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⁽¹⁾ Text with EEA relevance.

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⁽¹⁾ Text with EEA relevance.

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2018/337

of 5 March 2018

amending Implementing Regulation (EU) 2015/2403 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 91/477/EEC of 18 June 1991 on control of acquisition and possession of weapons ⁽¹⁾, and in particular Article 10b(2) thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2015/2403 ⁽²⁾ lays down rules as well as technical specifications concerning the deactivation of firearms in the Union in order to ensure that deactivated firearms are rendered irreversibly inoperable. That Regulation also describes how deactivation of firearms must be verified and certified by Member States public authorities and lays down rules concerning the marking of deactivated firearms.
- (2) In order to ensure the highest level of security possible for the deactivation of firearms, Implementing Regulation (EU) 2015/2403 provides for a regular review and update of the technical specifications laid down therein taking into account the experience acquired by the Member States when applying these rules and any additional deactivation measures.
- (3) For that purpose, the Commission set up, in September 2016, a working group with national experts for deactivation of firearms under the Committee established by Directive 91/477/EEC. The working group focused on the revision of the technical specifications for the deactivation of firearms set out in Annex I to Implementing Regulation (EU) 2015/2403 with the aim to improve their clarity, avoid any ambiguities for practitioners, and ensure that the technical specifications are applicable to all types of firearms.
- (4) Directive 91/477/EEC was amended by Directive (EU) 2017/853 of the European Parliament and of the Council ⁽³⁾. The amended Directive includes deactivated firearms in its scope providing also for their classification and offers a definition of deactivated firearms reflecting the general principles of deactivation of firearms as provided for by the Protocol against the Illicit Manufacturing of and Trafficking of Firearms, their Parts and

⁽¹⁾ OJ L 256, 13.9.1991, p. 51.⁽²⁾ Commission Implementing Regulation (EU) 2015/2403 of 15 December 2015 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable (OJ L 333, 19.12.2015, p. 62).⁽³⁾ Directive (EU) 2017/853 of the European Parliament and of the Council of 17 May 2017 amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons (OJ L 137, 24.5.2017, p. 22).

Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, attached to Council Decision 2014/164/EU ⁽¹⁾, which transposes that Protocol into the legal order of the Union.

- (5) The rules on deactivation of firearms laid down in Implementing Regulation (EU) 2015/2403 should reflect and be consistent with the new rules on deactivation introduced by Directive (EU) 2017/853.
- (6) The scope of Implementing Regulation (EU) 2015/2403 should cover firearms of all categories listed in Part II of Annex I to Directive 91/477/EEC.
- (7) The technical specifications for the deactivation of firearms should prevent the reactivation of firearms with the use of ordinary tools.
- (8) The technical specifications for the deactivation of firearms focus on the deactivation of essential components of firearms as defined in Directive 91/477/EEC. This is since Directive 91/477/EEC also provides a definition for deactivated firearms which includes the need to ensure that all essential components of the firearm in question have been rendered permanently inoperable and incapable of removal, replacement or modification in a manner that would permit the firearm to be reactivated in any way. The technical specifications for the deactivation of firearms should also apply to the deactivation of exchange barrels which, being separate objects, are technically linked with and intended to be mounted on the firearm to be deactivated.
- (9) On request of the working group of national deactivation experts, the revised technical specifications were subject to a stress test by national deactivation practitioners over 5 weeks from 9 February to 20 March 2017. The outcome of this stress test led in particular to the decision to review the presentation of the deactivation specifications. For the sake of clarity, the specific deactivation operations should be presented in a way that distinguishes between the different types of firearms.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Directive 91/477/EEC.
- (11) In order for Member States to make the necessary administrative changes and to bring their practices in line with this amended Implementing Regulation, this Regulation should apply 3 months following its entry into force,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) 2015/2403 is amended as follows:

- (1) Article 1(1) is replaced by the following:

‘1. This Regulation shall apply to firearms of all categories listed in Part II of Annex I to Directive 91/477/EEC.’;

- (2) Article 3(1) is replaced by the following:

‘1. Member States shall designate a competent public authority to verify that the deactivation of the firearm has been carried out in accordance with the technical specifications set out in Annex I (“the verifying entity”).’;

⁽¹⁾ Council Decision 2014/164/EU of 11 February 2014 on the conclusion, on behalf of the European Union, of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (OJ L 89, 25.3.2014, p. 7).

