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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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DECISIONS

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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1311

of 24 July 2015

entering a name in the register of protected designations of origin and protected geographical indications [Plate de Florenville (PGI)]

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Belgium's application to register the name 'Plate de Florenville' was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Plate de Florenville' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Plate de Florenville' (PGI) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 1.6. Fruit, vegetables and cereals, fresh or processed, as listed in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ⁽³⁾.

Article 2

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

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ C 72, 28.2.2015, p. 26.

⁽³⁾ Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

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

Done at Brussels, 24 July 2015.

*For the Commission,
On behalf of the President,
Phil HOGAN
Member of the Commission*

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1312**of 24 July 2015****entering a name in the register of protected designations of origin and protected geographical indications (Fesols de Santa Pau (PDO))**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Spain's application to register the name 'Fesols de Santa Pau' was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Fesols de Santa Pau' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Fesols de Santa Pau' (PDO) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 1.6. Fruits, vegetables and cereals, fresh or processed, as listed in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ⁽³⁾.*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 24 July 2015.

For the Commission,
On behalf of the President,
Phil HOGAN
Member of the Commission

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ C 82, 10.3.2015, p. 17.

⁽³⁾ Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1313**of 24 July 2015****entering a name in the register of protected designations of origin and protected geographical indications [Artichaut du Roussillon (PGI)]**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, France's application to register the name 'Artichaut du Roussillon' was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Artichaut du Roussillon' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Artichaut du Roussillon' (PGI) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 1.6. Fruits, vegetables and cereals, fresh or processed, as listed in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ⁽³⁾.

Article 2

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

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

Done at Brussels, 24 July 2015.

*For the Commission,
On behalf of the President,
Phil HOGAN
Member of the Commission*

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ C 92, 19.3.2015, p. 38.

⁽³⁾ Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1314**of 29 July 2015****amending Regulation (EC) No 1484/95 as regards fixing representative prices in the poultrymeat and egg sectors and for egg albumin**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 183(b) thereof,Having regard to Regulation (EU) No 510/2014 of the European Parliament and of the Council of 16 April 2014 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations (EC) No 1216/2009 and (EC) No 614/2009 ⁽²⁾, and in particular Article 5(6)(a) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1484/95 ⁽³⁾ lays down detailed rules for implementing the system of additional import duties and fixes representative prices in the poultrymeat and egg sectors and for egg albumin.
- (2) Regular monitoring of the data used to determine representative prices for poultrymeat and egg products and for egg albumin shows that the representative import prices for certain products should be amended to take account of variations in price according to origin.
- (3) Regulation (EC) No 1484/95 should be amended accordingly.
- (4) Given the need to ensure that this measure applies as soon as possible after the updated data have been made available, this Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1484/95 is replaced by the text set out in the Annex to this Regulation.

*Article 2*This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 29 July 2015.

*For the Commission,**On behalf of the President,*

Jerzy PLEWA

Director-General for Agriculture and Rural Development⁽¹⁾ OJ L 347, 20.12.2013, p. 671.⁽²⁾ OJ L 150, 20.5.2014, p. 1.⁽³⁾ Commission Regulation (EC) No 1484/95 of 28 June 1995 laying down detailed rules for implementing the system of additional import duties and fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and repealing Regulation (EC) No 163/67/EEC (OJ L 145, 29.6.1995, p. 47).

ANNEX

‘ANNEX I

CN code	Description	Representative price (EUR/100 kg)	Security under Article 3 (EUR/100 kg)	Origin ⁽¹⁾
0207 12 10	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as “70 % chickens”, frozen	136,8	0	AR
0207 12 90	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as “65 % chickens”, frozen	145,5	0	AR
		188,0	0	BR
0207 14 10	Fowls of the species <i>Gallus domesticus</i> , boneless cuts, frozen	286,1	4	AR
		214,7	26	BR
		350,7	0	CL
		301,0	0	TH
0207 27 10	Turkeys, boneless cuts, frozen	343,4	0	BR
		413,7	0	CL
0408 91 80	Eggs, not in shell, dried	384,3	0	AR
1602 32 11	Preparations of fowls of the species <i>Gallus domesticus</i> , uncooked	278,9	2	BR

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). The code “ZZ” represents “other origins”.

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1315**of 30 July 2015****on the allocation to Spain of additional days at sea within ICES Divisions VIIIc and IXa excluding the Gulf of Cádiz**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EU) 2015/104 of 19 January 2015 fixing for 2015 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union vessels, in certain non-Union waters, amending Regulation (EU) No 43/2014 and repealing Regulation (EU) No 779/2014 ⁽¹⁾, and in particular point 8 of Annex IIB thereto,

Whereas:

- (1) Table I of Annex IIB to Regulation (EU) 2015/104 lays down the maximum number of days that Union vessels of an overall length equal to or greater than 10 m, carrying on board or deploying trawls, Danish seines and similar gears of mesh size equal to or larger than 32 mm, gill-nets of mesh size equal to or larger than 60 mm and bottom long-lines, may be present within ICES Divisions VIIIc and IXa, excluding the Gulf of Cádiz, from 1 February 2015 to 31 January 2016.
- (2) According to point 8.5 of Annex IIB to Regulation (EU) 2015/104, the Commission may, on the basis of permanent cessations of fishing activities that took place between 1 February 2014 and 31 January 2015, allocate an additional number of days at sea on which a vessel may be authorised by its flag Member State to be present within the relevant area when carrying on board regulated gear.
- (3) On 1 June 2015, in accordance with the first sentence of point 8.1 of Annex IIB of Regulation (EU) 2015/104, Spain submitted a request for additional days at sea on the basis of the permanent cessation of fishing activity of six vessels that took place between 1 February 2014 and 31 January 2015.
- (4) In view of the data made available to the Commission and having regard to the calculation method laid down in point 8.2 of Annex IIB to Regulation (EU) 2015/104, three additional days at sea for the vessels referred to in point 1 of that Annex should be allocated to Spain for the period from 1 February 2015 to 31 January 2016.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

The maximum number of days at sea for which Spain may authorise a vessel flying its flag to be present in ICES Divisions VIIIc and IXa, excluding the Gulf of Cádiz, carrying on board or deploying regulated gear and not being subject to special conditions, as laid down in Table I of Annex IIB to Regulation (EU) 2015/104, shall be increased to 117 days per year.

⁽¹⁾ OJ L 22, 28.1.2015, p. 1.

Article 2

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

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

Done at Brussels, 30 July 2015.

For the Commission

The President

Jean-Claude JUNKER

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1316**of 30 July 2015****derogating from Council Regulation (EC) No 850/98, as regards the minimum conservation reference size for sea bass (*Dicentrarchus labrax*)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fisheries resources through technical measures for the protection of juveniles of marine organisms ⁽¹⁾, and in particular Article 45(1) thereof,

Whereas:

- (1) According to Article 2(2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council ⁽²⁾, the common fisheries policy shall aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield.
- (2) In Article 45(1) of Regulation (EC) No 850/98 it is provided that, where the conservation of stocks of marine organisms calls for immediate action, the Commission may, in addition to, or by way of derogation from that Regulation, adopt any measures necessary.
- (3) According to scientific advice from the International Council for the Exploration of the Sea (ICES) as well as from the Scientific, Technical and Economic Committee for Fisheries (STECF) sea bass in the Celtic Sea, Channel, Irish Sea and southern North Sea (ICES divisions IVb, IVc and VIIa, VIId to VIIh) suffers from a rapid decline in biomass, because of a combination of declining recruitment and increasing fishing mortality. Sea bass is a late maturing and slow growing species. The spawning stock biomass is converging towards the lowest historically observed level. The current fishing mortality is almost four times as high as the stock can sustain. ICES therefore advise to implement measures to reduce substantially fishing mortality throughout the range of this stock in the above areas.
- (4) By Commission Implementing Regulation (EU) 2015/111 ⁽³⁾, based on Article 12 of Regulation (EU) No 1380/2013, the Commission has adopted urgent measures to reduce the fishing mortality caused by pelagic vessels targeting spawning aggregations of sea bass. A restrictive limit has been introduced by Council Regulation (EU) 2015/523 ⁽⁴⁾ to reduce the mortality from recreational anglers. Scientific advice has indicated that a combination of limiting the catches and an increase in the minimum conservation reference size would be more effective in reducing the fishing mortality.
- (5) Regulation (EC) No 850/98 establishes minimum conservation reference sizes for marine organisms with the aim of ensuring the protection of juveniles.
- (6) The four sea bass stock areas identified by ICES are: Celtic Sea, Channel, Irish Sea and southern North Sea (ICES divisions IVb, IVc, VIIa and VIId to VIIh), Bay of Biscay and Atlantic Iberian waters (ICES divisions VIIa and VIIb), Atlantic Iberian Waters (ICES divisions VIIc and IXa), and Celtic Sea and West of Scotland (ICES divisions VIa, VIId and VIIj).
- (7) The current minimum size for sea bass established in Annex XII to Regulation (EC) No 850/98 Regulation is 36 cm.

