

Official Journal of the European Union

L 78



English edition

Legislation

Volume 59

24 March 2016

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* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

⁽¹⁾ Text with EEA relevance

EN

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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Information relating to the entry into force of the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo *, of the other part

As the procedures necessary for the entry into force of the abovementioned Agreement have been completed on 26 February 2016, this Agreement enters into force on 1 April 2016, in accordance with its Article 144.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

COUNCIL DECISION (EU) 2016/437**of 10 March 2016****on the signing, on behalf of the European Union, and provisional application of the Agreement between the European Union and the Republic of Peru on the short-stay visa waiver**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (a) of Article 77(2), in conjunction with Article 218(5), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Regulation (EU) No 509/2014 of the European Parliament and of the Council ⁽¹⁾ transferred the reference to the Republic of Peru from Annex I to Annex II to Council Regulation (EC) No 539/2001 ⁽²⁾.
- (2) That reference to the Republic of Peru is accompanied by a footnote indicating that the exemption from the visa requirement shall apply from the date of entry into force of an agreement on visa exemption to be concluded with the European Union.
- (3) Pursuant to Regulation (EU) No 509/2014, the Commission assessed the situation of the Republic of Peru with regard to the criteria set out in that Regulation. On 29 October 2014, the Commission adopted a report concluding that the significant improvement of the Peruvian economic and social situation in recent years provided justification for exempting Peruvian nationals from the visa requirement when travelling to the European Union.
- (4) On 19 May 2015, the Council adopted a decision authorising the Commission to open negotiations with the Republic of Peru for the conclusion of an agreement between the European Union and the Republic of Peru on the short-stay visa waiver (the 'Agreement').
- (5) Negotiations on the Agreement were opened on 20 May 2015 and were successfully finalised by the initialling thereof on 9 June 2015.
- (6) The Agreement should be signed, and the declarations attached to the Agreement should be approved, on behalf of the Union. The Agreement should be applied on a provisional basis as from the day following the date of signature thereof, pending the completion of the procedures for its formal conclusion.
- (7) This Decision constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC ⁽³⁾; the United Kingdom is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (8) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ⁽⁴⁾; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

⁽¹⁾ Regulation (EU) No 509/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 149, 20.5.2014, p. 67).

⁽²⁾ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1).

⁽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).

HAS ADOPTED THIS DECISION:

Article 1

The signing on behalf of the Union of the Agreement between the European Union and the Republic of Peru on the short-stay visa waiver (the 'Agreement') is hereby authorised, subject to the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The declarations attached to this Decision shall be approved on behalf of the Union.

Article 3

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union.

Article 4

The Agreement shall be applied on a provisional basis as from the day following the date of signature thereof ⁽¹⁾, pending the completion of the procedures for its conclusion.

Article 5

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

Done at Brussels, 10 March 2016.

For the Council
The President
K.H.D.M. DIJKHOFF

⁽¹⁾ The date of signature of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

AGREEMENT**between the European Union and the Republic of Peru on the short-stay visa waiver**

THE EUROPEAN UNION, hereinafter referred to as 'the Union' or 'the EU', and

THE REPUBLIC OF PERU, hereinafter referred to as 'Peru',

hereinafter referred to jointly as the 'Contracting Parties',

WITH A VIEW TO further developing friendly relations between the Contracting Parties and desiring to facilitate travel by ensuring visa-free entry and short stay for their citizens,

HAVING REGARD to Regulation (EU) No 509/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement ⁽¹⁾ by, inter alia, transferring 19 third countries, including Peru, to the list of third countries whose nationals are exempt from the visa requirement for short stays in the Member States,

BEARING IN MIND that Article 1 of Regulation (EU) No 509/2014 states that for those 19 countries, the exemption from the visa requirement shall apply from the date of entry into force of an agreement on visa exemption to be concluded with the Union,

DESIRING to safeguard the principle of equal treatment of all EU citizens,

TAKING INTO ACCOUNT that persons travelling for the purpose of carrying out a paid activity during their short stay are not covered by this Agreement and therefore for that category the relevant rules of Union law and national law of the Member States and the national law of Peru on the visa obligation or exemption and on the access to employment continue to apply,

TAKING INTO ACCOUNT the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice and 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 confirming that the provisions of this Agreement do not apply to the United Kingdom and Ireland,

HAVE AGREED AS FOLLOWS:

*Article 1***Purpose**

This Agreement provides for visa-free travel for the citizens of the Union and for the citizens of Peru when travelling to the territory of the other Contracting Party for a maximum period of 90 days in any 180-day period.

*Article 2***Definitions**

For the purpose of this Agreement:

- (a) 'Member State' shall mean any Member State of the Union, with the exception of the United Kingdom and Ireland;
- (b) 'a citizen of the Union' shall mean a national of a Member State as defined in point (a);

⁽¹⁾ OJ L 149, 20.5.2014, p. 67.

- (c) 'a citizen of Peru' shall mean a national of Peru;
- (d) 'Schengen area' shall mean the area without internal borders comprising the territories of the Member States as defined in point (a) applying the Schengen *acquis* in full.

Article 3

Scope of application

1. Citizens of the Union holding a valid ordinary, diplomatic, service, official or special passport issued by a Member State may enter and stay without a visa in the territory of Peru for the period of stay as defined in Article 4(1).

Citizens of Peru holding a valid ordinary, diplomatic, service, official or special passport issued by Peru may enter and stay without a visa in the territory of the Member States for the period of stay as defined in Article 4(2).

2. Paragraph 1 of this Article does not apply to persons travelling for the purpose of carrying out a paid activity.

For that category of persons, each Member State individually may decide to impose a visa requirement on the citizens of Peru or to withdraw it in accordance with Article 4(3) of Council Regulation (EC) No 539/2001 ⁽¹⁾.

For that category of persons, Peru may decide on the visa requirement or the visa waiver for the citizens of each Member State individually in accordance with its national law.

3. The visa waiver provided for by this Agreement shall apply without prejudice to the laws of the Contracting Parties relating to the conditions of entry and short stay. The Member States and Peru reserve the right to refuse entry into and short stay in their territories if one or more of these conditions is not met.

4. The visa waiver applies regardless of the mode of transport used to cross the borders of the Contracting Parties.

5. Issues not covered by this Agreement shall be governed by Union law, the national law of the Member States and by the national law of Peru.

Article 4

Duration of stay

1. Citizens of the Union may stay in the territory of Peru for a maximum period of 90 days in any 180-day period.

2. Citizens of Peru may stay in the territory of the Member States fully applying the Schengen *acquis* for a maximum period of 90 days in any 180-day period. That period shall be calculated independently of any stay in a Member State which does not yet apply the Schengen *acquis* in full.

Citizens of Peru may stay for a maximum period of 90 days in any 180-day period in the territory of each of the Member States that do not yet apply the Schengen *acquis* in full, independently of the period of stay calculated for the territory of the Member States fully applying the Schengen *acquis*.

3. This Agreement does not affect the possibility for Peru and the Member States to extend the period of stay beyond 90 days in accordance with their respective national laws and Union law.

Article 5

Territorial application

1. As regards the French Republic, this Agreement shall apply only to the European territory of the French Republic.

2. As regards the Kingdom of the Netherlands, this Agreement shall apply only to the European territory of the Kingdom of the Netherlands.

⁽¹⁾ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1).

*Article 6***Joint Committee for the management of the Agreement**

1. The Contracting Parties shall set up a Joint Committee of experts (hereinafter referred to as the 'Committee'), composed of representatives of the Union and representatives of Peru. The Union shall be represented by the European Commission.
2. The Committee shall have, inter alia, the following tasks:
 - (a) monitoring the implementation of this Agreement;
 - (b) suggesting amendments or additions to this Agreement;
 - (c) settling disputes arising from the interpretation or application of this Agreement.
3. The Committee shall be convened whenever necessary, at the request of one of the Contracting Parties.
4. The Committee shall establish its rules of procedure.

*Article 7***Relationship of this Agreement to existing bilateral visa waiver agreements between the Member States and Peru**

This Agreement shall take precedence over any bilateral agreements or arrangements concluded between individual Member States and Peru, in so far as they cover issues falling within the scope hereof.

*Article 8***Final provisions**

1. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their respective internal procedures and shall enter into force on the first day of the second month following the date of the later of the two notifications by which the Contracting Parties notify each other that those procedures have been completed.

This Agreement shall be applied on a provisional basis as from the day following the date of signature hereof.

2. This Agreement is concluded for an indefinite period, unless terminated in accordance with paragraph 5.
3. This Agreement may be amended by written agreement of the Contracting Parties. Amendments shall enter into force after the Contracting Parties have notified each other of the completion of their internal procedures necessary for this purpose.
4. Each Contracting Party may suspend in whole or in part this Agreement, in particular, for reasons of public policy, the protection of national security or the protection of public health, irregular immigration or upon the reintroduction of the visa requirement by either Contracting Party. The decision on suspension shall be notified to the other Contracting Party not later than two months before its planned entry into force. A Contracting Party that has suspended the application of this Agreement shall immediately inform the other Contracting Party should the reasons for that suspension cease to exist and shall lift that suspension.
5. Each Contracting Party may terminate this Agreement by giving written notice to the other Party. This Agreement shall cease to be in force 90 days thereafter.
6. Peru may suspend or terminate this Agreement only in respect of all the Member States.
7. The Union may suspend or terminate this Agreement only in respect of all of its Member States.

Done in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

Съставено в Брюксел на четиринадесети март през две хиляди и шестнадесета година.
 Hecho en Bruselas, el catorce de marzo de dos mil dieciséis.
 V Bruselu dne čtrnáctého března dva tisíce šestnáct.
 Udfærdiget i Bruxelles den fjortende marts to tusind og seksten.
 Geschehen zu Brüssel am vierzehnten März zweitausendsechzehn.
 Kahe tuhande kuueteistkümnenda aasta märtsikuu neljateistkümnendal päeval Brüsselis.
 Έγινε στις Βρυξέλλες, στις δέκα τέσσερις Μαρτίου δύο χιλιάδες δεκαέξι.
 Done at Brussels on the fourteenth day of March in the year two thousand and sixteen.
 Fait à Bruxelles, le quatorze mars deux mille seize.
 Sastavljeno u Bruxellesu četrnaestog ožujka godine dvije tisuće šesnaeste.
 Fatto a Bruxelles, addì quattordici marzo duemilasedici.
 Briselē, divi tūkstoši sešpadsmitā gada četrpadsmitajā martā.
 Priimta du tūkstančiai šešioliktų metų kovo keturioliktą dieną Briuselyje.
 Kelt Brüsszelben, a kétezer-tizenhatodik év március havának tizennegyedik napján.
 Magħmul fi Brussell, fl-erbatax-il jum ta' Marzu fis-sena elfejn u sittax.
 Gedaan te Brussel, veertien maart tweeduizend zestien.
 Sporządzono w Brukseli dnia czternastego marca roku dwa tysiące szesnastego.
 Feito em Bruxelas, em catorze de março de dois mil e dezasseis.
 Întocmit la Bruxelles la paisprezece martie două mii şaisprezece.
 V Bruseli štrnásteho marca dvetisícšestnásť.
 V Bruslju, dne štirinajstega marca leta dva tisoč šestnajst.
 Tehty Brysselissä neljäntenätoista päivänä maaliskuuta vuonna kaksituhattakuusitoista.
 Som skedde i Bryssel den fjortonde mars år tjugohundrasexton.

За Европейския съюз
 Por la Unión Europea
 Za Evropskou unii
 For Den Europæiske Union
 Für die Europäische Union
 Euroopa Liidu nimel
 Για την Ευρωπαϊκή Ένωση
 For the European Union
 Pour l'Union européenne
 Za Europsku uniju
 Per l'Unione europea
 Eiropas Savienības vārdā –
 Europos Sąjungos vardu
 Az Európai Unió részéről
 Ghall-Unjoni Ewropea
 Voor de Europese Unie
 W imieniu Unii Europejskiej
 Pela União Europeia
 Pentru Uniunea Europeană
 Za Európsku úniu
 Za Evropsko unijo
 Euroopan unionin puolesta
 För Europeiska unionen

The image shows a large, stylized handwritten signature in black ink. To the right of the signature is a rectangular official stamp, which appears to be a seal or a placeholder for a stamp, with some faint markings inside.

За Република Перу
Por la República del Perú
Za Peruánskou Republikudo
For Republikken Peru
Für die Republik Peru
Peruu Vabariigi nimel
Για τη Δημοκρατία του Περού
For the Republic of Peru
Pour la république du pérou
Za Republiku Peru
Per la Republica del Perù
Peru Republikas vārdā –
Peru Respublikos vardu
A Perui Köztársaság részéről
Għar-Repubblika tal-Perù
Voor de Republiek Peru
W imieniu Peru
Pela República do Peru
Pentru Republica Peru
Za Peruánsku Republiku
Za Republika Peru
Perun Tasavallan puolesta
För Republiken Peru

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end, followed by a period.

JOINT DECLARATION WITH REGARD TO ICELAND, NORWAY, SWITZERLAND AND LIECHTENSTEIN

The Contracting Parties take note of the close relationship between the European Union and Norway, Iceland, Switzerland and Liechtenstein, particularly by virtue of the Agreements of 18 May 1999 and 26 October 2004 concerning the association of those countries with the implementation, application and development of the Schengen *acquis*.

In such circumstances it is desirable that the authorities of Norway, Iceland, Switzerland, and Liechtenstein, on the one hand, and Peru, on the other hand, conclude, without delay, bilateral agreements on the short-stay visa waiver in terms similar to those of this Agreement.

JOINT DECLARATION ON THE INTERPRETATION OF THE CATEGORY OF PERSONS TRAVELLING FOR THE PURPOSE OF CARRYING OUT A PAID ACTIVITY AS PROVIDED FOR IN ARTICLE 3(2) OF THIS AGREEMENT

Desiring to ensure a common interpretation, the Contracting Parties agree that, for the purposes of this Agreement, the category of persons carrying out a paid activity covers persons entering for the purpose of carrying out a gainful occupation or remunerated activity in the territory of the other Contracting Party as an employee or as a service provider.

This category should not cover:

- businesspersons, i.e. persons travelling for the purpose of business deliberations (without being employed in the country of the other Contracting Party),
- sportspersons or artists performing an activity on an ad-hoc basis,
- journalists sent by the media of their country of residence, and,
- intra-corporate trainees.

The implementation of this Declaration shall be monitored by the Joint Committee within its responsibility under Article 6 of this Agreement, which may propose modifications when, on the basis of the experiences of the Contracting Parties, it considers it necessary.

This Declaration is without prejudice to the definition of categories of travellers in the national law of Peru for the purpose of entry, exit, transit and stay in the territory of Peru.

JOINT DECLARATION ON THE INTERPRETATION OF THE PERIOD OF 90 DAYS IN ANY 180-DAY PERIOD AS SET OUT IN ARTICLE 4 OF THIS AGREEMENT

The Contracting Parties understand that the maximum period of 90 days in any 180-day period as provided for by Article 4 of this Agreement means either a continuous visit or several consecutive visits, the total duration of which does not exceed 90 days in any 180-day period.

The notion of 'any' implies the application of a moving 180-day reference period, looking backwards at each day of the stay into the last 180-day period, in order to verify if the 90 days in any 180-day period requirement continues to be fulfilled. *inter alia*, it means that an absence for an uninterrupted period of 90 days allows for a new stay for up to 90 days.

JOINT DECLARATION ON INFORMING CITIZENS ABOUT THE VISA WAIVER AGREEMENT

Recognising the importance of transparency for the citizens of the European Union and the citizens of Peru, the Contracting Parties agree to ensure full dissemination of information about the content and consequences of the visa waiver agreement and related issues, such as the entry conditions.

JOINT DECLARATION ON THE INTRODUCTION OF BIOMETRIC PASSPORTS BY THE REPUBLIC OF PERU

The Republic of Peru as a Contracting Party declares that it has awarded a contract concerning the production of biometric passports and commits to issuing only biometric passports to its citizens by 31 July 2016 at the latest. These passports will comply fully with ICAO requirements stipulated in ICAO Doc 9303.

The Contracting Parties agree that failure to issue only biometric passports by 31 July 2016 constitutes sufficient ground for suspending this Agreement in accordance with the procedure laid down in Article 8(4) hereof.

JOINT DECLARATION ON COOPERATION CONCERNING IRREGULAR MIGRATION

The Contracting Parties recall that under Article 49(3) of the Political Dialogue and Cooperation Agreement between the European Community and its Member States, of the one part, and the Andean Community and its member countries, of the other part, they agree to readmit their irregular migrants.

The Contracting Parties will closely monitor this commitment. They agree to conclude, upon request by either Contracting Party, and in particular in case of an increase of irregular migration and in case of problems regarding the readmission of irregular migrants following the entry into force of this Agreement, an agreement regulating the specific obligations of both parties on readmission of irregular migrants.

The Contracting Parties agree that failure to conclude such a readmission agreement upon request of either Contracting Party constitutes sufficient ground for suspending this Agreement in accordance with the procedure laid down in Article 8(4) hereof.

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2016/438

of 17 December 2015

supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ⁽¹⁾, and in particular Article 26b thereof,

Whereas:

- (1) It is important to ensure that the objectives of Directive 2009/65/EC are achieved uniformly throughout the Member States to enhance the integrity of the internal market and offer legal certainty for its participants, including retail and institutional investors, competent authorities and other stakeholders. The form of a Regulation ensures a coherent framework for all market operators and is the best possible guarantee for a level playing field, uniform conditions of competition and the common appropriate standard of investor protection. Furthermore, it ensures the direct applicability of detailed uniform rules concerning the operation of undertakings for collective investment in transferable securities (UCITS) and depositaries, which by their nature are directly applicable and therefore require no further transposition at national level. Adopting a Regulation also ensures that the relevant amendments to Directive 2009/65/EC, as introduced by Directive 2014/91/EU of the European Parliament and of the Council ⁽²⁾, may all be applied from the same date in all Member States.
- (2) Directive 2009/65/EC lays down an extensive set of requirements regarding depositaries' duties, delegation arrangements, and the liability regime for UCITS assets under custody in order to ensure a high standard of investor protection, that takes into account that UCITS is a retail investment scheme. Specific rights and obligations of the depositary, the management company and the investment company should therefore be set out clearly. The written contract should comprise all details necessary for the appropriate safe-keeping of all UCITS' assets by the depositary or a third party to whom safekeeping functions are delegated in accordance with Directive 2009/65/EC for the depositary to properly fulfil its oversight and control functions.
- (3) In order to allow the depositary to assess and monitor custody and insolvency risk, the written contract should provide sufficient detail on the categories of financial instruments in which the UCITS may invest and cover the geographical regions in which the UCITS plans to invest. The contract should also contain details of an escalation procedure in order to specify the circumstances, notification obligations and the steps to be taken by a depositary's staff member, at any level of its organisational structure, in relation to any detected discrepancies, including notification to the management company or the investment company or/and competent authorities, as required by this Regulation. Therefore, the depositary should alert the management company or the investment company of any material risk identified in a particular market's settlement system. The termination of the contract should reflect the fact that it represents the depositary's last resort when not satisfied that assets are sufficiently protected. It should also prevent moral hazard whereby the UCITS would make investment decisions irrespective of custody risks on the basis that the depositary would be liable. In order to maintain a high standard

⁽¹⁾ OJ L 302, 17.11.2009, p. 32.

