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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION (EU) 2016/1392

of 12 July 2016

on the signing, on behalf of the European Union, and provisional application, of the Amending Protocol to the Agreement between the European Community and the Principality of Monaco providing for measures equivalent to those laid down in Council Directive 2003/48/EC

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115, in conjunction with Article 218(5) and the second subparagraph of Article 218(8), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 14 May 2013 the Council authorised the Commission to open negotiations with the Principality of Monaco to amend the Agreement between the European Community and the Principality of Monaco providing for measures equivalent to those laid down in Council Directive 2003/48/EC ⁽¹⁾ (the 'Agreement'), in order to align it with recent developments at global level, in which it was agreed to promote automatic exchange of information as an international standard.
- (2) The text of the Amending Protocol to the Agreement (the 'Amending Protocol') which is the result of the negotiations, duly reflects the negotiating directives issued by the Council, as it aligns the Agreement with the latest developments at international level concerning the automatic exchange of information, namely, with the Global Standard for automatic exchange of financial account information in tax matters developed by the Organisation for Economic Cooperation and Development (OECD). The Union, the Member States and the Principality of Monaco have actively participated in the work of the Global Forum of the OECD to support the development and implementation of that Global Standard. The text of the Agreement, as amended by the Amending Protocol, is the legal basis for implementing the Global Standard in the relations between the Union and the Principality of Monaco.
- (3) The Amending Protocol should be signed.
- (4) In view of orientations expressed by the Principality of Monaco in the framework of the Global Forum of the OECD, the Amending Protocol should be applied on a provisional basis from 1 January 2017, pending completion of the procedures for its conclusion,

⁽¹⁾ OJ L 19, 21.1.2005, p. 55.

HAS ADOPTED THIS DECISION:

Article 1

The signing, on behalf of the Union, of the Amending Protocol to the Agreement between the European Community and the Principality of Monaco providing for measures equivalent to those laid down in Council Directive 2003/48/EC is hereby authorised, subject to the conclusion of the said Amending Protocol.

The text of the Amending Protocol is attached to this Decision.

Article 2

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

Article 3

Subject to reciprocity, the Amending Protocol shall be applied on a provisional basis from 1 January 2017, pending completion of the procedures for its conclusion.

The President of the Council shall, on behalf of the Union, notify the Principality of Monaco of its intention to apply the Amending Protocol provisionally, subject to reciprocity, as from 1 January 2017.

Article 4

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

Done at Brussels, 12 July 2016.

For the Council
The President
P. KAŽIMÍR

AMENDING PROTOCOL
to the Agreement between the European Community and the Principality of Monaco providing for
measures equivalent to those laid down in Council Directive 2003/48/EC

THE EUROPEAN UNION

and

THE PRINCIPALITY OF MONACO,

hereinafter referred to as 'Contracting Party' or, jointly, as 'Contracting Parties',

WITH A VIEW to implementing the Standard for Automatic Exchange of Financial Account Information developed by the Organisation for Economic Cooperation and Development (OECD) within a framework of cooperation which takes account of the legitimate interests of both Contracting Parties,

WHEREAS the Contracting Parties have a long-standing and close cooperation in tax matters, in particular on the application of measures equivalent to those laid down in Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments ⁽¹⁾, and desire to improve international tax compliance by further building on that relationship,

WHEREAS the Contracting Parties desire to come to an agreement to improve international tax compliance based on reciprocal automatic exchange of information subject to the confidentiality and other protections referred to in this amending Protocol, including provisions limiting the use of the information exchanged,

WHEREAS the Contracting Parties agree that the Agreement resulting from this Amending Protocol must comply with the OECD Standard for Automatic Exchange of Financial Account Information, hereinafter referred to as the 'Global Standard',

WHEREAS Article 12 of the Agreement between the European Community and the Principality of Monaco providing for measures equivalent to those laid down in Council Directive 2003/48/EC (hereinafter referred to as 'the Agreement'), which in its current form ⁽²⁾ prior to its amendment by this Amending Protocol limits the transmission of information to requests concerning acts constituting tax fraud, should be aligned on the OECD standard on transparency and exchange of information in tax matters in order to satisfy the objectives of this Standard as laid down in detail in Article 5(1) of the Agreement resulting from this Amending Protocol and in compliance with the guarantees of confidentiality and protection of personal data provided for in Article 6 of the Agreement resulting from this Amending Protocol and Annex III thereto,

WHEREAS, for Member States, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽³⁾ lays down specific data protection rules in the European Union which also apply to the exchanges of information effected by the Member States that are covered by the Agreement resulting from this Amending Protocol,

WHEREAS the protection of personal data in the Principality of Monaco is governed by Law No 1.165 of 23 December 1993 on the protection of personal data as amended by Law No 1.240 of 2 July 2001 and Law No 1.353 of 4 December 2008, which entered into force on 1 April 2009, including the conditions of implementation as set out in Sovereign Order No 2.230 of 19 June 2009 ⁽⁴⁾,

⁽¹⁾ OJ EUL 157, 26.6.2003, p. 38.

⁽²⁾ OJ EUL 19, 21.1.2005, p. 55.

⁽³⁾ OJ EUL 281, 23.11.1995, p. 31.

⁽⁴⁾ 'Journal de Monaco', the official bulletin of the Principality, No 7918 of 26 June 2009.

WHEREAS on the date of signing of this Amending Protocol the European Commission has not yet adopted a decision pursuant to Article 25(6) of Directive 95/46/EC finding that the Principality of Monaco ensures an adequate level of protection of personal data,

WHEREAS Contracting Parties undertake to implement and uphold the specific data protection safeguards set out in the Agreement resulting from this Amending Protocol, including Annex III thereto, in such a way as to ensure that neither Contracting Party may use any justification to refuse to exchange information with the other Contracting Party,

WHEREAS Reporting Financial Institutions, Sending Competent Authorities and Receiving Competent Authorities, as data controllers, should retain information processed in accordance with the Agreement resulting from this Amending Protocol for no longer than necessary to achieve the objectives thereof. Given the differences in the Member States' and the Principality of Monaco's legislation, the maximum retention period for each of the Contracting Parties should be set by reference to the statute of limitations provided by each data controller's domestic tax legislation,

WHEREAS the categories of Reporting Financial Institutions and Reportable Accounts covered by the Agreement resulting from this Amending Protocol are designed to limit the opportunities for taxpayers to avoid being reported by shifting assets to financial institutions or investing in financial products that are outside the scope of the Agreement resulting from this Amending Protocol. However, certain financial institutions and accounts that present a low risk of being used to evade tax should be excluded from the scope. Thresholds should not be generally included as it is easy to remain below them by splitting accounts among different financial institutions. The financial information which must be reported and exchanged should concern not only all relevant income (interests, dividends and similar types of income) but also account balances and sale proceeds from financial assets in order to address situations where a taxpayer seeks to hide capital that in itself represents income or assets with regard to which tax has been evaded. Therefore, the processing of information under the Agreement resulting from this Amending Protocol is necessary for and proportionate to the purpose of enabling Member States' and the Principality of Monaco's tax administrations to correctly and unequivocally identify the taxpayers concerned, administer and enforce their tax laws in cross-border situations, assess the likelihood of tax evasion being perpetrated and avoid unnecessary further investigations,

HAVE AGREED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Principality of Monaco providing for measures equivalent to those laid down in Council Directive 2003/48/EC is amended as follows:

(1) The title shall be replaced by:

'Agreement between the European Union and the Principality of Monaco on the exchange of financial account information to improve international tax compliance in accordance with the Standard for Automatic Exchange of Financial Account Information in Tax Matters developed by the Organisation for Economic Cooperation and Development (OECD)';

(2) Articles 1 to 21 are replaced by the following:

'Article 1

Definitions

1. For the purposes of this Agreement the following terms shall have the following meanings:

(a) 'European Union' means the Union as established by the Treaty on European Union and includes the territories in which the Treaty on the Functioning of the European Union is applied under the conditions laid down in that latter Treaty;

- (b) 'Member State' means a Member State of the European Union;
- (c) 'Monaco' means the Principality of Monaco, its inland waters, territorial sea, soil and subsoil, the airspace above, the exclusive economic zone and the continental shelf, over which, in accordance with the provisions of international law and domestic law, the Principality of Monaco exercises sovereign rights and jurisdiction;
- (d) 'Competent Authorities of Monaco' and 'Competent Authorities of the Member States' mean the authorities listed in Annex IV under (a) and under (b) to (ac) respectively. Annex IV shall form an integral part of this Agreement. The list of Competent Authorities in Annex IV may be amended by simple notification of the other Contracting Party by Monaco for the authority referred to in point (a) therein, and by the European Union for the authorities referred to in (b) to (ac) therein. The European Commission shall inform the Member States and Monaco of any such notification;
- (e) 'Member State Financial Institution' means (i) any Financial Institution that is resident in a Member State, excluding any branch of that Financial Institution that is located outside that Member State, and (ii) any branch of a Financial Institution that is not resident in that Member State if that branch is located in that Member State;
- (f) 'Monaco Financial Institution' means (i) any Financial Institution that is resident in Monaco, excluding any branch of that Financial Institution that is located outside Monaco, and (ii) any branch of a Financial Institution that is not resident in Monaco, if that branch is located in Monaco;
- (g) 'Reporting Financial Institution' means any Member State Financial Institution or Monaco Financial Institution, depending on the jurisdiction in question, that is not a Non-Reporting Financial Institution.
- (h) 'Reportable Account' means a Member State Reportable Account or a Monaco Reportable Account, depending as the context requires, provided that it has been identified as such pursuant to due diligence procedures in place in that Member State or Monaco, in accordance with Annexes I and II;
- (i) 'Member State Reportable Account' means a Financial Account that is maintained by a Monaco Reporting Financial Institution and held by one or more Member State Persons that are Reportable Persons or by a Passive NFE with one or more Controlling Persons that are Member State Reportable Persons;
- (j) 'Monaco Reportable Account' means a Financial Account that is maintained by a Member State Reporting Financial Institution and held by one or more Monaco Persons who are Reportable Persons or by a Passive NFE with one or more Controlling Persons that are Monaco Reportable Persons;
- (k) 'Member State Person' means an individual or entity that is identified by a Monaco Reporting Financial Institution as resident in a Member State pursuant to due diligence procedures consistent with Annex I and II, or an estate of a decedent who was a resident of a Member State.
- (l) 'Monaco Person' means an individual or Entity that is identified by a Member State Reporting Financial Institution as resident in Monaco pursuant to due diligence procedures consistent with Annexes I and II, or an estate of a decedent who was a resident of Monaco.

2. Any capitalised term not otherwise defined in this Agreement shall have the meaning attributed to it at the time: (i) for Member States, by Council Directive 2011/16/EU on administrative cooperation in the field of taxation ⁽¹⁾ or, where applicable, by the domestic law of the Member State applying the Agreement, and (ii) for Monaco, by its domestic law, such meaning being consistent with the meaning set forth in Annexes I and II.

Any term not otherwise defined in this Agreement shall, unless the context requires otherwise or the Competent Authority of a Member State and the Competent Authority of Monaco agree to a common meaning as provided for in Article 7 (if permitted by domestic law), have the meaning that it has at that time under the law of the jurisdiction concerned applying this Agreement: (i) for Member States, by Council Directive 2011/16/EU on administrative cooperation in the field of taxation or, where applicable, the domestic law of the Member State concerned, and (ii) for Monaco, by its domestic law, any meaning attributed by the applicable tax laws of the jurisdiction concerned (a Member State or Monaco) prevailing over a meaning given to the term under other laws of that jurisdiction.

⁽¹⁾ OJ EUL 64, 11.3.2011, p. 1.

*Article 2***Automatic exchange of information with respect to Reportable Accounts**

1. Pursuant to this Article, and subject to the applicable reporting and due diligence rules consistent with Annexes I and II, which shall form an integral part of this Agreement, the Competent Authority of Monaco shall each year exchange with each of the Member States' Competent Authorities, and each of the Member States' Competent Authorities shall each year exchange with the Competent Authority of Monaco, on an automatic basis, the information obtained pursuant to such rules and specified in paragraph 2.

2. The information to be exchanged is, in the case of a Member State with respect to each Monaco Reportable Account and in the case of Monaco with respect to each Member State Reportable Account:

- (a) the name, address, TIN and date and place of birth (in the case of an individual) of each Reportable Person who is an Account Holder and, in the case of any Entity that is an Account Holder and that, after application of due diligence procedures consistent with Annexes I and II, is identified as having one or more Controlling Persons that are Reportable Persons, the name, address, and TIN of the Entity and the name, address, TIN and date and place of birth of each Reportable Person. Monaco does not have TINs for Monaco Persons on the date of signing of this Amending Protocol, 12 July 2016;
- (b) the account number (or functional equivalent in the absence of an account number);
- (c) the name and identifying number (if any) of the Reporting Financial Institution;
- (d) the account balance or value (including, in the case of a Cash-Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
- (e) in the case of any Custodial Account:
 - (i) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
 - (ii) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
- (f) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
- (g) in the case of any account not described in subparagraph 2(e) or (f), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

*Article 3***Time and manner of automatic exchange of information**

1. For the purposes of the exchange of information provided for in Article 2, the amount and characterisation of payments made with respect to a Reportable Account may be determined in accordance with the principles of the tax laws of the jurisdiction (Member State or Monaco) exchanging the information.

2. For the purposes of the exchange of information provided for in Article 2, the information exchanged shall identify the currency in which each relevant amount is denominated.

3. With respect to Article 2(2), the information to be exchanged for 2017 and all subsequent years shall be exchanged within nine months after the end of the calendar year to which the information relates.
4. The Competent Authorities shall automatically exchange the information referred to in Article 2 using a common reporting standard scheme in XML (Extensible Markup Language).
5. The Competent Authorities shall agree on one or more methods for data transmission, including encryption standards.

Article 4

Cooperation on compliance and enforcement

The Competent Authority of a Member State must notify the Competent Authority of Monaco and the Competent Authority of Monaco must notify the Competent Authority of a Member State when the first-mentioned (notifying) Competent Authority has reason to believe that an error may have led to incorrect or incomplete information-reporting under Article 2, or that a Reporting Financial Institution is not complying with the applicable reporting requirements and due diligence procedures consistent with Annexes I and II. The notified Competent Authority shall take all appropriate measures available under its domestic law to address the errors or non-compliance described in the notice.

Article 5

Exchange of information on request

1. Notwithstanding the provisions of Article 2 and of any other agreement providing for information exchanges upon request between Monaco and the Competent Authority of any Member State, the Competent Authority of Monaco and the Competent Authority of any Member State shall exchange upon request such information as may be relevant for implementing this Agreement or for administering or enforcing domestic laws concerning taxes of any kind and description levied on behalf of Monaco and the Member States, or of their political subdivisions or local authorities, provided that the taxation under such domestic laws of the requesting State is not contrary to any applicable double taxation agreement between Monaco and the Member State concerned.
2. In no case shall the provisions of paragraph 1 of this Article and of Article 6 be interpreted as requiring Monaco or a Member State:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of Monaco or the Member State respectively;
 - (b) to supply information which is not obtainable by law or in the normal course of the administration of Monaco or the Member State respectively;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or commercial process, or information, the disclosure of which would be contrary to public policy (ordre public).
3. If information is requested by a Member State or by Monaco acting as the requesting jurisdiction in accordance with this Article, Monaco or the Member State acting as the requested jurisdiction shall use its information gathering resources to obtain the requested information, even though that requested jurisdiction may not need such information for its own tax purposes. The obligation laid down in the preceding sentence is subject to the limitations of paragraph 2 but in no case shall such limitations be construed as authorising the requested jurisdiction to refuse to supply information solely because it has no domestic interest in such information.
4. In no case shall paragraph 2 be construed as authorising Monaco or a Member State to refuse to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.
5. The Competent Authorities shall agree on one or more methods for data transmission, including encryption standards, and on the standard forms to be used where applicable.

*Article 6***Confidentiality and personal data safeguards**

1. In addition to the confidentiality rules and other safeguards provided for in the Agreement, including Annex III, the collection and exchange of information under the Agreement shall be subject: (i) in the case of Member States, to the laws and regulations of Member States implementing Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and (ii) in the case of Monaco, to Law No 1.165 of 23 December 1993 on personal data protection, as amended by Law No 1.240 of 2 July 2001 and Law No 1.353 of 4 December 2008, which entered into force on 1 April 2009, including the conditions of implementation set out in Sovereign Order No 2.230 of 19 June 2009.

For the purpose of the correct application of Article 5, Member States shall restrict the scope of the obligations and rights provided for in Articles 10, 11(1), 12 and 21 of Directive 95/46/EC to the extent required to safeguard the interests referred to in Article 13(1)(e) of that Directive. Monaco shall take equivalent measures under its law.

Notwithstanding the preceding subparagraph, each Member State and Monaco shall ensure that each Reporting Financial Institution under their jurisdiction informs each individual Reportable Person concerned (whether a Monaco Person or a Member State Person) that the information referred to in Article 2 relating to them will be collected and transferred in accordance with this Agreement and shall ensure that the Reporting Financial Institution gives that person all the information that they are entitled to under its domestic data protection legislation, and at the least the following:

- (a) the purpose for which their personal data are processed;
- (b) the legal basis for the processing operation;
- (c) the recipients of the personal data;
- (d) the identity of the data controllers;
- (e) the time-limits for storing the data;
- (f) the right of a person to ask the controller for access to, and rectification and erasure of, their personal data;
- (g) the right to seek administrative and/or judicial redress;
- (h) the procedure for exercising the right to administrative and/or judicial redress;
- (i) the right to apply to the competent data protection supervisory authority or authorities and their contact details.

This information must be provided in sufficient time for an individual to exercise their data protection rights and, in any case, before the Reporting Financial Institution concerned reports the information referred to in Article 2 to the Competent Authority of its jurisdiction of residence (a Member State or Monaco).

The Member States and Monaco shall ensure that each individual Reportable Person (whether a Monaco Person or a Member State Person) is notified of a breach of security with regard to their data when that breach is likely to adversely affect the protection of their personal data or privacy.

2. Information processed in accordance with this Agreement shall be kept for no longer than necessary to achieve the purposes of this Agreement and, in any case, in accordance with each data controller's domestic rules on the statute of limitations.

Reporting Financial Institutions and the Competent Authorities of each Member State and Monaco shall be considered to be data controllers, each with respect to the personal data it processes under this Agreement. Data controllers are responsible for enforcing personal-data protection safeguards, in accordance with the provisions on such safeguards in this Agreement and with the rights of the persons concerned.

3. Any information obtained by a jurisdiction (a Member State or Monaco) under this Agreement shall be treated as confidential and protected in the same manner as information obtained under the domestic law of that jurisdiction and, to the extent necessary for the protection of personal data, in accordance with the applicable domestic law, and with safeguards which may be specified by the jurisdiction supplying the information as required under its domestic law.

4. Such information shall in any case be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of taxes, the enforcement of decisions, prosecutions and decisions on appeals in relation to taxes of that jurisdiction (a Member State or Monaco), or the oversight of these tasks. Only the persons or authorities mentioned above may use the information, and then only for purposes spelled out in the preceding sentence. Notwithstanding paragraph 3, they may disclose it in public court proceedings or in judicial decisions relating to such taxes, on condition, specifically with regard to the recovery of taxes, of obtaining a prior authorisation issued by the Competent Authority providing the information (whether Monaco or a Member State respectively).

5. Notwithstanding the preceding paragraphs, information received by a jurisdiction (a Member State or Monaco) may be used for other purposes where such information may be used for such other purposes under the laws, including the law on the protection of personal data, of the supplying jurisdiction (Monaco or a Member State) and where the Competent Authority of that jurisdiction authorises such use. Information provided by a jurisdiction (a Member State or Monaco) to another jurisdiction (Monaco or a Member State respectively) may be transmitted by the latter to a third jurisdiction (that is, another Member State), subject to the application of the safeguards provided for under this Article and to prior authorisation of the Competent Authority of the first-named jurisdiction from which the information originated, which authority must have received the necessary data for assessment of the application of the safeguards in question. Information provided by one Member State to another Member State under its law implementing Council Directive 2011/16/EU on administrative cooperation in the field of taxation may be transmitted to Monaco, subject to prior authorisation by the Competent Authority of the Member State from which the information originated.

6. Each Competent Authority of a Member State or of Monaco shall immediately notify the other Competent Authority, i.e. that of Monaco or of the Member State concerned, regarding any breach of confidentiality, failure of safeguards or any other breaches of data protection rules, and any sanctions and remedial measures consequently adopted.

Article 7

Consultations and suspension of this Agreement

1. If any difficulties in the implementation or interpretation of this Agreement arise, the Competent Authorities of Monaco or of a Member State may request consultations between the Competent Authority of Monaco and one or more of the Competent Authorities of Member States to draw up appropriate measures to ensure that this Agreement is fulfilled. Those Competent Authorities shall immediately notify the European Commission and the Competent Authorities of the other Member States of the results of their consultations. The European Commission may take part in consultations on issues of interpretation at the request of any of the Competent Authorities.

2. If the consultations concern significant non-compliance with this Agreement, and the procedure set out in paragraph 1 does not provide for an adequate settlement, the Competent Authority of a Member State or Monaco may suspend the exchange of information under this Agreement with, respectively, Monaco or a specific Member State, by giving notice in writing to the other Competent Authority concerned. Such suspension shall have immediate effect. For the purposes of this paragraph, significant non-compliance includes, but is not limited to: (i) non-compliance with the confidentiality and data safeguard provisions of this Agreement, including Annex III, of Directive 95/46/EC and of Law No 1.165 of 23 December 1993 on personal data protection, as amended by Law No 1.240 of 2 July 2001 and Law No 1.353 of 4 December 2008, which entered into force on 1 April 2009, including the conditions of implementation set out in Sovereign Order No 2.230 of 19 June 2009, depending on the context, (ii) a failure by the Competent Authority of a Member State or Monaco to provide timely or adequate information as required under this Agreement, and (iii) the designation of Entities or accounts as Non-Reporting Financial Institutions and Excluded Accounts in a manner that frustrates the purposes of this Agreement.

*Article 8***Amendments**

1. The Contracting Parties shall consult each other on any occasion an important change to any of the elements of the Standard for Automatic Exchange of Financial Account Information developed by the OECD (the “Global Standard”) is adopted at OECD level or — if deemed necessary by the Contracting Parties — in order to improve the technical functioning of this Agreement or to assess and reflect other international developments. The consultations shall be held within one month of a request by either Contracting Party or as soon as possible in urgent cases.

2. On the basis of such a contact the Contracting Parties may consult each other in order to examine whether changes to this Agreement are necessary.

3. For the purposes of the consultations referred to in paragraphs 1 and 2, each Contracting Party shall inform the other Contracting Party of any developments which could affect the proper functioning of this Agreement. This includes any relevant agreement between one of the Contracting Parties and a third State.

4. Following the consultations, this Agreement may be amended by means of a protocol or a new agreement between the Contracting Parties.

5. Where a Contracting Party has implemented a change made by the OECD to the Global Standard and wishes to make a corresponding change in Annexes I and/or II to this Agreement, it shall notify the other Contracting Party thereof. A consultation procedure between the Contracting Parties shall take place within one month of this notification. Notwithstanding paragraph 4, if the Contracting Parties reach a consensus within this consultation procedure on the change that should be made to Annexes I and/or II to this Agreement, and for the period of time necessary for implementation of the change by a formal amendment of this Agreement, the Contracting Party that requested the change may provisionally apply the revised version of Annexes I and/or II to this Agreement, as approved during the consultation procedure, from 1 January of the year following that in which the aforementioned procedure was concluded.

A Contracting Party is considered to have implemented a change to the Global Standard adopted by the OECD when:

- (a) in the case of Member States, the change has been incorporated in Council Directive 2011/16/EU on administrative cooperation in the field of taxation;
- (b) in the case of Monaco, when the change has been incorporated in an agreement with a third State or into domestic legislation.

*Article 9***Termination**

Either Contracting Party may terminate this Agreement by giving notice of termination in writing to the other Contracting Party. Such termination shall become effective on the first day of the month following a period of 12 months from the date of the notice of termination. In the event of termination, all information previously received under this Agreement shall remain confidential and subject (i) in the case of Member States, to the provisions of Member States’ laws and regulations implementing Directive 95/46/EC and (ii) in the case of Monaco, to the provisions of Law No 1.165 of 23 December 1993 on personal data protection as amended by Law No 1.240 of 2 July 2001 and Law No 1.353 of 4 December 2008, which entered into force on 1 April 2009, including the conditions of implementation set out in Sovereign Order No 2.230 of 19 June 2009, and in both cases to the specific data protection safeguards provided for in this Agreement, including those in Annex III.

*Article 10***Territorial Scope**

This Agreement shall apply, on the one hand, to the territories of the Member States in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applied and under the conditions laid down in those Treaties and, on the other hand, to the territory of Monaco as defined in Article 1(1)(c).;

(3) the Annexes are replaced by:

‘ANNEX I

**COMMON STANDARD ON REPORTING AND DUE DILIGENCE FOR FINANCIAL ACCOUNT INFORMATION
(HEREINAFTER ‘COMMON REPORTING STANDARD’)**

SECTION I

GENERAL REPORTING REQUIREMENTS

A. Subject to paragraphs C to E, each Reporting Financial Institution must report to the Competent Authority of its jurisdiction (a Member State or Monaco) the following information with respect to each Reportable Account of such Reporting Financial Institution:

1. the name, address, jurisdiction(s) of residence (a Member State or Monaco), TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of the due diligence procedures consistent with Sections V, VI and VII, is identified as having one or more Controlling Persons that are Reportable Persons, the name, address, jurisdiction(s) of residence and TIN(s) of the Entity and the name, address, jurisdiction(s) of residence (a Member State or Monaco), TIN(s) and date and place of birth of each Reportable Person;
2. the account number (or functional equivalent in the absence of an account number);
3. the name and identifying number (if any) of the Reporting Financial Institution;
4. the account balance or value (including, in the case of a Cash-Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) at the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during this year or period, upon the closure of the account;
5. in the case of any Custodial Account:
 - (a) the total gross amount of interest, the total gross amount of dividends and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
 - (b) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
6. in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
7. in the case of any account not described in subparagraph A(5) or A(6), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

B. The information reported must identify the currency in which each amount is denominated.

C. Notwithstanding subparagraph A(1), with respect to each Reportable Account that is a Pre-existing Account, the TIN(s) or date of birth is not required to be reported if such TIN(s) or date of birth are not in the records of the Reporting Financial Institution and is not otherwise required to be collected by such Reporting Financial Institution under domestic law or any European Union legal instrument (if applicable). However, a Reporting Financial Institution is required to use reasonable efforts to obtain the TIN(s) and date of birth with respect to Pre-existing Accounts by the end of the second calendar year following the year in which Pre-existing Accounts were identified as Reportable Accounts.

- D. Notwithstanding subparagraph A(1), the TIN does not have to be reported if the relevant Member State, Monaco or other jurisdiction of residence has not issued a TIN.
- E. Notwithstanding subparagraph A(1), the place of birth is not required to be reported unless the Reporting Financial Institution is otherwise required to obtain and report it under domestic law and it is available in the electronically searchable data maintained by the Reporting Financial Institution.

SECTION II

GENERAL DUE DILIGENCE REQUIREMENTS

- A. An account is treated as a Reportable Account from the date on which it is identified as such pursuant to the due diligence procedures in Sections II through VII and, unless otherwise provided, information with respect to a Reportable Account must be reported annually in the calendar year following the year to which the information relates.
- B. The balance or value of an account is the balance or value as of the last day of the calendar year or other appropriate reporting period.
- C. Where a balance or value threshold must be determined as of the last day of a calendar year, the relevant balance or value must be determined as of the last day of the reporting period that ends with or within that calendar year.
- D. Each Member State and Monaco may allow Reporting Financial Institutions to use service providers to fulfil the reporting and due diligence obligations imposed on such Reporting Financial Institutions under domestic law, but those obligations shall remain the responsibility of the Reporting Financial Institutions.
- E. Each Member State and Monaco may allow Reporting Financial Institutions to apply the due diligence procedures for New Accounts to Pre-existing Accounts, and the due diligence procedures for High Value Accounts to Lower Value Accounts. Where a Member State or Monaco allows the use of New Account due diligence procedures for Pre-existing Accounts, the rules otherwise applicable to Pre-existing Accounts shall continue to apply.

SECTION III

DUE DILIGENCE FOR PRE-EXISTING INDIVIDUAL ACCOUNTS

- A. The following procedures apply for purposes of identifying Reportable Accounts among Pre-existing Individual Accounts.
- B. Lower Value Accounts. The following procedures apply with respect to Lower Value Accounts.
 - 1. Residence address. If the Reporting Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the Member State or Monaco or other jurisdiction in which the address is located for purposes of determining whether this individual Account Holder is a Reportable Person.
 - 2. Electronic record search. If the Reporting Financial Institution does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth in subparagraph B(1), the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the following indicia and apply subparagraphs B(3) to B(6):
 - (a) identification of the Account Holder as a resident of a Reportable Jurisdiction;
 - (b) current mailing or residence address (including a post office box) in a Reportable Jurisdiction;

- (c) one or more telephone numbers in a Reportable Jurisdiction and no telephone number in Monaco or the Member State of the Reporting Financial Institution, as the context requires;
 - (d) standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Reportable Jurisdiction;
 - (e) currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction; or
 - (f) a 'hold mail' instruction or 'in-care-of' address in a Reportable Jurisdiction if the Reporting Financial Institution does not have any other address on file for the Account Holder.
3. If none of the indicia listed in subparagraph B(2) are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more indicia being associated with the account, or the account becomes a High Value Account.
 4. If any of the indicia listed in subparagraphs B(2)(a) to (e) are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified, unless it elects to apply subparagraph B(6) and one of the exceptions in that subparagraph applies with respect to that account.
 5. If a 'hold mail' instruction or 'in-care-of' address is discovered in the electronic search and no other address and none of the other indicia listed in subparagraphs B(2)(a) to (e) are identified for the Account Holder, the Reporting Financial Institution must, in the order most appropriate to the circumstances, apply the paper record search described in subparagraph C(2), or seek to obtain from the Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution must report the account to the Competent Authority of its Member State or Monaco, as the context requires, as an undocumented account.
 6. Notwithstanding a finding of indicia under subparagraph B(2), a Reporting Financial Institution is not required to treat an Account Holder as a resident of a Reportable Jurisdiction if:
 - (a) the Account Holder information contains a current mailing or residence address in the Reportable Jurisdiction, one or more telephone numbers in that Reportable Jurisdiction (and no telephone number in Monaco or the Member State of the Reporting Financial Institution, as the context requires) or standing instructions (with respect to Financial Accounts other than Depository Accounts) to transfer funds to an account maintained in a Reportable Jurisdiction, and the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:
 - (i) a self-certification from the Account Holder's jurisdiction(s) of residence (a Member State, Monaco or other jurisdiction) that does not include such Reportable Jurisdiction; and
 - (ii) Documentary Evidence establishing the Account Holder's non-reportable status;
 - (b) the Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in the Reportable Jurisdiction, and the Reporting Financial Institution obtains, or has previously reviewed and maintains a record of:
 - (i) a self-certification from the Account Holder's jurisdiction(s) of residence (a Member State, Monaco or other jurisdiction) that does not include such Reportable Jurisdiction; or
 - (ii) Documentary Evidence establishing the Account Holder's non-reportable status.
- C. Enhanced Review Procedures for High Value Accounts. The following enhanced review procedures apply with respect to High Value Accounts.
1. Electronic record search. With respect to High Value Accounts, the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the indicia described in subparagraph B(2).