⁽¹⁾ OJ L 125, 27.4.1998, p. 1.

⁽²⁾ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

⁽³⁾ Commission Implementing Regulation (EU) 2015/111 of 26 January 2015 establishing measures to alleviate a serious threat to the conservation of the sea bass (*Dicentrarchus labrax*) stock in the Celtic Sea, Channel, Irish Sea and southern North Sea (OJ L 20, 27.1.2015, p. 31).

⁽⁴⁾ Council Regulation (EU) 2015/523 of 25 March 2015 amending Regulations (EU) No 43/2014 and (EU) No 2015/104 as regards certain fishing opportunities (OJ L 84, 28.3.2015, p. 1).

- (8) However, for the stock of sea bass in the Celtic Sea, Channel, Irish Sea and southern North Sea (ICES divisions IVb, IVc, VIIa and VIId to VIIh), the information from ICES assessments indicates that female sea bass reaches first sexual maturity at a size of 42 cm. Catch statistics confirm that fishing and landing sea bass below 42 cm removes juvenile female sea bass at a point in time where they have not yet contributed to the reproduction of the stock. Allowing catching and landing sea bass at a size of less than 42 cm therefore seriously harms the reproductive capacity of this stock, contributing significantly to the overall fishing mortality, and causes a serious threat to the conservation of the sea bass stock. As sea bass stocks in these ICES divisions depend on female sea bass remaining in the sea until they reproduce, it is appropriate to increase the minimum conservation reference size for that species to 42 cm.
- (9) Moreover, as maturity appears to be temperature dependant, it is precautionary to include the other northern stock, i.e. in the Celtic Sea and West of Scotland (ICES divisions VIa, VIIb and VIIj), under the same restriction.
- (10) It is therefore urgent to take measures in order to prohibit the fishing and landing of sea bass below 42 cm as a protective measure for juvenile sea bass in the two stocks of sea bass identified by ICES: Celtic Sea, Channel, Irish Sea and southern North Sea (ICES divisions IVb, IVc, VIIa and VIId to VIIh) and Celtic Sea and West of Scotland (ICES divisions VIa, VIIb and VIIj). Further delay in providing protection to juvenile sea bass would considerably increase the risk of serious harm to the sea bass stock, contribute significantly to its fishing mortality and accelerate the decline of its biomass.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

By way of derogation from Annex XII to Regulation (EC) No 850/98, the minimum size for sea bass (*Dicentrarchus labrax*) in Region 2, as defined in Article 2 of that Regulation, shall be 42 cm.

Article 2

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

It shall take effect on 1 September 2015.

Before the end of 2017 the Commission shall assess whether the measures introduced by this Regulation are still necessary.

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

Done at Brussels, 30 July 2015.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1317**of 30 July 2015****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾,

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

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 30 July 2015.

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

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	171,5
	MK	26,3
	ZZ	98,9
0707 00 05	TR	126,8
	ZZ	126,8
0709 93 10	TR	124,7
	ZZ	124,7
0805 50 10	AR	128,9
	BO	135,7
	UY	128,8
	ZA	128,6
	ZZ	130,5
0806 10 10	EG	255,9
	MA	228,9
	TN	185,1
	ZA	115,6
	ZZ	196,4
0808 10 80	AR	262,5
	BR	105,8
	CL	135,5
	NZ	131,5
	US	179,5
	UY	139,7
	ZA	134,3
	ZZ	155,5
0808 30 90	AR	222,6
	CL	139,3
	CN	89,6
	NZ	150,8
	ZA	136,7
	ZZ	147,8
0809 10 00	TR	226,5
	ZZ	226,5
0809 29 00	TR	236,2
	US	487,6
	ZZ	361,9

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0809 30 10, 0809 30 90	MK	80,0
	TR	176,8
	ZZ	128,4
0809 40 05	BA	59,9
	IL	124,7
	XS	66,1
	ZZ	83,6

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2015/1318

of 29 July 2015

amending the Annex to Implementing Decision 2014/709/EU concerning animal health control measures relating to African swine fever in certain Member States, as regards the entries for Estonia and Latvia

(notified under document C(2015) 5378)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽¹⁾, and in particular Article 9(4) thereof,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽²⁾, and in particular Article 10(4) thereof,

Having regard to Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption ⁽³⁾, and in particular Article 4(3) thereof,

Whereas:

- (1) Commission Implementing Decision 2014/709/EU ⁽⁴⁾ lays down animal health control measures in relation to African swine fever in certain Member States. The Annex to that Decision demarcates and lists certain areas of those Member States differentiated by the level of risk based on the epidemiological situation. That list includes certain areas of Estonia, Italy, Latvia, Lithuania and Poland.
- (2) In July 2015, one case of African swine fever in wild boar and three outbreaks in domestic pigs were notified by Estonia within the areas listed in the Annex to Implementing Decision 2014/709/EU. The case in wild boar occurred in the area listed in Part I of that Annex while the three outbreaks in domestic pigs occurred in Part II of that same Annex.
- (3) In July 2015, cases of African swine fever in wild boar were notified by Latvia within the areas listed in the Annex to Implementing Decision 2014/709/EU. Those cases occurred in areas listed in Parts II and III that were in proximity to Part I.
- (4) The evolution of the current epidemiological situation in the Union as regards African swine fever should be considered in the assessment of the risk represented by the animal health situation as regards that disease in Estonia and in Latvia. In order to focus animal health control measures and to prevent the further spread of African swine fever, as well as to prevent any unnecessary disturbance to trade within the Union and to avoid unjustified barriers to trade by third countries, the Union list of areas subject to the animal health control measures set out in the Annex to Implementing Decision 2014/709/EU should be amended to take into account the current animal health situation as regards that disease in those Member States.

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ OJ L 18, 23.1.2003, p. 11.

⁽⁴⁾ Commission Implementing Decision 2014/709/EU of 9 October 2014 concerning animal health control measures relating to African swine fever in certain Member States and repealing Implementing Decision 2014/178/EU (OJ L 295, 11.10.2014, p. 63).

- (5) Implementing Decision 2014/709/EU should therefore be amended to modify the areas listed in Parts I, II and III of Estonia and Parts I and II of Latvia.
- (6) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Implementing Decision 2014/709/EU is replaced by the text in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 29 July 2015.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX

‘ANNEX

PART I

1. Estonia

The following areas in Estonia:

- the linn of Jõgeva,
- the linn of Kallaste,
- the linn of Kunda,
- the linn of Mustvee,
- the linn of Rakvere,
- the linn of Tartu,
- the maakond of Harjumaa,
- the vald of Alatskivi,
- the vald of Are,
- the vald of Elva,
- the vald of Haaslava,
- the vald of Halinga,
- the vald of Haljala,
- the vald of Järvakandi,
- the vald of Jõgeva,
- the vald of Juuru,
- the vald of Kadrina,
- the vald of Kaiu,
- the vald of Kambja,
- the vald of Kasepää,
- the vald of Kehtna,
- the vald of Kohila,
- the vald of Laekvere,
- the vald of Luunja,
- the vald of Mäksa,
- the vald of Märjamaa,
- the vald of Meeksi,
- the vald of Nõo,
- the vald of Paikuse,
- the vald of Pajusi,
- the vald of Pala,

- the vald of Palamuse,
- the vald of Peipsiääre,
- the vald of Piirissaare,
- the vald of Rägavere,
- the vald of Raikküla,
- the vald of Rakvere,
- the vald of Rapla,
- the vald of Saare,
- the vald of Sauga,
- the vald of Sindi,
- the vald of Sõmeru,
- the vald of Surju,
- the vald of Tabivere,
- the vald of Tahkuranna,
- the vald of Tapa,
- the vald of Tartu,
- the vald of Tootsi,
- the vald of Tori,
- the vald of Torma,
- the vald of Ülenurme,
- the vald of Vara,
- the vald of Vigala,
- the vald of Vihula,
- the vald of Vinni,
- the vald of Viru-Nigula,
- the vald of Võnnu.