(3) Article 5 is replaced by the following:

'Article 5

Marking of deactivated firearms

Deactivated firearms shall be marked with a common unique marking in accordance with the template set out in Annex II to indicate that they have been deactivated in accordance with the technical specifications set out in Annex I. The marking shall be affixed by the verifying entity to all essential components modified for the deactivation of the firearm and shall fulfil the following criteria:

- (a) it is clearly visible and irremovable;
- (b) it bears information on the Member State where the deactivation has been carried out and the verifying entity that certified the deactivation;
- (c) the original serial number(s) of the firearm are maintained.';

(4) Annex I is replaced by the text set out in Annex I to this Regulation;

(5) Annex II is replaced by the text set out in Annex II to this Regulation;

(6) Annex III is replaced by the text set out in Annex III to this Regulation.

Article 2

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

It shall apply from 28 June 2018.

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

Done at Brussels, 5 March 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Technical specifications for the deactivation of firearms

- The deactivation operations to be performed in order to render firearms irreversibly inoperable are defined on the basis of three tables:
 - Table I lists the different types of firearms,
 - Table II sets out the general principles to be followed when rendering firearms irreversibly inoperable,
 - Table III describes the specific operations per type of firearm to be performed to render the firearms irreversibly inoperable.
- The technical specifications for the deactivation of firearms should prevent the reactivation of firearms with the use of ordinary tools.
- The technical specifications for the deactivation of firearms focus on the deactivation of essential components of firearms as defined in Directive 91/477/EEC. The technical specifications for the deactivation of firearms set out in Annex I also apply to the deactivation of exchange barrels which, being separate objects, are technically linked with and intended to be mounted on the firearm to be deactivated.
- In order to ensure a correct and uniform application of the deactivation operations of firearms, the Commission shall elaborate definitions in cooperation with the Member States.

Table I

List of types of firearms

Types of Firearms	
1	Pistols (single shot, semi-automatic)
2	Revolvers (including cylinder loading revolvers)
3	Single-shot long firearms (not break action)
4	Break action firearms (e.g. smoothbore, rifled, combination, falling/rolling block action, short and long firearms)
5	Repeating long firearms (smoothbore, rifled)
6	Semi-automatic long firearms (smoothbore, rifled)
7	Automatic firearms: e.g. assault rifles, (sub)machine guns, automatic pistols
8	Muzzle loading firearms including break action (except cylinder loading revolvers)

Table II

General Principles

Prevent the disassembly of the firearms essential components by welding, bonding or by using appropriate measures with the equivalent degree of permanence.

Depending on national laws, this process can be performed after the checking of the National Authority.

Hardness of inserts: Deactivating entity has to ensure that pins/plugs/rods used have a hardness of at least 40 HRC and that material used for welding ensures a permanent and effective bond.

Table III

Specific operations per type of firearms

1. PISTOLS (SINGLE SHOT, SEMI-AUTOMATIC)	
1.1	Barrel: Cut a longitudinal slot through the barrel including the chamber where present (width: > ½ calibre; length: for rifled barrels three times the length of chamber and for smoothbore barrels twice the length of the chamber).
1.2	Barrel: For all pistols other than those with break action barrels a hole must be drilled across the chamber through both walls and through which a hardened steel pin must be inserted and securely welded (diameter > 50 % chamber, min 4,5 mm). The same pin can be used to secure the barrel to the action. Alternatively, a plug of the size of the cartridge case must be inserted into the chamber and securely welded.
1.3	Barrel: Remove the feed ramp where present.
1.4	Barrel: The barrel must be permanently secured to the firearm by welding, bonding or by using appropriate measures with the equivalent degree of permanence. The pin used in operation 1.2 can be used for this purpose.
1.5	Barrel: For exchange barrels not contained in a pistol, apply operations 1.1-1.4 and 1.19 as applicable. In addition, the barrels must be permanently prevented from being affixed to a firearm by cutting, welding, bonding or using appropriate measures with the equivalent degree of permanence.
1.6	Breech block/bolt head: Remove or shorten firing pin.
1.7	Breech block/bolt head: Machine or remove the breech face at an angle of between 45 and 75 degrees as measured from the angle of the original face. Material must be removed across the entire breech face. All locking lugs must be removed or substantially weakened.
1.8	Breech block/bolt head: Weld the firing pin hole.
1.9	Slide: Machine or remove the breech face at an angle of between 45 and 75 degrees as measured from the angle of the original face. Material must be removed across the entire surface.
1.10	Slide: Remove the firing pin.
1.11	Slide: Remove locking lugs in slide.
1.12	Slide: Where applicable, machine the inside of the locking edge of the ejection port in the slide to an angle at a range of 45 to 75 degrees.
1.13	Slide: If the breech block can be taken off the slide body, the deactivated breech block has to be permanently fixed to the slide body.
1.14	Frame/Receiver: Remove feed ramp where present.
1.15	Frame/Receiver: Machine away at least 2/3 of the slide rails on both sides of the frame.
1.16	Trigger mechanism: Ensure destruction of the physical operating link between the trigger blade and the hammer, striker or sear. Fuse the trigger mechanism together with weld within receiver/frame, where applicable. If such fusion of the trigger mechanism is not possible, remove the trigger mechanism and fill the area with weld or epoxy resin.

