

Official Journal of the European Union

L 340



English edition

Legislation

Volume 59

15 December 2016

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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Notice concerning the provisional application of the Stepping Stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part

The European Union and the Republic of Ghana have notified the completion of the procedures necessary for the provisional application of the Stepping Stone Economic Partnership Agreement between Ghana, of the one part, and the European Community and its Member States, of the other part ⁽¹⁾, in accordance with Article 75 of that Agreement. Consequently, the Agreement applies provisionally as from 15 December 2016 between the European Union and the Republic of Ghana.

⁽¹⁾ OJ L 287, 21.10.2016, p. 1.

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2016/2250

of 4 October 2016

establishing a discard plan for certain demersal fisheries in the North Sea and in Union waters of ICES Division IIa

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC ⁽¹⁾, and in particular Article 15(6) thereof,

Having regard to Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms ⁽²⁾ and in particular Article 18a thereof,

Whereas:

- (1) Regulation (EU) No 1380/2013 aims to progressively eliminate discards in all Union fisheries through the introduction of a landing obligation for catches of species subject to catch limits.
- (2) Article 15(6) of that Regulation empowers the Commission to adopt discard plans by means of delegated acts for a period of no more than three years on the basis of joint recommendations developed by Member States in consultation with the relevant Advisory Councils.
- (3) Belgium, Denmark, Germany, France, the Netherlands, Sweden and the United Kingdom have direct fisheries management interest in the North Sea. After consulting the North Sea Advisory Council, those Member States have submitted on 3 June 2016 a joint recommendation to the Commission concerning a new discard plan for certain demersal fisheries in the North Sea. Scientific contributions were obtained from relevant scientific bodies and reviewed by the Scientific, Technical and Economic Committee for Fisheries (STECF). On 14 July an expert group meeting consisting of 28 Member States and the Commission as well European Parliament as an observer, took place and the measures concerned were discussed.
- (4) The measures included in the joint recommendation comply with Article 18(3) of Regulation (EU) No 1380/2013.
- (5) For the purposes of that Regulation, the North Sea comprises ICES zones IIIa and IV. As some demersal stocks relevant to the proposed discard plan are also to be found in Union waters of ICES Division IIa, the Member States concerned recommend that ICES Division IIa be also covered by the discard plan.
- (6) As regards the North Sea, in accordance with Article 15(1)(c) of Regulation (EU) No 1380/2013 the landing obligation applies at the latest from 1 January 2016 in:
 - mixed fisheries for cod, haddock, whiting and saithe,
 - fisheries for Norway lobster,

⁽¹⁾ OJ L 354, 28.12.2013, p. 22.

⁽²⁾ OJ L 125, 27.4.1998, p. 1.

- mixed fishery for common sole and plaice,
- fisheries for hake, and
- fisheries for Northern prawn.

In accordance with Article 15(5) of Regulation (EU) No 1380/2013, Commission Delegated Regulation (EU) 2015/2440 ⁽¹⁾ identified the species which have to be landed as from 1 January 2016. Those species are saithe, haddock, Norway lobster, common sole, plaice, hake and Northern prawn. Delegated Regulation (EU) 2015/2440 also established an obligation to land bycatches of Northern prawn. This Regulation should reinstate the provisions regarding the species to be landed from Delegated Regulation (EU) 2015/2440 and should specify additional species and fisheries to which the landing obligation applies in 2017 and 2018.

- (7) The Member States concerned claim that the fishing effort rules set out in Chapter III of Council Regulation (EC) No 1342/2008 ⁽²⁾ constitute an obstacle to the successful implementation of the landing obligation for cod due to the fact that the fishing effort regime set out in that Chapter would hamper the flexibility needed to adapt fishing patterns, such as choice of area and gear, once the landing obligation is introduced. Regulation (EC) No 1342/2008 is currently subject to a revision process by the co-legislators. To prevent the fishing effort regime and the landing obligation for cod from applying simultaneously, the landing obligation for cod should apply only once the fishing effort regime ceases to be applicable.
- (8) Delegated Regulation (EU) 2015/2440 introduced an exemption from the obligation to land all catches for species for which scientific evidence demonstrates high survival rates ('high survivability exemption') for catches of Norway lobster in ICES division IIIa under the condition that pots or certain bottom trawls are used. That Delegated Regulation required Member States having a direct management interest in the North Sea to submit to the Commission additional scientific information supporting the exemptions for the bottom trawls specified. That information has been submitted and STECF has concluded that the information is sufficient. Therefore, that exemption should be included in the new discard plan.
- (9) The joint recommendation includes a high survivability exemption for catches of Norway lobster in ICES subarea IV for certain gears on the condition that a netgrid selectivity device is used.
- (10) The joint recommendation includes a high survivability exemption for catches of common sole in ICES subarea IV with certain gears and on certain conditions that favour the survivability of sole.
- (11) Based on the scientific evidence provided in the joint recommendation and reviewed by STECF and taking into account the characteristics of the gear, of the fishing practices and of the ecosystem, these exemptions should be included in this Regulation for the year 2017. Member States should submit additional data in order to enable STECF to further assess the survival rates of Norway lobster and common sole caught in ICES subarea IV with the trawls concerned and to enable the Commission to review the relevant exemption.
- (12) Delegated Regulation (EU) 2015/2440 introduced *de minimis* exemptions for
 - common sole caught with trammel nets and gillnets in ICES Division IIIa, ICES Subarea IV and Union waters of ICES Subarea IIa,
 - common sole caught with certain beam trawls in ICES Subarea IV,
 - Norway lobster caught with certain bottom trawls in ICES Subarea IV and Union waters of ICES Division IIa, and
 - common sole and haddock combined caught with certain bottom trawls in ICES Division IIIa.

The joint recommendation suggests the continued application of those exemptions. They should therefore be included in the new discard plan.

⁽¹⁾ Commission Delegated Regulation (EU) 2015/2440 of 22 October 2015 establishing a discard plan for certain demersal fisheries in the North Sea and in Union waters of ICES Division IIa (OJ L 336, 23.12.2015, p. 42).

⁽²⁾ Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks and repealing Regulation (EC) No 423/2004 (OJ L 348, 24.12.2008, p. 20).

- (13) The joint recommendation includes a *de minimis* exemption for common sole, haddock and whiting combined for catches with certain bottom trawls in ICES division IIIa, a *de minimis* exemption for sole, haddock and whiting combined for catches with creels in ICES division IIIa and, for 2018, a *de minimis* exemption for whiting caught with bottom trawls in ICES division IVc.
- (14) The Commission, on the basis of compelling evidence provided by Member States for those exemptions as reviewed by the STECF, which concluded that those exemptions contained reasoned arguments that further improvements in selectivity are difficult to achieve and/or imply disproportionate costs in handling unwanted catches, considers it appropriate to establish the *de minimis* exemptions in accordance with the percentage level proposed in the joint recommendation, within the limits set out in Article 15(5)(c) of Regulation (EU) No 1380/2013.
- (15) Article 18a of Regulation (EC) No 850/98 empowers the Commission to establish, for the purpose of adopting discard plans and for the species subject to the landing obligation, minimum conservation reference size (MCRS) with the aim of ensuring the protection of juveniles of marine organisms. Those minimum conservation reference sizes may derogate, where appropriate, from the sizes established in Annex XII to Regulation (EC) No 850/98. For Norway lobster in ICES Division IIIa it is appropriate to maintain the minimum conservation reference sizes set out in Delegated Regulation (EU) 2015/2440, i.e. a total length of 105 mm and a carapace length of 32 mm. A minimum tail length of 59 mm should be added, based on the Joint Recommendation and STECF's assessment which states that such tail length corresponds to the existing values for total length and carapace length.
- (16) Discard plans may also include technical measures for fisheries or species covered by the landing obligation. To increase gear selectivity and reduce unwanted catches in the Skagerrak, it is appropriate to maintain a number of technical measures, which were agreed between the Union and Norway in 2011 ⁽¹⁾, and 2012 ⁽²⁾.
- (17) To ensure appropriate control, specific requirements for the Member States to establish lists of vessels covered by this Regulation should be laid down.
- (18) As the measures provided for in this Regulation have a direct impact on the economic activities linked to and the planning of the fishing season of Union vessels, this Regulation should enter into force immediately after its publication. It should apply from 1 January 2017 until 31 December 2018 in order to comply with the time-frame set out in Article 15 of Regulation (EU) No 1380/2013,

HAS ADOPTED THIS REGULATION:

Article 1

Implementation of the landing obligation

The landing obligation provided for in Article 15(1) of Regulation (EU) No 1380/2013 shall apply in ICES subarea IV (North Sea), ICES division IIIa (Kattegat and Skagerrak) and Union waters of ICES division IIa (Norwegian Sea) to the fisheries set out in the Annex to this Regulation.

Article 2

Definitions

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

- (1) 'Seltra panel' means a selectivity device consisting of a top panel of at least 270 mm mesh size (diamond mesh) placed in a four-panel section and mounted with a joining ratio of three meshes of 90 mm to one mesh of 270 mm, or of a top panel of at least 140 mm mesh size (square mesh). The panel is at least 3 metres long, positioned no more than 4 metres from the cod line, and is the full width of the top sheet of the trawl (i.e. from selvedge to selvedge).

⁽¹⁾ Agreed record of fisheries consultations between Norway and the European Union on the regulation of fisheries in the Skagerrak and the Kattegat for 2012.

⁽²⁾ Agreed record of fisheries consultations between the European Union and Norway on measures for the implementation of a discard ban and control measures in the Skagerrak area, 4 July 2012.

- (2) 'Netgrid selectivity device' means a selectivity device consisting of a four panel section inserted into a two-panel trawl with an inclined sheet of diamond mesh netting with a mesh size of at least 200 mm, leading to an escape hole in the top of the trawl.

Article 3

Specific rules on the landing obligation for cod

Notwithstanding Article 1, the obligation to land catches of cod pursuant to this Regulation shall apply only if Regulation (EC) No 1342/2008 or Chapter III thereof is repealed prior to 1 January 2017.

Article 4

Survivability exemptions for Norway lobster

1. The exemption from the landing obligation pursuant to Article 15(4)(b) of Regulation (EU) No 1380/2013, for species for which scientific evidence demonstrates high survival rates, shall apply to the following catches of Norway lobster:

- (a) catches with pots (FPO ⁽¹⁾);
- (b) catches in ICES Division IIIa with bottom trawls (OTB, TBN) with a mesh size of at least 70 mm equipped with a species selective grid with bar spacing of maximum 35 mm;
- (c) catches in ICES Division IIIa with bottom trawls (OTB, TBN) with a mesh size of at least 90 mm equipped with a seltra panel;
- (d) in 2017, catches in ICES Division IV with bottom trawls (OTB, TBN) with a mesh size of at least 80 mm equipped with a netgrid selectivity device.

2. Norway lobster caught in cases referred to in paragraph 1 shall be released whole, immediately and in the area where it has been caught.

3. Before 1 May 2017, Member States having a direct management interest in the North Sea shall submit to the Commission additional data to those provided for in the Joint Recommendation of 3 June 2016 and any other relevant scientific information supporting the exemption laid down in paragraph 1, point d. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess those data and that information before 1 September 2017.

Article 5

Survivability exemption for common sole

1. The exemption from the landing obligation pursuant to Article 15(4)(b) of Regulation (EU) No 1380/2013, for species for which scientific evidence demonstrates high survival rates, shall apply in 2017 to catches of common sole below minimum conservation reference size made within six nautical miles of the coast in ICES area IVc and outside identified nursery areas with otter trawls (OTB) with cod end mesh size of 80-99 mm.

2. The exemption referred to in paragraph 1 shall only apply to vessels with a maximum length of 10 meters, a maximum engine power of 180 kW, when fishing in waters with a depth of 15 meters or less and with limited tow durations of no more than 1:30 hours.

3. Common sole caught in cases referred to in paragraph 1 shall be released immediately.

⁽¹⁾ Gear codes used in this Regulation refer to those codes in Annex XI to Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common fisheries policy (OJ L 112, 30.4.2011, p. 1). For the vessels whose LOA is less than 10 metres gear codes used in this table refer to the codes from the FAO gear classification.

4. Before 1 May 2017, Member States having a direct management interest in the North Sea shall submit to the Commission additional scientific information supporting the exemption laid down in paragraph 1. The STECF shall assess that information before 1 September 2017.

Article 6

De minimis exemptions

By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, the following quantities may be discarded pursuant to Article 15(4)(c) of that Regulation:

- (a) for common sole, up to a maximum of 3 % of the total annual catches of this species by vessels using trammel nets and gill nets (GN, GNS, GND, GNC, GTN, GTR, GEN, GNF) in ICES Division IIIa, ICES Subarea IV and Union waters of ICES Division IIa;
- (b) for common sole below minimum conservation reference size, up to a maximum of, in 2017, 7 % and, in 2018, 6 % of the total annual catches of this species by vessels using beam trawl (TBB) of mesh size 80-119 mm with increased mesh size in the extension of the beam trawl in ICES Subarea IV;
- (c) for Norway lobster below minimum conservation reference size, up to a maximum of 6 % of the total annual catches of this species by vessels using bottom trawls (OTB, TBN, OTT, TB) of mesh size 80-99 mm in ICES Subarea IV and Union waters of ICES Division IIa;
- (d) in 2017, for common sole and haddock combined, below minimum conservation reference size, up to a maximum of 2 % of the total annual catches of Norway lobster, common sole, haddock and Northern prawn in the fishery for Norway lobster by vessels using bottom trawls (OTB, TBN) of mesh size equal to or larger than 70 mm equipped with a species selective grid with bar spacing of maximum 35 mm in ICES Division IIIa;
- (e) in 2018, for common sole, haddock and whiting combined, below minimum conservation reference size, up to a maximum of 4 % of the total annual catches of Norway lobster, common sole, haddock, whiting and Northern prawn in the fishery for Norway lobster by vessels using bottom trawls (OTB, TBN) of mesh size equal to or larger than 70 mm equipped with a species-selective grid with bar spacing of maximum 35 mm in ICES Division IIIa;
- (f) for common sole, haddock and whiting below minimum conservation reference size combined, up to a maximum of 1 % of the total annual catches of Norway lobster, common sole, haddock, whiting and Northern prawn in the fishery for Northern prawn by vessels using bottom trawls (OTB) with a mesh size equal to or larger than 35 mm equipped with a species selective grid with bar spacing of maximum 19 mm, with unblocked fish outlet, in ICES Division IIIa.
- (g) for common sole, haddock and whiting combined, up to a maximum of 0,5 % of the total annual catches of Norway lobster, common sole, haddock, whiting and Northern prawn in the fishery for Norway lobster conducted with creels (FPO), in ICES division IIIa.
- (h) in 2018, for whiting, up to a maximum of 7 % of the total annual catches of Norway lobster, haddock, sole, Northern prawn, whiting, plaice, saithe and cod in the mixed fishery for sole, whiting and species without catch limits by vessels using bottom trawls (OTB, OTT) of mesh size 70-99 mm in ICES Division IVc.

Article 7

Minimum conservation reference size

By way of derogation from the minimum conservation reference size established in Annex XII to Regulation (EC) No 850/98, the minimum conservation reference size of Norway lobster in ICES Division IIIa shall be as follows:

- (a) total length of 105 mm;
- (b) tail length of 59 mm;
- (c) carapace length of 32 mm.

*Article 8***Specific technical measures in the Skagerrak**

1. The carrying on board or the use of any trawl, Danish seine, beam trawl or similar towed net having a mesh size of less than 120 mm shall be prohibited in the Skagerrak.
2. By way of derogation from paragraph 1, the following trawls may also be used:
 - (a) trawls with a cod end of a mesh size of at least 90 mm, provided they are equipped with a seltra panel or a sorting grid with no more than 35 mm bar spacing.
 - (b) trawls with a cod end of at least 70 mm mesh size (square mesh) equipped with a sorting grid with no more than 35 mm bar spacing;
 - (c) trawls of minimum mesh sizes of less than 70 mm when fishing for pelagic or industrial species, provided the catch contains more than 80 % of one or more pelagic or industrial species;
 - (d) trawls with a cod end of at least 35 mm mesh size when fishing for *Pandalus*, provided the trawl is equipped with a sorting grid with a maximum bar spacing of 19 mm.
3. A fish retention device may be used when fishing for *Pandalus* in accordance with paragraph 2(d), provided there are adequate fishing opportunities to cover by-catch and that the retention device is
 - constructed with a top panel of a minimum mesh size of 120 mm square mesh,
 - at least 3 metres long, and
 - at least as wide as the width of the sorting grid.

*Article 9***List of vessels**

Member States shall determine, in accordance with the criteria laid down in the Annex to this Regulation, the vessels subject to the landing obligation for each particular fishery. By 31 December 2016 they shall submit to the Commission and other Member States, using the secure Union control website, the lists of all saithe targeting vessels, as defined in the Annex, established pursuant to the first sentence. They should keep those lists updated.

*Article 10***Entry into force and application**

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*. It shall apply from 1 January 2017 until 31 December 2018.

However, Article 9 shall apply as from the date of entry into force of this Regulation.

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

Done at Brussels, 4 October 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Fisheries subject to the landing obligation:

Fishing gear ⁽¹⁾ ⁽²⁾	Mesh size	Species concerned
Trawls: OTB, OTT, OT, PTB, PT, TBN, TBS, OTM, PTM, TMS, TM, TX, SDN, SSC, SPR, TB, SX, SV	≥ 100 mm	In 2017 and 2018: all catches of saithe (if caught by a saithe targeting vessel ⁽³⁾), plaice, haddock, whiting, cod, Northern prawn, common sole and Norway lobster.
Trawls: OTB, OTT, OT, PTB, PT, TBN, TBS, OTM, PTM, TMS, TM, TX, SDN, SSC, SPR, TB, SX, SV	70-99 mm	In 2017 and 2018: all catches of Norway lobster, common sole, haddock and Northern prawn In 2018: all catches of whiting.
Trawls: OTB, OTT, OT, PTB, PT, TBN, TBS, OTM, PTM, TMS, TM, TX, SDN, SSC, SPR, TB, SX, SV	32-69 mm	In 2017 and 2018: All catches of Northern prawn, Norway lobster, common sole, haddock and whiting.
Beam trawls: TBB	≥ 120 mm	In 2017 and 2018: All catches of plaice, Northern prawn, Norway lobster, common sole, cod, haddock and whiting.
Beam trawls: TBB	80-119 mm	In 2017 and 2018: All catches of common sole, Northern prawn, Norway lobster and haddock. In 2018: all catches of whiting.
Gillnets, trammel nets and entangling nets: GN, GNS, GND, GNC, GTN, GTR, GEN, GNF		In 2017 and 2018: All catches of common sole, Northern prawn, Norway lobster, haddock, whiting and cod ⁽⁴⁾
Hooks and lines: LLS, LLD, LL, LTL, LX, LHP, LHM		In 2017 and 2018: All catches of hake, Northern prawn, Norway lobster, common sole, haddock, whiting and cod
Traps: FPO, FIX, FYK, FPN		In 2017 and 2018: All catches of Norway lobster, Northern prawn, common sole, haddock and whiting.

⁽¹⁾ Gear codes used in this Table refer to those codes in Annex XI to Commission Implementing Regulation (EU) No 404/2011.

⁽²⁾ For the vessels whose LOA is less than 10 metres gear codes used in this table refer to the codes from the FAO gear classification.

⁽³⁾ Vessels are considered as saithe targeting if, when using trawls with mesh size ≥ 100 mm, they have had annual average landings of saithe of ≥ 50 % of all landings by the vessel taken in both EU and third country zone of the North Sea over the period of x – 4 to x – 2 where x is the year of application; i.e. 2012-2014 for 2016, 2013-2015 for 2017 and 2014-2016 for 2018. If a vessel has been considered as a saithe targeting vessel in one year it shall continue to be considered as such in the following years.

⁽⁴⁾ The landing obligation for cod caught with gillnets, trammel nets and entangling nets shall not apply in ICES area IIIaS.