2. Latvia

The following areas in Latvia:

- in the novads of Alūksnes, the pagasti of Ilzenes, Zeltiņu, Kalncempju, Annas, Malienas, Jaunannas, Māilupes and Liepnas,
- in the novads of Apes, the pagasts of Virešu,
- in the novads of Krimuldas, the pagasts of Krimuldas,
- in the novads of Priekuļu, the pagasti of Priekuļu and Veselavas,
- in the novads of Smiltenes, the pagasti of Brantu, Launkalnes, Variņu, and Palsmanes,
- in the novads of Vecpiebalgas, the pagasts of Dzērbenes,
- the novads of Aizkraukles,
- the novads of Amatas,
- the novads of Balinavas,

- the novads of Balvu,
- the novads of Cēsu,
- the novads of Gulbenes,
- the novads of Ikšķiles,
- the novads of Inčukalna,
- the novads of Jaunjelgavas,
- the novads of Ķeguma,
- the novads of Lielvārdes,
- the novads of Līgatnes,
- the novads of Mālpils,
- the novads of Neretas,
- the novads of Ogres,
- the novads of Raunas,
- the novads of Ropažu,
- the novads of Rugāju,
- the novads of Salas,
- the novads of Sējas,
- the novads of Siguldas,
- the novads of Skrīveru,
- the novads of Vecumnieku,
- the novads of Viesītes,
- the novads of Viļakas.

3. Lithuania

The following areas in Lithuania:

- in the rajono savivaldybė of Jurbarkas, the seniūnija of Raudonės, Veliuonos, Seredžiaus and Juodaičių,
- in the rajono savivaldybė of Pakruojis, the seniūnija of Klovainių, Rozalimo and Pakruojo,
- in the rajono savivaldybė of Panevėžys, the seniūnija of Krekenavos, Upytės, Naujamiesčio and Smilgių,
- in the rajono savivaldybė of Raseiniai, the seniūnija of Ariogalos, Ariogalos miestas, Betygalos, Pajūrių and Šiluvos,
- in the rajono savivaldybė of Šakiai, the seniūnija of Plokščių, Kriūkų, Lekėčių, Lukšių, Griškabūdžio, Barzdų, Žvirgždaičių, Sintautų, Kudirkos Naumiesčio, Slavikų, Šakių,
- the rajono savivaldybė of Pasvalys,
- the rajono savivaldybė of Vilkaviškis,
- the rajono savivaldybė of Radviliškis,
- the savivaldybė of Kalvarija,
- the savivaldybė of Kazlų Rūda,
- the savivaldybė of Marijampolė.

4. Poland

The following areas in Poland:

In the województwo podlaskie:

- the gminy of Augustów with the city of Augustów, Nowinka, Sztabin and Bargłów Kościelny in the powiat augustowski,
- the gminy of Choroszcz, Juchnowiec Kościelny, Suraż, Turośń Kościelna, Tykocin, Łapy, Poświętne, Zawady, Dobrzyniewo Duże and part of Zabłudów (the South-West part of the gmina delimited by the line created by road number 19 and prolonged by road number 685) in the powiat białostocki,
- the gminy of Czyże, Hajnówka with the city of Hajnówka, Dubicze Cerkiewne, Kleszczele and Czeremcha in the powiat hajnowski,
- the gminy of Grodzisk, Dziadkowice and Milejczyce in the powiat siemiatycki,
- the gminy of Kobylin-Borzymy, Kulesze Kościelne, Sokoły, Wysokie Mazowieckie with the city of Wysokie Mazowieckie, Nowe Piekuty, Szepietowo, Klukowo and Ciechanowiec in the powiat wysokomazowiecki,
- the gminy of Krasnopol and Puńsk in the powiat sejneński,
- the gminy of Rutka-Tartak, Szypliszki, Suwałki, Raczek in the powiat suwalski,
- the gminy of Rutki in the powiat zambrowski,
- the gminy of Suchowola and Korycin in the powiat sokólski,
- the powiat bielski,
- the powiat M. Białystok,
- the powiat M. Suwałki,
- the powiat moniecki.

PART II

1. Estonia

The following areas in Estonia:

- the linn of Vändra,
- the linn of Võru,
- the linn of Viljandi,
- the maakond of IDA-Virumaa,
- the maakond of Järvamaa,
- the maakond of Põlvamaa,
- the part of the vald of Suure-Jaani located to the West of road 49,
- the part of the vald of Viiratsi located to the West of the line defined by the Western part of road 92 until the junction to road 155, then road 155 until the junction to road 24156, then road 24156 until it crosses Verilaskke river, then the Verilaskke river until it reaches the southern border of the vald,
- the vald of Kõpu,
- the vald of Pärsti,
- the vald of Halliste,
- the vald of Abja,
- the vald of Karksi,
- the vald of Häädemeeste,

- the vald of Haanja,
- the vald of Kāru,
- the vald of Lasva,
- the vald of Meremäe,
- the vald of Misso,
- the vald of Rakke,
- the vald of Saarde,
- the vald of Tamsalu,
- the vald of Väike-Maarja,
- the vald of Vändra,
- the vald of Vastseliina,
- the vald of Võru.

2. Latvia

The following areas in Latvia:

- in the novads of Alūksnes, the pagasti of Veclaicenes, Jaunlaicenes, Ziemeru, Alsviķu, Mārkalnes, Jaunalūksnes and Pededzes,
- in the novads of Apes, the pagasts of Gaujienas, Trapenes and Apes,
- in the novads of Krimuldas, the pagasts of Lēdurgas,
- in the novads of Priekuļu, the pagasti of Liepas and Mārsnēnu,
- in the novads of Smiltenes, the pagasti of Blomes, Smiltenes, Bilskas and Grundzāles and the pilsēta of Smiltenes,
- in the novads of Vecpiebalgas, the pagasti of Kaives, Inešu, Vecpiebalgas and Taurenas,
- the novads of Aknīstes,
- the novads of Alojas,
- the novads of Cesvaines,
- the novads of Ērgļu,
- the novads of Ilūkstes,
- the novads of Jaunpiebalgas,
- the novads of Jēkabpils,
- the novads of Kocēnu,
- the novads of Kokneses,
- the novads of Krustpils,
- the novads of Limbažu,
- the novads of Līvānu,
- the novads of Lubānas,
- the novads of Madonas,
- the novads of Mazsalacas,

- the novads of Pārgaujas,
- the novads of Pļaviņu,
- the novads of Salacgrīvas,
- the novads of Varakļānu,
- the republikas pilsēta of Jēkabpils,
- the republikas pilsēta of Valmiera.

3. Lithuania

The following areas in Lithuania:

- in the rajono savivaldybė of Anykščiai, the seniūnija of Andrioniškis, Anykščiai, Debeikiai, Kavarskas, Kurkliai, Skiemonys, Traupis, Troškūnai, Viešintos and the part of Svėdasai located south to road No 118,
- in the rajono savivaldybė of Kupiškis, the seniūnija of Alizava, Kupiškis, Noriūnai and Subačius,
- in the rajono savivaldybė of Panevėžys the seniūnija of Karsakiškio, Miežiškių, Pajstrio, Panevėžio, Ramygalos, Raguvos, Vadoklių and Velžio,
- the apskritis of Alytus,
- the miesto savivaldybė of Kaunas,
- the miesto savivaldybė of Panevėžys,
- the miesto savivaldybė of Vilnius,
- the rajono savivaldybė of Biržai,
- the rajono savivaldybė of Jonava,
- the rajono savivaldybė of Kaišiadorys,
- the rajono savivaldybė of Kaunas,
- the rajono savivaldybė of Kėdainiai,
- the rajono savivaldybė of Prienai,
- the rajono savivaldybė of Šalčininkai,
- the rajono savivaldybė of Širvintos,
- the rajono savivaldybė of Trakai,
- the rajono savivaldybė of Ukmergė,
- the rajono savivaldybė of Vilnius,
- the savivaldybė of Birštonas,
- the savivaldybė of Elektrėnai.