1. PISTOLS (SINGLE SHOT, SEMI-AUTOMATIC)

1.17	Trigger mechanism: The trigger mechanism and/or housing has to be welded to the receiver/frame (in case of steel frame) or glued to the receiver/frame with high temperature resistant glue (in case of light metal or polymer frame).
1.18	Automatic system: Destroy the gas piston, gas pipe and gas port by cutting or welding.
1.19	Automatic system: If there is no gas piston, remove gas pipe. If the barrel is used as a gas piston, weld the deactivated barrel to the housing. In all cases where present, close the barrel's gas vent by welding.
1.20	Magazines: Weld the magazine with spots or use appropriate measures with the equivalent degree of permanence, depending on type of arm and material to prevent removing the magazine.
1.21	Magazines: If the magazine is missing, place spots of weld or use appropriate measures in the magazine location or fix a lock to permanently prevent the insertion of a magazine.
1.22	Silencer/Suppressor: Permanently prevent removal of the silencer/suppressor from the barrel by use of hardened steel pin or by welding, bonding or by using appropriate measures with the equivalent degree of permanence, if the silencer/suppressor is part of the weapon.
1.23	Silencer/Suppressor: Remove all the inner parts where possible and their attachment points of the moderator so that only a tube remains. Drill holes that are of a diameter larger than the calibre of the firearm and at a longitudinal interval of 3 cm (short firearms) or 5 cm (long firearms) through the casing and penetrating the expansion chamber. Or else cut a longitudinal slot of minimum 6 mm from rear end to front end through the casing and penetrating the expansion chamber.

2. REVOLVERS (INCLUDING CYLINDER LOADING REVOLVERS)

2.1	Barrel: Cut a longitudinal slot (width > ½ calibre; length: minimum ½ the length of the barrel from the forcing cone).
2.2	Barrel: A hole must be drilled through both walls of barrel (near the forcing cone) and through which a hardened steel pin must be inserted and securely welded (diameter > 50 % calibre, min 4,5 mm). The same pin can be used to secure the barrel to the action. As an alternative, securely weld a fitting hardened steel plug (length: minimum half length of the cylinder's chamber), into the barrel starting at the cylinder side.
2.3	Barrel: The barrel must be permanently secured to the frame by welding, bonding or by using appropriate measures with the equivalent degree of permanence. The pin used in operation 2.2 can be used for this purpose.
2.4	Barrel: For exchange barrels not affixed to the firearm, apply operations 2.1-2.3 as applicable. In addition, the barrels must be permanently prevented from being affixed to a firearm by cutting, welding, bonding or using appropriate measures with the equivalent degree of permanence.
2.5	Cylinder: Remove all internal walls from cylinder for a minimum of 2/3 of its length by machining. Remove as much of the internal walls from the cylinder as possible, ideally to the case diameter without breaching the external wall.
2.6	Cylinder: Where possible, weld to prevent the removal of the cylinder from the frame, or take appropriate measures such as pinning, that render the removal impossible.