COMMISSION DELEGATED REGULATION (EU) 2016/2251**of 4 October 2016****supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ⁽¹⁾, and in particular Article 11(15) thereof,

Whereas:

- (1) Counterparties have an obligation to protect themselves against credit exposures to derivatives counterparties by collecting margins where those contracts are not cleared by a central counterparty. This Regulation lays out the standards for the timely, accurate and appropriately segregated exchange of collateral. These standards should apply on a mandatory basis to the collateral that counterparties are required to collect or post pursuant to this Regulation. However, counterparties which agree to collecting or posting collateral beyond the requirements of this Regulation should be able to choose whether or not to exchange such collateral in accordance with these standards.
- (2) Counterparties subject to the requirements of Article 11(3) of Regulation (EU) No 648/2012 should take into account the different risk profiles of non-financial counterparties that are below the clearing threshold referred to in Article 10 of that Regulation when establishing their risk management procedures for over-the-counter ('OTC') derivative contracts concluded with such entities. It is therefore appropriate to allow counterparties to determine whether or not the level of counterparty credit risk posed by those non-financial counterparties that is below that clearing threshold needs to be mitigated through the exchange of collateral. Given that non-financial counterparties established in a third country that would be below the clearing threshold if established in the Union can be assumed to have the same risk profiles as non-financial counterparties below the clearing threshold established in the Union, the same approach should be applied to both types of entities in order to prevent regulatory arbitrage.
- (3) Counterparties to non-centrally cleared OTC derivatives contracts need to be protected from the risk of a potential default of the other counterparty. Therefore, two types of collateral in the form of margins are necessary to properly manage the risks to which those counterparties are exposed. The first type is variation margin, which protects counterparties against exposures related to the current market value of their OTC derivative contracts. The second type is initial margin, which protects counterparties against potential losses which could stem from movements in the market value of the derivatives position occurring between the last exchange of variation margin before the default of a counterparty and the time that the OTC derivative contracts are replaced or the corresponding risk is hedged.
- (4) Since central counterparties ('CCPs') might be authorised as a credit institution according to Union legislation, it is necessary to exclude non-centrally cleared OTC derivative contracts that CCPs enter into during a default management process from the requirements of this Regulation since those contracts are already subject to the provisions of Commission Delegated Regulation (EU) No 153/2013 ⁽²⁾ and therefore they are not subject to the provisions of this Regulation.

⁽¹⁾ OJ L 201, 27.7.2012, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties (OJ L 52, 23.2.2013, p. 41).

- (5) For non-centrally cleared OTC derivative contracts that involve the payment of a premium upfront to guarantee the performance of the contract, the counterparty receiving the payment of the premium ('option seller') does not have a current or potential future exposure to the counterparty. Also, the daily mark-to-market value of such contracts is already covered by the payment of this premium. Therefore, where the netting set consists of such option positions, the option seller should be able to choose not to collect initial or variation margins for these types of OTC derivatives as long as the option seller is not exposed to any credit risk. The counterparty paying the premium ('option buyer') should however collect both initial and variation margins.
- (6) While dispute resolution processes contained in bilateral agreements between counterparties are useful for minimising the length and frequency of disputes, counterparties should, in the first instance, collect at least the undisputed amount in case the amount of a margin call is disputed. This will mitigate the risk arising from the disputed transactions and therefore ensure that non-centrally cleared OTC derivative contracts are collateralised to the extent possible.
- (7) In order to guarantee a level playing field across jurisdictions, where a counterparty established in the Union enters into a non-centrally cleared OTC derivative contract with a counterparty that is established in a third country, initial and variation margins should be exchanged in both directions. Counterparties established in the Union transacting with counterparties established in third countries should remain subject to the obligation of assessing the legal enforceability of the bilateral agreements and the effectiveness of the segregation agreements.
- (8) It is appropriate to allow counterparties to apply a minimum transfer amount when exchanging collateral in order to reduce the operational burden of exchanging limited sums when exposures move only slightly. However, it should be ensured that such minimum transfer amount is used as an operational tool and not with the view to serving as an uncollateralised credit line between counterparties. Therefore, a maximum level should be set out for that minimum transfer amount.
- (9) For operational reasons, it might be more appropriate in some cases to have separate minimum transfer amounts for the initial and the variation margin. In those cases it should be possible for counterparties to agree on separate minimum transfer amounts for variation and initial margin. However, the sum of the separate minimum transfer amounts should not exceed the maximum level of the minimum transfer amount. For practical reasons, it should be possible to define the minimum transfer amount in the currency in which margins are normally exchanged, which may not be the euro.
- (10) Some third-country jurisdictions may determine a different scope to Regulation (EU) No 648/2012 for the purposes of their requirements for the exchange of collateral in relation to OTC derivative contracts that are not centrally cleared. Therefore, were this Regulation to require that only non-centrally cleared OTC derivative contracts governed by Regulation (EU) No 648/2012 are included in the margin calculations for cross-border netting sets, counterparties in different jurisdictions would potentially have to duplicate required calculations to take into account different definitions or different scopes of products under the respective margin requirements. This could lead to distorted margin calculations. Furthermore, this would likely increase the risk of disputes. Therefore, allowing the use of a broader set of products in cross-border netting sets that includes all the OTC derivative contracts that are subject to exchange of collateral in one or the other jurisdiction would facilitate a smoother process of margin collection. This approach is consistent with the systemic risk-reduction goal of Regulation (EU) No 648/2012, since a broader range of products would be subject to the margin requirements.
- (11) Counterparties may choose to collect initial margins in cash, in which case the collateral should not be subject to any haircut, provided that the currency of the collateral matches the currency in which the contract is expressed. However, where initial margins are collected in cash in a currency different than the currency in which the contract is expressed, currency mismatch may generate foreign exchange risk. For this reason, a currency mismatch haircut should apply to initial margins collected in cash in another currency. For variation margins collected in cash no haircut is necessary in line with the BCBS-IOSCO framework, even where the payment is executed in a different currency than the currency of the contract.

- (12) When setting the level of initial margin requirements, the Basel Committee on Banking Supervision and the Board of the International Organization of Securities Commissions have explicitly considered two aspects, as reflected in their framework, 'Margin requirements for non-centrally cleared derivatives' of March 2015 (BCBS-IOSCO framework). The first aspect is the availability of high credit quality and liquid assets covering the initial margin requirements. The second is the proportionality principle, as smaller financial and non-financial counterparties might be hit in a disproportionate manner from the initial margin requirements. In order to maintain a level playing field, this Regulation should introduce a threshold that is exactly the same as in the BCBS-IOSCO framework below which two counterparties are not required to exchange initial margin. This should substantially alleviate costs and operational burden for smaller participants and address the concern about the availability of high credit quality and liquid assets without undermining the general objectives of Regulation (EU) No 648/2012.
- (13) While the thresholds should always be calculated at group level, investment funds should be treated as a special case as they can be managed by a single investment manager and captured as a single group. However, where the funds are distinct pools of assets and they are not collateralised, guaranteed or supported by other investment funds or the investment manager itself, they are relatively risk remote in relation to the rest of the group. Such investment funds should therefore be treated as separate entities when calculating the thresholds, in line with the BCBS-IOSCO framework.
- (14) With regard to initial margin, the requirements of this Regulation are likely to have a measurable impact on market liquidity, as assets provided as collateral cannot be liquidated or otherwise reused for the duration of the non-centrally cleared OTC derivative contract. Such requirements represent a significant change in market practice and present certain operational and practical challenges that will need to be managed as the new requirements come into effect. Taking into account that the variation margin already covers realised fluctuations in the value of non-centrally cleared OTC derivatives contracts up to the point of default, it is considered proportionate to apply a threshold of EUR 8 billion in gross notional amounts of outstanding contracts to the application of the initial margin requirements. This threshold applies at the group level or, where the counterparty is not part of a group, at the level of the single entity. The aggregated gross notional amount of outstanding contracts should be used as an adequate reference given that it is an appropriate metric for measuring the size and complexity of a portfolio of non-centrally cleared OTC derivative contracts. It is also a reference that is easy to monitor and report. These thresholds are also in line with the BCBS-IOSCO framework for non-centrally cleared OTC derivative contracts and are therefore consistent with international standards.
- (15) Exposures arising either from contracts or counterparties that are permanently or temporarily exempted or partially exempted from margins, should also be included in the calculation of the aggregated gross notional amount. This is due to the fact that all the contracts contribute to the determination of the size and complexity of a counterparty's portfolio. Therefore, non-centrally cleared OTC derivative contracts that may be exempted from the requirements of this Regulation are also relevant for determining the size, scale and complexity of the counterparty's portfolio and should therefore also be included in the calculation of the thresholds.
- (16) It is appropriate to set out special risk management procedures for certain types of non-centrally cleared OTC derivative contracts that show particular risk profiles. In particular, the exchange of variation margin without initial margin should, consistent with the BCBS-IOSCO framework, be considered an appropriate exchange of collateral for physically-settled foreign exchange contracts. Similarly, as cross-currency swaps can be decomposed into a sequence of foreign exchange forwards, only the interest rate component should be covered by initial margin.
- (17) Account should be taken of the impediments faced by covered bonds issuers or cover pools in providing collateral. Under a specific set of conditions, covered bonds issuers or cover pools should therefore not be

required to post collateral. This should allow for some flexibility for covered bonds issuers or cover pools while ensuring that the risks for their counterparties are limited. Covered bond issuers or cover pools may face legal impediments to posting and collecting non-cash collateral for initial or variation margin or posting variation margin in cash since variation margin payment could be considered a claim that ranks senior to the bond holder claims, which could result in a legal impediment. Similarly, the possibility to substitute or withdraw initial margin could be considered a claim that ranks senior to the bond holder claims facing the same type of constraints. However, there are no constraints on a covered bond issuer or cover pool to return cash previously collected as variation margin. Counterparties of covered bond issuers or cover pools should therefore be required to post variation margin in cash and should have the right to get back part or all of it, but the covered bond issuers or cover pools should only be required to post variation margin for the amount in cash that was previously received.

- (18) Counterparties should always assess the legal enforceability of their netting and segregation agreements. Where, with respect to the legal framework of a third country, these assessments turn out to be negative, counterparties should rely on arrangements different from the two-way exchange of margins. With a view to ensuring consistency with international standards, to avoid that it becomes impossible for Union counterparties to trade with counterparties in those jurisdictions, and to ensure a level playing field for Union counterparties, it is appropriate to set out a minimum threshold below which counterparties can trade with counterparties established in those jurisdictions without exchanging initial or variation margins. Where the counterparties have the possibility to collect margins and can ensure that for collected collateral, as opposed to posted collateral, the provisions of this Regulation can be met, Union counterparties should always be required to collect collateral. Exposures from contracts with counterparties established in third-country jurisdictions that are not covered by any exchange of collateral because of the legal impediments in those jurisdictions should be constrained by setting a limit, as capital is not considered equivalent to margin exchange in relation to the exposures arising from non-centrally cleared OTC derivative contracts and not all counterparties subject to the margin requirements under this Regulation are also subject to capital requirements. This limit should be set in such a way that it is simple to calculate and verify. To avoid the build-up of systemic risk and to avoid that such specific treatment creates the possibility to circumvent the provisions of this Regulation, the limit should be set at a conservative level. These treatments would be considered sufficiently prudent, because there are also other risk mitigation techniques as an alternative to margins.
- (19) In order to safeguard against the case where collateral cannot be liquidated immediately after the default of a counterparty, it is necessary, when calculating initial margin to take into account the time period from the most recent exchange of collateral covering a netting set of contracts with a defaulting counterparty until the contracts are closed out and the resulting market risk is re-hedged. This time period is known as the 'margin period of risk' ('MPOR') and is the same tool as that used in Article 272(9) of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁽¹⁾, with respect to counterparty credit risk of credit institutions. Nevertheless, as the objectives of the two Regulations differ, and Regulation (EU) No 575/2013 sets out rules for calculating the MPOR for the purpose of own funds requirements only, this Regulation should include specific rules on the MPOR that are required in the context of the risk management procedures for non-centrally cleared OTC derivative contracts. The MPOR should take into account the processes required by this Regulation for the exchange of margins.
- (20) Initial and variation margin should generally be exchanged no later than the end of the business day following the day of execution. However, an extension of the time for the exchange of variation margin is permitted where compensated by an adequate calculation of the MPOR. Alternatively, where no initial margin requirements apply, an extension should be allowed if an appropriate amount of additional variation margin is collected.

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

- (21) When developing initial margin models and when calculating the appropriate MPOR, counterparties should take into account the need to have models that capture the liquidity of the market, the number of participants in that market and the volume of the relevant OTC derivative contracts. At the same time there is the need to develop a model that both parties can understand, reproduce and on which they can rely to resolve disputes. Therefore counterparties should be allowed to calibrate the model and calculate MPOR dependent only on market conditions, without the need to adjust their estimates to the characteristics of specific counterparties. This in turn implies that counterparties may choose to adopt different models to calculate the amounts of initial margin to be exchanged between them, and that those amounts of initial margin may not be symmetrical.
- (22) While there is a need for recalibrating an initial margin model with sufficient frequency, a new calibration might lead to unexpected levels of margin requirements. For this reason, an appropriate time period should be established, during which margins may still be exchanged based on the previous calibration. This should give counterparties enough time to comply with margin calls resulting from the recalibration.
- (23) Collateral should be considered as being freely transferable if, in the case of a default of the poster of collateral, there are no regulatory or legal impediments or third-party claims, including those of the third-party custodian. However, certain claims, such as costs and expenses incurred for the transfer of the collateral, in the form of liens routinely imposed on all securities transfers, should not be considered an impediment as that would lead to a situation where an impediment would always be identified.
- (24) The collecting counterparty should have the operational capability to liquidate the collateral in the case of a default of the poster of collateral. The collecting counterparty should also be able to use the cash proceeds of liquidation to enter into an equivalent contract with another counterparty or to hedge the resulting risk. Having access to the market should therefore be a pre-requisite for the collector of collateral to enable it to either sell the collateral or repo it within a reasonable amount of time. This capability should be independent of the poster of collateral.
- (25) Collateral collected must be of sufficiently high liquidity and credit quality to allow the collecting counterparty to liquidate the positions without suffering a loss due to significant changes in value in case the other counterparty defaults. The credit quality of the collateral should be assessed relying on recognised methodologies such as the ratings of external credit assessment institutions. In order to mitigate the risk of mechanistic reliance on external ratings, however, a number of additional safeguards should be introduced. Those safeguards should include the possibility to use an approved Internal Rating Based ('IRB') model and the possibility to delay the replacement of collateral that becomes ineligible due to a rating downgrade, with the view to efficiently mitigating potential cliff effects that may arise from excessive reliance on external credit assessments.
- (26) While haircuts mitigate the risk that collected collateral is not sufficient to cover margin needs in a time of financial stress, other risk mitigants are also needed when accepting non-cash collateral in order to ensure that it can be effectively liquidated. In particular, counterparties should ensure that the collateral collected is reasonably diversified in terms of individual issuers, issuer types and asset classes.
- (27) The impact on financial stability of liquidating the collateral posted by non-systemically important counterparties is limited. Further, concentration limits on initial margin might be burdensome for counterparties with small OTC derivative portfolios as they might have only a limited range of eligible collateral available to post. Therefore, even though collateral diversification is a valid risk mitigant, non-systemically important counterparties should not be required to diversify collateral. On the other hand, systemically important financial institutions and other counterparties with large OTC derivative portfolios trading with each other should apply the concentration limits at least to initial margin including with respect to eligible collateral comprising Member States' sovereign debt securities. Those counterparties are sophisticated enough to either transform collateral or to access multiple markets and issuers to sufficiently diversify the collateral posted. Article 131 of Directive 2013/36/EU of the

European Parliament and of the Council ⁽¹⁾ provides for the identification of institutions as systemically important under Union law. However, given the broad scope of Regulation (EU) No 648/2012, a quantitative threshold should be introduced so that the requirements for concentration limits apply also to counterparties that might not fall under those existing classifications of systemically important institutions but which should nonetheless be subject to concentration limits because of the size of their OTC derivative portfolios.

- (28) Pension scheme arrangements are subject to bilateral collateralisation requirements. It is, however, important to avoid excessive burden from those requirements on the expected performance of those schemes and, consequently, on the retirement income of future pensioners. Pension scheme arrangements' liabilities to retirees are denominated in local currencies and their investments must therefore be denominated in the same currency in order to avoid the costs and risks of foreign currency mismatches. It is therefore appropriate to provide that concentration limits do not apply to pension scheme arrangements in the same manner as for other counterparties. However, it is important that adequate risk management procedures are in place to monitor and address potential concentration risks arising from that special regime. The application of these provisions with regard to pension scheme arrangements should be monitored and reviewed in light of market developments.

- (29) Difficulties in segregating cash collateral should be acknowledged by allowing counterparties to post a limited amount of initial margin in the form of cash and by allowing custodians to reinvest this cash collateral. However, cash held by a custodian is a liability that the custodian has towards the posting counterparty, which generates a credit risk for the posting counterparty. Therefore, in order to reduce systemic risk, the use of cash as initial margin should be subject to diversification requirements at least for systemically important institutions. Systemically important institutions should be required to either limit the amount of initial margin collected in cash or to diversify the exposures by using more than one custodian.

- (30) The value of collateral should not exhibit a significant positive correlation with the creditworthiness of the poster of collateral or the value of the underlying non-centrally cleared derivatives portfolio since this would undermine the effectiveness of the protection offered by the collateral collected. Accordingly, securities issued by the poster of collateral or its related entities should not be accepted as collateral. Counterparties should also be required to monitor that collateral collected is not subject to other forms of wrong way risk.

- (31) It should be possible for the non-defaulting counterparty to liquidate assets collected as collateral as initial or variation margin in a sufficiently short time in order to protect against losses on non-centrally cleared OTC derivative contracts in the event of a counterparty default. These assets should therefore be highly liquid and should not be exposed to excessive credit, market or foreign exchange risk. To the extent that the value of the collateral is exposed to these risks, appropriately risk-sensitive haircuts should be applied.

- (32) In order to ensure the timely transfer of collateral, counterparties should have efficient operational processes in place. This requires that the processes for the bilateral exchange of collateral are sufficiently detailed, transparent and robust. A failure by counterparties to agree upon and establish an operational framework for efficient calculation, notification and finalisation of margin calls can lead to disputes and failed exchanges of collateral that result in uncollateralised exposures under OTC derivative contracts. As a result, it is essential that counterparties set clear internal policies and standards in respect of collateral transfers. Any deviation from those policies should be rigorously reviewed by all relevant internal stakeholders that are required to authorise those deviations. Furthermore, all applicable terms in respect of operational exchange of collateral should be accurately recorded in detail in a robust, prompt and systematic way.