4. Poland

The following areas in Poland:

In podlaskie województwo:

- the gminy of Czarna Białostocka, Supraśl, Wasilków and part of Zabłudów (the North-East part of the gmina delimited by the line created by road number 19 and prolonged by road number 685) in the powiat białostocki,
- the gminy of Dąbrowa Białostocka, Janów, Nowy Dwór and Sidra in the powiat sokólski,

- the gminy of Giby and Sejny with the city of Sejny in the powiat sejneński,
- the gminy of Lipsk and Plaska in the powiat augustowski,
- the gminy of Narew, Narewka and Białowieża in the powiat hajnowski.

PART III

1. Estonia

The following areas in Estonia:

- the linn of Põltsamaa,
- the linn of Võhma,
- the maakond of Valgamaa,
- the part of the vald of Suure-Jaani located to the East of road 49,
- the part of the vald of Viiratsi located to the East of the line defined by the Western part of road 92 until the junction to road 155, then road 155 until the junction to road 24156, then road 24156 until it crosses Verilaske river, then the Varilaske river until it reaches the southern border of the vald,
- the vald of Kolga-Jaani,
- the vald of Kõo,
- the vald of Saarepeedi,
- the vald of Paistu,
- the vald of Tarvastu,
- the vald of Antsla,
- the vald of Konguta,
- the vald of Laeva,
- the vald of Mõniste,
- the vald of Põltsamaa,
- the vald of Puhja,
- the vald of Puurmani,
- the vald of Rannu,
- the vald of Rõngu,
- the vald of Rõuge,
- the vald of Sõmerpalu,
- the vald of Tähtvere,
- the vald of Urvaste,
- the vald of Varstu.

2. Latvia

The following areas in Latvia:

- the novads of Aglonas,
- the novads of Beverīnas,

- the novads of Burtnieku,
- the novads of Ciblas,
- the novads of Dagdas,
- the novads of Daugavpils,
- the novads of Kārsavas,
- the novads of Krāslavas,
- the novads of Ludzas,
- the novads of Naukšēnu,
- the novads of Preiļu,
- the novads of Rēzeknes,
- the novads of Riebiņu,
- the novads of Rūjienas,
- the novads of Strenču,
- the novads of Valkas,
- the novads of Vārkavas,
- the novads of Viļānu,
- the novads of Zilupes,
- the republikas pilsēta of Daugavpils,
- the republikas pilsēta of Rēzekne.

3. Lithuania

The following areas in Lithuania:

- in the rajono savivaldybė of Anykščiai, the part of the seniūnija of Svėdasai located north to road No 118,
- in the rajono savivaldybė of Kupiškis, the seniūnija of Šimonys and Skapiškis,
- the rajono savivaldybe of Ignalina,
- the rajono savivaldybe of Moletai,
- the rajono savivaldybe of Rokiškis,
- the rajono savivaldybe of Švencionys,
- the rajono savivaldybe of Utena,
- the rajono savivaldybe of Zarasai,
- the savivaldybe of Visaginas.

4. Poland

The following areas in Poland:

In podlaskie województwo:

- the gminy of Gródek and Michałowo in the powiat białostocki,
- the gminy of Kryuki, Kuźnica, Sokółka and Szudziałowo in the powiat sokólski.

PART IV

Italy

The following areas in Italy:

all areas of Sardinia.'

COMMISSION IMPLEMENTING DECISION (EU) 2015/1319**of 29 July 2015****concerning certain protective measures in relation to highly pathogenic avian influenza of subtype H7N7 in Germany***(notified under document C(2015) 5501)***(Only the German text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽¹⁾, and in particular Article 9(4) thereof,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽²⁾, and in particular Article 10(4) thereof,

Whereas:

- (1) Avian influenza is an infectious viral disease in birds, including poultry. Infections with avian influenza viruses in domestic poultry cause two main forms of that disease that are distinguished by their virulence. The low pathogenic form generally only causes mild symptoms, while the highly pathogenic form results in very high mortality rates in most poultry species. That disease may have a severe impact on the profitability of poultry farming.
- (2) Avian influenza is mainly found in birds, but under certain circumstances infections can also occur in humans even though the risk is generally very low.
- (3) In the event of an outbreak of avian influenza, there is a risk that the disease agent might spread to other holdings where poultry or other captive birds are kept. As a result it may spread from one Member State to other Member States or to third countries through trade in live birds or their products.
- (4) Council Directive 2005/94/EC ⁽³⁾ sets out certain preventive measures relating to the surveillance and the early detection of avian influenza and the minimum control measures to be applied in the event of an outbreak of that disease in poultry or other captive birds. That Directive provides for the establishment of protection and surveillance zones in the event of an outbreak of highly pathogenic avian influenza.
- (5) Germany notified the Commission of an outbreak of highly pathogenic avian influenza of subtype H7N7 in a holding on its territory where poultry or other captive birds are kept and it immediately took the measures required pursuant to Directive 2005/94/EC, including the establishment of protection and surveillance zones.
- (6) The Commission has examined those measures in collaboration with Germany, and it is satisfied that the borders of the protection and surveillance zones, established by the competent authority in that Member State, are at a sufficient distance to the actual holding where the outbreak was confirmed.
- (7) In order to prevent any unnecessary disturbance to trade within the Union and to avoid unjustified barriers to trade being imposed by third countries, it is necessary to rapidly define the protection and surveillance zones established in Germany at Union level in collaboration with that Member State.
- (8) Accordingly, the protection and surveillance zones in Germany, where the animal health control measures as laid down in Directive 2005/94/EC are applied, should be defined in the Annex to this Decision and the duration of that regionalisation fixed.

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC (OJ L 10, 14.1.2006, p. 16).

- (9) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Germany shall ensure that the protection and surveillance zones established in accordance with Article 16(1) of Directive 2005/94/EC comprise at least the areas listed as protection and surveillance zones in Parts A and B of the Annex to this Decision.

Article 2

This Decision shall apply until 31 December 2015.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 29 July 2015.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX

Part A

Protection zone as referred to in Article 1:

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 29 of Directive 2005/94/EC
DE	Germany	Postal/ADNS code	Area comprising:	
		EMSLAND 03454	In Lower Saxony in the Landkreis Emsland the following parts: Herzlake; starting at Wettruper Damm, Birkenweg, Pappelweg, Moorstraße, Am Esch, K 241, Hauptstraße, L 55, Schullenpool, Burgstraße, K 208, Unterm Bookhof, Kampweg, Andrufer Weg, An der Drake, Beel, Südradde (Hase) up to level of Essenbeel, then in an L-shaped line up to the B213 road, Zum Klingenberg, K 256, Alter Kirchweg, Im Dorfe (K 256), Oling up to the Große Hase river, district border along the Große Hase as far as Hahnenmoorkanal, Hahnenmoorkanal as far as L 128, Siedlerstraße, Friesenstraße up to district border, district border as far as Wettruper Damm.	19.8.2015

Part B

Surveillance zone as referred to in Article 1:

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
DE	Germany	Postal/ADNS code	Area comprising:	
		EMSLAND 03454	In Lower Saxony: Landkreis Cloppenburg: On the northern side of the district border along Vinner Weg und Birkenweg to Lönningen, then further along Dr Lübbers-Weg, Langenstraße, Hasestraße, Röpker Weg, Röpker Straße and Zur Moorborg up to the district border, then along that border to the starting point at Vinner Weg. Landkreis Emsland: Wettrup, starting at Bahnhofstraße (in a south-easterly direction), Im Felde, Bergerstraße, Haselünner Straße, K 317, Alte Haselünner Straße, Moorhook, Steppenberger Straße, Penninghuser Straße, Walldamm, K 233, Hestruper Mühlenbach, Lotter Beeke, 'Feldweg' as far as Droper Straße, Lotter Beeke as far as Hase river, Hammer-Tannen-Straße, Industriestraße, Hammerstraße, Schwarzenbergweg, Meppener Straße, Im Fehn, Diekstraße, Sandstraße, Am Schullenriedengraben, Meppener Straße, B 402, Stadtmark, K 207, Am Sportplatz, Alter Kirchweg, K 207, Alte Schulstraße, Am Jugendheim, Zum Herthum, 'Feldweg' to Middelradde, 'Feldweg' to Buchenweg, Buchenweg, Berßener Straße, Mittelradde, Hübener Straße, 'Feldweg' to Oststraße, Oststraße, Ahmsener Straße, Lahner Straße, Alte Dorfstraße, Am Neuland, Zur Waldbühne, 'Feldweg' to Vinner Straße, Vinner Straße, Up'n Sande, Riehen, Im Dorf, Am Sportplatz, Im England, Lönninger Straße, district border as far as Bahnhofstraße.	28.8.2015