2. REVOLVERS (INCLUDING CYLINDER LOADING REVOLVERS)

2.7	Cylinder: For spare cylinders not affixed to a firearm, apply operation 2.5. In addition, the cylinder must be permanently prevented from being affixed to a firearm by cutting, welding, bonding or using appropriate measures with the equivalent degree of permanence.
2.8	Frame/Receiver: Extend firing pin hole to three times of its original size.
2.9	Frame/Receiver: Remove or shorten firing pin.
2.10	Trigger mechanism: Ensure destruction of the physical operating link between the trigger blade and the hammer, striker or sear. Fuse the trigger mechanism together with weld within receiver/frame, where applicable. If such fusion of the trigger mechanism is not possible, remove the trigger mechanism and fill the area with weld or epoxy resin.
2.11	Trigger mechanism: The trigger mechanism and/or housing has to be welded to the receiver/frame (in case of steel frame) or glued to the receiver/frame with high temperature resistant glue (in case of light metal or polymer frame).
2.12	Silencer/Suppressor: Permanently prevent removal of the silencer/suppressor from the barrel by use of hardened steel pin or by welding, bonding or by using appropriate measures with the equivalent degree of permanence, if the silencer/suppressor is part of the weapon.
2.13	Silencer/Suppressor: Remove all the inner parts where possible and their attachment points of the moderator so that only a tube remains. Drill holes that are of a diameter larger than the calibre of the firearm and at a longitudinal interval of 3 cm (short firearms) or 5 cm (long firearms) through the casing and penetrating the expansion chamber. Or else cut a longitudinal slot of minimum 6 mm from rear end to front end through the casing and penetrating the expansion chamber.

3. SINGLE-SHOT LONG FIREARMS (NOT BREAK ACTION)

3.1	Barrel: Cut a longitudinal slot through the barrel including the chamber where present (width: > ½ calibre; length: for rifled barrels three times the length of chamber and for smoothbore barrels twice the length of the chamber).
3.2	Barrel: A hole must be drilled across the chamber through both walls and through which a hardened steel pin must be inserted and securely welded (diameter > 50 % chamber, min 4,5 mm). The same pin can be used to secure the barrel to the action. Alternatively, a plug of the size of the cartridge case must be inserted into the chamber and securely welded.
3.3	Barrel: Remove the feed ramp where present.
3.4	Barrel: The barrel must be permanently secured to the firearm by welding, bonding or by using appropriate measures with the equivalent degree of permanence. The pin used in operation 3.2 can be used for this purpose.
3.5	Barrel: For exchange barrels not affixed to the firearm, apply operations 3.1-3.4 as applicable. In addition, the barrels must be permanently prevented from being affixed to a firearm by cutting, welding, bonding or using appropriate measures with the equivalent degree of permanence.
3.6	Breech block/bolt head: Remove or shorten firing pin.
3.7	Breech block/bolt head: Machine or remove the breech face at an angle of between 45 and 75 degrees as measured from the angle of the original face. Material must be removed across the entire breech face. All locking lugs must be removed or substantially weakened.

3. SINGLE-SHOT LONG FIREARMS (NOT BREAK ACTION)

3.8	Breech block/bolt head: Weld the firing pin hole.
3.9	Trigger mechanism: Ensure destruction of the physical operating link between the trigger blade and the hammer, striker or sear. Fuse the trigger mechanism together with weld within receiver/frame, where applicable. If such fusion of the trigger mechanism is not possible, remove the trigger mechanism and fill the area with weld or epoxy resin.
3.10	Trigger mechanism: The trigger mechanism and/or housing has to be welded to the receiver/frame (in case of steel frame) or glued to the receiver/frame with high temperature resistant glue (in case of light metal or polymer frame).
3.11	Silencer/Suppressor: Permanently prevent removal of the silencer/suppressor from the barrel by use of hardened steel pin or by welding, bonding or by using appropriate measures with the equivalent degree of permanence, if the silencer/suppressor is part of the weapon.
3.12	Silencer/Suppressor: Remove all the inner parts where possible and their attachment points of the moderator so that only a tube remains. Drill holes that are of a diameter larger than the calibre of the firearm and at a longitudinal interval of 3 cm (short firearms) or 5 cm (long firearms) through the casing and penetrating the expansion chamber. Or else cut a longitudinal slot of minimum 6 mm from rear end to front end through the casing and penetrating the expansion chamber.

