conditional on the European Commission (the 'Commission') adopting a Final Decision that the State aid received by EBS and AIB comprising the State aid element of Ireland's 2008 and 2009 bank guarantee schemes, the recapitalisations by Ireland of EBS as described in the Rescue Decision N 160/10 dated 2 June 2010, and of AIB as described in the Rescue Decisions N 241/09 dated 12 May 2009, N 553/10 dated 21 December 2010 and SA.33296 dated 15 July 2011, relating thereto and the State aid provided to EBS and AIB as a result of NAMA (all such aid is referred to herein as 'State aid') are compatible with the internal market in accordance with Articles 107 to 109 of the Treaty on the Functioning of the European Union.
- 2.2. AIB shall use all reasonable endeavours to comply with the obligations imposed on it as a result of the Measures arising out of the commitments made by Ireland (including seeking and receiving all necessary approvals).

⁽¹⁾ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

- 2.3. In relation to AIB's obligation to implement these Measures, AIB shall not be obliged to breach any of its legal obligations. In case of a conflict between an obligation arising from a Measure in this term sheet and AIB's legal obligations, AIB will inform the Monitoring Trustee and will undertake to propose an alternative solution that will enable AIB to fulfil its obligations. The Monitoring Trustee, in consultation with the Commission, will verify whether the proposed solution is in line with the commitments in the term sheet and AIB's legal obligations.

3. **Commitment to the Restructuring of Loan Portfolio**

- 3.1. Ireland commits that AIB will achieve the following loan restructuring targets (percentages quoted in this Clause 3 are a percentage of the drawn euro balance for each sector) for Mortgages and SME Loans agreed as part of the EU — IMF Programme:
- 3.1.1. by 31 December 2014, [80-100] % ⁽¹⁾ of the Distressed SME Portfolio will have been restructured (meaning there has been formal communication by AIB with the customer of the revised arrangement (e.g. a revised loan agreement/term sheet) or where legal proceedings have been initiated); and
- 3.1.2. by 30 June 2014, sustainable solutions will have been proposed by AIB for 75 % of Mortgages which are Late Arrears Loans, and solutions will have been concluded with customers for 35 % of Mortgages which are Late Arrears Loans.
- 3.2. Ireland commits that AIB will engage with customers in respect of the other loan portfolios that are managed by AIB's Financial Solutions Group, and will propose sustainable solutions for [50-100] % of these loans by 31 December 2014.
- 3.3. Commencing 3 months after the Date of the Final Decision until the end of the Restructuring Period, Ireland commits that the methodology to be adopted by AIB to assess which restructuring solution is the most appropriate for SME Loans, loans to corporates and commercial real estate loans which are Impaired and/or which are Late Arrears Loans, will be based on economic and commercial criteria and is outlined as follows:
- 3.3.1. Where the Net Exposure to the client exceeds EUR [2,5-10] m, a Net Present Value ('NPV') analysis of the restructuring options will be conducted, with the objective of maximising the NPV for AIB but also ensuring that the viability of the SME or corporate is not endangered as a result, and if the solution chosen does not have the highest NPV, it must be based on verifiable economic and commercial criteria and the decision will require approval by the appropriate AIB Credit Committee.
- 3.3.2. Where the Net Exposure to the client does not exceed EUR [2,5-10] m, Ireland commits that AIB will effectively and consistently implement guidelines to assist decision makers on the proper means of assessing the appropriate restructuring option for both viable and non-viable customers.

4. **Commitment to the limitation of lending to [...]**

- 4.1. Ireland commits that AIB will target an aggregate 'new lending' limit to [...] of [...] in [...] and [...] in [...] respectively.
- 4.2. At AIB's sole discretion, new lending may exceed the limits to [...] referred to in Clause 4.1, provided that the aggregate closing gross loan balance to [...] does not exceed [...] at end [...] and [...] billion at end [...] respectively.

5. **Commitment to Marketing, Advertising and Sponsorship in Ireland**

- 5.1. Ireland commits that AIB will cap the nominal level of its expenditure externally on Marketing, Advertising and Sponsorship in Ireland at the same level as it was for its financial year ended 31 December 2012 until the end of the Restructuring Period (i.e. [...] million for each year).
- 5.2. During the Restructuring Period, Ireland commits that AIB will not refer in its advertising campaign to any State support enjoyed by AIB, nor take any measure that might reasonably be deemed an aggressive commercial practice.

⁽¹⁾ Central Bank target. Subject to change by Central Bank.

- 5.3. The cap referred to in Clause 5.1 shall not apply to any: (a) expenditure required or recommended by any regulatory or governmental authority; and/or (b) expenditure related to any Measure herein; and/or (c) expenditure related to charities; and/or (d) initiative reasonably necessary to advise customers and others of issues such as fraud, criminal acts (e.g. forged banknotes or bank robberies, changes in terms and conditions in products) or greater exposure to risk.

6. Commitment to making no Acquisitions and accepting restrictions on the scope of AIB's business for a period of time

- 6.1. Ireland commits that from the Date of the Final Decision until the earlier of (a) the end of the Restructuring Period; and (b) the date by which the NPRFC Preference Shares and the Contingent Capital Instrument shall have been repaid in full or are no longer owned by Ireland, AIB will not for any reason whatsoever, acquire any stake in any undertaking (meaning an undertaking which has the legal form of a company or package of assets which form a business) (an 'Acquisition') subject to the exceptions set out at Clause 6.2.
- 6.2. AIB may make such an Acquisition:
- 6.2.1. with the prior written consent of the Commission, such consent to be granted on the basis that the Acquisition is deemed necessary in exceptional circumstances to restore financial stability or to ensure effective competition;
- 6.2.2. where the purchase price for that Acquisition (excluding the assumption of debt) paid by AIB is less than 0,01 % of AIB's total assets at the Date of the Final Decision and the cumulative purchase price for all Acquisitions made during the Restructuring Period (excluding the assumption of debt) paid by AIB, is less than 0,025 % of AIB's total assets at the Date of the Final Decision; or
- 6.2.3. where the Acquisition takes place in the ordinary course of the banking business in the management of existing claims towards ailing firms.

7. Commitments in respect of payments on capital instruments

- 7.1. Ireland commits that AIB will not make discretionary payments of coupons or exercise voluntary call options on capital instruments during the Restructuring Period, unless:
- 7.1.1. the Commission provides consent to the payment or call option;
- 7.1.2. the coupon payment is paid to the State (provided that such payments would not trigger coupon payments to other investors that otherwise would not be mandatory); or
- 7.1.3. the payment arises under a newly issued instrument (meaning instruments issued on or after the Date of the Final Decision), provided that any payment of coupons on such newly issued instruments does not create a legal obligation to make any coupon payments on AIB's securities existing prior to the Date of the Final Decision.

8. Commitment to Cost Reduction

- 8.1. Ireland commits that AIB will actively manage costs so that at 31 December 2015, AIB's:
- 8.1.1. Annual Operating Expenses will not exceed EUR [...] million, which is EUR [200-600] million less than the 2012 equivalent figure reported in the financial reports; and
- 8.1.2. CIR will not exceed [45-65] %, unless the GDP growth is below 2 % at that time, in which event its CIR will not exceed [50-70] %.

9. Commitment in respect of AIB exposure to Irish Sovereign

- 9.1. Ireland commits that the value of Irish Sovereign bonds held by AIB, excluding those bonds issued by NAMA, shall not exceed EUR billion [10-20] at any point in time during the Restructuring Period.

10. Commitment to Repayment of State aid

- 10.1. Ireland commits that AIB will repay the State aid prior to the end of the Restructuring Period via the payment of dividends or other means, in such amount equal to the surplus regulatory capital above the minimum CET1 ratio (on a Basel III fully implemented basis) as set by the Central Bank (plus a buffer of 1-4 %) at 31 December 2016.
- 10.2. Ireland and AIB acknowledge that the commitment set out at Clause 10.1 is subject to receipt of all regulatory and other approvals.
- 10.3. To facilitate the repayment set out at Clause 10.1, Ireland commits that AIB shall not take any steps that would lead to a Capital Outflow prior to [...] unless [...].
- 10.4. Without prejudice to Clauses 10.1 to 10.3, Ireland and AIB retain the options to:
 - 10.4.1. partially or fully convert the NPRFC Preference Shares to equity at par up to 13 May 2014 and thereafter at 125 % of the subscription price, in advance of, or as part of an exit (or part exit) event arising for the State involving the private sector; and
 - 10.4.2. dispose of the State's Contingent Capital Instrument at any time, notwithstanding that AIB will not have an option to redeem the State's Contingent Capital Instrument until after the Comprehensive Assessment, subject to regulatory approval.

11. Commitments to operate certain competition measures

- 11.1. Commencing on 1 July 2014 for a period of 3 years, Ireland commits that AIB will operate certain competition measures, namely, the provision to Relevant Competitors of: (a) a Services Package; and (b) a Customer Mobility Package.
- 11.2. Ireland commits that AIB will contribute EUR 500 000 per annum for a period of 3 years commencing on 1 July 2014 to a public awareness campaign (such campaign to be facilitated by Ireland through an appropriate state body) to raise awareness and promote customer switching.
- 11.3. Any dispute between AIB and a Relevant Competitor relating to this Clause 11 will be referred by AIB and the Relevant Competitor to the Monitoring Trustee, who shall mediate a solution. In case no solution is found, the Monitoring Trustee will refer the matter for resolution to the Commission, whose decision shall be binding.

Services Package

- 11.4. Ireland commits that AIB will operate a Services Package for Relevant Competitors who seek to avail of such package.
 - 11.4.1. AIB shall provide, on FRAND terms and on terms which recoup AIB's Incremental Costs (including the relevant cost of capital and cost of capital means the cost of AIB's funds (e.g. debt and equity) to support this business), to Relevant Competitors:
 - 11.4.1.1. access to Ireland's bank clearing system (both servicing paper and electronic transactions);
 - 11.4.1.2. debit card access to any automated teller machine network in Ireland of which AIB is a member;
 - 11.4.1.3. access to market intelligence (e.g. rate of default of customers generally and macro/microeconomic data generally) but such access shall be subject to compliance with all laws, codes and practices including, without limitation, those relating to data protection, confidentiality, intellectual property, contract and competition;
 - 11.4.1.4. access to cash supply and distribution services; and
 - 11.4.1.5. foreign exchange supply and distribution services.

- 11.4.2. AIB will give due consideration to all reasonable requests from a Relevant Competitor via the Monitoring Trustee for a change in the services to be provided under Clause 11.4.1. For the avoidance of doubt, the provision of such services shall be in compliance with all applicable laws, codes and practices generally (including, without limitation, the EU's Payment Services Directive) and AIB shall only be obliged to provide such services as are within its control and power.

Customer Mobility Package

- 11.5. Ireland commits that AIB will provide a Customer Mobility Package for Relevant Competitors who seek to avail of such package.
- 11.5.1. The Customer Mobility Package will enable a Relevant Competitor to have its advertising material relating to a Relevant Product mailed to AIB's customers provided that all of the following conditions in this Clause 11.5.1 are satisfied in full:
- 11.5.1.1. AIB has received a Valid Application from the Relevant Competitor;
- 11.5.1.2. the Relevant Competitor qualifies as a Relevant Competitor on the Date of the Request;
- 11.5.1.3. AIB has Market Share of more than 30 % in respect of that Relevant Product as at the Date of the Request;
- 11.5.1.4. the Relevant Competitor will reimburse AIB on commercial terms for all costs directly involved with mailing the Relevant Competitor's material concerning the Relevant Product ('Material') to AIB customers (including, where relevant, printing, packaging and posting such material). Relevant Competitors will be responsible for all costs involved with the production of the relevant materials, delivery and related costs of the same to AIB and the cost of mailing. The costs of customer selection in relation to the Customer Mobility Package will be borne by AIB. Other costs not directly involved with mailing the Relevant Competitor's Material to AIB customers will be borne by AIB;
- 11.5.1.5. the Relevant Competitor takes full responsibility for the lawfulness, accuracy and appropriateness of the Material and provides to AIB in advance a written indemnity from and against all and any loss or damage caused or suffered by AIB in connection with the mailing. For the avoidance of doubt, AIB shall not be obliged to review the Materials, and AIB shall bear no responsibility or liability whatsoever for the Material distributed pursuant to this Measure or the fulfilment of this Measure generally; if there is any dispute in this regard between AIB and the Relevant Competitor then it will be referred to the Monitoring Trustee, who shall mediate a solution. In case no solution is found, the Monitoring Trustee will refer the matter to the Commission for resolution; and
- 11.5.1.6. sufficient copies of the Material to be distributed hereunder shall be received by AIB from the Relevant Competitor by 17.00 five clear Business Days prior to the Mailing Date and the Material shall comply in all respects with all applicable laws, codes and practices. Any dispute shall be referred to the Monitoring Trustee, who shall mediate a solution. In case no solution is found, the Monitoring Trustee will refer the matter to the Commission for resolution.
- 11.5.2. The following shall apply to the mailing undertaken by AIB:
- 11.5.2.1. The mailings will be divided over six periods of 6 months, the first period starting on the date which is 3 months after the Date of the Final Decision. During these periods, Relevant Competitors may submit an application for a mailing to AIB. Each Relevant Competitor is allowed to approach AIB once in each 6 month mailing period.
- 11.5.2.2. For each 6 month mailing period, the mailings shall be made on 3 predetermined dates (the 'Mailing Dates') taking into account the interest of the Relevant Competitors and the mailing schedule of AIB, provided that the Date of the Request by the Relevant Competitors is a reasonable number of days before the Mailing Dates to enable AIB to prepare for such voluminous mailings respectively for each of the Mailing Dates (and such requests to be received by AIB no later than 17.00 (Dublin time) on the relevant Date of the Request). AIB will ensure that the Mailing Dates are made public on AIB's website in advance, in order to allow interested Relevant Competitors a reasonable time to prepare an application. Any dispute shall be referred to the Monitoring Trustee, who shall mediate a solution. In case no solution is found, the Monitoring Trustee will refer the matter to the Commission for resolution.

- 11.5.2.3. For the purposes of the mailing, AIB shall randomly select, at the request of the Relevant Competitor, up to one-third of its customer base for each mailing taking place in the first 6 month mailing period; such customer base being AIB's customers for the Relevant Product to be advertised by the Relevant Competitor in that mailing, limited solely to those AIB customers who have provided their consent to receive marketing information from AIB. AIB will select a different third of its customer base in the second 6 month mailing period and the final third of its customer base in the third period. The same process will be repeated in the successive three 6 month mailing periods. The Monitoring Trustee will verify the selection of the customers by AIB. At the request of the Relevant Competitor, the number of customers contacted during a 6 month mailing period may be reduced, on the basis of filtering criteria that can be easily implemented by AIB (meaning the instruments necessary to conduct this filtering are readily available to AIB, or are easily computable in AIB). In accordance with Irish data protection law, no customer shall be sent material where the customer has not given consent to AIB to receive similar AIB materials.
- 11.5.2.4. In the interests of ensuring that consumers are not inundated unreasonably with advertising literature and in order to maximise the chances of the Material supplied by Relevant Competitors being read, the Material of no more than two Relevant Competitors per Relevant Product will be mailed on each Mailing Date by AIB in each of the 6 month mailing periods as part of this Measure.
- 11.5.2.5. For the avoidance of doubt, the unused mailing opportunities shall be forfeited and not carried forward.
- 11.5.3. The mailing will be managed, processed and completed by AIB (or its agent) on behalf of, and for the account of, the Relevant Competitor without any input or involvement of the Relevant Competitor. For the avoidance of doubt, the Relevant Competitor shall not have access to the names and addresses or other details of AIB's customer base.
- 11.5.4. AIB shall be obliged to send Material on behalf of no more than two Relevant Competitors per Relevant Product on each Mailing Date and those two Relevant Competitors per Relevant Product shall be selected in the order in which they apply to AIB or, in the event of more than two Relevant Competitors per Relevant Product applying simultaneously for each Mailing Date, then the two Relevant Competitors per Relevant Product will be selected by lot by the Monitoring Trustee. In order for an application to be valid, the Relevant Competitor must qualify as a Relevant Competitor on the Date of the Request and have satisfied all of the conditions set out in Clause 11.5.1. AIB will notify the Relevant Competitor in writing whether it has been successful in its application and that its Material is going to be mailed by AIB.
- 11.5.5. A Relevant Competitor may request Material to be mailed in respect of one or more Relevant Products but no other products. Furthermore, the Relevant Competitor may point out the possibility for customers to fully or partially switch their banking relationship and make general references to other banking products. A request will be otherwise valid notwithstanding that it has requested the benefit of this Customer Mobility Measure where AIB has less than 30 % Market Share in relation to a Relevant Product provided the request also seeks a mailing in respect of those Relevant Products where AIB has a Market Share of more than 30 %. If the marketing materials received from the Relevant Competitor include materials for products other than the Relevant Products (except for general references to fully or partly switching their banking relationship and general references to other banking products), then AIB shall not be obliged to mail such materials but will notify the Relevant Competitor of its decision, where practicable and possible, in a timely manner to afford the Relevant Competitor the opportunity to re-submit amended materials. Any dispute in this regard shall be referred to the Monitoring Trustee, who shall mediate a solution. In case no solution is found, the Monitoring Trustee will refer the matter to the Commission for resolution. AIB will be under no obligation to mail the resubmitted materials unless they are received by 17.00 five clear Business Days prior to the Mailing Date and provided that such resubmitted materials are in compliance with the terms of this Clause 11.5.5.
- 11.5.6. For each Relevant Product subject to a mailing, AIB commits:
- 11.5.6.1. not to contact a customer with advertising literature relating to that Relevant Product where that customer has been one selected for contact and has been contacted on behalf of a Relevant Competitor, during the 6 months following such contact on behalf of the Relevant Competitor;
- 11.5.6.2. not to contact that customer for an additional 1 year with advertising literature relating to that Relevant Product, if such a customer switches to the Relevant Competitor under this Measure and AIB knows that such a customer has switched; and
- 11.5.6.3. not to contact that customer during the additional 1 year referred to in Clause 11.5.6.2 with any advertising literature which is specifically designed to recapture customers to the Relevant Product switched.