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

- (33) An exchange of collateral agreement should be concluded between counterparties entering into non-centrally cleared OTC derivative contracts in order to provide legal certainty. As a result, the exchange of collateral agreement should include all material rights and obligations of the counterparties applicable to non-centrally cleared OTC derivative contracts.
- (34) Collateral protects the collecting counterparty in the event of the default of the posting counterparty. However, both counterparties are also responsible for ensuring that the manner in which collateral collected is held does not increase the risk of a loss of excess posted collateral for the posting counterparty in case the collecting counterparty defaults. For this reason, the bilateral agreement between the counterparties should allow both counterparties to access the collateral in a timely manner when they have the right to do so, hence the need for rules on segregation and for rules providing for an assessment of the effectiveness of the agreement in this respect, taking into account the legal constraints and the market practices of each jurisdiction.
- (35) The re-hypothecation, re-pledge or re-use of collateral collected as initial margins would create new risks for counterparties due to claims of third parties over the assets in the event of a default. Legal and operational complications could delay the return of the collateral in the event of a default of the initial collateral collector or the third party or even make it impossible. In order to preserve the efficiency of the framework and ensure a proper mitigation of counterparty credit risks, the re-hypothecation, re-pledge or re-use of collateral collected as initial margin should therefore not be permitted.
- (36) Given the difficulties in segregating cash, the current practices for the exchange of cash collateral in certain jurisdictions and the need for reliance on cash instead of securities in certain circumstances where transferring securities may be impeded by operational constraints, cash collateral collected as initial margin should always be held by a central bank or third-party credit institution, since this ensures the separation from the two counterparties to the contract. To ensure such separation, the third-party credit institution should not belong to the same group as either of the counterparties.
- (37) When a counterparty notifies the relevant competent authority regarding its intention to take advantage of the exemption of intragroup transactions, in order for the competent authority to decide whether the conditions for the exemption are met, the counterparty should provide a complete file including all relevant information necessary for the competent authority to complete its assessment.
- (38) For a group to be deemed to have adequately sound and robust risk management procedures, a number of conditions have to be met. The group should ensure a regular monitoring of the intragroup exposures, and the timely settlement of the obligations resulting from the intragroup OTC derivative contracts should be guaranteed based on the monitoring and liquidity tools at group level that are consistent with the complexity of the intragroup transactions.
- (39) In order for the exemption for intragroup transactions to be applicable, it must be certain that no legislative, regulatory, administrative or other mandatory provisions of applicable law could legally prevent the intragroup counterparties from meeting their obligations to transfer monies or repay liabilities or securities under the terms of the intragroup transactions. Similarly, there should be no operational or business practices of the intragroup counterparties or the group that could result in funds not being available to meet payment obligations as they fall due on a day-to-day basis, or in prompt electronic transfer of funds not being possible.
- (40) This Regulation includes a number of detailed requirements to be met for a group to obtain the exemption from posting margin for intragroup transactions. In addition to those requirements, where one of the two counterparties in the group is domiciled in a third country for which an equivalence determination under Article 13(2) of Regulation (EU) No 648/2012 has not yet been provided, the group has to exchange, variation and appropriately segregated initial margins for all the intragroup transactions with the subsidiaries in those third countries. In order to avoid a disproportionate application of the margin requirements and taking into account similar requirements for clearing obligations, this Regulation should provide for a delayed implementation of that

particular requirement. This would allow enough time for completion of the process to produce the equivalence determination, while not requiring an inefficient allocation of resources to the groups with subsidiaries domiciled in third countries.

- (41) Taking into account the principle of proportionality, counterparties that have smaller portfolios and therefore generally smaller operations should be allowed more time to adapt their internal systems and processes in order to comply with the requirements of this Regulation. In order to achieve a proper balance between mitigating the risks arising from non-centrally cleared OTC derivatives and the proportionate application of this Regulation, as well as to achieve international consistency and minimise possibilities of regulatory arbitrage with the view to avoiding market disruption, a phase-in period of the requirements is necessary. The phase-in period for the requirements introduced in this Regulation takes into account the schedule agreed in the BCBS-IOSCO framework, which was established by reference to a quantitative impact study involving Union credit institutions.
- (42) Commission Delegated Regulation (*) specifies the definition of physically settled foreign exchange forwards within the Union. However, at this juncture, that definition is not applicable and those products are defined in a non-homogenous way in the Union. Therefore, in order to avoid creating an un-level playing field within the Union, it is necessary that the application of the corresponding risk mitigation techniques are aligned to the date of application of the relevant Delegated Act. A specific date on which the relevant requirements should in any case apply is also set out to avoid excess delays in the introduction of the risk mitigation techniques.
- (43) In order to avoid market fragmentation and ensure a level playing field for Union counterparties established in the Union on a global level, and acknowledging the fact that in some jurisdictions the exchange of variation and initial margin for single-stock options and equity index options is not subject to equivalent margin requirements, the treatment of those products should be phased-in. This phase-in period will provide time for monitoring regulatory developments in other jurisdictions and ensuring that appropriate requirements are in place in the Union to mitigate counterparty credit risk in respect of such contracts whilst avoiding scope for regulatory arbitrage.
- (44) For reasons of legal certainty and to avoid potential disruptions in financial markets, it is appropriate to clarify the treatment of existing contracts.
- (45) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.
- (46) The European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority have conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽¹⁾, the opinion of the Insurance and Reinsurance Stakeholder Group and the Occupational Pensions Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council ⁽²⁾, and the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽³⁾.
- (47) In accordance with the procedure set out in the fifth, sixth and seventh sub-paragraphs of Article 10(1) of Regulation (EU) No 1093/2010, in the fifth, sixth and seventh sub-paragraphs of Article 10(1) of Regulation (EU)

(*) C(2016) 2398 final.

⁽¹⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

⁽²⁾ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

⁽³⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

No 1095/2010 and in the fifth, sixth and seventh sub-paragraphs of Article 10(1) of Regulation (EU) No 1094/2010, this Regulation incorporates amendments to the draft regulatory technical standards, resubmitted in the form of a formal opinion to the Commission by the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority, on the basis of the Commission's proposed amendments,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS ON RISK MANAGEMENT PROCEDURES

SECTION 1

Definitions and general requirements

Article 1

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) 'initial margin' means the collateral collected by a counterparty to cover its current and potential future exposure in the interval between the last collection of margin and the liquidation of positions or hedging of market risk following a default of the other counterparty;
- (2) 'variation margin' means the collateral collected by a counterparty to reflect the results of the daily marking-to-market or marking-to-model of outstanding contracts referred to in Article 11(2) of Regulation (EU) No 648/2012;
- (3) 'netting set' means a set of non-centrally cleared over-the-counter ('OTC') derivative contracts between two counterparties that is subject to a legally enforceable bilateral netting agreement.

Article 2

General requirements

1. Counterparties shall establish, apply and document risk management procedures for the exchange of collateral for non-centrally cleared OTC derivative contracts.
2. The risk management procedures referred to in paragraph 1 shall include procedures providing for or specifying the following:
 - (a) the eligibility of collateral for non-centrally cleared OTC derivative contracts in accordance with Section 2;
 - (b) the calculation and collection of margins for non-centrally cleared OTC derivative contracts in accordance with Section 3;
 - (c) the management and segregation of collateral for non-centrally cleared OTC derivative contracts in accordance with Section 5;
 - (d) the calculation of the adjusted value of collateral in accordance with Section 6;
 - (e) the exchange of information between counterparties and the authorisation and recording of any exceptions to the risk management procedures referred to in paragraph 1;
 - (f) the reporting of the exceptions set out in Chapter II to senior management;
 - (g) the terms of all necessary agreements to be entered into by counterparties, at the latest, at the moment in which a non-centrally cleared OTC derivative contract is concluded, including the terms of the netting agreement and the terms of the exchange of collateral agreement in accordance with Article 3;

- (h) the periodic verification of the liquidity of the collateral to be exchanged;
- (i) the timely re-appropriation of the collateral in the event of default by the posting counterparty from the collecting counterparty; and
- (j) the regular monitoring of the exposures arising from OTC derivative contracts that are intragroup transactions and the timely settlement of the obligations resulting from those contracts.

For the purposes of point (g) of the first subparagraph, the terms of the agreements shall comprise all aspects concerning the obligations arising from any non-centrally cleared OTC derivative contract to be concluded, and at least the following:

- (a) any payment obligations arising between counterparties;
- (b) the conditions for netting payment obligations;
- (c) events of default or other termination events of the non-centrally cleared OTC derivative contracts;
- (d) all calculation methods used in relation to payment obligations;
- (e) the conditions for netting payment obligations upon termination;
- (f) the transfer of rights and obligations upon termination;
- (g) the governing law of the transactions of the non-centrally cleared OTC derivative contracts.

3. Where counterparties enter into a netting or an exchange of collateral agreement, they shall perform an independent legal review of the enforceability of those agreements. That review may be conducted by an internal independent unit or by an independent third party.

The requirement to perform the review referred to in the first subparagraph shall be considered to be satisfied in relation to the netting agreement where that agreement is recognised in accordance with Article 296 of Regulation (EU) No 575/2013.

4. Counterparties shall establish policies to assess on a continuous basis the enforceability of the netting and the exchange of collateral agreements that they enter into.

5. The risk management procedures referred to in paragraph 1 shall be tested, reviewed and updated as necessary and at least annually.

6. Upon request, counterparties using initial margin models in accordance with Section 4 shall provide the competent authorities with any documentation relating to the risk management procedures referred to in paragraph 2(b) at any time.

Article 3

Exchange of collateral agreement

The exchange of collateral agreement referred to in point (g) of the first subparagraph of Article 2(2) shall include at least the following terms:

- (a) the levels and type of collateral required;
- (b) the segregation arrangements;
- (c) the netting set to which the exchange of collateral refers;
- (d) the procedures for notification, confirmation and adjustment of margin calls;
- (e) the procedures for settlement of margin calls for each type of eligible collateral;

- (f) the procedures, methods, timeframes and allocation of responsibilities for the calculation of margins and the valuation of collateral;
- (g) the events that are considered to be default or termination events;
- (h) the law applicable to the non-centrally cleared OTC derivative contract;
- (i) the law applicable to the exchange of collateral agreement.

SECTION 2

Eligibility

Article 4

Eligible collateral

1. A counterparty shall only collect collateral from the following asset classes:
 - (a) cash in the form of money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits;
 - (b) gold in the form of allocated pure gold bullion of recognised good delivery;
 - (c) debt securities issued by Member States' central governments or central banks;
 - (d) debt securities issued by Member States' regional governments or local authorities whose exposures are treated as exposures to the central government of that Member State in accordance with Article 115(2) of Regulation (EU) No 575/2013;
 - (e) debt securities issued by Member States' public sector entities whose exposures are treated as exposures to the central government, regional government or local authority of that Member State in accordance with Article 116(4) of Regulation (EU) No 575/2013;
 - (f) debt securities issued by Member States' regional governments or local authorities other than those referred to in point (d);
 - (g) debt securities issued by Member States' public sector entities other than those referred to in point (e);
 - (h) debt securities issued by multilateral development banks listed in Article 117(2) of Regulation (EU) No 575/2013;
 - (i) debt securities issued by the international organisations listed in Article 118 of Regulation (EU) No 575/2013;
 - (j) debt securities issued by third countries' governments or central banks;
 - (k) debt securities issued by third countries' regional governments or local authorities that meet the requirements of points (d) and (e);
 - (l) debt securities issued by third countries' regional governments or local authorities other than those referred to in points (d) and (e);
 - (m) debt securities issued by credit institutions or investment firms including bonds referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council ⁽¹⁾;
 - (n) corporate bonds;
 - (o) the most senior tranche of a securitisation, as defined in Article 4(61) of Regulation (EU) No 575/2013, that is not a re-securitisation as defined in Article 4(63) of that Regulation;
 - (p) convertible bonds provided that they can be converted only into equities which are included in an index specified pursuant to point (a) of Article 197 (8) of Regulation (EU) No 575/2013;

⁽¹⁾ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

- (q) equities included in an index specified pursuant to point (a) of Article 197(8) of Regulation (EU) No 575/2013;
 - (r) shares or units in undertakings for collective investments in transferable securities (UCITS), provided that the conditions set out in Article 5 are met.
2. A counterparty shall only collect collateral from the asset classes referred to in points (f), (g) and (k) to (r) of paragraph 1 where all the following conditions apply:
- (a) the assets are not issued by the posting counterparty;
 - (b) the assets are not issued by entities which are part of the group to which the posting counterparty belongs;
 - (c) the assets are not otherwise subject to any significant wrong way risk, as defined in points (a) and (b) of paragraph 1 of Article 291 of Regulation (EU) No 575/2013.

Article 5

Eligibility criteria for units or shares in UCITS

1. For the purposes of point (r) of Article 4(1), a counterparty may only use units or shares in UCITS as eligible collateral where all the following conditions are met:
- (a) the units or shares have a daily public price quote;
 - (b) the UCITS are limited to investing in assets that are eligible in accordance with Article 4(1);
 - (c) the UCITS meet the criteria laid down in Article 132(3) of Regulation (EU) No 575/2013.

For the purposes of point (b), UCITS may use derivative instruments to hedge the risks arising from the assets in which they invest.

Where a UCITS invests in shares or units of other UCITS, the conditions laid down in the first subparagraph shall also apply to those UCITS.

2. By way of derogation from point (b) of paragraph 1, where a UCITS or any of its underlying UCITS do not only invest in assets that are eligible in accordance with Article 4(1), only the value of the unit or share of the UCITS that represents investment in eligible assets may be used as eligible collateral pursuant to paragraph 1 of this Article.

The first subparagraph shall apply to any underlying UCITS of a UCITS that has underlying UCITS of its own.

3. Where non-eligible assets of a UCITS can have a negative value, the value of the unit or share of the UCITS that may be used as eligible collateral pursuant to paragraph 1 shall be determined by deducting the maximum negative value of the non-eligible assets from the value of eligible assets.

Article 6

Credit quality assessment

1. The collecting counterparty shall assess the credit quality of assets belonging to the asset classes referred to in points (c), (d) and (e) of Article 4(1) that are either not denominated or not funded in the issuer's domestic currency and in points (f), (g), (j) to (n) and (p) of Article 4(1) using one of the following methodologies:
- (a) the internal ratings referred to in paragraph 3 of the collecting counterparty;

- (b) the internal ratings referred to in paragraph 3 of the posting counterparty, where that counterparty is established in the Union or in a third country where the posting counterparty is subject to consolidated supervision assessed equivalent to that governed by Union law in accordance with Article 127 of Directive 2013/36/EU;
 - (c) a credit quality assessment issued by a recognised External Credit Assessment Institution (ECAI) as defined in Article 4(98) of Regulation (EU) No 575/2013 or a credit quality assessment of an export credit agency referred to in Article 137 of that Regulation.
2. The collecting counterparty shall assess the credit quality of assets belonging to the asset class referred to in point (o) of Article 4(1) using the methodology referred to in point (c) of paragraph 1 of this Article.
3. A counterparty permitted to use the Internal Rating Based (IRB) approach pursuant to Article 143 of Regulation (EU) No 575/2013 may use their internal ratings in order to assess the credit quality of the collateral collected for the purposes of this Regulation.
4. A counterparty using the IRB approach in accordance with paragraph 3 shall determine the credit quality step of the collateral in accordance with Annex I.
5. A counterparty using the IRB approach in accordance with paragraph 3 shall communicate to the other counterparty the credit quality step referred to in paragraph 4 associated to the assets to be exchanged as collateral.
6. For the purposes of paragraphs 1(c), the credit quality assessment shall be mapped to credit quality steps specified pursuant to Articles 136 or 270 of Regulation (EU) No 575/2013.

Article 7

Specific requirements for eligible assets

1. Counterparties shall only use the assets referred to in points (f), (g) and (j) to (p) of Article 4(1) as collateral where their credit quality has been assessed as credit quality steps 1, 2 or 3 in accordance with Article 6.
2. Counterparties shall only use the assets referred to in points (c), (d) and (e) of Article 4(1) that are not denominated or funded in the issuer's domestic currency as collateral where their credit quality has been assessed as credit quality steps 1, 2, 3 or 4 in accordance with Article 6.
3. Counterparties shall establish procedures for the treatment of assets exchanged as collateral in accordance with paragraphs 1 and 2 whose credit quality is subsequently assessed to be:
- (a) step 4 or beyond for assets referred to in paragraph 1;
 - (b) beyond step 4 for assets referred to in paragraph 2.
4. The procedures referred to in paragraph 3 shall meet all of the following requirements:
- (a) they shall prohibit counterparties from exchanging additional assets assessed to be of the credit quality referred to in paragraph 3;
 - (b) they shall establish a schedule by which assets assessed to be of the credit quality referred to in paragraph 3 and already exchanged as collateral are replaced over a period of time not exceeding 2 months;
 - (c) they shall set a credit quality step that requires the immediate replacement of the assets referred to in paragraph 3;
 - (d) they shall allow counterparties to increase the haircuts on the relevant collateral insofar as the collateral has not been replaced in accordance with the schedule referred to in point (b).
5. Counterparties shall not use assets classes referred to in Article 4(1) as collateral where they have no access to the market for those assets or where they are unable to liquidate those assets in a timely manner in case of default of the posting counterparty.

Article 8

Concentration limits for initial margin

1. Where collateral is collected as initial margin in accordance with Article 13, the following limits shall apply for each collecting counterparty:

(a) the sum of the values of the initial margin collected from the asset classes referred to in points (b), (f), (g), and (l) to (r) of Article 4(1) issued by a single issuer or by entities which belong to the same group does not exceed the greater of the following values:

(i) 15 % of the collateral collected from the posting counterparty;

(ii) EUR 10 million or the equivalent in another currency;

(b) the sum of the values of the initial margin collected from the asset classes referred to in points (o), (p) and (q) of Article 4(1), where the asset classes referred to in points (p) and (q) of that Article are issued by institutions as defined in Regulation (EU) No 575/2013, does not exceed the greater of the following values:

(i) 40 % of the collateral collected from the posting counterparty;

(ii) EUR 10 million or the equivalent in another currency.

The limits laid down in the first subparagraph shall also apply to shares or units in UCITS where the UCITS primarily invests in the asset classes referred to in that subparagraph.

2. Where collateral is collected as initial margin in accordance with Article 13 in excess of EUR 1 billion and each of the counterparties belong to one of the categories listed in paragraph 3, the following limits to the amount of initial margin in excess of EUR 1 billion collected from a counterparty shall apply:

(a) the sum of the values of the initial margin collected from the asset classes referred to in points (c) to (l) of Article 4(1) issued by a single issuer or by issuers domiciled in the same country shall not exceed 50 % of the initial margin collected from that counterparty;

(b) Where initial margin is collected in cash, the 50 % concentration limit referred to in point (a) shall also take into account the risk exposures arising from the third-party holder or custodian holding that cash.

3. The counterparties referred to in paragraph 2 shall be one of the following:

(a) institutions identified as G-SIIs in accordance with Article 131 of Directive 2013/36/EU;

(b) institutions identified as O-SIIs in accordance with Article 131 of Directive 2013/36/EU;

(c) counterparties which are not pension scheme arrangements and for which the sum of the values of the collateral to be collected exceeds EUR 1 billion.

4. Where collateral is collected as initial margin in accordance with Article 13 in excess of EUR 1 billion by or from a pension scheme arrangement, the collecting counterparty shall establish procedures to manage concentration risk with respect to collateral collected from the asset classes referred to in points (c) to (l) of Article 4(1), including adequate diversification of that collateral.

5. Where institutions referred to in points (a) and (b) of paragraph 3 collect initial margin in cash from a single counterparty that is also an institution referred to in those points, the collecting counterparty shall ensure that not more than 20 % of that initial margin is held by a single third-party custodian.

6. Paragraphs 1 to 4 shall not apply to collateral collected in the form of financial instruments that are the same as the underlying financial instrument of the non-centrally cleared OTC derivative contract.

7. The collecting counterparty shall assess compliance with the conditions laid down in paragraph 2 of this Article at least every time that initial margin is calculated in accordance with Article 9(2).

8. By way of derogation from paragraph 7, a counterparty referred to in points (a), (b) and (c) of Article 2(10) of Regulation (EU) No 648/2012 may assess compliance with the conditions laid down in paragraph 2 quarterly, provided that the amount of initial margin collected from each individual counterparty is at all times below EUR 800 million during the quarter preceding the assessment.

SECTION 3

Calculation and collection of margins

Article 9

Frequency of calculation and determination of the calculation date

1. Counterparties shall calculate variation margin in accordance with Article 10 at least on a daily basis.
2. Counterparties shall calculate initial margin in accordance with Article 11 no later than the business day following one of these events:
 - (a) where a new non-centrally cleared OTC derivative contract is executed or added to the netting set;
 - (b) where an existing non-centrally cleared OTC derivative contract expires or is removed from the netting set;
 - (c) where an existing non-centrally cleared OTC derivative contract triggers a payment or a delivery other than the posting and collecting of margins;
 - (d) where the initial margin is calculated in accordance with the standardised approach referred to in Article 11(1) and an existing contract is reclassified in terms of the asset category referred to in paragraph 1 of Annex IV as a result of reduced time to maturity;
 - (e) where no calculation has been performed in the preceding 10 business days.
3. For the purpose of determining the calculation date for initial and variation margin, the following shall apply:
 - (a) where two counterparties are located in the same time-zone, the calculation shall be based on the netting set of the previous business day;
 - (b) where two counterparties are not located in the same time-zone, the calculation shall be based on the transactions in the netting set which are entered into before 16.00 of the previous business day of the time zone where it is first 16.00.