⁽²⁾ Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions (OJ L 257, 28.8.2014, p. 186).

of investor protection, the requirement laying down the details for the monitoring of third parties should be applied in relation to the whole custody chain.

- (4) In order to ensure that the depositary is able to conduct its duties, it is necessary to clarify the tasks provided for in Article 22(3) of Directive 2009/65/EC, and in particular the second layer controls to be undertaken by the depositary. Such tasks should not prevent the depositary from conducting *ex-ante* verifications in agreement with the UCITS where it deems appropriate. In order to ensure that it is able to conduct its duties, the depositary should establish its own escalation procedure to address situations where discrepancies have been detected. That procedure should ensure the notification of the competent authorities of any material breaches. The oversight responsibilities of the depositary towards third parties should be without prejudice to the responsibilities incumbent on the UCITS under Directive 2009/65/EC.
- (5) The depositary should check that there is consistency between the number of units issued and the subscription proceeds received. Moreover, to ensure that payments made by investors upon subscription have been received, the depositary should further ensure that another reconciliation is conducted between the subscription orders and the subscription proceeds. The same reconciliation should be performed with regard to redemption orders. The depositary should also verify that the number of units in the UCITS' accounts matches the number of outstanding units in the UCITS' register. The depositary should adapt its procedures accordingly, taking into account the flow of subscriptions and redemptions.
- (6) The depositary should take all necessary steps to ensure that appropriate valuation policies and procedures for the assets of the UCITS are effectively implemented, through the performance of sample checks or by comparing the consistency of the change in the net asset value (NAV) calculation over time with that of a benchmark. When setting up its procedures, the depositary should have a clear understanding of the valuation methodologies used by the UCITS to value the UCITS' assets. The frequency of such checks should be consistent with the frequency of the UCITS' asset valuation.
- (7) By virtue of its obligation of oversight under Directive 2009/65/EC, the depositary should set up a procedure to verify on an *ex post* basis the UCITS' compliance with applicable law and regulations and its rules and instruments of incorporation. This should cover areas such as checking that the UCITS' investments are consistent with its investment strategies as described in the UCITS' rules and offering documents and ensuring that the UCITS does not breach its investment restrictions. The depositary should monitor the UCITS' transactions and investigate any unusual transaction. If the limits or restrictions set out in the applicable law or regulations or the UCITS rules and instruments of incorporation are breached, the depositary should act promptly to reverse the transaction that is in breach of those laws, regulations or rules.
- (8) The depositary should ensure that the income of the UCITS is calculated accurately in accordance with Directive 2009/65/EC. In order to achieve this, the depositary has to ensure that the income calculation and distribution is appropriate and, where it identifies an error, that the UCITS takes appropriate remedial action. Once the depositary has ensured this, it should verify the completeness and accuracy of the income distribution.
- (9) In order for the depositary to have a clear overview of all inflows and outflows of cash of the UCITS in all instances, the UCITS should ensure that the depositary receives without undue delay accurate information related to all cash flows, including from any third party with which an UCITS' cash account is opened.
- (10) In order for the UCITS' cash flows to be properly monitored, the depositary should ensure that there are procedures in place and that they are effectively implemented to appropriately monitor the UCITS' cash flows and that those procedures are periodically reviewed. In particular, the depositary should look into the reconciliation procedure to satisfy itself that the procedure is suitable for the UCITS and performed at appropriate intervals taking into account the nature, scale and complexity of the UCITS. Such a procedure should for example compare one by one each cash flow as reported in the bank account statements with the cash flows recorded in the UCITS' accounts. Where reconciliations are performed on a daily basis as for most UCITS, the depositary should perform its reconciliation also on a daily basis. The depositary should in particular monitor the discrepancies highlighted by the reconciliation procedures and the corrective measures taken in order to notify without undue delay the UCITS of any anomaly which has not been remedied and to conduct a full review of the reconciliation procedures. Such a review should be performed at least once a year. The depositary should also identify on a timely basis significant cash flows and in particular those which could be inconsistent with the UCITS' operations, such as changes in positions in UCITS' assets or subscriptions and redemptions, and it should

receive periodically cash account statements and check the consistency of its own records of cash positions with those of the UCITS. The depositary should keep its record up to date in accordance with Article 22(5)(b) of Directive 2009/65/EC.

- (11) The depositary has to ensure that all payments made by or on behalf of investors upon the subscription of shares or units of an UCITS have been received and booked in one or more cash accounts in accordance with Directive 2009/65/EC. The UCITS should therefore ensure that the depositary is provided with the relevant information it needs to properly monitor the receipt of investors' payments. The UCITS has to ensure that the depositary obtains this information without undue delay when the third party receives an order to redeem or issue units of an UCITS. The information should therefore be transmitted at the close of the business day from the entity which is responsible for the subscription and redemption of units of an UCITS to the depositary in order to avoid any misuse of investors' payments.
- (12) The depositary should hold in custody all financial instruments of the UCITS that could be registered or held in an account directly or indirectly in the name of the depositary or a third party to whom safekeeping functions are delegated, notably at the level of the central securities depositary. In addition the depositary should hold in custody those financial instruments that are only directly registered with the issuer itself or its agent in the name of the depositary or a third party to whom safekeeping functions are delegated. Those financial instruments that in accordance with applicable national law are only registered in the name of the UCITS with the issuer or its agent should not be held in custody. All financial instruments which could be physically delivered to the depositary should be held in custody. Provided that the conditions on which financial instruments are to be held in custody are fulfilled, financial instruments which are provided as collateral to a third party or are provided by a third party for the benefit of the UCITS have to be held in custody too by the depositary itself or by a third party to whom safekeeping functions are delegated as long as they are owned by the UCITS.
- (13) Financial instruments which are held in custody should be subject to due care and protection at all times. To ensure that the custody risk is properly assessed, in exercising due care, clear obligations should be established for the depositary, which should in particular know what third parties constitute the custody chain ensure that the due-diligence and segregation obligations have been maintained throughout the whole custody chain, ensure that it has an appropriate right of access to the books and records of third parties to whom safekeeping functions are delegated, ensure compliance with the requirements of due-diligence and segregation, with the documents and make those documents available to the management company or the investment company.
- (14) The depositary should at all times have a comprehensive overview of all assets that are not financial instruments to be held in custody. Those assets would be subject to the obligation to verify the ownership and maintain a record under Directive 2009/65/EC. Examples of such assets are physical assets which do not qualify as financial instruments under Directive 2009/65/EC or could not be physically delivered to the depositary, financial contracts such as certain derivatives and cash deposits.
- (15) To ensure a sufficient degree of certainty that the UCITS is indeed the owner of the assets, the depositary should make sure it receives all information it deems necessary to be satisfied that the UCITS holds the ownership right over the asset. That information could be a copy of an official document evidencing that the UCITS is the owner of the asset or any formal and reliable evidence that the depositary considers appropriate. If necessary, the depositary should request additional evidence from the UCITS or as the case may be from a third party.
- (16) The depositary should also keep a record of all assets for which it is satisfied that the UCITS holds ownership. It may set up a procedure to receive information from third parties, whereby procedures which ensure that the assets could not be transferred without the depositary or the third party to whom safekeeping functions are delegated having been informed of such transactions.
- (17) When delegating safekeeping functions to a third party in accordance with Article 22a of Directive 2009/65/EC, the depositary is required to implement and apply an appropriate and documented procedure to ensure that the delegate complies with the requirements of Article 22a(3) of that Directive at all times. In order to ensure a sufficient level of protection of assets, it is necessary to set out certain principles that should be applied in relation to the delegation of safekeeping functions.
- (18) Those principles should not be taken to be exhaustive, either in terms of setting out all details of the depositary's exercise of due skill, care and diligence, or in terms of setting out all the steps that a depositary should take in

relation to those principles themselves. The obligation to monitor on an ongoing basis the third party, to whom safekeeping functions have been delegated should consist of verifying that the third party correctly performs all the delegated functions and complies with the delegation contract and other legal requirements such as independence requirements and prohibition of reuse. The depositary should also review elements assessed during the selection and appointment process and compare them with the development of the market. The depositary should at all times be in a position to appropriately assess the risks related to the decision to entrust assets to the third party. The frequency of the review should be adapted so as to always remain consistent with market conditions and associated risks. For the depositary to effectively respond to a possible insolvency of the third party, it should undertake contingency planning, including the possible selection of alternative providers as may be relevant. While such measures may reduce the custody risk faced by a depositary, they do not alter the obligation to return the financial instruments or pay the corresponding amount should they be lost, which depends on whether or not the requirements of Article 24 of Directive 2009/65/EC are fulfilled.

- (19) In order to be satisfied that UCITS assets and UCITS rights are protected against a third party insolvency, the depositary has to understand the insolvency law of the third country where a third party is located and ensure the enforceability of their contractual relation. Before delegating the safekeeping functions to a third party located outside of the Union, the depositary has to receive an independent legal opinion on the enforceability of the contractual arrangement with the third party under the applicable insolvency law and case law of the country the third party is located in, in order to ensure that the contractual arrangement is enforceable also in case of insolvency of the third party. A depositary's duty to assess the regulatory and legal framework of the third country also includes the reception of the independent legal opinion assessing insolvency law and case law of the third country where that third party is located. Those opinions may be combined, as the case may be, or issued for each jurisdiction by relevant industry federations or law firms for the benefit of several depositaries.
- (20) The contractual arrangement with the selected third party to whom the safekeeping functions are delegated should contain an early termination clause, as it is necessary for the depositary to be in position to terminate that contractual relationship in cases where the law or case law of a third country changes in such a way that the protection of the UCITS' assets is no longer ensured. In those cases the depositary has to notify the management company or the investment company thereof. The management company or the investment company has to notify its competent authorities and take all necessary measures which are in the best interest of the UCITS and its investors. The notification of the competent authorities about the increased custody and insolvency risk to UCITS' assets in a third country should not discharge the depositary or the management company or the investment company from their duties and obligations laid down in Directive 2009/65/EC.
- (21) When delegating safekeeping functions, the depositary should ensure that the requirements of Article 22a(3)(c) of Directive 2009/65/EC are fulfilled and that the assets of the UCITS clients of the depositary are properly segregated. This obligation should particularly ensure that assets of the UCITS are not lost due to insolvency of the third party to whom safekeeping functions are delegated and that assets of UCITS are not reused by the third party on its own account. Furthermore, the depositary should be allowed to prohibit temporary deficits in client assets, use buffers or put in place arrangements prohibiting the use of a debit balance for one client to offset a credit balance for another. While such measures may reduce the custody risk faced by a depositary when delegating safekeeping functions, they do not alter the obligation to return the financial instruments or pay the corresponding amount where these are lost, which depends on whether or not the requirements of Directive 2009/65/EC are fulfilled.
- (22) Before and during the delegation of safekeeping functions, the depositary should ensure, by means of its pre-contractual and contractual arrangements, that the third party takes measures and puts in place arrangements to ensure that the UCITS assets are protected from distribution among or realisation for the benefit of creditors of the third party itself. Directive 2009/65/EC requires all Member States to bring their relevant insolvency laws in line with this requirement. It is therefore necessary that the depositary obtain independent information about the applicable insolvency laws and case law of a third country where the UCITS' assets are required to be held.
- (23) The depositary's liability under the second subparagraph of Article 24(1) of Directive 2009/65/EC is triggered in the event of the loss of a financial instrument held in custody by the depositary itself or by a third party to whom the safekeeping has been delegated, provided that the depositary does not demonstrate that the loss results from an external event beyond reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary. That loss should be distinguished from an investment loss for investors resulting from a decrease in the value of assets as a consequence of an investment decision.

- (24) For a loss to give rise to a depositary's liability, it has to be definitive, without prospect of recovering the financial asset. Thus, situations where a financial instrument is only temporarily unavailable or frozen should not count as losses within the meaning of Article 24 of Directive 2009/65/EC. In contrast, three types of situations can be identified where the loss should be deemed to be definitive: where the financial instrument no longer exists or never existed; where the financial instrument exists but the UCITS has definitively lost its right of ownership over it; and where the UCITS has the ownership right but can no longer transfer title of or create limited property rights in the financial instrument on a permanent basis.
- (25) A financial instrument is deemed no longer to exist for instance when it has disappeared following an accounting error that cannot be corrected, or if it never existed, when the UCITS' ownership was registered on the basis of falsified documents. Situations where the loss of financial instruments is caused by fraudulent conduct should be deemed a loss.
- (26) No loss can be ascertained when the financial instrument has been substituted by or converted into another financial instrument, in situations where shares are cancelled and replaced by the issue of new shares in a company reorganisation. The UCITS should not be considered as permanently deprived of its right of ownership over the financial instrument if it has legitimately transferred ownership to a third party. Consequently, where there is a distinction between the legal ownership and the beneficial ownership of assets, the definition of loss should refer to loss of the beneficial ownership right.
- (27) Only in the case of an external event beyond the control of the depositary, the consequences of which are unavoidable despite all reasonable efforts to the contrary, may the depositary avoid to be held liable under Article 24 of Directive 2009/65/EC. The cumulative fulfilment of those conditions should be proven by the depositary in order for it to be discharged of liability, and a procedure should be laid down to be followed for that purpose.
- (28) It should first be determined whether the event which led to the loss was external. The depositary's liability should not be affected by the delegation of safekeeping functions and therefore an event should be deemed external if it does not occur as a result of any act or omission of the depositary or the third party to whom the safekeeping of financial instruments held in custody has been delegated. Then, it should be assessed whether the event is beyond the depositary's control, by verifying that there was nothing a prudent depositary could reasonably have done to prevent the occurrence of the event. Under these steps both natural events and acts of a public authority may be considered as external events beyond reasonable control. In contrast, a loss caused by failure to apply the segregation requirements laid down in Article 21(11)(d)(iii) of Directive 2009/65/EC or the loss of assets because of disruption in the third party's activity in relation to its insolvency cannot be seen as being external events beyond reasonable control.
- (29) Finally, the depositary should prove that the loss could not have been avoided despite all reasonable efforts to the contrary. In this context, the depositary should inform the management company or the investment company and take appropriate action depending on the circumstances. For instance, in a situation where the depositary believes the only appropriate action is to dispose of the financial instruments, the depositary should duly inform the management company or the investment company, which must in turn instruct the depositary in writing whether to continue holding the financial instruments or to dispose of them. Any instruction to the depositary to continue holding the assets should be reported to the UCITS' investors without undue delay. The management company or the investment company should give due consideration to the depositary's recommendations. Depending on the circumstances, if the depositary remains concerned that the standard of protection of the financial instrument is not sufficient, despite repeated warnings, it should consider further possible action, such as termination of the contract provided the UCITS is given a period of time to find another depositary in accordance with national law.
- (30) Investor protection safeguards within the depositary regime need to take into account possible interconnections between the depositary and the management or the investment company such as those arising from common or affiliated management or cross-shareholdings. Those interconnections, where and to the extent permitted under national law, could give rise to the conflict of interests represented by risk of fraud (unreported irregularities to the competent authorities to avoid bad reputation), legal recourse risk (reluctance or avoidance to take legal steps against the depositary), selection bias (the choice of the depositary not based on quality and price), insolvency risk (lower standards in asset segregation or attention to the depositary's solvency) or single group exposure risk (intragroup investments).
- (31) The operational independence of the management company or of the investment company and the depositary, including situations where safekeeping functions have been delegated, provides additional safeguards that ensure

investor protection without undue costs by raising behavioural standards of the entities that belong to the same group or that are otherwise linked. The requirements for operational independence should address material elements such as identity or personal links of managers, employees or persons discharging supervisory functions towards other entities or companies in the group, including situations where such persons are affiliated.

- (32) To ensure proportionate treatment, where the management company or the investment company and depositary belong to the same group, at least one third of the members or two persons on the bodies in charge of the supervisory functions or on the management bodies which are also in charge of the supervisory functions, whichever is lower, should be independent.
- (33) As regards corporate governance, the specific features of both one-tier system, where a company is governed by one corporate body that undertakes both the management and supervisory functions, and two-tier system, where the board of directors and the supervisory board exist side by side, should be reflected.
- (34) In order to allow competent authorities, UCITS and depositaries to adapt to the new provisions contained in this Regulation so that those provisions can be applied in an efficient and effective manner, it is appropriate to defer the date of application of this Regulation by 6 months from its date of entry into force.
- (35) The measures provided for in this Regulation are in accordance with the opinion of the expert group of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

DEFINITIONS AND DETAILS OF THE WRITTEN CONTRACT

(Article 22(2) of Directive 2009/65/EC)

Article 1

Definitions

For the purpose of this Regulation, the following definitions shall apply:

- (a) 'link' means a situation in which two and more natural or legal persons are either linked by a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the undertaking in which that holding subsists;
- (b) 'group link' means a situation in which two or more undertakings or entities belong to the same group within the meaning of Article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council ⁽¹⁾ or international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council ⁽²⁾.

Article 2

Contract for the appointment of a depositary

1. The contract evidencing the appointment of the depositary in accordance with Article 22(2) of Directive 2009/65/EC shall be drawn up between, on the one hand, the depositary and, on the other hand, the investment company or the management company for each of the common funds that the management company manages.

⁽¹⁾ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

⁽²⁾ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

2. The contract shall include at least the following elements:
 - (a) a description of the services to be provided by the depositary and the procedures to be adopted by the depositary for each type of assets in which the UCITS may invest and which are entrusted to the depositary;
 - (b) a description of the way in which the safekeeping and oversight functions are to be performed depending on the types of assets and the geographical regions in which the UCITS plans to invest, including in respect to the safekeeping duties, country lists and procedures for adding or withdrawing countries from the lists. This shall be consistent with the information provided in the UCITS rules, instruments of incorporation and offering documents regarding the assets in which the UCITS may invest;
 - (c) the period of validity and the conditions for amendment and termination of the contract, including the situations which could lead to the termination of the contract and details regarding the termination procedure and the procedures by which the depositary send all relevant information to its successor;
 - (d) the confidentiality obligations applicable to the parties in accordance with relevant laws and regulations. Those obligations shall not impair the ability of competent authorities to have access to the relevant documents and information;
 - (e) the means and procedures by which the depositary transmits to the management company or the investment company all relevant information that it needs in order to perform its duties, including the exercise of any rights attached to assets, and to allow the management company or the investment company to have a timely and accurate overview of the accounts of the UCITS;
 - (f) the means and procedures by which the management company or the investment company transmits all relevant information or ensures the depositary has access to all the information it needs to fulfil its duties, including the procedures ensuring that the depositary will receive information from other parties appointed by the management company or the investment company;
 - (g) the procedures to be followed when an amendment to the UCITS rules, instruments of incorporation or offering documents is being considered, detailing the situations in which the depositary is to be informed, or where the prior agreement of the depositary is needed to proceed with the amendment;
 - (h) all necessary information that needs to be exchanged between the investment company or the management company, or a third party acting on behalf of the UCITS on the one hand, and the depositary, on the other hand, related to the sale, subscription, redemption, issue, cancellation and re-purchase of units of the UCITS;
 - (i) all necessary information that needs to be exchanged between the investment company or the management company, or a third party acting on behalf of the UCITS and the depositary related to the performance of the depositary's duties;
 - (j) where parties to the contract envisage appointing third parties to carry out parts of their respective duties, a commitment to provide, on a regular basis, details of any third party appointed and, upon request, information on the criteria used to select the third party and the steps envisaged to monitor the activities carried out by the selected third party;
 - (k) information on the tasks and responsibilities of the parties to the contract in respect of obligations relating to the prevention of money laundering and the financing of terrorism;
 - (l) information on all cash accounts opened in the name of the investment company or of the management company acting on behalf of the UCITS and the procedures ensuring that the depositary will be informed when any new account is opened;
 - (m) details regarding the depositary's escalation procedures, including the identification of the persons to be contacted within the management company or the investment company by the depositary when it launches such a procedure;
 - (n) a commitment by the depositary to notify that the segregation of assets is no longer sufficient to ensure protection from insolvency of a third party, to whom safekeeping has been delegated in accordance with Article 22a of Directive 2009/65/EC in a specific jurisdiction;

- (o) the procedures ensuring that the depositary, in respect of its duties, has the ability to enquire into the conduct of the management company or the investment company and to assess the quality of information received, including by way of having access to the books of the management company or the investment company and by way of on-site visits;
- (p) the procedures ensuring that the management company or the investment company are enabled to review the performance of the depositary in respect of the depositary's duties.