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
DE	Germany	Postal/ADNS code	Area comprising:	
			Landkreis Osnabrück: In the municipality of Bippen: From the south-western district border along the L 60 Lingener Straße in the direction of Ohrtermersch, right into Zum Scherpenberg, left into Alte Schulstraße, left into Fangstraße, left into Bramhof, across Bippener Straße L 73, Bergstraße, right into Kreuzweg, left into Lindlage, crossing to municipality of Berge. In the municipality of Berge: From Lindlage to Upberg, Tiefer Weg, Rübbelhauk, right into Kampstraße, left into Kirchweg, right into Asterfeldstraße, left into Am Eiskenberg, right into Fienenmoorweg, Zum weißen Pfahl, Antener Straße, crossing to municipality of Menslage, In the municipality of Menslage: From Antener Straße, left into Reuterweg, Hahler Beeke, upstream along Kleine Hase, left into Thündamm as far as the district border, then along that border back to starting point.	
		EMSLAND 03454	In Lower Saxony in the Landkreis Emsland the following parts: Herzlake; starting at Wettruper Damm, Birkenweg, Pappelweg, Moorstraße, Am Esch, K 241, Hauptstraße, L 55, Schullenpool, Burgstraße, K 208, Unterm Bookhof, Kampweg, Andrufer Weg, An der Drake, Beel, Südradde (Hase) up to level of Essenbeel, then in an L-shaped line up to the B213 road, Zum Klingenberg, K 256, Alter Kirchweg, Im Dorfe (K 256), Oling up to the Große Hase river, district border along the Große Hase as far as Hahnenmoorkanal, Hahnenmoorkanal as far as L 128, Siedlerstraße, Friesenstraße up to district border, district border as far as Wettruper Damm.	20.8 - 28.8.2015

COMMISSION IMPLEMENTING DECISION (EU) 2015/1320

of 30 July 2015

on the withdrawal of the references of the standards on soother holder, on soothers, on buoyancy aids for swimming instructions and on barbecues from the *Official Journal of the European Union* pursuant to Directive 2001/95/EC of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety ⁽¹⁾, and in particular the third and fourth subparagraphs of Article 4(2) thereof,

After consulting the committee established by Article 22 of Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council ⁽²⁾,

Whereas:

- (1) Article 3(1) of Directive 2001/95/EC requires producers to place only safe products on the market.
- (2) Under the second subparagraph of Article 3(2) of Directive 2001/95/EC, a product is to be presumed safe, as far as the risks and risk categories covered by the relevant national standards are concerned, when it conforms to voluntary national standards transposing European standards, the references of which have been published by the Commission in the *Official Journal of the European Union* in accordance with Article 4 of that Directive.
- (3) In accordance with Commission Decision C(2004) 1493 ⁽³⁾, the Commission published in the C series of the *Official Journal of the European Union* the references of standards EN 12586:1999 and EN 12586:1999/AC:2002 on soother holder and EN 1400:2002 (parts 1, 2 and 3) on soothers.
- (4) In accordance with Commission Decision 2005/718/EC ⁽⁴⁾, the Commission published in the C series of the *Official Journal of the European Union* the references of standards EN 13138-2:2002 on buoyancy aids for swimming instructions and EN 1860-1:2003 on barbecues.
- (5) The European Committee for Standardisation has withdrawn standards EN 12586:1999, EN 12586:1999/AC:2002, EN 1400:2002 (parts 1, 2 and 3), EN 13138-2:2002 and EN 1860-1:2003. These standards which no longer exist do not ensure compliance with the general safety requirement.
- (6) References of these standards should therefore be withdrawn from the *Official Journal of the European Union*.
- (7) The measures provided for in this Decision are in accordance with the opinion of the committee established by Directive 2001/95/EC,

HAS ADOPTED THIS DECISION:

Article 1

The references of the following standards shall be withdrawn from the *Official Journal of the European Union*:

- (a) EN 12586:1999 and EN 12586:1999/AC:2002 'Child use and care articles — Soother holder — Safety requirements and methods';
- (b) EN 1400-1:2002 'Child use and care articles — Soothers for babies and young children — Part 1: General safety requirements and product information';

⁽¹⁾ OJ L 11, 15.1.2002, p. 4.⁽²⁾ OJ L 316, 14.11.2012, p. 12.⁽³⁾ Commission Decision C(2004) 1493 of 23 April 2004 on compliance of certain standards with the general safety requirement of Directive 2001/95/EC and the publication of their references in the Official Journal.⁽⁴⁾ Commission Decision 2005/718/EC of 13 October 2005 on compliance of certain standards with the general safety requirement of Directive 2001/95/EC of the European Parliament and of the Council and the publication of their references in the Official Journal (OJ L 271, 15.10.2005, p. 51).

- (c) EN 1400-2:2002 'Child use and care articles — Soothers for babies and young children — Part 2: Mechanical requirements and tests';
- (d) EN 1400-3:2002 'Child use and care articles — Soothers for babies and young children — Part 3: Chemical requirements and tests';
- (e) EN 13138-2:2002 'Buoyant aids for swimming instruction — Part 2: Safety requirements and test methods for buoyant aids to be held';
- (f) EN 1860-1:2003 'Appliances, solid fuels and firelighters for barbecuing — Part 1: Barbecues burning solid fuels — Requirements and test methods'.

Article 2

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

Done at Brussels, 30 July 2015.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION DECISION (EU) 2015/1321**of 23 June 2010****on State aid C 38/07 (ex NN 45/07) implemented by France for Arbel Fauvet Rail SA***(notified under document C(2010) 4112)***(Only the French 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) ⁽¹⁾ 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 ⁽²⁾,

Whereas:

1. PROCEDURE**1.1. Procedure before the Commission**

- (1) The Commission received a complaint informing it of certain support measures implemented by France for Arbel Fauvet Rail SA (hereinafter 'AFR'). On 28 January 2006, 25 October 2006, 30 January 2007 and 6 June 2007, France submitted additional information.
- (2) By letter dated 12 September 2007, the Commission informed France that it had decided to initiate the formal investigation procedure laid down in Article 108(2) of the TFEU in respect of the measure.
- (3) France submitted comments in communications dated 12 October and 18 and 19 December 2007.
- (4) The Commission decision to initiate the formal investigation procedure was published in the *Official Journal of the European Union* ⁽³⁾. The Commission called on interested parties to submit their comments.
- (5) The Commission received no comments from interested parties.
- (6) On 2 April 2008, the Commission issued a negative ruling on the measures in question ⁽⁴⁾ and ordered recovery (hereinafter 'the original AFR decision').
- (7) The original AFR decision was challenged before the Court of First Instance by the Nord-Pas-de-Calais region on 9 July 2008 (Case T-267/08) and by the Communauté d'Agglomération du Douaisis on 17 July 2008 (Case T-279/08). One of the grounds for annulment raised by the applicants was the failure to state reasons with respect to the calculation of the aid element. The applicants also argued that the Commission had committed a manifest error of assessment in mistakenly qualifying AFR as a firm in difficulty.

⁽¹⁾ From 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union ('TFEU'). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88 respectively of the EC Treaty, where appropriate.

⁽²⁾ OJ C 249, 24.10.2007, p. 17.

⁽³⁾ See footnote 2.

⁽⁴⁾ Commission Decision C(2008) 1089 final of 2 April 2008, OJ L 238, 5.9.2008, p. 27.