Article 10

Calculation of variation margin

The amount of variation margin to be collected by a counterparty shall be the aggregation of the values calculated in accordance with Article 11(2) of Regulation (EU) No 648/2012 of all contracts in the netting set, minus the value of all variation margin previously collected, minus the net value of each contract in the netting set at the point of entry into the contract, and plus the value of all variation margin previously posted.

Article 11

Calculation of initial margin

1. Counterparties shall calculate the amount of initial margin to be collected using either the standardised approach set out in Annex IV or the initial margin models referred to in Section 4 or both.

2. The collection of initial margin shall be performed without offsetting the initial margin amounts between the two counterparties.
3. Where counterparties use both the standardised approach set out in Annex IV and the initial margin models referred to in Section 4 in relation to the same netting set, they shall use them consistently for each non-centrally cleared OTC derivative contract.
4. Counterparties calculating the initial margin in accordance with Section 4 shall not take into account any correlations between the value of the unsecured exposure and the collateral in that calculation.
5. Counterparties shall agree on the method each counterparty uses to determine the initial margin it has to collect but are not required to use a common methodology.
6. Where one or both counterparties rely on an initial margin model they shall agree on the model developed pursuant to Section 4.

Article 12

Provision of variation margin

1. The posting counterparty shall provide the variation margin as follows:
 - (a) within the same business day of the calculation date determined in accordance with Article 9(3);
 - (b) where the conditions in paragraph 2 are met, within 2 business days of the calculation date determined in accordance with Article 9(3).
2. The provision of variation margin in accordance with paragraph 1(b) may only be applied to the following:
 - (a) netting sets comprising derivative contracts not subject to initial margin requirements in accordance with this Regulation, where the posting counterparty has provided, at or before the calculation date of the variation margin, an advance amount of eligible collateral calculated in the same manner as that applicable to initial margins in accordance with Article 15, for which the collecting counterparty has used a margin period of risk ('MPOR') at least equal to the number of days in between and including the calculation date and the collection date;
 - (b) netting sets comprising contracts subject to initial margin requirements in accordance with this Regulation, where the initial margin has been adjusted in one of the following ways:
 - (i) by increasing the MPOR referred to in Article 15(2) by the number of days in between, and including, the calculation date determined in accordance with Article 9(3) and the collection date determined in accordance with paragraph 1 of this Article;
 - (ii) by increasing the initial margin calculated in accordance with the standardised approach referred to in Article 11 using an appropriate methodology taking into account a MPOR that is increased by the number of days in between, and including, the calculation date determined in accordance with Article 9(3) and the collection date determined in accordance with paragraph 2 of this Article.

For the purposes of point (a), in case no mechanism for segregation is in place between the two counterparties, those counterparties may offset the amounts to be provided.

3. In the event of a dispute over the amount of variation margin due, counterparties shall provide, in the same time frame referred to in paragraph 1, at least the part of the variation margin amount that is not being disputed.

Article 13

Provision of initial margin

1. The posting counterparty shall provide the initial margin in accordance with Section 5.

2. The posting counterparty shall provide the initial margin within the same business day of the calculation date determined in accordance with Article 9(3).

3. In the event of a dispute over the amount of initial margin due, counterparties shall provide at least the part of the initial margin amount that is not being disputed within the same business day of the calculation date determined in accordance with Article 9(3).

SECTION 4

Initial margin models

Article 14

General requirements

1. Where a counterparty uses an initial margin model, that model may be developed by any of, or both, counterparties or by a third-party agent.

Where a counterparty uses an initial margin model developed by a third-party agent, the counterparty shall remain responsible for ensuring that that model complies with the requirements referred to in this Section.

2. Initial margin models shall be developed in a way that captures all the significant risks arising from entering into the non-centrally cleared OTC derivative contracts included in the netting set, including the nature, scale, and complexity of those risks and shall meet the following requirements:

- (a) the model incorporates risk factors corresponding to the individual currencies in which those contracts in the netting set are denominated;
- (b) the model incorporates interest rate risk factors corresponding to the individual currencies in which those contracts are denominated;
- (c) the yield curve is divided into a minimum of six maturity buckets for exposures to interest-rate risk in the major currencies and markets;
- (d) the model captures the risk of movements between different yield curves and between different maturity buckets;
- (e) the model incorporates separate risk factors at least for each equity, equity index, commodity or commodity index which is significant for those contracts;
- (f) the model captures the risk arising from less liquid positions and positions with limited price transparency within realistic market scenarios;
- (g) the model captures the risk, otherwise not captured by other features of the model, arising from derivative contracts where the underlying asset class is credit;
- (h) the model captures the risk of movements between similar, but not identical, underlying risk factors and the exposure to changes in values arising from maturity mismatches;
- (i) the model captures main non-linear dependencies;
- (j) the model incorporates methodologies used for back-testing which include statistical tests of the model's performance;
- (k) the model determines which events trigger a model change, calibration or other remedial action.

3. The risk management procedures referred to in Article 2(1) shall ensure that the performance of the model is monitored on a continuous basis including by back-testing the model at least every 3 months.

For the purposes of the first subparagraph, back testing shall include a comparison between the values produced by the model and the realised market values of the non-centrally cleared OTC derivative contracts in the netting set.

4. The risk management procedures referred to in Article 2(1) shall outline the methodologies used for undertaking back-testing, including statistical tests of performance.

5. The risk management procedures referred to in Article 2(1) shall describe what results of the back-testing would lead to a model change, recalibration or other remediation action.

6. The risk management procedures referred to in Article 2(1) shall ensure that counterparties retain records of the results of the back-testing referred to in paragraph 3 of this Article.

7. Counterparties shall provide all the information necessary to explain the calculation of a given value of the initial margin model to the other counterparty in a way that a knowledgeable third party would be able to verify that calculation.

8. The initial margin model shall reflect parameter uncertainty, correlation, basis risk and data quality in a prudent manner.

Article 15

Confidence interval and MPOR

1. The assumed variations in the value of the non-centrally cleared OTC derivative contracts within the netting set for the calculation of initial margins using an initial margin model shall be based on a one-tailed 99 percent confidence interval over a MPOR of at least 10 days.

2. The MPOR for the calculation of initial margins using an initial margin model referred to in paragraph 1 shall include:

- (a) the period that may elapse from the last margin exchange of variation margin to the default of the counterparty;
- (b) the estimated period needed to replace each of the non-centrally cleared OTC derivative contracts within the netting set or hedge the risks arising from them, taking into account the level of liquidity of the market where those types of contracts are traded, the total volume of the non-centrally cleared OTC derivative contracts in that market and the number of participants in that market.

Article 16

Calibration of the parameters of the model

1. Parameters used in initial margin models shall be calibrated, at least annually, based on historical data from a time period with a minimum duration of 3 years and a maximum duration of 5 years.

2. The data used for calibrating the parameters of initial margin models shall include the most recent continuous period from the date on which the calibration referred to in paragraph 1 is performed and at least 25 % of those data shall be representative of a period of significant financial stress ('stressed data').

3. Where stressed data referred to in paragraph 2 does not constitute at least 25 % of the data used in the initial margin model, the least recent data of the historical data referred to in paragraph 1 shall be replaced by data from a period of significant financial stress, until the overall proportion of stressed data is at least 25 % of the overall data used in the initial margin model.

4. The period of significant financial stress used for calibration of the parameters shall be identified and applied separately at least for each of the asset classes referred to in Article 17(2).
5. The parameters shall be calibrated using equally weighted data.
6. The parameters may be calibrated for shorter periods than the MPOR determined in accordance with Article 15. Where shorter periods are used, the parameters shall be adjusted to that MPOR by an appropriate methodology.
7. Counterparties shall have written policies setting out the circumstances triggering a more frequent calibration.
8. Counterparties shall establish procedures for adjusting the value of the margins to be exchanged in response to a change in the parameters due to a change in market conditions. Those procedures shall provide for counterparties to be able to exchange the additional initial margin resulting from that change of the parameters over a period that ranges between 1 and 30 business days.
9. Counterparties shall establish procedures regarding the quality of the data used in the model in accordance with paragraph 1, including the selection of appropriate data providers and the cleaning and interpolation of that data.
10. Proxies for the data used in initial margin models shall be used only where both of the following conditions are met:
 - (a) available data is insufficient or is not reflective of the true volatility of an OTC derivative contract or portfolio of OTC derivative contracts within the netting set;
 - (b) the proxies lead to a conservative level of margins.

Article 17

Diversification, hedging and risk offsets across underlying classes

1. Initial margin models shall only include non-centrally cleared OTC derivative contracts within the same netting set. Initial margin models may provide for diversification, hedging and risk offsets arising from the risks of the contracts within the same netting set, provided that the diversification, hedging or risk offset is only carried out within the same underlying asset class as referred to in paragraph 2.
2. For the purposes of paragraph 1, diversification, hedging and risk offsets may only be carried out within the following underlying asset classes:
 - (a) interest rates, currency and inflation;
 - (b) equity;
 - (c) credit;
 - (d) commodities and gold;
 - (e) other.

Article 18

Qualitative requirements

1. Counterparties shall establish an internal governance process to assess the appropriateness of the initial margin model on a continuous basis, including all of the following:
 - (a) an initial validation of the model by suitably qualified persons who are independent from the persons developing the model;
 - (b) a follow up validation whenever a significant change is made to the initial margin model and at least annually;

- (c) a regular audit process to assess the following:
 - (i) the integrity and reliability of the data sources;
 - (ii) the management information system used to run the model;
 - (iii) the accuracy and completeness of data used;
 - (iv) the accuracy and appropriateness of volatility and correlation assumptions.
- 2. The documentation of the risk management procedures referred to in point (b) of Article 2(2) relating to the initial margin model shall meet all of the following conditions:
 - (a) it shall allow a knowledgeable third party to understand the design and operational detail of the initial margin model;
 - (b) it shall contain the key assumptions and the limitations of the initial margin model;
 - (c) it shall define the circumstances under which the assumptions of the initial margin model are no longer valid.
- 3. Counterparties shall document all changes to the initial margin model. That documentation shall also detail the results of the validations, referred to in paragraph 1, carried out after those changes.

SECTION 5

Collateral management and segregation

Article 19

Collateral management and segregation

- 1. The procedures referred to in Article 2(2)(c) shall include the following:
 - (a) a daily valuation of the collateral held in accordance with Section 6;
 - (b) the legal arrangements and a collateral holding structure that allow access to the received collateral where it is being held by a third party;
 - (c) where initial margin is held by the collateral provider, that the collateral is held in insolvency-remote custody accounts;
 - (d) that non-cash initial margin is maintained in accordance with paragraphs 3 and 4;
 - (e) that cash collected as initial margin is maintained in cash accounts at central banks or credit institutions which fulfil all of the following conditions:
 - (i) they are authorised in accordance with Directive 2013/36/EU or are authorised in a third country whose supervisory and regulatory arrangements have been found to be equivalent in accordance with Article 142(2) of Regulation (EU) No 575/2013;
 - (ii) they are neither the posting nor the collecting counterparties, nor part of the same group as either of the counterparties;
 - (f) the availability of unused collateral to the liquidator or other insolvency official of the defaulting counterparty;
 - (g) the initial margin is freely transferable to the posting counterparty in a timely manner in case of the default of the collecting counterparty;

- (h) that non-cash collateral is transferable without any regulatory or legal constraints or third-party claims, including those of the liquidator of the collecting counterparty or third-party custodian, other than liens for fees and expenses incurred in providing the custodial accounts and other than liens routinely imposed on all securities in a clearing system in which such collateral may be held;
 - (i) that any unused collateral is returned to the posting counterparty in full, excluding costs and expenses incurred for the process of collecting and holding the collateral.
2. Any collateral posted as initial or variation margin may be substituted by alternative collateral where all of the following conditions are met:
- (a) the substitution is made in accordance with the terms of the agreement between the counterparties referred to in Article 3;
 - (b) the alternative collateral is eligible in accordance with Section 2;
 - (c) the value of the alternative collateral is sufficient to meet all margin requirements after applying any relevant haircut.
3. Initial margin shall be protected from the default or insolvency of the collecting counterparty by segregating it in either or both of the following ways:
- (a) on the books and records of a third-party holder or custodian;
 - (b) via other legally binding arrangements;
4. Counterparties shall ensure that non-cash collateral exchanged as initial margin is segregated as follows:
- (a) where collateral is held by the collecting counterparty on a proprietary basis, it shall be segregated from the rest of the proprietary assets of the collecting counterparty;
 - (b) where collateral is held by the posting counterparty on a non-proprietary basis, it shall be segregated from the rest of the proprietary assets of the posting counterparty;
 - (c) where collateral is held on the books and records of a custodian or other third-party holder, it shall be segregated from the proprietary assets of that third-party holder or custodian.
5. Where non-cash collateral is held by the collecting party or by a third-party holder or custodian, the collecting counterparty shall always provide the posting counterparty with the option to segregate its collateral from the assets of other posting counterparties.
6. Counterparties shall perform an independent legal review in order to verify that the segregation arrangements meet the requirements referred to in paragraph 1(g) and paragraphs 3, 4 and 5. That legal review may be conducted by an independent internal unit, or by an independent third party.
7. Counterparties shall provide evidence to their competent authorities of compliance with paragraph 6 in relation to each relevant jurisdiction and, upon request by a competent authority, shall establish policies ensuring the continuous assessment of compliance.
8. For the purposes of paragraph 1(e), the counterparties shall assess the credit quality of the credit institution referred to therein by using a methodology that does not solely or mechanistically rely on external credit quality assessments.

Article 20

Treatment of collected initial margins

1. The collecting counterparty shall not rehypothecate, repledge nor otherwise reuse the collateral collected as initial margin.
2. Notwithstanding paragraph 1, a third-party holder may use the initial margin received in cash for reinvestment purposes.

SECTION 6

Valuation of collateral

Article 21

Calculation of the adjusted value of collateral

1. Counterparties shall adjust the value of collected collateral in accordance with either the methodology set out in Annex II or a methodology using own volatility estimates accordance with Article 22.
2. When adjusting the value of collateral pursuant to paragraph 1, counterparties may disregard the foreign exchange risk arising from positions in currencies which are subject to a legally binding intergovernmental agreement limiting the variation of those positions relative to other currencies covered by the same agreement.

Article 22

Own estimates of the adjusted value of collateral

1. Counterparties shall adjust the value of collected collateral using own volatility estimates in accordance with Annex III.
2. Counterparties shall update their data sets and calculate the own volatility estimates referred to in Article 21 whenever the level of market prices' volatility changes materially and at least quarterly.
3. For the purposes of paragraph 2, counterparties shall pre-determine the levels of volatility that trigger a recalculation of the haircuts as referred to in Annex III.
4. The procedures referred to in Article 2(2)(d) shall include policies to monitor the calculation of the own volatility estimates and the integration of those estimates into the risk management process of that counterparty.
5. The policies referred to in paragraph 4 shall be subject to an internal review that includes all of the following:
 - (a) the integration of the estimates into the risk management process of the counterparty, which shall take place at least annually;
 - (b) the integration of estimated haircuts into daily risk management;
 - (c) the validation of any significant change in the process for the calculation of the estimates;
 - (d) the verification of the consistency, timeliness and reliability of data sources used to calculate the estimates;
 - (e) the accuracy and appropriateness of the volatility assumptions.
6. The review referred to in paragraph 5 shall be carried out regularly within the internal auditing process of the counterparty.

CHAPTER II

SPECIFIC PROVISIONS ON RISK MANAGEMENT PROCEDURES

SECTION 1

Exemptions

Article 23

CCPs authorised as credit institutions

By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that no collateral is exchanged in relation to non-centrally cleared OTC derivative contracts entered into with CCPs authorised as credit institutions in accordance with Directive 2013/36/EU.

*Article 24***Non-financial counterparties and third-country counterparties**

By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that no collateral is exchanged in relation to non-centrally cleared OTC derivative contracts entered into with non-financial counterparties that do not meet the conditions of Article 10(1)(b) of Regulation (EU) No 648/2012, or with non-financial entities established in a third country that would not meet the conditions of Article 10(1)(b) of Regulation (EU) No 648/2012 if they were established in the Union.

*Article 25***Minimum transfer amount**

1. By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that no collateral is collected from a counterparty where the amount due from the last collection of collateral is equal to or lower than the amount agreed by the counterparties ('minimum transfer amount').

The minimum transfer amount shall not exceed EUR 500 000 or the equivalent amount in another currency.

2. Where counterparties agree on a minimum transfer amount, the amount of collateral due shall be calculated as the sum of:

- (a) the variation margin due from its last collection calculated in accordance with Article 10, including any excess collateral;
- (b) the initial margin due from its last collection calculated in accordance with Article 11, including any excess collateral.

3. Where the amount of collateral due exceeds the minimum transfer amount agreed by the counterparties, the collecting counterparty shall collect the full amount of collateral due without deduction of the minimum transfer amount.

4. Counterparties may agree on separate minimum transfer amounts for initial and variation margins, provided that the sum of those minimum transfer amounts is equal to or lower than EUR 500 000 or the equivalent amount in another currency.

5. Where counterparties agree on separate minimum transfer amounts in accordance with paragraph 4, the collecting counterparty shall collect the full amount of initial or variation margin due without any deduction of those minimum transfer amounts where the amount of initial or variation collateral due exceeds the minimum transfer amount.

*Article 26***Margin calculation with third-country counterparties**

Where a counterparty is domiciled in a third country, counterparties may calculate margins on the basis of a netting set that includes the following types of contracts:

- (a) non-centrally cleared OTC derivatives subject to margin requirements under this Regulation;
- (b) contracts that meet both of the following conditions:
 - (i) they are identified as non-centrally cleared OTC derivatives by the regulatory regime applicable to the counterparty domiciled in the third country;
 - (ii) they are subject to margin rules in the regulatory regime applicable to the counterparty domiciled in the third country.

SECTION 2

Exemptions in calculating levels of initial margin*Article 27***Foreign exchange contracts**

By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that initial margins are not collected with respect to:

- (a) physically settled OTC derivative contracts that solely involve the exchange of two different currencies on a specific future date at a fixed rate agreed on the trade date of the contract covering the exchange ('foreign exchange forwards');
- (b) physically settled OTC derivative contracts that solely involve an exchange of two different currencies on a specific date at a fixed rate that is agreed on the trade date of the contract covering the exchange, and a reverse exchange of the two currencies at a later date and at a fixed rate that is also agreed on the trade date of the contract covering the exchange ('foreign exchange swaps');
- (c) the exchange of principal of non-centrally cleared OTC derivative contracts under which counterparties exchange solely the principal amount and any interest payments in one currency for the principal amount and any interest payments in another currency, at specified points in time according to a specified formula ('currency swap').

*Article 28***Threshold based on notional amount**

1. By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that initial margins are not collected for all new OTC derivative contracts entered into within a calendar year where one of the two counterparties has an aggregate month-end average notional amount of non-centrally cleared OTC derivatives for the months March, April and May of the preceding year of below EUR 8 billion.

The aggregate month-end average notional amount referred to in the first subparagraph shall be calculated at the counterparty level or at the group level where the counterparty belongs to a group.

2. Where a counterparty belongs to a group, the calculation of the group aggregate month-end average notional amount shall include all non-centrally cleared OTC derivative contracts of the group including all intragroup non-centrally cleared OTC derivatives contracts.

For the purposes of the first subparagraph, OTC derivative contracts which are internal transactions shall only be taken into account once.

3. UCITS authorised in accordance with Directive 2009/65/EC and alternative investment funds managed by alternative investment fund managers authorised or registered in accordance with Directive 2011/61/EU of the European Parliament and of the Council⁽¹⁾ shall be considered distinct entities and treated separately when applying the thresholds referred to in paragraph 1 where the following conditions are met:

- (a) the funds are distinct segregated pools of assets for the purposes of the fund's insolvency or bankruptcy;
- (b) the segregated pools of assets are not collateralised, guaranteed or otherwise financially supported by other investment funds or their managers.