The details of the means and procedures set out in points (a) to (p) shall be described in the contract appointing the depositary and any subsequent amendment to the contract.

3. The parties may agree to transmit all or part of the information that flows between them electronically provided that proper recording of such information is ensured.

4. Unless otherwise provided by national law, there shall be no obligation to enter into a specific written contract for each common fund.

The management company and the depositary may enter into a single contract agreement listing the common funds managed by that management company to which the contract applies.

5. The contract evidencing the appointment of the depositary and any subsequent agreement shall indicate the law applicable to the contract.

CHAPTER 2

DEPOSITARY FUNCTIONS, DUE DILIGENCE DUTIES, SEGREGATION OBLIGATION AND INSOLVENCY PROTECTION

(Article 22(3), (4) and (5) and Article 22a(2)(c) and (d) of Directive 2009/65/EC)

Article 3

Oversight duties — general requirements

1. At the time of its appointment, a depositary shall assess the risks associated with the nature, scale and complexity of the investment policy and strategy of the UCITS' and with the organisation of the management company or the investment company. On the basis of that assessment, the depositary shall devise oversight procedures which are appropriate to the UCITS and the assets in which it invests and which are then implemented and applied. Those procedures shall be regularly updated.

2. In performing its oversight duties under Article 22(3) of Directive 2009/65/EC, a depositary shall perform *ex post* controls and verifications of processes and procedures that are under the responsibility of the management company or the investment company or an appointed third party. The depositary shall in all circumstances ensure that an appropriate verification and reconciliation procedure exists which is implemented and applied and frequently reviewed. The management company or the investment company shall ensure that all instructions related to the UCITS' assets and operations are sent to the depositary, so that the depositary is able to perform its own verification or reconciliation procedure.

3. A depositary shall establish a clear and comprehensive escalation procedure to deal with situations where potential discrepancies are detected in the course of its oversight duties, the details of which shall be made available to the competent authorities of the management company or the investment company upon request.

4. The management company or the investment company shall provide the depositary, upon commencement of its duties and on an ongoing basis thereafter, with all the relevant information it needs in order to comply with its obligations pursuant to Article 22(3) of Directive 2009/65/EC including information to be provided to the depositary by third parties.

The management company or the investment company shall particularly ensure that the depositary is able to have access to the books and perform on-site visits on premises of the management company or the investment company and of any service provider appointed by the management company or the investment company, or to review reports and statements of recognised external certifications by qualified independent auditors or other experts in order to ensure the adequacy and relevance of the procedures in place.

Article 4

Duties regarding subscription and redemptions

1. A depositary shall be deemed to comply with the requirements set out in point (a) of Article 22(3) of Directive 2009/65/EC where it ensures that the management company or the investment company has established, implements and applies an appropriate and consistent procedure to:

- (a) reconcile the subscription orders with the subscription proceeds, and the number of units issued with the subscription proceeds received by the UCITS;
- (b) reconcile the redemption orders with the redemptions paid, and the number of units cancelled with the redemptions paid by the UCITS;
- (c) verify on a regular basis that the reconciliation procedure is appropriate.

For the purpose of points (a), (b) and (c), the depositary shall in particular regularly check that there is consistency between the total number of units in the UCITS' accounts and the total number of outstanding units that appear in the UCITS' register.

2. A depositary shall ensure and regularly check that the procedures regarding the sale, issue, repurchase, redemption and cancellation of units of the UCITS comply with the applicable national law and with the UCITS rules or instruments of incorporation and verify that those procedures are effectively implemented.

3. The frequency of the depositary's checks shall be consistent with the flow of subscriptions and redemptions.

Article 5

Duties regarding the valuation of units

1. A depositary shall be deemed to comply with the requirements set out in point (b) of Article 22(3) of Directive 2009/65/EC where it puts in place procedures to:

- (a) verify on an ongoing basis that appropriate and consistent procedures are established and applied for the valuation of the assets of the UCITS in compliance with the applicable national law as laid down in Article 85 of Directive 2009/65/EC and with the UCITS rules or instruments of incorporation;
- (b) ensure that the valuation policies and procedures are effectively implemented and periodically reviewed.

2. The depositary, shall conduct the verifications referred to in paragraph 1 at a frequency consistent with the frequency of the UCITS' valuation policy as defined in the national law adopted in accordance with Article 85 of Directive 2009/65/EC, and with the UCITS rules or instruments of incorporation.

3. Where a depositary considers that the calculation of the value of the units of the UCITS has not been performed in compliance with applicable law or the UCITS rules or with instruments of incorporation, it shall notify the management company or the investment company and ensure that timely remedial action is taken in the best interest of the investors in the UCITS.

*Article 6***Duties regarding the carrying out of the UCITS' instructions**

A depositary shall be deemed to comply with the requirements set out in point (c) of Article 22(3) of Directive 2009/65/EC where it establishes and implements at least:

- (a) appropriate procedures to verify that instructions of the management company or the investment company comply with applicable laws and regulations and with the UCITS' rules and instruments of incorporation;
- (b) an escalation procedure where the UCITS has breached one of the limits or restrictions referred to in second subparagraph.

For the purposes of point (a), the depositary shall in particular monitor the UCITS' compliance with investment restrictions and leverage limits to which the UCITS is subject. The procedures referred to in point (a) shall be proportionate to the nature, scale and complexity of the UCITS.

*Article 7***Duties regarding the timely settlement of transactions**

1. A depositary shall be deemed to comply with the requirements set out in point (d) of Article 22(3) of Directive 2009/65/EC where it establishes a procedure to detect any situation where consideration in transactions involving the assets of the UCITS is not remitted to the UCITS within the usual time limits, to notify the management company or the investment company accordingly and, where the situation has not been remedied, to request the restitution of the assets from the counterparty where possible.

2. Where transactions do not take place on a regulated market, the depositary shall carry out its duties pursuant to paragraph 1 taking into account the conditions attached to these transactions.

*Article 8***Duties related to the UCITS' income calculation and distribution**

1. A depositary shall be deemed to comply with the requirements set out in point (e) of Article 22(3) of Directive 2009/65/EC where it:

- (a) ensures that the net income calculation is applied in accordance with the UCITS rules, instruments of incorporation and applicable national law every time income is to be distributed;
- (b) ensures that appropriate measures are taken where the UCITS' auditors have expressed reserves on the annual financial statements. The management company or the investment company shall provide the depositary with all information on reserves expressed on the financial statements;
- (c) checks the completeness and accuracy of dividend payments, every time income is to be distributed.

2. Where a depositary considers that the income calculation has not been applied in compliance with applicable law or with the UCITS rules or instruments of incorporation, it shall notify the management company or the investment company and ensure that timely remedial action has been taken in the best interest of the UCITS' investors.

*Article 9***Cash monitoring — general requirements**

1. Where a cash account is maintained or opened at an entity referred to in point (b) of Article 22(4) of Directive 2009/65/EC in the name of the investment company or of the management company acting on behalf of the UCITS, the management company or the investment company shall ensure that the depositary is provided, upon commencement of its duties and on an ongoing basis, with all relevant information necessary for having a clear overview of all UCITS' cash flows so that the depositary is able to comply with its obligations.
2. Upon the depositary's appointment the investment company or the management company shall inform the depositary of all existing cash accounts opened in the name of the investment company, or the management company acting on behalf of the UCITS.
3. The investment company or the management company shall ensure that the depositary is provided with all information related to the opening of any new cash account by the investment company, or the management company acting on behalf of the UCITS.

*Article 10***Monitoring of the UCITS' cash flows**

1. A depositary shall be deemed to comply with the requirements set out in Article 22(4) of Directive 2009/65/EC where it ensures effective and proper monitoring of the UCITS' cash flows and, in particular, it at least:
 - (a) ensures that all cash of the UCITS is booked in accounts opened with either a central bank or a credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council ⁽¹⁾ or a credit institution authorised in a third country, where cash accounts are required for the purposes of the UCITS' operations, provided that the prudential supervisory and regulatory requirements applied to credit institutions in that third country are considered by the competent authority of the UCITS home Member State as at least equivalent to those applied in the Union;
 - (b) implements effective and proper procedures to reconcile all cash flow movements and performs such reconciliations on a daily basis, or, in case of infrequent cash movements, when such cash flow movements occur;
 - (c) implements appropriate procedures to identify at the close of each business day significant cash flows and cash flows which could be inconsistent with UCITS' operations;
 - (d) reviews periodically the adequacy of those procedures, including through a full review of the reconciliation process at least once a year, and ensures that the cash accounts opened in the name of the investment company or in the name of the management company acting on behalf of the UCITS or in the name of the depositary acting on behalf of the UCITS are included in the reconciliation process;
 - (e) monitors on an ongoing basis the outcomes of the reconciliations and the actions taken as a result of any discrepancies identified by the reconciliation procedures, and notifies the management company or the investment company if a discrepancy has not been corrected without undue delay and also the competent authorities if the situation cannot be corrected;
 - (f) checks that there is consistency between its own records of cash positions and those of the UCITS.

For the purposes of assessing the equivalence of prudential supervisory and regulatory requirements applied to credit institutions of a third country referred to in point (a), competent authorities shall take into account the implementing acts adopted by the Commission pursuant to Article 107(4) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽²⁾.

⁽¹⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

⁽²⁾ 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).

2. The management company or the investment company shall ensure that all instructions and information related to a cash account opened with a third party are sent to the depositary, to enable the depositary to perform its own reconciliation procedure.

Article 11

Duties regarding payments upon the subscriptions

A management company or an investment company shall ensure that the depositary is provided with information about payments made by or on behalf of investors upon the subscription of units of an UCITS at the close of each business day on which the investment company or the management company acting on behalf of the UCITS, or a party acting on behalf of UCITS, such as a transfer agent, receives such payments or an order from the investor. The management company or the investment company shall ensure that the depositary receives all other relevant information it needs to make sure that the payments are booked in cash accounts opened in the name of the investment company or in the name of the management company acting on behalf of the UCITS or in the name of the depositary in accordance with Article 22(4) of Directive 2009/65/EC.

Article 12

Financial instruments to be held in custody

1. Financial instruments belonging to the UCITS which are not able to be physically delivered to the depositary shall be included in the scope of the custody duties of the depositary where all of the following requirements are met:

- (a) they are financial instruments referred to in points (a) to (e) and (h) of Article 50(1) of Directive 2009/65/EC or transferable securities which embed derivatives as referred to in the fourth subparagraph of Article 51(3) of Directive 2009/65/EC;
- (b) they are capable of being registered or held in a securities account directly or indirectly in the name of the depositary.

2. Financial instruments which, in accordance with applicable national law, are only directly registered in the name of the UCITS with the issuer itself or its agent, such as a registrar or a transfer agent, shall not be held in custody.

3. Financial instruments belonging to the UCITS which are able to be physically delivered to the depositary shall in all cases be included in the scope of the custody duties of the depositary.

Article 13

Safekeeping duties with regard to assets held in custody

1. A depositary shall be deemed to comply with the requirements set out in point (a) of Article 22(5) of Directive 2009/65/EC with respect to financial instruments to be held in custody where it ensures that:

- (a) the financial instruments are properly registered in accordance with Article 22(5)(a)(ii) of Directive 2009/65/EC;
- (b) records and segregated accounts are maintained in a way that ensures their accuracy, and in particular record the correspondence with the financial instruments and cash held for UCITS;
- (c) reconciliations are conducted on a regular basis between the depositary's internal accounts and records and those of any third party to whom safekeeping has been delegated in accordance with Article 22a of Directive 2009/65/EC;
- (d) due care is exercised in relation to the financial instruments held in custody in order to ensure a high standard of investor protection;

- (e) all relevant custody risks throughout the custody chain are assessed and monitored and the management company or the investment company is informed of any material risk identified;
- (f) adequate organisational arrangements are introduced to minimise the risk of loss or diminution of the financial instruments, or of rights in connection with those financial instruments as a result of fraud, poor administration, inadequate registering or negligence;
- (g) the UCITS's ownership right or the ownership right of the management company acting on behalf of the UCITS over the assets is verified.

2. Where a depositary has delegated its safekeeping functions, with regard to assets held in custody, to a third party in accordance with Article 22a of Directive 2009/65/EC, it shall remain subject to the requirements of points (b) to (e) of paragraph 1 of this Article. The depositary shall also ensure that the third party complies with the requirements of points (b) to (g) of paragraph 1 of this Article.

Article 14

Safekeeping duties regarding ownership verification and record keeping

1. The management company or the investment company shall provide the depositary, upon commencement of its duties and on an ongoing basis thereafter, with all relevant information it needs to comply with its obligations pursuant to point (b) of Article 22(5) of Directive 2009/65/EC, and ensure that the depositary is provided with all relevant information by third parties.

2. A depositary shall be deemed to comply with the requirements set out in point (b) of Article 22(5) of Directive 2009/65/EC where it at least:

- (a) has access without undue delay to all relevant information it needs in order to perform its ownership verification and record-keeping duties, including relevant information to be provided to the depositary by third parties;
- (b) possesses sufficient and reliable information for it to be satisfied of the UCITS' ownership right over the assets;
- (c) maintains a record of those assets for which it is satisfied that the UCITS holds the ownership by:
 - (i) registers in its records, in the name of the UCITS, assets, including their respective notional amounts, for which it is satisfied that the UCITS holds the ownership;
 - (ii) is able to provide at any time a comprehensive and up-to-date inventory of the UCITS' assets, including their respective notional amounts.

For the purposes of point (c)(ii) of this paragraph, the depositary shall ensure it has procedures in place so that registered assets cannot be assigned, transferred, exchanged or delivered without the depositary or the third party to whom the safekeeping has been delegated in accordance with Article 22a of Directive 2009/65/EC having been informed of such transactions. The depositary shall have access without undue delay to documentary evidence of each transaction and position from the relevant third party. The management company or the investment company shall ensure that the relevant third party provides the depositary without undue delay with certificates or other documentary evidence every time there is a sale or acquisition of assets or a corporate action resulting in the issue of financial instruments and at least once a year.

3. A depositary shall ensure that the management company or the investment company has and implements appropriate procedures to verify that the assets acquired by the UCITS are appropriately registered in the name of the UCITS, and shall check the consistency between the positions in the UCITS records and the assets for which the depositary is satisfied that the UCITS holds ownership. The management company or the investment company shall ensure that all instructions and relevant information related to the UCITS' assets are sent to the depositary to enable the depositary to perform its own verification or reconciliation procedure.

4. A depositary shall set up and implement an escalation procedure for situations where a discrepancy is detected including notification of the management company or the investment company and of the competent authorities if the situation cannot be corrected.

Article 15

Due diligence

1. A depositary shall be deemed to comply with the requirements set out in point (c) of Article 22a(2) of Directive 2009/65/EC where it implements and applies an appropriate documented due diligence procedure for the selection and ongoing monitoring of the third party, to whom safekeeping functions are to be or have been delegated in accordance with Article 22a of that Directive. That procedure shall be reviewed regularly and, at least, once a year.

2. When selecting and appointing a third party to whom safekeeping functions are to be delegated in accordance with Article 22a of Directive 2009/65/EC, a depositary shall exercise all due skill, care and diligence to ensure that entrusting financial instruments to that third party provides an adequate standard of protection. The depositary shall at least:

- (a) assess the regulatory and legal framework, including country risk, custody risk and the enforceability of the contract entered into with that third party. That assessment shall in particular enable the depositary to determine the implications of a potential insolvency of the third party for the assets and rights of the UCITS;
- (b) ensure that the assessment of the enforceability of the contractual provisions referred to in point (a), where the third party is located in a third country, is based on the legal advice of a natural or legal person independent from the depositary or that third party;
- (c) assess whether the third party's practice, procedures and internal controls are adequate to ensure that the assets of the UCITS are subject to a high standard of care and protection;
- (d) assess whether the third party's financial strength and reputation are consistent with the tasks delegated. That assessment shall be based on information provided by the potential third party as well as other data and information;
- (e) ensure that the third party has the operational and technological capabilities to perform the delegated safekeeping tasks with a high degree of protection and security.

3. A depositary shall exercise all due skill, care and diligence in the periodic review and ongoing monitoring to ensure that the third party continues to comply with the criteria provided for in paragraph 2 and the conditions set out in points (a) to (e) of paragraph 3 of Article 22a of Directive 2009/65/EC, and shall at least:

- (a) monitor the third party's performance and its compliance with the depositary's standards;
- (b) ensure that the third party exercises a high standard of care, prudence and diligence in the performance of its safekeeping tasks and in particular that it effectively segregates the financial instruments in line with the requirements of Article 16 of this Regulation;
- (c) review the custody risks associated with the decision to entrust the assets to the third party and without undue delay notify the management company, or the investment company of any change in those risks. That assessment shall be based on information provided by the third party and other data and information. During market turmoil or when a risk has been identified, the frequency and the scope of the review shall be increased;
- (d) monitor compliance with the prohibition laid down in paragraph 7 of Article 22 of Directive 2009/65/EC;
- (e) monitor compliance with the prohibition laid down in Article 25 of the Directive 2009/65/EC and the requirements laid down in Articles 21 to 24 of this Regulation.

4. Paragraphs 1, 2 and 3 shall apply *mutatis mutandis* when the third party to whom safekeeping functions are delegated in accordance with Article 22a of Directive 2009/65/EC has decided to sub-delegate all or part its safekeeping functions to another third party pursuant to the third subparagraph of Article 22a(3) of Directive 2009/65/EC.

5. A depositary shall devise contingency plans for each market in which it appoints a third party to whom safekeeping functions are delegated in accordance with Article 22a of Directive 2009/65/EC. A contingency plan shall include the identification of an alternative provider, if any.

6. A depositary shall take measures, including termination of the contract, which are in the best interest of the UCITS and its investors where the third party to whom safekeeping has been delegated in accordance with Article 22a of Directive 2009/65/EC no longer complies with the requirements of this Regulation.

7. Where the depositary has delegated its safekeeping functions in accordance with Article 22a of Directive 2009/65/EC to a third party located in a third country, it shall ensure that the agreement with the third party allows for an early termination, taking into account the need to act in the best interest of UCITS and its investors, in case the applicable insolvency laws and case law no longer recognises the segregation of the UCITS's assets in the event of insolvency or the third party or the conditions laid down in law and case law are no longer fulfilled.

8. Where the applicable insolvency law and case law no longer recognise the segregation of the UCITS' assets in the event of insolvency of the third party to whom safekeeping functions have been delegated in accordance with Article 22a of Directive 2009/65/EC or no longer ensure that the assets of the depositary's UCITS clients do not form part of the third party's estate in case of insolvency and are unavailable for distribution among, or realisation for the benefit of, creditors of the third party to whom safekeeping functions are delegated pursuant to Article 22a of Directive 2009/65/EC, the depositary shall immediately inform the management company or the investment company.