4. BREAK ACTION FIREARMS (e.g. SMOOTHBORE, RIFLED, COMBINATION, FALLING/ROLLING BLOCK ACTION, SHORT AND LONG FIREARMS)

4.1	Barrel: Cut a longitudinal slot through the barrel including the chamber where present (width: $> \frac{1}{2}$ calibre; length: for rifled barrels three times the length of chamber and for smoothbore barrels twice the length of the chamber). For firearms without chamber included in the barrel, cut a longitudinal slot (width $> \frac{1}{2}$ calibre; length: minimum $\frac{1}{2}$ the length of the barrel from the forcing cone).
4.2	Barrel: A tight fitting plug of at least $\frac{2}{3}$ length of the chamber is to be securely welded into the chamber and should be positioned as close to the breech as possible.
4.3	Barrel: Remove the feed ramp where present.
4.4	Barrel: The barrel must be permanently secured to the firearm by welding, bonding or by using appropriate measures with the equivalent degree of permanence.
4.5	Barrel: For exchange barrels not affixed to the firearm, apply operations 4.1-4.4 as applicable. In addition, the barrels must be permanently prevented from being affixed to a firearm by cutting, welding, bonding or using appropriate measures with the equivalent degree of permanence.
4.6	Trigger mechanism: Ensure destruction of the physical operating link between the trigger blade and the hammer, striker or sear. Fuse the trigger mechanism together with weld within receiver/frame, where applicable. If such fusion of the trigger mechanism is not possible, remove the trigger mechanism and fill the area with weld or epoxy resin.
4.7	Trigger mechanism: The trigger mechanism and/or housing has to be welded to the receiver/frame (in case of steel frame) or glued to the receiver/frame with high temperature resistant glue (in case of light metal or polymer frame).
4.8	Action: Machine a cone of 60 degrees minimum (apex angle), in order to obtain a base diameter equal to 10 mm at least or the diameter of the breech face.

4. BREAK ACTION FIREARMS (e.g. SMOOTHBORE, RIFLED, COMBINATION, FALLING/ROLLING BLOCK ACTION, SHORT AND LONG FIREARMS)

4.9	Action: Remove the firing pin, enlarge the firing pin hole at a minimum diameter of 5 mm and weld the firing pin hole.
4.10	Silencer/Suppressor: Permanently prevent removal of the silencer/suppressor from the barrel by use of hardened steel pin or by welding, bonding or by using appropriate measures with the equivalent degree of permanence, if the silencer/suppressor is part of the weapon.
4.11	Silencer/Suppressor: Remove all the inner parts where possible and their attachment points of the moderator so that only a tube remains. Drill holes that are of a diameter larger than the calibre of the firearm and at a longitudinal interval of 3 cm (short firearms) or 5 cm (long firearms) through the casing and penetrating the expansion chamber. Or else cut a longitudinal slot of minimum 6 mm from rear end to front end through the casing and penetrating the expansion chamber.

5. REPEATING LONG FIREARMS (SMOOTHBORE, RIFLED)

5.1	Barrel: Cut a longitudinal slot through the barrel including the chamber where present (width: > ½ calibre; length: for rifled barrels three times the length of chamber and for smoothbore barrels twice the length of the chamber). For firearms without chamber included in the barrel, cut a longitudinal slot (width > ½ calibre; length: minimum ½ the length of the barrel from the forcing cone).
5.2	Barrel: A hole must be drilled across the chamber through both walls and through which a hardened steel pin must be inserted and securely welded (diameter > 50 % chamber, min 4,5 mm). The same pin can be used to secure the barrel to the action. Alternatively, a plug of the size of the cartridge case must be inserted into the chamber and securely welded.
5.3	Barrel: Remove the feed ramp where present.
5.4	Barrel: The barrel must be permanently secured to the firearm by welding, bonding or by using appropriate measures with the equivalent degree of permanence. The pin used in operation 5.2 can be used for this purpose.
5.5	Barrel: For exchange barrels not affixed to the firearm, apply operations 5.1-5.4 as applicable. In addition, the barrels must be permanently prevented from being affixed to a firearm by cutting, welding, bonding or using appropriate measures with the equivalent degree of permanence.
5.6	Breech block/bolt head: Remove or shorten firing pin.
5.7	Breech block/bolt head: Machine or remove the breech face at an angle of between 45 and 75 degrees as measured from the angle of the original face. Material must be removed across the entire breech face. All locking lugs must be removed or substantially weakened.
5.8	Breech block/bolt head: Weld the firing pin hole.
5.9	Trigger mechanism: Ensure destruction of the physical operating link between the trigger blade and the hammer, striker or sear. Fuse the trigger mechanism together with weld within receiver/frame, where applicable. If such fusion of the trigger mechanism is not possible, remove the trigger mechanism and fill the area with weld or epoxy resin.
5.10	Trigger mechanism: The trigger mechanism and/or housing has to be welded to the receiver/frame (in case of steel frame) or glued to the receiver/frame with high temperature resistant glue (in case of light metal or polymer frame).
5.11	Magazines: Weld the magazine with spots or use appropriate measures with the equivalent degree of permanence, depending on type of arm and material to prevent removing the magazine.