- 11.5.7. For the avoidance of doubt, AIB shall remain free to contact such customers for regulatory reasons and as part of any initiative reasonably necessary to advise customers and others of issues such as fraud, criminal acts (e.g. forged banknotes or bank robberies, changes in terms and conditions in products) or greater exposure to risk.
- 11.5.8. AIB commits that in case an AIB customer pursuant to the mailing of the Materials of the Relevant Competitor decides to switch part or all of its business (including both Relevant Products and other products) to the Relevant Competitor, AIB will not impede the switching in any way, nor charge any (penal) switching fees unless required by law or legal obligation or which are part of AIB's product terms and conditions.
- 11.5.9. In case there is reasonable doubt regarding the Market Share of a Relevant Competitor the Relevant Competitor in question shall provide, on a strictly confidential basis, to the Monitoring Trustee such information, as may reasonably be required by the Monitoring Trustee to establish the Relevant Competitor's market share in the Relevant Product market, failing which, the Relevant Competitor shall not be entitled to avail of the Customer Mobility Package for that Relevant Product.

SCHEDULE: MONITORING TRUSTEE

In this Schedule, the capitalised terms have the same meaning as provided in Clause 1 above.

I — Appointment Procedure

1. Ireland commits that AIB will appoint a Monitoring Trustee to carry out the functions specified in the commitments for a Monitoring Trustee.
2. The Monitoring Trustee shall be independent of AIB, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Monitoring Trustee shall be remunerated by AIB in a way that does not impede the independent and effective fulfilment of its mandate.

II — Proposal by AIB

3. Ireland commits that no later than 2 weeks after the Date of the Final Decision, AIB will submit a list of two or more persons whom AIB proposes to appoint as the Monitoring Trustee to the Commission for approval, with an indication which of those is AIB's preferred choice. The proposal shall contain sufficient information for the Commission to verify that the proposed Monitoring Trustee fulfils the requirements set out in paragraph 2 and shall include:
 - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these commitments; and
 - (b) the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

III — Approval or rejection by the Commission

4. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustees and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, AIB shall appoint or cause to be appointed, the individual or institution concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, AIB shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within 1 week of the Commission's approval, in accordance with the mandate approved by the Commission.

IV — New proposal by AIB

5. If all the proposed Monitoring Trustees are rejected, Ireland commits that AIB will submit the names of at least two more individuals or institutions within 1 week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraph 3.

V — Monitoring Trustee nominated by the Commission

6. If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom AIB shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

VI — Functions of the Monitoring Trustee

7. The Monitoring Trustee shall assume its specified duties in order to ensure compliance with the commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or AIB, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the commitments attached to the Final Decision.

VII — Duties and obligations of the Monitoring Trustee

8. The Monitoring Trustee shall:
 - (a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the commitments attached to the Final Decision;
 - (b) monitor the compliance with all the commitments of the Final Decision and with Clauses 3 to 11 of the Term Sheet;
 - (c) assume the other functions assigned to the Monitoring Trustee under the commitments attached to the Final Decision;
 - (d) propose to AIB such measures as the Monitoring Trustee considers necessary to ensure AIB's compliance with the commitments attached to the Final Decision; and
 - (e) provide to the Commission, sending AIB a non-confidential copy at the same time, a written report within 15 days after the end of every quarter. The report shall cover the operation and management of Clauses 3 to 11 of the Term Sheet so that the Commission can assess whether the business is held in a manner consistent with the commitments. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending AIB a non-confidential copy at the same time, if it concludes on reasonable grounds that AIB is failing to comply with the commitments assumed by Ireland.

VIII — Duties and obligations of AIB

9. Ireland commits that AIB will provide and cause its advisors to provide the Monitoring Trustee with all such cooperation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks. The Monitoring Trustee shall have full and complete access to any of AIB's books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the commitments and AIB shall provide the Monitoring Trustee upon request with copies of any document. AIB shall make available to the Monitoring Trustee one or more offices on their premises and shall be available for meetings in order to provide the Monitoring Trustee with all information necessary for the performance of its tasks.
10. Ireland commits that AIB will provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request.
11. Ireland commits that AIB will indemnify the Monitoring Trustee and its employees and agents (each an **'Indemnified Party'**) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to AIB for any liabilities arising out of the performance of the Monitoring Trustee's duties under the commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.

12. At the expense of AIB, the Monitoring Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to AIB's approval (this approval not to be unreasonably withheld or delayed) if the Monitoring Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should AIB refuse to approve the advisors proposed by the Monitoring Trustee the Commission may approve the appointment of such advisors instead, after having heard AIB. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors.

IX — Replacement, discharge and reappointment of the Monitoring Trustee

13. If the Monitoring Trustee ceases to perform its functions under the commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:
 - (a) the Commission may, after hearing the Monitoring Trustee, require AIB to replace the Monitoring Trustee; or
 - (b) AIB, with the prior approval of the Commission, may replace the Monitoring Trustee.
 14. If the Monitoring Trustee is removed according to paragraph 13, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 3-6.
 15. Beside the removal according to paragraph 13, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the commitments with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.
-

COMMISSION IMPLEMENTING DECISION (EU) 2015/219**of 29 January 2015****replacing the Annex to Implementing Decision 2013/115/EU on the Sirene Manual and other implementing measures for the second generation Schengen Information System (SIS II)***(notified under document C(2015) 326)*

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) ⁽¹⁾, and in particular Article 8(4), Article 9(1), Article 20(3), point (a) of Article 22, Article 36(4) and Article 37(7) thereof,

Having regard to Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) ⁽²⁾, and in particular Article 8(4), Article 9(1), Article 20(4), point (a) of Article 22, Article 51(4) and Article 52(7) thereof,

Having consulted the European Data Protection Supervisor,

Whereas:

- (1) The second generation Schengen Information System (SIS II) entered into operation on 9 April 2013. It contains sufficient information allowing the identification of a person or an object and the necessary action to be taken. In addition, for SIS II to function effectively, Member States exchange supplementary information related to the alerts. This exchange of supplementary information is carried out by the Sirene Bureaux.
- (2) To facilitate the work of the Sirene Bureaux and of users of SIS II involved in Sirene operations in their daily work, a Sirene Manual was adopted in 2008 through a former first pillar legal instrument, Commission Decision 2008/333/EC ⁽³⁾, as well as a former third pillar instrument, Commission Decision 2008/334/JHA ⁽⁴⁾. Those Decisions were replaced by Commission Implementing Decision 2013/115/EU ⁽⁵⁾ in order to better reflect the operational needs of users and staff involved in Sirene operations, to improve consistency of working procedures and to ensure that technical rules correspond to the state of the art.
- (3) Following the first year of operation of SIS II it is appropriate to amend Implementing Decision 2013/115/EU in order to reflect new challenges and operational requirements as well as to provide clearer provisions in some areas related to the processing of SIS II data. This should enhance legal certainty and further reinforce fundamental rights.
- (4) Pursuant to Article 29(1) and Article 30(1) of Regulation (EC) No 1987/2006 and Article 44(1) and Article 45(1) Decision 2007/533/JHA an alert entered in SIS II is to be kept only for the time required to achieve the purpose for which it was entered. Considering the diverging practices of Member States concerning the definition of the point in time when an alert fulfils its purpose it is appropriate to set out detailed criteria for each alert category to determine when it should be deleted from SIS II.
- (5) The United Kingdom does not take part in Regulation (EC) No 1987/2006 as a consequence of which it cannot search and enter alerts on refusal of entry or stay regarding third country nationals. It remains, nevertheless, bound by the rules on compatibility and priority of all alert categories since SIS II constitutes one single system. Therefore it is necessary to define the procedure of consultation in case there is an alleged incompatibility between an alert issued by the United Kingdom and an alert on refusal of entry or stay issued by another Member State.

⁽¹⁾ OJ L 381, 28.12.2006, p. 4.

⁽²⁾ OJ L 205, 7.8.2007, p. 63.

⁽³⁾ Commission Decision 2008/333/EC of 4 March 2008 adopting the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II) (OJ L 123, 8.5.2008, p. 1).

⁽⁴⁾ Commission Decision 2008/334/JHA of 4 March 2008 adopting the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II) (OJ L 123, 8.5.2008, p. 39).

⁽⁵⁾ Commission Implementing Decision 2013/115/EU of 26 February 2013 on the Sirene Manual and other implementing measures for the second generation Schengen Information System (SIS II) (OJ L 71, 14.3.2013, p. 1).

- (6) It is indispensable to lay down a new accelerated procedure for information exchange on alerts on discreet and specific checks in order to address a possible increased threat posed by some persons, involved in terrorism or in serious crime, which require immediate action of the competent authorities. It is necessary to indicate for end-users if a document used for travel purposes was invalidated by the issuing national authorities to ensure the seizure of such documents. In order to provide instructions to end-users on accelerated reporting and invalidated documents used for travel purposes Appendix 2 should be amended.
- (7) Certain detailed procedures should be revised in order to harmonise national practices. Taking into account that fingerprints and photographs are to be added to the alerts once they are available or they can be attached to forms to provide them to the issuing Member State the provision on the Sirpit procedure and Appendix 5 should be deleted.
- (8) Statistics related to the interventions of the Sirene Contact Person in each Sirene Bureau should be collected in order to enable better assessment of their efficiency. To this end former Appendix 6 should be amended.
- (9) Provisions on the protection of personal data and security of data in SIS II are set out in Regulation (EC) No 1987/2006 and Decision 2007/533/JHA. In the absence of specific provisions in Regulation (EC) No 1987/2006, Directive 95/46/EC of the European Parliament and of the Council ⁽¹⁾ should apply to the exchange of supplementary information in relation to alerts based upon Article 24 of Regulation (EC) No 1987/2006. In the absence of specific provisions in Decision 2007/533/JHA, Council Framework Decision 2008/977/JHA ⁽²⁾ should apply to the exchange of supplementary information relating to all other alerts.
- (10) Given that Regulation (EC) No 1987/2006 builds upon the Schengen *acquis*, Denmark, in accordance with Article 5 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, notified by letter of 15 June 2007 the transposition of this *acquis* into its national law. Denmark participates in Decision 2007/533/JHA. It is therefore bound to implement this Decision.
- (11) The United Kingdom is taking part in this Decision to the extent that it does not concern the exchange of supplementary information in relation to Articles 24 and 25 of Regulation (EC) No 1987/2006, in accordance with Article 5 of the Protocol on the Schengen *acquis* integrated into the framework of the European Union annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, and Article 8(2) of Council Decision 2000/365/EC ⁽³⁾.
- (12) Ireland is taking part in this Decision to the extent that it does not concern the exchange of supplementary information in relation to Articles 24 and 25 of Regulation (EC) No 1987/2006, in accordance with Article 5 of the Protocol on the Schengen *acquis* integrated into the framework of the European Union annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, and Article 6(2) of Council Decision 2002/192/EC ⁽⁴⁾.
- (13) As regards Cyprus, this Decision constitutes an act building upon the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession.
- (14) As regards Croatia, this Decision constitutes an act building upon the Schengen *acquis* or otherwise related to it within the meaning of Article 4(1) of the 2012 Act of Accession.
- (15) As regards Iceland and Norway, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* ⁽⁵⁾, which falls within the area referred to in Article 1, point G of Council Decision 1999/437/EC ⁽⁶⁾.

⁽¹⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31.).

⁽²⁾ Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

⁽³⁾ Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (OJ L 131, 1.6.2000, p. 43).

⁽⁴⁾ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

⁽⁵⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁶⁾ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

- (16) As regards Switzerland, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽¹⁾, which falls within the area referred to in Article 1, point G of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decision 2004/860/EC ⁽²⁾.
- (17) As regards Liechtenstein, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽³⁾, which falls within the area referred to in Article 1, point G, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU ⁽⁴⁾.
- (18) The measures provided for in this Decision are in accordance with the opinion of the Committee set up by Article 51 of Regulation (EC) No 1987/2006 and Article 67 of Decision 2007/533/JHA,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Implementing Decision 2013/115/EU is replaced by the text in the Annex to this Decision.

Article 2

Appendix 2 of the Annex to Implementing Decision 2013/115/EU shall apply until 31 January 2015.

Appendix 2 of the Annex in the Annex to this Decision shall enter into force on 1 February 2015.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 29 January 2015.

For the Commission
Dimitris AVRAMOPOULOS
Member of the Commission

⁽¹⁾ OJ L 53, 27.2.2008, p. 52.

⁽²⁾ Council Decision 2004/860/EC of 25 October 2004 on the signing, on behalf of the European Community, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation, concerning the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 370, 17.12.2004, p. 78).

⁽³⁾ OJ L 160, 18.6.2011, p. 21.

⁽⁴⁾ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

ANNEX

‘ANNEX

The Sirene Manual and other implementing measures for the second generation Schengen Information System (SIS II)

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INTRODUCTION

The Schengen area

On 14 June 1985, the Governments of the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands signed an agreement at Schengen, a small town in Luxembourg, with a view to enabling "(...) all nationals of the Member States to cross internal borders freely (...)" and to enable the "free circulation of goods and services".

The five founding countries signed the Convention implementing the Schengen Agreement ⁽¹⁾ on 19 June 1990, and were later joined by the Italian Republic on 27 November 1990, the Kingdom of Spain and the Portuguese Republic on 25 June 1991, the Hellenic Republic on 6 November 1992, the Republic of Austria on 28 April 1995 and by the Kingdom of Denmark, the Kingdom of Sweden and the Republic of Finland on 19 December 1996.

Subsequently, as of 26 March 1995, the Schengen *acquis* was fully applied in Belgium, Germany, France, Luxembourg, Netherlands, Spain and Portugal ⁽²⁾. As of 31 March 1998, in Austria and Italy ⁽³⁾; as of 26 March 2000 in Greece ⁽⁴⁾ and finally, as of 25 March 2001, the Schengen *acquis* was applicable in full in Norway, Iceland, Sweden, Denmark and Finland ⁽⁵⁾.

The United Kingdom (UK) and Ireland only take part in some of the provisions of the Schengen *acquis*, in accordance with Decision 2000/365/EC and Decision 2002/192/EC respectively.

In the case of the UK, the provisions in which the United Kingdom wished to take part (with exception of SIS) are applicable as of the 1 January 2005 ⁽⁶⁾.

The Schengen *acquis* was incorporated into the legal framework of the European Union by means of protocols attached to the Treaty of Amsterdam ⁽⁷⁾ in 1999. A Council Decision was adopted on 12 May 1999, determining the legal basis for each of the provisions or decisions which constitute the Schengen *acquis*, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union.