1.2. The Biria judgment

- (8) The calculation of the amount of aid in the original AFR decision of 2 April 2008 was based on a method devised in a previous decision of the Commission in the 'Biria Group' case C 38/2005 (hereinafter 'the Biria decision') ⁽⁵⁾.
- (9) By proceedings ⁽⁶⁾ brought on 5 April 2007 (Case T-102/07) and 16 April 2007 (Case T-120/07), the Biria decision was challenged before the Court of First Instance by the authority which had granted the aid and by the legal successor to the aid recipients respectively. On 3 March 2010 ⁽⁷⁾, the General Court annulled the Biria decision.
- (10) Although the Court confirmed to a large degree the reasoning of the Commission, the decision was, nonetheless, annulled for failure to state adequate reasons on a particular point. The General Court held that the Commission could not confine itself to a mere reference to the Commission notice of 1997 for setting the reference and discount rates ⁽⁸⁾ (hereinafter 'the Commission notice of 1997 on reference rates') in the reasons relating to the risk premiums when calculating the amount of the aid element contained in a loan to a firm in difficulty.

1.3. Withdrawal

- (11) The original AFR decision made explicit reference to the recital in the Biria decision which prompted its annulment by the General Court. The reasoning in the Biria decision and that in the original AFR decision with respect to the risk premium to be used were based on similar elements.
- (12) Consequently, the Commission notes, in the light of the Biria judgment, that the original AFR decision of 2 April 2008 did not provide reasons to the requisite legal standard concerning the level of risk premium to be used. As the decision has yet to become final, there is thus reason to withdraw it and issue a new decision.

2. AID DESCRIPTION

2.1. Beneficiary

- (13) AFR is a manufacturer of railway equipment specialising in goods wagons and tank containers. It is one of the leading manufacturers of railway rolling stock on the European market. The company is located in Douai (Nord) and employed around 265 people in 2008.
- (14) In 2005, AFR was fully owned by Arbel SA ⁽⁹⁾. At the time, AFR employed some 330 people.
- (15) AFR's business has been running at a loss for several years. The company's economic difficulties worsened from 2001 onwards. This trend gathered momentum between 2002 and 2005. The following table shows some of AFR's key performance indicators for the period before the aid was granted.

	To 31.12.2004	To 31.12.2003	To 31.12.2002	To 31.12.2001
Turnover in EUR	22 700 000	42 700 000	42 000 000	70 000 000
Net loss in EUR	– 11 589 620	– 14 270 634	– 2 083 746	– 10 500 000
Capital and reserves in EUR	– 21 090 000	– 23 000 000	– 8 700 000	– 6 600 000

2.2. Support measures

- (16) On 4 July 2005 the Nord-Pas-de-Calais regional authorities and the Communauté d'agglomération du Douaisis jointly granted AFR a repayable advance of EUR 1 million each, making a total of EUR 2 million.

⁽⁵⁾ Commission Decision C(2007) 130 final of 24 January 2007, OJ L 183, 13.7.2007, p. 27.

⁽⁶⁾ The two cases were joined by a decision of the President of the Court of 24 November 2008.

⁽⁷⁾ Judgment of the General Court in Joined Cases T-102/07 *Freistaat Sachsen v Commission* and T-120/07 *MB Immobilien and MB System v Commission*, not yet reported.

⁽⁸⁾ OJ C 273, 9.9.1997, p. 3.

⁽⁹⁾ On 29 June 2007 AFR was taken over by IGF Industries. Its business name was changed to 'IGF Industries — Arbel Fauvet Rail'.

(17) According to the information provided by the French authorities, the terms of the advances were as follows:

- the repayable advance from the regional authorities was granted at an annual interest rate of 4,08 % (equivalent to the Community reference rate applicable at the time) subject to the completion of a financing plan that AFR was drawing up; it was to be repaid in 6-monthly instalments over a 3-year period starting on 1 January 2006,
- the advance from the Communauté d'agglomération du Douaisis was granted at an annual interest rate of 4,08 % (equivalent to the Community reference rate applicable at the time), subject to payment of the advance from the regional authorities, repayable under the same terms, and to supply of proof of the irrevocable merger between AFR and Lormafer, another company controlled by Arbel SA. This advance was also to be repaid in 6-monthly instalments over a 3-year period from 1 January 2006.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (18) In its decision to initiate the formal investigation procedure, the Commission took the view that the repayable advances constituted state aid within the meaning of Article 107(1) of the TFEU. In this connection, it noted that the advances conferred an advantage on AFR in that the firm, given its financial situation, could not have raised funds on such favourable terms on the financial markets.
- (19) The Commission also took the view that AFR was a firm in difficulty within the meaning of the 'Community Guidelines on state aid for rescuing and restructuring firms in difficulty' (hereinafter 'the Guidelines') ⁽¹⁰⁾ and that the compatibility of the state aid it had received needed, therefore, to be assessed in the light of the Guidelines. The Commission was doubtful whether, in the light of the Guidelines, the aid in question was compatible with the internal market.

4. COMMENTS FROM FRANCE

- (20) The French authorities claimed that, although AFR was going through a difficult period at the time when the repayable advances were granted and then paid (i.e. July and the second half of 2005), it had maintained the confidence of its customers and bankers.
- (21) To support their claims, the French authorities mentioned the following points, which they described as 'signs of confidence' in AFR on the part of customers and banks:
- [...] (*) bank had increased the overdraft facility on AFR's current account by EUR 2 million (guaranteed by [...]),
 - AFR had received EUR 7 million in advance payments from customers (guaranteed by [...]), to which a further EUR 4 million in new advance payments was added in January 2006,
 - at the same time, the firm held supplier guarantees worth EUR 4 million with [...].
- (22) The French authorities backed up their comments with documents which show the following:
- the overdraft interest rate was 4,4199 % as at 1 July 2005,
 - the outstanding amount of the various guarantees (suppliers, contract guarantees, financial guarantees) provided by [...] to AFR was EUR 29 million as at May 2005.
- (23) The French authorities also argued that AFR had devised measures 'for a recovery in its orders, business, operating performance and P&L'. The measures, which were described by the French authorities as a 'restructuring plan' were centred on three main areas: (a) a new sales strategy (aimed at achieving better positioning for AFR's products), (b) a reduction in the headcount and (c) a funding and recapitalisation plan. According to the French authorities, the implementation of these measures from 2004 on had brought benefits, leading notably to an increase in turnover (from EUR 22,6 million in 2004 to EUR 45 million in 2005) and an improvement in the bottom line, which remained, however, in the red (net loss down from EUR 11,9 million in 2004 to EUR 8,1 million in 2005).

⁽¹⁰⁾ OJ C 244, 1.10.2004, p. 2.

(*) All information in [...] is confidential.

- (24) It should also be noted that in the proceedings filed against the original AFR decision, the applicants mentioned in recital 7 claimed that AFR was not a firm in difficulty at the time when the aid was granted. In this respect, they argue that the Commission made a manifest error of assessment when it did not give sufficient consideration to AFR's 'recovery measures' (referred to in recital 23), the positive effects of which (reflected notably in a series of supply contracts awarded to AFR in 2004 and the first half of 2005) allegedly invalidate the Commission's arguments in support of the finding that AFR was a firm in difficulty.

5. ASSESSMENT OF THE AID IN THE LIGHT OF ARTICLE 107 OF THE TREATY

5.1. Existence of state aid

5.1.1. State resources

- (25) Article 107(1) of the TFEU stipulates that, save as otherwise provided for in the Treaties, aid granted by a Member State or through state resources which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade among Member States, incompatible with the internal market.
- (26) With regard to the repayable advances, the Commission notes the following.
- (27) Article 107 of the TFEU does not apply only to aid granted by the national governments of Member States, but also to aid from local and regional authorities such as the Nord-Pas-de-Calais region or the Communauté d'agglomération du Douaisis. The funds of such authorities constitute state resources, and their decisions to grant the advances in question to AFR are attributable to the State.