2. Paper record search. If the Reporting Financial Institution's electronically searchable databases include fields for, and capture all of the information described in, subparagraph C(3), a further paper record search is not required. If the electronic databases do not capture all of that information, then with respect to a High Value Account the Reporting Financial Institution must also review the current customer master file and, to the extent this information is not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Financial Institution within the last five years for any of the indicia described in subparagraph B(2):
 - (a) the most recent Documentary Evidence collected with respect to the account;
 - (b) the most recent account-opening contract or documentation;
 - (c) the most recent documentation obtained by the Reporting Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;
 - (d) any power of attorney or signature authority forms currently in effect; and
 - (e) any standing instructions (other than with respect to a Depository Account) to transfer funds currently in effect.
3. Exception applicable where databases contain sufficient information. A Reporting Financial Institution is not required to perform the paper record search described in subparagraph C(2) where the Reporting Financial Institution's electronically searchable information includes the following:
 - (a) the Account Holder's residence status;
 - (b) the Account Holder's residence address and mailing address currently on file with the Reporting Financial Institution;
 - (c) the Account Holder's telephone number(s) currently on file, if any, with the Reporting Financial Institution;
 - (d) in the case of Financial Accounts other than Depository Accounts, whether there are standing instructions to transfer funds from the account to another account (including an account at another branch of the Reporting Financial Institution or another Financial Institution);
 - (e) there is a current 'in-care-of' address or 'hold mail' instruction for the Account Holder; and
 - (f) there is a power of attorney or signatory authority for the account.
4. Relationship Manager Inquiry for Actual Knowledge. In addition to the electronic and paper record searches described in subparagraphs C(1) and (2), the Reporting Financial Institution must treat as a Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with that High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Reportable Person.
5. Effect of Finding Indicia.
 - (a) If none of the indicia listed in subparagraph B(2) are discovered in the enhanced review of High Value Accounts described in paragraph C, and the account is not identified as held by a Reportable Person in subparagraph C(4), then further action is not required until there is a change in circumstances that results in one or more indicia being associated with the account.
 - (b) If any of the indicia listed in subparagraphs B(2)(a) to (e) are discovered in the enhanced review of High Value Accounts described in paragraph C, or if there is a subsequent change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Reportable Jurisdiction for which an indicium is identified unless it elects to apply subparagraph B(6) and one of the exceptions in that subparagraph applies with respect to that account.

- (c) If a 'hold mail' instruction or 'in-care-of' address is discovered in the enhanced review of High Value Accounts described in paragraph C, and no other address and none of the other indicia listed in subparagraphs B(2)(a) to (e) are identified for the Account Holder, the Reporting Financial Institution must obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain such self-certification or Documentary Evidence, it must report the account to the Competent Authority of its Member State or Monaco, as the context requires, as an undocumented account.
6. If a Pre-existing Individual Account is not a High Value Account as of 31 December 2016, but becomes a High Value Account as of the last day of a subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in paragraph C with respect to such account within the calendar year following the year in which the account becomes a High Value Account. If, based on that review, such account is identified as a Reportable Account, the Reporting Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person.
7. Once a Reporting Financial Institution applies the enhanced review procedures described in paragraph C to a High Value Account, the Reporting Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in subparagraph C(4), to the same High Value Account in any subsequent year unless the account is undocumented where the Reporting Financial Institution should re-apply them annually until such account ceases to be undocumented.
8. If there is a change of circumstances with respect to a High Value Account that results in one or more indicia described in subparagraph B(2) being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Reportable Jurisdiction for which an indicium is identified unless it elects to apply subparagraph B(6) and one of the exceptions in that subparagraph applies with respect to that account.
9. A Reporting Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in a Reportable Jurisdiction, the Reporting Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply subparagraph B(6), is required to obtain the appropriate documentation from the Account Holder.
- D. Review of Pre-existing High Value Individual Accounts must be completed by 31 December 2017. Review of Pre-existing Lower Value Individual Accounts must be completed by 31 December 2018.
- E. Any Pre-existing Individual Account that has been identified as a Reportable Account under this Section must be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Reportable Person.

SECTION IV

DUE DILIGENCE FOR NEW INDIVIDUAL ACCOUNTS

The following procedures apply for purposes of identifying Reportable Accounts among New Individual Accounts.

- A. With respect to New Individual Accounts, upon account opening, the Reporting Financial Institution must obtain a self-certification (which may be part of the account opening documentation) that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.
- B. If the self-certification establishes that the Account Holder is resident for tax purposes in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account and the self-certification must also include the Account Holder's TIN with respect to such Reportable Jurisdiction (subject to paragraph D of Section I) and date of birth.

- C. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder.

SECTION V

DUE DILIGENCE FOR PREEXISTING ENTITY ACCOUNTS

The following procedures apply for purposes of identifying Reportable Accounts among Pre-existing Entity Accounts.

- A. Entity Accounts not required to be reviewed, identified or reported. Unless the Reporting Financial Institution elects otherwise, either with respect to all Pre-existing Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Pre-existing Entity Account with an aggregate account balance or value that does not exceed, as of 31 December 2016, USD 250 000 or an equivalent amount denominated in the domestic currency of a Member State or Monaco, is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds that amount as of the last day of any subsequent calendar year.
- B. Entity Accounts subject to review. A Pre-existing Entity Account that has an aggregate account balance or value that exceeds, as of 31 December 2016, USD 250 000 or an equivalent amount denominated in the domestic currency of a Member State or Monaco, and a Pre-existing Entity Account that does not exceed, as of 31 December 2016, that amount but the aggregate account balance or value of which exceeds such amount as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D.
- C. Entity Accounts with respect to which reporting is required. With respect to Pre-existing Entity Accounts described in paragraph B, only accounts that are held by one or more Entities that are Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons, shall be treated as Reportable Accounts.
- D. Review procedures for identifying Entity Accounts with respect to which reporting is required. For Pre-existing Entity Accounts described in paragraph B, a Reporting Financial Institution must apply the following review procedures to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons:
1. Determine whether the Entity is a Reportable Person.
 - (a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC procedures) to determine whether the information indicates that the Account Holder is resident in a Reportable Jurisdiction. For this purpose, information indicating that the Account Holder is resident in a Reportable Jurisdiction includes a place of incorporation or organisation, or an address in a Reportable Jurisdiction.
 - (b) If the information indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person.
 2. Determine whether the Entity is a Passive NFE with one or more Controlling Persons who are Reportable Persons. With respect to an Account Holder of a Pre-existing Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account.

In making these determinations the Reporting Financial Institution must follow the guidance in subparagraph D(2)(a) to (c) in the order most appropriate under the circumstances.

- (a) Determining whether the Account Holder is a Passive NFE. For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.
- (b) Determining the Controlling Persons of an Account Holder. For the purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC procedures.
- (c) Determining whether a Controlling Person of a Passive NFE is a Reportable Person. For the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on:
 - (i) information collected and maintained pursuant to AML/KYC Procedures in the case of a Pre-existing Entity Account held by one or more NFEs with an aggregate account balance or value that does not exceed USD 1 000 000 or an equivalent amount denominated in the domestic currency of a Member State or Monaco; or
 - (ii) a self-certification from the Account Holder or such Controlling Person of the jurisdiction(s) (a Member State, Monaco or other jurisdictions) in which the Controlling Person is resident for tax purposes.

E. Timing of review and additional procedures applicable to Pre-existing Entity Accounts.

1. Review of Pre-existing Entity Accounts with an aggregate account balance or value that exceeds, as of 31 December 2016, USD 250 000 or an equivalent amount denominated in the domestic currency of a Member State or Monaco, must be completed by 31 December 2018.
2. Review of Pre-existing Entity Accounts with an aggregate account balance or value that does not exceed, as of 31 December 2016, USD 250 000 or an equivalent amount denominated in the domestic currency of a Member State or Monaco, but exceeds that amount as of 31 December of a subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds such amount.
3. If there is a change of circumstances with respect to a Pre-existing Entity Account that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account in accordance with the procedures set forth in paragraph D.

SECTION VI

DUE DILIGENCE FOR NEW ENTITY ACCOUNTS

The following procedures apply for purposes of identifying Reportable Accounts among New Entity Accounts.

- A. Review procedures for identifying Entity Accounts with respect to which reporting is required. For New Entity Accounts, a Reporting Financial Institution must apply the following review procedures to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons:

1. Determine whether the Entity is a Reportable Person.
 - (a) Obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation

collected pursuant to AML/KYC procedures. If the Entity certifies that it has no residence for tax purposes, the Reporting Financial Institution may rely on the address of the principal office of the Entity to determine the residence of the Account Holder.

- (b) If the self-certification indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account unless it reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.
2. Determine whether the Entity is a Passive NFE with one or more Controlling Persons who are Reportable Persons. With respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs A(2)(a) to (c) in the order most appropriate under the circumstances.
- (a) Determining whether the Account Holder is a Passive NFE. For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must rely on a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in subparagraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.
 - (b) Determining the Controlling Persons of an Account Holder. For purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC procedures.
 - (c) Determining whether a Controlling Person of a Passive NFE is a Reportable Person. For purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on a self-certification from the Account Holder or such Controlling Person.

SECTION VII

SPECIAL DUE DILIGENCE RULES

The following additional rules apply in implementing the due diligence procedures described above:

- A. Reliance on Self-Certifications and Documentary Evidence. A Reporting Financial Institution may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.
- B. Alternative procedures for Financial Accounts held by individual beneficiaries of a Cash-Value Insurance Contract or an Annuity Contract and for a Group Cash-Value Insurance Contract or Group Annuity Contract. A Reporting Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash-Value Insurance Contract or an Annuity Contract receiving a death benefit is not a Reportable Person and may treat such Financial Account as other than a Reportable Account unless the Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person. A Reporting Financial Institution has reason to know that a beneficiary of a Cash-Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected by the Reporting Financial Institution and associated with the beneficiary contains indicia as described in paragraph B of Section III. If a Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person, the Reporting Financial Institution must follow the procedures in paragraph B of Section III.

A Member State or Monaco shall have the option to allow Reporting Financial Institutions to treat a Financial Account that is a member's interest in a Group Cash-Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to the

employee/certificate holder or beneficiary, if the Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract meets the following requirements:

- (a) the Group Cash-Value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employees/certificate holders;
- (b) the employee/certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the employee's death; and
- (c) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed USD 1 000 000 or an equivalent amount denominated in the domestic currency of a Member State or Monaco.

The term 'Group Cash-Value Insurance Contract' means a Cash-Value Insurance Contract that (i) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group; and (ii) charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group.

The term 'Group Annuity Contract' means an Annuity Contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group.

Before 1 January 2017, Member States shall communicate to Monaco and Monaco shall communicate to the European Commission whether they have exercised the option provided for in this point. The European Commission may coordinate the transmission of the communication from Member States to Monaco and the European Commission shall transmit the communication from Monaco to all Member States. All further changes to the exercise of that option by a Member State or Monaco shall be communicated in the same manner.

C. Account balance aggregation and currency rules

1. Aggregation of Individual Accounts. For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Financial Institution is required to aggregate all Financial Accounts managed by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.
2. Aggregation of Entity Accounts. For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and thus allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this subparagraph.
3. Special aggregation rule applicable to relationship managers. For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a Financial Account is a High Value Account, a Reporting Financial Institution is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.
4. Amounts read to include equivalent in other currencies. All amounts denominated in the domestic currency of a Member State or Monaco shall be read to include equivalent amounts in other currencies, as determined by domestic law.

SECTION VIII

DEFINED TERMS

The following terms have the meanings set forth below:

A. Reporting Financial Institution

1. The term 'Reporting Financial Institution' means any Member State Financial Institution or Monaco Financial Institution, as the context requires, that is not a Non-Reporting Financial Institution.
2. The term 'Participating Jurisdiction Financial Institution' means: (i) any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction; and (ii) any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.
3. The term 'Financial Institution' means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
4. The term 'Custodial Institution' means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20 % of the Entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.
5. The term 'Depository Institution' means any Entity that accepts deposits in the ordinary course of a banking or similar business.
6. The term 'Investment Entity' means any Entity:
 - (a) which primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
 - (i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
 - (ii) individual and collective portfolio management; or
 - (iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons;
 - or
 - (b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a)

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for the purposes of subparagraph A(6)(b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50 % of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. The term 'Investment Entity' does not include an Entity that is an Active NFE because that Entity meets any of the criteria in subparagraphs D(9)(d) to (g).

This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of 'financial institution' in the Financial Action Task Force Recommendations.

7. The term 'Financial Asset' includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term 'Financial Asset' does not include a non-debt, direct interest in real property.

8. The term 'Specified Insurance Company' means any Entity that is an insurance company (or the holding company of an insurance company) which issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

B. Non-Reporting Financial Institution

1. The term 'Non-Reporting Financial Institution' means any Financial Institution which is:

- (a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;
- (b) a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;
- (c) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in subparagraphs B(1)(a) and (b), and is defined in domestic law as a Non-Reporting Financial Institution, and, for Member States, is provided for in paragraph 7a of Article 8 of Council Directive 2011/16/EU on administrative cooperation in the field of taxation and communicated to Monaco and for Monaco, is communicated to the European Commission, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of this Agreement;
- (d) an Exempt Collective Investment Vehicle; or
- (e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.

2. The term 'Governmental Entity' means the government of a Member State, Monaco or other jurisdiction, any political subdivision of a Member State, Monaco or other jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a Member State, Monaco or other jurisdiction or of any one or more of the foregoing (each, a 'Governmental Entity'). This category is comprised of the integral parts, controlled entities, and political subdivisions of a Member State, Monaco or other jurisdiction.

- (a) An 'integral part' of a Member State, Monaco or other jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a Member State, Monaco or other jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the Member State, Monaco or other jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.
- (b) A controlled entity means an Entity which is separate in form from the Member State, Monaco or other jurisdiction or which otherwise constitutes a separate juridical entity, provided that:
 - (i) the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;
 - (ii) the Entity's net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and
 - (iii) the Entity's assets vest in one or more Governmental Entities upon dissolution.
- (c) Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a Governmental Entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

3. The term 'International Organisation' means any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation) (i) that is comprised primarily of governments; (ii) that has in effect a headquarters or substantially similar agreement with the Member State, Monaco or the other jurisdiction; and (iii) the income of which does not inure to the benefit of private persons.
4. The term 'Central Bank' means an institution that is by law or government sanction the principal authority, other than the government of the Member State, Monaco or other jurisdiction, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of the Member State, Monaco or the other jurisdiction, whether or not owned in whole or in part by the Member State, Monaco or the other jurisdiction.
5. The term 'Broad Participation Retirement Fund' means a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries who are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the Fund:
 - (a) does not have a single beneficiary with a right to more than 5 % of the fund's assets;
 - (b) is subject to government regulation and provides information reporting to the tax authorities; and
 - (c) satisfies at least one of the following requirements:
 - (i) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;
 - (ii) the fund receives at least 50 % of its total contributions (other than transfers of assets from other plans described in subparagraphs B(5) to (7) or from retirement and pension accounts described in subparagraph C(17)(a)) from the sponsoring employers;
 - (iii) distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in subparagraphs B(5) to (7) or retirement and pension accounts described in subparagraph C(17)(a)), or penalties apply to distributions or withdrawals made before such specified events; or
 - (iv) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed annually USD 50 000 or an equivalent amount denominated in the domestic currency of a Member State or Monaco applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.
6. The term 'Narrow Participation Retirement Fund' means a fund established to provide retirement, disability, or death benefits to beneficiaries who are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that:
 - (a) the fund has fewer than 50 participants;
 - (b) the fund is sponsored by one or more employers that are not Investment Entities or Passive NFEs;
 - (c) the employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in subparagraph C(17)(a)) are limited by reference to earned income and compensation of the employee, respectively;
 - (d) participants that are not residents of the jurisdiction (whether a Member State or Monaco) in which the fund is established are not entitled to more than 20 % of the fund's assets; and
 - (e) the fund is subject to government regulation and provides information reporting to the tax authorities.
7. The term 'Pension Fund of a Governmental Entity, International Organisation or Central Bank' means a fund established by a Governmental Entity, International Organisation or Central Bank to provide retirement, disability, or death benefits to beneficiaries or participants who are current or former employees (or persons designated by such employees), or who are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the Governmental Entity, International Organisation or Central Bank.

8. The term 'Qualified Credit Card Issuer' means a Financial Institution satisfying the following requirements:
- (a) the Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
 - (b) beginning on or before 1 January 2017, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000 or an equivalent amount denominated in the domestic currency of a Member State or Monaco, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.
9. The term 'Exempt Collective Investment Vehicle' means an Investment Entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through individuals or Entities that are not Reportable Persons, except a Passive NFE with Controlling Persons who are Reportable Persons.

An Investment Entity that is regulated as a collective investment vehicle does not fail to qualify under subparagraph B(9) as an Exempt Collective Investment Vehicle solely because the collective investment vehicle has issued physical shares in bearer form, provided that:

- (a) the collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after 31 December 2016;
- (b) the collective investment vehicle retires all such shares upon surrender;
- (c) the collective investment vehicle performs the due diligence procedures set forth in Sections II to VII and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and
- (d) the collective investment vehicle has in place policies and procedures to ensure that such shares are redeemed or immobilised as soon as possible and in any event prior to 1 January 2019.

C. Financial Account

1. The term 'Financial Account' means an account maintained by a Financial Institution, and includes a Depository Account, a Custodial Account and:
- (a) in the case of an Investment Entity, any equity or debt interest in the Financial Institution. Notwithstanding the foregoing, the term 'Financial Account' does not include any equity or debt interest in an Entity that is an Investment Entity solely because it: (i) renders investment advice to, and acts on behalf of, or (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity;
 - (b) in the case of a Financial Institution not described in subparagraph C(1)(a), any equity or debt interest in the Financial Institution, if the class of interests was established with a purpose of avoiding reporting in accordance with Section I; and
 - (c) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an Excluded Account.

The term 'Financial Account' does not include any account that is an Excluded Account.

2. The term 'Depository Account' includes any commercial, checking, savings, time or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.

3. The term 'Custodial Account' means an account (other than an Insurance Contract or Annuity Contract) which holds one or more Financial Assets for the benefit of another person.
4. The term 'Equity Interest' means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.
5. The term 'Insurance Contract' means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.
6. The term 'Annuity Contract' means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction (whether a Member State, Monaco or other jurisdiction) in which the contract was issued, and under which the issuer agrees to make payments for a term of years.
7. The term 'Cash Value Insurance Contract' means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value.
8. The term 'Cash Value' means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term 'Cash Value' does not include an amount payable under an Insurance Contract:
 - (a) solely by reason of the death of an individual insured under a life insurance contract;
 - (b) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
 - (c) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;
 - (d) as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in subparagraph C(8)(b); or
 - (e) as a return of an advance premium or premium deposit for an Insurance Contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.
9. The term 'Pre-existing Account' means:
 - (a) a Financial Account maintained by a Reporting Financial Institution as of 31 December 2016;
 - (b) a Member State or Monaco shall have the option of extending the term 'Pre-existing Account' to mean also any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, if:
 - (i) the Account Holder also holds with the Reporting Financial Institution, or with a Related Entity within the same jurisdiction (a Member State or Monaco) as the Reporting Financial Institution, a Financial Account that is a Pre-existing Account under subparagraph C(9)(a);

- (ii) the Reporting Financial Institution, and, as applicable, the Related Entity within the same jurisdiction (a Member State or Monaco) as the Reporting Financial Institution, treats both of the aforementioned Financial Accounts, and any other Financial Accounts of the Account Holder that are treated as Pre-existing Accounts under this point C 9(b), as a single Financial Account for purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds;
- (iii) with respect to a Financial Account that is subject to AML/KYC Procedures, the Reporting Financial Institution is permitted to satisfy such AML/KYC Procedures for the Financial Account by relying upon the AML/KYC Procedures performed for the Pre-existing Account described in subparagraph C(9)(a); and
- (iv) the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for the purposes of this Agreement.

Before 1 January 2017, Member States shall communicate to Monaco and Monaco shall communicate to the European Commission whether they have exercised the option provided for in this point. The European Commission may coordinate the transmission of the communication from Member States to Monaco and the European Commission shall transmit the communication from Monaco to all Member States. All further changes to the exercise of that option by a Member State or Monaco shall be communicated in the same manner.

10. The term 'New Account' means a Financial Account maintained by a Reporting Financial Institution opened on or after 1 January 2017, unless it is treated as a Pre-existing Account under the extended definition of Pre-existing Account in subparagraph C(9).
11. The term 'Pre-existing Individual Account' means a Pre-existing Account held by one or more individuals.
12. The term 'New Individual Account' means a New Account held by one or more individuals.
13. The term 'Pre-existing Entity Account' means a Pre-existing Account held by one or more Entities.
14. The term 'Lower Value Account' means a Pre-existing Individual Account with an aggregate balance or value as of 31 December 2016 that does not exceed USD 1 000 000 or an equivalent amount denominated in the domestic currency of a Member State or Monaco.
15. The term 'High Value Account' means a Pre-existing Individual Account with an aggregate balance or value that exceeds, as of 31 December 2016 or 31 December of any subsequent year, USD 1 000 000 or an equivalent amount denominated in the domestic currency of a Member State or Monaco.
16. The term 'New Entity Account' means a New Account held by one or more Entities.
17. The term 'Excluded Account' means any of the following accounts:
 - (a) a retirement or pension account that satisfies the following requirements:
 - (i) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
 - (ii) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
 - (iii) information reporting is required to the tax authorities with respect to the account;
 - (iv) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and

- (v) either (i) annual contributions are limited to USD 50 000 or an equivalent amount denominated in the domestic currency of each Member State or Monaco or less, or (ii) there is a maximum lifetime contribution limit to the account of USD 1 000 000 or an equivalent amount denominated in the domestic currency of a Member State or Monaco or less, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of subparagraph C(17)(a)(v) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of subparagraph C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of subparagraphs B(5) to (7);

- (b) an account that satisfies the following requirements:

- (i) the account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement;
- (ii) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
- (iii) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
- (iv) annual contributions are limited to USD 50 000 or an equivalent amount denominated in the domestic currency of a Member State or Monaco or less, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of subparagraph C(17)(b)(iv) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of subparagraph C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of subparagraphs B(5) to (7);

- (c) a life insurance contract with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:

- (i) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
- (ii) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
- (iii) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
- (iv) the contract is not held by a transferee for value;

- (d) an account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate;

- (e) an account established in connection with any of the following:

- (i) a court order or judgment.

- (ii) a sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:
 - the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a Financial Asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
 - the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
 - the assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
 - the account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset; and
 - the account is not associated with an account described in subparagraph C(17)(f);
- (iii) an obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time;
- (iv) an obligation of a Financial Institution solely to facilitate the payment of taxes at a later time;
- (f) a Depository Account that satisfies the following requirements:
 - (i) the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and
 - (ii) beginning on or before 1 January 2017, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000 or an equivalent amount denominated in the domestic currency of a Member State or Monaco, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns;
- (g) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in subparagraphs C(17)(a) to (f), and is defined in domestic law as an Excluded Account and, for Member States, is provided for in Article 8(7a) of Council Directive 2011/16/EU on administrative cooperation in the field of taxation and communicated to Monaco, and for Monaco, is communicated to the European Commission, provided that the status of such account as an Excluded Account does not frustrate the purposes of this Agreement.

D. Reportable Account

1. The term 'Reportable Account' means an account held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person, provided it has been identified as such pursuant to the due diligence procedures described in Sections II to VII.
2. The term 'Reportable Person' means a Reportable Jurisdiction Person other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a Related Entity of a corporation described in clause (i); (iii) a Governmental Entity; (iv) an International Organisation; (v) a Central Bank; or (vi) a Financial Institution.

3. The term 'Reportable Jurisdiction Person' means an individual or Entity that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a Reportable Jurisdiction. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement, which has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.
4. The term 'Reportable Jurisdiction' means Monaco with regard to a Member State or a Member State with regard to Monaco in the context of the obligation to provide the information specified in Section I.
5. The term 'Participating Jurisdiction' with regard to a Member State or Monaco means:
 - (a) any Member State with regard to reporting to Monaco, or
 - (b) Monaco with regard to reporting to a Member State, or
 - (c) any other jurisdiction: (i) with which the relevant Member State or Monaco, as the context requires, has an agreement in place pursuant to which that other jurisdiction will provide the information specified in Section I, and (ii) which is identified in a list published by that Member State or by Monaco, as the context requires, and notified to Monaco or to the European Commission respectively.
 - (d) with regard to Member States, any other jurisdiction (i) with which the European Union has an agreement in place pursuant to which that other jurisdiction will provide the information specified in Section I, and (ii) which is identified in a list published by the European Commission.
6. The term 'Controlling Persons' means the natural persons who exercise control over an Entity. In the case of a trust, that term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term 'Controlling Persons' must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.
7. The term 'NFE' means any Entity that is not a Financial Institution.
8. The term 'Passive NFE' means any: (i) NFE that is not an Active NFE; or (ii) an Investment Entity described in subparagraph A(6)(b) that is not a Participating Jurisdiction Financial Institution.
9. The term 'Active NFE' means any NFE that meets any of the following criteria:
 - (a) less than 50 % of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 % of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
 - (b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
 - (c) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
 - (d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
 - (e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;

- (f) the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- (g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or
- (h) the NFE meets all of the following requirements:
 - (i) it is established and operated in its jurisdiction of residence (a Member State, Monaco or other jurisdiction) exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence (a Member State, Monaco or other jurisdiction) and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
 - (ii) it is exempt from income tax in its jurisdiction of residence (a Member State, Monaco or other jurisdiction);
 - (iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
 - (iv) the applicable laws of the NFE's jurisdiction of residence (a Member State, Monaco or other jurisdiction) or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and
 - (v) the applicable laws of the NFE's jurisdiction of residence (a Member State, Monaco or other jurisdiction) or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's jurisdiction of residence (a Member State, Monaco or other jurisdiction) or any political subdivision thereof.

E. Miscellaneous

1. The term 'Account Holder' means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of this Annex, and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.
2. The term 'AML/KYC Procedures' means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such Reporting Financial Institution is subject.
3. The term 'Entity' means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.
4. An Entity is a 'Related Entity' of another Entity if (i) either Entity controls the other Entity, (ii) the two Entities are under common control, or (iii) the two Entities are Investment Entities described in subparagraph A(6)(b) under common management, and such management fulfils the due diligence obligations of such Investment Entities. For this purpose control includes direct or indirect ownership of more than 50 per cent of the vote and value in an Entity.

5. The term 'TIN' means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number).
6. The term 'Documentary Evidence' includes any of the following:
 - (a) a certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the jurisdiction (a Member State, Monaco or other jurisdiction) in which the payee claims to be a resident;
 - (b) with respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes;
 - (c) with respect to an Entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the jurisdiction (a Member State, Monaco or other jurisdiction) in which it claims to be a resident or the jurisdiction (a Member State, Monaco or other jurisdiction) in which the Entity was incorporated or organised;
 - (d) any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report.

With respect to a Pre-existing Entity Account, each Member State or Monaco shall have the option to allow Reporting Financial Institutions to use as Documentary Evidence any classification in the Reporting Financial Institution's records with respect to the Account Holder that was determined based on a standardised industry coding system, that was recorded by the Reporting Financial Institution consistent with its normal business practices for purposes of AML/KYC Procedures or another regulatory purposes (other than for tax purposes) and that was implemented by the Reporting Financial Institution prior to the date used to classify the Financial Account as a Pre-existing Account, provided that the Reporting Financial Institution does not know or does not have reason to know that such classification is incorrect or unreliable. The term 'standardised industry coding system' means a coding system used to classify establishments by business type for purposes other than tax purposes.

Before 1 January 2017, Member States shall communicate to Monaco and Monaco shall communicate to the European Commission whether they have exercised the option provided for in this point. The European Commission may coordinate the transmission of the communication from Member States to Monaco and the European Commission shall transmit the communication from Monaco to all Member States. All further changes to the exercise of that option by a Member State or Monaco shall be communicated in the same manner.

SECTION IX

EFFECTIVE IMPLEMENTATION

Each Member State and Monaco must have rules and administrative procedures in place to ensure effective implementation of, and compliance with, the reporting and due diligence procedures set out above including:

- (a) rules to prevent any Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures;
 - (b) rules requiring Reporting Financial Institutions to keep records of the steps undertaken and any evidence relied upon for the performance of the reporting and due diligence procedures and adequate measures to obtain those records;
 - (c) administrative procedures to verify Reporting Financial Institutions' compliance with the reporting and due diligence procedures; administrative procedures to follow up with a Reporting Financial Institution when undocumented accounts are reported;
 - (d) administrative procedures to ensure that the Entities and accounts defined in domestic law as Non-Reporting Financial Institutions and Excluded Accounts continue to have a low risk of being used to evade tax; and
 - (e) effective enforcement provisions to address non-compliance.
-

ANNEX II

COMPLEMENTARY REPORTING AND DUE DILIGENCE RULES FOR FINANCIAL ACCOUNT INFORMATION**1. Change in circumstances**

A 'change in circumstances' includes any change that results in the addition of information relevant to a person's status or otherwise conflicts with such person's status. In addition, a change in circumstances includes any change or addition of information to the Account Holder's account (including the addition, substitution, or other change of an Account Holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules described in subparagraphs C(1) to (3) of Section VII of Annex I) if such change or addition of information affects the status of the Account Holder.

If a Reporting Financial Institution has relied on the residence address test described in subparagraph B(1) of Section III of Annex I and there is a change in circumstances that causes the Reporting Financial Institution to know or have reason to know that the original Documentary Evidence (or other equivalent documentation) is incorrect or unreliable, the Reporting Financial Institution must, by the latest on the last day of the relevant calendar year or other appropriate reporting period, or 90 calendar days following the notice or discovery of such change in circumstances, obtain a self-certification and new Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain the self-certification and new Documentary Evidence by such date, the Reporting Financial Institution must apply the electronic record search procedure described in subparagraphs B(2) to (6) of Section III of Annex I.

2. Self-certification for New Entity Accounts

With respect to New Entity Accounts, for the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may only rely on a self-certification from either the Account Holder or the Controlling Person.

3. Residence of a Financial Institution

A Financial Institution is 'resident' in a Member State, Monaco or another Participating Jurisdiction if it is subject to the jurisdiction of such Member State, Monaco or another Participating Jurisdiction (i.e., the Participating Jurisdiction is able to enforce reporting by the Financial Institution). In general, where a Financial Institution is resident for tax purposes in a Member State, Monaco or another Participating Jurisdiction, it is subject to the jurisdiction of such Member State, Monaco or another Participating Jurisdiction and it is, thus, a Member State Financial Institution, Monaco Financial Institution or another Participating Jurisdiction Financial Institution. In the case of a trust that is a Financial Institution (irrespective of whether it is resident for tax purposes in a Member State, Monaco or another Participating Jurisdiction), the trust is considered to be subject to the jurisdiction of a Member State, Monaco or another Participating Jurisdiction if one or more of its trustees are resident in such Member State, Monaco or another Participating Jurisdiction except if the trust reports all the information required to be reported pursuant to this Agreement or another agreement implementing the Global Standard with respect to Reportable Accounts maintained by the trust to another Participating Jurisdiction (a Member State, Monaco or another Participating Jurisdiction), because it is resident for tax purposes in such other Participating Jurisdiction. However, where a Financial Institution (other than a trust) does not have a residence for tax purposes (e.g., because it is treated as fiscally transparent, or it is located in a jurisdiction that does not have an income tax), it is considered to be subject to the jurisdiction of a Member State, Monaco or another Participating Jurisdiction and it is, thus, a Member State, Monaco or another Participating Jurisdiction Financial Institution if:

- (a) it is incorporated under the laws of the Member State, Monaco or another Participating Jurisdiction;
- (b) it has its place of management (including effective management) in the Member State, Monaco or another Participating Jurisdiction; or
- (c) it is subject to financial supervision in the Member State, Monaco or another Participating Jurisdiction.