From 1 May 2004, the Schengen *acquis* as integrated into the framework of the European Union by the Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community (hereinafter referred to as the Schengen Protocol), and the acts building upon it or otherwise related to it are binding on the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic. These Member States became full members of the Schengen area on 21 December 2007.

Cyprus is a signatory to the Convention implementing the Schengen Agreement but enjoys a derogation under its Act of Accession of 2003.

The Republic of Bulgaria and Romania acceded to the European Union on 1 January 2007; as from that date the Schengen *acquis* and the acts building upon it or otherwise related to it are binding upon them, with the derogation provided by their Act of Accession of 2005.

Croatia acceded to the European Union on 1 July 2013. It applies the Schengen *acquis* with the derogation provided by its Act of Accession of 2011.

Some of the provisions of the Schengen *acquis* apply upon accession of new Member States to the EU. Other provisions shall only apply in these Member States pursuant to a Council decision to that effect. Finally, the Council takes a decision on the lifting of border checks, after verification that the necessary conditions for the application of all parts of the *acquis* concerned have been met in the Member State in question, in accordance with the applicable Schengen evaluation procedures and after consultation of the European Parliament.

⁽¹⁾ OJ L 239, 22.9.2000, p. 19.

⁽²⁾ Decision of the Executive Committee of 22 December 1994 on bringing into force the Convention implementing the Schengen Agreement of 19 June 1990 (SCH/Com-ex (94)29 rev. 2. (OJ L 239, 22.9.2000, p. 130).

⁽³⁾ Decisions of the Executive Committee of 7 October 1997 (SCH/com-ex 97(27) rev. 4) for Italy and (SCH/com-ex 97(28)rev. 4) for Austria.

⁽⁴⁾ Council Decision 1999/848/EC of 13 December 1999 on the full application of the Schengen *acquis* in Greece (OJ L 327, 21.12.1999, p. 58).

⁽⁵⁾ Council Decision 2000/777/EC of 1 December 2000 on the application of the Schengen *acquis* in Denmark, Finland and Sweden, and in Iceland and Norway (OJ L 309, 9.12.2000, p. 24).

⁽⁶⁾ Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen *acquis* by the United Kingdom of Great Britain and Northern Ireland (OJ L 395, 31.12.2004, p. 70).

⁽⁷⁾ OJ C 340, 10.11.1997.

Certain other European countries joined the Schengen area. The Kingdom of Norway and the Republic of Iceland concluded an Association Agreement with the Member States on 18 May 1999 ⁽⁸⁾ in order to be associated to the Schengen Convention.

In 2004, the Swiss Confederation signed an agreement with the European Union and the European Community concerning its association with the implementation, application and development of the Schengen *acquis* ⁽⁹⁾, based upon which it became a member of the Schengen area on 12 December 2008.

On the basis of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽¹⁰⁾, signed in 2008, the Principality of Liechtenstein became a member of the Schengen area on 19 December 2011.

The second generation Schengen Information System (SIS II)

SIS II, set up pursuant to the Regulation (EC) No 1987/2006 and Decision 2007/533/JHA (SIS II Decision) on the establishment, operation and use of the Second Generation Information System (SIS II) (together: the SIS II legal instruments) as well as Regulation (EC) No 1986/2006 of the European Parliament and of the Council ⁽¹¹⁾ constitute a common information system allowing the competent authorities in the Member States to cooperate by exchanging information and is an essential tool for the application of the provisions of the Schengen *acquis* as integrated into the framework of the European Union. These instruments as of 9 April 2013 when in application, repealed Title IV of the Convention implementing the Schengen Agreement. SIS II replaces the first generation Schengen Information System that began operating in 1995 and was extended in 2005 and 2007.

The purpose of SIS II as laid down in Article 1 of the SIS II legal instruments is "(...) to ensure a high level of security within an area of freedom, security and justice of the European Union including the maintenance of public security and public policy and the safeguarding of security in the territories of the Member States, and to apply the provisions of Title IV of Part Three of the (EC) Treaty (hereinafter referred to as the EC Treaty) relating to the movement of persons in their territories, using information communicated via this system".

In accordance with the SIS II legal instruments, by means of an automated consultation procedure, SIS II shall provide access to alerts on persons and objects to the following authorities:

- (a) authorities responsible for border controls, in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council ⁽¹²⁾;
- (b) authorities carrying out and coordinating other police and customs checks within the country;
- (c) national judicial authorities and their coordination authorities;
- (d) authorities responsible for issuing visas, the central authorities responsible for examining visa applications, authorities responsible for issuing residence permits and for the administration of legislation on third-country nationals in the context of the application of the Union law relating to the movement of persons;
- (e) authorities responsible for issuing vehicle registration certificates (in accordance with Regulation (EC) No 1986/2006).

In accordance with the SIS II Decision, Europol and Eurojust also have access to certain categories of alerts.

SIS II is made up of the following components:

1. a central system (the Central SIS II) composed of:
 - (a) a technical support function (CS-SIS) containing a database (the SIS II database);
 - (b) a uniform national interface (NI-SIS);

⁽⁸⁾ Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 36).

⁽⁹⁾ OJ L 370, 17.12.2004, p. 78.

⁽¹⁰⁾ OJ L 160, 18.6.2011, p. 3.

⁽¹¹⁾ Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates (OJ L 381, 28.12.2006, p. 1).

⁽¹²⁾ Regulation (EC) No 562/2006 of the European Parliament and the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

2. a national system (N.SIS II) in each of the Member States, consisting of the national data systems which communicate with the Central SIS II. An N.SIS II may contain a data file (a national copy), containing a complete or partial copy of the SIS II database;
3. a communication infrastructure between the CS-SIS and the NI-SIS that provides an encrypted virtual network dedicated to SIS II data and the exchange of data between Sirene Bureaux as defined below.

1. THE SIRENE BUREAUX AND SUPPLEMENTARY INFORMATION

1.1. The Sirene Bureau

SIS II only contains the indispensable information (i.e. alert data) allowing the identification of a person or an object and the necessary action to be taken. In addition, according to the SIS II legal instruments, Member States shall exchange supplementary information related to the alert which is required for implementing certain provisions foreseen under the SIS II legal instruments, and for SIS II to function properly, either on a bilateral or multilateral basis.

This structure, built to deal with the exchange of supplementary information, has been given the name “Sirene”, which is an acronym of the definition of the structure in English: Supplementary Information Request at the National Entries.

A national “Sirene Bureau” shall be set up by each of the Member States in accordance with common Article 7(2) of the SIS II legal instruments. It shall serve as a single contact point for the Member States, fully operational on 24/7 basis, for the purpose of exchanging supplementary information in connection with the entry of alerts and for allowing the appropriate action to be taken in cases where persons and objects have been entered in SIS II and are found as a result of a hit. The Sirene Bureaux's main tasks include ⁽¹³⁾ ensuring the exchange of all supplementary information in accordance with the requirements of this Sirene Manual, as provided in common Article 8 of the SIS II legal instruments for the following purposes:

- (a) to allow Member States to consult or inform each other whilst entering an alert (e.g. when entering alerts for arrest);
- (b) following a hit to allow the appropriate action to be taken (e.g. matching an alert);
- (c) when the required action cannot be taken (e.g. adding a flag);
- (d) when dealing with the quality of SIS II data (e.g. when data has been unlawfully entered or is factually inaccurate), including the validation of outgoing alerts and the verification of incoming alerts, if it is provided for by national law;
- (e) when dealing with the compatibility and priority of alerts (e.g. when checking for multiple alerts);
- (f) when dealing with data subjects' rights, in particular the right of access to data.

Member States are encouraged to organise all national bodies responsible for international police cooperation, including Sirene Bureaux, in a structured way so as to prevent conflicts of competence and duplication of work.

1.2. Sirene Manual

The Sirene Manual is a set of instructions which describes in detail the rules and procedures governing the bilateral or multilateral exchange of supplementary information.

1.3. Appendices to this Sirene Manual

Since certain rules of a technical nature have a direct impact on the work of users in the Member States, including the Sirene Bureaux, it is appropriate to include such rules in the Sirene Manual. Therefore Appendices to this Manual set out, inter alia, rules on transliteration, code tables, forms for communication of supplementary information and other technical implementing measures for data processing.

⁽¹³⁾ This is without prejudice to other tasks given to Sirene Bureaux based on respective legislation in the framework of police cooperation, e.g. in the application of the Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ L 386, 29.12.2006, p. 89).

1.4. **Catalogue of recommendations for the correct application of the Schengen *acquis* and best practices (Schengen Information System)**

The catalogue serves to provide legally non-binding recommendations and best practices for Member States in the light of experience. It also serves as a reference tool for evaluation of the correct implementation of the SIS II legal instruments. Accordingly, it should, as far as possible, be followed.

1.5. **Role of the Sirene Bureaux in police cooperation in the European Union**

The exchange of supplementary information shall not prejudice the tasks entrusted to the Sirene Bureaux in the area of international police cooperation by national law implementing other legal instruments of the European Union.

Additional tasks may be entrusted to the Sirene Bureaux, in particular, by the national law implementing Framework Decision 2006/960/JHA, Articles 39 and 46 of the Schengen Convention, in as far as they are not replaced by Framework Decision 2006/960/JHA, Articles 40 or 41 of the Schengen Convention or if the information falls within the scope of mutual legal assistance.

If a Sirene Bureau receives, from another Sirene Bureau, a request falling outside its competence under national law it should immediately forward it to the competent authority and inform the requesting Sirene Bureau about this action. If necessary, it should provide support to the requesting Sirene Bureau to facilitate communication.

1.5.1. *Transfer of SIS II data and supplementary information to third countries or international organisations*

According to Article 39 of the SIS II Regulation and Article 54 of the SIS II Decision, data processed in SIS II in application of these two legal instruments shall not be transferred or made available to third countries or to international organisations. This prohibition shall apply to the transfer of supplementary information to third countries or international organisations. Article 55 of the SIS II Decision foresees derogation from this general rule regarding the exchange of data on stolen, misappropriated, lost or invalidated passports with Interpol, subject to the conditions laid down in this article.

1.6. **Relations between Sirene Bureaux and Europol**

Europol has the right to access and to directly search data entered in SIS II according to Articles 26, 36 and 38 of the SIS II Decision. Europol may request further information from the Member States concerned in accordance with the provisions of the Europol Decision⁽¹⁴⁾. In accordance with national law, it is strongly recommended that cooperation with the National Europol Unit (ENU) should be established in order to ensure that the Sirene Bureau is informed of any exchange of supplementary information between Europol and the ENU concerning alerts in SIS II. In exceptional cases where communication at national level concerning SIS II alerts is done by the ENU, all parties to the communication, especially the Sirene Bureau, should be made aware of this fact to avoid confusion.

1.7. **Relations between Sirene Bureaux and Eurojust**

The national members of Eurojust and their assistants have the right to access and to directly search data entered in SIS II according to Articles 26, 32, 34 and 38 of the SIS II Decision. In accordance with national law, cooperation with them should be established in order to ensure the smooth exchange of information in case of a hit. In particular, the Sirene Bureau should be the contact point for national members of Eurojust and their assistants for supplementary information related to alerts in SIS II.

1.8. **Relations between Sirene Bureaux and Interpol⁽¹⁵⁾**

The role of the SIS II is neither to replace nor to replicate the role of Interpol. Although tasks may overlap, the governing principles for action and cooperation between the Member States under Schengen differ substantially from those under Interpol. It is therefore necessary to establish rules for cooperation between the Sirene Bureaux and the NCBs (National Central Bureaux) at the national level.

The following principles shall apply:

1.8.1. *Priority of SIS II alerts over Interpol alerts*

In case of alerts issued by Member States, SIS II alerts and the exchange of all information on these alerts shall always have priority over alerts and information exchanged via Interpol. This is of particular importance if the alerts conflict.

⁽¹⁴⁾ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).

⁽¹⁵⁾ See also Schengen Catalogue, recommendations and best practices.

1.8.2. *Choice of communication channel*

The principle of Schengen alerts taking precedence over Interpol alerts issued by Member States shall be respected and it shall be ensured that the NCBs of Member States comply with this. Once the SIS II alert is created, all communication related to the alert and the purpose for its creation and execution of action to be taken shall be provided by Sirene Bureaux. If a Member State wants to change channels of communication, the other parties have to be consulted in advance. Such a change of channel is possible only in specific cases.

1.8.3. *Use and distribution of Interpol diffusions in Schengen States*

Given the priority of SIS II alerts over Interpol alerts, the use of Interpol alerts shall be restricted to exceptional cases (i.e. where there is no provision, either in the SIS II legal instruments or in technical terms, to enter the alert in the SIS II, or where not all the necessary information is available to form a SIS II alert). Parallel alerts in the SIS II and via Interpol within the Schengen area should be avoided. Alerts which are distributed via Interpol channels and which also cover the Schengen area or parts thereof shall bear the following indication: "except for the Schengen States".

1.8.4. *Hit and deletion of an alert*

In order to ensure the Sirene Bureau's role as a coordinator of the verification of the quality of the information entered in the SIS II Member States shall ensure that the Sirene Bureaux and the NCBs inform each other of hits and deletion of alerts.

1.8.5. *Improvement of cooperation between the Sirene Bureaux and the Interpol NCBs*

In accordance with national law, each Member State shall take all appropriate measures to provide for the effective exchange of information at the national level between its Sirene Bureau and the NCBs.

1.9. **Standards**

The standards that underpin the cooperation via Sirene Bureaux are the following:

1.9.1. *Availability*

Each Sirene Bureau shall be fully operational 24 hours a day, seven days a week in order to be able to react within the time limit as required in Section 1.13. Provision of technical and legal analysis, support and solutions shall also be available 24 hours a day, seven days a week.

1.9.2. *Continuity*

Each Sirene Bureau shall build an internal structure which guarantees the continuity of management, staff and technical infrastructure.

1.9.3. *Confidentiality*

Pursuant to common Article 11 of the SIS II legal instruments, relevant national rules of professional secrecy or other equivalent obligations of confidentiality shall apply to all Sirene staff. This obligation shall also apply after staff members leave office or employment.

1.9.4. *Accessibility*

In order to fulfil the requirement to provide supplementary information, the Sirene staff shall have direct or indirect access to all relevant national information and expert advice.

1.10. **Communications**

1.10.1. *Language of communication*

In order to achieve the utmost efficiency in bilateral communication between Sirene Bureaux, a language familiar to both parties shall be used.

1.10.2. *Data exchange between Sirene Bureaux*

The technical specifications concerning the exchange of information between Sirene Bureaux are laid down in the document: "Data exchange between Sirene Bureaux (DEBS)". These instructions shall be respected.

1.10.3. *Network, messages and mailboxes*

Sirene Bureaux shall use an encrypted virtual network exclusively dedicated to SIS II data and the exchange of supplementary information between Sirene Bureaux, as referred to in common Articles 4(1)(c) and 8(1) of the SIS II legal instruments. Only if this channel is not available, another adequately secured and appropriate means of communication may be used. The ability to choose the channel means that it shall be determined on a case-by-case basis, according to technical possibilities and the security and quality requirements that the communications have to meet.

Written messages shall be divided into two categories: free text and standard forms. Appendix 3 describes the forms exchanged between Sirene Bureaux and set out guidance on the expected content of the fields, including whether they are mandatory or not.

There shall be four different mailboxes within the abovementioned network for free text messages and Sirene forms.

Mailbox	Mailbox Address	Purpose
Operational	oper@xx.sirenemail2.eu	Used for the exchange of forms and attachments between Sirene Bureaux
Technical	tech@xx.sirenemail2.eu	Used for e-mail exchange between the technical support staff of the Sirene Bureaux
Head of Sirene	director@xx.sirenemail2.eu	Used for e-mail exchange with the Heads of the Sirene Bureaux
E-mail	message@xx.sirenemail2.eu	Used for free text message exchange between Sirene Bureaux

For testing purposes a second domain exists ⁽¹⁶⁾ (testxx.sirenemail2.eu) within which any of the mailboxes in the table above may be replicated for test purposes without interfering with the live message exchange and workflow environment.

The detailed rules on Sirene mailboxes and transmission of Sirene forms described in DEBS shall apply.

The Sirene workflow system (see Section 1.12) shall monitor the operational and e-mail mailboxes (“oper” and “message”) to detect incoming forms, related e-mails and attachments. Urgent messages shall only be sent to the operational mailbox.

1.10.4. *Communication in exceptional circumstances*

Where normal communication channels are not available and it is necessary to send standard forms by fax, for example, the procedure described in DEBS shall apply.