5.1.2. Aid favouring certain undertakings

- (28) The advances were granted at a time when AFR was in a difficult financial situation. In its decision to initiate the procedure, the Commission was of the opinion that, given its financial situation as described in recital 15 of this decision, AFR was a firm in difficulty within the meaning of the Guidelines when the aid was granted. It also noted that the advances were granted without any guarantee being lodged for their repayment, whereas the interest rates applied are supposed to reflect the interest rate applicable to loans 'backed by normal security' ⁽¹¹⁾. It therefore considers that AFR, given its financial situation, would by no means have been able to obtain funding on such favourable terms on the credit market. The advances in question consequently confer an advantage on AFR.
- (29) In this connection, it is worth noting that, basing themselves on the examples given in recital 24, the French authorities stated that AFR still had the confidence of its bankers and customers at the time the aid was granted. The Commission takes these comments to mean that France disputes the idea that AFR was unable to obtain funds on similar terms on the credit market (which amounts to disputing the notion that the repayable advances conferred an advantage on AFR) and *a fortiori* that AFR was a firm in difficulty within the meaning of the Guidelines at the time the repayable advances were granted.
- (30) However, France's comments cannot alter the analysis made in the decision to initiate the formal investigation procedure, for the following reasons.
- (31) The examples of credit quoted by the French authorities (such as the current account overdraft facility and the advance payments from customers) are not comparable to the repayable advances in question. A current account overdraft is a very short-term credit facility, unlike the repayable advances, which have a maturity of 3 years. These different types of credit are not, therefore, subject to the same risk analyses by creditors, and the fact that a debtor can obtain short-term credit is insufficient in assessing whether it could obtain a longer-term loan, the repayment of which depends on the debtor's ability to survive.
- (32) Concerning the advance payments from customers, the Commission notes that they were counter-guaranteed by [...], an independent institution, which means that customers and suppliers were not incurring any risks in connection with AFR's financial situation and therefore had no reason to subject the payment of these advances to an analysis of the financial soundness of the firm along the lines of that which would have been carried out by a creditor considering the possibility of providing an unsecured loan.

⁽¹¹⁾ Commission notice on the method for setting the reference and discount rates (OJ C 273, 9.9.1997, p. 3).

- (33) In conclusion, France's comments do not lead to the conclusion that AFR would have been able to obtain funds on similar terms on the credit market.

5.1.3. Firm in difficulty

- (34) With regard to AFR's status as a firm in difficulty within the meaning of the Guidelines, the Commission makes the following observations.
- (35) Point 10(a) of the Guidelines states that a firm is in difficulty where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months. This provision reflects the assumption that a company experiencing a massive loss in its registered capital will be unable to stem losses that will almost certainly condemn it to go out of business in the short or medium term. The Commission considers that this assumption logically applies *a fortiori* to a company that has lost all its registered capital and has negative capital and reserves.
- (36) As shown by the financial data set out in recital 15 (which were not disputed by France during the formal investigation procedure), AFR had had negative capital and reserves since 2001 and had not, at the time the aid was granted, been able to reverse this trend and move back into a positive situation as regards capital and reserves. Under the circumstances, the Commission considers that AFR was a firm in difficulty within the meaning of point 10(a) of the Guidelines at the time the aid was granted.
- (37) In addition, in the *Biria* judgment, the General Court ruled that a substantial reduction in capital is indeed an indication of difficulties. It thus held that the Commission was right in concluding that an undertaking with negative registered capital was a firm in difficulty, irrespective of the highly specific provisions of the Guidelines.
- (38) In the alternative, the Commission notes that, at the time the aid was granted, AFR also fitted the definition of a firm in difficulty given in point 11 of the Guidelines, which states that, even when none of the circumstances set out in point 10 are present, a firm may still be considered to be in difficulty, in particular where the usual signs of a firm being in difficulty are present, such as increasing losses and diminishing turnover. However, point 11 of the Guidelines does stipulate that a firm in difficulty is eligible only where, demonstrably, it cannot recover through its own resources or with the funds it obtains from its owners/shareholders or from market sources. This provision is therefore a reminder that the status of a firm in difficulty must be determined in the light of all the relevant indicators, but with significant weight being given to the firm's ability to recover without state intervention. The Commission further notes that, in accordance with settled case-law ⁽¹²⁾, such 'symptoms' are neither exhaustive nor cumulative and that there is no minimum number of indicators which must exist for the criteria to be fulfilled.
- (39) In this regard, the Commission notes (as is clear from the table in recital 15) that, from 2001, AFR experienced a steady decline in turnover and persistent losses. These are signs of a firm in difficulty within the meaning of point 11 of the Guidelines. In its decision to initiate the formal investigation procedure, the Commission had already noted these signs in support of its preliminary conclusion that AFR was a firm in difficulty. Moreover, the negative trend in AFR's financial situation is clear from the fact that, from January 2004 onwards, the firm was unable to pay by the due date taxes and social security contributions totalling EUR 4,3 million and therefore needed to ask the competent authorities for a moratorium and an arrangement to clear the debt.
- (40) The principal elements cited by France that might constitute signs to the contrary are the loans granted to AFR (current account overdraft and advance payments) and the fact that AFR had received certain guarantees from [...]. The Commission considers that these signs should be taken into account in the assessment, required by point 11 of the Guidelines, of the firm's ability to recover with the funds that it may have been able to obtain from market sources. In this respect, the Commission notes that:

— the fact that AFR had negative capital and reserves suggests that it was unable to overcome its difficulties with its own resources,

⁽¹²⁾ See judgment of the Court of First Instance in Case T-349/03 *Corsica Ferries France v Commission* [2005] ECR II-2197, paragraph 191; Commission Decision of 13 May 2003 in Case C 62/2000 *Kahla*, OJ L 227, 11.9.2003, p. 12, recital 117; and Commission Decision of 14 July 2004 in Case C 5/2003 *Mobilcom*, OJ L 116, 4.5.2005, p. 55, recitals 148-164; see also aforementioned *Biria* judgment, paragraphs 133-135.

- the French authorities indicated that AFR's shareholder, Arbel SA, despite the support it provided to AFR, was unable on its own to ensure the recovery of its subsidiary,
 - with regard to financial market sources, the loans and guarantees cited by France mean at the most that AFR still had some ability to obtain limited amounts of short-term credit. However, given the extent of AFR's difficulties, particularly its need for capital and reserves, the loans cited are not sufficient to conclude that AFR could have resolved its difficulties with funds from market sources. It was, moreover, for this reason that the regional authorities and the Communauté were obliged to step in financially.
- (41) As for the recovery measures implemented by AFR from 2004, the Commission observes, first, that the implementation of restructuring measures constitutes a condition for the compatibility of aid in relation to the Guidelines, providing that the measures comply with the Guidelines. They do not, however, necessarily affect the status of firm in difficulty, which is assessed on the financial soundness of the beneficiary at the time when the aid is granted. The assessment is essentially carried out using the most recent accounts established by the undertaking. In the present instance, the data for the 2004 financial year were used, giving rise, for the reasons mentioned above, to the conclusion that AFR was in difficulty at the time when the aid was granted.
- (42) The French authorities (and the applicants who filed the challenge to the original decision) have argued that AFR's recovery measures had brought positive results in the months leading up to the granting of the repayable advances. The Commission notes, nonetheless, that the results referred to in support of this argument were limited, haphazard and concerned a relatively short period of time. In addition, the undertaking continued to post a sizeable net loss.
- (43) Compared to the evidence attesting to severe difficulties which threatened the survival of the firm in the short or medium term, in particular the fact that AFR had had negative capital and reserves since 2001 (a very significant indicator covering a long period), the trends cited by the French authorities cannot be regarded as serious indications of a recovery in AFR's financial situation.
- (44) Accordingly, it must be concluded that, at the time the aid was granted, AFR was in serious financial difficulties that threatened its survival in the short or medium term and that it was not in a position to address those difficulties without help from the public authorities.
- (45) The Commission therefore takes the view, in the light of the above observations and, in particular, of the financial results shown in recital 15, that AFR was a firm in difficulty within the meaning of point 10 and, in the alternative, of point 11 of the Guidelines at the time the repayable advances were granted. Given the difficulties experienced by AFR, the Commission considers that AFR would not have been able to obtain funds on such advantageous terms on the credit market. The advances in question thus conferred an advantage on AFR by providing it with finance on more favourable terms than it would have been able to obtain on the credit market.

5.1.4. *Effect on trade and competition*

- (46) The repayable advances confer an advantage on AFR in relation to other firms in a similar situation in that they are available only to AFR.
- (47) The railway rolling stock manufacturing sector is characterised by the presence of several European operators and by trade within the European Union. Consequently, the advantage conferred on AFR is likely to distort competition and trade between Member States.