⁽¹⁾ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

Article 29

Threshold based on initial margin amounts

1. By way of derogation from Article 2(2), counterparties may provide in their risk management procedures that initial margin collected is reduced by an amount up to EUR 50 million in the case of points (a) and (b) of this paragraph or EUR 10 million in the case of point (c) where:

- (a) neither counterparty belongs to any group;
- (b) the counterparties are part of different groups;
- (c) both counterparties belong to the same group.

2. Where a counterparty does not collect initial margins in accordance with paragraph 1(b), the risk management procedures referred to in Article 2(1) shall include provisions on monitoring, at group level, whether that threshold is exceeded and provisions for the retention of appropriate records of the group's exposures to each single counterparty in the same group.

3. UCITS authorised in accordance with Directive 2009/65/EC and alternative investment funds managed by alternative investment fund managers authorised or registered in accordance with Directive 2011/61/EU shall be considered distinct entities and treated separately when applying the thresholds referred to in paragraph 1 where the following conditions are met:

- (a) the funds are distinct segregated pools of assets for the purposes of the fund's insolvency or bankruptcy;
- (b) the segregated pools of assets are not collateralised, guaranteed or otherwise financially supported by other investment funds or their managers.

SECTION 3

Exemptions from the requirement to post or collect initial or variation margin

Article 30

Treatment of derivatives associated to covered bonds for hedging purposes

1. By way of derogation from Article 2(2) and where the conditions set out in paragraph 2 of this Article are met, counterparties may, in their risk management procedures, provide the following in relation to OTC derivative contracts concluded in connection with covered bonds:

- (a) variation margin is not posted by the covered bond issuer or cover pool but is collected from its counterparty in cash and returned to its counterparty when due;
- (b) initial margin is not posted or collected.

2. Paragraph 1 applies where all of the following conditions are met:

- (a) the OTC derivative contract is not terminated in case of resolution or insolvency of the covered bond issuer or cover pool;
- (b) the counterparty to the OTC derivative concluded with covered bond issuers or with cover pools for covered bonds ranks at least *pari passu* with the covered bond holders except where the counterparty to the OTC derivative concluded with covered bond issuers or with cover pools for covered bonds is the defaulting or the affected party, or waives the *pari passu* rank;

- (c) the OTC derivative contract is registered or recorded in the cover pool of the covered bond in accordance with national covered bond legislation;
- (d) the OTC derivative contract is used only to hedge the interest rate or currency mismatches of the cover pool in relation to the covered bond;
- (e) the netting set does not include OTC derivative contracts unrelated to the cover pool of the covered bond;
- (f) the covered bond to which the OTC derivative contract is associated meets the requirements of paragraphs (1), (2) and (3) of Article 129 of Regulation (EU) No 575/2013;
- (g) the cover pool of the covered bond to which the OTC derivative contract is associated is subject to a regulatory collateralisation requirement of at least 102 %.

Article 31

Treatment of derivatives with counterparties in third countries where legal enforceability of netting agreements or collateral protection cannot be ensured

1. By way of derogation from Article 2(2), counterparties established in the Union may provide in their risk management procedures that variation and initial margins are not required to be posted for non-centrally cleared OTC derivative contracts concluded with counterparties established in a third country for which any of the following apply:

- (a) the legal review referred to in Article 2(3) confirms that the netting agreement and, where used, the exchange of collateral agreement cannot be legally enforced with certainty at all times;
- (b) the legal review referred to in Article 19(6) confirms that the segregation requirements referred to in Article 19(3), (4) and (5) cannot be met.

For the purposes of the first subparagraph, counterparties established in the Union shall collect margin on a gross basis.

2. By way of derogation from Article 2(2), counterparties established in the Union may provide in their risk management procedures that variation and initial margins are not required to be posted or collected for contracts concluded with counterparties established in a third country where all of the following conditions apply:

- (a) points (a) and, where applicable, point (b) of paragraph 1 apply;
- (b) the legal reviews referred to in points (a) and (b) of paragraph 1 confirm that collecting collateral in accordance with this Regulation is not possible, even on a gross basis;
- (c) the ratio calculated in accordance with paragraph 3 is lower than 2,5 %.

3. The ratio referred to in paragraph 2(c) shall be the result of dividing the amount resulting from point (a) of this paragraph with that resulting from point (b):

- (a) the sum of the notional amounts of any outstanding OTC derivative contracts of the group to which the counterparty belongs that were concluded after the entry into force of this Regulation and for which no margin has been collected from counterparties established in a third country for which point (b) of paragraph 2 applies;
- (b) the sum of the notional amounts of all outstanding OTC derivative contracts of the group to which the counterparty belongs, excluding OTC derivative contracts that are intragroup transactions.

CHAPTER III

INTRAGROUP DERIVATIVE CONTRACTS

SECTION 1

Procedures for counterparties competent authorities when applying exemptions for intragroup derivative contracts

Article 32

Procedures for counterparties and relevant competent authorities

1. The application or notification from a counterparty to the competent authority pursuant to paragraphs 6 to 10 of Article 11 of Regulation (EU) No 648/2012 shall be deemed to have been received when the competent authority receives all of the following information:

- (a) all the information necessary to assess whether the conditions specified in paragraphs 6, 7, 8, 9 or 10, respectively, of Article 11 of Regulation (EU) No 648/2012 have been fulfilled;
- (b) the information and documents referred to in Article 18(2) of Commission Delegated Regulation (EU) No 149/2013 ⁽¹⁾.

2. Where a competent authority determines that further information is required in order to assess whether the conditions referred to in paragraph 1(a) are fulfilled, it shall submit a written request for information to the counterparty.

3. A decision by a competent authority under Article 11(6) of Regulation (EU) No 648/2012 shall be communicated to the counterparty within 3 months of receipt of all the information referred to in paragraph 1.

4. Where a competent authority reaches a positive decision under paragraphs 6, 8, or 10 of Article 11 of Regulation (EU) No 648/2012, it shall communicate that positive decision to the counterparty in writing, specifying at least the following:

- (a) whether the exemption is a full exemption or a partial exemption;
- (b) in the case of a partial exemption, a clear identification of the limitations of the exemption.

5. Where a competent authority reaches a negative decision under paragraphs 6, 8, or 10 of Article 11 of Regulation (EU) No 648/2012 or objects to a notification under paragraphs 7 or 9 of Article 11 of that Regulation, it shall communicate that negative decision or objection to the counterparty in writing, specifying at least the following:

- (a) the conditions of paragraphs 6, 7, 8, 9 or 10, respectively, of Article 11 of Regulation (EU) No 648/2012 that are not fulfilled;
- (b) a summary of the reasons for considering that such conditions are not fulfilled.

6. Where one of the competent authorities notified under Article 11(7) of Regulation (EU) No 648/2012 considers that the conditions referred to in points (a) or (b) of the first subparagraph of Article 11(7) of that Regulation are not fulfilled, it shall notify the other competent authority within 2 months of receipt of the notification.

7. The competent authorities shall notify the non-financial counterparties of the objection referred to in paragraph 5 within 3 months of receipt of the notification.

8. A decision by a competent authority under Article 11(8) of Regulation (EU) No 648/2012 shall be communicated to the counterparty established in the Union within 3 months of receipt of all the information referred to in paragraph 1.

⁽¹⁾ Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (OJ L 52, 23.2.2013, p. 11).

9. A decision by the competent authority of a financial counterparty referred to Article 11(10) of Regulation (EU) No 648/2012 shall be communicated to the competent authority of the non-financial counterparty within 2 months from the receipt of the all the information referred to in paragraph 1 and to the counterparties within 3 months of receipt of that information.

10. Counterparties that have submitted a notification or received a positive decision according to paragraphs 6, 7, 8, 9 or 10, respectively, of Article 11 of Regulation (EU) No 648/2012 shall immediately notify the relevant competent authority of any change that may affect the fulfilment of the conditions set out in those paragraphs, as applicable. The competent authority may object to the application for the exemption or withdraw its positive decision following any change in circumstances that could affect the fulfilment of those conditions.

11. Where a negative decision or objection is communicated by a competent authority, the relevant counterparty may only submit another application or notification where there has been a material change in the circumstances that formed the basis of the competent authority's decision or objection.

SECTION 2

Applicable criteria for applying exemptions for intragroup derivative contracts

Article 33

Applicable criteria on the legal impediment to the prompt transfer of own funds and repayment of liabilities

A legal impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties as referred to in paragraphs 5 to 10 of Article 11 of Regulation (EU) No 648/2012 shall be deemed to exist where there are actual or foreseen restrictions of a legal nature including any of the following:

- (a) currency and exchange controls;
- (b) a regulatory, administrative, legal or contractual framework that prevents mutual financial support or significantly affects the transfer of funds within the group;
- (c) any of the conditions on the early intervention, recovery and resolution as referred to in Directive 2014/59/EU of the European Parliament and of the Council ⁽¹⁾ are met, as a result of which the competent authority foresees an impediment to the prompt transfer of own funds or repayment of liabilities;
- (d) the existence of minority interests that limit decision-making power within entities that form the group;
- (e) the nature of the legal structure of the counterparty, as defined in its statutes, instruments of incorporation and internal rules.

Article 34

Applicable criteria on the practical impediments to the prompt transfer of own funds and repayment of liabilities

A practical impediment to the prompt transfer of own funds or repayment of liabilities between the counterparties as referred to in paragraphs 5 to 10 of Article 11 of Regulation (EU) No 648/2012 shall be deemed to exist where there are restrictions of a practical nature, including any of the following:

- (a) insufficient availability of unencumbered or liquid assets to the relevant counterparty when due;
- (b) impediments of an operational nature which effectively delay or prevent such transfers or repayments when due.

⁽¹⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

CHAPTER IV

TRANSITIONAL AND FINAL PROVISIONS

*Article 35***Transitional provisions**

Counterparties referred to in Article 11(3) of Regulation (EU) No 648/2012 may continue to apply the risk-management procedures that they have in place at the date of application of this Regulation in respect of non-centrally cleared OTC derivative contracts entered into between 16 August 2012 and the relevant dates of application of this Regulation.

*Article 36***Application of 9(2), Article 11, Articles 13 to 18, points (c), (d) and (f) of Article 19(1), Article 19(3) and Article 20**

1. Article 9(2), Article 11, Articles 13 to 18, points (c), (d) and (f) of Article 19(1), Article 19(3) and Article 20 shall apply as follows:

- (a) from 1 month after the date of entry into force of this Regulation, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 3 000 billion;
- (b) from 1 September 2017, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 2 250 billion;
- (c) from 1 September 2018, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 1 500 billion;
- (d) from 1 September 2019, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 750 billion;
- (e) from 1 September 2020, where both counterparties have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared derivatives that is above EUR 8 billion.

2. By way of derogation from paragraph 1, where the conditions of paragraph 3 of this Article are met, Article 9(2), Article 11, Articles 13 to 18, points (c), (d) and (f) of Article 19(1), Article 19(3) and Article 20 shall apply as follows:

- (a) 3 years after the date of entry into force of this Regulation where no equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country;
- (b) the later of the following dates where an equivalence decision has been adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country:
 - (i) 4 months after the date of entry into force of the decision adopted pursuant to Article 13(2) of Regulation (EU) No 648/2012 for the purposes of Article 11(3) of that Regulation in respect of the relevant third country;
 - (ii) the applicable date determined pursuant to paragraph 3.

3. The derogation referred to in paragraph 2 shall only apply where counterparties to a non-centrally cleared OTC derivative contract meet all of the following conditions:

- (a) one counterparty is established in a third country and the other counterparty is established in the Union;
- (b) the counterparty established in a third country is either a financial counterparty or a non-financial counterparty;

- (c) the counterparty established in the Union is one of the following:
 - (i) a financial counterparty, a non-financial counterparty, a financial holding company, a financial institution or an ancillary services undertaking subject to appropriate prudential requirements and the third-country counterparty referred to in point (a) is a financial counterparty;
 - (ii) either a financial counterparty or a non-financial counterparty and the third-country counterparty referred to in point (a) is a non-financial counterparty;
- (d) both counterparties are included in the same consolidation on a full basis in accordance to Article 3(3) of Regulation (EU) No 648/2012;
- (e) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;
- (f) the requirements of Chapter III are met.

Article 37

Application of Articles 9(1), 10 and 12

1. Articles 9(1), 10 and 12, shall apply as follows:
 - (a) from 1 month after the date of its entry into force of this Regulation for counterparties both of which have, or belong to groups each of which has, an aggregate average notional amount of non-centrally cleared OTC derivatives above EUR 3 000 billion;
 - (b) from the date that is the latest of 1 March 2017 or 1 month following the date of its entry into force of this Regulation for other counterparties.
2. By way of derogation from paragraph 1 in respect of contracts for foreign exchange forwards referred to in point (a) of Article 27, Articles 9(1), 10 and 12 shall apply on one of the following dates, whichever is earlier:
 - (a) 31 December 2018, where the Regulation referred to in point (b) does not yet apply;
 - (b) the date of entry into application of the Commission Delegated Regulation (*) specifying some technical elements related to the definition of financial instruments with regard to physically settled foreign exchange forwards or the date determined pursuant to paragraph 1, whichever is later.

Article 38

Dates of application for specific contracts

1. By way of derogation from Articles 36(1) and 37, in respect of all non-centrally OTC derivatives which are single-stock equity options or index options, the Articles referred to in paragraph Articles 36(1) and 37 shall apply from 3 years after the date of entry into force of this Regulation.
2. By way of derogation from Articles 36(1) and 37, where a counterparty established in the Union enters into a non-cleared OTC derivative contract with another counterparty which belongs to the same group, the Articles referred to in Articles 36(1) and 37 shall apply from the dates specified in accordance with those Articles or 4 July 2017, whichever is the later.

Article 39

Calculation of aggregate average notional amount

1. For the purposes of Articles 36 and 37, the aggregate average notional amount referred to shall be calculated as the average of the total gross notional amount that meets all of the following conditions:
 - (a) that are recorded on the last business day of March, April and May of 2016 with respect to counterparties referred to in point (a) of Article 36(1);

(*) C(2016) 2398 final.

- (b) that are recorded on the last business day of March, April and May of the year referred to in each of the points in Article 36(1);
 - (c) it includes all the entities of the group;
 - (d) it includes all the non-centrally cleared OTC derivative contracts of the group;
 - (e) it includes all the intragroup non-centrally cleared OTC derivative contracts of the group, counting each one of them once.
2. For the purpose of paragraph 1, UCITS authorised in accordance with Directive 2009/65/EC and alternative investment funds managed by alternative investment fund managers authorised or registered in accordance with Directive 2011/61/EU shall be considered distinct entities and treated separately, where the following conditions are met:
- (a) the funds are distinct segregated pools of assets for the purposes of the fund's insolvency or bankruptcy;
 - (b) the segregated pools of assets are not collateralised, guaranteed or otherwise financially supported by other investment funds or their managers.

Article 40

Entry into force

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

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

Done at Brussels, 4 October 2016.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX I

Correspondence of Probability of default ('PD') to Credit quality steps for the purposes of Articles 6 and 7

An internal rating with a PD equal to or lower than the value in Table 1 shall be associated to the corresponding credit quality step.

Table 1

Credit Quality Step	Probability of default, as defined in Article 4(54) of Regulation (EU) 575/2013 lower than or equal to:
1	0,10 %
2	0,25 %
3	1 %
4	7,5 %

ANNEX II

Methodology to adjust the value of collateral for the purposes of Article 21

1. The value of the collateral shall be adjusted as follows:

$$C_{\text{value}} = C \cdot (1 - H_C - H_{\text{FX}})$$

where:

C = the market value of the collateral;

H_C = the haircut appropriate to the collateral, as calculated under paragraph 2;

H_{FX} = the haircut appropriate to currency mismatch, as calculated under paragraph 6.

2. Counterparties shall apply at least the haircuts provided in the following Tables 1 and 2 to the market value of the collateral:

Table 1

Haircuts for long term credit quality assessments

Credit quality step with which the credit assessment of the debt security is associated	Residual maturity	Haircuts for debt securities issued by entities described in Article 4 (1) (c) to (e) and (h) to (k), in (%)	Haircuts for debt securities issued by entities described in Article 4 (1) (f), (g), (l) to (n) in (%)	Haircuts for securitisation positions meeting the criteria in Article 4 (1) (o) in (%)
1	≤ 1 year	0,5	1	2
	> 1 ≤ 5 years	2	4	8
	> 5 years	4	8	16
2-3	≤ 1 year	1	2	4
	> 1 ≤ 5 years	3	6	12
	> 5 years	6	12	24
4 or below	≤ 1 year	15	N/A	N/A
	> 1 ≤ 5 years	15	N/A	N/A
	> 5 years	15	N/A	N/A

Table 2

Haircuts for short term credit quality assessments

Credit quality step with which the credit assessment of a short term debt security is associated	Haircuts for debt securities issued by entities described in Article 4(1) (c) and (j) in (%)	Haircuts for debt securities issued by entities described in Article 4(1) (m) in (%)	Haircuts for securitisation positions and meeting the criteria in Article 4(1) (o) in (%)
1	0,5	1	2
2-3 or below	1	2	4

1. Equities in main indices, bonds convertible to equities in main indices and gold shall have a haircut of 15 %.
 2. For eligible units in UCITS the haircut is the weighted average of the haircuts that would apply to the assets in which the fund is invested.
 3. Cash variation margin shall be subject to a haircut of 0 %.
 4. For the purpose of exchanging variation margin, a haircut of 8 % shall apply to all non-cash collaterals posted in a currency other than those agreed in an individual derivative contract, the relevant governing master netting agreement or the relevant credit support annex.
 5. For the purpose of exchanging initial margin, a haircut of 8 % shall apply to all cash and non-cash collaterals posted in a currency other than the currency in which the payments in case of early termination or default have to be made in accordance with the single derivative contract, the relevant exchange of collateral agreement or the relevant credit support annex ('termination currency'). Each of the counterparties may choose a different termination currency. Where the agreement does not identify a termination currency, the haircut shall apply to the market value of all the assets posted as collateral.
-

ANNEX III

Own volatility estimates of the haircuts to be applied to the market value of collateral for the purposes of Article 22

1. The calculation of the adjusted value of the collateral shall meet all of the following conditions:

- (a) counterparties shall base the calculation on a 99th percentile, one-tailed confidence interval;
- (b) counterparties shall base the calculation on a liquidation period of at least 10 business days;
- (c) counterparties shall calculate the haircuts by scaling up the daily revaluation haircuts, using the following square-root-of time formula:

$$H = H_M \cdot \sqrt{\frac{N_R + (T_M - 1)}{T_M}}$$

where:

H = the haircut to be applied;

H_M = the haircut where there is daily revaluation;

N_R = the actual number of business days between revaluations;

T_M = the liquidation period for the type of transaction in question;

- (d) counterparties shall take into account the lesser liquidity of low quality assets. They shall adjust the liquidation period upwards in cases where there are doubts concerning the liquidity of the collateral. They shall also identify where historical data may understate potential volatility. Such cases shall be dealt with by means of a stress scenario;
- (e) the length of the historical observation period institutions use for calculating haircuts shall be at least 1 year. For counterparties that use a weighting scheme or other methods for the historical observation period, the length of the effective observation period shall be at least 1 year;
- (f) the market value of the collateral shall be adjusted as follows:

$$C_{\text{value}} = C \cdot (1 - H)$$

where:

C = the market value of the collateral;

H = the haircut as calculated in point (c) above.

- 2. Cash variation margin may be subject to a haircut of 0 %.
- 3. For debt securities that have a credit assessment from an ECAI, counterparties may use their own volatility estimate for each category of security.
- 4. In determining relevant categories of securities for the purposes of paragraph 3, counterparties shall take into account the type of issuer of the security, the external credit assessment of the securities, their residual maturity, and their modified duration. Volatility estimates shall be representative of the securities included in the category.