1.11. **Sirene Address Book (SAB)**

The contact details of the Sirene Bureaux and relevant information for mutual communication and cooperation are collected and provided in the Sirene Address Book (SAB). The Commission will update the SAB. The updated SAB shall be issued by the Commission at least twice per year. Each Sirene Bureau shall ensure that:

- (a) information from the SAB is not disclosed to third parties;
- (b) the SAB is known and used by the Sirene staff;
- (c) any update of the information listed in the SAB is provided without delay to the Commission.

⁽¹⁶⁾ This second domain exists in the technical “pre-production environment”.

1.12. Sirene workflow system

The effective management of the Sirene Bureaux' workload can be best achieved through each Sirene Bureau having a computerised management system (workflow system), which allows a great deal of automation in the management of the daily workflow.

The Sirene Bureau may have a back-up computer and database system for its workflow at a secondary site in case of a serious emergency at the Sirene Bureau. This should include sufficient back-up power and communication supply.

Appropriate IT support should be provided for Sirene workflow to ensure its high availability.

1.13. Time limits for response

The Sirene Bureau shall answer all requests for information on alerts and hit procedures, made by the other Member States via their Sirene Bureaux, as soon as possible. In any event a response shall be given within 12 hours. (See also Section 1.13.1 on indication of urgency in Sirene forms.)

Priorities in daily work shall be based on the category of alert and the importance of the case.

1.13.1. Indication of urgency in Sirene forms including urgent reporting of a hit

Sirene forms to be dealt with by the requested Sirene Bureau with highest priority may be marked "URGENT", in field 311 ("Important Notice"), followed by the reason for urgency. The reason for urgency shall be explained in the appropriate fields of the Sirene forms. Telephone communication or notification may also be used where an urgent response is required.

Where the circumstances of a hit on an alert dictate, such as a case of genuine urgency or significant importance, the Sirene Bureau of the Member State that matched the alert shall, where appropriate, inform the Sirene Bureau of the issuing Member State of the hit by telephone after sending a **G form**.

1.14. Transliteration/transcription rules

The transliteration and transcription definitions and rules are set out in Appendix 1. They shall be respected in the communication between Sirene Bureaux (see also Section 2.10 on entering proper names).

1.15. Data quality

Pursuant to Article 7(2) of the SIS II legal instruments, Sirene Bureaux shall coordinate the verification of the quality of the information entered in the SIS II. Sirene Bureaux should have the necessary national competence to perform this role. Therefore, an adequate form of national data quality audit should be provided for, including a review of the rate of alerts/hits and of data content.

In order to allow each Sirene Bureau to perform its role of data quality verification coordinator, the necessary IT support and appropriate rights within the systems should be available.

National standards for training users on data quality principles and practice should be established in cooperation with the national Sirene Bureau. Member States may call upon the staff of the Sirene Bureaux to be involved in the training of all authorities entering alerts, stressing data quality and maximisation of the use of SIS II.

1.16. Archiving

- (a) Each Member State shall establish conditions for storing information.
- (b) The Sirene Bureau of the issuing Member State shall keep all information on its own alerts available to the other Member States, including a reference to the decision giving rise to the alert.
- (c) The archives of each Sirene Bureau shall allow swift access to the relevant information to meet the very short deadlines for transmitting information.
- (d) In accordance with Article 12(4) of the SIS II legal instruments personal data, held in files by the Sirene Bureau as a result of exchanging information, shall be kept only for such time as may be required to achieve the purposes for which they were supplied. As a rule, this information shall be deleted immediately after the related alert has been deleted from SIS II, and in any event at the latest one year thereafter. However, data relating to a particular alert which a Member State has entered or to an alert in connection with which action has been taken on its territory may be stored for longer in accordance with national law.

- (e) Supplementary information sent by other Member States shall be stored according to national data protection laws in the recipient Member State. Common Article 12 of the SIS II legal instruments, the Directive 95/46/EC and Framework Decision 2008/977/JHA also apply.
- (f) Information on misused identity shall be deleted after the deletion of the relevant alert.
- (g) Access to archives shall be recorded, controlled and restricted to designated staff.

1.17. Staff

A high level of experienced staff leads to a workforce able to function on their own initiative and thereby able to handle cases efficiently. Therefore a low turnover of personnel is desirable, which requires the unambiguous support of management to create a devolved working environment. Member States are encouraged to take appropriate measures to avoid loss of qualification and experience caused by staff turnover.

1.17.1. Heads of Sirene Bureaux

The Heads of Sirene Bureaux should meet at least twice a year to assess the quality of the cooperation between their services, to discuss necessary technical or organisational measures in the event of any difficulties and to clarify procedures where required. The meeting of the Heads of Sirene Bureaux is organised by the Member State holding the Presidency of the Council of the European Union.

1.17.2. Sirene Contact Person (SIRCoP)

In cases where standard procedures may be insufficient, the Sirene Contact Person (SIRCoP) may deal with files on which progress is complex, problematic or sensitive and a degree of quality assurance and/or longer term contact with another Sirene Bureau may be required in order to resolve the issue. The SIRCoP is not intended for urgent cases where the 24/7 front desk services shall in principle be used.

The SIRCoP may formulate proposals to enhance quality and describe options to resolve such issues in the longer term.

As a general rule SIRCoP are contactable by another SIRCoP only during office hours.

An annual assessment shall be carried out within the framework of the annual statistical reporting as it is set out in Appendix 5 based upon the following indicators:

- (a) number of SIRCoP interventions per Member State;
- (b) reason for contact;
- (c) result of the interventions based on information available during the reporting period.

1.17.3. Knowledge

Sirene Bureau staff shall have linguistic skills covering as wide a range of languages as possible and on-duty staff shall be able to communicate with all Sirene Bureaux.

They shall have the necessary knowledge on:

- national, European and international legal aspects,
- their national law enforcement authorities, and
- national and European judiciary and immigration administration systems.

They need to have the authority to deal independently with any incoming case.

Operators on duty outside office hours shall have the same competence, knowledge and authority and it should be possible for them to refer to experts available on-call.

Legal expertise to cover both normal and exceptional cases should be available in the Sirene Bureau. Depending on the case, this may be provided by any personnel with the necessary legal background or experts from judicial authorities.

1.17.4. *Training*

National level

At the national level, sufficient training shall ensure that staff meet the required standards laid down in this Manual. Before being authorised to process data stored in the SIS II, staff shall in particular receive appropriate training about data security and data protection rules and shall be informed of any relevant criminal offences and penalties.

European level

Common training courses shall be organised at least once a year, to enhance cooperation between Sirene Bureaux by allowing staff to meet colleagues from other Sirene Bureaux, share information on national working methods and create a consistent and equivalent level of knowledge. It will furthermore make staff aware of the importance of their work and the need for mutual solidarity in view of the common security of Member States.

The delivery of training should be in compliance with the Sirene Trainers Manual.

Article 3 of Regulation (EU) No 1077/2011 of the European Parliament and of the Council ⁽¹⁷⁾ sets out that the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (the Agency) shall perform tasks relating to training on the technical use of SIS II, in particular for Sirene staff.

1.17.5. *Exchange of staff*

As far as possible, Sirene Bureaux should also foresee setting up staff exchanges with other Sirene Bureaux at least once a year. These exchanges are intended to help improve staff knowledge of working methods, to show how other Sirene Bureaux are organised and to establish personal contacts with colleagues in other Member States.

2. GENERAL PROCEDURES

The procedures described below are applicable to all categories of alerts. The procedures specific to each category of alert can be found in the relevant parts of this Manual.

2.1. **Definitions**

“Issuing Member State”: Member State which entered the alert in SIS II;

“Executing Member State”: Member State which takes the required actions following a hit;

“Providing Sirene Bureau”: Sirene Bureau of a Member State which has fingerprints or pictures of the person for whom an alert was entered by another Member State.

“Hit”: a hit occurs in SIS II when:

- (a) a search is conducted by a user,
- (b) the search reveals a foreign alert in SIS II,
- (c) data concerning the alert in SIS II matches the search data, and
- (d) further actions are requested as a result of the hit

“Flag”: a suspension of validity at the national level that may be added to alerts for arrest, alerts on missing persons and alerts for checks, where a Member State considers that to give effect to an alert is incompatible with its national law, its international obligations or essential national interests. When the alert is flagged, the requested action on the basis of the alert shall not be taken on the territory of this Member State.

⁽¹⁷⁾ Regulation (EU) No 1077/2011 of 25 October 2011 of the European Parliament and of the Council establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 286, 1.11.2011, p. 1).

2.2. Multiple alerts (Article 34(6) of the SIS II Regulation and Article 49(6) of the SIS II Decision)

Only one alert per Member State may be entered in SIS II for any one person or object.

Therefore, wherever possible and necessary, second and subsequent alerts on the same person or object shall be kept available at national level so that they can be introduced when the first alert expires or is deleted.

Several alerts may be entered by different Member States for the same subjects. It is essential that this does not cause confusion to users, and that it is clear to them what measures must be taken when seeking to enter an alert and which procedure shall be followed when a hit occurs. Procedures shall therefore be established for detecting multiple alerts, as shall a priority mechanism for entering them in SIS II.

This calls for:

- checks before entering an alert, in order to determine whether the subject is already in SIS II,
- consultation with the other Member States, when the entry of an alert causes multiple alerts that are incompatible.

2.2.1. Compatibility of alerts

Several Member States may enter an alert on the same person or object if the alerts are compatible.

Table of compatibility of alerts on persons

Order of importance	Alert for arrest	Alert for refusal of entry	Alert on missing person (protection)	Alert for specific check — immediate action	Alert for specific check	Alert for discreet check — immediate action	Alert for discreet check	Alert on missing person (whereabouts)	Alert for judicial procedure
Alert for arrest	yes	yes	yes	no	no	no	no	yes	yes
Alert for refusal of entry	yes	yes	no	no	no	no	no	no	no
Alert on missing person (protection)	yes	no	yes	no	no	no	no	yes	yes
Alert for specific check — immediate action	no	no	no	yes	yes	no	no	no	no
Alert for specific check	no	no	no	yes	yes	no	no	no	no
Alert for discreet check — immediate action	no	no	no	no	no	yes	yes	no	no
Alert for discreet check	no	no	no	no	no	yes	yes	no	no
Alert on missing person (whereabouts)	yes	no	yes	no	no	no	no	yes	yes
Alert for judicial procedure	yes	no	yes	no	no	no	no	yes	yes

Table of compatibility for alerts on objects

Order of importance	Alert for use as evidence	Document invalidated for travel purposes	Alert for seizure	Alert for specific check — immediate action	Alert for specific check	Alert for discreet check — immediate action	Alert for discreet check
Alert for use as evidence	yes	yes	yes	no	no	no	no
Document invalidated for travel purposes	yes	yes	yes	no	no	no	no
Alert for seizure	yes	yes	yes	no	no	no	no
Alert for specific check — immediate action	no	no	no	yes	yes	no	no
Alert for specific check	no	no	no	yes	yes	no	no
Alert for discreet check — immediate action	no	no	no	no	no	yes	yes
Alert for discreet check	no	no	no	no	no	yes	yes

2.2.2. *Order of priority of alerts*

In case of incompatible alerts the order of priority for alerts on persons shall be as follows:

- arrest with a view to surrender or extradition (Article 26 of Decision),
- refusing entry or stay in the Schengen territory (Article 24 of Regulation),
- placing under protection (Article 32 of Decision),
- specific check — immediate action (Article 36 of Decision),
- specific check (Article 36 of Decision),
- discreet check — immediate action (Article 36 of Decision),
- discreet check (Article 36 of Decision),
- communicating whereabouts (Articles 32 and 34 of the Decision).

The order of priority for alerts on objects shall be as follows:

- use as evidence (Article 38 of Decision),
- seizure of document invalidated for travel purposes (Article 38 of Decision),
- seizure (Article 38 of Decision),
- specific check — immediate action (Article 36 of Decision),
- specific check (Article 36 of Decision),
- discreet check — immediate action (Article 36 of Decision),
- discreet check (Article 36 of Decision),

Departures from this order of priority may be made after consultation between the Member States if essential national interests are at stake.

2.2.3. *Checking for incompatibility and entering multiple alerts*

In order to avoid incompatible multiple alerts, it is important to distinguish accurately between persons or objects that have similar characteristics. Consultation and cooperation between the Sirene Bureaux is therefore essential, and each Member State shall establish appropriate technical procedures to detect such cases before an entry is made.

The Sirene Bureau shall ensure that only one alert exists in SIS II in accordance with national procedure if a request for an alert conflicts with an alert entered by the same Member State.

The following procedure shall apply in order to verify if multiple alerts exist on the same person or same object:

- (a) The mandatory identity description elements shall be compared when establishing the existence of multiple alerts:
 - (i) on a person:
 - surname,
 - forename,
 - date of birth,
 - sex;
 - (ii) on a vehicle:
 - the VIN,
 - the registration number and country of registration,
 - the make,
 - the type;
 - (iii) on an aircraft:
 - category of aircraft,
 - ICAO registration number;
 - (iv) on a boat:
 - category of boat,
 - number of hulls,
 - boat external identification number (not mandatory but may be used);
 - (v) on a container:
 - BIC number ⁽¹⁸⁾.
- (b) When entering a new alert on a vehicle or other object with a VIN or registration number see procedures in Section 8.2.1.
- (c) For other objects, the most appropriate fields for identifying multiple alerts are the mandatory fields, all of which are to be used for automatic comparison by the system.

The procedures described in Section 8.2.1 (checking for multiple alerts on a vehicle) shall be used to distinguish between other categories of objects in SIS II when it becomes apparent that two similar objects have the same serial number.

If the outcome of the check is that the details relate to two different persons or objects, the Sirene Bureau shall approve the request for entering the new alert ⁽¹⁹⁾.

⁽¹⁸⁾ Certain transportation companies use other reference numbers. SIS II has a provision for entering serial numbers other than the BIC.

⁽¹⁹⁾ Due to the lack of standardisation in serial numbers for objects it is possible, for example, for two different firearms of different makes to have the same serial number. Equally it is possible for an object to have the same serial number as a very different object, for example, an issued document and a piece of industrial equipment. Where it is clear that the serial numbers are identical but the objects are clearly not the same no consultation between Sirene Bureaux is required. Users may be made aware that this situation can arise. Additionally, it is possible that an object, such as a passport or car, has been stolen and reported in one country and is subsequently reported in the country of origin. This could result in two alerts for the same object. If this matter comes to light it may be resolved by the Sirene Bureaux concerned.

If the check for multiple alerts reveals that the details are identical and relate to the same person or object, the Sirene Bureau of the Member State which intends to enter a new alert shall consult the Sirene Bureau of the issuing Member State if the alerts are incompatible.

The following procedure shall apply to verify the compatibility of alerts:

- (a) prior to entering an alert it is mandatory to carry out a check to ensure that there are no incompatible alerts;
- (b) if another alert exists which is compatible, the Sirene Bureaux do not need to consult one another. However, if there is a need to clarify whether the alert relates to the same person the Sirene Bureau shall consult the Sirene Bureau of the issuing Member State using the **L form**;
- (c) if the alerts are incompatible, the Sirene Bureaux shall consult one another using an **E form** so that ultimately only one alert is entered;
- (d) alerts for arrest shall be entered immediately without awaiting the result of any consultation with other Member States;
- (e) if an alert that is incompatible with existing alerts is given priority as the outcome of consultation, the Member States that entered the other alerts shall delete them when the new alert is entered. Any disputes shall be settled by Member States via the Sirene Bureaux;
- (f) Member States who were not able to enter an alert may subscribe to be notified by the CS-SIS about the deletion of the alert;
- (g) the Sirene Bureau of the Member State that was not able to enter the alert may request that the Sirene Bureau of the Member State that entered the alert informs it of a hit on this alert.

2.2.4. *Special situation of the United Kingdom and Ireland*

The United Kingdom and Ireland do not take part in the SIS II Regulation therefore they cannot access the alerts on refusal of entry or stay (Articles 24 and 26 of the SIS II Regulation). They shall, nevertheless, be bound by the rules on compatibility of alerts as set out in Section 2.2 and in particular they shall apply the procedure referred in Section 2.2.3.