Where a Financial Institution (other than a trust) is resident in two or more Participating Jurisdictions (a Member State, Monaco or another Participating Jurisdiction), such Financial Institution will be subject to the reporting and due diligence obligations of the Participating Jurisdiction in which it maintains the Financial Account(s).

4. Accounts maintained by a Financial Institution

In general, an account should be considered to be an account maintained by a Financial Institution:

- (a) in the case of a Custodial Account, by the Financial Institution that holds custody over the assets in the account (including a Financial Institution that holds assets in the name of a broker for an Account Holder in such institution);
- (b) in case of a Depository Account, by the Financial Institution that is obligated to make payments with respect to the account (excluding an agent of a Financial Institution regardless of whether such agent is a Financial Institution);
- (c) in the case of any equity or debt interest in a Financial Institution that constitutes a Financial Account, by such Financial Institution;
- (d) in the case of a Cash Value Insurance Contract or an Annuity Contract, by the Financial Institution that is obligated to make payments with respect to the contract.

5. Trusts that are Passive NFEs

An Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes, according to subparagraph D(3) of Section VIII of Annex I, shall be treated as resident in the jurisdiction in which its place of effective management is situated. For these purposes, a legal person or a legal arrangement is considered 'similar' to a partnership and a limited liability partnership where it is not treated as a taxable unit in a Reportable Jurisdiction under the tax laws of such Reportable Jurisdiction. However, in order to avoid duplicate reporting (given the wide scope of the term 'Controlling Persons' in the case of trusts), a trust that is a Passive NFE may not be considered a similar legal arrangement.

6. Address of Entity's principal office

One of the requirements described in subparagraph E(6)(c) of Section VIII of Annex I is that, with respect to an Entity, the official documentation includes either the address of the Entity's principal office in the Member State, Monaco or other jurisdiction in which it claims to be a resident or the Member State, Monaco or other jurisdiction in which the Entity was incorporated or organised. The address of the Entity's principal office is generally the place in which its place of effective management is situated. The address of a Financial Institution with which the Entity maintains an account, a post office box, or an address used solely for mailing purposes is not the address of the Entity's principal office unless such address is the only address used by the Entity and appears as the Entity's registered address in the Entity's organisational documents. Further, an address that is provided subject to instructions to hold all mail to that address is not the address of the Entity's principal office.

ANNEX III

ADDITIONAL DATA PROTECTION SAFEGUARDS REGARDING THE TREATMENT OF THE DATA COLLECTED AND EXCHANGED UNDER THIS AGREEMENT

1. Definitions

The following terms and expressions shall have the meaning assigned to them hereinafter when used under this Agreement:

- (a) 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity;

- (b) 'processing' means any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission or transfer, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

2. Non-discrimination

The Contracting Parties shall ensure that the safeguards applicable to the processing of personal data under this Agreement and relevant national laws apply to all individuals without discrimination, in particular on the basis of nationality or country of residence or physical appearance.

3. Data

The data processed by the Contracting Parties under this Agreement shall be relevant, necessary and proportionate to the purposes set out in this Agreement.

The Contracting Parties shall not exchange personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, or data concerning the health or sex life of the individual.

4. Right to information, right of access and rectification and erasure of data

Where the information is used for other purposes within the receiving jurisdiction or is transmitted by the receiving jurisdiction to a third jurisdiction (a Member State or Monaco) in accordance with Article 6(5) of the Agreement, the Competent Authority of the jurisdiction receiving the information and using it for other purposes or forwarding it to a third jurisdiction shall inform the persons concerned. This information shall be provided in sufficient time for the individual(s) concerned to exercise their data protection rights and, in any case, before the receiving jurisdiction has used the information for other purposes or transmitted it to the third jurisdiction.

With respect to any personal data processed under this Agreement, any individual shall have the right to request access to personal data relating to them that are processed by the Reporting Financial Institutions and/or the Competent Authorities and to rectify such data where they are inaccurate. Where the data is unlawfully processed the individual may request their erasure.

To facilitate the exercise of this right, each individual shall be entitled to submit requests for access to and rectification and/or erasure of their data; these requests shall be addressed to the other Competent Authority concerned through their own Competent Authority.

The requested Competent Authority shall provide access to the relevant data and, where appropriate, update and/or correct any inaccurate or incomplete data.

5. Right of redress

With respect to any personal data processed under this Agreement, any individual shall have the right to effective administrative and judicial redress regardless of their nationality and country of residence in either or all of the jurisdictions involved.

6. Automated processing

The Competent Authorities shall not take any decision which produces adverse legal effects concerning an individual or significantly affects them and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to them.

7. Transfers to authorities of third countries

A Competent Authority may occasionally transfer personal data received pursuant to this Agreement to public authorities of third jurisdictions, other than the Member States and Monaco, if all of the following circumstances apply:

- (a) the transfer is necessary for the purposes specified in Article 6(4) in the receiving third jurisdiction and the data will be used by the receiving third jurisdiction only for such purposes;
- (b) the data are relevant and proportionate to the purposes for which they are transferred;
- (c) the competences of the third jurisdiction authority are directly related to the purposes referred to in Article 6(4);
- (d) the receiving third jurisdiction guarantees a level of protection of personal data equivalent to that established by this Agreement, and undertakes not to transfer the received data to any third parties;
- (e) the Competent Authority that provided the information has given prior authorisation in accordance with the conditions set out in Article 6(5); and
- (f) the data subject has been informed of the transfer.

Any other transfers of information received pursuant to this Agreement to third parties is prohibited.

8. Data integrity and security

With respect to the information processed under this Agreement, the Contracting Parties and the Reporting Financial Institutions shall have in place:

- (a) appropriate safeguards to ensure that such information remains confidential and is used solely for the purposes and by the persons or authorities referred to in Article 6;
- (b) the infrastructure for an effective information-exchange relationship (including established processes for ensuring timely, accurate, secure and confidential information exchanges, effective and reliable communications, and capabilities to promptly resolve questions and concerns about exchanges or requests for exchanges and to administer the provisions of Article 4 of this Agreement);
- (c) technical and organisational measures to prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, or any other unlawful form of processing; and
- (d) technical and organisational measures for the rectification of any inaccurate information and the deletion of information for which there is no legal justification for its retention.

The Contracting Parties shall ensure that the Reporting Financial Institutions shall without delay notify the Competent Authority in their jurisdiction when they have reasons to believe that they have reported any incorrect or incomplete information to such Competent Authority. The notified Competent Authority shall take all appropriate measures available under its domestic law to address the errors described in the notice.

9. Sanctions

The Contracting Parties shall ensure that any infringement of the provisions on the protection of personal data set out in this Agreement shall be subject to effective and dissuasive sanctions.

10. Oversight

The processing of personal data by Reporting Financial Institutions and Competent Authorities under this Agreement shall be subject to the supervision of: (i) for Member States, the national data protection supervisory authorities established under their domestic laws implementing Directive 95/46/EC and (ii) for Monaco, the *Commission de contrôle des informations nominatives* (Monaco's Data Protection Authority).

Those data protection supervisory authorities of the Member States and Monaco must have effective powers of oversight, investigation, intervention and review, and must have the power to refer violations of law for legal action, where appropriate. They shall in particular ensure that complaints relating to non-compliance are received, investigated, responded to, and appropriately redressed.

ANNEX IV

LIST OF COMPETENT AUTHORITIES OF THE CONTRACTING PARTIES

For the purposes of this Agreement, the authorities listed below are 'Competent Authorities' of the Contracting Parties:

- (a) in the Principality of Monaco: le Conseiller de gouvernement-Ministre des finances et de l'économie ou un représentant autorisé;
- (b) in the Kingdom of Belgium: de Minister van Financiën/le Ministre des Finances or an authorised representative;
- (c) in the Republic of Bulgaria: Изпълнителният директор на Националната агенция за приходите or an authorised representative;
- (d) in the Czech Republic: Ministr financí or an authorised representative,
- (e) in the Kingdom of Denmark: Skatteministeren or an authorised representative;
- (f) in the Federal Republic of Germany: der Bundesminister der Finanzen or an authorised representative;
- (g) in the Republic of Estonia: Rahandusminister or an authorised representative;
- (h) in the Hellenic Republic: Ο Υπουργός Οικονομίας και Οικονομικών or an authorised representative;
- (i) in the Kingdom of Spain: el Ministro de Economía y Hacienda or an authorised representative;
- (j) in the French Republic: le Ministre chargé du budget or an authorised representative;
- (k) in the Republic of Croatia: Ministar financija or an authorised representative;
- (l) in Ireland: the Revenue Commissioners or their authorised representative,
- (m) in the Italian Republic: il Direttore Generale delle Finanze or an authorised representative;
- (n) in the Republic of Cyprus: Υπουργός Οικονομικών or an authorised representative;
- (o) in the Republic of Latvia: Finanšu ministrs or an authorised representative;
- (p) in the Republic of Lithuania: Finansų ministras or an authorised representative;
- (q) in the Grand Duchy of Luxembourg: le Ministre des Finances or an authorised representative;
- (r) in Hungary: a pénzügyminiszter or an authorised representative;

- (s) in the Republic of Malta: il-Ministru responsabbli għall-Finanzi or an authorised representative;
- (t) in the Kingdom of the Netherlands: de Minister van Financiën or an authorised representative;
- (u) in the Republic of Austria: der Bundesminister für Finanzen or an authorised representative;
- (v) in the Republic of Poland: Minister Finansów or an authorised representative;
- (w) in the Portuguese Republic: o Ministro das Finanças or an authorised representative;
- (x) in Romania: Președintele Agenției Naționale de Administrare Fiscală or an authorised representative;
- (y) in the Republic of Slovenia: Minister za finance or an authorised representative;
- (z) in the Slovak Republic: Minister financií or an authorised representative;
- (aa) in the Republic of Finland: Valtiovarainministeriö/Finansministeriet or an authorised representative;
- (ab) in the Kingdom of Sweden: Chefen för Finansdepartementet or an authorised representative;
- (ac) in the United Kingdom of Great Britain and Northern Ireland and in the European territories for whose external relations the United Kingdom is responsible: the Commissioners of Inland Revenue or their authorised representative and the competent authority in Gibraltar, which the United Kingdom will designate in accordance with the Agreed Arrangements relating to Gibraltar authorities in the context of EU instruments and related treaties notified to the Member States and institutions of the European Union of 19 April 2000, a copy of which shall be notified to the Principality of Monaco by the Secretary General of the Council of the European Union, and which shall apply to this Agreement.’.

Article 2

Entry into force and application

1. This Amending Protocol is concluded subject to its ratification or approval by the Contracting Parties in accordance with their internal procedures. The Contracting Parties shall notify each other of the completion of these procedures. This Amending Protocol shall enter into force on the first day of the second month following the last notification.
2. Subject to the fulfilment of the institutional procedures by the Principality of Monaco and of those procedures required by European Union law for the conclusion of international agreements, the Principality of Monaco and the European Union, as the context requires, will implement and effectively apply the Agreement resulting from this Amending Protocol from 1 January 2017 and notify each other accordingly.
3. Notwithstanding paragraphs 1 and 2, the Contracting Parties shall provisionally apply this Amending Protocol pending its entry into force. Such provisional application shall commence on 1 January 2017, subject to notification by each of the Contracting Parties to the other by 31 December 2016 of the completion of its respective internal procedures necessary for such provisional application.
4. Notwithstanding paragraphs 2 and 3, the following obligations under the Agreement in the form prior to its amendment by this Amending Protocol shall continue to apply, as follows:
 - (a) the obligations of the Principality of Monaco and the underlying obligations of paying agents established therein referred to in Articles 8 and 9 of the Agreement in the form prior to its amendment by this Amending Protocol shall continue to apply until 30 June 2017 or until those obligations have been fulfilled;

- (b) the obligations of Member States referred to in Article 10 of the Agreement in the form prior to its amendment by this Amending Protocol with regard to withholding tax levied during 2016 and previous years shall continue to apply until those obligations have been fulfilled.

Article 3

The Agreement is supplemented by a Protocol with the following content:

'Protocol to the Agreement between the European Union and the Principality of Monaco on the exchange of financial account information to improve international tax compliance in accordance with the Standard for Automatic Exchange of Financial Account Information developed by the Organisation for Economic Cooperation and Development (OECD).

On the occasion of the signature of this Amending Protocol between the European Union and the Principality of Monaco the duly authorised undersigned have agreed the following provisions which shall form an integral part of this Agreement as amended by this Amending Protocol:

1. It is understood that an exchange of information under Article 5 of this Agreement will be requested only once the requesting State (a Member State or Monaco) has exhausted all regular sources of information available under the internal taxation procedure.
2. It is understood that the Competent Authority of the requesting State (a Member State or Monaco) shall provide the following information to the Competent Authority of the requested State (respectively, Monaco or a Member State) when making a request for information under Article 5 of this Agreement:
 - (a) the identity of the person under examination or investigation;
 - (b) the period of time for which the information is requested;
 - (c) a statement of the information sought, including its nature and the form in which the requesting State wishes to receive the information from the requested State;
 - (d) the tax purpose for which the information is sought;
 - (e) to the extent known, the name and address of any person believed to be in possession of the requested information.
3. It is understood that the reference to the standard of 'foreseeable relevance' is intended to provide for an exchange of information under Article 5 of this Agreement to the widest possible extent and, at the same time, to clarify that Member States and Monaco are not at liberty to engage in 'fishing expeditions' or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While paragraph 2 contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, nevertheless clauses (i) to (v) of that paragraph are not to be interpreted in order to frustrate effective exchange of information. The standard of 'foreseeable relevance' can be met both in cases dealing with one taxpayer (whether identified by name or otherwise) or several taxpayers (whether identified by name or otherwise).
4. It is understood that this Agreement does not include the exchange of information on a spontaneous basis.
5. It is understood that in case of an exchange of information under Article 5 of this Agreement, the administrative procedural rules regarding taxpayers' rights provided for in the requested State (a Member State or Monaco) remain applicable. It is further understood that these provisions aim at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process.'

Article 4

Languages

This Amending Protocol is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovakian, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have hereunto set their hands.

Съставено в Брюксел на дванадесети юли през две хиляди и шестнадесета година.

Hecho en Bruselas, el doce de julio de dos mil dieciséis.

V Bruselu dne dvanáctého července dva tisíce šestnáct.

Udfærdiget i Bruxelles den tolvte juli to tusind og seksten.

Geschehen zu Brüssel am zwölften Juli zweitausendsechzehn.

Kahe tuhande kuueteistkümnenda aasta juulikuu kaheteistkümnendal päeval Brüsselis.

Έγινε στις Βρυξέλλες, στις δώδεκα Ιουλίου δύο χιλιάδες δεκαέξι.

Done at Brussels on the twelfth day of July in the year two thousand and sixteen.

Fait à Bruxelles, le douze juillet deux mille seize.

Sastavljeno u Bruxellesu dvanaestog srpnja godine dvije tisuće šesnaeste.

Fatto a Bruxelles, addì dodici luglio duemilasedici.

Briselē, divi tūkstoši sešpadsmitā gada divpadsmitajā jūlijā.

Priimta du tūkstančiai šešiolikų metų liepos dvyliktą dieną Briuselyje.

Kelt Brüsszelben, a kétezer-tizenhatodik év július havának tizenkettedik napján.

Magħmul fi Brussell, fit-tnax-il jum ta' Lulju fis-sena elfejn u sittax.

Gedaan te Brussel, twaalf juli tweeduizend zestien.

Sporządzono w Brukseli dnia dwunastego lipca roku dwa tysiące szesnastego.

Feito em Bruxelas, em doze de julho de dois mil e dezasseis.

Întocmit la Bruxelles la doisprezece iulie două mii șaisprezece.

V Bruseli dvanásteho júla dvetisícšestnást.

V Bruslju, dne dvanajstega julija leta dva tisoč šestnajst.

Tehty Brysselissä kahdentenatoista päivänä heinäkuuta vuonna kaksituhattakuusitoista.

Som skedde i Bryssel den tolfte juli 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 Europejską uniję
Per l'Unione europea
Eiropas Savienības vārdā –
Europos Sąjungos vardu
Az Európai Unió részéről
Għall-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



Pierre Telle

За Княжество Монако
Por el Principado de Mónaco
Za Monacké knížectví
For Fyrstendømmet Monaco
Für das Fürstentum Monaco
Monaco Vürstiriigi nimel
Για το Πριγκιπάτο του Μονακό
For the Principality of Monaco
Pour la Principauté de Monaco
Za Kneževinu Monako
Per il Principato di Monaco
Monako Firstistes vārdā –
Monako Kunigaikštystės vardu
A Monacói Hercegség részéről
Għall-Prinċipat ta' Monaco
Voor het Vorstendom Monaco
W imieniu Księstwa Monako
Pelo Principado do Mónaco
Pentru Principatul Monaco
Za Monacké kniežatstvo
Za Kneževino Monako
Monacon ruhtinaskunnan puolesta
För Furstendömet Monaco

S. Telle

DECLARATIONS OF THE CONTRACTING PARTIES:**JOINT DECLARATION BY THE CONTRACTING PARTIES ON COMPLIANCE WITH THE GLOBAL STANDARD**

The Contracting Parties agree on the compliance with the Global Standard of the provisions on the automatic exchange of information contained:

- (i) in Council Directive 2011/16/EU on administrative cooperation in the field of taxation, as amended by Council Directive 2014/107/EU,
- (ii) in the Agreement and its annexes, and
- (iii) in other agreements that the European Union has negotiated in parallel on the same subject matter with the Swiss Confederation, the Principality of Andorra, the Principality of Liechtenstein and the Republic of San Marino, although some of these agreements contain further details concerning confidentiality and data protection because of the different positions on the subject of the Principality of Monaco and these four other countries, to the extent strictly necessary to allow the European Union Member States to comply with the requirements imposed on them by Union law in their relations with jurisdictions outside the European Union.

JOINT DECLARATION OF THE CONTRACTING PARTIES ON THE AGREEMENT AND THE ANNEXES

The Contracting Parties agree, regarding the implementation of the Agreement and Annexes I and II thereto, to use the Commentaries to the OECD Model Competent Authority Agreement and Common Reporting Standard as a source of illustration or interpretation and in order to ensure consistency in application.

JOINT DECLARATION OF THE CONTRACTING PARTIES ON ARTICLE 5 OF THE AGREEMENT

The Contracting Parties agree, regarding the implementation of Article 5 of the Agreement on the Exchange of Information upon Request, that the Commentary to Article 26 of the OECD Model Tax Convention on Income and on Capital should be a source of interpretation.

JOINT DECLARATION BY THE CONTRACTING PARTIES ON ARTICLE 2 OF THE AMENDING PROTOCOL

With reference to Article 2 of the Amending Protocol, the Contracting Parties agree that the provisional application of the Amending Protocol implies:

- that the Principality of Monaco and the Member States and their financial institutions shall apply the reporting and due diligence rules consistent with Annexes I and II as of 1 January 2017 in view of meeting their obligations under Article 3(3) of the Agreement as amended by this Amending Protocol. The obligations laid down in Article 3(3) of the Agreement as amended by this Amending Protocol shall not, however, be applicable to the Contracting Parties until the requirements for entry into force laid down in Article 2(1) of the Amending Protocol are met,
 - that the Member States are authorised from 1 January 2017 to send requests for information to the Principality of Monaco under Article 5 of the Agreement as amended by this Amending Protocol but the Principality of Monaco may choose to respond to such requests only after the conditions for entry into force laid down in Article 2(1) of the Amending Protocol are met,
 - that the Principality of Monaco and its financial institutions, taking into account the provisional application of this Amending Protocol, may choose to suspend application of their obligations under the Agreement between the European Community and the Principality of Monaco providing for measures equivalent to those laid down in Council Directive 2003/48/EC in the form prior to its amendment by this Amending Protocol from 1 January 2017, unless otherwise specified in Article 2(4) of the Amending Protocol.
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REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2016/1393

of 4 May 2016

amending Delegated Regulation (EU) No 640/2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross-compliance

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 ⁽¹⁾, and in particular Articles 63(4), 64(6) and 72(5), Article 76, Articles 77(7), 93(4) and 101(1), and Article 120 thereof,

Whereas:

- (1) According to Article 7(1) of Commission Delegated Regulation (EU) No 640/2014 ⁽²⁾, the system for the identification and registration of payment entitlements is to ensure effective traceability of the payment entitlements as regards certain elements, *inter alia* the date of last activation. The provisions of Regulation (EU) No 1307/2013 of the European Parliament and of the Council ⁽³⁾ on the replenishment of the national reserve or regional reserve under the basic payment scheme do no longer require this specific information as long as the total number of payment entitlements per farmer can be established.
- (2) Article 9 of Delegated Regulation (EU) No 640/2014 sets out rules on the determination of areas where the agricultural parcel contains landscape features and trees. It is appropriate to clarify the wording of that provision by making a reference to eligible hectares.
- (3) Article 11(4) of Commission Implementing Regulation (EU) No 809/2014 ⁽⁴⁾ provides that the results of the preliminary checks are to be notified to the beneficiary by the competent authority within a period of 26 calendar days after the final date of submission of the single application, aid application or payment claim referred to in Article 13 of that Regulation. Article 12 of Delegated Regulation (EU) No 640/2014 provides for derogations from Article 5(1) of Council Regulation (EEC, Euratom) No 1182/71 ⁽⁵⁾ for the final dates for submission. For consistency reasons, it is appropriate to introduce the same derogation for the latest possible date for notification of the results of those preliminary checks and the latest possible date for the beneficiary to notify the competent authority of the modifications following those preliminary checks. It should also be clarified that, in any case, the period of 26 calendar days for the notification of the results of those preliminary checks will expire one day after the latest possible date for late submission of an aid application or payment claim or of an application related to payment entitlements.

⁽¹⁾ OJ L 347, 20.12.2013, p. 549.

⁽²⁾ Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ L 181, 20.6.2014, p. 48).

⁽³⁾ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

⁽⁴⁾ Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ L 227, 31.7.2014, p. 69).

⁽⁵⁾ Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

- (4) For the re-distributive payment, the payment to young farmers and the payment for areas with natural constraints, Article 18 of Delegated Regulation (EU) No 640/2014 sets out the principle that a farmer should not be subject to penalties of over-declarations where there is no possible advantage to be gained due to a maximum limit in terms of hectares on which a payment may be granted. A similar provision existed for livestock premiums in Commission Regulation (EC) No 1122/2009 ⁽¹⁾ and for the agricultural area-related measures in Commission Regulation (EU) No 65/2011 ⁽²⁾. To ensure continuity and fairness in the treatment of farmers and for reasons of simplification, it is appropriate to introduce such a rule in Delegated Regulation (EU) No 640/2014 for the calculation of the basis for the payment for all area-related and animal-related aid schemes and area-related and animal-related rural development measures, where relevant.
- (5) Within the integrated administration and control system, the calculation of the aid to which the beneficiary is entitled is based on the concept of crop group. Under the re-distributive payment provided for in Article 41 of Regulation (EU) No 1307/2013, Member States may decide to graduate the number of hectares to be paid differently. Introducing a specific crop group for the re-distributive payment would contribute to simplifying the application made by the beneficiary in case of graduation of the re-distributive payment, as the beneficiary would not have to indicate which agricultural parcel belongs to which part of the graduated number of hectares. For consistency reasons, it is appropriate to introduce the same provision for the young farmers scheme and the voluntary coupled support measures.
- (6) For area-related aid schemes or support measures other than the basic payment scheme or the single area payment scheme, Article 17(1)(b) of Delegated Regulation (EU) No 640/2014 distinguishes crop groups as a group for each of the areas declared for which a different rate of aid or support is applicable. As regards payments to areas facing natural or other specific constraints, Article 31(4) of Regulation (EU) No 1305/2013 of the European Parliament and of the Council ⁽³⁾ requires Member States, except in some specific cases, to provide for degressivity of payments above a threshold level of area per holding, to be defined in the programme. In respect of that payment, it should be clarified that where degressive aid amounts are used, the average of those amounts in relation to the respective areas declared is to be taken into account, as previously provided for in Article 16(2) of Regulation (EU) No 65/2011.
- (7) Taking into account the evolution of the integrated administration and control system and for reasons of simplification, it is appropriate to adapt the administrative penalties in respect of the aid schemes or support measures where effective administrative cross-checks with the land parcel identification system can be carried out and where retro-active recovery is possible, namely the area-related aid schemes provided for in Chapters 1, 2, 4 and 5 of Title III and in Title V of Regulation (EU) No 1307/2013 and the area-related support measures referred to in Articles 30 and 31 of Regulation (EU) No 1305/2013. This should take account of the principles of dissuasiveness and proportionality to respect the sound financial management of the common agriculture policy.
- (8) For those aid schemes or support measures it is appropriate to introduce a system of reduced penalties for a first offender in respect of small over-declarations. In accordance with the principles of sound financial management and in order to prevent abuse of the system and to stimulate correct declarations in the future, the amount by which the administrative penalty had been reduced should be paid where another administrative penalty for the area-related aid scheme or support measure concerned is imposed on the beneficiary in the following claim year.
- (9) Article 24 of Delegated Regulation (EU) No 640/2014 provides for reductions of the greening payment in case of non-compliance with crop diversification. For the sake of clarity, a specific provision should be included in order to cover the cases of non-compliance with Article 44(2) of Regulation (EU) No 1307/2013.

⁽¹⁾ Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (OJ L 316, 2.12.2009, p. 65).

⁽²⁾ Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures (OJ L 25, 28.1.2011, p. 8).

⁽³⁾ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

- (10) Pursuant to Article 21 of Implementing Regulation (EU) No 809/2014 the beneficiary has to undertake, where applicable, to keep animals on his holding during a period determined by the Member State and to indicate the location or locations where the animals will be held during that period in the livestock aid application or payment claims under animal-related support measures. It is appropriate to lay down provisions on the basis of which animals that during that period have been moved to another place than the ones notified can be considered as determined, provided that they can immediately be localised within the holding during the on-the-spot checks.
- (11) Article 53(4) of Commission Delegated Regulation (EU) No 639/2014 ⁽¹⁾ provides that Member States are to define as an eligibility condition the requirement to identify and register bovine animals in accordance with Regulation (EC) No 1760/2000 of the European Parliament and of the Council ⁽²⁾. The purpose of referring to that Regulation as a systematic eligibility condition is to ensure an unambiguous identification of animals eligible for aid or support. In this regard, it should be clarified in Article 30(4)(c) of Delegated Regulation (EU) No 640/2014 that incorrect entries in the register, the animal passports and/or the computerised database for bovine animals of elements such as for instance gender, breed, colour or date should be considered as non-compliances after the first finding if the information is essential for the assessment of the animals' eligibility under the aid scheme or support measure concerned. Otherwise, the animal concerned should be considered as not determined if such incorrect entries are found on at least two checks within a period of 24 months.
- (12) Administrative penalties to be applied for animal-related support measures are laid down in Article 31 of Delegated Regulation (EU) No 640/2014 and they are designed to be applied at the level of the measure. That Article does not take into account the fact that operations under a measure can concern different animal breeds and species, which may be subject to different rates of support and eligibility conditions in the rural development programs. Therefore, it is appropriate to refer to the type of operation in that Article.
- (13) In addition, Article 31 of Delegated Regulation (EU) No 640/2014 refers to a threshold of three animals found with non-compliances. In the case of short-production cycle species, with a high turnover of animals, that threshold might not lead to an equivalent level of penalties as for species such as bovines, ovines and caprines. In respect of those short-production cycle species, Member States should therefore be allowed to establish an adjusted number of animals that is in substance equivalent to the threshold of three.
- (14) In order to ensure that data used for the purpose of the claimless system as referred to in Article 21(4) of Implementing Regulation (EU) No 809/2014 are reliable, potentially eligible animals should be subject to on-the-spot checks. The administrative penalties laid down in Article 31 of Delegated Regulation (EU) No 640/2014 apply in case non-compliances are found. Without prejudice to other eligibility conditions, such potentially eligible animals will nevertheless still be deemed eligible for payment provided that non-compliances as regards identification and registration requirements are remedied no later than the first day of the retention period or no later than the date chosen by the Member State, in accordance with Article 53(4) of Delegated Regulation (EU) No 639/2014. It should therefore be specified in Article 31(3) of Delegated Regulation (EU) No 640/2014 that potentially eligible animals found not to be correctly identified or registered count as animals found with non-compliances, irrespectively of their status as regards the fulfilment of the eligibility requirements laid down in Article 53(4) of Delegated Regulation (EU) No 639/2014.
- (15) Furthermore, Article 31 of Delegated Regulation (EU) No 640/2014 lays down the methodology for the calculation of the administrative penalties in respect of declared animals under animal aid schemes or support measures. That methodology is based on the number of individual animals found with non-compliances, regardless of the number of days those animals stayed on the holding. Some Member States have set up a system in which the calculation of the aid or support is not only based on the number of individual animals that meet the eligibility criteria, but also on the number of days on the holding for which animals meet the eligibility criteria. For the sake of proportionality, those Member States should adjust their methodology for the calculation of the administrative penalties accordingly.

⁽¹⁾ Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation (OJ L 81, 20.6.2014, p. 1).

⁽²⁾ Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ L 204, 11.8.2000, p. 1).

- (16) Pursuant to Council Regulation (EC) No 21/2004 ⁽¹⁾ Member States are to establish a system for the identification and registration of ovine and caprine animals that comprises a central register or a computer database. It is therefore appropriate to extend the scope of Article 34 of Delegated Regulation (EU) No 640/2014 to those animal species.
- (17) For the sake of clarity, it is appropriate to clarify in Articles 43 and 44 of Delegated Regulation (EU) No 640/2014 that the continued application of Regulations (EC) No 1122/2009 and (EU) No 65/2011 and the deferred application of Delegated Regulation (EU) No 640/2014 also concerns applications for support. It is also appropriate to clarify that the continued application of Regulations (EC) No 1122/2009 and (EU) No 65/2011 concerns payment claims relating to 2014 and earlier years.
- (18) In addition, it is appropriate to specify in Article 43 of Delegated Regulation (EU) No 640/2014 that with regard to the payment claims for expenditure relating to technical assistance as referred to in Article 66(2) of Council Regulation (EC) No 1698/2005 ⁽²⁾ made in relation to the year 2015, Regulations (EC) No 1122/2009 and (EU) No 65/2011 continue to apply.
- (19) Finally, for reasons of clarity it is appropriate to replace references to a legal basis in Regulation (EU) No 1306/2013 by a reference to Article 28 of Commission Implementing Regulation (EU) No 908/2014 ⁽³⁾.
- (20) Delegated Regulation (EU) No 640/2014 should therefore be amended accordingly.
- (21) The amendments which clarify Articles 43 and 44 of Delegated Regulation (EU) No 640/2014 should for the sake of continuity apply in relation to claim years and premium periods starting as from the same date as provided in Regulation (EU) No 640/2014,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment of Delegated Regulation (EU) No 640/2014

Delegated Regulation (EU) No 640/2014 is amended as follows:

- (1) Article 7(1) is amended as follows:

- (a) point (d) is deleted;
- (b) the following second subparagraph is added:

‘That electronic register shall contain all information necessary to carry out the replenishment of the national reserve or regional reserve pursuant to Article 31 of Regulation (EU) No 1307/2013.’;

- (2) in the first subparagraph of Article 9(3), point (b) is replaced by the following:

- ‘(b) the number of trees per eligible hectare does not exceed a maximum density.’;

⁽¹⁾ Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC (OJ L 5, 9.1.2004, p. 8).

⁽²⁾ Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277, 21.10.2005, p. 1).

⁽³⁾ Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency (OJ L 255, 28.8.2014, p. 59).