5.1.5. *Conclusion*

- (48) In the light of the above observations, the Commission considers that the repayable advances granted to AFR constitute state aid within the meaning of Article 107(1) of the TFEU.

5.2. Amount of the aid

- (49) In the case of aid granted in the form of loans to firms in difficulty, the aid element is made up of the difference between the interest rate actually applied and the interest rate at which the beneficiary company could have obtained the same loan on the open market.
- (50) In line with the 1997 notice on reference rates, the Commission calculates reference rates which are supposed to reflect the level of market rates of interest for medium and long-term loans, backed by normal security. The notice also stressed the fact that the reference rate constitutes a floor rate, which can be raised in situations implying a particular risk, for example when a firm is in difficulty or when the normal security required by banks is not forthcoming. In such cases, the rate can be raised by a premium of 400 basis points or more. The 1997 notice on reference rates did not indicate whether different risk premiums could be added together to reflect various risks. Although a combination of different risk premiums cannot be ruled out, the Commission, in its decision, has to provide reasons for the method used in adding them together by way of analysis of common practice on the financial markets ⁽¹³⁾.
- (51) In 2004, the auditors Deloitte & Touche GmbH Wirtschaftsprüfungsgesellschaft wrote a report ⁽¹⁴⁾ for the Commission (hereinafter 'the report'). On the basis of empirical research, the report ascertained the premiums prevailing on the market for various categories of risks relating to undertakings and transactions (backed by variable security). The report clearly demonstrated that the simultaneous combination of different risk factors (borrower solvency, security) resulted in various premiums which had to be added to the base rates.
- (52) Following this report, the Commission's approach to calculating the aid element in loans was revised and fine-tuned in its 2008 Communication on the revision of the method for setting the reference and discount rates ⁽¹⁵⁾ (hereinafter 'the 2008 Communication on reference rates'). This Communication reflected the method advocated by the report and allowed for the addition of various premiums to base rates, depending on both the solvency of the undertaking and the security provided.
- (53) And there is reason to note that in determining the aid element of the measures reference must be made to the concept of state aid and that, according to the settled jurisprudence of the Court of Justice, 'the concept of State aid must be applied to an objective situation, which must be appraised on the date on which the Commission takes its decision' ⁽¹⁶⁾.
- (54) Consequently, the Commission takes the view that the appropriate method for determining the aid element is that contained in the 2008 Communication on reference rates and aims to assess the measures in question in the light of that Communication.
- (55) The 2008 Communication on reference rates stipulated that a premium ruling out the existence of state aid in the case of a firm in difficulty providing a low level of security would amount to 1 000 basis points.
- (56) As was shown in Section 5.1.3, the Commission holds that AFR was a firm in difficulty at the time when the (aid) measures were granted. The Commission observes, moreover, that no security was provided to back the repayable advances and the level of security can thus be viewed as low.
- (57) Consequently, the aid element corresponds, in principle, to the difference between the base rate to which a premium of 1 000 basis points is applied and the rate at which the measure was granted. In its original decision, however, the Commission held that the risk premium applicable was 800 basis points. Since that decision was not challenged by the beneficiary, and none of the beneficiary's competitors has challenged the legality of that initial decision, and taking into account all of the circumstances of the present case, the Commission is of the view that there is no reason to increase the risk premium applicable in the present instance.
- (58) The Commission concludes that the aid element corresponds to the difference between a risk premium of 800 basis points to the reference interest rate applicable and the rate of interest at which the measure was granted.

⁽¹³⁾ See the *Biria* judgment in Joined Cases T-102/07 and T-120/07 *Freistaat Sachsen and Others v Commission*, not yet reported, paragraphs 218-222.

⁽¹⁴⁾ 'Study by Deloitte & Touche GmbH in relation to the updating of the reference rates of interest applied to State aid control in the EU', October 2004. http://ec.europa.eu/competition/state_aid/studies_reports/full_report.pdf

⁽¹⁵⁾ OJ C 14, 19.1.2008, p. 6.

⁽¹⁶⁾ See the judgment of the Court of Justice in Joined Cases C-341/06 P and C-342/06 P *Chronopost and La Poste v UFEX and Others* [2008] ECR I-4777, paragraph 95.

5.3. Compatibility of the aid with the internal market

- (59) Given AFR's financial situation at the time the aid was granted, as illustrated by the table in recital 15 (running at a loss for several years, negative capital and reserves, falling turnover), the Commission considers that AFR was a firm in difficulty within the meaning of the Guidelines at the time the repayable advances were granted. For the reasons set out in recitals 41 to 44, France's comments do not alter this analysis.
- (60) It is true that, in 2005, AFR was part of a group controlled by the Arbel SA holding company. Aside from its railways division (made up of AFR and Lormafer), the group included a construction division made up of firms specialising in the manufacture of windows for the construction industry. However, it is clear from the information supplied by the French authorities in the correspondence exchanged before the initiation of the formal investigation procedure that the difficulties encountered by AFR were specific to it within the group as its activity had no connection with the construction division. Moreover, the Commission notes that AFR's difficulties seem to have been too great for the group to overcome, given its mediocre results. It therefore considers that point 13 of the Guidelines is no obstacle to AFR being considered eligible for rescue and restructuring aid, despite its being part of a group.
- (61) The compatibility of the aid must therefore be assessed in the light of the Guidelines.
- (62) The Commission observes that the compatibility conditions for restructuring aid laid down in the Guidelines are not fulfilled in view of the following.
- (63) The French authorities did not present it with a restructuring plan in accordance with points 34 to 37 of the Guidelines. The restructuring measures mentioned in recital 24, presented by the French authorities as a 'restructuring plan' that had been implemented from 2004 on (see recital 24) were not, at the time the measures were granted, part of a viable restructuring plan to which the Member State concerned committed itself (point 35 of the Guidelines). Contrary to what is laid down in the Guidelines, the supposed plan made no mention of a market survey. Such a survey is required to verify the scope for a return to viability and for the internal restructuring measures proposed (point 35 of the Guidelines). Moreover, there is no evidence that a restructuring plan existed in July 2005 which described 'the circumstances that led to the company's difficulties' in order to act as 'a basis for assessing whether the proposed measures [were] appropriate' (point 36 of the Restructuring Guidelines). In addition, the supposed plan did not appear to contain any compensatory measures, as required by point 38 of the Guidelines.
- (64) In view of the reasons given in the above recital, the Commission is of the view that it was not informed of any restructuring plan which complied with the Guidelines.
- (65) Nor does the aid appear to fulfil the compatibility conditions for rescue aid provided for by the Guidelines, given that the repayable advances were granted for a period of more than 6 months (see point 25 of the Guidelines).
- (66) To conclude, the aid in question is not compatible with the internal market.

6. CONCLUSION

- (67) The Commission finds that France has unlawfully implemented the aid in question in breach of Article 108(3) of the TFEU. As the aid is incompatible with the internal market, France must bring it to an end and recover from the beneficiary the amounts already paid,

HAS ADOPTED THIS DECISION:

Article 1

Article 2

The state aid unlawfully implemented by France, in breach of Article 108(3) of the TFEU, for Arbel Fauvet Rail SA is incompatible with the internal market.

Article 3

1. France shall recover the aid referred to in Article 2 from the beneficiary.
2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiary until their actual recovery.
3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ⁽¹⁷⁾.
4. France shall cancel all outstanding payments of the aid referred to in Article 2 with effect from the date of notification of this Decision.

Article 4

1. Recovery of the aid referred to in Article 1 shall be immediate and effective.
2. France shall ensure that this Decision is implemented within 4 months following the date of its notification.

Article 5

1. Within 2 months following notification of this Decision, France shall submit the following information to the Commission:
 - (a) the total amount (principal and interest) to be recovered from the beneficiary;
 - (b) a detailed description of the measures already taken and planned to comply with this decision;
 - (c) the documents demonstrating that the beneficiary has been ordered to repay the aid.
2. France shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1 has been completed. It shall immediately forward to the Commission, at the latter's request, any information on the measures already taken and planned to comply with this Decision, as well as detailed information concerning the amounts of aid and interest already recovered from the beneficiary.

Article 6

This Decision is addressed to the French Republic.

Done at Brussels, 23 June 2010.

For the Commission
Joaquín ALMUNIA
Vice-President

⁽¹⁷⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