9. On receipt of the information referred to under paragraph 8, the management company or the investment company shall immediately notify its competent authority of such information and consider all the appropriate measures in relation to the relevant assets of the UCITS, including their disposal taking into account the need to act in the best interest of the UCITS and its investors.

Article 16

Segregation obligation

1. Where safekeeping functions have been delegated wholly or partly to a third party, a depositary shall ensure that the third party to whom safekeeping functions are delegated pursuant to Article 22a of Directive 2009/65/EC acts in accordance with the segregation obligation laid down in point (c) of Article 22a(3) of Directive 2009/65/EC by verifying that the third party:

- (a) keeps all necessary records and accounts to enable the depositary at any time and without delay to distinguish assets of the depositary's UCITS clients from its own assets, assets of its other clients, assets held by the depositary for its own account and assets held for clients of the depositary which are not UCITS;
- (b) maintains records and accounts in a way that ensures their accuracy, and in particular their correspondence to the assets safe-kept for the depositary's clients;
- (c) conducts, on a regular basis, reconciliations between the depositary's internal accounts and records and those of the third party to whom it has sub-delegated safekeeping functions in accordance with the third subparagraph of Article 22a(3) of Directive 2009/65/EC;
- (d) introduces adequate organisational arrangements to minimise the risk of loss or diminution of financial instruments or of rights in connection with those financial instruments as a result of misuse of the financial instruments, fraud, poor administration, inadequate record-keeping or negligence;
- (e) holds the UCITS' cash in an account or accounts with a central bank of a third country or a credit institution authorised in a third country, provided that the prudential supervisory and regulatory requirements applied to credit institutions in that third country are considered by the competent authorities of the UCITS home Member States as at least equivalent to those applied in the Union, in accordance with point (c) of Article 22(4) of Directive 2009/65/EC.

2. Paragraph 1 shall apply *mutatis mutandis* when the third party, to whom safekeeping functions are delegated in accordance with Article 22a of Directive 2009/65/EC, has decided to sub-delegate all or part of its safekeeping functions to another third party pursuant to the third subparagraph of Article 22a(3) of Directive 2009/65/EC.

Article 17

Insolvency protection of UCITS assets when delegating custody functions

1. A depositary shall ensure that a third party located in a third country, to whom custody functions are to be or have been delegated in accordance with Article 22a of Directive 2009/65/EC takes all necessary steps in order to ensure that in the event of an insolvency of the third party, assets of a UCITS held by the third party in custody are unavailable for distribution among, or realisation for the benefit of, creditors of that third party.

2. A depository shall ensure that the third party takes the following steps:
 - (a) receives legal advice from an independent natural or legal person confirming that the applicable insolvency law recognises the segregation of the assets of the depository's UCITS clients from its own assets and from the assets of its other clients, from the assets held for the depository's own account and from the assets held for clients of the depository which are not UCITS as referred to in Article 16 of this Regulation and that the assets of the depository's UCITS clients do not form part of the third party's estate in case of insolvency and are unavailable for distribution among, or realisation for the benefit of, creditors of the third party to whom safekeeping functions have been delegated in accordance with Article 22a of Directive 2009/65/EC;
 - (b) ensures that the conditions laid down in the applicable insolvency laws and case law of that third country recognise that the assets of the depository's UCITS clients are segregated and unavailable for distribution among, or realisation for the benefit of creditors, as referred to in point (a), are met when concluding the delegation agreement with the depository as well as on an ongoing basis for the entire duration of the delegation;
 - (c) immediately informs the depository where any of the conditions referred to in point (b) is no longer met;
 - (d) maintains accurate and up-to-date records and accounts of the UCITS' assets on the basis of which the depository can at any time establish the precise nature, location and ownership status of those assets;
 - (e) provides a statement to the depository, on a regular basis, and in any case whenever a change occurs, detailing the assets of the depository's UCITS clients;
 - (f) informs the depository about the changes of applicable insolvency law and of its effective application.
3. Where the depository has delegated its safekeeping functions in accordance with Article 22a of Directive 2009/65/EC to a third party located in the Union, that third party shall provide a statement to the depository, on a regular basis, and in any case whenever a change occurs, detailing the assets of the depository's UCITS clients.
4. The depository shall ensure that duties laid down in paragraphs 1 and 2 shall apply *mutatis mutandis* when the third party, to whom safekeeping functions are delegated pursuant to Article 22a of Directive 2009/65/EC, has decided to sub-delegate all or part of its safekeeping functions to another third party pursuant to the third subparagraph of Article 22a(3) of Directive 2009/65/EC.

CHAPTER 3

LOSS OF FINANCIAL INSTRUMENTS AND LIABILITY DISCHARGE

(Article 24(1) of Directive 2009/65/EC)

Article 18

Loss of a financial instrument held in custody

1. The loss of a financial instrument held in custody within the meaning of the second subparagraph of Article 24(1) of Directive 2009/65/EC shall be deemed to have taken place where, in relation to a financial instrument held in custody by the depository or by a third party to whom the safekeeping of financial instruments has been delegated in accordance with Article 22a of Directive 2009/65/EC, any of the following conditions is met:
 - (a) a stated right of ownership of the UCITS is demonstrated not to be valid because it either ceased to exist or never existed;
 - (b) the UCITS has been definitively deprived of its right of ownership over the financial instrument;
 - (c) the UCITS is definitively unable to directly or indirectly dispose of the financial instrument.
2. The ascertainment by the management or the investment company of the loss of a financial instrument shall follow a documented process readily available to the competent authorities. Once a loss is ascertained, it shall be notified immediately to investors in a durable medium.

3. A financial instrument held in custody shall not be deemed to be lost within the meaning of the second subparagraph of Article 24(1) of Directive 2009/65/EC where an UCITS is definitively deprived of its right of ownership in respect of a particular instrument, as long as that instrument is substituted by or converted into another financial instrument or instruments.

4. In the event of insolvency of the third party to whom the safekeeping of financial instruments has been delegated in accordance with Article 22a of Directive 2009/65/EC, the loss of a financial instrument held in custody shall be ascertained by the management company or the investment company as soon as one of the conditions listed in paragraph 1 is met with certainty.

There shall be certainty as to whether any of the conditions set out in paragraph 1 is fulfilled at the latest at the end of the insolvency proceedings. The management company or the investment company and the depositary shall monitor closely the insolvency proceedings to determine whether all or some of the financial instruments entrusted to the third party to whom the safekeeping of financial instruments has been delegated in accordance with Article 22a of Directive 2009/65/EC are effectively lost.

5. A loss of a financial instrument held in custody shall be ascertained irrespective of whether the conditions set out in paragraph 1 are the result of fraud, negligence or other intentional or non-intentional behaviour.

Article 19

Liability discharge

1. A depositary's liability under the second subparagraph of Article 24(1) of Directive 2009/65/EC shall not be triggered provided the depositary can prove that all the following conditions are met:

- (a) the event which led to the loss is not the result of any act or omission of the depositary or of a third party to whom the safekeeping of financial instruments held in custody in accordance with point (a) of Article 22(5) of Directive 2009/65/EC has been delegated;
- (b) the depositary could not have reasonably prevented the occurrence of the event which led to the loss despite adopting all precautions incumbent on a diligent depositary as reflected in common industry practice;
- (c) the depositary could not have prevented the loss despite rigorous and comprehensive due diligence as documented by:
 - (i) establishing, implementing, applying and maintaining structures and procedures and insuring expertise that are adequate and proportionate to the nature and complexity of the assets of the UCITS in order to identify in a timely manner and monitor on an ongoing basis external events which may result in loss of a financial instrument held in custody;
 - (ii) assessing on an ongoing basis whether any of the events identified under point (i) presents a significant risk of loss of a financial instrument held in custody;
 - (iii) informing the management company or the investment company of the significant risks identified and taking appropriate actions, if any, to prevent or mitigate the loss of financial instruments held in custody, where actual or potential external events have been identified which are believed to present a significant risk of loss of a financial instrument held in custody.

2. The requirements referred to in points (a) and (b) of paragraph 1 may be deemed to be fulfilled in the following circumstances:

- (a) natural events beyond human control or influence;
- (b) the adoption of any law, decree, regulation, decision or order by any government or governmental body, including any court or tribunal, which impacts the financial instruments held in custody;
- (c) war, riots or other major upheavals.

3. The requirements referred to in points (a) and (b) of paragraph 1 shall not be deemed to be fulfilled in cases such as an accounting error, operational failure, fraud, failure to apply the segregation requirements at the level of the depositary or a third party to whom the safekeeping of financial instruments held in custody in accordance with point (a) of Article 22(5) of Directive 2009/65/EC has been delegated.

CHAPTER 4

INDEPENDENCE REQUIREMENTS AND FINAL PROVISIONS

(Article 25 of Directive 2009/65/EC)

Article 20

Management body

For the purposes of this Chapter 'management body of the management company' shall include the management body of the management company or the management body of the investment company.

Article 21

Common management

The management company or the investment company and the depositary shall at all times comply with all of the following requirements:

- (a) no person may at the same time be both a member of the management body of the management company and a member of the management body of the depositary;
- (b) no person may at the same time be both a member of the management body of the management company and an employee of the depositary;
- (c) no person may at the same time be both a member of the management body of the depositary and an employee of the management company or the investment company;
- (d) where the management body of the management company is not in charge of the supervisory functions within the company, no more than one third of the members of its body in charge of the supervisory functions shall consist of members who are at the same time members of the management body, the body in charge of the supervisory functions or employees of the depositary;
- (e) where the management body of the depositary is not in charge of the supervisory functions within the depositary, no more than one third of the members of its body in charge of the supervisory functions shall consist of members who are at the same time members of the management body of the management company, or the body in charge of the supervisory functions of the management company or of the investment company or employees of the management company or of the investment company.

Article 22

Appointment of depositary and delegation of safekeeping

1. The management company or the investment company shall have in place a decision-making process for choosing and appointing the depositary, which shall be based on objective pre-defined criteria and meet the sole interest of the UCITS and the investors of the UCITS.

2. Where the management company or the investment company appoints a depositary to which it has a link or a group link, it shall keep documentary evidence of the following:

- (a) an assessment comparing the merits of appointing a depositary with a link or a group link with the merits of appointing a depositary which has no link or no group link with the management company or the investment company, taking into account at least the costs, the expertise, financial standing and the quality of services provided by all depositaries assessed;

(b) a report, based on the assessment referred to in point (a), describing the way in which the appointment meets the objective pre-defined criteria referred to in paragraph 1 and is made in the sole interest of the UCITS and the investors of the UCITS.

3. The management company or the investment company shall demonstrate to the competent authority of the UCITS home Member State that it is satisfied with the appointment of the depositary and that the appointment is in the sole interest of the UCITS and the investors of the UCITS. The management company or the investment company shall make the documentary evidence referred to in paragraph 1 available to the competent authority of the UCITS home Member State.

4. The management company or the investment company shall justify to investors of the UCITS, upon request, the choice of the depositary.

5. The depositary shall have in place a decision-making process for choosing third parties to whom it may delegate the safekeeping functions in accordance with Article 22a of Directive 2009/65/EC, which shall be based on objective pre-defined criteria and meet the sole interest of the UCITS and the investors of the UCITS.

Article 23

Conflicts of interest

Where a link or a group link exists between them, the management company or the investment company and the depositary, shall put in place policies and procedures ensuring that they:

- (a) identify all conflicts of interest arising from that link;
- (b) take all reasonable steps to avoid those conflicts of interest.

Where a conflict of interest referred to in the first subparagraph cannot be avoided, the management company or the investment company and the depositary shall manage, monitor and disclose that conflict of interest in order to prevent adverse effects on the interests of the UCITS and of the investors of the UCITS.

Article 24

Independence of management boards and supervisory functions

1. Where a group link exists between them, the management company or the investment company and the depositary shall ensure that:

- (a) where the management body of the management company and the management body of the depositary are also in charge of the supervisory functions within the respective companies, at least one third of the members or two persons, whichever is lower, on the management body of the management company and on the management body of the depositary shall be independent;
- (b) where the management body of the management company and the management body of the depositary are not in charge of the supervisory functions within the respective companies, at least one third of the members or two persons, whichever is lower, on the body in charge of the supervisory functions within the management company and within the depositary shall be independent.

2. For the purposes of the first paragraph, members of the management body of the management company, members of the management body of the depositary or members of the body in charge of the supervisory functions of the above companies shall be deemed independent as long as they are neither members of the management body or the body in charge of the supervisory functions nor employees of any of the other undertakings between which a group link exists and are free of any business, family or other relationship with the management company or the investment company, the depositary and any other undertaking within the group that gives rise to a conflict of interest such as to impair their judgment.

*Article 25***Entry into force and application**

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

It shall apply from 13 October 2016.

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

Done at Brussels, 17 December 2015.

For the Commission

The President

Jean-Claude JUNKER

COMMISSION REGULATION (EU) 2016/439

of 23 March 2016

amending Annex IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards *Cydia pomonella* Granulovirus (CpGV), calcium carbide, potassium iodide, sodium hydrogen carbonate, rescalure and *Beauveria bassiana* strain ATCC 74040 and *Beauveria bassiana* strain GHA

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC ⁽¹⁾, and in particular Article 5(1) thereof,

Whereas:

- (1) For *Cydia pomonella* Granulovirus (CpGV), calcium carbide, sodium hydrogen carbonate, rescalure, *Beauveria bassiana* strain ATCC 74040 and *Beauveria bassiana* strain GHA no specific MRLs were set. As those substances were not included in Annex IV to Regulation (EC) No 396/2005 either, the default value of 0,01 mg/kg laid down in Article 18(1)(b) of that Regulation applies. Potassium iodide is included in Annex IV to Regulation (EC) No 396/2005.
- (2) As regards *Cydia pomonella* Granulovirus (CpGV), the European Food Safety Authority ('the Authority') concluded ⁽²⁾ that these viruses are not pathogenic to humans and that they will not produce any toxins. Therefore, it is considered appropriate to include this substance in Annex IV to Regulation (EC) No 396/2005.
- (3) As regards calcium carbide, the Authority concluded ⁽³⁾ that this substance does not enter the human food chain. Therefore, it is considered appropriate to include this substance in Annex IV to Regulation (EC) No 396/2005.
- (4) Potassium iodide is a mineral substance which may be used in the manufacture of food supplements in accordance with Directive 2002/46/EC of the European Parliament and of the Council ⁽⁴⁾. In view of this, it is considered appropriate to remove the footnote requesting evaluation according to Article 12 of Regulation (EC) No 396/2005 for this substance.
- (5) Sodium hydrogen carbonate is approved as basic substance in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council ⁽⁵⁾. In view of Commission Implementing Regulation (EU) 2015/2069 ⁽⁶⁾, the Commission considers that the inclusion of that substance in Annex IV to Regulation (EC) No 396/2005 is appropriate.
- (6) As regards rescalure, the Authority concluded ⁽⁷⁾ that the inclusion of that substance in Annex IV to Regulation (EC) No 396/2005 is appropriate.

⁽¹⁾ OJ L 70, 16.3.2005, p. 1.

⁽²⁾ European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance *Cydia pomonella* granulovirus. *EFSA Journal* 2012;10(4):2655. [40 pp.] doi:10.2903/j.efsa.2012.2655.

⁽³⁾ European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance calcium carbide. *EFSA Journal* 2011;9(10):2419. [48 pp.] doi:10.2903/j.efsa.2011.2419.

⁽⁴⁾ Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ L 183, 12.7.2002, p. 51).

⁽⁵⁾ Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1).

⁽⁶⁾ Commission Implementing Regulation (EU) 2015/2069 of 17 November 2015 approving the basic substance sodium hydrogen carbonate in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 (OJ L 301, 18.11.2015, p. 42).

⁽⁷⁾ European Food Safety Authority, 2015. Conclusion on the peer review of the pesticide risk assessment of the active substance rescalure. *EFSA Journal* 2015;13(2):4031, 40 pp.

- (7) As regards *Beauveria bassiana* strain ATCC 74040 and *Beauveria bassiana* strain GHA ⁽¹⁾ the Authority could not conclude on the dietary risk assessment for consumers as some information was not available and further consideration by risk managers was necessary. Such further consideration was reflected in the respective review reports ⁽²⁾ ⁽³⁾ which concluded that the risk to humans through metabolites from these substances is negligible. In view of those conclusions, the Commission considers that the inclusion of those substances in Annex IV to Regulation (EC) No 396/2005 is appropriate.
- (8) Regulation (EC) No 396/2005 should therefore be amended accordingly.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Annex IV to Regulation (EC) No 396/2005 is amended in accordance with the Annex to this Regulation.

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, 23 March 2016.

For the Commission

The President

Jean-Claude JUNCKER

⁽¹⁾ European Food Safety Authority, 2013. Conclusion on the peer review of the pesticide risk assessment of the active substances *Beauveria bassiana* strains ATCC-74040 and GHA. *EFSA Journal* 2013;11(1):3031. 44 pp.

⁽²⁾ Review report for the active substance *Beauveria bassiana* strain ATCC 74040 finalised in the Standing Committee on the Food Chain and Animal Health at its meeting on 11 July 2008 in view of the inclusion of *Beauveria bassiana* strain ATCC 74040 in Annex I to Directive 91/414/EEC. SANCO/1546/08 — rev. 5, 11 July 2014.

⁽³⁾ Review report for the active substance *Beauveria bassiana* strain GHA finalised in the Standing Committee on the Food Chain and Animal Health at its meeting on 11 July 2008 in view of the inclusion of *Beauveria bassiana* strain GHA in Annex I to Directive 91/414/EEC. SANCO/1547/08 — rev. 5, 11 July 2014.

ANNEX

Annex IV to Regulation (EC) No 396/2005 is amended as follows.

- (1) The entries '*Cydia pomonella* Granulovirus (CpGV)', 'calcium carbide', 'sodium hydrogen carbonate', 'rescalure', '*Beauveria bassiana* strain ATCC 74040' and '*Beauveria bassiana* strain GHA' are inserted, in alphabetical order.
 - (2) The reference to footnote 1 after the entry 'Potassium Iodide' is deleted.
-

COMMISSION REGULATION (EU) 2016/440**of 23 March 2016****amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for atrazine in or on certain products****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC ⁽¹⁾, and in particular Article 14(1)(a) in conjunction with Article 17 and Article 49(2) thereof,

Whereas:

- (1) For atrazine, maximum residue limits (MRLs) were set in Annex II and Part B of Annex III to Regulation (EC) No 396/2005.
- (2) All existing authorisations for plant protection products containing atrazine have been revoked. In accordance with Article 17 of Regulation (EC) No 396/2005, the MRLs set out for that active substance in Annexes II and III should be deleted.
- (3) In accordance with Article 43 of Regulation (EC) No 396/2005, the Commission requested the European Food Safety Authority, hereinafter 'the Authority', to provide a scientific opinion on the temporary MRLs, which were set for cereals, following an import tolerance request made by Argentina. Based on residue trials submitted by the applicant in support of the use of atrazine on maize in accordance with Argentinian Good Agricultural Practices, the Authority concluded ⁽²⁾ that the MRLs for atrazine in cereals should be lowered to a level of 0,05 mg/kg. Such level corresponds to the existing relevant limit of determination for atrazine in products of plant origin. The proposed MRLs do not pose a consumer health risk for the European consumers.
- (4) Through the World Trade Organisation, the trading partners of the Union were consulted on the new MRLs and their comments have been taken into account.
- (5) Regulation (EC) No 396/2005 should therefore be amended accordingly.
- (6) In order to allow for the normal marketing, processing and consumption of products, this Regulation should provide for a transitional arrangement for products which have been produced before the modification of the MRLs made by this Regulation and for which information shows that a high level of consumer protection is maintained.
- (7) A reasonable period should be allowed to elapse before the modified MRLs become applicable in order to permit Member States, third countries and food business operators to prepare themselves to meet the new requirements which will result from the modification of the MRLs.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes II, III and V to Regulation (EC) No 396/2005 are amended in accordance with the Annex to this Regulation.