(3) Article 12 is replaced by the following:

'Article 12

Derogation for the final date for submission and notification

By way of derogation from Article 5(1) of Council Regulation (EEC, Euratom) No 1182/71 (*), where one of the following dates is a public holiday, a Saturday or a Sunday, it shall be deemed to fall on the first following working day:

- (a) the final date for the submission of an aid application, application for support, payment claim or other declarations or any supporting documents or contracts, or the final date for amendments to the single application or to the payment claim;
- (b) the latest possible date for late submission referred to in the third subparagraph of Article 13(1) and the latest possible date for late submission referred to in the second subparagraph of Article 14 for the submission of applications by beneficiaries for allocation or increase of payment entitlements;
- (c) the latest possible date for notification of the results of the preliminary checks to the beneficiary referred to in Article 11(4) of Commission Implementing Regulation (EU) No 809/2014 (**).
- (d) the latest possible date for the beneficiary to notify the competent authority of the modifications following the preliminary checks as referred to in Article 15(2a) of Implementing Regulation (EU) No 809/2014.

However, where the latest possible dates for late submission referred to in point (b) of the first paragraph are already deemed to fall on the first following working day, the latest possible date for notification referred to in point (c) of that paragraph shall be deemed to fall on the second following working day.

(*) Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

(**) Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ L 227, 31.7.2014, p. 69).'

(4) the following Article 15a is inserted:

'Article 15a

Individual limit or ceiling

Where an individual limit or individual ceiling is applicable under an aid scheme or support measure and the area or the number of animals declared by the beneficiary exceeds the individual limit or individual ceiling, the area declared or the number of animals declared corresponding thereto shall be adjusted to the limit or ceiling set for the beneficiary concerned.;

(5) in Article 17, paragraph 1 is replaced by the following:

'1. For the purposes of this Section, the following crop groups shall be distinguished as appropriate:

- (a) areas declared for the purpose of activation of payment entitlements under the basic payment scheme or for the purpose of being granted the single area payment;
- (b) areas giving right to the re-distributive payment;

- (c) areas giving right to payments under the young farmers scheme;
- (d) areas declared per voluntary coupled support measures;
- (e) a group for each of the areas declared for the purpose of any other area-related aid scheme or support measure, for which a different rate of aid or support is applicable;
- (f) areas declared under the heading "other uses".

For the purposes of point (e) of the first subparagraph, in respect of payments for areas facing natural or other specific constraints as referred to in Article 31 of Regulation (EU) No 1305/2013, where degressive aid amounts are used, the average of those amounts in relation to the respective areas declared shall be taken into account.;

- (6) in Article 19, paragraph 3 is replaced by the following:

‘3. If the amount calculated in accordance with paragraphs 1 and 2 cannot be fully off-set in the course of the three calendar years following the calendar year of the finding, in accordance with Article 28 of Commission Implementing Regulation (EU) No 908/2014 (*), the outstanding balance shall be cancelled.

(*) Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency (OJ L 255, 28.8.2014, p. 59).;

- (7) the following Article 19a is inserted:

‘Article 19a

Administrative penalties in cases of over-declaration of areas for the basic payment scheme, the single area payment scheme, the re-distributive payment, the young farmers scheme, the payment for areas with natural constraints, the small farmers scheme, Natura 2000 and Water Framework Directive payments and payments to areas facing natural or other specific constraints

1. If, in respect of a crop group as referred to in Article 17(1), the area declared for the aid schemes provided for in Chapters 1, 2, 4 and 5 of Title III and in Title V of Regulation (EU) No 1307/2013 and the support measures referred to in Articles 30 and 31 of Regulation (EU) No 1305/2013 exceeds the area determined in accordance with Article 18 of this Regulation, the aid or support shall be calculated on the basis of the area determined reduced by 1,5 times the difference found if that difference is more than either 3 % of the area determined or 2 hectares.

The administrative penalty shall not exceed 100 % of the amounts based on the area declared.

2. Where no administrative penalty has been imposed on the beneficiary under paragraph 1 for over-declaration of areas for the aid scheme or support measure concerned, the administrative penalty referred to in that paragraph shall be reduced by 50 % if the difference between the area declared and the area determined does not exceed 10 % of the area determined.

3. Where a beneficiary had his administrative penalty reduced in accordance with paragraph 2 and another administrative penalty as referred to in this Article and in Article 21 is to be imposed on that beneficiary for the aid scheme or support measure concerned in respect of the following claim year, he shall pay the full administrative penalty in respect of that following claim year and shall pay the amount by which the administrative penalty calculated in accordance with paragraph 1 had been reduced in accordance with paragraph 2.

4. If the amount calculated in accordance with paragraphs 1, 2 and 3 cannot be fully off-set in the course of the three calendar years following the calendar year of the finding, in accordance with Article 28 of Implementing Regulation (EU) No 908/2014, the outstanding balance shall be cancelled.;

(8) in Article 21, paragraph 2 is replaced by the following:

‘2. If the amount of the undue payments and the administrative penalties referred to in paragraph 1 cannot be fully off-set in the course of the three calendar years following the calendar year of the finding, in accordance with Article 28 of Implementing Regulation (EU) No 908/2014, the outstanding balance shall be cancelled.’;

(9) Article 24 is amended as follows:

(a) the following paragraph 3a is inserted:

‘3a. Where Article 44(2) of Regulation (EU) No 1307/2013 requires that the main crop on the remaining arable land shall not cover more than 75 % of that remaining arable land, but the area that has been determined for the main crop group on the remaining arable land covers more than 75 %, the area to be used for the calculation of the greening payment in accordance with Article 23 of this Regulation shall be reduced by 50 % of the remaining area of arable land determined multiplied by the ratio of difference.

The ratio of difference referred to in the first subparagraph shall be the share of the area of the main crop group on the remaining arable land that goes beyond 75 % of the remaining arable land determined in the total area required for the other crop groups on that remaining arable land.’;

(b) paragraph 4 is replaced by the following:

‘4. Where a beneficiary has been found non-compliant with crop diversification as described in this Article for three years, the area by which the area to be used for the calculation of the greening payment is to be reduced in accordance with paragraphs 1, 2, 3 and 3a for the subsequent years shall be the total area of arable land determined multiplied by the applicable ratio of difference.’;

(10) in Article 28, paragraph 4 is replaced by the following:

‘4. If the amount of the administrative penalties calculated in accordance with paragraphs 1, 2 and 3 cannot be fully off-set in the course of the three calendar years following the calendar year of the finding, in accordance with Article 28 of Implementing Regulation (EU) No 908/2014, the outstanding balance shall be cancelled.’;

(11) Article 30, is amended as follows:

(a) the following paragraph 3a is inserted:

‘3a. Where animals have been moved to other locations than those notified in accordance with point (d) of Article 21(1) of Implementing Regulation (EU) No 809/2014 during the period determined by the Member State referred to in that point, they shall be regarded as determined if an immediate localisation of those animals within the holding was made during the on-the-spot check.’;

(b) in the first subparagraph of paragraph 4, point (c) is replaced by the following:

‘(c) where the non-compliances found relate to incorrect entries in the register, the animal passports or the computerised database for animals, but are not of relevance for the verification of the respect of the eligibility conditions other than that referred to in Article 53(4) of Delegated Regulation (EU) No 639/2014 under the aid scheme or support measure concerned, the animal concerned shall only be considered as not determined if such incorrect entries are found during at least two checks within a period of 24 months. In all other cases the animals concerned shall be considered as not determined after the first finding.’;

(12) Article 31 is replaced by the following:

‘Article 31

Administrative penalties in respect of declared animals under the animal aid schemes or animal-related support measures

1. Where, in respect of an aid application under an animal aid scheme or in respect of a payment claim under an animal-related support measure or a type of operation under such support measure, a difference is found between the number of animals declared and that determined in accordance with Article 30(3), the total amount of aid or support to which the beneficiary is entitled under that aid scheme or support measure or type of operation under such support measure for the claim year concerned shall be reduced by the percentage to be established in accordance with paragraph 3 of this Article, if no more than three animals are found with non-compliances.

2. If more than three animals are found with non-compliances, the total amount of aid or support to which the beneficiary is entitled under the aid scheme or support measure or type of operation under such support measure referred to in paragraph 1 for the claim year concerned shall be reduced by:

- (a) the percentage to be established in accordance with paragraph 3, if it is not more than 10 %;
- (b) twice the percentage to be established in accordance with paragraph 3, if it is more than 10 % but not more than 20 %.

If the percentage established in accordance with paragraph 3 is more than 20 %, no aid or support to which the beneficiary would have been entitled pursuant to Article 30(3) shall be granted under the aid scheme or support measure or type of operation under such support measure for the claim year concerned.

If the percentage established in accordance with paragraph 3 is more than 50 %, no aid or support to which the beneficiary would have been entitled pursuant to Article 30(3) shall be granted under the aid scheme or support measure or type of operation under such support measure for the claim year concerned. Moreover, the beneficiary shall be subject to an additional penalty of an amount equal to the amount corresponding to the difference between the number of animals declared and the number of animals determined in accordance with Article 30(3). If that amount cannot be fully off-set in the course of the three calendar years following the calendar year of the finding, in accordance with Article 28 of Implementing Regulation (EU) No 908/2014, the outstanding balance shall be cancelled.

For other species than those referred to in Article 30(4) and (5) of this Regulation, Member States may decide to determine a number of animals different from the threshold of three animals provided for in paragraphs 1 and 2 of this Article. When determining that number, Member States, shall ensure that it is equivalent in substance to that threshold, by inter alia taking into account the livestock units and/or the amount of aid or support granted.

3. In order to establish the percentages referred to in paragraphs 1 and 2, the number of animals declared under an animal aid scheme or animal-related support measure or type of operation and found with non-compliances shall be divided by the number of animals determined for that animal aid scheme or support measure or type of operation under such support measure in respect of the aid application or payment claim or type of operation under such support measure for the claim year concerned.

For the purpose of this paragraph, where a Member State makes use of the possibility of having a claimless system in accordance with Article 21(4) of Implementing Regulation (EU) No 809/2014 potentially eligible animals found not to be correctly identified or registered in the system for identification and registration for animals shall count as animals found with non-compliances, irrespectively of their status as regards the fulfilment of the eligibility requirements as laid down in Article 53(4) of Delegated Regulation (EU) No 639/2014.

4. Where the calculation of the total amount of aid or support to which the beneficiary is entitled under an aid scheme or support measure or type of operation under such support measure for the claim year concerned is based on the number of days the animals fulfilling the eligibility conditions are present on the holding, the calculation of the number of animals found with non-compliances as referred to in paragraphs 1 and 2 shall also be based on the number of days those animals are present on the holding.

For potentially eligible animals as referred to in the second subparagraph of paragraph 3, the calculation of the number of animals found with non-compliances shall be based on the number of days on which the animals may qualify for the aid or support.;

(13) Article 34 is replaced by the following:

‘Article 34

Amendments and adjustments of entries in the computerised database for animals

In respect of declared animals, Article 15 shall apply to errors and omissions in relation to entries in the computerised database for animals made from the moment the aid application or payment claim is submitted.;

(14) in Article 35, paragraph 7 is replaced by the following:

‘7. If the withdrawals and administrative penalties referred to in paragraphs 1, 2, 4, 5 and 6 cannot be fully off-set in the course of the three calendar years following the calendar year of the finding, in accordance with Article 28 of Implementing Regulation (EU) No 908/2014, the outstanding balance shall be cancelled.’;

(15) in the second paragraph of Article 43, point (b) is replaced by the following:

‘(b) payment claims made and application for support relating to the year 2014 and earlier years and payment claims relating to the year 2015 under Article 66(2) of Regulation (EC) No 1698/2005; and’;

(16) in Article 44, the second paragraph is replaced by the following:

‘It shall apply to aid applications, applications for support and payment claims relating to claim years or premium periods starting as from 1 January 2015.’.

Article 2

Entry into force and application

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 to aid applications, applications for support and payment claims relating to claim years or premium periods starting as from 1 January 2016.

However points (15) and (16) of Article 1 shall apply to aid applications, applications for support and payment claims relating to claim years or premium periods starting as from 1 January 2015.

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

Done at Brussels, 4 May 2016.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1394**of 16 August 2016****amending Implementing Regulation (EU) No 809/2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 ⁽¹⁾, and in particular Article 58(1)(a) to (c), Article 59(1), (2) and (5) and Article 62(2)(b) thereof,

Whereas:

- (1) Article 19a(2) of Commission Delegated Regulation (EU) No 640/2014 ⁽²⁾ sets out rules for reduced administrative penalties for area over-declaration under a certain area-related aid scheme or support measure where a beneficiary did not yet receive such a penalty previously for that given area-related aid scheme or support measure. In accordance with the principles of sound financial management and to prevent abuse of the system and to stimulate correct declarations in the future, the outstanding amount should be paid back in case the beneficiary faces again an administrative penalty referred to in Articles 19a and 21 of that Regulation for that given area-related aid scheme or support measure in the following claim year. It is therefore justified to define a specific control rate for follow-up of this provision.
- (2) It is necessary to clarify that, for the purpose of the on-the-spot checks referred to in Article 50(1) of Commission Implementing Regulation (EU) No 809/2014 ⁽³⁾, the amounts of advanced and interim payments should be counted towards the 5 % of minimum control rate for on-the-spot checks. It is therefore appropriate to amend the second subparagraph of Article 50(1) of that Regulation.
- (3) Implementing Regulation (EU) No 809/2014 should therefore be amended accordingly.
- (4) The Committee for Direct Payments and the Rural Development Committee have not delivered an opinion within the time limit laid down by the Chair,

HAS ADOPTED THIS REGULATION:

*Article 1***Amendment of Implementing Regulation (EU) No 809/2014**

Implementing Regulation (EU) No 809/2014 is amended as follows:

- (1) the following Article 33a is inserted:

*'Article 33a***Additional control rate for on-the-spot checks to follow-up the beneficiaries referred to in Article 19a(2) of Delegated Regulation (EU) No 640/2014**

1. The beneficiaries who were subject to a reduced administrative penalty in accordance with Article 19a(2) of Delegated Regulation (EU) No 640/2014 for an area-related aid scheme or support measure following an over-declaration identified in the course of an on-the-spot check shall be subject to a follow-up on-the-spot check for that given aid scheme or support measure in the following claim year.

⁽¹⁾ OJ L 347, 20.12.2013, p. 549.

⁽²⁾ Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ L 181, 20.6.2014, p. 48).

⁽³⁾ Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ L 227, 31.7.2014, p. 69).

2. The follow-up on-the-spot check referred to in paragraph 1 shall not be necessary where the over-declaration identified has led to an up-date of the reference parcels concerned in the identification system for agricultural parcels as referred to in Article 5 of Delegated Regulation (EU) No 640/2014 in the year of the finding;'

(2) the second subparagraph of Article 50(1) is replaced by the following:

'Where an operation subject to on-the-spot check has received advance or interim payments, those payments shall be counted towards the expenditure covered by on-the-spot checks as referred to in the first subparagraph.'

Article 2

Entry into force and application

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 to aid applications, applications for support and payment claims relating to claim years or premium periods starting as from 1 January 2016.

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

Done at Brussels, 16 August 2016.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1395**of 18 August 2016**

reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and produced by Buckingham Shoe Mfg Co. Ltd, Buildyet Shoes Mfg., DongGuan Elegant Top Shoes Co. Ltd, Dongguan Stella Footwear Co. Ltd, Dongguan Taiway Sports Goods Limited, Foshan City Nanhai Qun Rui Footwear Co., Jianle Footwear Industrial, Sihui Kingo Rubber Shoes Factory, Synfort Shoes Co. Ltd, Taicang Koton Shoes Co. Ltd, Wei Hao Shoe Co. Ltd, Wei Hua Shoe Co. Ltd, Win Profile Industries Ltd, and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('TFEU'), and in particular to Article 266 thereof,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Articles 9 and 14 thereof,

Whereas:

A. PROCEDURE

- (1) On 23 March 2006, the Commission adopted Regulation (EC) No 553/2006 imposing provisional anti-dumping measures on imports of certain footwear with uppers of leather ('footwear') originating in the People's Republic of China ('PRC') and Vietnam ('the provisional Regulation') ⁽²⁾.
- (2) By Regulation (EC) No 1472/2006 ⁽³⁾ the Council imposed definitive anti-dumping duties ranging from 9,7 % to 16,5 % on imports of certain footwear with uppers of leather, originating in Vietnam and in the PRC for 2 years ('Council Regulation (EC) No 1472/2006' or 'the contested Regulation').
- (3) By Regulation (EC) No 388/2008 ⁽⁴⁾ the Council extended the definitive anti-dumping measures on imports of certain footwear with upper leather originating in the PRC to imports consigned from the Macao Special Administrative Region ('SAR'), whether declared as originating in the Macao SAR or not.
- (4) Further to an expiry review initiated on 3 October 2008 ⁽⁵⁾, the Council further extended the anti-dumping measures for 15 months by Regulation (EU) No 1294/2009 ⁽⁶⁾, i.e. until 31 March 2011, when the measures expired ('Regulation (EU) No 1294/2009').
- (5) Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd and Risen Footwear (HK) Co. Ltd as well as Zhejiang Aokang Shoes Co. Ltd ('the applicants') challenged the contested Regulation in the Court of First Instance (now: the General Court). By judgements of 4 March 2010 in Case T-401/06 *Brosmann Footwear (HK) and Others v Council* [2010] ECR II-671 and of 4 March 2010 in Joined Cases T-407/06 and T-408/06 *Zhejiang Aokang Shoes and Wenzhou Taima Shoes v Council* [2010] ECR II-747, the General Court rejected those challenges.
- (6) The applicants appealed those judgements. In its judgments of 2 February 2012 in case C-249/10 P *Brosmann et al* and of 15 November 2012 in case C-247/10 P *Zhejiang Aokang Shoes Co. Ltd* ('the Brosmann and Aokang judgments'), the Court of Justice set aside those judgments. It held that the General Court erred in law in so far as it held that the Commission was not required to examine requests for market economy treatment ('MET') under Article 2(7)(b) and (c) of the basic Regulation from non-sampled traders (paragraph 36 of the judgement in Case C-249/10 P and paragraph 29 and 32 of the judgement in Case C-247/10 P).
- (7) The Court of Justice then gave judgement itself in the matter. It held: [...] *the Commission ought to have examined the substantiated claims submitted to it by the appellants pursuant to Article 2(7)(b) and (c) of the basic regulation for the purpose of claiming MET in the context of the anti-dumping proceeding [which is] the subject of the contested regulation. It must next be found that it cannot be ruled out that such an examination would have led to a definitive anti-dumping duty*

being imposed on the appellants other than the 16,5 % duty applicable to them pursuant to Article 1(3) of the contested regulation. It is apparent from that provision that a definitive anti-dumping duty of 9,7 % was imposed on the only Chinese trader in the sample which obtained MET. As is apparent from paragraph 38 above, had the Commission found that the market economy conditions prevailed also for the appellants, they ought, when the calculation of an individual dumping margin was not possible, also to have benefited from the same rate (paragraph 42 of the judgement in Case C-249/10 P and paragraph 36 of the judgement in Case C-247/10 P).

- (8) As a consequence, it annulled the contested Regulation, in so far as it relates to the applicants concerned.
- (9) In October 2013, the Commission by means of notice published in the *Official Journal of the European Union* ⁽⁷⁾ announced that it had decided to resume the anti-dumping proceeding at the very point at which the illegality occurred and to examine whether market economy conditions prevailed for the applicants for the period from 1 April 2004 to 31 March 2005 and invited interested parties to come forward and make themselves known.
- (10) In March 2014, the Council, by Council Implementing Decision 2014/149/EU ⁽⁸⁾, rejected a Commission proposal to adopt a Council Implementing Regulation reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on certain footwear with uppers of leather originating in the People's Republic of China and produced by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co. Ltd and Zhejiang Aokang Shoes Co. Ltd and terminated the proceedings with regard to these producers. The Council took the view that importers having bought shoes from those exporting producers, to whom the relevant customs duties had been reimbursed by the competent national authorities on the basis of Article 236 of Regulation (EEC) No 2913/1992 of 12 October 1992 establishing the Community Customs Code ⁽⁹⁾ ('the Community Customs Code'), had acquired legitimate expectations on the basis of Article 1(4) of the contested Regulation, which had rendered the provisions of the Community Customs Code, and in particular its Article 221, applicable to the collection of the duties.
- (11) Three importers of the product concerned, C&J Clark International Ltd ('Clark'), Puma SE ('Puma') and Timberland Europe B.V. ('Timberland') ('the importers concerned') challenged the anti-dumping measures on imports of certain footwear from China and Vietnam invoking the jurisprudence mentioned in recitals 5 to 7 before their national Courts, which referred the matters to the Court of Justice for a preliminary ruling.
- (12) In the joined Cases C-659/13 C & J Clark International Limited and C-34/14 Puma SE, the Court of Justice declared Council Regulations (EC) No 1472/2006 and (EU) No 1294/2009 invalid in so far as the European Commission did not examine the MET and individual treatment ('IT') claims submitted by exporting producers in the PRC and Vietnam that were not sampled ('the judgments'), contrary to the requirements laid down in Article 2(7)(b) and Article 9(5) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁰⁾.
- (13) Regarding the third case C-571/14, Timberland Europe B.V. against Inspecteur van de Belastingdienst, kantoor Rotterdam Rijnmond, the Court of Justice decided on 11 April 2016 to remove the case from the register at the request of the referring national court.
- (14) Article 266 TFEU provides that the Institutions must take the necessary measures to comply with the Court's judgments. In case of annulment of an act adopted by the Institutions in the context of an administrative procedure, such as anti-dumping, compliance with the Court's judgement consists in the replacement of the annulled act by a new act, in which the illegality identified by the Court is eliminated ⁽¹¹⁾.
- (15) According to the case-law of the Court, the procedure for replacing the annulled act may be resumed at the very point at which the illegality occurred ⁽¹²⁾. That implies in particular that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as the initiation of the anti-dumping procedure. In a situation where a Regulation imposing definitive anti-dumping measures is annulled, that means that subsequent to the annulment, the anti-dumping proceeding is still open, because the act concluding the anti-dumping proceeding has disappeared from the Union legal order ⁽¹³⁾, except if the illegality occurred at the stage of initiation.

- (16) Apart from the fact that the Institutions did not examine the MET and IT claims submitted by exporting producers in the PRC and Vietnam that were not sampled, all other findings made in Council Regulations (EC) No 1472/2006 and (EU) No 1294/2009 remain valid.
- (17) In the present case, the illegality occurred after initiation. Hence, the Commission decided to resume the present anti-dumping proceeding that was still open following the judgments at the very point at which the illegality occurred and to examine whether market economy conditions prevailed for the exporting producers concerned for the period from 1 April 2004 to 31 March 2005, which was the investigation period in the investigation that led to the imposition of definitive duties mentioned in recitals 1 and 2 ('the original investigation'). The Commission also examined, where appropriate, whether the exporting producers concerned qualified for IT in accordance with 9(5) of the basic Regulation in its form prior to the entry into force of Regulation (EU) No 765/2012 ⁽¹⁴⁾ (the 'basic Regulation prior to its amendment') ⁽¹⁵⁾.
- (18) In a first step, for imports of Clark and Puma from the PRC, the Commission assessed all MET and IT claims provided by the non-sampled relevant exporting producers that submitted such claims in the original investigation.
- (19) Regarding imports of Timberland from PRC, there were two suppliers in the PRC identified in the case C-571/14. One of those suppliers, Zhongshan Pou Yuen, was sampled in the original investigation and therefore no illegality occurred in the original investigation regarding this supplier. The second supplier, General Shoes Limited, was wrongly identified as a Chinese supplier whereas the company was established in Vietnam. As mentioned in recital 150 below, this was later contested by the Federation of the European Sporting Goods Industry ('FESI') that claimed that General Shoes Ltd was in fact a Chinese supplier.
- (20) For imports of Puma, Clark and Timberland from Vietnam, the Commission is currently also carrying out an assessment of MET and IT claims provided by the relevant non-sampled exporting producers that submitted such claims in the original investigation. This investigation is still ongoing.

B. IMPLEMENTATION OF THE JUDGMENTS OF THE COURT OF JUSTICE IN JOINED CASES C-659/13 AND C-34/14 FOR IMPORTS FROM THE PRC

- (21) The Commission has the possibility to remedy the aspects of the contested Regulation which led to its annulment, while leaving unchanged the parts of the assessment which are not affected by the judgment ⁽¹⁶⁾.
- (22) The present Regulation seeks to correct the aspects of the contested Regulation found to be inconsistent with the basic Regulation, and which thus led to the declaration of invalidity in so far as certain exporting producers from the PRC are concerned.
- (23) All other findings made in the contested Regulation, which were not declared invalid by the Court of Justice, remain valid and are herewith incorporated into the present Regulation.
- (24) Therefore, the following recitals are limited to the new assessment necessary in order to comply with the judgments.
- (25) The Commission has examined whether MET and IT prevailed for the Chinese exporting producers of Clark and Puma, which submitted MET and/or IT requests in that investigation, during the period from 1 April 2004 to 31 March 2005. The purpose of this determination is to ascertain the extent to which the two importers concerned are entitled to receive a repayment of the anti-dumping duty paid with regard to anti-dumping duties paid on exports of their Chinese suppliers which requested MET and/or IT.
- (26) Should the analysis reveal that MET was to be granted to the Chinese exporting producer whose exports were subject to the anti-dumping duty paid by either of the two importers concerned, the repayment of the duty would be limited to an amount corresponding to a difference between the duty paid, namely 16,5 %, and the duty imposed on the only exporting company in the sample that has obtained MET, i.e. *Golden Step*, namely 9,7 %.

- (27) Should the analysis reveal that IT was to be granted to the Chinese exporting producer for which MET was rejected, but whose exports were subject to the anti-dumping duty paid by either of the two importers concerned, an individual duty rate would have to be attributed to the exporting producer concerned and the repayment of the duty would be limited to an amount corresponding to a difference between the duty paid, and the individual duty calculated for the exporting producer concerned, if any.
- (28) Conversely, should the analysis of such MET and IT claims reveal that both MET and IT should be rejected, no repayment of anti-dumping duties can be awarded.
- (29) As explained in recital 12, the Court of Justice annulled the contested Regulation and Regulation (EU) No 1294/2009, *inter alia*, with regard to exports of certain footwear from 13 Chinese exporting producers, i.e. Buckingham Shoe Mfg Co. Ltd, Buildyet Shoes Mfg., DongGuan Elegant Top Shoes Co. Ltd, Dongguan Stella Footwear Co. Ltd, Dongguan Taiway Sports Goods Limited, Foshan City Nanhai Qun Rui Footwear Co., Jianle Footwear Industrial, Sihui Kingo Rubber Shoes Factory, Synfort Shoes Co. Ltd, Taicang Kotoni Shoes Co. Ltd, Wei Hao Shoe Co. Ltd, Wei Hua Shoe Co. Ltd and Win Profile Industries Ltd ('the exporting producers concerned') to the Union and imported by Clark and Puma, in so far as the Commission did not examine the MET and IT claims submitted by, *inter alia*, the exporting producers in the PRC.
- (30) The Commission has therefore examined in a first step the MET and IT claims of these 13 exporting producers in order to determine the duty rate applicable to their exports. The assessment showed that the information provided was not sufficient to demonstrate that the exporting producers concerned operated under market economy conditions or that they qualified for individual treatment (see for a detailed explanation below recitals 32 and following).

1. Assessment of the MET claims

- (31) It is necessary to point out that the burden of proof lies with the producer wishing to claim MET under Article 2(7)(b) of the basic Regulation. To that end, the first subparagraph of Article 2(7)(c) provides that the claim submitted by such a producer must contain sufficient evidence, as laid down in that provision, that the producer operates under market economy conditions. Accordingly, there is no obligation on the Union institutions to prove that the producer does not satisfy the conditions laid down for the recognition of such status. On the contrary, it is for the Union institutions to assess whether the evidence supplied by the producer concerned is sufficient to show that the criteria laid down in the first subparagraph of Article 2(7)(c) of the basic regulation are fulfilled in order to grant it MET and it is for the Union judicature to examine whether that assessment is vitiated by a manifest error (paragraph 32 of the judgement in Case C-249/10 P and paragraph 24 of the judgement in Case C-247/10 P).
- (32) In accordance with Article 2(7)(c) of the basic Regulation all five criteria listed in this Article should be met so that an exporting producer can be granted MET. Therefore, the Commission considered that the failure to meet at least one criterion was enough to reject the MET request.
- (33) None of the exporting producers concerned was able to demonstrate that it met criteria 1 (Business decisions) and 3 (Assets and 'Carry-over'). More specifically, regarding criterion 1 the exporting producers concerned failed to provide essential and complete information (e.g. evidence concerning the structure and the capital of the company, evidence concerning domestic sales, evidence concerning the remuneration of the employees, etc.) to demonstrate that their business decisions were taken in accordance with market signals without significant State interference. Regarding criterion 3, the exporting producers concerned equally failed to provide essential and complete information (e.g. evidence concerning the assets owned by the company and the land use right) to demonstrate that no distortions were carried over from the non-market economy system.
- (34) In addition, as concerns criterion 2 (Accounting), four companies (Companies A, I, K, M) did not meet this criterion as they did not submit a clear set of basic accounting records.
- (35) For the remaining nine companies (Companies B, C, D, E, F, G, H, J, L) criterion 2 (Accounting) was not assessed for the reason set out in recital 32.

- (36) For the same reason set out in recital 22, for none of the exporting producers concerned criteria 4 (Bankruptcy and property laws) and 5 (Exchange rate conversions) were assessed.
- (37) On the basis of the above, the Commission concluded that none of the 13 Chinese exporting producers concerned should be granted MET and informed the exporting producers concerned accordingly, which were invited to provide comments. No comments were received from any of the 13 Chinese exporting producers concerned.
- (38) Therefore, none of the 13 Chinese exporting producers concerned fulfilled all the conditions set out in Article 2(7)(c) of the basic Regulation and MET is, as a result, denied for all of them.
- (39) It is recalled that the Court of Justice held that if the Union Institutions found that the market economy conditions prevailed for the exporting producers concerned, they ought to have benefited from the same rate as the company in the sample that was granted MET ⁽¹⁷⁾.
- (40) However, since MET is denied for all exporting producers concerned as a result of the findings in the resumed investigation, none of the exporting producers concerned should benefit from the individual duty rate of the sampled company that was granted MET.

2. Assessment of the IT claims

- (41) Pursuant to Article 9(5) of the basic Regulation prior to its amendment, where Article 2(7)(a) of the same regulation applies, an individual duty shall however be specified for the exporters which can demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation prior to its amendment.
- (42) As mentioned in recital 31 it is necessary to point out that the burden of proof lies with the producer wishing to claim IT under Article 9(5) of the basic Regulation prior to its amendment. To that end, the first subparagraph of Article 9(5) provides that the claim submitted must be properly substantiated. Accordingly, there is no obligation on the Union institutions to prove that the exporter does not satisfy the conditions laid down for the recognition of such status. On the contrary, it is for the Union institutions to assess whether the evidence supplied by the exporter concerned is sufficient to show that the criteria laid down in Article 9(5) of the basic Regulation prior to its amendment are fulfilled in order to grant IT.
- (43) In accordance with Article 9(5) of the basic Regulation prior to its amendment, exporters should demonstrate on the basis of a properly substantiated claim that all five criteria listed in this Article are met so that they can be granted IT.
- (44) Therefore, the Commission considered that the failure to meet at least one criterion was enough to reject the IT claim.
- (45) The five criteria are the following:
 - (a) in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits;
 - (b) export prices and quantities, and conditions and terms of sale are freely determined;
 - (c) the majority of the shares belong to private persons; state officials appearing on the board of directors or holding key management positions shall either be in minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference;
 - (d) exchange rate conversions are carried out at the market rate; and
 - (e) State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.
- (46) All 13 Chinese exporting producers that requested MET also claimed IT in the event that they would not be granted MET.