5. The calculation of haircuts resulting from the application of point (c) of paragraph 1 shall meet all of the following conditions:
- (a) a counterparty shall use the volatility estimates in the day-to-day risk management process including in relation to its exposure limits;
 - (b) where the liquidation period used by a counterparty is longer than that referred to in point (b) of paragraph 1 for the type of OTC derivative contract in question, that counterparty shall increase its haircuts in accordance with the square root of time formula referred to in point (c) of that paragraph.
-

ANNEX IV

Standardised Method for the calculation of initial margin for the purposes of Articles 9 and 11

1. The notional amounts or underlying values, as applicable, of the OTC derivative contracts in a netting set shall be multiplied by the percentages in the following Table 1:

Table 1

Category	Add-on factor
Credit: 0-2 year residual maturity	2 %
Credit: 2-5 year residual maturity	5 %
Credit: 5+ year residual maturity	10 %
Commodity	15 %
Equity	15 %
Foreign exchange	6 %
Interest rate and inflation: 0-2 year residual maturity	1 %
Interest rate and inflation: 2-5 year residual maturity	2 %
Interest rate and inflation: 5+ year residual maturity	4 %
Other	15 %

2. The gross initial margin of a netting set shall be calculated as the sum of the products referred to in paragraph 1 for all OTC derivative contracts in the netting set.
3. The following treatment shall be applied to contracts which fall within more than one category:
- where a relevant risk factor for an OTC derivative contract can be clearly identified, contracts shall be assigned to the category corresponding to that risk factor;
 - where the condition referred to in point (a) is not met, contracts shall be assigned to the category with the highest add-on factor among the relevant categories;
 - the initial margin requirements for a netting set shall be calculated in accordance with the following formula:

$$\text{Net initial margin} = 0,4 * \text{Gross initial margin} + 0,6 * \text{NGR} * \text{Gross initial margin}.$$

where:

- net initial margin refers to the reduced figure for initial margin requirements for all OTC derivative contracts with a given counterparty included in a netting set;
- NGR refers to the net-to-gross ratio calculated as the quotient of the net replacement cost of a netting set with a given counterparty in the numerator, and the gross replacement cost of that netting set in the denominator;

- (d) for the purposes of point (c), the net replacement cost of a netting set shall be the bigger between zero and the sum of current market values of all OTC derivative contracts in the netting set;
 - (e) for the purposes of point (c), the gross replacement cost of a netting set shall be the sum of the current market values of all OTC derivative contracts calculated in accordance with Article 11(2) of Regulation (EU) No 648/2012 and Articles 16 and 17 of Delegated Regulation (EU) No 149/2013 with positive values in the netting set;
 - (f) the notional amount referred to in paragraph 1 may be calculated by netting the notional amounts of contracts that are of opposite direction and are otherwise identical in all contractual features except their notional amounts.
-

COMMISSION IMPLEMENTING REGULATION (EU) 2016/2252**of 1 December 2016****entering a name in the register of protected designations of origin and protected geographical indications (Oliva di Gaeta (PDO))**

THE EUROPEAN COMMISSION,

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

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

Whereas:

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

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Oliva di Gaeta' (PDO) is hereby entered in the register.

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

Article 2

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

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

Done at Brussels, 1 December 2016.

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

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ C 282, 4.8.2016, p. 14.

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

COMMISSION IMPLEMENTING REGULATION (EU) 2016/2253**of 14 December 2016****opening and providing for the management of Union tariff quotas for certain agricultural and processed agricultural products originating in South Africa**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ⁽¹⁾, and in particular Article 58(1) thereof,

Whereas:

- (1) By Decision (EU) 2016/1623 of 1 June 2016 ⁽²⁾, the Council authorised the signing and the provisional application of the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part ⁽³⁾ ('the Agreement').
- (2) The Agreement stipulates that customs duties on imports into the Union of goods originating in the SADC EPA States are to be reduced or eliminated in accordance with the tariff elimination schedule in Annex I to the Agreement. Annex I provides that for certain goods originating in South Africa the reduction or elimination of customs duties is granted within tariff quotas.
- (3) Part 1, Section B, of Annex I to the Agreement stipulates that the Union is to manage those tariff quotas on a first-come, first-served basis. The Commission shall manage those tariff quotas in accordance with the rules on the management of tariff quotas laid down in Commission Implementing Regulation (EU) 2015/2447 ⁽⁴⁾.
- (4) Protocol 4 to the Agreement stipulates that, in the case of provisional application of this Agreement by the EU and ratification by South Africa, the application of the Articles of the Trade, Development and Cooperation Agreement with South Africa ⁽⁵⁾ which are laid down in Title II on trade and Title III on trade-related issues and its corresponding annexes and Protocols, with the exception of its Article 31 on maritime transport, shall be suspended. Therefore, Council Regulation (EC) No 2793/1999 ⁽⁶⁾ should be suspended as of the date of provisional application of the Agreement.
- (5) Article 16 of Protocol 3 of the Agreement stipulates that the agricultural market access concessions shall only be granted to the Party that lodges the notification pursuant to Article 3(3) of this Protocol from the first day of the month following receipt by the other Party of such notification. As the related notification has been received in October 2016, the related concessions should be granted as from 1 November 2016.

In order to ensure the effective application and management of the tariff quotas granted under the Agreement which the Commission shall manage on a first-come first-served basis, this Regulation should apply from 1 November 2016.

- (6) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

⁽¹⁾ OJ L 269, 10.10.2013, p. 1.

⁽²⁾ Council Decision (EU) 2016/1623 of 1 June 2016 on the signing, on behalf of the European Union and provisional application of the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part (OJ L 250, 16.9.2016, p. 1).

⁽³⁾ OJ L 250, 16.9.2016, p. 3.

⁽⁴⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

⁽⁵⁾ OJ L 311, 4.12.1999, p. 3.

⁽⁶⁾ Council Regulation (EC) No 2793/1999 of 17 December 1999 on certain procedures for applying the Trade, Development and Cooperation Agreement between the European Community and the Republic of South Africa (OJ L 337, 30.12.1999, p. 29).

HAS ADOPTED THIS REGULATION:

Article 1

Union tariff quotas are opened for goods originating in South Africa as set out in the Annex.

Article 2

The tariff quotas set out in the Annex shall be managed in accordance with Articles 49 to 54 of Implementing Regulation (EU) 2015/2447.

Article 3

In accordance with Protocol 4 of the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part, the application of Council Regulation (EC) No 2793/1999 shall be suspended.

Article 4

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

It shall apply from 1 November 2016.

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

Done at Brussels, 14 December 2016.

For the Commission
The President
Jean-Claude JUNKER

ANNEX

Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording for the description of the products is to be considered as having no more than an indicative value. The preferential scheme is determined, within the context of this Annex, by the coverage of the CN codes as they exist at the time of adoption of this Regulation. Where ex CN codes are indicated, the preferential scheme is to be determined by application of the CN code and corresponding description taken together.

Order No	CN code	TARIC subdivision	Description of products	Quota period	Quota volume (in tonnes net weight unless otherwise specified)	Tariff quota duty (% reduction)
09.1801	0402 10		Milk and cream, concentrated or containing added sugar or other sweetening matter, in powder, granules or in other solid forms, of a fat content, by weight, not exceeding 1,5 %	From 1.11.2016 to 31.12.2016 For each year thereafter from 1.1 to 31.12	83,3 500	0
09.1802	0405 10		Butter	From 1.11.2016 to 31.12.2016 For each year thereafter from 1.1 to 31.12	83,3 500	0
09.1804	0811 10 90		Strawberries, frozen	From 1.11.2016 to 31.12.2016 For each year thereafter from 1.1 to 31.12	377,5 ⁽¹⁾ 385 ⁽²⁾	0
09.1806	1701 13 10 1701 14 10 1701 99 10		Cane sugar for refining and white sugar, not containing added flavouring or colouring matter	From 1.11.2016 to 31.12.2016 For each year thereafter from 1.1 to 31.12	8 333 50 000	0
09.1808	1701 13 10 1701 14 10		Cane sugar for refining, not containing added flavouring or colouring matter	From 1.11.2016 to 31.12.2016 For each year thereafter from 1.1 to 31.12	16 667 100 000	0
09.1818	1702 30 50		Glucose and glucose syrup, in the form of white crystalline powder, whether or not agglomerated, not containing fructose or containing in the dry state less than 20 % by weight of fructose	From 1.11.2016 to 31.12.2016 For each year thereafter from 1.1 to 31.12	83,3 500	0

Order No	CN code	TARIC subdivision	Description of products	Quota period	Quota volume (in tonnes net weight unless otherwise specified)	Tariff quota duty (% reduction)
09.1820	2007 91 30		Jams, jellies, marmalades, purée or pastes of citrus fruit, with a sugar content exceeding 13 % but not exceeding 30 % by weight	From 1.11.2016 to 31.12.2016 For each year thereafter from 1.1 to 31.12	16,7 100	50 % MFN
09.1822	ex 2007 99 39	16 17 18 19 22 24 26 27 29 30 32 34 39 40 46 47 54 56	Fruit purées of pears, apricots, peaches (incl. nectarines) or mixtures (excluding tropical fruit) obtained by sieving then brought to the boil in a vacuum, the texture and chemical composition of which have not been changed by the heat treatment; pears, apricots, peaches (incl. nectarines) or mixtures (excluding tropical fruit), prepared or preserved, not containing added spirit	From 1.11.2016 to 31.12.2016 For each year thereafter from 1.1 to 31.12	57 156 ⁽³⁾ 57 156	From 1.11.2016 to 31.12.2016: 45 % MFN From 1.1.2017 to 31.12.2017: 41 % MFN From 1.1.2018 to 31.12.2018: 36 % MFN From 1.1.2019 to 31.12.2019: 32 % MFN From 1.1.2020 to 31.12.2020: 27 % MFN From 1.1.2021 to 31.12.2021: 23 % MFN From 1.1.2022 to 31.12.2022: 18 % MFN From 1.1.2023 to 31.12.2023: 14 % MFN
	ex 2007 99 50	41 42 43 45 47 49 51 52 53 62 64 67				From 1.1.2024 to 31.12.2024: 9 % MFN From 1.1.2025 to 31.12.2025: 5 % MFN From 1.1.2026 to 31.12.2026: 0
	2007 99 97	32 33 35 37 38 39				

Order No	CN code	TARIC subdivision	Description of products	Quota period	Quota volume (in tonnes net weight unless otherwise specified)	Tariff quota duty (% reduction)
		40 41 42 44 46 48 52 57 62				
	2008 40 51 2008 40 59 2008 40 71 2008 40 79 2008 40 90 2008 50 61 2008 50 69 2008 50 71 2008 50 79 2008 50 92 2008 50 98 2008 70 61 2008 70 69 2008 70 71 2008 70 79 2008 70 92 2008 70 98 2008 97 59 2008 97 74 2008 97 78 2008 97 98					
09.1824	ex 2007 99 39 2008 97 72	43 44	Fruit purées of tropical fruit obtained by sieving then brought to the boil in a vacuum, the texture and chemical composition of which have not been changed by the heat treatment; tropical fruit, prepared or preserved, not containing added spirit	From 1.11.2016 to 31.12.2016 For each year thereafter from 1.1 to 31.12	2 960 ⁽⁴⁾ 3 020 ⁽⁵⁾	50 % MFN

Order No	CN code	TARIC subdivision	Description of products	Quota period	Quota volume (in tonnes net weight unless otherwise specified)	Tariff quota duty (% reduction)
09.1826	2009 11 99		Frozen orange juice	From 1.11.2016 to 31.12.2016 For each year thereafter from 1.1 to 31.12	1 036 ⁽⁶⁾ 1 057 ⁽⁷⁾	0
09.1829	2009 71 2009 79		Apple juice	From 1.11.2016 to 31.12.2016 For each year thereafter from 1.1 to 31.12	3 478 ⁽⁸⁾ 3 595 ⁽⁹⁾	50 % MFN
09.1830	2102 10 90		Active yeasts, other than culture yeast and baker's yeast	From 1.11.2016 to 31.12.2016 For each year thereafter from 1.1 to 31.12	58,3 350	0
09.1891	ex 2204 21 93 ex 2204 21 94 ex 2204 21 95 ex 2204 21 96 ex 2204 21 97	19 29 31 19 29 31 61 71 81 11 21 31 11 21 31 61 71 81 11 21 31	Wines of an actual alcoholic strength by volume not exceeding 18 % vol.	From 1.11.2016 to 31.12.2016	60 105 000 litres ⁽¹⁰⁾	0

Order No	CN code	TARIC subdivision	Description of products	Quota period	Quota volume (in tonnes net weight unless otherwise specified)	Tariff quota duty (% reduction)
	ex 2204 21 98	11 21 31 61 71 81				
	ex 2204 29 93	10 20 30				
	ex 2204 29 94	21 31 71 81				
	ex 2204 29 95	10 20 30				
	ex 2204 29 96	21 31 71 81				
	ex 2204 29 97	10 20 30				
	ex 2204 29 98	21 31 71 81				
09.1892	ex 2204 21 93	19 29 31	Wines, in containers holding 2 litres or less, of an actual alcoholic strength by volume not exceeding 18 % vol. ⁽¹¹⁾	From 1.1.2017 to 31.12.2017 and, for each year thereafter, from 1.1 to 31.12	77 741 300 ⁽¹²⁾	0
	ex 2204 21 94	19 29 31 61 71 81				
	ex 2204 21 95	11 21 31				

Order No	CN code	TARIC subdivision	Description of products	Quota period	Quota volume (in tonnes net weight unless otherwise specified)	Tariff quota duty (% reduction)
	ex 2204 21 96	11 21 31 61 71 81				
	ex 2204 21 97	11 21 31				
	ex 2204 21 98	11 21 31 61 71 81				
09.1893	ex 2204 21 93	19 29 31	Wines of an actual alcoholic strength by volume not exceeding 18 % vol.	From 1.1.2017 to 31.12.2017 and, for each year thereafter, from 1.1 to 31.12	33 317 700 litres ⁽¹³⁾	0
	ex 2204 21 94	19 29 31 61 71 81				
	ex 2204 21 95	11 21 31				
	ex 2204 21 96	11 21 31 61 71 81				
	ex 2204 21 97	11 21 31				
	ex 2204 21 98	11 21 31 61 71 81				

Order No	CN code	TARIC subdivision	Description of products	Quota period	Quota volume (in tonnes net weight unless otherwise specified)	Tariff quota duty (% reduction)
	ex 2204 29 93	10 20 30				
	ex 2204 29 94	21 31 71 81				
	ex 2204 29 95	10 20 30				
	ex 2204 29 96	21 31 71 81				
	ex 2204 29 97	10 20 30				
	ex 2204 29 98	21 31 71 81				
09.1894	2207		Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol. or higher; ethyl alcohol and other spirits, denatured, of any strength	From 1.11.2016 to 31.12.2016 For each year thereafter from 1.1 to 31.12	13 333 80 000	0

⁽¹⁾ The tariff quota volume shall be reduced by the quantity imported, in 2016, under the tariff quota 09.1811.

⁽²⁾ From 1.1.2018, the volume shall be increased by 7,5 metric tonnes annually.

⁽³⁾ The tariff quota volume shall be reduced by the quantity imported, in 2016, under the tariff quotas 09.1813 and 09.1815.

⁽⁴⁾ The tariff quota volume shall be reduced by the quantity imported, in 2016, under the tariff quota 09.1817.

⁽⁵⁾ From 1.1.2018, the volume shall be increased by 60 metric tonnes annually.

⁽⁶⁾ The tariff quota volume shall be reduced by the quantity imported, in 2016, under the tariff quota 09.1819.

⁽⁷⁾ From 1.1.2018, the volume shall be increased by 21 metric tonnes annually.

⁽⁸⁾ The tariff quota volume shall be reduced by the quantity imported, in 2016, under the tariff quotas 09.1821.

⁽⁹⁾ From 1.1.2018 until 31.12.2026, the volume shall be increased by 117 metric tonnes annually. From 1.1.2027, the volume shall be increased by 70,5 metric tonnes annually.

⁽¹⁰⁾ The tariff quota volume shall be reduced by the quantity imported, in 2016, under the tariff quota 09.1825.

⁽¹¹⁾ From 1.9 to 31.12 each year, this tariff quota is also available for wines, in any volume of container, of an actual alcoholic strength by volume not exceeding 18 % vol.

⁽¹²⁾ From 1.1.2018, the volume shall be increased by 741 300 litres annually.

⁽¹³⁾ From 1.1.2018, the volume shall be increased by 317 700 litres annually.

COMMISSION IMPLEMENTING REGULATION (EU) 2016/2254**of 14 December 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, 14 December 2016.

*For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General
Directorate-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	102,3
	SN	241,4
	TN	123,9
	TR	119,2
	ZZ	146,7
0707 00 05	MA	63,2
	TR	160,2
	ZZ	111,7
0709 93 10	MA	143,1
	TR	162,1
	ZZ	152,6
0805 10 20	TR	71,8
	ZA	27,9
	ZZ	49,9
0805 20 10	MA	71,1
	ZZ	71,1
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	IL	110,6
	JM	125,0
	TR	81,6
	ZZ	105,7
0805 50 10	TR	78,8
	ZZ	78,8
0808 10 80	US	97,3
	ZA	36,6
	ZZ	67,0
0808 30 90	CN	83,8
	ZZ	83,8

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

DECISIONS

POLITICAL AND SECURITY COMMITTEE DECISION (CFSP) 2016/2255

of 7 December 2016

on the acceptance of third States' contributions to the European Union CSDP Military Training Mission in the Central African Republic (EUTM RCA) (EUTM RCA/2/2016)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular the third paragraph of Article 38 thereof,

Having regard to Council Decision (CFSP) 2016/610 of 19 April 2016 on a European Union CSDP Military Training Mission in the Central African Republic (EUTM RCA) ⁽¹⁾,

Whereas:

- (1) Pursuant to Article 8(2) of Decision (CFSP) 2016/610, the Council authorised the Political and Security Committee to take the relevant decisions on the acceptance of proposed contributions by third States to the European Union CSDP Military Training Mission in the Central African Republic (EUTM RCA).
- (2) In accordance with the recommendation by the EU Mission Commander of EUTM RCA on a proposed contribution from the Republic of Serbia and the advice provided by the European Union Military Committee in that regard, that contribution should be accepted and considered to be significant.
- (3) In accordance with Article 5 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not participate in the elaboration and implementation of decisions and actions of the Union which have defence implications. Consequently, Denmark is not participating in the adoption of this Decision and is neither bound by it nor subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

Third States' contributions

1. The contribution from the Republic of Serbia to EUTM RCA is accepted and considered to be significant.
2. The Republic of Serbia is exempted from financial contributions to the budget of EUTM RCA.

Article 2

Entry into force

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

Done at Brussels, 7 December 2016.

For the Political and Security Committee

The Chairperson

W. STEVENS

⁽¹⁾ OJ L 104, 20.4.2016, p. 21.

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2016/2256

of 8 December 2016

addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No 604/2013 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Whereas:

- (1) The transfer of applicants for international protection to Greece under Regulation (EU) No 604/2013 of the European Parliament and of the Council ⁽¹⁾ (hereafter 'the Dublin Regulation') has been suspended by Member States since 2011, following two judgments of the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (CJEU) ⁽²⁾, which identified systemic deficiencies in the Greek asylum system, resulting in a violation of the fundamental rights of applicants for international protection transferred from other Member States to Greece under Council Regulation (EC) No 343/2003 ⁽³⁾.
- (2) The Committee of Ministers of the Council of Europe has been monitoring the situation in Greece since the *M.S.S v Belgium and Greece* judgment was delivered by the ECHR in 2011 on the basis of progress reports that Greece is required to submit as evidence of the execution of the judgment and on the basis of evidence from NGOs and international organisations, such as the United Nations High Commissioner for Refugees (UNHCR), that operate in Greece. At the request of Greece submitted in June 2016, the Ministerial Committee has accepted to postpone the evaluation procedure on the basis of the argument that Greece is currently under enormous migratory pressure, that the situation is exceptional, unstable and not the same as it was when the *M.S.S* judgment was delivered five years ago.
- (3) As a result of the *M.S.S* judgment, Greece committed to reform its asylum system on the basis of a national Action Plan on Asylum Reform and Migration Management presented in August 2010 and revised in January 2013 (hereafter 'the Greek Action Plan'). On 1 October 2015, Greece presented a Roadmap on the implementation of the relocation scheme and the hotspots approach to the Council, which also outlines certain actions to be prioritised to ensure implementation of agreed pending actions in the areas of asylum and reception.
- (4) At the same time, the current refugee and migration crisis continues to place pressure on the Greek asylum and migration systems as the main country of first entry from the Eastern Mediterranean route. Between January and 4 December 2016, 171 909 migrants arrived irregularly in Greece ⁽⁴⁾. Even if the EU-Turkey Statement ⁽⁵⁾ has led to a significant decrease in the number of daily arrivals to Greece from Turkey ⁽⁶⁾, it has also placed new responsibilities on the Greek authorities. The average daily number of arrivals to Greece has moreover increased in the period since the beginning of August 2016 compared to the period 1 May until 31 July 2016 ⁽⁷⁾. Furthermore,

⁽¹⁾ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180, 29.6.2013, p. 31).