⁽¹⁾ OJ L 70, 16.3.2005, p. 1.

⁽²⁾ Reasoned opinion on the setting of a new maximum residue level for atrazine in cereals. *EFSA Journal* 2015;13(6):4126 [21 pp.].

Article 2

Regulation (EC) No 396/2005 as it stood before being amended by this Regulation shall continue to apply to products which were produced before 13 October 2016.

Article 3

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

It shall apply from 13 October 2016.

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

Done at Brussels, 23 March 2016.

For the Commission

The President

Jean-Claude JUNKER

ANNEX

Annexes II, III and V to Regulation (EC) No 396/2005 are amended as follows.

- (1) In Annex II, the column for atrazine is deleted.
- (2) In Part B of Annex III, the column for atrazine is deleted.
- (3) In Annex V, the following column for atrazine is added:

'Pesticide residues and maximum residue levels (mg/kg)

Code number	Groups and examples of individual products to which the MRLs apply ^(a)	Atrazine (F)
(1)	(2)	(3)
0100000	FRUITS, FRESH or FROZEN; TREE NUTS	0,05 (*)
0110000	Citrus fruits	
0110010	Grapefruits	
0110020	Oranges	
0110030	Lemons	
0110040	Limes	
0110050	Mandarins	
0110990	Others	
0120000	Tree nuts	
0120010	Almonds	
0120020	Brazil nuts	
0120030	Cashew nuts	
0120040	Chestnuts	
0120050	Coconuts	
0120060	Hazelnuts/cobnuts	
0120070	Macadamias	
0120080	Pecans	
0120090	Pine nut kernels	
0120100	Pistachios	
0120110	Walnuts	
0120990	Others	
0130000	Pome fruits	
0130010	Apples	
0130020	Pears	
0130030	Quinces	
0130040	Medlars	
0130050	Loquats/Japanese medlars	
0130990	Others	

(1)	(2)	(3)
0140000	Stone fruits	
0140010	Apricots	
0140020	Cherries (sweet)	
0140030	Peaches	
0140040	Plums	
0140990	Others	
0150000	Berries and small fruits	
0151000	(a) <i>grapes</i>	
0151010	Table grapes	
0151020	Wine grapes	
0152000	(b) <i>strawberries</i>	
0153000	(c) <i>cane fruits</i>	
0153010	Blackberries	
0153020	Dewberries	
0153030	Raspberries (red and yellow)	
0153990	Others	
0154000	(d) <i>other small fruits and berries</i>	
0154010	Blueberries	
0154020	Cranberries	
0154030	Currants (black, red and white)	
0154040	Gooseberries (green, red and yellow)	
0154050	Rose hips	
0154060	Mulberries (black and white)	
0154070	Azaroles/Mediterranean medlars	
0154080	Elderberries	
0154990	Others	
0160000	Miscellaneous fruits with	
0161000	(a) <i>edible peel</i>	
0161010	Dates	
0161020	Figs	
0161030	Table olives	
0161040	Kumquats	
0161050	Carambolas	
0161060	Kaki/Japanese persimmons	
0161070	Jambuls/jambolans	
0161990	Others	

(1)	(2)	(3)
0162000	(b) <i>inedible peel, small</i>	
0162010	Kiwi fruits (green, red, yellow)	
0162020	Litchis/lychees	
0162030	Passionfruits/maracujas	
0162040	Prickly pears/cactus fruits	
0162050	Star apples/cainitos	
0162060	American persimmons/Virginia kaki	
0162990	Others	
0163000	(c) <i>inedible peel, large</i>	
0163010	Avocados	
0163020	Bananas	
0163030	Mangoes	
0163040	Papayas	
0163050	Granate apples/pomegranates	
0163060	Cherimoyas	
0163070	Guavas	
0163080	Pineapples	
0163090	Breadfruits	
0163100	Durians	
0163110	Soursops/guanabanas	
0163990	Others	
0200000	VEGETABLES, FRESH or FROZEN	
0210000	Root and tuber vegetables	0,05 (*)
0211000	(a) <i>potatoes</i>	
0212000	(b) <i>tropical root and tuber vegetables</i>	
0212010	Cassava roots/manioc	
0212020	Sweet potatoes	
0212030	Yams	
0212040	Arrowroots	
0212990	Others	
0213000	(c) <i>other root and tuber vegetables except sugar beets</i>	
0213010	Beetroots	
0213020	Carrots	
0213030	Celeriacs/turnip rooted celeries	
0213040	Horseradishes	
0213050	Jerusalem artichokes	
0213060	Parsnips	
0213070	Parsley roots/Hamburg roots parsley	
0213080	Radishes	
0213090	Salsifies	

(1)	(2)	(3)
0213100	Swedes/rutabagas	
0213110	Turnips	
0213990	Others	
0220000	Bulb vegetables	0,05 (*)
0220010	Garlic	
0220020	Onions	
0220030	Shallots	
0220040	Spring onions/green onions and Welsh onions	
0220990	Others	
0230000	Fruiting vegetables	0,05 (*)
0231000	(a) <i>solanacea</i>	
0231010	Tomatoes	
0231020	Sweet peppers/bell peppers	
0231030	Aubergines/eggplants	
0231040	Okra/lady's fingers	
0231990	Others	
0232000	(b) <i>cucurbits with edible peel</i>	
0232010	Cucumbers	
0232020	Gherkins	
0232030	Courgettes	
0232990	Others	
0233000	(c) <i>cucurbits with inedible peel</i>	
0233010	Melons	
0233020	Pumpkins	
0233030	Watermelons	
0233990	Others	
0234000	(d) <i>sweet corn</i>	
0239000	(e) <i>other fruiting vegetables</i>	
0240000	Brassica vegetables (excluding brassica roots and brassica baby leaf crops)	0,05 (*)
0241000	(a) <i>flowering brassica</i>	
0241010	Broccoli	
0241020	Cauliflowers	
0241990	Others	
0242000	(b) <i>head brassica</i>	
0242010	Brussels sprouts	
0242020	Head cabbages	
0242990	Others	

(1)	(2)	(3)
0243000	(c) <i>leafy brassica</i>	
0243010	Chinese cabbages/pe-tsai	
0243020	Kales	
0243990	Others	
0244000	(d) <i>kohlrabies</i>	
0250000	Leaf vegetables, herbs and edible flowers	0,05 (*)
0251000	(a) <i>lettuces and salad plants</i>	
0251010	Lamb's lettuces/corn salads	
0251020	Lettuces	
0251030	Escaroles/broad-leaved endives	
0251040	Cresses and other sprouts and shoots	
0251050	Land cresses	
0251060	Roman rocket/rucola	
0251070	Red mustards	
0251080	Baby leaf crops (including brassica species)	
0251990	Others	
0252000	(b) <i>spinaches and similar leaves</i>	
0252010	Spinaches	
0252020	Purslanes	
0252030	Chards/beet leaves	
0252990	Others	
0253000	(c) <i>grape leaves and similar species</i>	
0254000	(d) <i>watercresses</i>	
0255000	(e) <i>witloofs/Belgian endives</i>	
0256000	(f) <i>herbs and edible flowers</i>	
0256010	Chervil	
0256020	Chives	
0256030	Celery leaves	
0256040	Parsley	
0256050	Sage	
0256060	Rosemary	
0256070	Thyme	
0256080	Basil and edible flowers	
0256090	Laurel/bay leave	
0256100	Tarragon	
0256990	Others	

(1)	(2)	(3)
0260000	Legume vegetables	0,05 (*)
0260010	Beans (with pods)	
0260020	Beans (without pods)	
0260030	Peas (with pods)	
0260040	Peas (without pods)	
0260050	Lentils	
0260990	Others	
0270000	Stem vegetables	0,05 (*)
0270010	Asparagus	
0270020	Cardoons	
0270030	Celeries	
0270040	Florence fennels	
0270050	Globe artichokes	
0270060	Leeks	
0270070	Rhubarbs	
0270080	Bamboo shoots	
0270090	Palm hearts	
0270990	Others	
0280000	Fungi, mosses and lichens	0,05 (*)
0280010	Cultivated fungi	
0280020	Wild fungi	
0280990	Mosses and lichens	
0290000	Algae and prokaryotes organisms	
0300000	PULSES	0,05 (*)
0300010	Beans	
0300020	Lentils	
0300030	Peas	
0300040	Lupins/lupini beans	
0300990	Others	
0400000	OILSEEDS AND OIL FRUITS	0,05 (*)
0401000	Oilseeds	
0401010	Linseeds	
0401020	Peanuts/groundnuts	
0401030	Poppy seeds	
0401040	Sesame seeds	
0401050	Sunflower seeds	
0401060	Rapeseeds/canola seeds	
0401070	Soyabeans	
0401080	Mustard seeds	
0401090	Cotton seeds	

(1)	(2)	(3)
0401100	Pumpkin seeds	
0401110	Safflower seeds	
0401120	Borage seeds	
0401130	Gold of pleasure seeds	
0401140	Hemp seeds	
0401150	Castor beans	
0401990	Others	
0402000	Oil fruits	
0402010	Olives for oil production	
0402020	Oil palms kernels	
0402030	Oil palms fruits	
0402040	Kapok	
0402990	Others	
0500000	CEREALS	0,05 (*)
0500010	Barley	
0500020	Buckwheat and other pseudo-cereals	
0500030	Maize/corn	
0500040	Common millet/proso millet	
0500050	Oat	
0500060	Rice	
0500070	Rye	
0500080	Sorghum	
0500090	Wheat	
0500990	Others	
0600000	TEAS, COFFEE, HERBAL INFUSIONS, COCOA AND CAROBS	0,1 (*)
0610000	Teas	
0620000	Coffee beans	
0630000	Herbal infusions from	
0631000	(a) <i>flowers</i>	
0631010	Chamomile	
0631020	Hibiscus/roselle	
0631030	Rose	
0631040	Jasmine	
0631050	Lime/linden	
0631990	Others	
0632000	(b) <i>leaves and herbs</i>	
0632010	Strawberry	
0632020	Rooibos	
0632030	Mate/maté	
0632990	Others	

(1)	(2)	(3)
0633000	(c) roots	
0633010	Valerian	
0633020	Ginseng	
0633990	Others	
0639000	(d) any other parts of the plant	
0640000	Cocoa beans	
0650000	Carobs/Saint John's breads	
0700000	HOPS	0,1 (*)
0800000	SPICES	0,1 (*)
0810000	Seed spices	
0810010	Anise/aniseed	
0810020	Black caraway/black cumin	
0810030	Celery	
0810040	Coriander	
0810050	Cumin	
0810060	Dill	
0810070	Fennel	
0810080	Fenugreek	
0810090	Nutmeg	
0810990	Others	
0820000	Fruit spices	
0820010	Allspice/pimento	
0820020	Sichuan pepper	
0820030	Caraway	
0820040	Cardamom	
0820050	Juniper berry	
0820060	Peppercorn (black, green and white)	
0820070	Vanilla	
0820080	Tamarind	
0820990	Others	
0830000	Bark spices	
0830010	Cinnamon	
0830990	Others	

(1)	(2)	(3)
0840000	Root and rhizome spices	
0840010	Liquorice	
0840020	Ginger	
0840030	Turmeric/curcuma	
0840040	Horseradish	
0840990	Others	
0850000	Bud spices	
0850010	Cloves	
0850020	Capers	
0850990	Others	
0860000	Flower pistil spices	
0860010	Saffron	
0860990	Others	
0870000	Aril spices	
0870010	Mace	
0870990	Others	
0900000	SUGAR PLANTS	0,05 (*)
0900010	Sugar beet roots	
0900020	Sugar canes	
0900030	Chicory roots	
0900990	Others	
1000000	PRODUCTS OF ANIMAL ORIGIN -TERRESTRIAL ANIMALS	
1010000	Tissues from	
1011000	(a) <i>swine</i>	
1011010	Muscle	
1011020	Fat tissue	
1011030	Liver	
1011040	Kidney	
1011050	Edible offals (other than liver and kidney)	
1011990	Others	
1012000	(b) <i>bovine</i>	
1012010	Muscle	
1012020	Fat tissue	
1012030	Liver	
1012040	Kidney	
1012050	Edible offals (other than liver and kidney)	
1012990	Others	

(1)	(2)	(3)
1013000	(c) <i>sheep</i>	
1013010	Muscle	
1013020	Fat tissue	
1013030	Liver	
1013040	Kidney	
1013050	Edible offals (other than liver and kidney)	
1013990	Others	
1014000	(d) <i>goat</i>	
1014010	Muscle	
1014020	Fat tissue	
1014030	Liver	
1014040	Kidney	
1014050	Edible offals (other than liver and kidney)	
1014990	Others	
1015000	(e) <i>equine</i>	
1015010	Muscle	
1015020	Fat tissue	
1015030	Liver	
1015040	Kidney	
1015050	Edible offals (other than liver and kidney)	
1015990	Others	
1016000	(f) <i>poultry</i>	
1016010	Muscle	
1016020	Fat tissue	
1016030	Liver	
1016040	Kidney	
1016050	Edible offals (other than liver and kidney)	
1016990	Others	
1017000	(g) <i>other farmed terrestrial animals</i>	
1017010	Muscle	
1017020	Fat tissue	
1017030	Liver	
1017040	Kidney	
1017050	Edible offals (other than liver and kidney)	
1017990	Others	
1020000	Milk	
1020010	Cattle	
1020020	Sheep	
1020030	Goat	
1020040	Horse	
1020990	Others	

(1)	(2)	(3)
1030000	Birds eggs	
1030010	Chicken	
1030020	Duck	
1030030	Geese	
1030040	Quail	
1030990	Others	
1040000	Honey and other apiculture products	0,05 (*)
1050000	Amphibians and Reptiles	
1060000	Terrestrial invertebrate animals	
1070000	Wild terrestrial vertebrate animals	

(*) Indicates lower limit of analytical determination

(^e) For the complete list of products of plant and animal origin to which MRLs apply, reference should be made to Annex I.

(F) = Fat soluble'

COMMISSION REGULATION (EU) 2016/441**of 23 March 2016****amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the use of Steviol glycosides (E 960) as a sweetener in mustard****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1333/2008 ⁽¹⁾ of the European Parliament and of the Council of 16 December 2008 on food additives, and in particular Article 10(3) thereof,

Whereas:

- (1) Annex II to Regulation (EC) No 1333/2008 lays down a Union list of food additives approved for use in food and their conditions of use.
- (2) That list may be updated in accordance with the common procedure referred to in Article 3(1) of Regulation (EC) No 1331/2008 of the European Parliament and of the Council ⁽²⁾ either on the initiative of the Commission or following an application.
- (3) On 23 January 2015 an application was submitted for authorisation of the use of steviol glycosides (E 960) as a sweetener in mustard. The application was subsequently made available to the Member States pursuant to Article 4 of Regulation (EC) No 1331/2008.
- (4) Steviol glycosides are non-caloric sweet-tasting constituents which may be used to replace sucrose in the production of mustard thus allowing for an extension of its shelf life and its microbiological stability (decreasing the content of sugar prevents the process of fermentation for which sugar is a substrate) whilst retaining the demanded organoleptic properties of the product. Permitting steviol glycosides in mustard will make it possible to widen the assortment of this product by means of a product containing a sweetener different than those applied hitherto and having slightly other flavour properties.
- (5) The European Food Safety Authority ('the Authority') evaluated the safety of steviol glycosides, extracted from the leaves of the *Stevia rebaudiana* Bertoni plant, as a sweetener and expressed its opinion on 14 April 2010 ⁽³⁾. The Authority established an Acceptable Daily Intake (ADI) for steviol glycosides, expressed as steviol equivalents, of 4 mg/kg body weight/day.
- (6) Authorising this sweetener in mustard at 120 mg/kg (as steviol equivalents) would lead to an increase in the intake of E960 within the following limits: between 0 up to 0,133 % of the ADI in the case of mean consumption and between 0 up to 1,143 % of the ADI in the case of high level consumption. This is considered to be an additional negligible exposure of the consumer and therefore is not of safety concern.
- (7) Pursuant to Article 3(2) of Regulation (EC) No 1331/2008, the Commission is to seek the opinion of 'the Authority' in order to update the Union list of food additives set out in Annex II to Regulation (EC) No 1333/2008, except where that update is not liable to have an effect on human health. Since the authorisation of use of steviol glycosides (E 960) as a sweetener in mustard constitutes an update of that list which is not liable to have an effect on human health, it is not necessary to seek the opinion of the Authority.
- (8) Therefore, it is appropriate to authorise the use of steviol glycosides (E 960) as a sweetener added to mustard (food subcategory 12.4) at maximum level of 120 mg/kg.

⁽¹⁾ OJ L 354, 31.12.2008, p. 16.

⁽²⁾ Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings (OJ L 354, 31.12.2008, p. 1).

⁽³⁾ EFSA Journal 2010;8(4):1537.

- (9) Therefore, Annex II to Regulation (EC) No 1333/2008 should be amended accordingly.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 1333/2008 is amended in accordance with the Annex to this Regulation.

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, 23 March 2016.

For the Commission
The President
Jean-Claude JUNKER

ANNEX

Part E of Annex II to Regulation (EC) No 1333/2008 is amended as follows:

- (1) in food subcategory 12.4 Mustard, the following entry is inserted after the entry for E 959:

	E 960	Steviol glycosides	120	(60)	
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- (2) the following footnote is added:

‘(60): Expressed as steviol equivalents’.

COMMISSION IMPLEMENTING REGULATION (EU) 2016/442**of 23 March 2016****amending Implementing Regulation (EU) No 170/2013 laying down transitional measures in the sugar sector by reason of the accession of Croatia**

THE EUROPEAN COMMISSION,

Having regard to the Treaty of Accession of Croatia,

Having regard to the Act of Accession of Croatia ⁽¹⁾, and in particular Articles 41 and 16 thereof in conjunction with point 4 of Section 3(a) of Annex IV thereto,

Whereas:

- (1) Commission Implementing Regulation (EU) No 170/2013 ⁽²⁾ lays down transitional measures in the sugar sector by reason of the accession of Croatia to the Union. Section 2 of Chapter II of that Regulation deals with the determination and elimination of surplus quantities of sugar present in Croatia at the date of its accession. In particular it sets deadlines for the determination of the surplus sugar quantities, for their elimination and for the proofs of elimination to be provided by identified operators in Croatia. It also fixes reference periods to be used in the calculation of charges for Croatia if surplus sugar quantities are not eliminated.
- (2) Commission Implementing Regulation (EU) No 1345/2014 ⁽³⁾ determined the surplus quantities of sugar in Croatia stockpiled prior to its accession and which have to be eliminated from the Union market at the expense of Croatia in accordance with the deadlines set out in Implementing Regulation (EU) No 170/2013, as amended by Implementing Regulation (EU) 2015/1407 ⁽⁴⁾.
- (3) By its letter of 26 January 2016, Croatia has informed the Commission that, while it does not question the obligation to ensure the elimination of the surplus sugar quantities, as determined by the Commission, the unforeseen procedural difficulties in the implementation of the obligation to compel the operators concerned to eliminate those surplus quantities that led to the extension of the deadlines for elimination could not be fully solved and that some short additional time is needed. It is therefore appropriate to extend the deadlines provided for by Implementing Regulation (EU) No 170/2013 by 4 months.
- (4) Implementing Regulation (EU) No 170/2013 should therefore be amended accordingly.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 170/2013 is amended as follows:

- (1) in Article 9(1), '31 March 2016' is replaced by '31 July 2016';
- (2) Article 10 is amended as follows:
 - (a) '31 March 2016' is replaced by '31 July 2016';
 - (b) '30 November 2016' is replaced by '31 March 2017';

⁽¹⁾ OJ L 112, 24.4.2012, p. 10.