- (47) The majority of exporting producers concerned (Companies A, B, C, D, E, G, H, I, J, K, L, M) were not able to demonstrate that they met criterion 2 (Export sales and prices freely determined). More specifically, for certain exporting producers concerned (Companies E, G, H, J, K, L) the Articles of Association stipulated a limitation in output and therefore they failed to demonstrate that business decisions, such as export quantities are made in response to market signals reflecting supply and demand. Others (Companies A, B, M) did not sell on the domestic market and provided no further explanations so that they have not demonstrated that this was not due to State intervention. The remaining exporting producers (Companies C, D, I) failed to provide essential and complete documentation and therefore they have not demonstrated that criterion 2 was met.
- (48) As regards criterion 3 (Company — key management and shares — is sufficiently independent from State interference), 10 Chinese exporting producers (Companies B, E, F, G, H, I, J, K, L, M) failed to submit essential and complete documentation (in particular on how the company acquired the assets, who owned the assets and the land use rights, etc.) and did therefore not demonstrate that there was no State interference and they therefore failed to demonstrate that they met this criterion.
- (49) In addition, one exporting producer (Company C) failed to meet criterion 1 (Capital repatriation) since the investigation revealed limitations for capital repatriation due to State interference. Furthermore, the same exporting producer (Company C) failed to demonstrate that it met criterion 5 (No state interference to permit circumvention of measures) since no information was provided concerning two related companies located in China and therefore essential documentation was missing to demonstrate that this criterion was met.
- (50) Therefore, none of the 13 Chinese exporting producers concerned fulfilled the conditions set out in Article 9(5) of the basic Regulation prior to its amendment and IT was, as a result, denied to all of them.
- (51) The residual anti-dumping duty applicable to the PRC should therefore be imposed for these exporting producers for the period of application of Council Regulation (EC) No 1472/2006. The period of application of that Regulation was initially from 7 October 2006 until 7 October 2008. Following the initiation of an expiry review, it was prolonged on 30 December 2009 until 31 March 2011. The illegality identified in the judgments is that the Union Institutions failed to establish whether the products produced by the exporting producers concerned should be subject to the residual duty or to an individual duty or to the duty of the company in the sample that was granted MET.
- (52) On the basis of the illegality identified by the Court, there is no legal ground for completely exempting the products produced by the exporting producers concerned from paying any anti-dumping duty. A new act remedying the illegality identified by the Court therefore only needs to reassess the applicable anti-dumping duty rate, and not the measures themselves.
- (53) Since it is concluded that the residual duty should be reimposed in respect of the exporting producers concerned at the same rate as originally imposed by the contested Regulation and Regulation (EU) No 1294/2009, no changes are required to Council Regulation (EC) No 388/2008. That Regulation remains valid.

C. COMMENTS OF INTERESTED PARTIES AFTER DISCLOSURE

- (54) The above findings and conclusions were disclosed to the interested parties which were given a time period to comment. FESI representing importers including Puma and Timberland, Clark, another importer and one exporting producer, which MET/IT claim had not been subject to the current implementation came forward and provided comments.

Alleged irregularities in the procedure

- (55) FESI and one importer claimed that there were a number of procedural errors in the current implementation. They pointed to the fact that the MET claims of the Chinese exporting producers concerned were already examined and disclosed prior to the judgement of the Court of Justice in the joined Cases C-659/13 C & J Clark International Limited and C-34/14 Puma SE, i.e. on 3 December 2015, as well as the Commission's intention to reimpose a definitive anti-dumping duty on imports of footwear of 16,5 %. These assessments would therefore have been carried out without legal basis and were pre-empting the up-coming judgment of the Court of Justice.

- (56) The Commission does not agree with the above statement as it only prepared the implementation of a possible future judgment. Such preparation was to ensure sound administration, for the following reasons: First, it is uncontested that the Commission ought to have examined the MET/IT requests. The only issue that was at stake in the Court proceedings still pending at that time was whether an unrelated importer such as Clark, Puma and Timberland can rely on that illegality. As a result of that yes/no binary choice, the Commission could exceptionally perfectly well prepare for the event of a negative judgment on this question. Second, swift implementation was necessary in order to enable national customs authorities to deal quickly with pending requests for reimbursement, and to provide legal certainty for all operators. Any influence on the Court's judgment was excluded, as this judgment concerned a different subject-matter (namely whether importers can rely on the right to have MET/IT claims assessed vested in exporting producers).
- (57) These parties further claimed that the Notice on the implementation of the judgment in joined cases C-659/13 and C-34/14 C&J Clark International Limited and Puma SE later published on 17 March 2016 ⁽¹⁸⁾ could not cure above procedural errors because it did not provide meaningful opportunity for the interested parties to exercise their rights of defence.
- (58) Several parties moreover claimed that they should have been granted access to the full investigation file of the original investigation and that the names of the relevant exporting producers should not have been anonymised in the disclosure documents.
- (59) In conclusions, these parties argued that on the basis of the above procedural mistakes, the Commission violated the basic legal framework of the EU and thus exercised an abuse of its powers.
- (60) Another party questioned the relationship between the disclosure mentioned in recital 55 and the latest disclosure sent on 20 May 2016 and requested clarification on this matter.
- (61) The Notice on the implementation of the judgment was published in order to increase transparency, in line with the Commission's policy on transparency in trade defence investigations and at the request of the Hearing Officer, following a hearing with one of the parties raising the issue. The Commission continues to take the view that that publication was not, strictly speaking, legally required. In any event, even if it was necessary, *quod non*, to ensure due process and the right to be heard, those requirements have been fulfilled by its publication and the fact of giving all parties the possibility to comment.
- (62) Access to the full file of the original investigation has been granted, even though the Commission fails to see how any other information than the MET/IT claims of the exporting producers concerned could possibly be relevant for the present proceedings. The anonymisation of the names of the exporting producers has been necessary in order to ensure that their business-confidential data is protected; however, at their request, interested parties who imported were informed which of the importers were their importers.
- (63) The second disclosure had become necessary because the regulation now also covers IT claims, which were not assessed initially.
- (64) For those reasons, any claims regarding procedural irregularities have to be rejected.

Legal basis for the resumption of the anti-dumping proceeding

- (65) Several interested parties claimed that there was no legal basis for the current implementation. In particular they claimed that Article 266 TFEU is not applicable on the grounds that the definitive measures on footwear expired on 31 March 2011 and that there are therefore no continued effects ensuing from the illegality of these measures. The parties argued that Article 266 TFEU is not intended to correct retroactively illegalities to expired measures. This view would be reinforced by Articles 263 and 265 TFEU which set time limits for bringing actions against illegal acts of and failure to act on the part of the EU institutions. The current approach does not have any precedents and the Commission did also not provide any reasoning or prior jurisprudence which would support its interpretation of Article 266 TFEU.

- (66) The parties argued further that in this case the investigation cannot be resumed at the very point where the illegality occurred under Article 266 TFEU because the Court of Justice did not merely establish a lack of reasoning but the illegality concerned a core legal provision of the basic Regulation affecting the entire assessment of dumping related to the Chinese exporting producers concerned.
- (67) The parties claimed further that the retro-active correction of expired measures violates the principle of protection of legitimate expectations. They argued that first, parties would have received assurance that the measures expired on 31 March 2011 and that given the time elapsed since the original investigation parties were entitled to have justified expectations that the original investigation will not be resumed or reopened. Secondly, the very fact that during the original investigation MET claims were not investigated within the 3 months deadline provided legal certainty to the Chinese exporting producers that their MET claims will indeed not be reviewed. In conclusion, the parties claimed that given the long time periods involved, the resumption of the investigation violated the universal principle of prescription or limitation which applied in all legal contexts.
- (68) Several interested parties argued that neither Article 266 TFEU, nor the basic Regulation permit the retroactive reimposition of the definitive duty of 16,5 % to imports of the Chinese exporting producers concerned.
- (69) As regards the claim that the measures in question expired on 31 March 2011, the Commission fails to see why the expiry of the measure would be of any relevance for the possibility for the Commission to adopt a new act to replace the annulled act. The judgment annulling the initial act reopens, according to the case-law, the administrative procedure, which can be resumed at the point in time where the illegality occurred.
- (70) The anti-dumping proceedings are hence, as a result of the annulment of the act concluding the proceedings, still open. The Commission is under an obligation to close those proceedings, as the basic Regulation provides that an investigation has to be closed by an act of the Commission.
- (71) As to the claim concerning retroactivity based on Article 13 of the basic Regulation and Article 10 of the WTO Anti Dumping Agreement ('ADA'), Article 13(1) of the basic Regulation, which takes over the text of Article 10(1) of the ADA, stipulates that provisional measures and definitive anti-dumping duties shall only be applied to products which enter free circulation after the time when the decision taken pursuant to Article 7(1) or 9(4) of the basic Regulation, as the case may be, enters into force. In the present case, the anti-dumping duties in question are only applied to products which entered into free circulation after the provisional and the contested (definitive) Regulation taken pursuant to 7(1) and 9(4) of the basic Regulation respectively had entered into force. Retroactivity in the sense of Article 10(1) of the basic Regulation, however, refers only to a situation where the goods were introduced into free circulation before measures were introduced, as can be seen from the very text of that provision as well as from the exception for which Article 10(4) of the basic Regulation provides ⁽¹⁹⁾.
- (72) The Commission also observes that there is no retroactivity and violation of legal certainty and legitimate expectations involved in the present case.
- (73) As to retroactivity, the case-law of the Court distinguishes, when assessing whether a measure is retroactive, between the application of a new rule to a situation that has become definitive (also referred to as an existing or definitively established legal situation) ⁽²⁰⁾, and a situation that started before the entry into force of the new rule, but which is not yet definitive (also referred to as a temporary situation) ⁽²¹⁾.
- (74) In the present case, the situation of the imports of the products concerned that occurred during the period of application of Council Regulation (EC) No 1472/2006 has not yet become definitive, because, as a result of the annulment of the contested Regulation, the anti-dumping duty applicable to them has not yet been definitively established. At the same time, importers of footwear were warned that such a duty may be imposed by the publication of the notice of initiation and the provisional Regulation. It is standing case-law of the Union Courts that operators cannot acquire legitimate expectations until the Institutions have adopted an act closing the administrative procedure, which has become definitive ⁽²²⁾.

- (75) The present regulation constitutes immediate application to the future effects of a situation that is on-going: The duties on footwear have been levied by national customs authorities. As a result of the requests for reimbursement, which have not had been decided in a definitive way, they constitute an on-going situation. The present regulation sets out the duty rate applicable to those imports, and hence regulates the future effects of an on-going situation.
- (76) In any event, even if there was retroactivity in the sense of Union law, *quod non*, such retroactivity would in any event be justified, for the following reason:
- (77) The substantive rules of Union law may apply to the situations existing before their entry into force in so far as it clearly follows from their terms, objectives or general scheme that such effect must be given to them ⁽²³⁾. In particular, in case Case C-337/88 *Società agricola fattoria alimentare (SAFA)* it was held that: *[A]lthough in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected* ⁽²⁴⁾.
- (78) In the present case the purpose is to comply with the obligation of the Commission pursuant to Article 266 TFEU. Since the Court only found an illegality with regards to the determination of the applicable duty rate, and not with regards to the imposition of the measures themselves (that is, with regards to the finding of dumping, injury and Union interest), the exporting producers concerned could not have legitimately expected that no definitive anti-dumping measures would be imposed. Consequently, that imposition, even if it was retroactive, *quod non*, cannot be construed as breaching legitimate expectations.
- (79) In addition, with regards to the protection of legal certainty and of legitimate expectations, it is first of all observed that according to the case-law, importers cannot claim the protection of legal certainty and legitimate expectations where they were alerted of an imminent change in the Union's commercial policy ⁽²⁵⁾. In the present case, importers were alerted by the publication of the notice of initiation and of the provisional Regulation in the Official Journal, which are both still part of the legal order of the Union, of the risk that the products produced by the exporting producers concerned may become subject to an anti-dumping duty. The exporting producers concerned could therefore not rely on the general principles of the Union's law of protection of legal certainty and legitimate expectations.
- (80) Rather, economic operators were fully aware, when importing footwear, that those imports were subject to a duty. They took that duty into account when setting sales prices and assessing economic risks. They therefore did not acquire legal certainty or legitimate expectations that the imports would be free of a duty, and usually passed on the duty to their customers. It is therefore in the Union interest to set now the applicable duty rate, rather than providing a windfall gain to the importers concerned, which would be enriched without due cause.
- (81) There is hence neither violation of the principles of prescription, legal certainty and legitimate expectations, nor of the provisions of the basic Regulation and the ADA.
- (82) As regards the claim that the MET determination had to be completed within 3 months of the initiation, it is recalled that according to the case law, the second subparagraph of Article 2(7)(c) of the basic Regulation does not contain any indication as regards the consequences of the Commission's failure to comply with the 3-month period. The General Court therefore takes the view that an MET decision at a later stage does not affect the validity of the Regulation imposing definitive measures as long as applicants have not proved that, if the Commission had not exceeded the 3-month period, the Council might have adopted a different regulation more favourable to their interests than the contested regulation ⁽²⁶⁾. The Court has furthermore recognized that the Institutions may modify the MET assessment until the adoption of final measures ⁽²⁷⁾.

- (83) The above case-law has not been overturned by the Brosmann and Aokang judgments. In the Brosmann and Aokang judgments, the Court relies on the obligation for the Commission to carry out the assessment in 3 months in order to show that the obligation of that assessment exists independently of whether the Commission applies sampling or not. The Court does not pronounce itself on the question what legal consequence it has if the Commission concludes the MET assessment at a later stage of the investigation. The Court only rules that the Institutions could not completely ignore MET claims, but had to assess them the latest when imposing definitive measures. The judgments confirm the case-law quoted in the preceding recital.
- (84) In the present case, the exporting producers concerned have not shown that, had the Commission carried out the MET assessment within 3 months after the initiation of the anti-dumping procedure in 2005, the Council might have adopted a different regulation more favourable to their interests than the contested regulation. The claim on time-bar for the assessment of the MET claim is therefore rejected.
- (85) It was also claimed that since the illegality occurred at the point of MET assessments, the Commission should have resumed the proceeding to the point prior to the imposition of provisional measures.
- (86) In that regard, the Commission observes that provisional measures are not a necessary step of the proceeding, but an autonomous act that ceases its effects with the adoption of definitive measures ⁽²⁸⁾. The only essential procedural step prior to the adoption of definitive measures is the initiation. Therefore, that argument is inoperative.
- (87) Some parties referring to the judgment of the General Court in case T-2/95, *IPS v Council*, pointed to the formal difference between an ‘investigation’ and a ‘proceeding’ and argued that once a proceeding is terminated, like in the current case, it cannot be resumed anymore.
- (88) The Commission fails to see any material difference between the terms ‘investigation’ and ‘proceeding’. They are used in an interchangeable manner in the basic Regulation and in the case-law. In any event, the judgment in case T-2/95 has to be read in the light of the judgment on appeal in that case.
- (89) Several parties also claimed that Article 266 TFEU does not allow for a partial implementation of a judgment of the Court of Justice and in the current case the reversal of the burden of proof. Thus, they claimed that the Commission wrongly assessed only the MET/IT requests of those exporting producers that were suppliers of importers that filed reimbursements claims. These parties based their claim on the understanding that the effect of the judgment of the Court of Justice in the joined Cases C-659/13 C & J Clark International Limited and C-34/14 Puma SE is *erga omnes* and that it cannot be excluded that the results of the current assessment the MET/IT claims has also an impact on the residual duty which is applicable to all Chinese exporting producers. These parties therefore claimed that the Commission should have assessed all MET/IT claims that were provided during the original investigation.
- (90) Moreover, these parties disagreed that the burden of proof lies with the producer wishing to claim MET/IT arguing that producers had discharged this burden of proof in 2005 by filing the MET/IT requests during the original investigation. They also disagreed that the judgment of the Court of Justice in the joined Cases C-659/13 C & J Clark International Limited and C-34/14 Puma SE can be implemented by simply assessing the MET/IT requests submitted by the non-sampled exporting producers as the Court of Justice did not specifically outline that the invalidation found is indeed limited to this aspect.
- (91) The Commission considers that implementation of the judgment is only necessary for those exporting producers for which not all import transactions have become definitive. Indeed, once the 3-year prescription period foreseen in the Community Customs Code has expired, the duty has become definitive, as confirmed in the judgments. Any impact on the residual duty is excluded, because the MET/IT claim for the companies in the sample has been assessed, and the fact of granting MET/IT to one of the companies outside the sample does not affect the residual duty rate.

- (92) The burden of proof is not limited to filing a request. It concerns the content of the request, which has to demonstrate that all conditions for MET/IT are met.
- (93) The only illegality identified in the judgments is the lack of assessment of the MET/IT claims.

Legal basis for the reimposition of duties

- (94) Several interested parties claimed that the Commission should not have applied two different legal regimes, i.e. the basic Regulation prior to its amendment for the assessment of the exporting producers' IT claims on the one hand and the current basic Regulation on the other hand that incorporated the amendments by Regulation (EU) No 1168/2012 of the European Parliament and the Council ⁽²⁹⁾ introducing Comitology procedures in the area of, inter alia, trade defence and thus delegating the decision making to the Commission.
- (95) These parties also reiterated that Article 266 TFEU does not allow for the imposition of anti-dumping duties retro-actively which would also be confirmed by the ruling of the Court of Justice in case C-459/98P, *IPS v Council* and Council Regulation (EC) 1515/2001 on measures that may be taken by the Community following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters ⁽³⁰⁾. They argued that the Commission has not given any valid justification to deviate from the principle of non-retroactivity and has therefor violated the principle of legitimate expectations.
- (96) One interested party claimed any imposition of measures would be in any event without object since the statute of limitations laid down in Article 103 of the Community Customs Code expired. Collecting anti-dumping duties would therefore violate the principle of good administration as well as Article 21 of the basic Regulation and would constitute an abuse of power.
- (97) Several parties also argued that reimposing the definitive anti-dumping measures on imports of the Chinese exporting producers concerned by the current implementation constitutes (i) a discrimination of the importers concerned by the current implementation vis-à-vis importers concerned by the implementation of the Brosmann and Aokang judgments that were reimbursed duties paid on imports of footwear from the five exporting producers concerned by these judgments as well as (ii) a discrimination of the exporting producers concerned by the current implementation vis-à-vis the five exporting producers concerned by the Brosmann and Aokang judgments which were not made subject of any duty following the Council Implementing Decision of 18 March 2014 rejecting the proposal for an Implementing Regulation reimposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and produced by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co. Ltd and Zhejiang Aokang Shoes Co. Ltd ⁽³¹⁾.
- (98) This discriminatory treatment was claimed to reflect a lack of uniform interpretation and application of EU law which violates the fundamental right of an effective judicial protection.
- (99) Regarding the alleged use of different legal regimes, the Commission considers that that follows from the differences in the transition rules contained in the three Regulations amending the basic Regulation at stake.
- (100) First, Regulation (EU) No 765/2012 (the so-called 'Fasteners amendment' dealing with IT) provided in its Article 2 that '*it shall apply to all investigations initiated pursuant to Regulation (EC) No 1225/2009 following the entry into force of this Regulation*'. As the present investigation was initiated prior to that date, the amendments of that Regulation to the basic Regulation do not apply in the present case.
- (101) Second, Regulation (EU) No 1168/2012 (the so-called 'Brosmann amendment' dealing with MET) provided in its Article 2 that '*this Regulation shall apply to all new and to all pending investigations as from 15 December 2012*'. Therefore, if the Commission had adopted a strict approach, it would not even have been necessary to assess the MET claims of the non-sampled companies any more, as they had lost the right to an MET assessment on 15 December 2012. However, the Commission considers that such treatment would be difficult to reconcile with

its obligation to implement the judgments. Regulation (EU) No 1168/2012 does also not seem to introduce a complete ban on analysing MET claims outside the sample, as it authorizes such examination in case of individual treatment. By analogy, that derogation could be said to apply in the present case. In the alternative, the Commission considers that the outcome of applying Regulation (EU) No 1168/2012 to the present case would lead to same outcome, as all MET claims would be automatically rejected, without going through the assessment.

- (102) Third, with regard to Comitology, Article 3 of Regulation (EU) No 37/2014 provides that the Council shall remain competent for acts where the Commission has adopted an act, consultation has been initiated or the Commission has adopted a proposal. In the present case, no such action had been undertaken with regard to the implementation of the judgment prior to the entry into force of that Regulation.
- (103) Regarding the retro-active imposition of the definitive anti-dumping duties reference is made to the considerations outlined above in recitals 73 to 81 where these claims were already addressed extensively.
- (104) Regarding discrimination, the Commission observes that exporting producers and certain importers concerned by the present regulation enjoy judicial protection in the Union courts against the present regulation. Other importers enjoy such protection via the national courts and tribunals, which act as judges of ordinary Union law.
- (105) The claim of discrimination is equally unfounded. Importers that have imported from Brosman and the other four exporting producers are in a different factual and legal situation, because their exporting producers decided to challenge the contested Regulation and because they were reimbursed their duties, so that they are protected by Article 221(3) of the Community Customs Code. No such challenge, and no such reimbursement have taken place for others. The Commission starts to prepare implementation for the Chinese exporting producers of Clark, Puma and Timberland; all other non-sampled exporting producers from the PRC and Vietnam and their importers will be treated in the same fashion at a later stage pursuant to the procedure set out in the present Regulation.
- (106) The same interested parties also claimed that Article 14 of the basic Regulation cannot serve as a legal basis to interfere in the application of Article 236 of the Community Customs Code, and the operation of Article 236 of the Community Customs Code is independent from any decision taken under the basic Regulation or the Commission's obligations under Article 266 TFEU.
- (107) In this context it was argued that the application of Article 236 of the Community Customs Code falls within the exclusive competence of the national customs authorities under which the latter are obliged to reimburse duties paid that were not legally owed. The parties concerned further argued that Article 236 of the Community Customs Code cannot be made subject to or subsidiary to Article 14 of the basic Regulation because both are secondary legislation and therefore none supersedes the other. In addition, the scope of Article 14 of the basic Regulation concerns special provisions that cover investigations and procedures under the basic Regulation and is not applicable to any other legal instrument such as the Community Customs Code.
- (108) The Commission observes that the Community Customs Code does not apply automatically to the imposition of anti-dumping duties, but only by virtue of a reference in the regulation imposing anti-dumping duties. Pursuant to Article 14 of the basic Regulation, the Commission may decide not to apply certain provisions of that Code, and instead create special rules. Because the Community Customs Code only applies on the basis of a reference in the Council and Commission Implementing Regulations, it does not have, vis-à-vis Article 14 of the basic Regulation, the same rank in the hierarchy of norms, but is subordinated and may be rendered inapplicable or applicable in a different manner.

Adequate statement of reasons

- (109) The above mentioned interested parties argued that in violation of Article 296 TFEU, the Commission failed to provide adequate statement of reasons and indication of the legal basis on which duties were reimposed retroactively and therefore the reimbursement of duties denied to the importers concerned by the current implementation.

- (110) The lack of adequate reasoning concerned in particular (i) the lack of legal basis for the reopening of the investigation and the lack of publishing a relevant notice announcing such reopening; (ii) the only partial implementation of the judgment of the General Court by merely assessing MET/IT claims of those exporting producers where reimbursement claims had been filed by the importers; (iii) the derogation from the principle of non-retroactivity of anti-dumping duties; (iv) the application of the basic Regulation prior to its amendment on 6 September 2012 for the assessment of the exporting producers' IT claims on the one hand and the current basic Regulation as amended by Regulation (EU) No 1168/2012 with regard to the applicable decision making procedures and (v) the lack of response to the legal arguments provided by these parties following the disclosure of the Commission concerning the assessment of the MET claims of the Chinese exporting producers concerned of 15 December 2015.
- (111) Concerning the lack of any legal basis to reopen the investigation the Commission recalls the case-law quoted above at recital 15, pursuant to which it may resume the investigation at the very point at which the illegality occurred. That was after initiation. There is no legal obligation for the Commission to publish a notice to reinstate, to resume or to reopen the proceeding or the investigation. Rather, such is the automatic effect of the judgment which the Institutions then have to implement.
- (112) According to the case-law, the legality of an anti-dumping regulation has to be assessed in the light of the objective norms of Union law, and not of a decisional practice, even where such a practice exists (which is not the case here) ⁽³²⁾. Hence, the fact that the Commission may have followed in the past in certain cases a different practice cannot create legitimate expectations. That is all the more the case because the previous practice referred to does not correspond to the factual and legal situation of the present case, and differences can be explained by factual and legal differences with the present case.
- (113) Those differences are as follows: The illegality identified by the Court does not concern the findings on dumping, injury, and Union interest, and therefore the principle of the imposition of the duty, but only the precise duty rate. The previous annulments relied on by the interested parties, on the contrary, concerned the findings on dumping, injury and Union interest. The institutions therefore considered it more appropriate to adopt new measures for the future.
- (114) In particular, in the present case, there was no need whatsoever to seek additional information from interested parties. Rather, the Commission had to assess information that had been filed with it, but not assessed before the adoption of Regulation (EC) No 1472/2006. In any event, previous practice in other cases does not constitute precise and unconditional assurance for the present case.
- (115) Finally, all parties against which the proceeding is directed, i.e. the exporting producers concerned, as well as the parties in the pending Court cases and the association representing one of those parties, have been informed by the disclosure of the relevant facts on the basis of which the Commission intends to adopt the present MET assessment. Hence, their rights of defence are safeguarded. In that regard, it is to be noted in particular that unrelated importers do not enjoy, in an antidumping proceeding, rights of defence, as those proceedings are not directed against them ⁽³³⁾.
- (116) Regarding the partial implementation of the judgments is concerned whether and to what extent the Institutions have to implement a judgment depends on the concrete content of the judgment. In particular, whether or not it is possible to confirm the imposition of duties on imports that took place prior to the judgment depends on whether the finding of injurious dumping as such, or only the calculation of the precise duty rate are affected by the illegality identified in the judgment. In the latter situation, which is pertinent here, there is no justification for reimbursing all duties. Rather, it suffices to determine the correct duty rate, and to reimburse any possible difference (whereas it would not be possible to increase the duty rate, as the increased part would constitute retroactive imposition).
- (117) Past annulments to which interested parties refer have concerned the finding of dumping, injury and Union interest (either with regard to the establishment of facts, with regard to the assessment of the facts, or with regard to rights of defence).
- (118) Those annulments have either been partial or complete.

- (119) The Union Courts use the technique of partial annulment where they can conclude themselves on the basis of the facts in the file that the Institutions ought to have granted a certain adjustment or should have used a different method for a certain calculation, which would have resulted in the imposition of a lower duty (but did not put into question the findings of dumping, injury and Union interest). The (lower) duty remains in force both for the time prior to annulment and for the time after annulment ⁽³⁴⁾. In order to comply with the judgment, the Institutions recalculate the duty and amend the Regulation imposing the duty accordingly for the past and for the future. They also instruct national customs authorities to reimburse the difference, where such claims had been made in due time ⁽³⁵⁾.
- (120) The Union Courts proceed to complete annulment where they cannot establish themselves on the basis of the facts in the file whether or not the institutions were right in assuming that there was dumping, injury and Union interest, because the Institutions had to redo part of their investigation. As the Union Courts are not competent for carrying out the investigation at the place of the Commission, they annulled the regulations imposing definitive duties completely. As a consequence, the Institutions validly established the presence of the three conditions necessary for the imposition of measures only after the judgment annulling the duties. For imports that took place prior to the valid establishment of dumping, injury and Union interest, the imposition of definitive duties is prohibited both by the basic Regulation and by ADA. Therefore, the acts adopted by the institutions to close those investigations imposed definitive duties only for the future ⁽³⁶⁾.
- (121) The present case is different from past (partial or complete) annulments in so far, as it does not concern the very presence of dumping, injury and Union interest, but merely the choice of the appropriate duty rate (that is the choice between the duty rate applicable to the only company in the sample having received MET and the residual duty rate). What is at dispute is therefore not the very principle of imposing a duty, but only the precise amount (in other words: a modality) of the duty. And the adjustment, if any, can only be downwards.
- (122) Contrary to the cases of partial annulment in the past discussed above in recital (119), the Court has not been able to decide as to whether a new (reduced) duty rate had to be granted, because that decision requires first an assessment of the MET claim. That task of assessing the MET claim falls within the prerogatives of the Commission. Hence, the Court cannot carry out this part of the investigation at the place of the Commission without overstepping its competences.
- (123) Contrary to cases of complete annulment in the past, the findings on dumping, injury, causality and Union interest have not been annulled. Therefore, dumping, injury, causality and Union interest have been validly established at the time of adoption of Council Regulation (EC) No 1472/2006. Therefore, there is no reason to limit the reimposition of definitive anti-dumping duties to the future.
- (124) The present regulation does therefore in any event not depart from the decisional practice of the Institutions, even if it was relevant.
- (125) Interested parties also argued that the annulment of anti-dumping duties would not entail any unjust enrichment by the importers, as claimed by the Commission, since these importers may have suffered a decline in sales due to the duty which had been incorporated in the sales price.
- (126) In the case-law of the Court of Justice, it is recognized that the repayment of charges which have been unduly levied may be refused where doing so would entail unjust enrichment of the recipients ⁽³⁷⁾. The Commission observes that those interested parties do not contest that the duty has been passed on and do not provide any proof for a decline in sales, and that in any event the case-law on unjust enrichment only takes into pass-on, but not possible secondary effects of pass-on.
- (127) Regarding the alleged derogation from the principle of non-retroactivity, reference is made to the recitals 76 to 81 where this was addressed extensively.
- (128) Regarding the alleged application of two different legal frames in the current implementation reference is made to recitals 99 to 102 where this was addressed extensively.

- (129) Finally, concerning the comments provided by these parties following the disclosure of the MET assessment of the Chinese exporting producers concerned, it is considered that these have been addressed fully in the current Regulation.

Other procedural issues

- (130) The above interested parties claimed that the same procedural rights should have been granted to the exporting producers concerned by the current implementation than those granted to the sampled exporting producers during the original investigation. They argued that in particular, the Chinese exporting producers were not provided any opportunity to complement their MET/IT claim forms via deficiency letters and only desk analysis had been carried out rather than on-spot verification visits. In addition, the Commission did not ensure the due delivery of the disclosure of the assessment of MET/IT requests to the exporting producers concerned as these were only sent to the legal representatives of these companies at the time of the original investigation.
- (131) It was further argued that the exporting producers concerned by this implementation were not provided with the same procedural guarantees than those applied in standard anti-dumping investigations, but stricter standards were applied. The Commission has not taken into account the time lag between the filing of the MET/IT request in the original investigation and the assessment of these claims. In addition, exporting producers, during the original investigation were only provided 15 days in order to fill in the MET/IT requests, instead of the usual 21 days.
- (132) In addition, one of the importers claimed that the procedural rights of the exporting producers were violated as they were no longer in a position to provide meaningful comments or provide additional information to support claims that were made 11 years ago as the companies may no longer exist or the documents may no longer be available.
- (133) The same party argued that unlike in the original investigation, the current reimposition of the measures would only affect the importers in the Union without, however, any option for them to provide meaningful input.
- (134) Also, it was claimed that the Commission applied de facto facts available within the meaning of Article 18(1) of the basic Regulation, while the Commission did not comply with the procedural rules set out in Article 18(4) of the basic Regulation.
- (135) The Commission observes that nothing in the basic Regulation requires the Commission to give exporting companies claiming MET/IT the possibility to complete lacking factual information. It recalls that according to the case-law, the burden of proof lies with the producer wishing to claim MET/IT under Article 2(7)(b) of the basic Regulation. To that end, the first subparagraph of Article 2(7)(c) provides that the claim submitted by such a producer must contain sufficient evidence, as laid down in that provision, that the producer operates under market economy conditions. Accordingly, as held by the Court in the judgments in *Brosmann* and *Aokang*, there is no obligation on the Institutions to prove that the producer does not satisfy the conditions laid down for the recognition of such status. On the contrary, it is for the Commission to assess whether the evidence supplied by the producer concerned is sufficient to show that the criteria laid down in the first subparagraph of Article 2(7)(c) of the basic Regulation are fulfilled in order to grant it MET/IT (see above recital 31). The right to be heard concerns the assessment of those facts, but does not comprise the right to remedy deficient information. Otherwise, the exporting producer could prolong indefinitely the assessment, by providing information piece by piece.
- (136) In that regard, it is recalled that there is no obligation, for the Commission, to request the exporting producer to complement the MET/IT claim. As mentioned in the preceding recital, the Commission may base their assessment on the information submitted by the exporting producer. In any event, the exporting producers concerned have not contested the assessment of their MET/IT claims by the Commission, and they have not identified which documents or which people they have no longer been able to rely upon. The allegation is therefore so abstract that the Institutions cannot take into account those difficulties when carrying out the assessment of the MET/IT claims. As that argument is based on speculation and not supported by precise indications as to which

documents and which people are no longer available and as to what the relevance of those documents and people for the assessment of the MET/IT claim is, that argument has to be rebutted.