⁽²⁾ *M.S.S v Belgium and Greece* (No 30696/09) and *NS v Secretary of State for the Home Department* C-411/10 & C-493/10.

⁽³⁾ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 50, 25.2.2003, p. 1), which has been replaced by Regulation (EU) No 604/2013.

⁽⁴⁾ Frontex data of 4 December 2016.

⁽⁵⁾ EU-Turkey Statement, 18 March 2016.

⁽⁶⁾ See the Commission reports on the progress made in the implementation of the EU-Turkey Statement, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/index_en.htm

⁽⁷⁾ The average daily arrivals to Greece 1 May-31 July 2016 was 52, and the average daily arrivals to Greece 1 August-29 November 2016 was 94.

the situation in Greece has also changed significantly, following the de facto closure of the Western Balkans route, which prevents third-country nationals from onward travel. As a result, more than 62 000 third-country nationals having arrived irregularly are currently present in Greece ⁽¹⁾. At the same time, the emergency relocation scheme based on two Council Decisions ⁽²⁾ (hereafter 'Relocation Decisions'), is showing a positive trend particularly in Greece where relocation transfers have moved upwards and stand presently at around 1 000 per month. However, more efforts are needed from all Member States to alleviate the pressure on Greece. For this purpose, the Commission is calling on all Member States to pledge and relocate on a monthly basis to achieve at least 2 000 relocation transfers per month as of December 2016 and progressively increase monthly relocations ⁽³⁾.

- (5) On 10 February and 15 June 2016, the Commission addressed respectively two Recommendations to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under the Dublin Regulation ⁽⁴⁾. Those Recommendations concluded that the situation in Greece still needed considerable improvement before a further assessment could be made by the Commission on the possible resumption of transfers to Greece under the Dublin Regulation. On 28 September 2016, the Commission addressed a third Recommendation to the Hellenic Republic on the specific urgent measures to be taken by Greece in view of the resumption of transfers under the Dublin Regulation ⁽⁵⁾ (hereafter 'the third Recommendation'). The third Recommendation concluded that Greece is still facing a challenging situation in dealing with a large number of new asylum applicants, notably arising from the implementation of the so called 'pre-registration' exercise and the continuing irregular arrivals of migrants. There were moreover further important steps to be taken to remedy the remaining systemic deficiencies in the Greek asylum system, in particular given the capacity shortfalls. On the basis of the further progress achieved, any future resumption of transfers to Greece under the Dublin Regulation should, in accordance with the third Recommendation, take account of the impact this challenging situation has on the overall functioning of the asylum system, and should therefore start gradually, on a case by case basis.
- (6) By letter of 22 November 2016, Greece provided the Commission with further information regarding the latest situation of asylum applicants in Greece and of the progress it has made to reform its asylum system. Greece also expressed concerns about the prospect of a possible resumption of Dublin transfers, given the number of migrants in Greece, noting an enormous burden on it disproportionate to its size and which result in a situation where the asylum and reception capacities have reached their limit. Greece equally pointed to the level of relocations from Greece to other Member States which remain well below the level foreseen in the Relocation Decisions. However, Greece underlined that it is not aiming at any permanent exclusion from the Dublin system and requested genuine solidarity and support until the situation has been fully regularised in Greece.
- (7) According to Greek data of 22 November 2016, approximately 39 000 asylum applications have been lodged with the Greek Asylum Service since 1 January 2016. The pending cases to be examined at first instance were on 30 September more than 17 000. It is estimated by the Greek authorities that up to a total of 50 000 asylum applications will have been lodged by the end of 2016 ⁽⁶⁾. Due to the regularisation of the situation in Greece and the improved access to the asylum procedure, among other factors, the asylum application case load that the Greek Asylum Service is facing is significantly greater than in previous years.
- (8) In its previous Recommendations, the Commission has noted the improvements that Greece has made to its legislative framework to ensure that the new legal provisions of Directive 2013/32/EU of the European Parliament and of the Council ⁽⁷⁾ (the recast Asylum Procedures Directive) and some of Directive 2013/33/EU of the European Parliament and of the Council ⁽⁸⁾ (the recast Reception Conditions Directive) have been transposed

⁽¹⁾ <http://www.media.gov.gr/index.php>, accessed on 6 December 2016.

⁽²⁾ Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ L 239, 15.9.2015, p. 146), and Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ L 248, 24.9.2015, p. 80).

⁽³⁾ Communication from the Commission to the European Parliament, the European Council and the Council, Eighth Report on Relocation and Resettlement, 7 December 2016, COM(2016) 791 final.

⁽⁴⁾ Commission Recommendation of 10 February 2016 addressed to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No 604/2013 — C(2016) 871 final, Commission Recommendation of 15 June 2016 addressed to the Hellenic Republic on the specific urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No 604/2013 — C(2016) 3805 final.

⁽⁵⁾ Commission Recommendation of 28 September 2016 addressed to the Hellenic Republic on the specific urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No 604/2013 — C(2016) 6311 final.

⁽⁶⁾ By the end of 2016, most of the 'pre-registered' applications should be fully registered/lodged. The aim of the 'pre-registration' exercise, which was completed in August 2016, was to pre-register all those irregular third-country nationals having arrived in Greece before 20 March 2016 who wanted to apply for international protection but who had not yet been channelled into the asylum procedure by the Greek authorities. Around 28 000 persons were pre-registered over the summer.

⁽⁷⁾ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).

⁽⁸⁾ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29.6.2013, p. 96).

into the national legislation. A new law (Law 4375/2016) was adopted by the Greek Parliament on 3 April 2016 ⁽¹⁾. On 22 June 2016, the Parliament approved an amendment to Law 4375/2016 which, *inter alia*, modified the composition of the Appeals Committees and the right of asylum seekers to an oral hearing before them ⁽²⁾. On 31 August 2016, the Greek Parliament also adopted a law regarding school-aged refugee children residing in Greece ⁽³⁾.

- (9) As regards reception capacity, in the past year, Greece has significantly increased its overall reception capacity for both irregular migrants and applicants for international protection. According to the daily information released by the Greek authorities on 6 December 2016, there are 71 539 places available mostly in temporary reception facilities, including accommodation being provided by UNHCR (see recital 11), for both irregular migrants and applicants for international protection in Greece ⁽⁴⁾. However, there are serious challenges as regards capacity in the Aegean islands which have become overcrowded: maximum reception capacity remains around 8 200 while the total number of registered migrants on the islands was 16 295 as of 5 December 2016 ⁽⁵⁾.
- (10) Greece has also increased the accommodation for vulnerable applicants, in particular for unaccompanied minors. On 17 November 2016, 1 191 places were available in shelters for unaccompanied minors irrespective of whether they are asylum seekers or not. An additional 130 places suitable for unaccompanied minors is foreseen to be established by the end of 2016. However, the capacity for vulnerable applicants is still far from sufficient as facilities are currently full and there is a waiting list for 1 199 unaccompanied minors who need to be placed in appropriate facilities ⁽⁶⁾. The progress is, therefore, too slow in this area, and it is clear that Greece needs to step up its efforts to ensure that an appropriate number of reception facilities for unaccompanied minors are in place to deal with the demand for such accommodation.
- (11) In January 2016, a Delegation Agreement for a total of EUR 80 million was signed between the Commission and the UNHCR in order to establish 20 000 places in open accommodation (rental apartment schemes, hotel vouchers and family host programmes) primarily for the benefit of applicants for international protection eligible for relocation. The Delegation Agreement was revised in July 2016 in order to include in the accommodation scheme also the possibility to establish places in relocation sites managed by UNHCR, and to make it clearer in the text that the target group of the accommodation scheme includes not only relocation candidates but also other asylum seekers, particularly Dublin family reunification candidates and vulnerable categories, including unaccompanied and separated children, persons with disabilities, elderly, single parents, chronically ill, pregnant women, and others. Since September, the accommodation places available have been significantly increased (by around 8 100). UNHCR had committed in December 2015 to create 20 000 places for applicants eligible for relocation under the rental scheme, and as of 6 December, 20 145 places were available, including 6 344 places in hotels/entire buildings, 11 711 places in apartments, 484 places in host families, and 960 in relocation sites and 646 places in dedicated facilities for unaccompanied minors ⁽⁷⁾. As the current Delegation Agreement ends on 31 December 2016, the Commission started discussions with UNHCR for the extension of the scheme in 2017, on the basis of an updated assessment of Greece's reception needs.
- (12) In terms of quality, many of the reception facilities in Greece still fall short of the requirements stipulated in the Reception Conditions Directive 2013/33/EU for applicants for international protection, in particular on the islands and in some of the mainland temporary facilities. The 'Hotspot' facilities on the islands are not only overcrowded but have substandard material conditions in terms of sanitation and hygiene, access to essential services such as health care, in particular for vulnerable groups. Security is insufficient, and tensions persist between different nationalities. In the mainland, while the UNHCR accommodation scheme provides adequate conditions, much of the remaining reception capacity consists of encampments (currently 53 sites are being used)

⁽¹⁾ 'Law 4375/2016 on the Structure and Operation of the Asylum Service, The Appeals' Authority and the Reception and Identification Service, the establishment of a General Secretariat for Reception, the transposition into Greek legislation of Directive 2013/32/EU of the European Parliament and the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) and other provisions', available at: <http://www.hellenicparliament.gr/UserFiles/bcc26661-143b-4f2d-8916-0e0e66ba4c50/o-prosf-pap.pdf>

Implementing acts in the form of Ministerial or Co-Ministerial Decisions need to be adopted in order for the Greek authorities to be able to implement the Law in its entirety.

⁽²⁾ Law 4399/2016: http://www.asylumineurope.org/sites/default/files/resources/n_4399.2016.pdf

⁽³⁾ Law 4415/2016: https://www.alfavita.gr/sites/default/files/attachments/fek_ellinoglosi.pdf

⁽⁴⁾ http://www.media.gov.gr/images/prosfygiko/REFUGEE_FLOWS-01-12-2016.pdf

These temporary emergency and permanent facilities are established on the Aegean islands in the hotspots as well as on the mainland.

⁽⁵⁾ The Greek Minister Mouzalas has stated that there are in reality less migrants on the Islands (around 10-12 000).

⁽⁶⁾ <http://reliefweb.int/report/greece/situation-update-unaccompanied-children-uac-greece-2-november-2016>

⁽⁷⁾ <http://data.unhcr.org/mediterranean/country.php?id=83>

and emergency facilities with widely varying and often inadequate standards, both in terms of material conditions and security. Winterisation of some of these facilities has commenced but progress is slow. Even with improvements, it will be difficult to turn some camps into suitable permanent reception facilities, and there may be a need to close them down, while consolidating others.

- (13) Moreover, overall coordination of the organisation of reception in Greece appears to be deficient, due to the lack of a clear legal framework and monitoring system, with an ad hoc management of some camps by the Ministry for Migration and others by the Reception and Identification Service. No decision has been taken yet regarding which facilities should be made permanent. The Reception Service is still in the process of building up capacity.
- (14) It follows from the above that Greece still needs to make progress in establishing sufficient and adequate dedicated permanent open reception capacity for asylum applicants, all of which should be of an appropriate standard in accordance with the EU *acquis*. This should include a centralized management of all reception facilities together with a system for constantly monitoring the material standards for those facilities and the services provided there. Some temporary facilities should be transformed into permanent ones, but a sufficient capacity in terms of temporary facilities to accommodate any shortfall in capacity resulting from unexpected inflows should nevertheless also be maintained. Furthermore, as already requested in the third Recommendation, it is of utmost importance that the Greek authorities provide more exact data on the reception capacity and a comprehensive and continuously updated needs assessment in terms of total reception capacity and the nature of that capacity.
- (15) Substantial improvements have been noted regarding the establishment of the Regional Asylum Offices in the previous Recommendations. Greece's law provides for the establishment of Regional Asylum Offices in the regions of Attica, Thessaloniki, Thrace, Epirus, Thessaly, Western Greece, Crete, Lesbos, Chios, Samos, Leros and Rhodes ⁽¹⁾. By decision of the Director of the Asylum Service it is also possible to set up Autonomous Asylum Units in order to cover increased needs of the Asylum Service. According to the information given by Greece in the letter of 22 November 2016, up till now seven Regional Offices have become operational, in the regions of Attica, Thrace, Thessaloniki, Lesbos, Samos, Rhodes and Patras. In addition, nine Autonomous Asylum Units are operational in Piraeus, Evros, Xanthi, Leros, Kos, Corinth and a Relocation Unit in Alimos. As the law stipulates, a further three Regional Asylum Offices are to become operational in the area of Kos, Epirus (Ioannina), Crete (Heraklio) and Thessaly (Volos).
- (16) The Greek Asylum Service is in the process of increasing its capacity. Currently, there are 478 persons working in the Asylum Service ⁽²⁾. This number covers posts of the Central Service as well as established Regional Offices and Asylum Units. The National budget covers 250 posts, whereas the rest is funded by different EU and EEA sources. By the end of the year it is planned that the staff will be increased to 659. This is in addition to the fixed-term staff hired by the UNHCR as well as the EASO staff members and the Member States' experts deployed via EASO to the Greek Asylum Service for a fixed period. The Greek authorities' intention is to replace all contractual staff with permanent staff by the end of 2017 and not to further increase the capacity; the Greek Asylum Service has indicated to the Commission services that a more rapid expansion of staffing is not feasible due to the lack of senior staff to train, mentor and supervise newly recruited ones. As the Asylum Service will have tripled in size during the course of 2016, it has indicated that it urgently needs to consolidate, especially to build middle management and staff expertise.
- (17) Given the scale of the increase in the number of asylum applications in Greece, it is not yet clear whether the current and planned staffing levels for the Asylum Service are sufficient for what is required to process the current and likely future case-load in a timely and adequate manner. One of the main priorities of the Asylum Service should be to reduce the time elapsing between the making and the lodging of an application which is currently often too long, with an impact on the rights enjoyed by the persons concerned and causing frustration among those affected. It should be reduced in accordance with Article 6(2) of the Asylum Procedures Directive which requires that a person who made an asylum application has an effective opportunity to lodge the application 'as soon as possible'. It is also essential that, once lodged, an application is processed within the time limits set out in the Directive, and so normally within 6 months. The processing of a lodged asylum application currently takes at its best several months, apart from relocation cases that are processed more rapidly, and there is considerable uncertainty about the speed in which the current backlog of applications will be cleared. The Commission, however, takes due note of the concerns Greece expressed in the letter of 22 November 2016 according to which an even more rapid increase of the staff of the Asylum Service would threaten to affect the coherence and the quality of the decisions.

⁽¹⁾ Article 1(3) of Law 4375/2016.

⁽²⁾ Staffing information given by the Greek Asylum Service in a meeting with the Commission services on 10 November 2016.

- (18) There is an urgent need to assess whether the increase so far in human resources of the Asylum Service is sufficient, and also to assess how the Commission, relevant EU Agencies and also the Member States could best assist Greece in dealing with these applications in a shorter time limit. A comprehensive and continuously updated needs assessment should be carried out that takes into account the number of asylum applications that are currently pending and that are likely to be handled by the Greek Asylum Service at any one time and the number of available staff required or likely to be required to process those applications. This staff could be comprised of additional resources to be provided by Greece itself and via deployment of Member States experts in the form of an EASO support team. While maintaining quality, it should be explored how to rationalise working methods and make them more efficient to speed up the interviews and procedures, with the support of EASO where appropriate.
- (19) Asylum seekers must be able to have effective access to a remedy against a negative decision on their claim. Important progress has been made in this regard. The Appeals Authority and Appeals Committees were established by Law 4375/2016 adopted in April 2016. Law 4399/2016 adopted in June 2016 establishes new Appeals Committees. They are responsible for examining all appeals against decisions of the Greek Asylum Service lodged since 20 July 2016. As a priority, the Appeals Committees are focusing primarily on cases lodged on the Greek islands, so as to contribute to the implementation of the EU-Turkey Statement. There are currently six of them. One Appeals Committee has also been established since 21 July as alternate to the permanent ones ⁽¹⁾. In order to cope with the increasing caseload and manage the backlog cases, Greece intends to establish a further seven committees expected to be operational by the end of December 2016 and bring the total to 20 by the end of February 2017.
- (20) Law 4399/2016 also amended the structure of these Committees which are now composed of three members: two judges of the Administrative Court and one Greek citizen with relevant background and experience to be put forward by UNHCR or the National Committee for Human Rights.
- (21) According to the information given by the Greek authorities in the letter of 22 November 2016 since 21 July 2016, 2 347 appeals have been brought before the Appeals Committees but only 573 decisions have been issued.
- (22) The old 'Backlog' Appeal Committees that were established to hear asylum appeals from Greece's backlog of cases had been initially given an additional mandate to hear, in addition to substantive appeals on first instance decisions, the appeals against the decisions based on grounds of admissibility as part of the EU-Turkey Statement. According to the information given by the Greek authorities on 22 November, more than 2 000 appeals lodged between April and 20 July 2016 have been brought before the Backlog Committees. The establishment of the New Appeals Committees on 24 June 2016 ⁽²⁾ has alleviated the burden of the 20 'Backlog' Appeal Committees allowing them to accelerate the pace of the proceedings of the backlog appeal cases.
- (23) More progress has been made on the long-standing backlog of appeals under the 'old procedure' regulated by Presidential Decree 114/2010. The current backlog stands at approximately 6 589 cases as of 22 November 2016 (down from a total of approximately 51 000 cases that were considered as part of the backlog at the beginning of 2013 and approximately 8 075 cases in September 2016). The Greek authorities have granted permits for humanitarian purposes to persons whose applications for asylum have been pending for a considerable time and who are eligible to acquire residence permits on humanitarian or other exceptional grounds, according to the Greek Law 4375/2016. The residence permits are issued for a period of two years and can be renewed ⁽³⁾. They provide to beneficiaries the same rights and benefits as to those granted subsidiary protection status in Greece ⁽⁴⁾, and these persons are then no longer considered as asylum applicants. Some of the backlog appeals are, however, examined as to their substance. Despite the significant progress made since the previous Recommendations, Greece should continue its efforts to clear the backlog of pending appeals in this regard, ensuring that applicants with an outstanding appeal have an opportunity to exercise their right to an effective remedy.

⁽¹⁾ However, because of the increase of workload due to the implementation of the EU-Turkey Statement, this alternate Committee is given 100 cases per month to examine.

⁽²⁾ Co-ministerial Decision (OJ B 1862), 24 June 2016.

⁽³⁾ Article 22(3), Law 4375/2016.

⁽⁴⁾ Article 28, Presidential Decree 114/2010.