⁽²⁾ Commission Implementing Regulation (EU) No 170/2013 of 25 February 2013 laying down transitional measures in the sugar sector by reason of the accession of Croatia (OJ L 55, 27.2.2013, p. 1).

⁽³⁾ Commission Implementing Regulation (EU) No 1345/2014 of 17 December 2014 on the determination of surplus quantities of sugar, isoglucose and fructose in Croatia (OJ L 363, 18.12.2014, p. 80).

⁽⁴⁾ Commission Implementing Regulation (EU) 2015/1407 of 19 August 2015 amending Implementing Regulation (EU) No 170/2013 laying down transitional measures in the sugar sector by reason of the accession of Croatia (OJ L 219, 20.8.2015, p. 1).

(3) Article 11 is amended as follows:

- (a) in paragraph 1, '30 June 2016' is replaced by '31 October 2016';
- (b) in the fourth subparagraph of paragraph 2, '31 March 2016' is replaced by '31 July 2016';

(4) Article 12 is amended as follows:

- (a) in paragraph 1, '31 July 2016' is replaced by '30 November 2016';
- (b) paragraph 2 is amended as follows:
 - (i) in the first subparagraph, '31 March 2016' is replaced by '31 July 2016';
 - (ii) in the second subparagraph, '30 November 2016' is replaced by '31 March 2017';
 - (iii) in the third subparagraph, '30 September 2016' is replaced by '31 January 2017'.

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, 23 March 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2016/443**of 23 March 2016****amending Annex I to Regulation (EC) No 669/2009 as regards the list of feed and food of non-animal origin subject to an increased level of official controls on imports****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules ⁽¹⁾, and in particular Article 15(5) thereof,

Whereas:

- (1) Commission Regulation (EC) No 669/2009 ⁽²⁾ lays down rules concerning the increased level of official controls to be carried out on imports of feed and food of non-animal origin listed in Annex I thereto ('the list'), at the points of entry into the territories referred to in Annex I to Regulation (EC) No 882/2004.
- (2) Article 2 of Regulation (EC) No 669/2009 provides that the list is to be reviewed on a regular basis, and at least quarterly, taking into account at least the sources of information referred to in that Article.
- (3) The occurrence and relevance of recent food incidents notified through the Rapid Alert System for Food and Feed, the findings of audits to third countries carried out by the Directorate for Health and Food Audits and Analysis of the Commission Directorate-General for Health and Food Safety, as well as the quarterly reports on consignments of feed and food of non-animal origin submitted by Member States to the Commission in accordance with Article 15 of Regulation (EC) No 669/2009 indicate that the list should be amended.
- (4) In particular, for consignments of groundnuts and derived products originating from Madagascar, palm oil from Ghana, and lemons from Turkey the relevant sources of information indicate the emergence of new risks requiring the introduction of an increased level of official controls. Entries concerning those consignments should therefore be included in the list.
- (5) The list should also be amended by deleting the entries for commodities for which the available information indicates an overall satisfactory degree of compliance with the relevant safety requirements provided for in Union legislation and for which an increased level of official controls is therefore no longer justified. The entries in the list concerning aubergines and bitter melon from the Dominican Republic should therefore be deleted.
- (6) In order to ensure consistency and clarity, it is appropriate to replace Annex I to Regulation (EC) No 669/2009 by the text set out in the Annex to this Regulation.
- (7) Regulation (EC) No 669/2009 should therefore be amended accordingly.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽¹⁾ OJ L 165, 30.4.2004, p. 1.

⁽²⁾ Commission Regulation (EC) No 669/2009 of 24 July 2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC (OJ L 194, 25.7.2009, p. 11).

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 669/2009 is replaced by the text set out in the Annex to this Regulation.

Article 2

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

It shall apply from 1 April 2016.

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

Done at Brussels, 23 March 2016.

For the Commission
The President
Jean-Claude JUNKER

ANNEX

‘ANNEX I

Feed and food of non-animal origin subject to an increased level of official controls at the designated point of entry

Feed and food (intended use)	CN code ⁽¹⁾	TARIC sub- division	Country of origin	Hazard	Frequency of physical and identity checks (%)
Dried grapes (vine fruit) (Food)	0806 20		Afghanistan (AF)	Ochratoxin A	50
— Almonds, in shell	— 0802 11		Australia (AU)	Aflatoxins	20
— Almonds, shelled	— 0802 12				
(Food)					
— Yardlong beans (<i>Vigna unguiculata</i> spp. <i>sesquipedalis</i>)	— ex 0708 20 00; ex 0710 22 00	10 10	Cambodia (KH)	Pesticide resi- dues ⁽²⁾ ⁽³⁾	50
— Aubergines	— 0709 30 00; ex 0710 80 95	72			
(Food — fresh, chilled or fro- zen vegetables)					
Chinese celery (<i>Apium graveo- lens</i>)	ex 0709 40 00	20	Cambodia (KH)	Pesticide resi- dues ⁽²⁾ ⁽⁴⁾	50
(Food — fresh or chilled herb)					
<i>Brassica oleracea</i> (other edible Brassica, “Chinese Broccoli”) ⁽⁵⁾	ex 0704 90 90	40	China (CN)	Pesticide resi- dues ⁽²⁾	50
(Food — fresh or chilled)					
Tea, whether or not flavoured (Food)	0902		China (CN)	Pesticide resi- dues ⁽²⁾ ⁽⁶⁾	10
— Yardlong beans (<i>Vigna unguiculata</i> spp. <i>sesquipedalis</i>)	— ex 0708 20 00; ex 0710 22 00	10 10	Dominican Republic (DO)	Pesticide resi- dues ⁽²⁾ ⁽⁷⁾	20
— Peppers (sweet and other than sweet) (<i>Capsicum</i> spp.)	— 0709 60 10; 0710 80 51				
(Food — fresh, chilled or fro- zen vegetables)	— ex 0709 60 99; ex 0710 80 59	20 20			

Feed and food (intended use)	CN code ⁽¹⁾	TARIC sub- division	Country of origin	Hazard	Frequency of physical and identity checks (%)
Strawberries (Food — fresh or chilled)	0810 10 00		Egypt (EG)	Pesticide residues ⁽²⁾ ⁽⁸⁾	10
Peppers (sweet and other than sweet) (<i>Capsicum</i> spp.) (Food — fresh, chilled or frozen)	— 0709 60 10; 0710 80 51 — ex 0709 60 99; ex 0710 80 59	 20 20	Egypt (EG)	Pesticide residues ⁽²⁾ ⁽⁹⁾	10
— Groundnuts (peanuts), in shell — Groundnuts (peanuts), shelled — Peanut butter — Groundnuts (peanuts), otherwise prepared or preserved (Feed and food)	— 1202 41 00 — 1202 42 00 — 2008 11 10 — 2008 11 91; 2008 11 96; 2008 11 98		Gambia (GM)	Aflatoxins	50
Palm oil (Food)	1511 10 90; 1511 90 11; 1511 90 19; 1511 90 99	 90	Ghana (GH)	Sudan dyes ⁽¹⁰⁾	50
Sesamum seeds (Food — fresh or chilled)	1207 40 90		India (IN)	Salmonella ⁽¹¹⁾	20
Enzymes; prepared enzymes (Feed and food)	3507		India (IN)	Chloramphenicol	50
Peas with pods (unshelled) (Food — fresh or chilled)	ex 0708 10 00	40	Kenya (KE)	Pesticide residues ⁽²⁾ ⁽¹²⁾	10
— Groundnuts (peanuts), in shell — Groundnuts (peanuts), shelled — Peanut butter — Groundnuts (peanuts), otherwise prepared or preserved (Feed and food)	— 1202 41 00 — 1202 42 00 — 2008 11 10 — 2008 11 91; 2008 11 96; 2008 11 98		Madagascar (MG)	Aflatoxins	50

Feed and food (intended use)	CN code ⁽¹⁾	TARIC sub- division	Country of origin	Hazard	Frequency of physical and identity checks (%)
Raspberries (Food — frozen)	0811 20 31; ex 0811 20 11; ex 0811 20 19	 10 10	Serbia (RS)	Norovirus	10
Watermelon (<i>Egusi</i> , <i>Citrullus</i> spp.) seeds and derived products (Food)	ex 1207 70 00; ex 1106 30 90; ex 2008 99 99	10 30 50	Sierra Leone (SL)	Aflatoxins	50
— Groundnuts (peanuts), in shell — Groundnuts (peanuts), shelled — Peanut butter — Groundnuts (peanuts), otherwise prepared or preserved (Feed and food)	— 1202 41 00 — 1202 42 00 — 2008 11 10 — 2008 11 91; 2008 11 96; 2008 11 98		Sudan (SD)	Aflatoxins	50
Peppers (other than sweet) (<i>Capsicum</i> spp.) (Food — fresh or chilled)	ex 0709 60 99	20	Thailand (TH)	Pesticide resi- dues ⁽²⁾ ⁽¹³⁾	10
— Yardlong beans (<i>Vigna unguiculata</i> spp. <i>sesquipedalis</i>) — Aubergines (Food — fresh, chilled or fro- zen vegetables)	— ex 0708 20 00; ex 0710 22 00 — 0709 30 00; ex 0710 80 95	10 10 72	Thailand (TH)	Pesticide resi- dues ⁽²⁾ ⁽¹⁴⁾	20
— Dried apricots — Apricots, otherwise pre- pared or preserved (Food)	— 0813 10 00 — 2008 50 61		Turkey (TR)	Sulphites ⁽¹⁵⁾	10

Feed and food (intended use)	CN code ⁽¹⁾	TARIC sub- division	Country of origin	Hazard	Frequency of physical and identity checks (%)
Lemons (<i>Citrus limon</i> , <i>Citrus limonum</i>) (Food — fresh, chilled or dried)	0805 50 10		Turkey (TR)	Pesticide residues ⁽²⁾	10
— Sweet Peppers (<i>Capsicum annuum</i>) (Food — fresh, chilled or frozen vegetables)	— 0709 60 10; 0710 80 51		Turkey (TR)	Pesticide residues ⁽²⁾ ⁽¹⁶⁾	10
Vine leaves (Food)	ex 2008 99 99	11; 19	Turkey (TR)	Pesticide residues ⁽²⁾ ⁽¹⁷⁾	50
— Pistachios, in shell — Pistachios, shelled (Food)	— 0802 51 00 — 0802 52 00		United States (US)	Aflatoxins	20
— Dried apricots — Apricots, otherwise prepared or preserved (Food)	— 0813 10 00 — 2008 50 61		Uzbekistan (UZ)	Sulphites ⁽¹⁵⁾	50
— Coriander leaves — Basil (holy, sweet) — Mint — Parsley (Food — fresh or chilled herbs)	— ex 0709 99 90 — ex 1211 90 86; ex 2008 99 99 — ex 1211 90 86; ex 2008 99 99 — ex 0709 99 90	72 20 75 30 70 40	Viet Nam (VN)	Pesticide residues ⁽²⁾ ⁽¹⁸⁾	50
— Okra — Peppers (other than sweet) (<i>Capsicum</i> spp.) (Food — fresh or chilled)	— ex 0709 99 90 — ex 0709 60 99	20 20	Viet Nam (VN)	Pesticide residues ⁽²⁾ ⁽¹⁸⁾	50

Feed and food (intended use)	CN code ⁽¹⁾	TARIC sub- division	Country of origin	Hazard	Frequency of physical and identity checks (%)
— Pitahaya (dragon fruit) (Food — fresh or chilled)	— ex 0810 90 20	10	Viet Nam (VN)	Pesticide resi- dues ⁽²⁾ ⁽¹⁸⁾	20

⁽¹⁾ Where only certain products under any CN code are required to be examined and no specific subdivision under that code exists, the CN code is marked "ex".

⁽²⁾ Residues of at least those pesticides listed in the control programme adopted in accordance with Article 29(2) of Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ L 70, 16.3.2005, p. 1) that can be analysed with multi-residue methods based on GC-MS and LC-MS (pesticides to be monitored in/on products of plant origin only).

⁽³⁾ Residues of Chlorbufam.

⁽⁴⁾ Residues of Phenthoate.

⁽⁵⁾ Species of *Brassica oleracea* L. convar. Botrytis (L) Alef var. Italica Plenck, cultivar alboglabra. Also known as "Kai Lan", "Gai Lan", "Gailan", "Kailan", "Chinese bare Jielan".

⁽⁶⁾ Residues of Trifluralin.

⁽⁷⁾ Residues of Acephate, Aldicarb (sum of aldicarb, its sulfoxide and its sulfone, expressed as aldicarb), Amitraz (amitraz including the metabolites containing the 2,4 -dimethylaniline moiety expressed as amitraz), Diafenthiuron, Dicofof (sum of p, p' and o, p' isomers), Dithiocarbamates (dithiocarbamates expressed as CS₂, including maneb, mancozeb, metiram, propineb, thiram and ziram) and Methiocarb (sum of methiocarb and methiocarb sulfoxide and sulfone, expressed as methiocarb).

⁽⁸⁾ Residues of Hexaflumuron, Methiocarb (sum of methiocarb and methiocarb sulfoxide and sulfone, expressed as methiocarb), Phenthoate and Thiophanate-methyl.

⁽⁹⁾ Residues of Dicofof (sum of p, p' and o, p' isomers), Dinotefuran, Folpet, Prochloraz (sum of prochloraz and its metabolites containing the 2,4,6-Trichlorophenol moiety expressed as prochloraz), Thiophanate-methyl and Triforine.

⁽¹⁰⁾ For the purposes of this Annex, "Sudan dyes" refers to the following chemical substances: (i) Sudan I (CAS Number 842-07-9); (ii) Sudan II (CAS Number 3118-97-6); (iii) Sudan III (CAS Number 85-86-9); (iv) Scarlet Red; or Sudan IV (CAS Number 85-83-6).

⁽¹¹⁾ Reference method EN/ISO 6579 or a method validated against it as referred to in Article 5 of Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs (OJ L 338, 22.12.2005, p. 1).

⁽¹²⁾ Residues of Acephate and Diafenthiuron.

⁽¹³⁾ Residues of Formetanate: Sum of formetanate and its salts expressed as formetanate (hydrochloride), Prothiofos and Triforine.

⁽¹⁴⁾ Residues of Acephate, Dicrotophos, Prothiofos, Quinalphos and Triforine.

⁽¹⁵⁾ Reference methods: EN 1988-1:1998, EN 1988-2:1998 or ISO 5522:1981.

⁽¹⁶⁾ Residues of Diafenthiuron, Formetanate: Sum of formetanate and its salts expressed as formetanate (hydrochloride) and Thiophanate-methyl.

⁽¹⁷⁾ Residues of Dithiocarbamates (dithiocarbamates expressed as CS₂, including maneb, mancozeb, metiram, propineb, thiram and ziram) and Metrafenone.

⁽¹⁸⁾ Residues of Dithiocarbamates (dithiocarbamates expressed as CS₂, including maneb, mancozeb, metiram, propineb, thiram and ziram), Phenthoate and Quinalphos.

COMMISSION IMPLEMENTING REGULATION (EU) 2016/444**of 23 March 2016****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 23 March 2016.

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

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	EG	109,3
	IL	125,9
	MA	94,8
	SN	144,4
	TR	104,6
	ZZ	115,8
0707 00 05	MA	84,0
	TR	146,9
	ZZ	115,5
0709 91 00	EG	241,9
	ZZ	241,9
0709 93 10	MA	53,1
	TR	157,3
	ZZ	105,2
0805 10 20	EG	46,7
	IL	70,5
	MA	56,0
	TN	65,7
	TR	72,0
	ZZ	62,2
0805 50 10	MA	85,8
	TR	88,5
	ZZ	87,2
0808 10 80	BR	87,5
	CL	130,3
	CN	70,5
	US	132,6
	ZA	110,3
	ZZ	106,2
0808 30 90	AR	113,2
	CL	156,8
	CN	88,2
	TR	156,4
	ZA	95,0
	ZZ	121,9

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

REGULATION (EU) 2016/445 OF THE EUROPEAN CENTRAL BANK
of 14 March 2016
on the exercise of options and discretions available in Union law (ECB/2016/4)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions ⁽¹⁾, and in particular Article 4(3), Article 6, and Article 9(1) and (2) thereof,

Having regard to 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 ⁽²⁾, and in particular Articles 89(3), 178(1), 282(6), 327(2), Article 380, Articles 395(1), 400(2), 415(3), 420(2), 467(3), 468(3), 471(1), 473(1), 478(3), Article 479(1) and (4), Article 480(3), Article 481(1) and (5), and Articles 486(6) and 495(1) thereof,

Having regard to Commission Implementing Regulation (EU) No 650/2014 of 4 June 2014 laying down implementing technical standards with regard to the format, structure, contents list and annual publication date of the information to be disclosed by competent authorities in accordance with Directive 2013/36/EU of the European Parliament and of the Council ⁽³⁾, and in particular Article 2 thereof and Annex II thereto,

Having regard to Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions ⁽⁴⁾, and in particular Articles 12(3) and 23(2), and Article 24(4) and (5) thereof,

Having regard to the public consultation and the analysis carried out pursuant to Article 4(3) of Regulation (EU) No 1024/2013,

Having regard to the proposal from the Supervisory Board approved in accordance with Article 26(7) of Regulation (EU) No 1024/2013,

Whereas:

- (1) The European Central Bank (ECB) is empowered to adopt regulations in accordance with Article 132 of the Treaty on the Functioning of the European Union. In addition, Article 132 of the Treaty and Article 34 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), by referring to Article 25.2 of the Statute of the ESCB, entrust the ECB with regulatory powers to the extent necessary to implement specific tasks concerning policies relating to the prudential supervision of credit institutions.
- (2) With regard to prudential requirements for credit institutions Union law provides for options and discretions that competent authorities may exercise.
- (3) The ECB is the competent authority in the participating Member States as established by relevant Union law for the purpose of carrying out its microprudential tasks within the single supervisory mechanism (SSM) under Regulation (EU) No 1024/2013 in respect of credit institutions that are classified as significant in accordance with Article 6(4) of that Regulation and Part IV and Article 147(1) of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) ⁽⁵⁾. Therefore it has all the powers and obligations that competent authorities have under relevant Union law. In particular, the ECB has the power to exercise the options and discretions available in Union law.

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ OJ L 176, 27.6.2013, p. 1.

⁽³⁾ OJ L 185, 25.6.2014, p. 1.

⁽⁴⁾ OJ L 11, 17.1.2015, p. 1.