- (137) Regarding the de facto application of Article 18(1) of the basic Regulation, this does not automatically also require the application of Article 18(4) of the basic Regulation. This is only required in cases where the Commission were to reject information that had been provided by the interested party. In the current case, the Commission accepted the information provided by the exporting producers concerned and based its assessment on this information. That is not use of facts available. Rather, the Commission has not rejected any information.

Union interest

- (138) One importer claimed that the Commission failed to examine whether the imposition of the anti-dumping duties would be in the Union interest and argued that the measures would be against the Union interest because (i) the measures already had their intended effect when first imposed; (ii) the measures would not cause additional benefit for the Union industry; (iii) the measures would not affect the exporting producers and (iv) the measures would impose an important cost on the importers in the Union.
- (139) The present case only concerns the MET/IT requests, because this is the only point on which a legal error has been identified by the Union Courts. For Union interest, the assessment in the initial regulation remains fully valid. Furthermore, the present measure is justified in order to protect the financial interest of the Union.

Manifest errors in the assessment of MET/IT requests

(i) MET assessment

- (140) FESI and Puma contested the assessment of the Commission with regard to the MET requests of their Chinese suppliers and alleged that they were mainly rejected based on the absence of complete information. Regarding criterion 1, these parties argued that the Commission, apart from making no effort to obtain the missing information did also not specify which information would have been necessary to show that there was no significant State interference in the business decisions of the exporting producers concerned. Regarding criterion 3, referring the judgment of the Court of Justice in case T-586/14 *Xinyi OV v Commission*, these parties argued that tax incentives or preferential tax regimes were not indicative for any distortion or non-market economy behaviour.
- (141) On this basis, the parties argued that the Commission made a manifest error in the application of Article 2(7)(c) of the basic Regulation and has also not provided adequate reasons for the rejection of the exporting producers' MET requests.
- (142) With regard to the missing information concerning criterion 1, reference is made to (135) which outlines that there is nothing in the basic Regulation that requires the Commission to give exporting companies claiming MET the possibility to complete lacking factual information and that the burden of proof lies in fact with the exporting producer who wishes to claim MET.
- (143) Concerning criterion 3, it is clarified that no tax incentives or preferential tax regimes (if any) were considered as a reason to reject the MET.

(ii) IT assessment

- (144) The same above parties argued, referring to criterion 2, that the Commission did not show that export sales were not freely determined and that it was up to the Commission to determine whether and how export prices were affected due to State interference.

- (145) Moreover, it was argued that the finding that export sales were not freely determined contradicts the findings of the original investigation related to OEM sales made where it was established that importers such as Puma were conducting its own R & D and raw material sourcing when buying from the Chinese suppliers ⁽³⁸⁾. On this basis, it was claimed that Puma and Timberland had significant control over the production process and specifications and that there was therefore no possibility of State interference.
- (146) As already mentioned in recital 42 above the burden of proof lies with the producer wishing to claim IT. As also explained above in recital 47 the exporting producers failed to demonstrate that business decisions were made without State interference. It is also noted that criterion 2 is not referring solely to export prices, but in general to export sales including export prices and quantities and other conditions and terms of sales that should be determined freely without State interference.
- (147) In support of their argument that export prices were freely determined the interested parties concerned referred to recital 269 of Commission Regulation (EC) No 553/2006 (provisional Regulation). However, this recital addressed the resale prices of the importers in the Union and cannot therefore be considered as an appropriate basis to establish the reliability of the export prices by the exporting producers. Likewise, the reference to recitals 132 of the provisional Regulation and recital 135 of Regulation (EC) No 1472/2006 ⁽³⁹⁾ (contested Regulation) refers to adjustments made to the normal value when comparing it to the export price and does not allow any conclusions as to whether export sales of the Chinese companies were freely determined.
- (148) Furthermore, these parties claimed that the Commission has also not explained how it arrived to the conclusion that there would be a risk of circumvention of the antidumping measure if the exporting producers concerned were granted an individual duty rate that would, however be the underlying purpose of the IT criteria.
- (149) Regarding the risk of circumvention, this is only one criterion out of five listed in Article 9(5) of the basic Regulation before its amendment. According to this Article all five criteria should be shown to be met by the exporting producer. Therefore, failure to meet one or more criteria is sufficient to deny the IT claim without examining whether the other criteria were met.

Supplier of Timberland

- (150) FESI contested the statement in recital 19 above according to which one of Timberland suppliers, General Shoes Limited, was wrongly identified as a Chinese supplier in the application before the national Court whereas the company was established in Vietnam. FESI argued that the Commission should have sought further clarification and alleged that the company was easily identifiable as a Chinese company. It argued that while it was true that the company appeared with a different name in the sampling form and MET claim provided in the original investigation (i.e. as General Footwear Ltd) the different company name in Timberland's application before the national Court (i.e. General Shoes Ltd) would be most likely merely due to a translation error. Therefore the MET/IT request of the Chinese company General Footwear Ltd should also have been assessed.
- (151) General Footwear Ltd is part of a company group with related companies in China and Vietnam. Both, a producer in Vietnam and another one in China provided MET/IT claims in the original investigation. In the MET/IT claim of the Chinese company, its name is consistently reported as 'General Footwear Ltd' with an address in China. The producer in Vietnam is reported as 'General Shoes Ltd'. However, the relevant MET/IT claim form is ambiguous whether the company at stake is in fact Chinese or Vietnamese. It was therefore not unreasonable to assume that the company mentioned in the file before the national Court was in fact Vietnamese.
- (152) In any event, it is the Commission's intention to still assess the MET/IT claim of 'General Footwear Ltd' (China). In the spirit of sound administration and in order not to delay unnecessarily the ongoing implementation exercise, this assessment will, however, be subject to separate legal act.

Argument linked to reimbursement claims

- (153) One importer acknowledged that none of the exporting producers concerned by the current implementation was its supplier and therefore considered that the conclusions were not relevant to its situation. This party argued that the conclusions of the current implementation cannot therefore constitute a basis for denying its reimbursement requests filed at the national customs. The importer further requested that the MET/IT claims of its suppliers should be investigated on the basis of the documents provided by the relevant Belgian customs authorities to the Commission.
- (154) With regard to the above claim, the Commission refers to the Commission Implementing Regulation (EU) 2016/223 establishing a procedure for assessing certain market economy treatment and individual treatment claims made by exporting producers from China and Vietnam, and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14 ⁽⁴⁰⁾ which sets out the procedure to be followed in this matter. In particular, in accordance with Articles 1 and 2 of that Regulation, the Commission will examine the relevant MET/IT claims as soon as it has received the relevant documentation from the customs authorities.

D. CONCLUSIONS

- (155) Account taken of the comments made and the analysis thereof it was concluded that the residual anti-dumping duty applicable to the PRC in respect of the 13 exporting producers concerned for the period of application of the contested Regulation should be reimposed.

E. DISCLOSURE

- (156) The exporting producers concerned and all parties that came forward were informed of the essential facts and considerations on the basis of which it was intended to recommend the reimposition of the definitive anti-dumping duty on imports of the 13 exporting producers concerned. They were granted a period within which to make representations subsequent to disclosure.
- (157) The Committee established by Article 15(1) of the Regulation (EU) 2016/1036 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of footwear with uppers of leather or composition leather, excluding sports footwear, footwear involving special technology, slippers and other indoor footwear and footwear with a protective toecap, originating in the People's Republic of China and produced by the exporting producers listed in Annex II to this Regulation and falling within CN codes: 6403 20 00, ex 6403 30 00 ⁽⁴¹⁾, ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00 ⁽⁴²⁾ which took place during the period of application of Council Regulation (EC) No 1472/2006 and Council Regulation (EU) 1294/2009. The TARIC codes are listed in Annex I to this Regulation.

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

- ‘sports footwear’ shall mean footwear within the meaning of subheading note 1 to Chapter 64 of Annex I of Commission Regulation (EC) No 1719/2005 ⁽⁴³⁾,
- ‘footwear involving special technology’ shall mean footwear having a CIF price per pair of not less than EUR 7,5, for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact, or materials such as low-density polymers and falling within CN codes ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98,

- ‘footwear with a protective toecap’ shall mean footwear incorporating a protective toecap with an impact resistance of at least 100 joules ⁽⁴⁴⁾ and falling within CN codes: ex 6403 30 00 ⁽⁴⁵⁾, ex 6403 51 11, ex 6403 51 15, ex 6403 51 19, ex 6403 51 91, ex 6403 51 95, ex 6403 51 99, ex 6403 59 11, ex 6403 59 31, ex 6403 59 35, ex 6403 59 39, ex 6403 59 91, ex 6403 59 95, ex 6403 59 99, ex 6403 91 11, ex 6403 91 13, ex 6403 91 16, ex 6403 91 18, ex 6403 91 91, ex 6403 91 93, ex 6403 91 96, ex 6403 91 98, ex 6403 99 11, ex 6403 99 31, ex 6403 99 33, ex 6403 99 36, ex 6403 99 38, ex 6403 99 91, ex 6403 99 93, ex 6403 99 96, ex 6403 99 98 and ex 6405 10 00,
- ‘slippers and other indoor footwear’ shall mean such footwear falling within CN code ex 6405 10 00.

3. The rate of the definitive anti-dumping duty applicable, before duty, to the net free-at-Union-frontier price of the products described in paragraph 1 and manufactured by the exporting producers listed in Annex II to this Regulation shall be 16,5 %.

Article 2

The amounts secured by way of the provisional anti-dumping duty pursuant to Commission Regulation (EC) No 553/2006 of 27 March 2006 shall be definitively collected by the present Regulation. The amounts secured in excess of the definitive rate of anti-dumping duty shall be released.

Article 3

This Regulation shall enter into force on the 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, 18 August 2016.

For the Commission

The President

Jean-Claude JUNCKER

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ L 98, 6.4.2006, p. 3.

⁽³⁾ Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with upper leather originating in the People's Republic of China and Vietnam (OJ L 275, 6.10.2006, p. 1).

⁽⁴⁾ Council Regulation (EC) No 388/2008 of 29 April 2008 extending the definitive anti-dumping measures imposed by Regulation (EC) No 1472/2006 on imports of certain footwear with uppers of leather originating in the People's Republic of China to imports of the same product consigned from the Macao SAR, whether declared as originating in the Macao SAR or not (OJ L 117, 1.5.2008, p. 1).

⁽⁵⁾ OJ C 251, 3.10.2008, p. 21.

⁽⁶⁾ Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 (OJ L 352, 30.12.2009, p. 1).

⁽⁷⁾ OJ C 295, 11.10.2013, p. 6.

⁽⁸⁾ Council Implementing Decision 2014/149/EU of 18 March 2014 rejecting the proposal for an Implementing Regulation reimposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on certain footwear with uppers of leather originating in the People's Republic of China and produced by Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd, Risen Footwear (HK) Co. Ltd and Zhejiang Aokang Shoes Co. Ltd (OJ L 82, 20.3.2014, p. 27).

⁽⁹⁾ OJ L 302, 19.10.1992, p. 1.

- ⁽¹⁰⁾ Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ L 56, 6.3.1996, p. 1).
- ⁽¹¹⁾ Joined cases 97, 193, 99 and 215/86 *Asteris AE and others and Hellenic Republic v Commission* [1988] ECR 2181, paragraphs 27 and 28.
- ⁽¹²⁾ Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques v Council* [2000] I-8147, paragraphs 80 to 85; Case T-301/01 *Alitalia v Commission* [2008] II-1753, paragraphs 99 and 142; Joined Cases T-267/08 and T-279/08 *Région Nord-Pas de Calais v Commission* [2011] II-0000, paragraph 83.
- ⁽¹³⁾ Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques v Council* [2000] I-8147, paragraphs 80 to 85.
- ⁽¹⁴⁾ Regulation (EU) No 765/2012 of the European Parliament and of the Council of 13 June 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ L 237, 3.9.2012, p. 1).
- ⁽¹⁵⁾ According to Article 2 of Regulation (EU) No 765/2012 of the European Parliament and of the Council of 13 June 2012 the amendments introduced by that amending Regulation only apply to investigations initiated after the entry into force of that Regulation. The present investigation, however, was initiated on 7 July 2005 (OJ C 166, 7.7.2005, p. 14).
- ⁽¹⁶⁾ Case C-458/98 P *Industrie des Poudres Sphériques v Council* [2000] I-8147.
- ⁽¹⁷⁾ Paragraph 42 of the judgement in Case C-249/10 P and paragraph 36 of the judgement in Case C-247/10 P.
- ⁽¹⁸⁾ Notice on the implementation of the judgment in joined cases C-659/13 and C-34/14 C&J *Clark International Limited and Puma SE concerning Council Regulation (EC) No 1472/2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam* (OJ C 101, 17.3.2016, p. 13).
- ⁽¹⁹⁾ Compare also the other cases for which retroactive application is permitted in Article 8 (breach of undertaking) and 14(5) (circumvention) of the basic Regulation, which also concern situations in which goods were introduced into free circulation before the duties were imposed.
- ⁽²⁰⁾ Case 270/84 *Licata v ESC* [1986] ECR 2305, paragraph 31; Case C-60/98 *Butterfly Music v CEDEM* [1999] ECR I-3939, paragraph 24; Case 68/69 *Bundesknappschaft v Brock* [1970] ECR 171, paragraph 6; Case 1/73 *Westzucker GmbH v Einfuhr und Vorratsstelle für Zucker* [1973] 723, paragraph 5; Case 143/73 *SOPAD v FORMA a.o.* [1973] ECR 1433, paragraph 8; Case 96/77 *Bauche* [1978] ECR 383, paragraph 48; Case 125/77 *Koninklijke Scholten-Honig NV v Floofproduktschaap voor Akkerbouwprodukten* [1978] ECR 1991, paragraph 37; Case 40/79 P v *Commission* [1981] ECR 361, paragraph 12; Case T-404/05 *Greece v Commission* [2008] ECR II-272, paragraph 77; C-334/07 P *Commission v Freistaat Sachsen* [2008] ECR I-9465, paragraph 53.
- ⁽²¹⁾ Case T-176/01 *Ferrière Nord v Commission* [2004] ECR II-3931, paragraph 139; C-334/07 P *Commission v Freistaat Sachsen* [2008] ECR I-9465, paragraph 53.
- ⁽²²⁾ Case C-169/95 *Spain v Commission* [1997] ECR I-135, paragraph 51 to 54; Joined Cases T-116/01 and T-118/01, *P&O European Ferries (Vizcaya) SA v Commission* [2003] ECR II-2957, paragraph 205.
- ⁽²³⁾ Case C-34/92 *GruSa Fleisch v Hauptzollamt Hamburg-Jonas* [1993] ECR I-4147, paragraph 22. The same or similar wording can be found for example in Joined cases 212 to 217/80 *Meridionale Industria Salumi a.đ.* [1981] ECR 2735, paragraph 9 and 10; Case 21/81 *Bout* [1982] ECR 381, paragraph 13; Case T-42/96 *Eyckeler & Malt v Commission* [1998] ECR II-401, paragraphs 53 and 55 to 56; Case T-180/01 *Euroagri v Commission* [2004] ECR II-369, paragraph 36.
- ⁽²⁴⁾ Case C-337/88 *Società agricola fattoria alimentare (SAFA)* [1990] ECR I-1, paragraph 13.
- ⁽²⁵⁾ Case 245/81 *Edeka v Germany* [1982] ECR 2746, paragraph 27.
- ⁽²⁶⁾ Case T-299/05 *Shanghai Excell M&E Enterprise and Shanghai Adepteck Precision v Council* [2009] ECR II-565, paragraph 116 to 146.
- ⁽²⁷⁾ Case C-141/08 P, *Foshan Shunde Yongjian Housewares & Hardware Co. Ltd v Council* [2009] I-9147, paragraph 94 and following.
- ⁽²⁸⁾ Case T-320/13 *Delsolar v Commission* [2014] II-0000, paragraphs 40 to 67.
- ⁽²⁹⁾ Regulation (EU) No 1168/2012 of the European Parliament and the Council amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community (OJ L 344, 14.12.2012, p. 1).

⁽³⁰⁾ OJ L 201, 26.7.2001, p. 10, recital 6.

⁽³¹⁾ OJ L 82, 20.3.2014, p. 27.

⁽³²⁾ Case C-138/09 *Todaro* [2010] ECR I-4561.

⁽³³⁾ Case T-167/94 *Nölle v Council and Commission* [1995] II-2589, paragraph 62 and 63.

⁽³⁴⁾ See for example Case T-221/05 *Huvis v Council* [2008] ECR II-124 and Case T-249/06 *Interpipe Nikopolsky v Council* [2009] ECR II-303. For the sake of completeness, the following explanations appear useful: In case T-107/08 *ENRC v Council*, the General Court found that there was no dumping, or, at the very least, that the dumping margin established would have been lower than that calculated in the contested regulation, and therefore annulled the contested Council Regulation in its entirety (Case T-107/08 *ENRC v Council* [2011] ECR II-8051, paragraphs 67 to 70). When the Commission applied the method prescribed by the General Court, it turned out that there was neither dumping nor injury. The Commission therefore refrained from formally resuming the investigation. In the judgment of the Court of Justice in Case C-351/04 *Ikea* (Case C-351/04 *Ikea* [2007] ECR I-7723), the Court of Justice had partially declared invalid the Council Regulation, namely to the extent that the duty had been calculated by relying on the technique of so-called 'zeroing'. The institutions had recalculated the duty without using zeroing already at an earlier stage, following a ruling of the WTO Appellate body, and found that no dumping had occurred, and therefore terminated the investigation without imposing measures (i.e. effectively setting the new duty at zero) (Council Regulation (EC) No 160/2002 of 28 January 2002 amending Council Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan, and terminating the proceeding with regard to imports originating in Pakistan (OJ L 26, 30.1.2002, p. 2)). In case T-498/04 *Zhejiang Xinan Chemical Group v Council* (Case T-498/04 *Zhejiang Xinan Chemical Group v Council* [2009] ECR I-1969), the Council filed an appeal. Therefore, the annulment only took effect on the date at which the Court of Justice handed down its judgment on appeal (Case C-337/09 P *Council v Zhejiang Xinan Chemical Group* [2012] ECR I-0000), which was on 19 July 2012. In that judgment, the General Court, confirmed by the Court of Justice, found that the Commission and the Council were obliged to grant market-economy treatment to the applicant, which was the only Chinese company that had exported the product concerned during the investigation period. In that case, contrary to the present case, the Commission and the Council had actually carried out the analysis of the market economy treatment claim and had rejected that request as unfounded. The Union Courts held that — contrary to the view expressed by the Commission and the Council — the claim actually was founded, and therefore normal value had to be calculated on the basis of the data provided by *Zhejiang Xinan Chemical Group*. The Commission would normally have resumed the procedure, in order to propose to the Council to impose a duty for the future. However, in the case at hand, the Commission (Commission Decision 2009/383/EC of 14 May 2009 suspending the definitive anti-dumping duties imposed by Council Regulation (EC) No 1683/2004 on imports of glyphosate originating in the People's Republic of China, OJ L 120, 15.5.2009, p. 20) and the Council (Implementing Regulation of the Council (EU) No 126/2010 of 11 February 2010 extending the suspension of the definitive anti-dumping duty imposed by Regulation (EC) No 1683/2004 on imports of glyphosate originating in the People's Republic of China (OJ L 40, 13.2.2010, p. 1)) had decided in 2009 and 2010 to suspend the anti-dumping duty for the period until the end of its applicability on 30 September 2010, considering that injury was unlikely to resume due to the high profit levels of the Union industry. Hence, there was no need to resume the procedure in view of the imposition of a duty for the future. There was also no scope to resume the procedure in view of a reimposition for the past: Contrary to the present case, there was no sampling. Indeed, *Zhejiang Xinan Chemical Group* was the only exporting producer that had sales to the Union market in the investigation period. As the Commission and the Council would have been obliged to grant *Zhejiang Xinan Chemical Group* market economy treatment, the Union Courts had annulled the finding of dumping. Case T-348/05 *JSC Kirovo-Chepetsky v Council* (Case T-348/05 *JSC Kirovo-Chepetsky v Council* [2008] ECR II-159) is a very peculiar case. The Commission had initiated a partial interim review at the request of the Union industry, and had at that occasion broadened the scope of the products concerned, by including a different product. The General Court held that it was not possible to proceed in that manner, but that it was necessary to launch a separate investigation into the product that had been added. On the basis of the general principle of Union law of *res iudicata*, there was no scope for the institutions to resume the partial interim review following the annulment.

⁽³⁵⁾ See for example Council Regulation (EC) No 412/2009 of 18 May 2009 amending Regulation (EC) No 428/2005 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the People's Republic of China and Saudi Arabia, amending Regulation (EC) No 2852/2000 imposing a definitive anti-dumping duty on imports of polyester staple fibres originating in the Republic of Korea and terminating the anti-dumping proceeding in respect of such imports originating in Taiwan (OJ L 125, 25.1.2009, p. 1) (compliance with *Huvis*); Council Implementing Regulation (EU) No 540/2012 of 21 June 2012 amending Regulation (EC) No 954/2006 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel originating in Croatia, Romania, Russia and Ukraine (OJ L 165, 26.6.2012, p. 1) (compliance with *Interpipe Nikopolsky*).

- ⁽³⁶⁾ See for example Case C-338/10 *Gruenwald Logistik Services* [2012] ECR I-0000 and the reimposition of duties by Council Implementing Regulation (EU) No 158/2013 reimposing a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China (OJ L 49, 22.2.2013, p. 29). See also the following examples: In case T-158/10 *Dow v Council*, the General Court found that there was no likelihood of continuation of dumping (Case T-158/10 *Dow v Council* [2012] ECR II-0000, paragraphs 47 and 59). In case T-107/04 *Aluminium Silicon Mill Products v Council*, the General Court found that there was no causal link between dumping and injury (Case T-107/04 *Aluminium Silicon Mill Products v Council* [2007] ECR II-672, paragraph 116). Pursuant to the general principle of Union law of *res judicata*, the Commission and the Council are bound by the findings of the Union Courts, where those can, on the basis of the facts in front of them, come to a definitive conclusion on dumping, injury, causal link and Union interest. The Commission and the Council can therefore not deviate from the Union Court's findings. In such a situation, the investigation is closed by virtue of the judgement of the Union Courts, which come to the definitive conclusion that the complaint of the Union industry is unfounded in law. Following those two judgments, there was therefore no scope for the Commission and the Council to resume an investigation, which is why no further steps were taken following those judgments.
- ⁽³⁷⁾ Case 199/82 *San Giorgio* [1983] ECR 3595, paragraph 13.
- ⁽³⁸⁾ Commission Regulation (EC) No 553/2006 imposing a provisional anti-dumping duty on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ L 98, 6.4.2006, p. 3).
- ⁽³⁹⁾ Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with upper leather originating in the People's Republic of China and Vietnam (OJ L 275, 6.10.2006, p. 1).
- ⁽⁴⁰⁾ OJ L 41, 18.2.2016, p. 3.
- ⁽⁴¹⁾ By virtue of Commission Regulation (EC) No 1549/2006 of 17 October 2006 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 301, 31.10.2006, p. 1) this CN code is replaced on 1 January 2007 by CN codes ex 6403 51 05, ex 6403 59 05, ex 6403 91 05 and ex 6403 99 05.
- ⁽⁴²⁾ As defined in Commission Regulation (EC) No 1719/2005 of 27 October 2005 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 286, 28.10.2005, p. 1). The product coverage is determined in combining the product description in Article 1(1) and the product description of the corresponding CN codes taken together.
- ⁽⁴³⁾ OJ L 286, 28.10.2005, p. 1.
- ⁽⁴⁴⁾ The impact resistance shall be measured according to European Norms EN345 or EN346.
- ⁽⁴⁵⁾ By virtue of Commission Regulation (EC) No 1549/2006 of 17 October 2006 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 301, 31.10.2006, p. 1) this CN code is replaced on 1 January 2007 by CN codes ex 6403 51 05, ex 6403 59 05, ex 6403 91 05 and ex 6403 99 05.
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ANNEX I

TARIC codes for footwear with uppers of leather or composition leather as defined in Article 1

a) From 7 October 2006:

6403 30 00 39, 6403 30 00 89, 6403 51 11 90, 6403 51 15 90, 6403 51 19 90, 6403 51 91 90,
 6403 51 95 90, 6403 51 99 90, 6403 59 11 90, 6403 59 31 90, 6403 59 35 90, 6403 59 39 90,
 6403 59 91 90, 6403 59 95 90, 6403 59 99 90, 6403 91 11 99, 6403 91 13 99, 6403 91 16 99,
 6403 91 18 99, 6403 91 91 99, 6403 91 93 99, 6403 91 96 99, 6403 91 98 99, 6403 99 11 90,
 6403 99 31 90, 6403 99 33 90, 6403 99 36 90, 6403 99 38 90, 6403 99 91 99, 6403 99 93 29,
 6403 99 93 99, 6403 99 96 29, 6403 99 96 99, 6403 99 98 29, 6403 99 98 99 and 6405 10 00 80

b) From 1 January 2007:

6403 51 05 19, 6403 51 05 99, 6403 51 11 90, 6403 51 15 90, 6403 51 19 90, 6403 51 91 90,
 6403 51 95 90, 6403 51 99 90, 6403 59 05 19, 6403 59 05 99, 6403 59 11 90, 6403 59 31 90,
 6403 59 35 90, 6403 59 39 90, 6403 59 91 90, 6403 59 95 90, 6403 59 99 90, 6403 91 05 19,
 6403 91 05 99, 6403 91 11 99, 6403 91 13 99, 6403 91 16 99, 6403 91 18 99, 6403 91 91 99,
 6403 91 93 99, 6403 91 96 99, 6403 91 98 99, 6403 99 05 19, 6403 99 05 99, 6403 99 11 90,
 6403 99 31 90, 6403 99 33 90, 6403 99 36 90, 6403 99 38 90, 6403 99 91 99, 6403 99 93 29,
 6403 99 93 99, 6403 99 96 29, 6403 99 96 99, 6403 99 98 29, 6403 99 98 99 and 6405 10 00 80

c) From 7 September 2007:

6403 51 05 15, 6403 51 05 18, 6403 51 05 95, 6403 51 05 98, 6403 51 11 91, 6403 51 11 99,
 6403 51 15 91, 6403 51 15 99, 6403 51 19 91, 6403 51 19 99, 6403 51 91 91, 6403 51 91 99,
 6403 51 95 91, 6403 51 95 99, 6403 51 99 91, 6403 51 99 99, 6403 59 05 15, 6403 59 05 18,
 6403 59 05 95, 6403 59 05 98, 6403 59 11 91, 6403 59 11 99, 6403 59 31 91, 6403 59 31 99,
 6403 59 35 91, 6403 59 35 99, 6403 59 39 91, 6403 59 39 99, 6403 59 91 91, 6403 59 91 99,
 6403 59 95 91, 6403 59 95 99, 6403 59 99 91, 6403 59 99 99, 6403 91 05 15, 6403 91 05 18,
 6403 91 05 95, 6403 91 05 98, 6403 91 11 95, 6403 91 11 98, 6403 91 13 95, 6403 91 13 98,
 6403 91 16 95, 6403 91 16 98, 6403 91 18 95, 6403 91 18 98, 6403 91 91 95, 6403 91 91 98,
 6403 91 93 95, 6403 91 93 98, 6403 91 96 95, 6403 91 96 98, 6403 91 98 95, 6403 91 98 98,
 6403 99 05 15, 6403 99 05 18, 6403 99 05 95, 6403 99 05 98, 6403 99 11 91, 6403 99 11 99,
 6403 99 31 91, 6403 99 31 99, 6403 99 33 91, 6403 99 33 99, 6403 99 36 91, 6403 99 36 99,
 6403 99 38 91, 6403 99 38 99, 6403 99 91 95, 6403 99 91 98, 6403 99 93 25, 6403 99 93 28,
 6403 99 93 95, 6403 99 93 98, 6403 99 96 25, 6403 99 96 28, 6403 99 96 95, 6403 99 96 98,
 6403 99 98 25, 6403 99 98 28, 6403 99 98 95, 6403 99 98 98, 6405 10 00 81 and 6405 10 00 89

ANNEX II

List of exporting producers

Name of the exporting producer	TARIC additional code
Buckingham Shoe Mfg Co. Ltd	A999
Buildyet Shoes Mfg.	A999
DongGuan Elegant Top Shoes Co. Ltd	A999
Dongguan Stella Footwear Co. Ltd	A999
Dongguan Taiway Sports Goods Limited	A999
Foshan City Nanhai Qun Rui Footwear Co.	A999
Jianle Footwear Industrial	A999
Sihui Kingo Rubber Shoes Factory	A999
Synfort Shoes Co. Ltd	A999
Taicang Kottoni Shoes Co. Ltd	A999
Wei Hao Shoe Co. Ltd	A999
Wei Hua Shoe Co. Ltd	A999
Win Profile Industries Ltd	A999

COMMISSION REGULATION (EU) 2016/1396**of 18 August 2016****amending certain Annexes to Regulation (No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies****(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 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ⁽¹⁾, and in particular the first paragraph of Article 23 thereof,

Whereas:

- (1) Regulation (EC) No 999/2001 lays down rules for the prevention, control and eradication of transmissible spongiform encephalopathies (TSEs) in bovine, ovine and caprine animals. It applies to the production and placing on the market of live animals and products of animal origin and in certain specific cases to exports thereof.
- (2) Annex II to Regulation (EC) No 999/2001 lays down the criteria based on which the BSE status of countries or regions shall be determined in accordance with Article 5(2) of that Regulation. Those criteria are based on the conditions set out in the chapter on bovine spongiform encephalopathy (BSE) of the Terrestrial Animal Health Code of the World Animal Health Organisation (OIE).
- (3) In May 2015, the OIE World Assembly of Delegates amended the BSE Chapter of the OIE Terrestrial Animal Health Code, by adding the following sentence in Article 11.4.1 of the Code: 'For the purpose of official BSE risk status recognition, BSE excludes "atypical BSE" as a condition believed to occur spontaneously in all cattle populations at a very low rate' ⁽²⁾. Atypical BSE should therefore be excluded from the definition of 'BSE' for the purpose of Annex II to Regulation (EC) No 999/2001.
- (4) Annexes III, V and VII to Regulation (EC) No 999/2001 contain a number of references to Council Directive 64/433/EEC ⁽³⁾, Regulation (EC) No 1774/2002 of the European Parliament and of the Council ⁽⁴⁾ and Commission Regulation (EC) No 1974/2006 ⁽⁵⁾. As those three acts have been repealed, references in the Annexes to Regulation (EC) No 999/2001 should be updated.
- (5) The specific requirements set out in Annex V to Regulation (EC) No 999/2001, concerning to the removal of specified risk material for bovine animals whose origin is in Member States with a negligible BSE risk, was amended by Commission Regulation (EU) 2015/1162 ⁽⁶⁾. As a consequence of this amendment, certain provisions relating to the removal of specified risk material set out in Annex V and in Annex IX to Regulation (EC) No 999/2001 should also be amended, as developed below.
- (6) First, in accordance with the amendment made to the specific requirements for Member States with a negligible BSE risk status set out in Annex V to Regulation (EC) No 999/2001, by Regulation (EU) 2015/1162, tonsils are no longer defined as specified risk material for bovine animals whose origin is in Member States with negligible BSE risk. The transverse cut rostral to the lingual process of the basihyoid bone for tongues of bovine animals,

⁽¹⁾ OJ L 147, 31.5.2001, p. 1.