The following procedure shall apply:

- (a) Should the United Kingdom or Ireland enter an alert which is potentially incompatible with an existing alert on refusal of entry or stay in accordance with Section 2.2.1 the Central SIS II notifies these two Member States on the potential incompatibility by communicating only the Schengen ID of the existing alert.
- (b) Should an alert inserted by the United Kingdom or Ireland be notified of a potential incompatibility with an alert on refusal of entry or stay entered by another Member State, the Sirene Bureau of the United Kingdom or Ireland shall initiate a consultation with the issuing Member State by using free text message and shall delete the potentially incompatible alert during the consultation.
- (c) Depending on the outcome of the consultation the United Kingdom or Ireland can reinsert an alert which has been shown to be compatible.

2.3. **The exchange of information after a hit**

If the user requires supplementary information after a hit, the Sirene Bureau shall contact the Sirene Bureau of the issuing Member State without delay and request the necessary information. Where appropriate, the Sirene Bureaux shall act as intermediaries between the national authorities and shall provide and exchange supplementary information pertinent to the alert in question.

Unless stated otherwise, the issuing Member State shall be informed of the hit and its outcome (see also Section 1.13.1 on indication of urgency)

The following procedure shall apply:

- (a) Without prejudice to Section 2.4 of this Manual, one hit on an individual or an object for which an alert has been entered, shall in principle be communicated to the Sirene Bureau of the issuing Member State using one **G form**.
- (b) When notifying the issuing Member State of a hit, the applicable article of the SIS II legal instruments shall be indicated in field 090 of the **G form**, including additional information if necessary (e.g. MINOR).

The **G form** shall provide as much information as possible on the hit, including on the action taken in field 088. Provision of supplementary information may be requested from the issuing Member State in field 089.

- (c) If the Sirene Bureau of the executing Member State intends to provide further information after a **G form** has been sent, it shall use an **M form**.
- (d) If necessary, the Sirene Bureau of the issuing Member State shall then send any relevant, specific information and indicate any particular measures that it requests the Sirene Bureau of the executing Member State to take.

For the reporting procedure on hits achieved via Automatic Number Plate Recognition (ANPR) systems see Section 9.

2.4. When the procedures following a hit cannot be followed (Article 48 of the SIS II Decision and Article 33 of the SIS II Regulation)

In accordance with Article 48 of the SIS II Decision and Article 33 of the SIS II Regulation, the following procedure shall apply:

- (a) the Member State, which is on the basis of all available information definitely unable to follow the procedure, shall inform the issuing Member State via its Sirene Bureau that it is not able to perform the requested action, and give the reasons in field 083 of an **H form**;
- (b) the Member States concerned may agree on the action to be taken in line with their own national laws and the SIS II legal instruments.

2.5. Processing of data for purpose other than that for which it was entered in the SIS II (Article 46(5) of the SIS II Decision)

The data contained in SIS II may only be processed for the purposes laid down for each category of alert.

However, if prior authorisation has been obtained from the issuing Member State, the data may be processed for a purpose other than that for which they were entered, in order to prevent an imminent serious threat to public policy and security, for serious reasons of national security or for the purposes of preventing a serious criminal offence.

If a Member State intends to process data in SIS II for a purpose other than that for which they were entered, the exchange of information shall take place according to the following rules:

- (a) through its Sirene Bureau, the Member State that intends to use data for a different purpose shall explain to the Member State that entered the alert the grounds for having the data processed for another purpose, by using an **I form**;
- (b) as soon as possible, the issuing Member State shall study whether this request can be met and inform the other Member State by using an **M form**, through its Sirene Bureau, of its decision;
- (c) if need be, the Member State that entered the alert may grant authorisation subject to certain conditions on how the data are to be used. This authorisation shall be sent by using an **M form**.

Once the Member State that entered the alert has agreed, the other Member State shall only use the data for the purpose for which it obtained authorisation. It shall take account of any conditions set by the issuing Member State.

2.6. Flagging

2.6.1. Introduction

- (a) Article 24 of the SIS II Decision provides for the following cases where a Member State may require a flag:
 - (i) Where a Member State considers that to give effect to an alert entered in accordance with Articles 26, 32 or 36 of the SIS II Decision is incompatible with its national law, its international obligations or essential national interests, it may subsequently require that a flag be added to the alert to the effect that the action to be taken on the basis of the alert will not be taken in its territory. The flag shall be added by the Sirene Bureau of the issuing Member State.
 - (ii) In order to enable Member States to require that a flag be added to an alert issued in accordance with Article 26, all Member States shall be notified automatically about any new alert of that category by the exchange of supplementary information.
 - (iii) If in particularly urgent and serious cases, a Member State issuing an alert requests the execution of the action, the Member State executing the alert shall examine whether it is able to allow the flag added at its behest to be withdrawn. If the Member State executing the alert is able to do so, it shall take the necessary steps to ensure that the action to be taken can be carried out immediately.
- (b) An alternative procedure exists only for alerts for arrest (see Section 3.6).
- (c) When a flag is added to alerts for missing persons and alerts for discreet or specific checks the alert does not appear on the screen when the user consults the system.
- (d) Without prejudice to Section 3.6.1 a Member State shall not request a flag solely on the basis that a given Member State is the issuing Member State. Flags shall only be requested on a case-by-case basis.

2.6.2. Consulting the Member States with a view to adding a flag

A flag shall be added **only** at the request or agreement of another Member State.

The following procedure shall apply:

- (a) If a Member State requests a flag to be added, it shall request the flag from the issuing Member State using an **F form**, explaining the reason for the flag. Field 071 shall be used for this purpose, explaining in field 080 the reason for the flag. For other supplementary information concerning the alert field 083 shall be used.
- (b) The Member State that entered the alert shall add the requested flag immediately.
- (c) Once information has been exchanged, based on the information provided for in the consultation process by the Member State requesting the flag, the alert may need to be amended or deleted or the request may be withdrawn, leaving the alert unchanged.

2.6.3. A request for deletion of a flag

Member States shall request the deletion of the previously requested flag as soon as the reason for the flag is no longer valid. This may be the case, in particular, if national legislation has changed or if further information exchange about the case reveals that the circumstances referred to in Article 24(1) or 25 of the SIS II Decision no longer exist.

The following procedure shall apply:

- (a) The Sirene Bureau which previously requested the flag to be added shall request the Sirene Bureau of the issuing Member State to delete the flag, using an **F form**. Field 075 shall be used for this purpose ⁽²⁰⁾. For more details concerning national law field 080 shall be used and, where appropriate, for inserting supplementary information explaining the reason for the deletion of the flag and for other supplementary information concerning the alert field 083 shall be used.
- (b) The Sirene Bureau of the issuing Member State shall delete the flag immediately.

⁽²⁰⁾ For the technical implementation see the Data Exchange between Sirenes document referred to in Section 1.10.2.

2.7. **Data found to be legally or factually inaccurate (Article 34 of the SIS II Regulation and Article 49 of the SIS II Decision)**

If data is found to be factually incorrect or has been unlawfully stored in the SIS II, then the exchange of supplementary information shall take place in line with the rules set out in Article 34(2) of the SIS II Regulation and Article 49(2) of the SIS II Decision, which provide that only the Member State that issued the alert may modify, add to, correct, update or delete data.

The Member State which found that data contains an error or that it has been unlawfully stored shall inform the issuing Member State via its Sirene Bureau at the earliest opportunity and not later than 10 calendar days after the evidence suggesting the error has come to its attention. The exchange of information should be carried out using a **J form**.

- (a) following the result of consultations, the issuing Member State may have to delete or correct the data, in accordance with its national procedures for correcting the item in question;
- (b) if there is no agreement within two months, the Sirene Bureau of the Member State that discovered the error or that the data has been unlawfully stored shall advise the authority responsible within its own country to refer the matter to the European Data Protection Supervisor, who shall, jointly with the national supervisory authorities concerned, act as mediator.

2.8. **The right to access and rectify data (Articles 41 of the SIS II Regulation and Article 58 of the SIS II Decision)**

2.8.1. *Requests for access to or rectification of data*

Without prejudice to national law, when the national authorities need to be informed of a request to access or rectify data, then the exchange of information will take place according to the following rules:

- (a) Each Sirene Bureau applies its national law on the right to access personal data. Depending on the circumstances of the case and in accordance with the applicable law, the Sirene Bureaux shall either forward any requests they receive for access to or for rectification of data to the competent national authorities, or they shall adjudicate upon these requests within the limits of their remit.
- (b) If the competent national authorities so require, the Sirene Bureaux of the Member States concerned shall, in accordance with their national law, forward them information on exercising the right to access data.

2.8.2. *Exchange of information on requests for access to alerts issued by other Member States*

Information on requests for access to alerts entered in SIS II by another Member State shall be exchanged via the national Sirene Bureaux using a **K form** for persons or an **M form** for objects.

The following procedure shall apply:

- (a) the request for access shall be forwarded to the Sirene Bureau of the issuing Member State as soon as possible, so that it can take a position on the question;
- (b) the Sirene Bureau of the issuing Member State shall inform the Sirene Bureau of the Member State that received the request of access of its position;
- (c) the response by the Sirene Bureau of the issuing Member State shall take into account any deadlines for processing the request set by the Sirene Bureau of the Member State that received the request for access;
- (d) the Sirene Bureau of the Member State receiving an enquiry from an individual for access, correction or deletion shall take all the necessary measures to ensure a timely response.

If the Sirene Bureau of the issuing Member State sends its position to the Sirene Bureau of the Member State that received the request for access, the Sirene Bureau, according to national law and within the limits of its competence, shall either adjudicate upon the request or shall ensure that the position is forwarded to the authority responsible for adjudication of the request as soon as possible.

2.8.3. *Exchange of information on requests to rectify or delete data entered by other Member States*

When a person requests to have his or her data rectified or deleted, this may only be done by the Member State that entered the alert. If the person addresses a Member State other than the one that entered the alert, the Sirene Bureau of the requested Member State shall inform the Sirene Bureau of the issuing Member State by means of a **K form** and the procedure described in 2.8.2 shall apply.

2.9. **Deleting when the conditions for maintaining the alert cease to be met**

Alerts entered in SIS II shall be kept only for the time required to meet the purposes for which they were entered.

As soon as the conditions for maintaining the alert are no longer fulfilled, the issuing Member State shall delete the alert without delay. When the alert has an expiry date, the deletion will occur automatically in the CS-SIS. In case of a hit, the particular procedures described in Sections 3.11, 4.10, 5.7, 6.5, 7.7 and 8.4 apply.

The CS-SIS deletion message shall be processed automatically by the N.SIS II.

Member States have the possibility to subscribe to an automatic notification of the deletion of an alert.

2.10. **Entering proper names**

Within the constraints imposed by national systems for entry of data and availability of data, proper names (forenames and surnames) shall be entered in SIS II in a format (script and spelling) in the format used on official travel documents in accordance with the ICAO standards for travel documents, which are also used in the transliteration and transcription functionalities of Central SIS II. In the exchange of supplementary information, Sirene Bureaux shall use the proper names as they are entered in SIS II. Both users and Sirene Bureaux within the issuing Member States shall use, as a general rule, Latin characters for entering data in SIS II, without prejudice to transliteration and transcription rules laid down in Appendix 1.

Where it is necessary to exchange supplementary information on a person who is not subject of an alert but may be related to it (e.g. a person who may be accompanying a missing minor) then the presentation and spelling of the name shall follow the rules set out in Appendix 1 and be provided in Latin characters and original format, if the Member State providing the information has the capacity to also input any special characters in the original format.

2.11. **Different categories of identity**

Confirmed identity

A confirmed identity means that the identity has been confirmed on the basis of genuine ID documents, by passport or by statement from competent authorities.

Not confirmed identity

A not confirmed identity means that there is not sufficient proof of the identity.

Misused identity

A misused identity (surname, forename, date of birth) occurs if a person, entered in SIS II, uses the identity of another real person. This can happen, for example, when a document is used to the detriment of the real owner.

Alias

Alias means an assumed identity used by a person known under other identities.

2.11.1. *Misused identity (Article 36 of the SIS II Regulation and Article 51 of the SIS II Decision)*

Due to the complexity of misused identity cases, on becoming aware that a person for whom an alert exists in SIS II is misusing someone else's identity, the issuing Member State shall check whether it is necessary to maintain the misused identity in the SIS II alert.

Subject to the person's explicit consent, and as soon as it has been established that a person's identity has been misused, additional data shall be added to the alert in SIS II in order to avoid the negative consequences of misidentification. The person whose identity has been misused may, according to national procedures, provide the competent authority with the information specified in Article 36(3) of the SIS II Regulation and Article 51(3) of the SIS II Decision. Any person whose identity has been misused has the right to withdraw his/her consent for the information to be processed.

The issuing Member State is responsible for inserting the remark “misused identity” in the alert and for entering additional data of the victim of misused identity such as photos, fingerprints and information on any valid ID document(s).

When a Member State discovers that an alert on a person entered by another Member State relates to a case of misused identity, and it has been established that the person's identity is misused it shall inform the Sirene Bureau of the issuing Member State using a **Q form**, in order that the misused identity extension can be used in the SIS II alert.

Taking into account the purpose for entering data of this nature, where the photographs and fingerprints of the person whose identity has been misused are available, they shall be added to the alert. For there to be a case of misused identity an innocent person's details must match an existing identity in an alert. The **Q form** must contain the identity details, including alias number, from the alert so that the issuing Member State may ascertain to which identity in the alert the form refers. The mandatory fields for completion of a **Q form** in such cases are set out in Appendix 3.

The data of the person whose identity has been misused shall only be available for the purpose of establishing the identity of the person being checked and shall in no way be used for any other purpose. Information on misused identity, including any fingerprints and photographs, shall be deleted at the same time as the alert or earlier if the person concerned so requests.

2.11.2. *Entering an alias*

In order to avoid incompatible alerts of any category due to an alias to be entered, to avoid problems for innocent victims and to ensure sufficient data quality, Member States shall as far as possible inform each other about aliases and exchange all relevant information about the real identity of the sought subject.

The Member State that entered the alert shall be responsible for adding any aliases. If another Member State discovers an alias, it shall inform the issuing Member State using an **M form**.

2.11.3. *Further information to establish a person's identity*

The Sirene Bureau of the issuing Member State may also, if the data in SIS II is insufficient, provide further information after consultation, on its own initiative or at the request of another Member State, to help clarify a person's identity. An **L Form** (and attachments) shall be used for this purpose. This information shall, in particular, cover the following:

- the origin of the passport or identity document in the possession of the person sought,
- the passport or identity document's reference number, date of issue, place and authority as well as the expiry date,
- description of the person sought,
- surname and forename of the mother and father of the person sought,
- other possible spellings of the surname and forenames of the person sought,
- photographs and fingerprints if available,
- last known address.

As far as possible, this information shall be available in the Sirene Bureaux, or immediately and permanently accessible to them for speedy transmission.

The common objective shall be to minimise the risk of wrongly stopping a person whose identity details are similar to those of the person on whom an alert has been issued.

2.12. **Exchange of information in case of interlinked alerts**

Each link allows for the establishment of a relationship between at least two alerts.

A Member State may create a link between alerts that it enters in SIS II and only this Member State may modify and delete the link. Links shall only be visible to users when they have correct user access rights which permit at least two alerts in the link to be visible to them. Member States shall ensure that only authorised access to links is possible.

2.12.1. *Operational rules*

Links between alerts do not require special procedures for the exchange of supplementary information. Nevertheless the following principles shall be observed:

In case there is a hit on each of two or more interlinked alerts, the Sirene Bureau of the executing Member State shall send a **G form** for each of them indicating in field 086 that other **G forms** on the linked alerts will be forwarded.

No forms shall be sent on alerts which, although linked to an alert on which there was a hit, were not respectively the object of the hit. However, if there is a linked alert for surrender/extradition or for a missing person (for their own protection or in order to prevent threats) the communication of this discovery shall be carried out using an **M form** if appropriate and the information is available.

2.13. **Format and quality of biometric data in SIS II**

In accordance with Article 23(2) of the SIS II Decision, photographs and fingerprints of the person shall be added to the alert when available.

Sirene Bureaux shall be able to exchange fingerprints and pictures for the purpose of completing the alert and/or to support the execution of the requested action to be taken. When a Member State has a picture or fingerprints of a person for whom an alert has been issued by another Member State, it may send the pictures and fingerprints as an attachment in order to allow the issuing Member State to complete the alert.

This exchange takes place without prejudice to exchanges in the framework of police cooperation in application of the Framework Decision 2006/960/JHA.