⁽⁵⁾ Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

- (4) The ECB carries out its supervisory tasks within the SSM, which should ensure that the Union's policy relating to the prudential supervision of credit institutions is implemented in a coherent and effective manner, that the single rulebook for financial services is applied in the same manner to credit institutions in all Member States concerned, and that those credit institutions are subject to supervision of the highest quality. In carrying out its supervisory tasks, the ECB should have full regard to the diversity of credit institutions and their size and business models, as well as the systemic benefits of diversity in the banking industry of the Union.
- (5) In order to ensure progressive convergence between the level of own funds and the prudential adjustments applied to the definition of own funds across the Union and the definition of own funds laid down in Union law during a transitional period, the phasing-in of own funds requirements should occur gradually.
- (6) The consistent application of prudential requirements for credit institutions within the Member States participating in the SSM is a specific objective of Regulation (EU) No 1024/2013 and Regulation (EU) No 468/2014 (ECB/2014/17) and is entrusted to the ECB.
- (7) In accordance with Regulation (EU) No 1024/2013, the ECB applies all relevant Union law and where this Union law is composed of directives, the national legislation transposing those directives. Where relevant Union law is composed of regulations and where currently those regulations explicitly grant options and discretions to the Member States, the ECB should also apply the national legislation exercising those options and discretions. Such national legislation should not affect the smooth functioning of the SSM, for which the ECB is responsible.
- (8) Such options and discretions do not include those available only to competent authorities, which the ECB is solely competent to exercise and should exercise as appropriate.
- (9) In exercising options and discretions, the ECB, as the competent authority, should take account of the general principles of Union law, in particular equal treatment, proportionality and the legitimate expectations of supervised credit institutions.
- (10) With regard to the legitimate expectations of supervised credit institutions, the ECB acknowledges the need to allow for transitional periods where its exercise of options and discretions significantly departs from the approach taken by the national competent authorities prior to the entry into force of this Regulation. In particular, where the ECB exercises its options and discretions in relation to transitional provisions laid down in Regulation (EU) No 575/2013, this Regulation should establish appropriate transitional periods.
- (11) Article 143(1)(b) of Directive 2013/36/EU of the European Parliament and of the Council ⁽¹⁾ requires competent authorities to publish the manner of exercise of the options and discretions available in Union law,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation specifies certain of the options and discretions conferred on competent authorities under Union law concerning prudential requirements for credit institutions that the ECB is exercising. It shall apply exclusively with regard to those credit institutions classified as significant in accordance with Article 6(4) of Regulation (EU) No 1024/2013, and Part IV and Article 147(1) of Regulation (EU) No 468/2014 (ECB/2014/17).

⁽¹⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

*Article 2***Definitions**

For the purposes of this Regulation, the definitions contained in Article 4 of Regulation (EU) No 575/2013, Article 2 of Regulation (EU) No 1024/2013, Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17) and Article 3 of Delegated Regulation (EU) 2015/61 shall apply.

CHAPTER I

OWN FUNDS*Article 3***Article 89(3) of Regulation (EU) No 575/2013: Risk weighting and prohibition of qualifying holdings outside the financial sector**

Without prejudice to Article 90 of Regulation (EU) No 575/2013 and for the purpose of calculating the capital requirements in accordance with Part Three of Regulation (EU) No 575/2013, credit institutions shall apply a risk weight of 1 250 % to the greater of the following:

- (a) the amount of qualifying holdings in undertakings referred to in Article 89(1) of Regulation (EU) No 575/2013 in excess of 15 % of the eligible capital of the credit institution; and
- (b) the total amount of qualifying holdings in undertakings referred to in Article 89(2) of Regulation (EU) No 575/2013 that exceeds 60 % of the eligible capital of the credit institution.

CHAPTER II

CAPITAL REQUIREMENTS*Article 4***Article 178(1) of Regulation (EU) No 575/2013: Default of an obligor**

Irrespective of the national treatment prior to the entry into force of this Regulation, credit institutions shall apply the 'more than 90 days past due' standard for the categories of exposures specified in Article 178(1)(b) of Regulation (EU) No 575/2013.

*Article 5***Article 282(6) of Regulation (EU) No 575/2013: Hedging sets**

For the transactions referred to in Article 282(6) of Regulation (EU) No 575/2013, credit institutions shall use the mark-to-market method set out in Article 274 of Regulation (EU) No 575/2013.

*Article 6***Article 327(2) of Regulation (EU) No 575/2013: Netting**

1. Credit institutions may use netting between a convertible and an offsetting position in the instrument underlying it, as referred to in Article 327(2) of Regulation (EU) No 575/2013, provided that either of the following conditions are fulfilled:

- (a) prior to 4 November 2014 the national competent authority adopted an approach under which the likelihood of a particular convertible's being converted is taken into account; or

- (b) prior to 4 November 2014 the national competent authority required an own funds requirement to cover any loss that conversion may entail.
2. The approaches adopted by national competent authorities referred to in paragraph 1 shall continue to be used pending the adoption by the ECB of its own approach pursuant to Article 327(2) of Regulation (EU) No 575/2013.

Article 7

Article 380 of Regulation (EU) No 575/2013: Waiver

In the event of a system-wide failure within the meaning of Article 380 of Regulation (EU) No 575/2013 which the ECB confirms by issuing a public statement, until the ECB issues a public statement that the situation referred to therein is rectified, the following provisions shall apply:

- (a) credit institutions shall not be required to comply with the own funds requirements laid down in Articles 378 and 379 of Regulation (EU) No 575/2013; and
- (b) the failure of a counterparty to settle a trade shall not be deemed a default for purposes of credit risk.

CHAPTER III

LARGE EXPOSURES

Article 8

Article 395(1) of Regulation (EU) No 575/2013: Limits to large exposures

Irrespective of the national treatment prior to the entry into force of this Regulation, the limit on the value of a large exposure within the meaning of Article 395(1) of Regulation (EU) No 575/2013 shall not be lower than EUR 150 million.

Article 9

Article 400(2) of Regulation (EU) No 575/2013: Exemptions

1. The exposures listed in Article 400(2)(a) of Regulation (EU) No 575/2013 shall be exempted from the application of Article 395(1) of that Regulation for 80 % of the nominal value of the covered bonds, provided that the conditions set out in Article 400(3) of that Regulation are fulfilled.
2. The exposures listed in Article 400(2)(b) of Regulation (EU) No 575/2013 shall be exempted from the application of Article 395(1) of that Regulation for 80 % of their exposure value, provided that the conditions set out in Article 400(3) of that Regulation are fulfilled.
3. The exposures listed in Article 400(2)(c) of Regulation (EU) No 575/2013 incurred by a credit institution to the undertakings referred to therein shall be exempted in full from the application of Article 395(1) of that Regulation, provided that the conditions set out in Article 400(3) of that Regulation, as further specified in Annex I to this Regulation, are fulfilled and in so far as those undertakings are covered by the same supervision on a consolidated basis in accordance with Regulation (EU) No 575/2013, Directive 2002/87/EC of the European Parliament and of the Council ⁽¹⁾, or with equivalent standards in force in a third country, as further specified in Annex I to this Regulation.
4. The exposures listed in Article 400(2)(d) of Regulation (EU) No 575/2013 shall be exempted in full from the application of Article 395(1) of that Regulation, provided that the conditions set out in Article 400(3) of that Regulation, as further specified in Annex II to this Regulation, are fulfilled.

⁽¹⁾ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

5. The exposures listed in Article 400(2)(e) to (k) of Regulation (EU) No 575/2013 shall be exempted in full, or in the case of Article 400(2)(i) they shall be exempted up to the maximum allowed amount, from the application of Article 395(1) of that Regulation, provided that the conditions set out in Article 400(3) of that Regulation are fulfilled.

6. Credit institutions shall assess whether the conditions specified in Article 400(3) of Regulation (EU) No 575/2013, as well as the relevant Annex of this Regulation applicable to the specific exposure, are fulfilled. The ECB may verify this assessment at any time and request credit institutions to submit the documentation referred to in the relevant Annex for this purpose.

7. This Article shall only apply where the relevant Member State has not exercised the option under Article 493(3) of Regulation (EU) No 575/2013 to grant a full or partial exemption for the specific exposure.

CHAPTER IV

LIQUIDITY

Article 10

Article 415(3) of Regulation (EU) No 575/2013: Reporting obligation

Without prejudice to other reporting requirements, credit institutions shall, in accordance with Article 415(3) of Regulation (EU) No 575/2013, report to the ECB the information required under national law for the purpose of monitoring compliance with national liquidity standards, where that information has not already been provided to national competent authorities.

Article 11

Article 420(2) of Regulation (EU) No 575/2013 and Article 23(2) of Delegated Regulation (EU) 2015/61: Liquidity outflows

When assessing liquidity outflows resulting from trade finance off-balance sheet items, as referred to in Article 420(2) of and Annex I to Regulation (EU) No 575/2013, and until specific outflow rates are determined by the ECB in accordance with Article 23(2) of Delegated Regulation (EU) 2015/61, credit institutions shall assume an outflow rate of 5 %, as referred to in Article 420(2) of that Regulation and Article 23(2) of Delegated Regulation (EU) 2015/61. The corresponding outflows shall be reported in accordance with Commission Implementing Regulation (EU) No 680/2014 ⁽¹⁾.

Article 12

Article 12(3) of Delegated Regulation (EU) 2015/61: Level 2B assets

1. Credit institutions that in accordance with their statutes of incorporation are unable for reasons of religious observance to hold interest-bearing assets may include corporate debt securities as level 2B liquid assets in accordance with all of the conditions specified in Article 12(1)(b), including points (ii) and (iii), of Delegated Regulation (EU) 2015/61.

2. For credit institutions referred to in paragraph 1, the ECB may periodically review the requirement referred to in that paragraph and allow an exemption from Article 12(1)(b)(ii) and (iii) of Delegated Regulation (EU) 2015/61, where the conditions specified in Article 12(3) of that Delegated Regulation have been met.

⁽¹⁾ Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).

*Article 13***Article 24(4) and (5) of Delegated Regulation (EU) 2015/61: Outflows from stable retail deposits**

Credit institutions shall multiply by 3 % the amount of stable retail deposits covered by a deposit guarantee scheme as referred to in Article 24(4) of Delegated Regulation (EU) 2015/61, provided that the Commission has given its prior approval in accordance with Article 24(5) of that Delegated Regulation certifying that all the conditions of Article 24(4) have been fulfilled.

CHAPTER V

TRANSITIONAL PROVISIONS OF REGULATION (EU) NO 575/2013*Article 14***Article 467(3) of Regulation (EU) No 575/2013: Unrealised losses measured at fair value**

1. During the period from 1 January 2016 to 31 December 2017, credit institutions shall include in the calculation of their Common Equity Tier 1 items only the applicable percentage of unrealised losses within the meaning of Article 467(1) of Regulation (EU) 575/2013 and including losses on exposures to central governments classified in the 'available for sale' category.
2. For the purposes of paragraph 1, the applicable percentage shall be:
 - (a) 60 % during the period from 1 January 2016 to 31 December 2016; and
 - (b) 80 % during the period from 1 January 2017 to 31 December 2017.
3. This Article is without prejudice to national law in force prior to the entry into force of this Regulation where such law sets applicable percentages higher than those specified in paragraph 2.

*Article 15***Article 468(3) of Regulation (EU) No 575/2013: Unrealised gains measured at fair value**

1. During the period from 1 January 2016 to 31 December 2017, credit institutions shall remove from their calculation of Common Equity Tier 1 items the applicable percentage of unrealised gains within the meaning of Article 468(1) of Regulation (EU) No 575/2013 and including gains on exposures to central governments classified in the 'available for sale' category.
2. For the purposes of paragraph 1, the applicable percentage shall be:
 - (a) 40 % during the period from 1 January 2016 to 31 December 2016; and
 - (b) 20 % during the period from 1 January 2017 to 31 December 2017.
3. This Article is without prejudice to national law in force prior to the entry into force of this Regulation where such law sets applicable percentages that are higher than those specified in paragraph 2.

*Article 16***Article 471(1) of Regulation (EU) No 575/2013: Exemption from deduction of equity holdings in insurance companies from Common Equity Tier 1 items**

1. During the period from 1 January 2016 to 31 December 2018, credit institutions shall be permitted not to deduct equity holdings in insurance undertakings, reinsurance undertakings and insurance holding companies from Common Equity Tier 1 items in accordance with the treatment set out in national provisions, provided that the conditions referred to in Article 471(1) of Regulation (EU) No 575/2013 are met.

2. From 1 January 2019, credit institutions are required to deduct equity holdings in insurance undertakings, reinsurance undertakings and insurance holding companies from Common Equity Tier 1 items.
3. This Article applies without prejudice to decisions taken by the competent authority pursuant to Article 49(1) of Regulation (EU) No 575/2013.

Article 17

Article 473(1) of Regulation (EU) No 575/2013: Introduction of amendments to the International Accounting Standard 19

1. During the period from 1 January 2016 to 31 December 2018, credit institutions may add to their Common Equity Tier 1 capital the amount referred to in Article 473(1) of Regulation (EU) No 575/2013 multiplied by the applicable factor, which shall be:
 - (a) 0,6 during the period from 1 January 2016 to 31 December 2016;
 - (b) 0,4 during the period from 1 January 2017 to 31 December 2017;
 - (c) 0,2 during the period from 1 January 2018 to 31 December 2018.
2. This Article is without prejudice to previous decisions of the national competent authorities or national law in force prior to the entry into force of this Regulation where such decisions or national law do not permit institutions to add to their Common Equity Tier 1 capital the amount referred to in paragraph 1.

Article 18

Article 478(3)(a),(c) and (d) of Regulation (EU) No 575/2013: Applicable percentages for deduction from Common Equity Tier 1, additional Tier 1 and Tier 2 items

1. For the purposes of Article 478(1) of Regulation (EU) No 575/2013, the applicable percentage shall be:
 - (a) 60 % during the period from 1 January 2016 to 31 December 2016;
 - (b) 80 % during the period from 1 January 2017 to 31 December 2017;
 - (c) 100 % from 1 January 2018.
2. This Article shall not apply to deferred tax assets that rely on future profitability.
3. This Article is without prejudice to national law in force prior to the entry into force of this Regulation where such law sets percentages that are higher than those specified in paragraph 1.

Article 19

Article 478(3)(a) and (b) of Regulation (EU) No 575/2013: Applicable percentages for deduction from Common Equity Tier 1 of significant investments in financial sector entities and deferred tax assets that rely on future profitability

1. For the purposes of Article 478(1) of Regulation (EU) No 575/2013, the applicable percentage for the purposes of Article 469(1)(a) and (c) of that Regulation shall be:
 - (a) 60 % during the period from 1 January 2016 to 31 December 2016;
 - (b) 80 % during the period from 1 January 2017 to 31 December 2017;
 - (c) 100 % from 1 January 2018.

2. For the purposes of Article 478(2) of Regulation (EU) No 575/2013, the applicable percentage shall be:
 - (a) 60 % during the period from 1 January 2016 to 31 December 2016;
 - (b) 80 % during the period from 1 January 2017 to 31 December 2017;
 - (c) 100 % from 1 January 2018.
3. By way of derogation from paragraph 2, where, pursuant to Article 478(2) of Regulation (EU) No 575/2013, national law provides for a 10-year phase-out period, the applicable percentage shall be:
 - (a) 40 % during the period from 1 January 2016 to 31 December 2016;
 - (b) 60 % during the period from 1 January 2017 to 31 December 2017;
 - (c) 80 % during the period from 1 January 2018 to 31 December 2018;
 - (d) 100 % from 1 January 2019.
4. Paragraphs 2 and 3 shall not apply to credit institutions which, at the date of entry into force of this Regulation, are subject to restructuring plans approved by the Commission.
5. Where a credit institution falling within the scope of paragraph 4 is acquired by or merges with another credit institution while the restructuring plan is still in operation without modification concerning the prudential treatment of deferred tax assets, the exception in paragraph 4 shall apply to the acquiring credit institution, new credit institution resulting from the merger or credit institution incorporating the original credit institution, to the same extent that it applied to the acquired, merged or incorporated credit institution.
6. The ECB may review the application of paragraphs 4 and 5 in 2020 based on monitoring of the situation of those credit institutions.
7. In the event of an unforeseen increase in the impact of the deductions provided for in paragraphs 2 and 3 which the ECB determines is material, credit institutions shall be allowed not to apply paragraph 2 or 3.
8. Where paragraphs 2 and 3 do not apply, credit institutions can apply national legislative provisions.
9. This Article is without prejudice to national law in force prior to the entry into force of this Regulation, provided that such law sets percentages that are higher than those specified in paragraphs 1, 2 and 3.

Article 20

Article 479(1) and (4) of Regulation (EU) No 575/2013: Recognition in consolidated Common Equity Tier 1 capital of instruments and items that do not qualify as minority interests

1. During the period from 1 January 2016 to 31 December 2017, the applicable percentage of the items referred to in Article 479(1) of Regulation (EU) No 575/2013 that would have qualified as consolidated reserves in accordance with national measures implementing Article 65 of Directive 2006/48/EC of the European Parliament and of the Council ⁽¹⁾ shall qualify as consolidated Common Equity Tier 1 capital according to the percentages set out below.
2. For the purposes of paragraph 1, the applicable percentage shall be:
 - (a) 40 % during the period from 1 January 2016 to 31 December 2016; and
 - (b) 20 % during the period from 1 January 2017 to 31 December 2017.

⁽¹⁾ Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ L 177, 30.6.2006, p. 1).

3. This Article is without prejudice to national law in force prior to the entry into force of this Regulation where such law sets percentages that are lower than those specified in paragraph 2.

Article 21

Article 480(3) of Regulation (EU) No 575/2013: Recognition in consolidated own funds of minority interests and qualifying additional Tier 1 and Tier 2 capital

1. During the period from 1 January 2016 to 31 December 2017, as referred to in Article 480(3) of Regulation (EU) No 575/2013, the value of the applicable factor under Article 480(1) of that Regulation shall be:

- (a) 0,6 during the period from 1 January 2016 to 31 December 2016; and
- (b) 0,8 during the period from 1 January 2017 to 31 December 2017.

2. This Article is without prejudice to national law in force prior to the entry into force of this Regulation where such law sets factors that are higher than those specified in paragraph 1.

Article 22

Article 481(1) and (5) of Regulation (EU) No 575/2013: Additional filters and deductions

1. During the period from 1 January 2016 to 31 December 2017, for the purpose of applying filters or deductions required under national transposition measures and referred to in Article 481(1) of Regulation (EU) No 575/2013 and provided that the conditions thereof are met, the applicable percentages shall be:

- (a) 40 % during the period from 1 January 2016 to 31 December 2016; and
- (b) 20 % during the period from 1 January 2017 to 31 December 2017.

2. During the period from 1 January 2016 to 31 December 2017, credit institutions shall apply the treatment provided for by national law to the amount remaining after the filter or deduction has been applied in accordance with paragraph 1.

3. This Article is without prejudice to national law in force prior to the entry into force of this Regulation where such law sets stricter requirements than those specified in paragraph 1.

Article 23

Article 486(6) of Regulation (EU) No 575/2013: Limits for grandfathering items within Common Equity Tier 1, Additional Tier 1 and Tier 2 items

1. For the purposes of Article 486 of Regulation (EU) No 575/2013, the applicable percentages shall be:

- (a) 60 % during the period from 1 January 2016 to 31 December 2016;
- (b) 50 % during the period from 1 January 2017 to 31 December 2017;
- (c) 40 % during the period from 1 January 2018 to 31 December 2018;
- (d) 30 % during the period from 1 January 2019 to 31 December 2019;
- (e) 20 % during the period from 1 January 2020 to 31 December 2020;
- (f) 10 % during the period from 1 January 2021 to 31 December 2021.