⁽²⁾ http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre_bse.htm

⁽³⁾ Council Directive 64/433/EEC of 26 June 1964 on health conditions for the production and marketing of fresh meat (OJ L 121, 29.7.1964, p. 2012).

⁽⁴⁾ Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJ L 273, 10.10.2002, p. 1).

⁽⁵⁾ Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 368, 23.12.2006, p. 15).

⁽⁶⁾ Commission Regulation (EU) 2015/1162 of 15 July 2015 amending Annex V to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (OJ L 188, 16.7.2015, p. 3).

required in accordance with point 7 of Annex V to Regulation (EC) No 999/2001, should therefore only apply to bovine animals whose origin is in Member States with controlled or undetermined BSE risk. Point 7 of that Annex V should therefore be amended accordingly.

- (7) Second, in accordance with the amendment made to Annex V to Regulation (EC) No 999/2001, by Regulation (EU) 2015/1162, the vertebral column is defined as specified risk material only for a minority of bovine animals in the Union. Taking into account the evolution of the epidemiological situation in the Union and the need to reduce administrative burden on operators, the requirement set out in point 11.3.(a) of Annex V to Regulation (EC) No 999/2001, to provide information on the label of the carcasses as regards the removal of the vertebral column, should be modified as follows: while so far a blue stripe must be indicated on the label of the carcasses or wholesale cuts of carcasses of bovine animals containing vertebral column when the removal of the vertebral column is not required, after a transitional period, a red stripe should be indicated on the label of the carcasses or wholesale cuts of carcasses of bovine animals containing vertebral column when the removal of the vertebral column is required.
- (8) The same modification from a requirement to indicate a blue stripe when the removal of the vertebral column is not required to a requirement to indicate a red stripe when the removal of the vertebral column is required, should apply for products of bovine origin imported into the Union. Point 3 of Section C and point 3 of Section D of Chapter C of Annex IX to Regulation (EC) No 999/2001 should therefore be amended accordingly.
- (9) In order to give economic operators and competent authorities inside and outside the Union the necessary time to adjust to this new regime of red stripe required when the removal of the vertebral column is required, this provision should enter into force after a transitional period until 30 June 2017.
- (10) Article 8(3) of Regulation (EC) No 999/2001 prohibits the practice, in Member States or regions thereof, with a controlled or undetermined BSE risk, of lacerating, after stunning, central nervous tissues by means of an elongated rod-shaped instrument introduced into the cranial cavity, or by means of gas injection into the cranial cavity, of bovine, ovine and caprine animals whose meat is intended for human or animal consumption. Point 6 of Annex V to Regulation (EC) No 999/2001 extends that prohibition to Member States with a negligible BSE risk, until all Member States are classified as countries with negligible BSE risk. Since atypical BSE is considered a spontaneous disease which occurs at a low prevalence also in countries with a negligible BSE risk, that prohibition should remain applicable after all Member States have been classified as countries with a negligible BSE risk. Point 6 of Annex V to Regulation (EC) No 999/2001 should therefore be amended to remove this time limitation.
- (11) Point 2 of Section A of Chapter A of Annex VIII to Regulation (EC) No 999/2001 sets out the rules relating to the approval of the negligible risk status for classical scrapie of Member States or zones of a Member State. On 25 June 2014 and 24 August 2014, Finland and Sweden respectively submitted an application to the Commission to be recognised as having a negligible risk status for classical scrapie.
- (12) On 13 January 2015, the Commission requested the scientific and technical assistance of the European Food Safety Authority (EFSA) to evaluate whether Finland and Sweden, in their respective applications, demonstrated compliance with point 2.1.(c) and point 2.2 of Section A of Chapter A of Annex VIII to Regulation (EC) No 999/2001.
- (13) On 19 November 2015, the EFSA published two scientific reports in response to the Commission's request ⁽¹⁾ ('the EFSA reports'). The EFSA reports conclude that, based on the testing sensitivity provided by the past evaluations of screening diagnostic tests by the EFSA and the Joint Research Centre Institute for Reference Materials and Measurement (IRMM), Sweden demonstrated compliance with point 2.1.(c) of Section A of Chapter A of Annex VIII to Regulation (EC) No 999/2001 for each of the preceding seven years, and Finland demonstrated such compliance for each of the preceding seven years, except for 2010, a year during which the level of confidence of detecting classical scrapie at a prevalence rate exceeding 0,1 per cent was 94,73 per cent. As the difference between a level of confidence of 94,73 per cent and of 95 per cent is negligible when it comes

⁽¹⁾ 'Evaluation of the application of Sweden to be recognised as having a negligible risk of classical scrapie' (EFSA Journal 2015;13(11):4292) and 'Evaluation of the application of Finland to be recognised as having a negligible risk of classical scrapie' (EFSA Journal 2015;13(11):4293).

to the risk of missing a case of classical scrapie, and as the criterion of point 2.1.(c) of Section A of Chapter A of Annex VIII to Regulation (EC) No 999/2001 was fulfilled in all six other years, the criterion can be considered as fulfilled for the past 7 years.

- (14) The EFSA reports also conclude that, based on the testing sensitivity provided by the past evaluations of screening diagnostic tests by the EFSA and the IRMM, Sweden and Finland's intentions concerning surveillance of classical scrapie in the future would comply with point 2.2 of Section A of Chapter A of Annex VIII to Regulation (EC) No 999/2001.
- (15) Taking into account the EFSA reports and the favourable outcome of the Commission assessment of those applications with the other criteria set out in point 2.1 of Section A of Chapter A of Annex VIII to Regulation (EC) No 999/2001, Finland and Sweden should be listed as Member States with a negligible risk of classical scrapie.
- (16) Point 3.2 of Section A of Chapter A of Annex VIII to Regulation (EC) No 999/2001 lists the Member States with an approved national control programme for classical scrapie. As Finland and Sweden should now be listed in point 2.3 of that Section as Member States with a negligible risk of classical scrapie, they should be deleted from the list of Member States with an approved national control programme for classical scrapie in point 3.2 of that Section, as that status offers guarantees exceeding those provided by an approved national control programme.
- (17) Points 1.2 and 1.3 of Section A of Chapter A of Annex VIII to Regulation (EC) No 999/2001 set out the conditions to be fulfilled for a holding to be recognised as having a negligible risk or a controlled risk of classical scrapie. Point 4 of that Section sets out the scrapie-related conditions to be fulfilled for intra-Union trade in ovine and caprine animals and semen and embryos thereof.
- (18) In addition, Article 3(1)(i) of Regulation (EC) No 999/2001 defines a holding as any place in which animals covered by that Regulation are held, kept, bred, handled or shown to the public. Semen collection centres, as well as zoos, must therefore be considered as holdings, and subject to conditions set out in Section A of Chapter A of Annex VIII to Regulation (EC) No 999/2001.
- (19) Given that the risk of spreading scrapie via male ovine and caprine animals kept at semen collection centres approved and supervised in accordance with the conditions set out in Annex D to Council Directive 92/65/EEC ⁽¹⁾ is limited, it is appropriate to establish specific conditions for semen collection centres in Section A of Chapter A of Annex VIII to Regulation (EC) No 999/2001.
- (20) These specific conditions should provide that a holding with a negligible, respectively controlled, risk of classical scrapie may introduce ovine and caprine animals from a semen collection centre provided that: (i) the semen collection centre is approved and supervised in accordance with Annex D to Directive 92/65/EEC; (ii) the semen collection centre has had no case of classical scrapie for the last seven, respectively three years; (iii) only the following ovine and caprine animals were introduced into the semen collection centre for the last seven, respectively three years: ovine and caprine animals from holdings where ovine and caprine animals are permanently marked and records are maintained, where records of movements of ovine and caprine animals in and out the holding are maintained, where no case of classical scrapie have been detected in the last seven, respectively three years, and which were subjected to regular checks by an official veterinarian or a veterinarian authorised by the competent authority; (iv) the semen collection centre has biosecurity measures in place to ensure that ovine and caprine animals coming from holdings with different scrapie statuses are not in contact in the semen collection centre. Points 1.2.(c) and 1.3.(c) of Section A of Chapter A of Annex VIII to Regulation (EC) No 999/2001 should be amended accordingly.
- (21) In addition, the scrapie-related intra-Union trade conditions for semen and embryos, laid down in point 4.2 of Section A of Chapter A of Annex VIII to Regulation (EC) No 999/2001, should be amended to take into account the specific conditions for semen collection centres mentioned in the above recital. Furthermore, reference to those specific conditions should also be introduced in the conditions for import of semen and embryos of ovine and caprine animals set out in Chapter H of Annex IX to Regulation (EC) No 999/2001.

⁽¹⁾ Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to Directive 90/425/EEC (OJ L 268, 14.9.1992, p. 54).

- (22) The conditions for intra-Union trade in ovine and caprine animals provided for in point 4.1 of Section A of Chapter A of Annex VIII to Regulation (EC) No 999/2001 are aimed at preventing the spread of classical scrapie in farmed animals kept on holdings. Since the movement of ovine and caprine animals exclusively between zoos has no impact on the scrapie status of the Union ovine and caprine farmed animals, those specific conditions should not apply to ovine and caprine animals kept in and moved exclusively between zoos as covered by the definition of approved bodies, institutes or centres provided in Article 2(1)(c) to Council Directive 92/65/EEC. Those animals should therefore be exempted from the conditions set out in point 4.1 of Section A of Chapter A of Annex VIII to Regulation (EC) No 999/2001.
- (23) The scrapie requirements for intra-Union trade in live ovine and caprine animals set out in point 4.1 of Section A of Chapter A of Annex VIII to Regulation (EC) No 999/2001 is difficult to comply with for intra-Union trade in certain rare breeds. In order to avoid inbreeding and to preserve the genetic diversity in rare breed populations, regular exchange of such animals between Member States is necessary. Specific conditions for intra-Union trade in ovine and caprine animals of rare breeds should therefore be laid down. Those specific conditions should allow intra-Union trade in ovine or caprine animals of rare breeds which do not comply with the requirements of point 4.1 of Section A of Chapter A of Annex VIII to Regulation (EC) No 999/2001.
- (24) The term 'rare breed' is not specifically defined in the Union legislation. However, Article 7(2) and (3) of Commission Delegated Regulation (EU) No 807/2014 ⁽¹⁾ establish the conditions under which commitments under the agri-environment-climate measure to rear local breeds in danger of being lost to farming can be made. Those conditions notably require that a duly recognised relevant technical body registers and keeps up-to-date the herd or flock book for the breed. In accordance with Council Directive 89/361/EEC ⁽²⁾, such a technical body is to be a breeders' organisation or association officially approved by the Member State in which that breeders' organisation or association is established, or an official agency of the Member State in question.
- (25) Therefore, for the purpose of Regulation (EC) No 999/2001, local breeds in danger of being lost to farming should be defined as those sheep and goat breeds that fulfil the conditions of Article 7(2) and (3) of Delegated Regulation (EU) No 807/2014, and which are subject to a preservation programme carried out by a breeders' organisation or association approved in accordance with Directive 89/361/EEC or by an official agency of the Member State in question.
- (26) Section B of Chapter C of Annex IX to Regulation (EC) No 999/2001 should be amended so as to allow the import into the Union of products of bovine, ovine or caprine origin from third countries with a negligible BSE risk also when these products are derived from raw materials coming, in part or in total, from countries with controlled or undetermined BSE risk, provided that specified risk material has been removed from those raw materials originating from countries with controlled or undetermined BSE risk.
- (27) Annexes II, III, V, VII, VIII and IX to Regulation (EC) No 999/2001 should therefore be amended accordingly.
- (28) 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, V, VII, VIII and IX to Regulation (EC) No 999/2001 are amended in accordance with the Annex to this Regulation.

⁽¹⁾ Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions (OJ L 227, 31.7.2014, p. 1).

⁽²⁾ Council Directive 89/361/EEC of 30 May 1989 concerning pure-bred breeding sheep and goats (OJ L 153, 6.6.1989, p. 30).

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*.

The amendments made to Annex IX to Regulation (EC) No 999/2001 by point 6 of the Annex to this Regulation shall apply from 1 July 2017.

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

Done at Brussels, 18 August 2016.

For the Commission

The President

Jean-Claude JUNKER

ANNEX

Annexes II, III, V, VII, VIII and IX to Regulation (EC) No 999/2001 are amended as follows:

1. In Annex II, the first paragraph of Chapter A is replaced by the following:

‘The BSE status of Member States or third countries or regions thereof (hereinafter referred to as countries or regions), shall be determined on the basis of the criteria set out in points (a) to (e). For the purpose of this Annex, “BSE” excludes “atypical BSE” as a condition believed to occur spontaneously in all cattle populations at a very low rate.’

2. In Annex III, Chapter A is amended as follows:

- (a) In Part I, point 6 is replaced by the following:

‘6. Measures following testing

- 6.1. Where an animal slaughtered for human consumption has been selected for testing for BSE, the health marking provided for in Chapter III of Section I of Annex I to Regulation (EC) No 854/2004 shall not be carried out on the carcase of that animal until a negative result to the rapid test has been obtained.
- 6.2. Member States may derogate from point 6.1 where an official system is in place in the slaughterhouse ensuring that no parts of examined animals bearing the health mark leave the slaughterhouse until a negative result to the rapid test has been obtained.
- 6.3. All parts of the body of an animal tested for BSE including the hide shall be retained under official control until a negative result to the rapid test has been obtained, unless they are disposed of in accordance with Article 12(a) or (b) of Regulation (EC) No 1069/2009, or unless its fats are processed in accordance with Regulation (EU) No 142/2011 and used in accordance with Article 12(e) of Regulation (EC) No 1069/2009 or used for the manufacture of derived products referred to in Article 36 of that Regulation.
- 6.4. All parts of the body of an animal found positive or inconclusive to the rapid test including the hide shall be disposed of in accordance with Article 12(a) or (b) of Regulation (EC) No 1069/2009, apart from material to be retained in conjunction with the records provided for in Chapter B, Part III of this Annex, and apart from the fats obtained from such a body, provided that these fats are processed in accordance with Regulation (EU) No 142/2011 and used in accordance with Article 12(e) of Regulation (EC) No 1069/2009 or used for the manufacture of derived products referred to in Article 36 of that Regulation.
- 6.5. Where an animal slaughtered for human consumption is found positive or inconclusive to the rapid test, at least the carcase immediately preceding and the two carcasses immediately following the animal tested positive or inconclusive on the same slaughter line shall be destroyed in accordance with point 6.4.

By way of derogation from the first paragraph of this point, Member States may decide to destroy the aforementioned carcasses only if the result of the rapid test is confirmed to be positive or inconclusive by confirmatory examinations referred to in Annex X, Chapter C, point 3.1(b).

- 6.6. Member States may derogate from the provisions of point 6.5 where a system is in place in the slaughterhouse preventing contamination between carcasses.’

- (b) In Part II, points 7.3 and 7.4 are replaced by the following:

- ‘7.3. All parts of the body of a tested animal, including the hide, shall be retained under official control until a negative result has been obtained to the rapid test, unless they are disposed of in accordance with Article 12(a) or (b) of Regulation (EC) No 1069/2009, or unless its fats are processed in accordance with Regulation (EU) No 142/2011 and used in accordance with Article 12(e) of Regulation (EC) No 1069/2009 or used for the manufacture of derived products referred to in Article 36 of that Regulation.

- 7.4. All parts of the body of an animal found positive to the rapid test, including the hide, shall be directly disposed of in accordance with Article 12(a) or (b) of Regulation (EC) No 1069/2009, apart from the material to be retained in conjunction with the records provided for in Chapter B, Part III of this Annex, and apart from rendered fats derived from such a body provided that these rendered fats are processed in accordance with Regulation (EU) No 142/2011 and used in accordance with Article 12(e) of Regulation (EC) No 1069/2009 or used for the manufacture of derived products referred to in Article 36 of that Regulation.'

3. Annex V is amended as follows:

- (a) points 3 and 4 are replaced by the following:

'3. Marking and disposal

Specified risk material shall be stained with a dye or, as appropriate, otherwise marked, immediately on removal, and disposed of in accordance with the rules laid down in Regulation (EC) No 1069/2009, and in particular in Article 12 thereof.

4. Removal of specified risk material

4.1. Specified risk material shall be removed at:

- (a) slaughterhouses, or, as appropriate, other places of slaughter;
- (b) cutting plants, in the case of vertebral column of bovine animals;
- (c) where appropriate, in approved establishments or plants referred to in Article 24(1)(h) of Regulation (EC) No 1069/2009.

4.2. By way of derogation from point 4.1, the use of an alternative test to the removal of specified risk material, referred to in Article 8(2), may be authorised in accordance with the procedure referred to in Article 24(3) of this Regulation, provided that that alternative test is listed in Annex X, in accordance with the following conditions:

- (a) the alternative tests must be carried out in slaughterhouses on all animals eligible for the removal of specified risk material;
- (b) no bovine, ovine or caprine product intended for human consumption or animal feed may leave the slaughterhouse before the competent authority has received and accepted the results of the alternative tests on all slaughtered animals potentially contaminated if BSE has been confirmed in one of them;
- (c) when an alternative test gives a positive result, all bovine, ovine and caprine material which has been potentially contaminated in the slaughterhouse must be destroyed in accordance with point 3, unless all parts of the body including the hide of the affected animal can be identified and kept separate.

4.3. By way of derogation from point 4.1, Member States may decide to allow:

- (a) the removal of the spinal cord of ovine and caprine animals in cutting plants specifically authorised for that purpose;
- (b) the removal of the vertebral column of bovine animals from carcasses or parts of carcasses in butcher shops specifically authorised, monitored and registered for that purpose;
- (c) the harvesting of head meat from bovine animals in cutting plants specifically authorised for that purpose in accordance with point 9.

4.4. The rules on the removal of specified risk material set out in this Chapter shall not apply to Category 1 material used in accordance with Article 18(2)(a) of Regulation (EC) No 1069/2009 for feeding to zoo animals, as well as to Category 1 material used in accordance with Article 18(2)(b) of that Regulation for feeding to endangered or protected species of necrophagous birds and other species living in their natural habitat, for the promotion of biodiversity.'

(b) points 6 and 7 are replaced by the following:

‘6. Measures concerning laceration of tissues

In addition to the prohibition laid down in Article 8(3) against the use, in Member States, or regions thereof, with a controlled or undetermined BSE risk, of laceration, after stunning, of central nervous tissue by means of an elongated rod-shaped instrument introduced into the cranial cavity, or by means of gas injection into the cranial cavity, in bovine, ovine or caprine animals whose meat is intended for human or animal consumption, that prohibition shall also be applicable in Member States with a negligible BSE risk.

7. Harvesting of tongues from bovine animals

The tongues of bovine animals of all ages intended for human or animal consumption shall be harvested at the slaughterhouse by a transverse cut rostral to the lingual process of the basihyoid bone, except for tongues of bovine animals whose origin is in Member States with a negligible BSE risk.’

(c) point 11 is replaced by the following:

‘11. Controls

11.1. Member States shall carry out frequent official controls to verify the correct application of this Annex and shall ensure that measures are taken to avoid any contamination, particularly in slaughterhouses, cutting plants or other places where specified risk material is removed, such as butcher shops or establishments referred in point 4.1(c).

11.2. Member States shall in particular set up a system to ensure and check that specified risk material is handled and disposed of in accordance with this Regulation and Regulation (EC) No 1069/2009.

11.3. A control system shall be put in place for the removal of the vertebral column as specified in point 1(a). That control system shall include at least the following measures:

(a) Until 30 June 2017, when removal of the vertebral column is not required, carcasses or wholesale cuts of carcasses of bovine animals containing vertebral column shall be identified by a clearly visible blue stripe on the label referred to in Article 13 of Regulation (EC) No 1760/2000.

From 1 July 2017, when the removal of the vertebral column is required, carcasses or wholesale cuts of carcasses of bovine animals containing vertebral column shall be identified by a clearly visible red stripe on the label referred to in Article 13 of Regulation (EC) No 1760/2000.

(b) Where applicable, specific information on the number of bovine carcasses or wholesale cuts of carcasses, from which the removal of the vertebral column is required, shall be added on the commercial document relating to consignments of meat. Where applicable, that specific information shall be added to the Common Veterinary Entry Document (CVED) referred to in Article 2(1) of Commission Regulation (EC) No 136/2004 (*) in the case of imports.

(c) Butcher shops shall keep, for at least one year, the commercial documents referred to in (b).

(*) Commission Regulation (EC) No 136/2004 of 22 January 2004 laying down procedures for veterinary checks at Community border inspection posts on products imported from third countries (OJ L 21, 28.1.2004, p. 11).’

4. In Annex VII, Chapter B, points 4.2, 4.3 and 4.4 are replaced by the following:

‘4.2. Only the following ovine animals may be introduced into the holding:

(a) male ovine animals of the ARR/ARR genotype;

(b) female ovine animals carrying at least one ARR allele and no VRQ allele.

However, by way of derogation from points (a) and (b), a Member State may allow the ovine animals referred to in points (c) and (d) to be introduced into the holding, subject to compliance with the following conditions:

(i) the breed reared in the holding is a local breed in danger of being lost to farming in accordance with Articles 7(2) and 7(3) of Commission Delegated Regulation (EU) No 807/2014 (*);

- (ii) the breed reared in the holding is subject to a preservation programme carried out by a breeders' organisation or association officially approved in accordance with Article 5 of Council Directive 89/361/EEC (**), or an official agency; and
 - (iii) the frequency of the ARR allele within the breed reared in the holding is low;
 - (c) male ovine animals carrying at least one ARR allele and no VRQ allele;
 - (d) female ovine animals carrying no VRQ allele.
- 4.3. Only the following breeding rams and ovine germinal products may be used in the holding:
- (a) male ovine animals of the ARR/ARR genotype;
 - (b) semen from rams of the ARR/ARR genotype;
 - (c) embryos carrying at least one ARR allele and no VRQ allele.

However, by way of derogation from points (a), (b) and (c), a Member State may allow the breeding rams and ovine germinal products referred to in points (d), (e) and (f) to be used in the holding, subject to compliance with the following conditions:

- (i) the breed reared in the holding is a local breed in danger of being lost to farming in accordance with Articles 7(2) and 7(3) of Delegated Regulation (EU) No 807/2014;
 - (ii) the breed reared in the holding is subject to a preservation programme carried out by a breeders' organisation or association officially approved in accordance with Article 5 of Directive 89/361/EEC, or an official agency; and
 - (iii) the frequency of the ARR allele within the breed reared in the holding is low;
 - (d) male ovine animals carrying at least one ARR allele and no VRQ allele;
 - (e) semen from male ovine animals carrying at least one ARR allele and no VRQ allele;
 - (f) embryos carrying no VRQ allele.
- 4.4. Movement of animals from the holding shall be allowed for the purposes of destruction or to go directly for slaughter for human consumption, or shall be subject to the following conditions:
- (a) rams and ewes of the ARR/ARR genotype may be moved from the holding for all purposes, including breeding, provided that they are moved to other holdings which are subject to the application of measures in accordance with point 2.2.2.(c) or 2.2.2.(d);
 - (b) if the Member State so decides, lambs and kids may be moved to one other holding located within its territory solely for the purposes of fattening prior to slaughter subject to compliance with the following conditions:
 - (i) the holding of destination shall not contain any ovine or caprine animals other than those being fattened prior to slaughter;
 - (ii) at the end of the fattening period, the lambs and kids originating from the holdings subject to the eradication measures referred to in point 2.2.2.(c)(iii) or 2.2.2.(d) shall be transported directly to a slaughterhouse located within the territory of the same Member State to be slaughtered not later than when they are 12 months of age.

(*) Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions (OJ L 227, 31.7.2014, p. 1).

(**) Council Directive 89/361/EEC of 30 May 1989 concerning pure-bred breeding sheep and goats (OJ L 153, 6.6.1989, p. 30).'

5. In Annex VIII, Section A of Chapter A is amended as follows:

(a) point 1 is replaced by the following:

‘1. Holdings with a negligible risk of classical scrapie and a controlled risk of classical scrapie:

1.1. For the purpose of intra-Union trade, Member States shall, where applicable, establish and supervise an official scheme for the recognition of holdings with a negligible risk of classical scrapie and holdings with a controlled risk of classical scrapie. Based on that official scheme, they shall, where applicable, establish and maintain lists of holdings of ovine and caprine animals with a negligible risk and holdings with a controlled risk of classical scrapie.

1.2. A holding of ovine animals having the TSE-resistance level I status, as laid down in Annex VII, Chapter C, Part 4, point 1.(a), and where no case of classical scrapie has been confirmed for a period of at least the preceding seven years, may be recognised as having a negligible risk of classical scrapie.

A holding of ovine animals, caprine animals, or ovine and caprine animals may also be recognised as having a negligible risk of classical scrapie provided that it has complied with the following conditions for a period of at least the preceding seven years:

(a) ovine and caprine animals are permanently identified and records are maintained, to enable them to be traced back to their holding of birth;

(b) records of movements of ovine and caprine animals in and out of the holding are maintained;

(c) only the following ovine and caprine animals are introduced into the holding:

(i) ovine and caprine animals from holdings with a negligible risk of classical scrapie;

(ii) ovine and caprine animals from holdings which have met the conditions set out in points (a) to (i) for a minimum period of the preceding seven years or for at least the same period of time as the period of time during which the holding, where they are to be introduced, has met the conditions set out in those points;

(iii) ovine animals of the ARR/ARR prion protein genotype;

(iv) ovine or caprine animals that comply with the conditions set out in point (i) or (ii) except during the period when they were kept at a semen collection centre, provided that the semen collection centre complies with the following conditions:

— the semen collection centre is approved in accordance with Chapter I(I) of Annex D to Council Directive 92/65/EEC (*) and supervised in accordance with Chapter I(II) of that Annex,

— for a period of the preceding seven years, only those ovine or caprine animals from holdings which have fulfilled during that period the conditions set out in points (a), (b) and (e), and which were subject to regular checks by an official veterinarian or a veterinarian authorised by the competent authority, were introduced into the semen collection centre,

— no case of classical scrapie has been confirmed at the semen collection centre for a period of the preceding seven years,

— biosecurity measures are in place at the semen collection centre to ensure that ovine and caprine animals kept at that centre and coming from holdings with a negligible or a controlled risk status for classical scrapie have no direct or indirect contact with ovine and caprine animals coming from holdings of a lower classical scrapie status;

(d) the holding is subject to regular checks to verify compliance with the conditions set out in points (a) to (i) by an official veterinarian or a veterinarian authorised for that purpose by the competent authority, to be conducted at least on an annual basis from 1 January 2014;

- (e) no case of classical scrapie has been confirmed;
- (f) until 31 December 2013, all ovine and caprine animals referred to in Annex III, Chapter A, Part II, point 3, over 18 months of age, that have died or have been killed for reasons other than slaughter for human consumption are tested in a laboratory for classical scrapie in accordance with the laboratory methods and protocols set out in Annex X, Chapter C, point 3.2.

From 1 January 2014, all ovine and caprine animals over 18 months of age that have died or have been killed for reasons other than slaughter for human consumption are tested in a laboratory for classical scrapie in accordance with the laboratory methods and protocols set out in Annex X, Chapter C, point 3.2.

By way of derogation from the conditions set out in the first and second paragraphs of point (f), Member States may decide that all ovine and caprine animals over 18 months of age with no commercial value, culled at the end of their productive life instead of being slaughtered for human consumption, are inspected by an official veterinarian, and all those exhibiting wasting signs or neurological signs are tested in a laboratory for classical scrapie in accordance with the laboratory methods and protocols set out in Annex X, Chapter C, point 3.2.

In addition to the conditions set out in points (a) to (f), the following conditions shall be complied with from 1 January 2014:

- (g) only the following ova and embryos of animals of the ovine and caprine species are introduced into the holding:
 - (i) ova and embryos from donor animals which have been kept since birth in a Member State with a negligible risk of classical scrapie, or in a holding with a negligible or a controlled risk of classical scrapie, or which comply with the following requirements:
 - they are permanently identified to enable them to be traced back to their holding of birth,
 - they have been kept since birth in holdings in which no case of classical scrapie has been confirmed during their residency,
 - they showed no clinical sign of classical scrapie at the time of collection of the ova or embryos;
 - (ii) ova and embryos of animals of the ovine species carrying at least one ARR allele;
- (h) only the following semen of animals of the ovine and caprine species are introduced into the holding:
 - (i) semen from donor animals which have been kept since birth in a Member State with a negligible risk of classical scrapie, or in a holding with a negligible risk or a controlled risk of classical scrapie, or which comply with the following requirements:
 - they are permanently identified to enable them to be traced back to their holding of birth,
 - they showed no clinical sign of classical scrapie at the time of semen collection;
 - (ii) semen from rams of the ARR/ARR prion protein genotype;
- (i) ovine and caprine animals on the holding have no direct or indirect contact, including shared grazing, with ovine and caprine animals from holdings of a lower classical scrapie status.

1.3. A holding of ovine animals, caprine animals or ovine and caprine animals may be recognised as having a controlled risk of classical scrapie provided that it has complied with the following conditions for a period of at least the preceding three years:

- (a) ovine and caprine animals are permanently identified and records are maintained, to enable them to be traced back to their holding of birth;
- (b) records of movements of ovine and caprine animals in and out of the holding are maintained;
- (c) only the following ovine and caprine animals are introduced into the holding:
 - (i) ovine and caprine animals from holdings with a negligible or a controlled risk of classical scrapie;
 - (ii) ovine and caprine animals from holdings which have met the conditions set out in points (a) to (i) for a minimum period of the preceding three years or for at least the same period of time as the period of time during which the holding, where they are to be introduced, has met the conditions set out in those points;
 - (iii) ovine animals of the ARR/ARR prion protein genotype;
 - (iv) ovine or caprine animals that comply with the conditions set out in point (i) or (ii) except during the period when they were kept at a semen collection centre, provided that the semen collection centre complies with the following conditions:
 - the semen collection centre is approved in accordance with Chapter I(I) of Annex D to Directive 92/65/EEC and supervised in accordance with Chapter I(II) of that Annex,
 - for a period of the preceding three years, only those ovine or caprine animals from holdings which have fulfilled during that period the conditions set out in points (a), (b) and (e), and which were subject to regular checks by an official veterinarian or a veterinarian authorised by the competent authority, were introduced into the semen collection centre,
 - no case of classical scrapie has been confirmed at the semen collection centre during the period of the preceding three years,
 - biosecurity measures are in place at the semen collection centre to ensure that ovine and caprine animals kept at that centre and coming from holdings with a negligible or a controlled risk status for classical scrapie have no direct or indirect contact with ovine and caprine animals coming from holdings of a lower classical scrapie status;
- (d) the holding is subject to regular checks to verify compliance with the conditions set out in points (a) to (i) by an official veterinarian or a veterinarian authorised for that purpose by the competent authority, to be conducted at least on an annual basis from 1 January 2014;
- (e) no case of classical scrapie has been confirmed;
- (f) Until 31 December 2013, all ovine and caprine animals referred to in Annex III, Chapter A, Part II, point 3 over 18 months of age that have died or have been killed for reasons other than slaughter for human consumption are tested in a laboratory for classical scrapie in accordance with the laboratory methods and protocols set out in Annex X, Chapter C, point 3.2.