2.13.1. *Further use of the data exchanged, including archiving*

Limitations on the use of data provided for alerts in SIS II are set out in the SIS II legal instruments. Any further use of pictures and fingerprints exchanged, including archiving, shall comply with the relevant provisions of the SIS II legal instruments, applicable national provisions on data protection, in accordance with Directive 95/46/EC and Framework Decision 2008/977/JHA.

Any storage of fingerprints at the national level shall fully respect the data protection rules of SIS II. Member State shall keep fingerprint data downloaded from CS-SIS separately from national fingerprint databases and such data shall be deleted at the same time as corresponding alerts and supplementary information.

2.13.2. *Exchanging fingerprints and photographs*

The following procedure shall apply:

- (a) the providing Sirene Bureau shall send an **L form** through the usual electronic path and shall mention in field 083 of an **L form** that the fingerprints and pictures are being sent to complete an alert in SIS II;
- (b) the Sirene Bureau of the issuing Member State shall add the fingerprints or pictures to the alert in SIS II or shall send them to the competent authority to complete the alert.

2.13.3. *Technical requirements*

Fingerprints and pictures shall be collected and transmitted in accordance with the standards to be defined in the implementing rules for entering biometric data in SIS II.

Every Sirene Bureau shall fulfil those technical standards.

2.13.4. *Format and quality of biometric data*

All biometric data entered in the system shall be subject of a specific quality check to ensure a minimum quality standard common to all SIS II users.

Before entry, checks shall be carried out at the national level to ensure that:

- (a) fingerprint data is compliant with the ANSI/NIST — ITL 1-2000 specified format, as implemented for the purposes of Interpol and adapted for SIS II;

- (b) photographs, that shall only be used to confirm the identity of a person who has been located as a result of an alphanumeric search made in SIS II, are compliant with the following requirements: full frontal face pictures aspect ratio shall be, as far as possible, 3:4 or 4:5. When available, a resolution of at least 480 × 600 pixels with 24 bits of colour depth shall be used. If the image has to be acquired through a scanner, the image size shall be, as far as possible, less than about 200 KB.

2.14. Special types of search

2.14.1. Geographically targeted search

A geographically targeted search is a search carried out in a situation where a Member State has firm evidence of the whereabouts of a person or object, subject of an alert, within a restricted geographical area.

Geographically targeted searches in the Schengen area shall take place on the basis of an alert in SIS II. In circumstances where the whereabouts of a person or object are known, field 311 (Important Notice) may be completed indicating a geographical search and selecting the appropriate countries. Additionally, if the whereabouts are known when issuing an alert for arrest, field 061 of an **A Form** shall include the information on whereabouts of the wanted person. In all other cases, including for communicating the whereabouts of objects, an **M form** (field 083) shall be used. An alert for the wanted person shall be entered in SIS II to ensure that a request for action to be taken is immediately enforceable (Article 9(3) of the Council Framework Decision 2002/584/JHA ⁽²¹⁾).

When the subject of a geographical search is located at a place other than that indicated in the geographical search the Sirene Bureau of the issuing Member State shall indicate this fact, using an **M form**, to the Member State(s) involved in the geographical search in order for any related work to be stopped.

2.14.2. Search with participation of special police units for targeted search (FAST)

The services provided by special units that conduct targeted searches (*Fugitive, Active Search Teams, FAST*) should also be used in suitable cases by Sirene Bureaux in the requested Member States. The alert in SIS II should not be replaced by international cooperation of the abovementioned police units. Such cooperation should not overlap the Sirene Bureau's role as a focal point for searches using SIS II.

Cooperation, as appropriate, should be established to ensure that the Sirene Bureau of the issuing Member State is informed by their national FAST about any ongoing operation relating to an alert entered in SIS II. Where appropriate this Sirene Bureau shall provide this information to other Sirene Bureaux. Any coordinated operation of Enfast (European Network of Fugitive Active Search Teams) which entails the cooperation of the Sirene Bureau shall be reported in advance to the Sirene Bureau.

The Sirene Bureaux shall ensure fast flow of supplementary information, including information on a hit, to the national FAST if the latter is involved in the search.

3. ALERTS FOR ARREST FOR SURRENDER OR EXTRADITION PURPOSES (ARTICLE 26 OF THE SIS II DECISION)

3.1. Entering an alert

Most of the alerts for arrest are accompanied by a European Arrest Warrant (EAW). However, under an alert for arrest, a provisional arrest is also possible prior to obtaining a request for extradition (ER) according to Article 16 of the European Convention on Extradition.

The EAW/ER shall be issued by a competent judicial authority carrying out this function in the issuing Member State.

When entering an alert for arrest for surrender purposes, a copy of the original EAW shall be entered in SIS II. A translation of the EAW in one or more of the official languages of the institutions of the Union may be entered.

In addition, photographs and fingerprints of the person shall be added to the alert when available.

The relevant information including EAW or ER, provided with regard to persons wanted for arrest for surrender or extradition purposes, shall be available to the Sirene Bureau when the alert is entered. A check shall be made to ensure that the information is complete and correctly presented.

⁽²¹⁾ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

Member States shall be able to enter more than one EAW per alert for arrest. It is the responsibility of the issuing Member State to delete an EAW that loses its validity and to check if there are any other EAWs attached to the alert and extend the alert if needed.

In addition to an EAW which a Member State has attached to an alert for arrest it shall also be possible to attach translations of the EAW, if necessary in separate binary files.

For scanned documents that are to be attached to alerts, as far as possible, a minimum resolution of 150 DPI shall be used.

3.2. **Multiple alerts**

For general procedures see Section 2.2.

In addition, the following rules shall apply:

Several Member States may enter an alert for arrest on the same person. If two or more Member States have issued an alert for the same person, the decision on which warrant shall be executed in the event of an arrest shall be taken by the executing judicial authority in the Member State where the arrest occurs. The Sirene Bureau of the executing Member State shall send a **G form** to each Member State concerned.

3.3. **Misused identity**

See general procedure in Section 2.11.1.

3.4. **Entering an alias**

See general procedure in Section 2.11.2.

In the case of alerts for arrest, the Sirene Bureau shall use field 011 of an **A form** ⁽²²⁾ (at the time of entry of the alert) or subsequently an **M form**, when informing the other Member States of aliases regarding an alert for arrest, if this information is available to the Sirene Bureau.

3.5. **Supplementary information to be sent to Member States**

When entering the alert, supplementary information regarding the alert shall be sent to all Member States.

The information referred to in Section 3.5.1 shall be sent to the other Sirene Bureaux by **A form**, at the same time as entering the alert. Any further information required for identification purposes shall be sent after consultation and/or at the request of another Member State.

In the case where several EAWs or ERs exist for the same person, separate **A forms** shall be completed for each of the EAWs or ERs.

There shall be sufficient detail contained in the EAW/ER and in the **A form** (in particular, EAW Section (e): "description of the circumstances in which the offence(s) was (were) committed, including the time and place", fields 042, 043, 044, 045: "description of the circumstances") for other Sirene Bureaux to verify the alert. Appendix 3 sets out the information required and its relation to the fields on the EAW.

When an EAW is replaced or revoked this shall be indicated in field 267 of an **A form** (Article 26 SIS II Decision) or in field 044 of an **A form** (Extradition Request/Migrated alerts) by using the following text: "This form replaces the form (reference number) referring to EAW (reference number) issued on (date)".

3.5.1. *Supplementary information to be sent with regard to provisional arrest*

3.5.1.1. When entering an alert based on both an EAW and an extradition request (ER)

When entering the alert for arrest for extradition purposes, supplementary information shall be sent to all Member States using an **A form**. If the data in the alert and the supplementary information sent to Member States with regard to an EAW is not sufficient for extradition purposes, additional information shall be provided.

In field 239 it shall be indicated that the form relates to both an EAW and an ER.

⁽²²⁾ For the technical implementation see the Data Exchange between Sirenes document referred to in Section 1.10.2.

3.5.1.2. When issuing an alert based on ER only

When entering the alert for arrest for extradition purposes, supplementary information shall be sent to all Member States using an **A form**.

In field 239 it shall be indicated that the form relates to an ER.

3.6. Adding a flag

For general rules see Section 2.6.

If at least one of the EAWs attached to the alert can be executed, the alert shall not be flagged.

If an EAW contains more than one offence and if surrender can be carried out in respect of at least one of those offences, the alert shall not be flagged.

As highlighted in Section 2.6, a flagged alert under Article 26 of the SIS II Decision shall, for the period of duration of the flag, be regarded as being entered for the purposes of communicating the whereabouts of the person for whom it was issued.

3.6.1. *Systematic request for a flag to be added to alerts on persons wanted for arrest for extradition purposes where Framework Decision 2002/584/JHA does not apply*

The following procedure shall apply:

- (a) in the case of alerts on persons wanted for arrest for extradition purposes, where Framework Decision 2002/584/JHA does not apply, a Sirene Bureau may ask other Sirene Bureau(x) to add a flag systematically to alerts entered under Article 26 of the SIS II Decision on its nationals;
- (b) any Sirene Bureau wishing to do so shall send a written request to other Sirene Bureau(x);
- (c) any Sirene Bureaux to whom such a request is addressed shall add a flag for the Member State in question immediately after the alert is issued;
- (d) the flag shall remain until the requesting Sirene Bureau asks for its deletion.

3.7. Action by Sirene Bureaux upon receipt of an alert for arrest

When a Sirene Bureau receives an **A form**, it shall, as soon as possible, search all available sources to try to locate the subject. If the information provided by the issuing Member State is not sufficient for acceptance by the receiving Member State, this shall not prevent the searches being carried out. The receiving Member States shall carry out searches to the extent permissible under national law.

If the alert for arrest is verified and the subject is located or arrested in a Member State, then the information contained in an **A form** may be forwarded by the receiving Sirene Bureau to the competent authority of the Member State which executes the EAW or the ER. If the original EAW or ER is requested, the issuing judicial authority may transmit it directly to the executing judicial authority (unless alternative arrangements have been made by the issuing and/or executing Member State).

3.8. The exchange of information after a hit

See general procedure in Section 2.3.

In addition, the following procedure shall apply:

- (a) a hit on an individual for whom an alert for arrest has been issued shall always be communicated immediately to the Sirene Bureau of the issuing Member State. Moreover, after sending a **G form** the Sirene Bureau of the executing Member State shall also communicate the hit to the Sirene Bureau of the issuing Member State where appropriate by telephone;
- (b) if necessary the Sirene Bureau of the issuing Member State shall then send any relevant, specific information on the particular measures that shall be taken by the Sirene Bureau of the executing Member State;
- (c) the authority competent for receiving the EAW or ER, its full communication contacts (postal address, phone and, if available, fax and e-mail), reference number (if available), competent person (if available), requested language, time limit for and form of delivery shall be provided in field 091 of a **G form**;
- (d) in addition, the Sirene Bureau of the issuing Member State shall inform other Sirene Bureaux of the hit, using an **M form**, where a clear link has been established with particular Member States from the facts of the case and further enquiries initiated;

- (e) the Sirene Bureaux may transmit further information on alerts under Article 26 of the SIS II Decision, and in so doing may act on behalf of judicial authorities if this information falls within the scope of mutual judicial assistance.

3.9. **Supplementary information exchange about surrender or extradition**

When the competent judicial authorities provide information to the Sirene Bureau of the executing Member State on whether the surrender or extradition may take place of a person for whom an alert for arrest has been issued, that Sirene Bureau shall immediately provide that information to the Sirene Bureau of the issuing Member State by means of an **M form**, marked in field 083 with the words "SURRENDER" or "EXTRADITION" ⁽²³⁾. The detailed arrangements of the surrender or extradition shall, where appropriate, be communicated via the Sirene Bureaux as soon as possible.

3.10. **Supplementary information exchange about transit through another Member State**

If the transit of a person is necessary, the Sirene Bureau of the Member State through which the person is to be taken shall provide the necessary information and support, in response to a request by the Sirene Bureau of the issuing Member State or the competent judicial authority, sent by the Sirene Bureau, by means of an **M form** marked with the word "TRANSIT" written at the start of field 083.

3.11. **Deletion of alerts upon surrender or extradition**

Deletion of alerts for arrest for surrender or extradition purposes shall take place once the person has been surrendered or extradited to the competent authorities of the issuing Member State but may also occur when the judicial decision on which the alert was based has been revoked by the competent judicial authority according to national law.

4. **ALERTS FOR REFUSAL OF ENTRY OR STAY (ARTICLE 24 OF THE SIS II REGULATION)**

Introduction

The exchange of information on third-country nationals on whom an alert has been issued under Article 24 of the SIS II Regulation allows Member States to take decisions in the case of entry or visa application. If the individual is already on the territory of the Member State, it allows national authorities to take the appropriate action for issuing residence permits, long-stay visas or expulsion. In this section references to visas concern long-stay visas, unless otherwise clearly explained (e.g. re-entry visa).

Carrying out the information procedures laid down under Article 5(4) of the Schengen Borders Code and the consultation procedures laid down under Article 25 of the Schengen Convention, falls within the competence of the authorities responsible for border controls and issuing residence permits or visas. In principle, the Sirene Bureaux shall be involved in these procedures only in order to transmit supplementary information directly related to the alerts (e.g. notification of a hit, clarification of identity) or to delete alerts.

However, the Sirene Bureaux may also be involved in transmitting supplementary information necessary for the expulsion of, or for refusing entry to, a third-country national; and, may be involved in transmitting any supplementary information further generated by these actions.

Directive 2004/38/EC of the European Parliament and of the Council ⁽²⁴⁾ is not applicable in Switzerland. Therefore in the case of hit on a third country national who is the beneficiary of the right of free movement, normal consultation procedures shall be undertaken between Switzerland, the issuing Member State and any other Member State which may hold relevant information on the third country national's right of free movement.

4.1. **Entering an alert**

According to Article 25 of the SIS II Regulation, specific rules apply to third-country nationals who are beneficiaries of the right of free movement within the meaning of Directive 2004/38/EC. The Sirene Bureau shall, as far as possible, be able to make available any information that was used to assess whether an alert for refusal of entry or stay was entered for a beneficiary of the right of free movement ⁽²⁵⁾. In the exceptional case of entry of an alert on a third-country national enjoying the right of free movement, the Sirene Bureau of the issuing Member State shall send an **M form** to all the other Member States, based on the information provided by the authority that has entered the alert (see Sections 4.6 and 4.7)

⁽²³⁾ See also Section 1.13.1 on indication of urgency in Sirene forms.

⁽²⁴⁾ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L 158, 30.4.2004, p. 77).

⁽²⁵⁾ Article 30 of the Directive 2004/38/EC provides that the person refused entry shall be notified in writing thereof and informed in full on grounds on which the decision was taken unless it is contrary to the interests of State security.

In addition, Article 26 of the SIS II Regulation provides that, subject to certain specific conditions, alerts relating to third-country nationals who are the subject of a restrictive measure intended to prevent entry into or transit through the territory of Member States, taken in accordance with Article 29 of the Treaty on European Union ⁽²⁶⁾, shall also be entered. The alerts shall be entered and kept up-to-date by the competent authority of the Member State which holds the Presidency of the Council of the European Union at the time of the adoption of the measure. If that Member State does not have access to SIS II or alerts under Article 24 of the SIS II Regulation the responsibility shall be taken up by the Member State which will hold the subsequent Presidency and has access to SIS II, including access to the alerts under Article 24 of the SIS II Regulation.

Member States shall put in place the necessary procedures for entering, updating and deleting such alerts.

4.2. **Multiple alerts**

See general procedure in Section 2.2.

4.3. **Misused identity**

See general procedure in Section 2.11.1.

Problems may occur when a third country national who is subject of an alert for refusal of entry or stay unlawfully uses the identity of a citizen of a Member State in order to seek to gain entry. If such a situation is discovered the competent authorities in the Member States may be made aware of the correct use of the misused identity function within SIS II. Alerts for refusal of entry shall not be issued in the main identity of a citizen of a Member State.

4.4. **Entering an alias**

For general rules see Section 2.11.2.

4.5. **Exchange of information when issuing residence permits or visas**

The following procedure shall apply:

- (a) without prejudice to the special procedure concerning the exchange of information, which takes place in accordance with Article 25 of the Schengen Convention; and without prejudice to Section 4.8, which concerns the exchange of information following a hit on a third-country national who is the beneficiary of the right of free movement (in which case the consultation of the Sirene of the issuing Member State is obligatory); the executing Member State may inform the issuing Member that the alert for refusal of entry has been matched in the course of the procedure for granting a residence permit or a visa. The issuing Member State may then inform other Member States using an **M form** if appropriate;
- (b) if so requested, in accordance with national law, the Sirene Bureaux of the Member States concerned may assist in transmitting the necessary information to the appropriate authorities responsible for granting residence permits and visas.