2. This Article is without prejudice to national law in force prior to the entry into force of this Regulation, provided that such law sets percentages that are lower than those specified in paragraph 1.

Article 24

Article 495(1) of Regulation (EU) No 575/2013: Treatment of equity exposures under the Internal Ratings Based (IRB) approach

The categories of equity exposures that benefit from the exemption from the IRB approach in accordance with Article 495(1) of Regulation (EU) No 575/2013 shall include, until 31 December 2017, only the categories of equity exposures that on 31 December 2013 were already benefiting from an exemption from the IRB treatment, in accordance with Article 2 of Commission Delegated Regulation (EU) 2015/1556 ⁽¹⁾.

Article 25

Entry into force

1. This Regulation shall enter into force on 1 October 2016.
2. Article 4 shall apply from 31 December 2016 and Article 13 shall apply from 1 January 2019.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Frankfurt am Main, 14 March 2016.

For the Governing Council of the ECB

The President of the ECB

Mario DRAGHI

⁽¹⁾ Commission Delegated Regulation (EU) 2015/1556 of 11 June 2015 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the transitional treatment of equity exposures under the IRB approach (OJ L 244, 19.9.2015, p. 9).

ANNEX I

Conditions for assessing an exemption from the large exposure limit, in accordance with Article 400(2)(c) of Regulation (EU) No 575/2013 and Article 9(3) of this Regulation

1. This Annex applies in respect of exemptions from the large exposure limit under Article 9(3) of this Regulation. For the purposes of Article 9(3), third countries listed in Annex I to Commission Implementing Decision 2014/908/EU ⁽¹⁾ are deemed to be equivalent.
2. Credit institutions must take the following criteria into account when assessing whether an exposure referred to in Article 400(2)(c) of Regulation (EU) No 575/2013 meets the conditions for an exemption from the large exposure limit, in accordance with Article 400(3) of Regulation (EU) No 575/2013.
 - (a) For the purpose of assessing whether the specific nature of the exposure, the counterparty or the relationship between the credit institution and the counterparty eliminate or reduce the risk of the exposure, as provided for in Article 400(3)(a) of Regulation (EU) No 575/2013, credit institutions must take into account whether:
 - (i) the conditions provided for in Article 113(6)(b), (c) and (e) of Regulation (EU) No 575/2013 are met and in particular whether the counterparty is subject to the same risk evaluation, measurement and control procedures as the credit institution and whether the IT systems are integrated or, at least, fully aligned. In addition, they must take into account whether there are any current or anticipated material practical or legal impediments that would hinder the timely repayment of the exposure by the counterparty to the credit institution, other than in the event of a recovery or resolution situation when the restrictions outlined in Directive 2014/59/EU of the European Parliament and of the Council ⁽²⁾ are required to be implemented;
 - (ii) the proposed intragroup exposures are justified by the group's funding structure;
 - (iii) the process by which a decision is made to approve an exposure to the intragroup counterparty, and the monitoring and review process applicable to such exposures, at individual level and at consolidated level, where relevant, are similar to those that are applied to third party lending;
 - (iv) the credit institution's risk management procedures, IT system and internal reporting enable it to continuously check and ensure that large exposures to group undertakings are aligned with its risk strategy at legal entity level and at consolidated level, where relevant.
 - (b) For the purpose of assessing whether any remaining concentration risk can be addressed by other equally effective means such as the arrangements, processes and mechanisms provided for in Article 81 of Directive 2013/36/EU, as provided for in Article 400(3)(b) of Regulation (EU) No 575/2013, credit institutions must take into account whether:
 - (i) the credit institution has robust processes, procedures and controls, at individual level and at consolidated level, where relevant, to ensure that use of the exemption would not result in concentration risk that is outside its risk strategy and against the principles of sound internal liquidity management within the group;
 - (ii) the credit institution has formally considered the concentration risk arising from intragroup exposures as part of its overall risk assessment framework;
 - (iii) the credit institution has a risk control framework, at legal entity level and at consolidated level where relevant, that adequately monitors the proposed exposures;
 - (iv) the concentration risk arising has been or will be clearly identified in the internal capital adequacy assessment process (ICAAP) of the credit institution and will be actively managed. The arrangements, processes and mechanisms to manage the concentration risk will be assessed in the supervisory review and evaluation process;
 - (v) there is evidence that the management of concentration risk is consistent with the group's recovery plan.

⁽¹⁾ Commission Implementing Decision 2014/908/EU of 12 December 2014 on the equivalence of the supervisory and regulatory requirements of certain third countries and territories for the purposes of the treatment of exposures according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 359, 16.12.2014, p. 155).

⁽²⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

3. For the purposes of verifying whether the conditions specified in paragraph 1 and 2 are met, the European Central Bank may request credit institutions to submit the following documentation.
- (a) A letter signed by the credit institution's legal representative, with approval from the management body, stating that the credit institution complies with all the conditions for an exemption as laid down in Article 400(2)(c) and Article 400(3) of Regulation (EU) No 575/2013.
 - (b) A legal opinion, issued either by an external independent third party or by an internal legal department, and approved by the management body, demonstrating that there are no obstacles that would hinder timely repayment of exposures by a counterparty to the credit institution that arise from either applicable regulations, including fiscal regulations, or binding agreements.
 - (c) A statement signed by the legal representative and approved by the management body stating that:
 - (i) there are no practical impediments that would hinder the timely repayment of exposures by a counterparty to the credit institution;
 - (ii) intragroup exposures are justified by the group's funding structure;
 - (iii) the process by which a decision is made to approve an exposure to an intragroup counterparty and the monitoring and review process applicable to such exposures, at legal entity level and at consolidated level, are similar to those that are applied to third-party lending;
 - (iv) concentration risk arising from intragroup exposures has been considered as part of the credit institution's overall risk assessment framework.
 - (d) Documentation signed by the legal representative and approved by the management body attesting that the credit institution's risk evaluation, measurement and control procedures are the same as the counterparty's and that the credit institution's risk management procedures, IT system and internal reporting enable the management body to continuously monitor the level of the large exposure and its compatibility with the credit institution's risk strategy at legal entity level and at consolidated level, where relevant, and with the principles of sound internal liquidity management within the group.
 - (e) Documentation showing that the ICAAP clearly identifies the concentration risk arising from the large intragroup exposures and that this risk is actively managed.
 - (f) Documentation showing that the management of concentration risk is consistent with the group's recovery plan.
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ANNEX II

Conditions for assessing an exemption from the large exposure limit, in accordance with Article 400(2)(d) of Regulation (EU) No 575/2013 and Article 9(4) of this Regulation

1. Credit institutions must take the following criteria into account when assessing whether an exposure referred to in Article 400(2)(d) of Regulation (EU) No 575/2013 meets the conditions for an exemption from the large exposure limit, in accordance with Article 400(3) of Regulation (EU) No 575/2013.
 - (a) For the purpose of assessing whether the specific nature of the exposure, the regional or central body or the relationship between the credit institution and the regional or central body eliminate or reduce the risk of the exposure, as provided for in Article 400(3)(a) of Regulation (EU) No 575/2013, credit institutions must take into account whether:
 - (i) there are any current or anticipated material practical or legal impediments that would hinder the timely repayment of the exposure by the counterparty to the credit institution, other than in the event of a recovery or resolution situation, when the restrictions outlined in the Directive 2014/59/EU are required to be implemented;
 - (ii) the proposed exposures are in line with the credit institution's ordinary course of business and its business model or justified by the funding structure of the network;
 - (iii) the process by which a decision is made to approve an exposure to the credit institution's central body, and the monitoring and review process applicable to such exposures, at individual level and at consolidated level, where relevant, are similar to those that are applied to third-party lending;
 - (iv) the credit institution's risk management procedures, IT system and internal reporting enable it to continuously check and ensure that the large exposures to its regional or central body are compatible with its risk strategy.
 - (b) For the purpose of assessing whether any remaining concentration risk can be addressed by other equally effective means such as the arrangements, processes and mechanisms provided for in Article 81 of Directive 2013/36/EU, as provided for in Article 400(3)(b) of Regulation (EU) No 575/2013, credit institutions must take into account whether:
 - (i) the credit institution has robust processes, procedures and controls to ensure that use of the exemption would not result in concentration risk which is outside its risk strategy;
 - (ii) the credit institution has formally considered the concentration risk arising from exposures to its regional or central body as part of its overall risk assessment framework;
 - (iii) the credit institution has a risk control framework that adequately monitors the proposed exposures;
 - (iv) the concentration risk arising has been or will be clearly identified in the credit institution's internal capital adequacy assessment process (ICAAP) and will be actively managed. The arrangements, processes and mechanisms to manage the concentration risk will be assessed in the supervisory review and evaluation process.
2. In addition to the conditions set out in paragraph 1, credit institutions must take into account, for the purpose of assessing whether the regional or central body with which the credit institution is associated in a network is responsible for cash-clearing operations, as provided for in Article 400(2)(d) of Regulation (EU) No 575/2013, whether the by-laws or articles of association of the regional or central body explicitly contain such responsibilities, including, but not limited to the following:
 - (a) market funding for the whole network;
 - (b) clearing liquidity within the network, within the scope of in Article 10 of Regulation (EU) No 575/2013;
 - (c) providing liquidity to affiliated credit institutions;
 - (d) absorbing excess liquidity of affiliated credit institutions.

3. For the purposes of verifying whether the conditions specified in paragraph 1 and 2 are met, the European Central Bank may request credit institutions to submit the following documentation.
- (a) A letter signed by the credit institution's legal representative, with approval from the management body, stating that the credit institution complies with all the conditions laid down in Article 400(2)(d) and Article 400(3) of Regulation (EU) No 575/2013 for an exemption to be granted.
 - (b) A legal opinion, issued either by an external independent third party or by an internal legal department, and approved by the management body, demonstrating that there are no obstacles that would hinder the timely repayment of exposures by a regional or central body to the credit institution arising from either applicable regulations, including fiscal regulations, or binding agreements.
 - (c) A statement signed by the legal representative and approved by the management body that:
 - (i) there are no practical impediments to the timely repayment of exposures by a regional or central body to the credit institution;
 - (ii) the regional or central body exposures are justified by the funding structure of the network;
 - (iii) the process by which a decision is made to approve an exposure to a regional or central body and the monitoring and review process applicable to such exposures, at legal entity level and at consolidated level, are similar to those applied to third-party lending;
 - (iv) the concentration risk arising from exposures to the regional or central body has been considered as part of the credit institution's overall risk assessment framework.
 - (d) Documentation signed by the legal representative and approved by the management body attesting that the credit institution's risk evaluation, measurement and control procedures are the same as the regional or central body's and that the credit institution's risk management procedures, IT system and internal reporting enable the management body to continuously monitor the level of the large exposure and its compatibility with the credit institution's risk strategy at legal entity level and at consolidated level, where relevant, and with the principles of sound internal liquidity management within the network.
 - (e) Documentation showing that the ICAAP clearly identifies the concentration risk arising from the large exposures to the regional or central body and that this is actively managed.
 - (f) Documentation showing that the management of concentration risk is consistent with the network's recovery plan.
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DECISIONS

COUNCIL DECISION (CFSP) 2016/446

of 23 March 2016

amending and extending Council Decision 2013/34/CFSP on a European Union military mission to contribute to the training of the Malian Armed Forces (EUTM Mali)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article 28 and Articles 42(4) and 43(2) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 17 January 2013, the Council adopted Decision 2013/34/CFSP ⁽¹⁾ on a European Union military mission to contribute to the training of the Malian Armed Forces (EUTM Mali).
- (2) On 18 February 2013, the Council adopted Decision 2013/87/CFSP ⁽²⁾ on the launch of EUTM Mali.
- (3) Following the Strategic Review, the Political and Security Committee recommended that the mandate of EUTM Mali be adapted and extended by a period of 2 years, until 18 May 2018.
- (4) It is also necessary to lay down the financial reference amount intended to cover the expenditure related to EUTM Mali for the period from 19 May 2016 until 18 May 2018.
- (5) Decision 2013/34/CFSP should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Council Decision 2013/34/CFSP is amended as follows:

- (1) in Article 1, paragraphs 1 and 2 are replaced by the following:

‘1. The Union shall conduct a military training mission in Mali (EUTM Mali), to provide, military and training advice to the Malian Armed Forces (MAF) operating under the control of legitimate civilian authorities, in order to contribute to the restoration of their military capacity with a view to enabling them to conduct military operations aiming at restoring Malian territorial integrity and reducing the threat posed by terrorist groups. EUTM Mali shall not be involved in combat operations. Its actions shall extend up to the river Niger Loop, including the municipalities of Gao and Timbuktu.

2. The objective of EUTM Mali shall be to respond to the operational needs of the MAF through the provision of:

- (a) training support for the benefit of the MAF;

⁽¹⁾ Council Decision 2013/34/CFSP of 17 January 2013 on a European Union military mission to contribute to the training of the Malian Armed Forces (EUTM Mali) (OJ L 14, 18.1.2013, p. 19).

⁽²⁾ Council Decision 2013/87/CFSP of 18 February 2013 on the launch of a European Union military mission to contribute to the training of the Malian Armed Forces (EUTM Mali) (OJ L 46, 19.2.2013, p. 27).

- (b) training and advice on command and control, logistical chain and human resources, as well as training on International Humanitarian Law, protection of civilians and human rights;
- (c) a contribution, upon Malian request and in coordination with MINUSMA, to the Disarmament, Demobilisation and Reintegration process framed by the Peace Agreement, through the provision of training sessions in order to facilitate the reconstitution of inclusive Malian Armed Forces;
- (d) support to the G5 Sahel process, within the activities of EUTM Mali in support of the MAF, by contributing to enhancing coordination and interoperability with the G5 Sahel national armed forces.’;

(2) in Article 10, paragraph 2 is replaced by the following:

‘2. The financial reference amount for the common costs of EUTM Mali for the period from 19 May 2016 to 18 May 2018 shall be EUR 33 400 000. The percentage of the reference amount referred to in Article 25(1) of Council Decision (CFSP) 2015/528 (*) shall be 60 % and the percentage for commitment referred to in Article 34(3) of that Decision shall be 10 %.

(*) Council Decision (CFSP) 2015/528 of 27 March 2015 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena) and repealing Decision 2011/871/CFSP (OJ L 84, 28.3.2015, p. 39).’;

(3) in Article 12, paragraph 2 is replaced by the following:

‘2. The mandate of EUTM Mali shall end on 18 May 2018.’.

Article 2

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

Done at Brussels, 23 March 2016.

For the Council
The President
A.G. KOENDERS

COMMISSION IMPLEMENTING DECISION (EU) 2016/447**of 22 March 2016****amending Implementing Decision (EU) 2015/2460 concerning certain protective measures in relation to highly pathogenic avian influenza of subtype H5 in France***(notified under document C(2016) 1608)***(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,

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) Commission Implementing Decision (EU) 2015/2460 ⁽³⁾ was adopted following the spread of highly pathogenic avian influenza (HPAI) in France and the establishment by the competent authority of that Member State of a large further restricted zone around the protection and surveillance zones. That further restricted zone comprises several departments or parts thereof in the south-west of France.
- (2) Implementing Decision (EU) 2015/2460 as last amended by Commission Implementing Decision (EU) 2016/237 ⁽⁴⁾ applies until 31 March 2016.
- (3) The number of HPAI outbreaks has decreased, but a few outbreaks are still being detected inside the area already under restrictions. Due to the epidemiological situation and in view of the implementation of the disease control strategy adopted in France, it is appropriate to prolong the period of the application of Implementing Decision (EU) 2015/2460 until 15 September 2016. However, the Commission will review the period of application should the disease situation improve beforehand.
- (4) Implementing Decision (EU) 2015/2460 should therefore be amended accordingly.
- (5) 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

In Article 5 of Implementing Decision (EU) 2015/2460, the date ‘31 March 2016’ is replaced by the date ‘15 September 2016’.

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ Commission Implementing Decision (EU) 2015/2460 of 23 December 2015 concerning certain protective measures in relation to highly pathogenic avian influenza of subtype H5 in France (OJ L 339, 24.12.2015, p. 52).

⁽⁴⁾ Commission Implementing Decision (EU) 2016/237 of 17 February 2016 amending the Annex to Implementing Decision (EU) 2015/2460 concerning certain protective measures in relation to highly pathogenic avian influenza of subtype H5 in France (OJ L 44, 19.2.2016, p. 12).

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 22 March 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2016/448**of 23 March 2016****amending Annexes I and II to Decision 2003/467/EC in relation to the official tuberculosis-free and brucellosis-free status of Malta as regards bovine herds***(notified under document C(2016) 1697)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine ⁽¹⁾, and in particular paragraph 4 of Annex A.I and paragraph 7 of Annex A.II thereto,

Whereas:

- (1) Directive 64/432/EEC applies to trade within the Union in bovine animals. It lays down the conditions whereby a Member State may be declared officially tuberculosis-free or officially brucellosis-free as regards bovine herds.
- (2) Commission Decision 2003/467/EC ⁽²⁾ provides that the Member States listed in Chapter 1 of Annex I and in Chapter 1 of Annex II thereto are declared officially free of tuberculosis and officially free of brucellosis, respectively, as regards bovine herds.
- (3) Malta has submitted to the Commission documentation demonstrating compliance for the entire territory of that Member State with the conditions laid down in Directive 64/432/EEC for officially tuberculosis-free and officially brucellosis-free status as regards bovine herds. Accordingly, Malta should be listed in Annexes I and II to Decision 2003/467/EC as an officially tuberculosis-free and officially brucellosis-free Member State as regards bovine herds.
- (4) Annexes I and II to Decision 2003/467/EC should therefore be amended accordingly.
- (5) 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

Annexes I and II to Decision 2003/467/EC are amended in accordance with the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 23 March 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

⁽¹⁾ OJ L21, 29.7.1964, p. 1977/64.

⁽²⁾ Commission Decision 2003/467/EC of 23 June 2003 establishing the official tuberculosis, brucellosis and enzootic-bovine-leukosis-free status of certain Member States and regions of Member States as regards bovine herds (OJ L 156, 25.6.2003, p. 74).

ANNEX

Annexes I and II to Decision 2003/467/EC are amended as follows.

(1) In Annex I, Chapter 1 is replaced by the following:

‘CHAPTER 1**Officially tuberculosis-free Member States**

ISO code	Member State
BE	Belgium
CZ	Czech Republic
DK	Denmark
DE	Germany
EE	Estonia
FR	France
LV	Latvia
LT	Lithuania
LU	Luxembourg
HU	Hungary
MT	Malta
NL	Netherlands
AT	Austria
PL	Poland
SI	Slovenia
SK	Slovakia
FI	Finland
SE	Sweden’

(2) In Annex II, Chapter 1 is replaced by the following:

‘CHAPTER 1**Officially brucellosis-free Member States**

ISO code	Member State
BE	Belgium
CZ	Czech Republic
DK	Denmark
DE	Germany
EE	Estonia

ISO code	Member State
IE	Ireland
FR	France
LV	Latvia
LT	Lithuania
LU	Luxembourg
MT	Malta
NL	Netherlands
AT	Austria
PL	Poland
RO	Romania
SI	Slovenia
SK	Slovakia
FI	Finland
SE	Sweden'