From 1 January 2014, all ovine and caprine animals over 18 months of age that have died or have been killed for reasons other than slaughter for human consumption are tested in a laboratory for classical scrapie in accordance with the laboratory methods and protocols set out in Annex X, Chapter C, point 3.2.

By way of derogation from the conditions set out in the first and second paragraphs of point (f), Member States may decide that all the ovine and caprine animals over 18 months of age with no commercial value culled at the end of their productive life instead of being slaughtered for human consumption, are inspected by an official veterinarian, and all those exhibiting wasting signs or neurological signs are tested in a laboratory for classical scrapie in accordance with the laboratory methods and protocols set out in Annex X, Chapter C, point 3.2.

In addition to the conditions set out in points (a) to (f), the following conditions shall be complied with from 1 January 2014:

- (g) only the following ova and embryos of animals of the ovine and caprine species are introduced into the holding:
 - (i) ova and embryos from donor animals which have been kept since birth in a Member State with a negligible risk of classical scrapie, or in a holding with a negligible or a controlled risk of classical scrapie, or which comply with the following requirements:
 - they are permanently identified to enable them to be traced back to their holding of birth,
 - they have been kept since birth in holdings in which no case of classical scrapie has been confirmed during their residency,
 - they showed no clinical sign of classical scrapie at the time of collection of the ova or embryos,
 - (ii) ova and embryos of animals of the ovine species carrying at least one ARR allele;
- (h) only the following semen of animals of the ovine and caprine species are introduced into the holding:
 - (i) semen from donor animals which have been kept since birth in a Member State with a negligible risk of classical scrapie, or in a holding with a negligible risk or with a controlled risk of classical scrapie, or which comply with the following requirements:
 - they are permanently identified to enable them to be traced back to their holding of birth,
 - they showed no clinical sign of classical scrapie at the time of semen collection;
 - (ii) semen from rams of the ARR/ARR prion protein genotype;
- (i) ovine and caprine animals of the holding have no direct or indirect contact, including shared grazing, with ovine and caprine animals from holdings of a lower classical scrapie status.

1.4. If a case of classical scrapie is confirmed in a holding with a negligible risk or a controlled risk of classical scrapie, or in a holding found to have an epidemiological link to a holding with a negligible risk or a controlled risk of classical scrapie as a result of an inquiry referred to in Part 1 of Chapter B of Annex VII, the holding with a negligible risk or a controlled risk of classical scrapie shall be immediately deleted from the list referred to in point 1.1 of this Section.

The Member State shall immediately inform the other Member States which have introduced ovine and caprine animals originating from, or semen or embryos collected from ovine and caprine animals kept in the infected holding during a period of the preceding seven years in the case of a holding with a negligible risk of classical scrapie or during the period of the preceding three years in the case of a holding with a controlled risk of classical scrapie.

(*) Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to Directive 90/425/EEC (OJ L 268, 14.9.1992, p. 54).'

(b) points 2.1(b) and 2.1(c) are replaced by the following:

‘(b) for a period of at least the preceding seven years, ovine and caprine animals displaying clinical signs compatible with classical scrapie have been tested;

- (c) for a period of at least the preceding seven years, a sufficient number of ovine and caprine animals over 18 months of age, representative of ovine and caprine animals slaughtered, that have died or have been killed for reasons other than slaughter for human consumption, have been tested annually, to provide a 95 per cent level of confidence of detecting classical scrapie if it is present in that population at a prevalence rate exceeding 0,1 per cent and no case of classical scrapie has been reported during that period;

(c) point 2.3 is replaced by the following:

‘2.3. The Member States or zone of the Member State with a negligible risk for classical scrapie are the following:

- Austria
- Finland
- Sweden.’

(d) point 3.2 is replaced by the following:

‘3.2. The national scrapie control programmes of the following Member States are hereby approved:

- Denmark.’

(e) point 4 is replaced by the following:

‘4. Intra-Union trade in ovine and caprine animals and semen and embryos thereof

The following conditions shall apply:

4.1. Ovine and caprine animals:

- (a) ovine and caprine animals for breeding destined to Member States other than those with a negligible risk of classical scrapie or with an approved national scrapie control programme shall:
 - (i) come from a holding or holdings with a negligible risk or a controlled risk of classical scrapie; or
 - (ii) come from a Member State or zone of a Member State with a negligible risk of classical scrapie; or
 - (iii) in the case of ovine animals, be of the ARR/ARR prion protein genotype, provided they do not come from a holding subject to the restrictions set out in Annex VII, Chapter B, points 3 and 4.
- (b) ovine and caprine animals for all intended uses except immediate slaughter destined to Member States with a negligible risk of classical scrapie or with an approved national scrapie control programme shall:
 - (i) come from a holding or holdings with a negligible risk of classical scrapie; or
 - (ii) come from a Member State or zone of a Member State with a negligible risk of classical scrapie; or
 - (iii) in the case of ovine animals, be of the ARR/ARR prion protein genotype, provided they do not come from a holding subject to the restrictions set out in Annex VII, Chapter B, points 3 and 4.
- (c) By way of derogation from points (a) and (b), the requirements set out in those points shall not apply to ovine and caprine animals which are kept in and moved exclusively between approved bodies, institutes or centres as defined in Article 2(1)(c) of Directive 92/65/EEC.

- (d) By way of derogation from points (a) and (b), the competent authority of a Member State may authorise intra-Union trade in animals that do not comply with the requirements set out in those points, provided that it has received prior consent from the competent authority of the Member States of destination of those animals, and provided that the animals comply with the following conditions:
- (i) the animals belong to a local breed in danger of being lost to farming, as referred to in Articles 7(2) and (3) of Delegated Regulation (EU) No 807/2014;
 - (ii) the animals are entered in a flock book established and maintained by a breeders' organisation or association officially approved in accordance with Article 5 of Directive 89/361/EEC in the Member State of dispatch, or by an official agency of that Member State, and the animals are to be entered in a flock book for that breed established and maintained by a breeders' organisation or association officially approved in accordance with Article 5 of Directive 89/361/EEC in the Member State of destination, or by an official agency of that Member State;
 - (iii) in the Member State of dispatch and in the Member State of destination, the breeders' organisations or associations or official agency referred to in point (ii) carry out a preservation programme for that breed;
 - (iv) the animals do not come from a holding subject to the restrictions set out in Annex VII, Chapter B, points 3 and 4;
 - (v) following the entry of the animals not fulfilling the requirements set out in point (a) or (b) into the recipient holding in the Member State of destination, the movement of all ovine and caprine animals on that holding shall be restricted in accordance with point 3.4. of Chapter B of Annex VII, for a period of three years, or for a period of seven years when the Member State of destination is a Member State with a negligible risk of classical scrapie or with an approved national scrapie control programme.

By way of derogation from the first paragraph of this point, such restriction on movement shall not apply to intra-Union trade in animals carried out in accordance with the conditions laid down in point 4.1.(d) of this Section nor to domestic movements of animals destined to a holding where a local breed in danger of being lost to farming, as referred to in Articles 7(2) and (3) of Delegated Regulation (EU) No 807/2014, is bred, provided that the breed is subject to a preservation programme carried out by a breeders' organisation or association officially approved or recognised in accordance with Article 5 of Directive 89/361/EEC or by an official agency.

Following the intra-Union trade or domestic movement referred to in the second paragraph of point (v), the movement of all ovine and caprine animals on the holding or holdings receiving animals moved under that derogation shall be restricted in accordance with the first and second paragraphs of point (v).

4.2. Semen and embryos of animals of the ovine and caprine species shall:

- (a) be collected from animals which have been kept continuously since birth on a holding or holdings with a negligible risk or a controlled risk of classical scrapie, except where the holding is a semen collection centre, provided that the semen collection centre complies with the conditions set out in point 1.3.(c)(iv); or
- (b) be collected from animals which have been kept continuously for the last three years before the collection on a holding or holdings which have complied with all the conditions set out in point 1.3. (a) to (f) for three years, except where the holding is a semen collection centre, provided that the semen collection centre complies with the conditions set out in point 1.3.(c)(iv); or
- (c) be collected from animals which have been kept continuously since birth in a country or zone with a negligible risk of classical scrapie; or
- (d) in the case of semen of animals of the ovine species, be collected from male animals of the ARR/ARR prion protein genotype; or
- (e) in the case of embryos of animals of the ovine species, be carrying at least one ARR allele.'

6. Annex IX is replaced by the following:

‘ANNEX IX

IMPORTATION INTO THE UNION OF LIVE ANIMALS, EMBRYOS, OVA AND PRODUCTS OF ANIMAL ORIGIN

CHAPTER B

Imports of bovine animals

SECTION A

Imports from a country or a region with a negligible BSE risk

Imports of bovine animals from a country or a region with a negligible BSE risk shall be subject to the presentation of an animal health certificate attesting that:

- (a) the animals were born and continuously reared in a country or region or countries or regions classified in accordance with Commission Decision 2007/453/EC (*) as countries or regions posing a negligible BSE risk;
 - (b) the animals are identified by a permanent identification system enabling them to be traced back to the dam and herd of origin, and have not been exposed to the following bovine animals:
 - (i) all BSE cases;
 - (ii) all bovine animals which, during their first year of life, were reared with the BSE cases during their first year of life, and which investigation showed consumed the same potentially contaminated feed during that period; or
 - (iii) if the results of the investigation referred to in indent (ii) are inconclusive, all bovine animals born in the same herd as, and within 12 months of the birth of, the BSE cases;
- and
- (c) if there have been BSE indigenous cases in the country concerned, the animals were born:
 - (i) after the date from which the ban on the feeding of ruminants with meat-and-bone meal and greaves derived from ruminants, as defined in the OIE Terrestrial Animal Health Code, has been effectively enforced; or
 - (ii) after the date of birth of the last BSE indigenous case if born after the date of the feed ban referred to in indent (i).

SECTION B

Imports from a country or a region with a controlled BSE risk

Imports of bovine animals from a country or a region with a controlled BSE risk shall be subject to the presentation of an animal health certificate attesting that:

- (a) the country or region is classified in accordance with Decision 2007/453/EC as a country or region posing a controlled BSE risk;
- (b) the animals are identified by a permanent identification system enabling them to be traced back to the dam and herd of origin, and have not been exposed to the following bovine animals:
 - (i) all BSE cases;
 - (ii) all bovine animals which, during their first year of life, were reared with the BSE cases during their first year of life, and which investigation showed consumed the same potentially contaminated feed during that period; or

- (iii) if the results of the investigation referred to in indent (ii) are inconclusive, all bovine animals born in the same herd as, and within 12 months of the birth of, the BSE cases;
- (c) the animals were born:
 - (i) after the date from which the ban on the feeding of ruminants with meat-and-bone meal and greaves derived from ruminants, as defined in the OIE Terrestrial Animal Health Code, has been effectively enforced; or
 - (ii) after the date of birth of the last BSE indigenous case if born after the date of the feed ban referred to in indent (i).

SECTION C

Imports from a country or a region with undetermined BSE risk

Imports of bovine animals from a country or a region with an undetermined BSE risk shall be subject to the presentation of an animal health certificate attesting that:

- (a) the country or region has been categorised in accordance with Decision 2007/453/EC as a country or region with undetermined BSE risk;
- (b) the feeding of ruminants with meat-and-bone meal and greaves from ruminants, as defined in the OIE Terrestrial Animal Health Code, has been banned and the ban has been effectively enforced in the country or region;
- (c) the animals are identified by a permanent identification system enabling them to be traced back to the dam and herd of origin, and have not been exposed to the following bovine animals:
 - (i) all BSE cases;
 - (ii) all bovine animals which, during their first year of life, were reared with the BSE cases during their first year of life, and which investigation showed consumed the same potentially contaminated feed during that period; or
 - (iii) if the results of the investigation referred to in indent (ii) are inconclusive, all bovine animals born in the same herd as, and within 12 months of the birth of, the BSE cases;
- (d) the animals were born:
 - (i) at least two years after the date from which the ban on the feeding of ruminants with meat-and-bone meal and greaves derived from ruminants, as defined in the OIE Terrestrial Animal Health Code, has been effectively enforced; or
 - (ii) after the date of birth of the last BSE indigenous case if born after the date of the feed ban referred to in indent (i).

CHAPTER C

Imports of products of animal origin from bovine, ovine or caprine animals

SECTION A

Products

The following products of bovine, ovine and caprine origin, as defined in the following points of Annex I to Regulation (EC) No 853/2004, shall be subject to the conditions set out in Sections B, C or D of this Chapter depending on the BSE risk category of the country of origin:

- fresh meat, as defined in point 1.10 thereof,
- minced meat, as defined in point 1.13 thereof,
- mechanically separated meat, as defined in point 1.14 thereof,

- meat preparations, as defined in point 1.15 thereof,
- meat products, as defined in point 7.1 thereof,
- rendered animal fat, as defined in point 7.5 thereof,
- greaves, as defined in point 7.6 thereof,
- gelatine, as defined in point 7.7 thereof, other than derived from hides and skins,
- collagen, as defined in point 7.8 thereof, other than derived from hides and skins,
- treated stomachs, bladders and intestines, as defined in point 7.9 thereof.

SECTION B

Imports from a country or a region with a negligible BSE risk

Imports of products of bovine, ovine and caprine animal origin referred to in Section A from a country or a region with a negligible BSE risk shall be subject to the presentation of an animal health certificate attesting that:

- (a) the country or region is classified in accordance with Decision 2007/453/EC as a country or region posing a negligible BSE risk;
- (b) the animals from which the products of bovine, ovine and caprine animal origin were derived passed *ante mortem* and *post mortem* inspections;
- (c) the products of bovine, ovine and caprine animal origin do not contain and are not derived from specified risk material as defined in point 1 of Annex V to this Regulation;
- (d) if the animals, from which the products of bovine animal origin were derived, originate from a country or region classified in accordance with Decision 2007/453/EC as a country or region posing a controlled or an undetermined BSE risk, by way of derogation from point (c) of this Section, carcasses, half carcasses or half carcasses cut into no more than three wholesale cuts, and quarters containing no specified risk material other than the vertebral column, including dorsal root ganglia, may be imported. In the case of such imports, the carcasses or wholesale cuts of carcasses of bovine animals containing a vertebral column which is defined as specified risk material in accordance with point 1 of Annex V to this Regulation shall be identified by a clearly visible red stripe on the label referred to in Article 13 or 15 of Regulation (EC) No 1760/2000. Furthermore, specific information on the number of bovine carcasses or wholesale cuts of carcasses, from which the removal of the vertebral column is required, shall be added to the Common Veterinary Entry Document (CVED) referred to in Article 2(1) of Regulation (EC) No 136/2004;
- (e) the products of bovine, ovine and caprine animal origin do not contain and are not derived from mechanically separated meat obtained from bones of bovine, ovine or caprine animals, except if the animals, from which the products of bovine, ovine and caprine animal origin are derived, were born, continuously reared and slaughtered in a country or region classified in accordance with Decision 2007/453/EC as a country or region posing a negligible BSE risk in which there has been no BSE indigenous cases;
- (f) the animals from which the products of bovine, ovine and caprine animal origin were derived have not been slaughtered after stunning by means of gas injected into the cranial cavity or killed by the same method or slaughtered by laceration after stunning of central nervous tissue by means of an elongated rod-shaped instrument introduced into the cranial cavity, except if the animals from which the products of bovine, ovine and caprine animal origin are derived, were born, continuously reared and slaughtered in a country or region classified in accordance with Decision 2007/453/EC as a country or region posing a negligible BSE risk;

- (g) if the animals, from which the products of bovine, ovine and caprine animal origin were derived, originate from a country or region classified in accordance with Decision 2007/453/EC as a country or region posing an undetermined BSE risk, the animals have not been fed with meat-and-bone meal or greaves, as defined in the OIE Terrestrial Animal Health Code;
- (h) if the animals, from which the products of bovine, ovine and caprine animal origin were derived, originate from a country or region classified in accordance with Decision 2007/453/EC as a country or region posing an undetermined BSE risk, the products were produced and handled in a manner which ensures that they did not contain and were not contaminated with nervous and lymphatic tissues exposed during the deboning process.

SECTION C

Imports from a country or a region with a controlled BSE risk

1. Imports of products of bovine, ovine and caprine animal origin referred to in Section A from a country or a region with a controlled BSE risk shall be subject to the presentation of an animal health certificate attesting that:
 - (a) the country or region is classified in accordance with Decision 2007/453/EC as a country or region posing a controlled BSE risk;
 - (b) the animals from which the products of bovine, ovine and caprine animal origin were derived passed *ante mortem* and *post mortem* inspections;
 - (c) the animals from which the products of bovine, ovine and caprine animal origin destined for export were derived have not been killed, after stunning, by laceration of central nervous tissue by means of an elongated rod-shaped instrument introduced into the cranial cavity, or by means of gas injected into the cranial cavity;
 - (d) the products of bovine, ovine and caprine animal origin do not contain and are not derived from specified risk material as defined in point 1 of Annex V to this Regulation, or mechanically separated meat obtained from bones of bovine, ovine or caprine animals.
2. For products of bovine animal origin, by way of derogation from point 1(d) carcasses, half carcasses or half carcasses cut into no more than three wholesale cuts, and quarters containing no specified risk material other than the vertebral column, including dorsal root ganglia, may be imported.
3. When the removal of the vertebral column is required, carcasses or wholesale cuts of carcasses of bovine animals containing vertebral column, shall be identified by a clearly visible red stripe on the label referred to in Article 13 or 15 of Regulation (EC) No 1760/2000.
4. The number of bovine carcasses or wholesale cuts of carcasses, from which the removal of the vertebral column is required shall be added to the Common Veterinary Entry Document (CVED) referred to in Article 2(1) of Regulation (EC) No 136/2004 in the case of imports.
5. In the case of intestines originally sourced from a country or a region with a negligible BSE risk, imports of treated intestines shall be subject to the presentation of an animal health certificate attesting that:
 - (a) the country or region is classified in accordance with Decision 2007/453/EC as a country or region posing a controlled BSE risk;
 - (b) the animals from which the products of bovine, ovine and caprine animal origin were derived were born, continuously reared and slaughtered in the country or region with a negligible BSE risk and passed *ante mortem* and *post mortem* inspections;

- (c) if the intestines are sourced from a country or region where there have been BSE indigenous cases:
 - (i) the animals were born after the date from which the ban on the feeding of ruminants with meat-and-bone meal and greaves derived from ruminants has been enforced; or
 - (ii) the products of bovine, ovine and caprine animal origin do not contain and are not derived from specified risk material as defined in point 1 of Annex V to this Regulation.

SECTION D

Imports from a country or a region with an undetermined BSE risk

1. Imports of products of bovine, ovine and caprine animal origin referred to in Section A from a country or a region with an undetermined BSE risk, shall be subject to the presentation of an animal health certificate attesting that:
 - (a) the animals from which the products of bovine, ovine and caprine animal origin were derived have not been fed meat-and-bone meal or greaves derived from ruminants, as defined in the OIE Terrestrial Animal Health Code, and passed *ante mortem* and *post mortem* inspections;
 - (b) the animals from which the products of bovine, ovine and caprine animal origin were derived have not been killed, after stunning, by laceration of central nervous tissue by means of an elongated rod-shaped instrument introduced into the cranial cavity, or by means of gas injected into the cranial cavity;
 - (c) the products of bovine, ovine and caprine animal origin do not contain and are not derived from:
 - (i) specified risk material as defined in point 1 of Annex V to this Regulation;
 - (ii) nervous and lymphatic tissues exposed during the deboning process;
 - (iii) mechanically separated meat obtained from bones of bovine, ovine or caprine animals.
2. For products of bovine animal origin, by way of derogation from point 1(c), carcasses, half carcasses or half carcasses cut into no more than three wholesale cuts, and quarters containing no specified risk material other than the vertebral column, including dorsal root ganglia, may be imported.
3. When removal of the vertebral column is required, carcasses or wholesale cuts of carcasses of bovine animals containing vertebral column, shall be identified by a clearly visible red stripe on the label referred to in Article 13 or 15 of Regulation (EC) No 1760/2000.
4. Specific information on the number of bovine carcasses or wholesale cuts of carcasses, from which removal of the vertebral column is required shall be added to the Common Veterinary Entry Document (CVED) referred to in Article 2(1) of Regulation (EC) No 136/2004 in the case of imports.
5. In the case of intestines originally sourced from a country or a region with a negligible BSE risk, imports of treated intestines shall be subject to the presentation of an animal health certificate attesting that:
 - (a) the country or region is classified in accordance with Decision 2007/453/EC as a country or region posing an undetermined BSE risk;
 - (b) the animals from which the products of bovine, ovine and caprine animal origin were derived were born, continuously reared and slaughtered in the country or region with a negligible BSE risk and passed *ante mortem* and *post mortem* inspections;
 - (c) if the intestines are sourced from a country or region where there have been BSE indigenous cases:
 - (i) the animals were born after the date from which the ban on the feeding of ruminants with meat-and-bone meal and greaves derived from ruminants had been enforced; or
 - (ii) the products of bovine, ovine and caprine animal origin do not contain and are not derived from specified risk material as defined in point 1 of Annex V to this Regulation.

CHAPTER D

Imports of animal by-products and derived products from bovine, ovine and caprine origin

SECTION A

Animal by-products

This Chapter shall apply to the following animal by-products, as defined in points (1) of Article 3 of Regulation (EC) No 1069/2009 and the following derived products as defined in point (2) of that Article, provided that those animal by-products and derived products are of bovine, ovine and caprine animal origin:

- (a) rendered fats derived from Category 2 material, which are intended to be used as organic fertilisers or soil improvers, as defined in point 22 of Article 3 of Regulation (EC) No 1069/2009;
- (b) bones and bone products derived from Category 2 material;
- (c) rendered fats derived from Category 3 material which are intended to be used as organic fertilisers or soil improvers or as feed, as defined in points 22 and 25 respectively of Article 3 of Regulation (EC) No 1069/2009, or their starting materials;
- (d) pet food including dog chews;
- (e) blood products;
- (f) processed animal protein;
- (g) bones and bone products derived from Category 3 material;
- (h) gelatine and collagen derived from materials other than hides and skins;
- (i) Category 3 material and derived products other than those referred to in points (c) to (h) excluding:
 - (i) fresh hides and skins, treated hides and skins;
 - (ii) gelatine and collagen derived from hides and skins;
 - (iii) fat derivatives.

SECTION B

Health certificate requirements

Imports of the animal by-products and derived products of bovine, ovine and caprine origin referred to in Section A shall be subject to the presentation of a health certificate which has been completed with the following attestation:

- (a) the animal by-product or derived product:
 - (i) does not contain and is not derived from specified risk material as defined in point 1 of Annex V to this Regulation; and
 - (ii) does not contain and is not derived from mechanically separated meat obtained from bones of bovine, ovine or caprine animals, except if the animals, from which the animal by-product or derived product are derived, were born, continuously reared and slaughtered in a country or region classified in accordance with Decision 2007/453/EC as a country or region posing a negligible BSE risk, in which there has been no BSE indigenous cases; and
 - (iii) is derived from animals which have not been killed, after stunning, by laceration of central nervous tissue by means of an elongated rod-shaped instrument introduced into the cranial cavity, or by means of gas injected into the cranial cavity, except for animals born, continuously reared and slaughtered in a country or region classified as posing a negligible BSE risk in accordance with Decision 2007/453/EC; or

- (b) the animal by-product or derived product does not contain and is not derived from bovine, ovine and caprine materials other than those derived from animals born, continuously reared and slaughtered in a country or region classified as posing a negligible BSE risk in accordance with Decision 2007/453/EC.

In addition to points (a) and (b) of this Section, imports of the animal by-products and derived products referred to in Section A, containing milk or milk products of ovine or caprine animal origin and intended for feed, shall be subject to the presentation of a health certificate which has been completed with the following attestation:

- (c) the ovine and caprine animals from which those animal by-products or derived products have been derived have been kept continuously since birth in a country where the following conditions are fulfilled:
- (i) classical scrapie is compulsorily notifiable;
 - (ii) an awareness, surveillance and monitoring system is in place;
 - (iii) official restrictions apply to holdings of ovine or caprine animals in case of a suspicion of TSE or a confirmation of classical scrapie;
 - (iv) ovine and caprine animals affected with classical scrapie are killed and completely destroyed;
 - (v) the feeding to ovine and caprine animals of meat-and-bone meal or greaves of ruminant origin, as defined in the OIE Terrestrial Animal Health Code, has been banned and effectively enforced in the whole country for a period of at least the preceding seven years;
- (d) the milk and milk products of ovine or caprine animals originate from holdings where no official restriction is imposed due to a suspicion of TSE;
- (e) the milk and milk products of ovine or caprine animals originate from holdings where no case of classical scrapie has been diagnosed during the preceding seven years or, following the confirmation of a case of classical scrapie:
- (i) all ovine and caprine animals on the holding have been killed and destroyed or slaughtered, except for breeding rams of the ARR/ARR genotype, breeding ewes carrying at least one ARR allele and no VRQ allele and other ovine animals carrying at least one ARR allele; or
 - (ii) all animals in which classical scrapie was confirmed have been killed and destroyed, and the holding has been subjected for two years at least since the confirmation of the last classical scrapie case to intensified TSE monitoring, including testing with negative results for the presence of TSE in accordance with the laboratory methods set out in Annex X, Chapter C, point 3.2, of all of the following animals which are over the age of 18 months, except ovine animals of the ARR/ARR genotype:
 - animals which have been slaughtered for human consumption, and
 - animals which have died or been killed on the holding but which were not killed in the framework of a disease eradication campaign.

CHAPTER E

Imports of ovine and caprine animals

Ovine and caprine animals imported into the Union shall be subject to the presentation of an animal health certificate attesting that they have been kept continuously since birth in a country where the following conditions are fulfilled:

- (1) classical scrapie is compulsorily notifiable;
- (2) an awareness, surveillance and monitoring system is in place;
- (3) ovine and caprine animals affected with classical scrapie are killed and completely destroyed;
- (4) the feeding to ovine and caprine animals of meat-and-bone meal or greaves of ruminant origin, as defined in the OIE Terrestrial Animal Health Code, has been banned and effectively enforced in the whole country for a period of at least the preceding seven years.

In addition to the conditions set out in points 1 to 4, the animal health certificate shall attest that:

- (5) For ovine and caprine animals for breeding imported into the Union and intended for Member States other than those with a negligible risk of classical scrapie or those with an approved national scrapie control programme listed in point 3.2 of Section A of Chapter A of Annex VIII, the following conditions have been complied with:
 - (a) the imported ovine and caprine animals come from a holding or holdings that have complied with the conditions of point 1.3 of Section A of Chapter A of Annex VIII; or
 - (b) they are ovine animals of the ARR/ARR prion protein genotype and they come from a holding where no official movement restriction has been imposed due to BSE or classical scrapie during the last two years.
- (6) For ovine and caprine animals for all uses except immediate slaughter imported into the Union and intended for a Member State with a negligible risk of classical scrapie or with an approved national scrapie control programme listed in point 3.2 of Section A of Chapter A of Annex VIII, the following conditions have been complied with:
 - (a) they come from a holding or holdings that have complied with the conditions of point 1.2 of Section A of Chapter A of Annex VIII; or
 - (b) they are ovine animals of the ARR/ARR prion protein genotype and they come from a holding where no official movement restriction has been imposed due to BSE or classical scrapie during the last two years.

CHAPTER F

Imports of products of animal origin from farmed and wild cervid animals

1. When fresh meat, minced meat, meat preparations and meat products as defined in points 1.10, 1.13, 1.15 and 7.1 respectively of Annex I to Regulation (EC) No 853/2004, derived from farmed cervid animals, are imported into the Union from Canada or the United States of America, the health certificates shall be accompanied by a declaration signed by the competent authority of the country of production, worded as follows:

"This product contains or is derived exclusively from meat, excluding offal and spinal cord, of farmed cervid animals which have been examined for chronic wasting disease by histopathology, immunohistochemistry or other diagnostic method recognised by the competent authority with negative results and is not derived from animals coming from a herd where chronic wasting disease has been confirmed or is officially suspected."

2. When fresh meat, minced meat, meat preparations and meat products as defined in points 1.10, 1.13, 1.15 and 7.1 respectively of Annex I to Regulation (EC) No 853/2004, derived from wild cervid animals, are imported into the Union from Canada or the United States of America, the health certificates shall be accompanied by a declaration signed by the competent authority of the country of production, worded as follows:

"This product contains or is derived exclusively from meat, excluding offal and spinal cord, of wild cervid animals which have been examined for chronic wasting disease by histopathology, immunohistochemistry or other diagnostic method recognised by the competent authority with negative results and is not derived from animals coming from a region where chronic wasting disease has been confirmed in the last three years or is officially suspected."

CHAPTER H

Import of ovine and caprine semen and embryos

Ovine and caprine semen and embryos imported into the Union shall be subject to the presentation of an animal health certificate attesting that:

- (1) the donor animals have been kept continuously since birth in a country where the following conditions are fulfilled:
 - (a) classical scrapie is compulsorily notifiable;
 - (b) an awareness, surveillance and monitoring system is in place;

- (c) ovine and caprine animals affected with classical scrapie are killed and completely destroyed;
 - (d) the feeding to ovine and caprine animals of meat-and-bone meal, or greaves of ruminant origin, as defined in the OIE Terrestrial Animal Health Code, has been banned and effectively enforced in the whole country for a period of at least the preceding seven years; and
- (2) the donor animals have been kept continuously for a period of three years preceding the date of the collection of the exported semen or embryos in a holding or holdings which have satisfied during that period all the requirements set out in point 1.3.(a) to (f) of Section A of Chapter A of Annex VIII except where the holding is a semen collection centre, provided that the semen collection centre complies with the conditions set out in point 1.3.(c)(iv) of that Section; or
- (a) in the case of semen of animals of the ovine species, the semen has been collected from male animals of the ARR/ARR prion protein genotype; or
 - (b) in the case of embryos of animals of the ovine species, the embryos carry at least one ARR allele.
- (*) Commission Decision 2007/453/EC of 29 June 2007 establishing the BSE status of Member States or third countries or regions thereof according to their BSE risk (OJ L 172, 30.6.2007, p. 84).'
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COMMISSION IMPLEMENTING REGULATION (EU) 2016/1397**of 18 August 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, 18 August 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	MA	148,1
	ZZ	148,1
0707 00 05	TR	158,2
	ZZ	158,2
0709 93 10	TR	135,1
	ZZ	135,1
0805 50 10	AR	181,3
	CL	137,8
	MA	99,8
	TR	154,0
	UY	201,1
	ZA	162,7
	ZZ	156,1
	EG	219,6
	TR	148,9
	ZZ	184,3
0808 10 80	AR	121,0
	BR	102,1
	CL	104,6
	CN	125,7
	NZ	130,5
	US	141,5
	UY	93,8
	ZA	91,0
	ZZ	113,8
	AR	93,2
0808 30 90	CL	121,2
	TR	141,3
	ZA	110,9
	ZZ	116,7
	TR	130,5
0809 30 10, 0809 30 90	ZZ	130,5

⁽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'.