Special procedures as provided for in Article 25 of the Schengen Convention

Procedure under Article 25(1) of the Schengen Convention

If a Member State that is considering granting a residence permit or visa discovers that the applicant concerned is the subject of an alert for refusal of entry or stay issued by another Member State, it shall consult the issuing Member State via the Sirene Bureaux. The Member State considering granting a residence permit or visa shall use an **N form** to inform the issuing Member State about the decision to grant the residence permit or visa. If the Member State decides to grant the residence permit or visa, the alert shall be deleted. The person may, nevertheless, be put on the issuing Member State's national list of alerts for refusal of entry.

⁽²⁶⁾ Article 26 of the SIS II Regulation refers to Article 15 of the Treaty on European Union. However, following the entry into force of the Lisbon Treaty this Article 15 became Article 29 in the consolidated version of the Treaty on European Union.

Procedure under Article 25(2) of the Schengen Convention

If a Member State that entered an alert for refusal of entry or stay finds out that the person who is the subject of the alert has been granted a residence permit or visa, it shall instigate a consultation procedure with the Member State that granted the residence permit or visa, via the Sirene Bureaux. The Member State which granted the residence permit or visa shall use an **O form** to inform the issuing Member State about the decision whether or not to withdraw the residence permit or visa. If this Member State decides to maintain the residence permit or visa, the alert shall be deleted. The person can, nevertheless, be put on a Member State's national list of alerts for refusal of entry.

The consultation via Sirene Bureaux using an **O form** shall also take place if the Member State that granted the residence permit or visa discovers later that there is an alert for refusal of entry or stay on that person entered in SIS II ⁽²⁷⁾.

If a third Member State (i.e. neither that which granted the residence permit/visa nor that which issued the alert) discovers that there is an alert on a third-country national who holds a residence permit or visa from one of the Member States, it shall notify both the Member State which granted the permit/visa and the issuing Member State via Sirene Bureaux using an **H form**.

If the procedure foreseen under Article 25 of the Schengen Convention entails deleting an alert for refusal of entry or stay, the Sirene Bureaux shall, whilst respecting their national law, offer their support if so requested.

Special procedures as provided for in Article 5(4)(a) and (c) of the Schengen Borders Code

4.5.1. *Procedure in cases falling under Article 5(4)(a)*

According to Article 5(4)(a) of the Schengen Borders Code, a third-country national who is subject to an alert for refusal of entry or stay and, at the same time, has a residence permit, long stay visa or a re-entry visa granted by one of the Member States, shall be allowed entry for transit purposes to the Member State which granted the residence permit or re-entry visa, when crossing a border in a third Member State. The entry may be refused if this Member State has issued a national alert for refusal of entry. In both cases, at the request of the competent authority, the Sirene Bureau of the Member State that the person is seeking to enter shall send the Sirene Bureaux of the two Member States in question a message (an **H form** if the transit was allowed/a **G form** if the entry was refused) informing them of the contradiction and requesting that they consult each other in order to either delete the alert in SIS II or to withdraw the residence permit/visa. It may also request to be informed of the result of any consultation.

If the third-country national concerned tries to enter the Member State which has entered the alert in SIS II, his/her entry may be refused by this Member State. However, at the request of the competent authority, the Sirene Bureau of that Member State shall consult the Sirene Bureau of the Member State that granted the residence permit or visa in order to allow the competent authority to determine whether there are sufficient reasons for withdrawing the residence permit/visa. The Member State which granted the residence permit or visa shall use an **O form** to inform the issuing Member State about the decision whether or not to withdraw the residence permit or visa. If this Member State decides to maintain the residence permit or visa, the alert shall be deleted. The person can, nevertheless, be put on a Member State's national list of alerts for refusal of entry.

If this person tries to enter the Member State that issued the residence permit or visa, he/she shall be allowed entry into the territory but the Sirene Bureau of that Member State, at the request of the competent authority, shall consult the Sirene Bureau of the issuing Member State in order to enable the competent authorities concerned to decide on withdrawal of the residence permit or visa or deletion of the alert. The Member State which granted the residence permit or visa shall use an **O form** to inform the issuing Member State about the

⁽²⁷⁾ In the case of alerts for refusal of entry issued for the family members of EU citizens, it is necessary to recall that it is not possible as a matter of routine to consult SIS II prior to issuing a residence card for such a person. Article 10 of the Directive 2004/38/EC lists the necessary conditions for acquiring right of residence for more than three months in a host Member State by family members of Union citizens who are third-country nationals. This list, which is exhaustive, does not allow for routine consultation of the SIS prior to the issuing of residence cards. Article 27(3) of this Directive specifies that Member States may request, should they consider it essential, information from other Member State only regarding any previous police record (that is not all of the SIS II data). Such enquiries shall not be made as a matter of routine.

decision whether or not to withdraw the residence permit or visa. If this Member State decides to maintain the validity of the residence permit or visa, the alert shall be deleted. The person can, nevertheless, be put on a Member State's national list of alerts for refusal of entry.

4.5.2. *Procedure in cases falling under Article 5(4)(c)*

According to Article 5(4)(c) a Member State may derogate from the principle that a person for whom an alert for refusal of entry was issued shall be refused entry on humanitarian grounds, on grounds of national interest or because of international obligations. At the request of the competent authority, the Sirene Bureau of the Member State that allowed entry shall inform the Sirene Bureau of the issuing Member State of this situation using an **H form**.

4.6. **Common rules concerning procedures referred to in Section 4.5**

- (a) Only one **N form** or **O form** shall be sent per consultation procedure by the Sirene Bureau of the Member State which has granted or intends to grant or retain a residence permit or long-stay visa in order to inform the Member State which has issued or is planning to issue a refusal of entry alert about the final decision on granting, retaining or revoking the residence permit or visa.
- (b) The consultation procedure shall be either a procedure for the purposes of Article 25(1) of the Schengen Convention or a procedure for the purposes of Article 25(2) of the Schengen Convention.
- (c) When a **M, G or H form** is sent in the context of a consultation procedure, it may be marked with the keyword "consultation procedure". (**M form**: field 083; **G form**: field 086; **H form**: field 083).

4.7. **Exchange of information following a hit and when refusing entry or expelling from the Schengen area**

Without prejudice to the special procedures concerning the exchange of information, which takes place in accordance with Article 5(4)(a) and (c) of the Schengen Borders Code; and without prejudice to Section 4.8 which concerns the exchange of information following a hit on a third-country national who is the beneficiary of the right of free movement (in which case the consultation of the issuing Member State via its Sirene Bureau is obligatory), a Member State may ask to be informed of any hits on alerts for refusal of entry or stay that it has entered.

The Sirene Bureaux of Member States that have entered alerts for refusal of entry shall not necessarily be informed of any hits as a matter of course, but may be informed in exceptional circumstances. A **G form** or an **H form**, depending on the action taken, may in any case be sent if, for example, supplementary information is required. A **G form** shall always be sent when there is a hit on a person benefiting from the right of free movement.

Notwithstanding the provisions of the paragraph above, as set out in Section 10 all Sirene Bureaux shall provide statistics on hits on all foreign alerts on their territory.

The following procedure shall apply:

- (a) A Member State may ask to be informed of any hits on alerts for refusal of entry or stay that it has issued. Any Member State that wishes to take up this option shall ask the other Member States in writing.
- (b) The executing Member State may take the initiative and inform the issuing Member State that the alert has been matched and that the third-country national has not been granted entry or has been expelled from the Schengen territory.
- (c) Once an action has been taken on the basis of a hit the Sirene Bureau of the executing Member State shall send a **G form** to the Sirene Bureau of the issuing Member State; a **G form** shall also be sent in case of a hit, when more information is needed for the execution of the measure.
- (d) Upon the receipt of the information referred to in point (c) from the issuing Member State:
 - (i) if the action is executed the executing Member State shall notify the Sirene Bureau of the issuing Member State using an **M form** (not another **G form** for the same hit),
 - (ii) if the action is not executed the executing Member State shall notify the Sirene Bureau of the issuing Member State using an **H form**, or

- (iii) if further consultation is required this shall take place using an **M form**,
- (iv) for the final form exchange in a consultation procedure an **N** or **O form** shall be used.
- (e) If, on its territory, a Member State discovers a third-country national for whom an alert has been issued, the Sirene Bureau of the issuing Member State, upon request, shall forward the information required to return the person concerned. Depending on the needs of the executing Member State this information, given in an **M form**, shall include the following:
 - the type and reason for the decision,
 - the authority issuing the decision,
 - the date of the decision,
 - the date of service (the date on which the decision was served),
 - the date of enforcement,
 - the date on which the decision expires or the length of validity,
 - the information whether the person was convicted and the nature of the penalty.

If a person on whom an alert has been issued is intercepted at the border, the procedures set out in the Schengen Borders Code, and by the issuing Member State, shall be followed.

There may also be an urgent need for supplementary information to be exchanged via the Sirene Bureaux in specific cases in order to identify an individual with certainty.

4.8. **Exchange of information following a hit on a third-country national who is a beneficiary of the right of free movement**

Concerning a third-country national who is a beneficiary of the right of free movement within the meaning of Directive 2004/38/EC ⁽²⁸⁾.

If there is a hit on a third-country national who is beneficiary of the right of free movement within the meaning of Directive 2004/38/EC special rules shall apply (but see the introduction to Section 4 on the position of Switzerland). The following procedure shall apply:

- (a) at the request of the competent authority, the Sirene Bureau of the executing Member State shall immediately contact the Sirene Bureau of the issuing Member State using a **G form** in order to obtain the information necessary to decide, without delay, on the action to be taken;
- (b) upon receipt of a request for information, the Sirene Bureau of the issuing Member State shall immediately start gathering the required information and send it as soon as possible to the Sirene Bureau of the executing Member State;
- (c) the Sirene Bureau of the issuing Member State shall check with the competent authority, if this information is not yet available, whether the alert may be kept in accordance with Directive 2004/38/EC. If the competent authority decides to keep the alert, the Sirene Bureau of the issuing Member State shall inform all the other Sirene Bureaux thereof, by means of an **M form**;
- (d) the executing Member State shall inform, via its Sirene Bureau, the Sirene Bureau of the issuing Member State whether the requested action to be taken was carried out (using an **M form**) or not (using an **H form**) ⁽²⁹⁾.

⁽²⁸⁾ According to Directive 2004/38/EC, a person benefiting from the right of free movement may only be refused entry or stay on the grounds of public policy or public security when their personal conduct represents a genuine, immediate, and sufficiently serious threat affecting one of the fundamental interests of society and when the other criteria laid down in Article 27(2) of the said Directive are respected. Article 27(2) stipulates: "Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures. The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted." Moreover, there are additional limitations for persons enjoying the right of permanent residence who can only be refused entry or stay on serious grounds of public policy or public security as stated in Article 28(2) of Directive 2004/38/EC.

⁽²⁹⁾ In conformity with Directive 2004/38/EC the executing Member State cannot limit the free movement of third country nationals benefiting from the right of free movement on the sole ground that the issuing Member State maintains the alert unless the conditions referred to in footnote 28 are met.

4.9. **Exchange of information if, in the absence of a hit, a Member State discovers that there is an alert for refusal of entry for a third-country national who is a beneficiary of the right of free movement**

If, in the absence a hit, a Member State discovers that there is an alert for refusal of entry for a third-country national who is a beneficiary of the right of free movement, the Sirene Bureau of this Member State shall, at the request of the competent authority, send an **M form** to the Sirene Bureau of the issuing Member State informing it about this.

The Sirene Bureau of the issuing Member State shall check with the competent authority, if this information is not yet available, whether the alert may be kept in accordance with Directive 2004/38/EC. If the competent authority decides to keep the alert, the Sirene Bureau of the issuing Member State shall inform all the other Sirene Bureaux thereof, by means of an **M form**.

4.10. **Deletion alerts for refusal of entry or stay**

Without prejudice to the special procedures provided for by Article 25 of the Schengen Convention and Article 5(4)(a) and (c) of the Schengen Borders Code the alerts for refusal of entry or stay on third country nationals shall be deleted upon:

- (a) the expiry of the alert;
- (b) the decision to delete by the competent authority of the issuing Member State;
- (c) the expiry of the time limit on refusal of entry where the competent authority of the issuing Member State set an expiry date on its decision; or
- (d) the acquisition of citizenship of one of the Member States. If the acquisition of citizenship comes to the attention of a Sirene Bureau of a Member State other than the issuing one, the former shall consult the Sirene Bureau of the issuing Member State and, if needed, send a **J form**, in accordance with the procedure for rectification and deletion of data found to be legally or factually inaccurate (see Section 2.7).

5. **ALERTS ON MISSING PERSONS (ARTICLE 32 OF THE SIS II DECISION)**

5.1. **Multiple alerts**

See general procedure in Section 2.2.

5.2. **Misused identity**

See general procedure in Section 2.11.1.

5.3. **Entering an alias**

See general procedure in Section 2.11.2.

5.4. **Adding a flag**

Circumstances may arise where a hit occurs on an alert on a missing person and the competent authorities within the executing Member State decide that the action requested may not be taken and/or that no further action will be taken on the alert. This decision may be taken even if the issuing Member State's competent authorities decide to retain the alert in SIS II. In such circumstances the executing Member State may request a flag after the hit has occurred. With a view to adding a flag, the general procedures as described in Section 2.6 shall be followed.

There is no alternative action to be taken for alerts for missing persons.

5.5. **Provision of descriptive detail on missing minors and other persons assessed as being at risk**

Sirene Bureaux shall have ready access to all relevant supplementary information at national level regarding missing person alerts in order for the Sirene Bureaux to be able to play a full role in reaching a successful outcome to cases, facilitating identification of the person and providing supplementary information promptly on matters linked to the case. Relevant supplementary information may cover, in particular, national decisions on the custody of a child or vulnerable person or requests for the use of "Child Alert" mechanisms.

As not all vulnerable missing persons will cross national borders, decisions on the provision of supplementary information (on descriptive details) and its recipients shall be taken on a case-by-case basis, covering the entire range of circumstances. Following a decision at national level on the extent of forwarding required for such supplementary information, the Sirene Bureau of the issuing Member State shall, as far as is appropriate, take one of the following measures:

- (a) retain the information in order to be able to forward supplementary information upon the request of another Member State;
- (b) forward an **M form** to the relevant Sirene Bureau if enquiries indicate a likely destination for the missing person;
- (c) forward an **M form** to all the relevant Sirene Bureaux, based on the disappearance circumstances for the purpose of supplying all data concerning the person in a short period of time.

In the case of a high-risk missing person, field 311 of the **M form** shall begin with the word “URGENT” and an explanation of the reason for the urgency. (When the missing minor is unaccompanied ⁽³⁰⁾, the explanatory term “Unaccompanied minor” shall be indicated.) This urgency may be reinforced by a telephone call highlighting the importance of the **M form** and its urgent nature.

A common method for entering structured supplementary information in an agreed order on a high-risk missing person shall be used ⁽³¹⁾. This shall be entered in field 083 of the **M form**.

Once information has been received by a Sirene Bureau, it shall, in order to maximise the opportunities for locating the person in a targeted and reasoned fashion, be communicated, as far as is appropriate, to:

- (a) relevant border posts;
- (b) the competent administrative and police authorities for the location and protection of persons;
- (c) the relevant consular authorities of the issuing Member State, after a hit is achieved in SIS II.

5.6. The exchange of information after a hit

See general procedure in Section 2.3.

In addition the following rules shall apply:

- (a) As far as it is possible, the Sirene Bureaux shall communicate the necessary medical details of the missing person(s) concerned if measures have to be taken for their protection.

The information transmitted shall be kept only as long as it is strictly necessary and shall be used exclusively for the purposes of medical treatment given to the person concerned.

⁽³⁰⁾ Unaccompanied minors are children, as defined in Article 1 of the Convention on the Rights of the Child of 20 November 1989 (CRC), who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

⁽³¹⁾ Data of disappearance:

- (a) Place, date and time of the disappearance.
- (b) Circumstances of disappearance.