- (24) Given the increase in the number of applications made in Greece since the implementation of the EU-Turkey Statement, a fully staffed Appeals Authority, capable of handling an expected significant increase in the number of appeals, is all the more essential. While maintaining quality and without prejudice to the independence of the committee members, the efficiency of the committees should be increased. This could include in particular the Appeals Committees meeting more frequently, the use of legal assistance in drafting decisions and specialization of the committees as well as full time engagement of the members. Also more support staff should be engaged ⁽¹⁾. A continuous needs assessment should also be carried out on the basis of the number of appeals that are currently pending in the different appeal bodies and that are likely to be handled by them with a view to assessing whether the number of committees is sufficient and working methods appropriate.
- (25) The provision of free legal aid has been included in the new law (Law 4375/2016) for applicants at the appeal stage. However, all the measures to implement this law in practice have not yet been taken. A Ministerial Decision implementing the provision for legal aid under Law 4375/2016 was adopted on 9 September 2016. Funding for the implementation of free legal assistance has been secured through the national programme under the Asylum, Migration and Integration Fund (AMIF). Additionally, a grant agreement was awarded to the UNHCR under AMIF emergency assistance funding for the total amount of EUR 30 million ⁽²⁾. This funding is, amongst other things, being used by the UNHCR to provide free legal assistance to applicants for international protection at the appeals stage until the beginning of 2017, by when the Greek authorities are expected to put in place their own free legal aid scheme. Two projects are being implemented in partnership with non-governmental organisations (Metaction and the Greek Council for Refugees): one on the islands, with full coverage of all appeals and the other one on the mainland, only with partial coverage, for appeals lodged in Athens and Thessaloniki, and not for asylum seekers in detention. On 19 September, Greece informed the Commission that the roster of lawyers to be maintained by the Asylum Service will be established by early 2017. Greece should take the necessary steps to guarantee without delay the right to free legal aid for all asylum applicants lodging appeals.
- (26) Serious concerns remain regarding the protection of vulnerable applicants, including unaccompanied minors, in particular given the lack of a properly functioning guardianship system, inadequacies in terms of suitable accommodation and general concerns regarding their security. The new Law 4375/2016 provides for a new Directorate for Reception and a Directorate for Social Integration that both include specialised departments for the reception and integration of unaccompanied minors within the Ministry of Interior and Administrative Reconstruction, including the provision of a legal representative. Despite this, implementing measures still need to be adopted by the Greek authorities to ensure that appropriate procedural guarantees and reception conditions are provided in practice to unaccompanied minors. A further legislative framework that should include provisions for an efficient guardianship system still needs to be adopted. The Greek authorities have confirmed that the Ministry of Labour and Social Solidarity (MoL), which is in charge of unaccompanied minors, is preparing a new law on guardianship that should be ready before the end of 2016. Within this law a special service, possibly a department, would be established for the guardianship system. While a Ministerial Decision concerning the age assessment of unaccompanied minors seeking asylum has already been adopted by the Greek government ⁽³⁾, there continue to be reported concerns about the implementation of the assessment in practice due to lack of identification and the lack of a legal remedy concerning the age assessment carried out by the police.
- (27) There has been significant progress as regards access to education. Law 4415/2016 in August 2016 aims, inter alia, at securing psychosocial support and education for the children of asylum seekers, as well as the smooth integration into the Greek educational system of those who will remain in Greece, following a preparatory, transitional period. Despite local resistance Greek authorities are taking significant measures to implement this legal framework fully and effectively.
- (28) According to various stakeholders, the situation for unaccompanied minors is still in general precarious, with many concerns about their security in the reception facilities on the mainland and on the islands, and with some indicating that children are still held in detention, or in 'protected' areas within open reception facilities, for prolonged periods in crowded and unsanitary conditions without a representative or access to legal aid, until appropriate accommodation can be found for them ⁽⁴⁾. As stated in recital 10, the lack of appropriate accommodation for minors is an important problem which still needs to be urgently remedied.

⁽¹⁾ Information given to the Commission services in a meeting with the Appeals Authority in November 2016.

⁽²⁾ The grant agreement was signed on 15 July 2016.

⁽³⁾ Ministerial Decision 1982/16/EC.2.2016 (Official Gazette, B' 335).

⁽⁴⁾ Human Rights Watch, 'Why Are You Keeping Me Here?', September 2016 https://www.hrw.org/sites/default/files/report_pdf/greece0916_web.pdf

- (29) The European Commission has provided substantial funding to Greece to support the country in its efforts to bring its asylum management system up to EU standards. Since the beginning of 2015, more than EUR 352 million in emergency assistance has been awarded through Home Affairs Funds (AMIF and Internal Security Fund (ISF)) to Greece, either directly to the Greek authorities or through Union Agencies and international organisations operating in Greece. Out of this amount, some EUR 90 million was directly awarded to the Greek authorities in July 2016 to strengthen their capacities to improve living conditions and provide primary healthcare services at refugee accommodation centres, as well as to provide reception and healthcare services to the migrants. Substantial funding (approximately EUR 198 million) aiming at covering the migrants' and refugees' basic humanitarian needs is also being provided to humanitarian partner organisations through the recently created Emergency Support Instrument. This funding contributes to the implementation of the emergency response plan developed together by the Commission, the Greek authorities and/or relevant stakeholders to address the ongoing humanitarian situation on the ground and/or to support the implementation of the EU-Turkey Statement.
- (30) This emergency assistance comes on top of the EUR 509 million allocated to Greece for the period 2014-2020 through its national programmes under the AMIF and ISF Funds, thus making Greece the first beneficiary of EU Home Affairs funds amongst EU Member States.
- (31) Greece should ensure that such financial resources are fully used in the most efficient and effective manner and without further delay. To this purpose, Greece's national programmes under the Home Affairs funds (AMIF, ISF) are being revised to adjust them to the new priorities. The revision of the AMIF national programme has been completed, while the revision of the ISF national programme is at its final stages and should soon be completed. Furthermore, although the formal designation of the new Responsible Authority has been completed, in accordance with the requirements set in the legal basis, procedures and operational measures still need to be streamlined to ensure that Greek authorities start fully mobilising the funding available under the national programmes in order to cater for urgent needs especially in the field of reception and other services for the migrants present in the country.
- (32) As acknowledged in the Commission's Communication of 4 March 2016 on 'Back to Schengen' ⁽¹⁾, ensuring a fully functioning Dublin system is an indispensable part of the wider efforts needed to stabilise the asylum, migration and border policy. These efforts to normalise the functioning of the Dublin system should in turn lead to a return to a normal functioning of the Schengen area. The incentive for asylum seekers arriving irregularly to Greece to move on to other Member States, which the suspension of Dublin transfers to Greece since 2011 has engendered, is one of the factors leading to the secondary movements which have been undermining the proper functioning of the Schengen system. It is therefore important that Greece takes as a matter of urgency the outstanding actions identified in this Recommendation. At the same time, reforming the Dublin rules as proposed by the Commission ⁽²⁾, based on the objective of solidarity and fair burden-sharing between Member States, should be a priority. Negotiations on this proposal are ongoing.
- (33) The Commission acknowledges the important progress made by Greece, assisted by the Commission, EASO, Member States and international and non-governmental organisations, to improve the functioning of the Greek asylum system since the M.S.S judgement in 2011. However, Greece is still facing a challenging situation in dealing with a large number of new asylum applicants, notably arising from the implementation of the pre-registration exercise, the continuing irregular arrivals of migrants, albeit at lower levels than before March 2016, and from its responsibilities under the implementation of the EU-Turkey Statement. There are moreover further important steps to be taken to remedy the remaining shortcomings in the Greek asylum system, in particular as regards the quality of reception facilities, the treatment of vulnerable applicants and the speed with which asylum applications are registered, lodged and examined in the two instances. In order to take account of the impact of this challenging situation on the overall functioning of the asylum system and in order to avoid placing an unsustainable burden on Greece, it is not yet possible to recommend a full resumption of Dublin transfers to Greece, although it remains the ultimate goal.
- (34) However, significant progress has been attained by Greece in putting in place the essential institutional and legal structures for a properly functioning asylum system and, there is a good prospect for a fully functioning asylum system being in place in the near future, once all the remaining shortcomings have been remedied, in particular

⁽¹⁾ Communication from the Commission to The European Parliament, The European Council and The Council, 'Back to Schengen — A Roadmap', COM(2016) 120 final, 4 March 2016.

⁽²⁾ COM(2016) 270 final.

as regards reception conditions and the treatment of vulnerable persons, including unaccompanied minors. It is, therefore, appropriate to recommend that transfers should resume gradually and on the basis of individual assurances, taking account of the capacities for reception and treatment of applications in conformity with relevant EU legislation, and taking account of the currently inadequate treatment of certain categories of persons, in particular vulnerable applicants, including unaccompanied minors. The resumption should, moreover, not be applied retroactively but concern asylum applicants for whom Greece is responsible starting from a specific date in order to avoid that an unsustainable burden is placed on Greece. It should be recommended that this date is set at 15 March 2017.

- (35) On the basis of the above, this Recommendation sets out the measures that need to be taken or sustained by the Greek authorities in view of resuming Dublin transfers concerning asylum applicants who have entered Greece irregularly at external borders from 15 March 2017 onwards, or for whom Greece is responsible under the criteria other than Article 13 in Chapter III of Regulation (EU) No 604/2013 from that date. With this objective in mind, Greece should urgently take all of the steps set out in this Recommendation. In compliance with the principle of solidarity and fair sharing of responsibility, the other Member States should also contribute to attaining this objective, in particular by deploying experts to assist the Greek authorities by responding to EASO's various calls as well as by fully complying with their relocation obligations resulting from the Relocation Decisions.
- (36) This Recommendation also sets out the modalities for the resumption of transfers which should include close cooperation between the Greek authorities and the authorities of the transferring Member State in individual cases of transfer, based on the duty of sincere cooperation between Member States, including for ensuring that the person will be suitably accommodated in accordance with the standards set out in Directive 2013/33/EU and that his or her request will be processed in accordance with Directive 2013/32/EU. This will require that Greece provides specific assurances in respect of each individual to be transferred concerning the manner in which he or she will be treated. Furthermore, a support and reporting mechanism consisting of an EASO team of Member States' experts should be set up in order to assist in ensuring that such standards are applied in practice with regard to the transferred persons.
- (37) Regular reporting by Greece on the progress being made in implementing these actions is essential in order to ensure full implementation of this Recommendation. Greece should accordingly provide a first report by 15 February 2017 as set out in this Recommendation which should in particular include a description of how the Greek authorities are putting in place the procedure for providing assurances in individual cases of transfer in respect of the relevant EU legislation. Thereafter, Greece should report every two months on the implementation of this Recommendation.
- (38) Based on these reports and any other relevant information at its disposal or other developments, the Commission will regularly report on the progress made in the implementation of this Recommendation and update where necessary the recommendations set out therein.
- (39) The responsibility for deciding on the resumption of transfers in individual cases lies exclusively with Member States' authorities under the control of the courts, which may make preliminary references to the European Court of Justice on the interpretation of the Dublin Regulation.

HAS ADOPTED THIS RECOMMENDATION:

I. MEASURES TO STRENGTHEN THE GREEK ASYLUM SYSTEM

Reception conditions and facilities

- (1) Greece should continue its efforts to ensure that the reception facilities are sufficient for accommodating all the applicants for international protection on its territory and that the reception conditions in all these reception facilities meet the standards set out in EU legislation. As a high priority Greece should:
 - (a) ensure that it has in place a sufficient number of open reception facilities that are capable of accommodating all applicants for international protection it receives or is likely to receive, and their dependants, for the duration of the asylum process;
 - (b) ensure that all these facilities meet at least the minimum standards fixed in Reception Conditions Directive 2013/33/EU, including for vulnerable applicants and including during the winter period;

- (c) decide without delay on which mainland facilities should be upgraded and which should be closed;
- (d) decide without delay on how the reception capacity on the islands should be increased;
- (e) create the necessary additional accommodation places for unaccompanied minors, in order to ensure that all unaccompanied asylum seeking minors are immediately placed in suitable accommodation and are not kept in sub-standard conditions or in detention, and ensure that those facilities are sustained;
- (f) ensure that applicants receive the necessary health care, which include at least emergency health care and essential treatment of illnesses and of serious mental disorders;
- (g) ensure effective and continuous centralized management and coordination of all reception facilities, together with a system for constantly monitoring the material standards for those facilities and the services provided there, including the hotspots, and ensure that the responsible authorities have adequate resources for this purpose.

Greece should also ensure that, in addition to the permanent facilities, an appropriate number of temporary open reception facilities is kept available, or can be made available at short notice, to allow for the accommodation of unexpected inflows of applicants for international protection and their dependants in adequate conditions.

The Greek authorities should carry out a comprehensive needs assessment in terms of total reception capacity required, and the nature of that capacity, and continuously update this assessment in the light of new developments.

Access to and resources for the first instance asylum procedure

- (2) Greece should continue its efforts to ensure that all applicants for international protection have effective access to the asylum procedure in particular by:
 - (a) assessing whether the number of staff in the Asylum Service is adequate to process the intake of asylum applications within the deadlines specified in the Asylum Procedures Directive 2013/32/EU;
 - (b) based on this assessment, ensuring the recruitment of any additional staff needed to the Asylum service in order to be able to, as soon as possible, deal efficiently and in a timely manner with all applications for international protection, and/or identifying additional staff, including both case workers and interpreters, that could be deployed by the Member States via EASO support teams;
 - (c) establishing additional Regional Asylum Offices or Units in accordance with the overall needs throughout the territory of Greece;
 - (d) speeding up the interviews and procedures while maintaining the requisite standards, with the support of EASO where appropriate, including by introducing interview and support tools;
 - (e) reducing the period of time between the expression of interest to apply for asylum and the actual lodging of the asylum application, in accordance with Article 6(2) of Asylum Procedures Directive 2013/32/EU.

The needs assessment referred to in point (a) should be continuously updated and contain information on the number of staff recruited.

Appeals Authority

- (3) Greece should continue its efforts to ensure that an effective remedy is available to all applicants for international protection, in particular by ensuring:
 - (a) the full functioning of the new Appeals Authority by establishing the planned 20 of Appeals Committees by the end of February 2017, and by supplementing this number as needed, on the basis of the needs assessment mentioned below;
 - (b) the adequate human resources for the Appeals Authority and the Committees, including support staff, in order to deal with all pending and likely future appeals, including the appeals within the framework of the EU-Turkey Statement;

- (c) the clearance of all pending requests for judicial review of administrative decisions that are currently outstanding as soon as possible;
- (d) the increase in the number of decisions per committee, including, where appropriate, through scheduling more frequent meetings, the use of legal assistance in drafting decisions, specialisation of the committees and through the full time engagement of committee members, without prejudice to their independence;
- (e) sufficient training for the Appeal Committee members, including with the support of EASO where appropriate.

The Greek authorities should identify, on the basis of a full and continuous needs assessment, the number of Appeals Committees under the new Appeals Authority that are needed in order to examine all appeals submitted by applicants for international protection, the number of human resources to continue the smooth-functioning of those Committees and any other measures, such as changes to the working methods, that might be required. This should in particular include an assessment of whether the 20 Appeals committees to be established by the end of February 2017 are sufficient.

Legal aid

- (4) Greece should ensure that the legal framework concerning access to free legal aid is effective in practice and that all asylum applicants are provided with the necessary legal assistance for judicial review of administrative decisions on applications for international protection. In particular, Greece should:
 - (a) effectively implement the Ministerial Decision for the provision of free legal aid services as soon as possible;
 - (b) swiftly establish a contract for a permanent register of lawyers who can provide these services to all applicants at the appeal stage in Greece. In the meantime, Greece should ensure that the two projects being implemented on the mainland and the islands provide effective free legal assistance for all asylum appellants.

Treatment of unaccompanied minors and vulnerable persons during the asylum procedure

- (5) Greece should ensure the establishment of appropriate structures, and take the appropriate measures, for the identification and treatment of vulnerable applicants, including unaccompanied minors. In particular Greece should:
 - (a) urgently put in place a suitable guardianship procedure by adopting the necessary legislative framework for implementing the relevant provisions under Law 4375/2016;
 - (b) establish and recruit the necessary staff for the Directorate for Reception and the Department for the protection of unaccompanied minors in order to urgently provide the necessary guarantees under asylum law for family tracing, and legal representation;
 - (c) ensure that the procedures for identifying applicants with special procedural and reception needs, including unaccompanied minors, are implemented in practice so that these applicants are provided with the necessary psychosocial support, particularly where they may have been victims of sexual violence and exploitation or trafficking, and that the best interests of the child are always duly taken into account.

Use of EU funding under national programmes

- (6) Greece should ensure that the substantial EU funding being provided is fully used, notably by mobilising without further delay the resources available under its AMIF and ISF national programmes and exploring complementary funding from Structural Funds. In this context, Greece should take the necessary measures to fully mobilise the funding available under the national programmes in order to cater for urgent needs especially in the field of reception and other services for the migrants present in Greece, notably by improving coordination among the relevant stakeholders, strengthening operational capacity and improving delivery mechanism.

Technical assistance by other Member States

- (7) Member States are requested to provide additional support to Greece by nominating experts to respond to EASO's various calls, by ensuring longer deployments and by identifying more senior and specialised profiles.

II. MODALITIES OF RESUMPTION OF TRANSFERS

- (8) It is recommended that the transfer of asylum applicants to Greece under Regulation (EU) No 604/2013 should be resumed under the conditions and following the modalities set out in points 9 and 10.

Scope

- (9) The resumption of transfers should apply to asylum applicants who have entered Greece irregularly at external borders from 15 March 2017 onwards or to other persons for whom Greece is responsible under criteria other than Article 13 in Chapter III of Regulation (EU) No 604/2013 from that date gradually, following the capacities of reception and treatment of applicants in Greece conformity with Directives 2013/32/EU and 2013/33/EU. Vulnerable asylum applicants, including unaccompanied minors, should not be transferred to Greece for the time being.

Cooperation and individual assurances

- (10) Before transferring an applicant to Greece, Member State authorities are invited to cooperate closely with the Greek authorities in order to ensure that the conditions indicated in point 9 are met and in particular that the applicant will be received in a reception facility meeting the standards set out in EU law, in particular in the Reception Conditions Directive 2013/33/EU, that his or her application will be examined within the deadlines specified in the Asylum Procedures Directive 2013/32/EU, and that he or she will be treated in line with EU legislation in every other relevant respect. The Greek authorities are invited to fully cooperate in providing such assurances to the other Member States.

III. SUPPORT AND REPORTING

EASO support and reporting

- (11) EASO should establish a team of Member States' experts to be deployed in Greece with the task of supporting the cooperation between Member States and reporting on whether the persons transferred back to Greece under the Dublin Regulation are treated in accordance with the assurances to be provided by Greece referred to in point 10.

Reporting by Greece

- (12) Greece is requested to provide, by 15 February 2017, a report covering the progress made in implementing this Recommendation. The report should in particular include a description of the actions taken to implement the outstanding shortcomings identified in this Recommendation, including how the Greek authorities have, or plan to, put in place the necessary human and material resources referred to in points 1 to 5 of this Recommendation and a description of the continuous needs assessments referred to in points 1 to 3 of this Recommendation. It should further describe in detail how the Greek authorities intend to implement the procedure for providing assurances in individual cases referred to in point 10.
- (13) The report should also include the following information:
- (a) the total current and planned permanent and temporary reception capacity for hosting applicants for international protection and the nature of that capacity;
 - (b) the total number of asylum applications pending at first instance;
 - (c) comprehensive data on all pending appeals, and issued decisions at second instance, including admissibility cases, by both the New Appeals Committees and the Backlog Appeal Committees;
 - (d) the total number of current and planned staff for processing asylum applications registered with the Asylum Service and for the Directorate for Reception; and the total current and planned number of staff and the number of Committees which the Appeals Authority has progressively made operational.

- (14) After 15 February 2017, Greece is requested to report every two months on the implementation of this Recommendation.

Done at Brussels, 8 December 2016.

For the Commission
Dimitris AVRAMOPOULOS
Member of the Commission

CORRIGENDA

Corrigendum to Commission Regulation (EU) 2016/1015 of 17 June 2016 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for 1 naphthylacetamide, 1-naphthylacetic acid, chloridazon, fluazifop-P, fuberidazole, mepiquat and tralkoxydim in or on certain products

(Official Journal of the European Union L 172 of 29 June 2016)

On page 21, in point (2) of the Annex:

for: '(2) In Annex III in Part B, the columns for 1-naphthylacetamide, 1-naphthylacetic acid, chloridazon, fluazifop-P, fuberidazole, mepiquat and tralkoxydim are deleted.'

read: '(2) In Annex III in Part A, the columns for 1-naphthylacetamide, 1-naphthylacetic acid, chloridazon, fluazifop-P, fuberidazole, mepiquat and tralkoxydim are deleted.'