Details of the missing person:

- (c) Apparent age.
- (d) Height.
- (e) Skin colour.
- (f) Colour and shape of hair.
- (g) Colour of eyes.
- (h) Other physical details (i.e. piercings, deformations, amputations, tattoos, marks, scars, etc.).
- (i) Psychological particulars: at risk of suicide, mental illness, aggressive behaviour, etc.
- (j) Other details: necessary medical treatment, etc.
- (k) Clothes worn at the time of the disappearance.
- (l) Photograph: available or not.
- (m) Ante-mortem form: available or not.

Related information:

- (n) Person/s who could accompany him or her (and Schengen ID if available).
- (o) Vehicle/s relating to the case (and Schengen ID if available).
- (p) If available: number of mobile phone/last “log-in”, contact via on-line social networks.

The titles of the different sub-fields themselves are not to be included as part of field 083, but just the reference letter. When details are already available in the fields of an alert the information shall be included in the alert, including fingerprints or photographs.

- (b) The Sirene Bureau of the executing Member State shall always communicate the whereabouts to the Sirene Bureau of the issuing Member State.
- (c) In accordance with Article 33(2) of the SIS II Decision, the communication of the whereabouts of the missing person, who is of age, to the person who reported him/her missing shall be subject to the missing person's consent ⁽³²⁾. The consent shall be in writing or at least a written record shall be available. In cases where consent is refused, this shall be in writing or recorded officially. However, the competent authorities may communicate the fact that the alert has been deleted following a hit, to the person who reported him or her missing.

5.7. **Deletion of alerts on missing persons**

If there is to be any significant delay in the deletion of the alert by the issuing Member State this delay shall be notified to the Sirene Bureau of the executing Member State in order for a flag to be placed on the alert as described in Section 5.4 of the Sirene Manual.

5.7.1. *Minors*

An alert shall be deleted upon:

- (a) the resolution of the case (e.g. the minor is repatriated; the competent authorities in the executing Member State take a decision on the care of the child);
- (b) the expiry of the alert; or
- (c) the decision by the competent authority of the issuing Member State.

5.7.2. *Adults where no protective measures are requested*

An alert shall be deleted upon:

- (a) the execution of the action to be taken (whereabouts ascertained by the executing Member State);
- (b) the expiry of the alert; or
- (c) the decision by the competent authority of the issuing Member State.

5.7.3. *Adults, protective measures requested*

An alert shall be deleted upon:

- (a) carrying out of the action to be taken (person placed under protection);
- (b) the expiry of the alert; or
- (c) the decision by the competent authority of the issuing Member State.

Subject to national law, where a person is in official protective care an alert may be retained until that person has been repatriated.

6. **ALERTS FOR PERSONS SOUGHT FOR A JUDICIAL PROCEDURE (ARTICLE 34 OF THE SIS II DECISION)**

6.1. **Multiple alerts**

See general procedure in Section 2.2.

6.2. **Misused identity**

See general procedure in Section 2.11.1.

⁽³²⁾ For clarity on consent in matters of on the protection of individuals with regard to the processing of personal data and on the free movement of such data see Article 2(h) Directive 95/46/EC.

6.3. **Entering an alias**

See general procedure in Section 2.11.2.

6.4. **The exchange of information after a hit**

See general procedure in Section 2.3.

In addition, the following rules shall apply:

- (a) the real place of residence or domicile shall be obtained using all measures allowed by the national law of the Member State where the person was located;
- (b) national procedures shall be in place, as appropriate, to ensure that alerts are only kept in SIS II for the time required to meet the purposes for which they were supplied.

The Sirene Bureaux may transmit further information on alerts entered under Article 34 of SIS II Decision, and in so doing may act on behalf of judicial authorities if this information falls within the scope of mutual judicial assistance.

6.5. **Deletion of alerts on persons sought for a judicial procedure**

An alert shall be deleted upon:

- (a) the communication of the whereabouts of the person to the competent authority of the issuing Member State. Where the information forwarded cannot be acted upon (e.g. incorrect address or no fixed abode) the Sirene Bureau of the issuing Member State shall inform the Sirene Bureau of the executing Member State in order to resolve the problem;
- (b) the expiry of the alert; or
- (c) the decision by the competent authority of the issuing Member State.

Where a hit has been achieved in a Member State and the address details were forwarded to the issuing Member State and a subsequent hit in that Member State reveals the same address details the hit shall be recorded in the executing Member State but neither the address details nor a **G form** shall be re-sent to the issuing Member State. In such cases the executing Member State shall inform the issuing Member State on the repeated hits, and the issuing Member State shall consider the need to maintain the alert.

7. **ALERTS FOR DISCREET AND SPECIFIC CHECKS (ARTICLE 36 OF THE SIS II DECISION)**

7.1. **Multiple alerts**

See general procedure in Section 2.2.

7.2. **Misused identity**

See general procedure in Section 2.11.1.

7.3. **Entering an alias**

See general procedure in Section 2.11.2.

7.4. **Informing other Member States when issuing alerts**

When issuing an alert the Sirene Bureau of the issuing Member State shall inform all the other Sirene Bureaux by using an **M form** in the following cases:

- (a) an alert for discreet or specific check is issued with the request that hits are reported without any delay to the issuing Sirene Bureau; in the **M form** it shall use the text "ARTICLE 36(2) of the SIS II Decision — immediate action" or "ARTICLE 36(3) of the SIS II Decision — immediate action". Justification for the immediate action should also be set out in field 083 of an **M form**; or
- (b) an authority responsible for national security requests the issuance of an alert in accordance with Article 36(3) of the SIS II Decision; in the **M form** it shall use the text "ARTICLE 36(3) of the SIS II Decision".

If the alert is issued under Article 36(3) of the SIS II Decision the **M form** shall contain, in field 080, the name of the authority requesting entry of the alert, first in the language of the issuing Member State and then also in English and its contact details in field 081 in a format not requiring translation.

The confidentiality of certain information shall be safeguarded in accordance with national law, including keeping contact between the Sirene Bureaux separate from any contact between the services responsible for national security.

7.5. **Adding a flag**

See general procedure in Section 2.6.

There is no alternative action to be taken for alerts for discreet or specific checks.

In addition, if the authority responsible for national security in the executing Member State decides that the alert requires a flag, it shall contact its national Sirene Bureau and inform it that the required action to be taken cannot be carried out. The Sirene Bureau shall then request a flag by sending an **F form** to the Sirene Bureau of the issuing Member State. As with other flag requests a general reason shall be given. However, matters of a sensitive nature need not be disclosed (see also Section 7.6(b) below).

7.6. **The exchange of information after a hit**

See general procedure in Section 2.3.

In addition the following rules shall apply:

- (a) When a hit occurs on an alert issued pursuant to Article 36(3) of the SIS II Decision, the Sirene Bureau of the executing Member State shall inform the Sirene Bureau of the issuing Member State of the results (discreet check or specific check) via the **G form**. At the same time the Sirene Bureau of the executing Member State shall inform its own authority responsible for national security.
- (b) A specific procedure is required to safeguard the confidentiality of information. Therefore, any contact between the authorities responsible for national security shall be kept separate from the contact between the Sirene Bureaux. Consequently, the detailed reasons for requesting a flag shall be discussed directly between authorities responsible for national security and not through Sirene Bureaux.
- (c) When a hit occurs on an alert which requests the hit to be reported immediately a **G Form** should be sent without delay to the Sirene Bureau of the issuing Member State.

7.7. **Deletion of alerts on discreet and specific check**

An alert shall be deleted upon:

- (a) the expiry of the alert; or
- (b) a decision to delete by the competent authority of the issuing Member State.

7.8. **Automatic Number Plate Recognition systems (ANPR)**

See Section 9.

8. **ALERTS ON OBJECTS FOR SEIZURE OR USE AS EVIDENCE (ARTICLE 38 OF THE SIS II DECISION)**

8.1. **Multiple alerts**

See general procedure in Section 2.2.

8.2. **Vehicle alerts**

8.2.1. *Checking for multiple alerts on a vehicle*

The mandatory identity description elements for checking for multiple alerts on a vehicle include:

- (a) the registration/number plate, and/or
- (b) the vehicle identification number (VIN).

Both numbers may feature in SIS II.

If, when entering a new alert, it is found that the same VIN and/or registration plate number already exist in SIS II, it is assumed that the new alert will result in multiple alerts on the same vehicle. However, this method of verification is effective only where the description elements used are the same. Comparison is therefore not always possible.

The Sirene Bureau shall draw the users' attention to the problems which may arise where only one of the numbers has been compared, VIN-twins and reuse of licence plates. A positive response does not mean automatically that there is a hit, and a negative response does not mean that there is no alert on the vehicle.

The identity description elements used for establishing whether two vehicle entries are identical are detailed in Section 2.2.3.

The consultation procedures for checking multiple and incompatible alerts to be applied by the Sirene Bureaux for vehicles shall be the same as for persons. For general procedures see Section 2.2.

The Sirene Bureau of the Member State issuing an alert shall maintain a record of any requests to enter a further alert which, after consultation, have been rejected by virtue of the provisions given above, until the alert is deleted.

8.2.2. VIN-twins

VIN-twin refers to a vehicle, entered in SIS II, of the same type with the same vehicle identification number (VIN) as an original manufactured vehicle (e.g. a tractor and a motorcycle with the same VIN do not fall into this category). The following specific procedure shall apply to avoid the negative consequences of a repeated seizure of the original manufactured vehicle with the same VIN:

(a) Where the possibility of a VIN-twin is established, the Sirene Bureau shall, as appropriate:

- (i) ensure that there is no error in the SIS II alert and the alert information is as complete as possible;
- (ii) check the circumstances of the case giving rise to an alert in SIS II;
- (iii) find out the history of both vehicles from their production;
- (iv) request a thorough check of the seized vehicle, in particular its VIN, to verify whether it is the original manufactured vehicle.

All Sirene Bureaux involved shall closely cooperate in taking such measures.

(b) Where the existence of a VIN-twin is confirmed, the issuing Member State shall consider whether it is necessary to maintain the alert in SIS II. If the Member State decides to maintain the alert in SIS II the issuing Member State shall:

- (i) add a vehicle-related remark "Suspicion of clone" ⁽³³⁾ in the alert;
- (ii) invite the owner of the original manufactured vehicle to, subject to his explicit consent and according to national law, provide the Sirene Bureau of the issuing Member State with all relevant information required to avoid the negative consequences of misidentification.
- (iii) Send out an **M form** via its Sirene Bureau to all other Bureaux including, as appropriate, the marks or features describing the original manufactured vehicle and distinguishing it from the vehicle entered in SIS II. The **M form** shall indicate words to the effect of "ORIGINAL MANUFACTURED VEHICLE" prominently in field 083.

(c) If, when SIS II is consulted, the vehicle-related remark, "Suspicion of clone" is found, the user conducting the check shall contact the national Sirene Bureau to obtain additional information in order to clarify whether the vehicle being checked is the vehicle sought or the original manufactured vehicle.

⁽³³⁾ "suspicion of clone" relates to cases where, for example, the registration documents of a vehicle are stolen and used to re-register another vehicle of the same make, model and colour which has also been stolen.

- (d) If during the check, it is established that the information on the **M form** is no longer up-to-date the Sirene Bureau of the executing Member State shall contact the Sirene Bureau of the issuing Member State in order to verify the current legal ownership of the vehicle. The latter Sirene Bureau shall send a new **M form** accordingly, indicating words to the effect of "ORIGINAL MANUFACTURED VEHICLE" prominently in field 083.

8.3. The exchange of information after a hit

The Sirene Bureaux may transmit further information on alerts entered under Article 38 of the SIS II Decision and in so doing may act on behalf of judicial authorities, if this information falls within the scope of mutual judicial assistance in accordance with national law.

The Sirene Bureaux shall send supplementary information as quickly as possible via a **P form**, if requested in field 089 of a **G form**, when a hit is achieved on an alert for seizure or use as evidence issued on a vehicle, aircraft, boat, industrial equipment or container pursuant to Article 38 of the SIS II Decision.

Given that the request is urgent and that it will not therefore be possible to collate all the information immediately, it shall not be necessary to fill all the fields of the **P form**. However, efforts shall be made to collate the information relating to the main headings: 041, 042, 043, 162, 164, 165, 166, 167 and 169.

Where a hit is achieved on an identifiable component of an object the Sirene Bureau of the executing Member State shall inform the Sirene Bureau of the issuing Member State of the circumstances of the hit using a **G form**, explaining in field 090 (Additional information) that the seizure is not of the complete object but of a component or components. Where several components are found at the same time, as they relate to one alert, only one **G form** will be sent. Any subsequent hits on the alert shall be notified to the Sirene Bureau of the issuing Member State by means of a **G form**. The alert shall not be deleted unless the conditions set out in Section 8.4 are met.

8.4. Deletion of alerts on objects for seizure or use as evidence in criminal proceedings

An alert shall be deleted upon:

- (a) the seizure of the object or equivalent measure once the necessary follow-up exchange of supplementary information has taken place between Sirene Bureaux or the object becomes subject of another judicial or administrative procedure (e.g. judicial procedure on good faith purchase, disputed ownership or judicial cooperation on evidence);
- (b) the expiry of the alert; or
- (c) the decision to delete by the competent authority of the issuing Member State.

9. AUTOMATIC NUMBER PLATE RECOGNITION SYSTEMS (ANPR)

These systems are relevant for alerts under Articles 36 and 38 of the SIS II Decision. Due to the widespread use of ANPR for law enforcement purposes there is the technical capability to achieve numerous hits on a vehicle or number plate over a short period of time.

Given that some ANPR sites are manned there is the possibility of a vehicle being detected and the requested action undertaken. In this case, before any action is undertaken, the users of the ANPR system shall verify whether the hit achieved through ANPR relates to an alert under Article 36 or 38 of the SIS II Decision.

However, many fixed ANPR sites are not constantly manned. Accordingly, although the technology will register the passage of the vehicle and a hit will be achieved, the requested action may not be undertaken.

For both Article 36 and Article 38 alerts where the requested action could not be taken the following general procedure shall apply:

One **H form** shall be sent for the first hit. If more information is required on the movement of the vehicle it is for the Sirene Bureau of the issuing Member State to contact the Sirene Bureau of the executing Member State bilaterally to discuss information needs.

For alerts under Article 36 the following procedure shall apply:

- (a) the Sirene Bureau of the Member State achieving the hit shall inform the issuing Sirene Bureau of the circumstances of the hit using one **G form**, using the word "ANPR" in field 086. If more information is required on the movement of the vehicle, the Sirene Bureau of the issuing Member State shall contact the Sirene Bureau of the executing Member State;
- (b) the Sirene Bureau of the Member State achieving a hit on an alert for a **specific check** whereby the requested action could not be taken, shall inform the issuing Sirene bureau of the circumstances of the hit using an **H form**, with the word "ANPR" in field 083, followed by words to the effect of: "This hit has been achieved by use of ANPR. Please inform us if your country wishes to be informed of further hits achieved through ANPR for this vehicle or number plate where the requested action could not be undertaken";
- (c) the issuing Member State shall decide whether the alert has achieved its purpose, shall be deleted or not and whether bilateral discussions should take place on information needs.

For alerts under Article 38 the following procedure shall apply:

- (a) in circumstances where a hit occurs and the requested action has been taken the Sirene Bureau of the Member State achieving the hit shall inform the issuing Sirene Bureau of the circumstances of the hit using one **G form**;
- (b) in circumstances where a hit occurs and the requested action has not been taken the Sirene Bureau of the Member State achieving the hit shall inform the Sirene Bureau of the issuing Member State of the circumstances of the hit using an **H form** and the word "ANPR" in field 083 followed by words to the effect of; "This hit has been achieved by the use of ANPR. Please inform us if your country wishes to be informed of further hits achieved through ANPR for this vehicle or number plate where the requested action could not be taken.";
- (c) when receiving such an **H form**, the Sirene Bureau of the issuing Member State shall consult the competent authorities, which shall have the responsibility of deciding on the necessity of receiving further **H forms** or information passed bilaterally from the Sirene Bureau of the executing Member State.

10. STATISTICS

Once a year the Sirene Bureaux shall provide statistics, which have to be sent to the Agency and the Commission. The statistics shall also be sent, upon request, to the European Data Protection Supervisor and the competent national data protection authorities. The statistics shall comprise the number of forms of each type sent to each of the Member States. In particular, the statistics shall show the number of hits and flags. A distinction shall be made between hits found on alerts issued by another Member State and hits found by a Member State on alerts it issued.

Appendix 5 sets out the procedures and formats for the provision of statistics under this section.'