5. REPEATING LONG FIREARMS (SMOOTHBORE, RIFLED)

5.12	Magazines: If the magazine is missing, place spots of weld or use appropriate measures in the magazine location or fix a lock to permanently prevent the insertion of a magazine.
5.13	Magazines: For tube magazines, drive one or several hardened steel pin(s) through magazine, chamber and frame connecting them permanently to each other. Secure by welding.
5.14	Silencer/Suppressor: Permanently prevent removal of the silencer/suppressor from the barrel by use of hardened steel pin or by welding, bonding or by using appropriate measures with the equivalent degree of permanence, if the silencer/suppressor is part of the weapon.
5.15	Silencer/Suppressor: Remove all the inner parts where possible and their attachment points of the moderator so that only a tube remains. Drill holes that are of a diameter larger than the calibre of the firearm and at a longitudinal interval of 3 cm (short firearms) or 5 cm (long firearms) through the casing and penetrating the expansion chamber. Or else cut a longitudinal slot of minimum 6 mm from rear end to front end through the casing and penetrating the expansion chamber.

6. SEMI-AUTOMATIC LONG FIREARMS (SMOOTHBORE, RIFLED)

6.1	Barrel: Cut a longitudinal slot through the barrel including the chamber where present (width: > ½ calibre; length: for rifled barrels three times the length of chamber and for smoothbore barrels twice the length of the chamber). For firearms without chamber included in the barrel, cut a longitudinal slot (width > ½ calibre; length: minimum ½ the length of the barrel from the forcing cone).
6.2	Barrel: A hole must be drilled across the chamber through both walls and through which a hardened steel pin must be inserted and securely welded (diameter > 50 % chamber, min 4,5 mm). The same pin can be used to secure the barrel to the action. Alternatively, a plug of the size of the cartridge case must be inserted into the chamber and securely welded.
6.3	Barrel: Remove the feed ramp where present.
6.4	Barrel: The barrel must be permanently secured to the firearm by welding, bonding or by using appropriate measures with the equivalent degree of permanence. The pin used in operation 6.2 can be used for this purpose.
6.5	Barrel: For exchange barrels not affixed to the firearm, apply operations 6.1-6.4 and 6.12 as applicable. In addition, the barrels must be permanently prevented from being affixed to a firearm by cutting, welding, bonding or using appropriate measures with the equivalent degree of permanence.
6.6	Breech block/bolt head: Remove or shorten firing pin.
6.7	Breech block/bolt head: Machine or remove the breech face at an angle of between 45 and 75 degrees as measured from the angle of the original face. Material must be removed across the entire breech face. All locking lugs must be removed or substantially weakened.
6.8	Breech block/bolt head: Weld the firing pin hole.
6.9	Trigger mechanism: Ensure destruction of the physical operating link between the trigger blade and the hammer, striker or sear. Fuse the trigger mechanism together with weld within receiver/frame, where applicable. If such fusion of the trigger mechanism is not possible, remove the trigger mechanism and fill the area with weld or epoxy resin.

6. SEMI-AUTOMATIC LONG FIREARMS (SMOOTHBORE, RIFLED)

6.10	Trigger mechanism: The trigger mechanism and/or housing has to be welded to the receiver/frame (in case of steel frame) or glued to the receiver/frame with high temperature resistant glue (in case of light metal or polymer frame).
6.11	Automatic system: Destroy the gas piston, gas pipe and gas port by cutting or welding.
6.12	Automatic system: If there is no gas piston, remove gas pipe. If the barrel is used as a gas piston, weld the deactivated barrel to the housing. In all cases where present, close the barrel's gas vent by welding.
6.13	Automatic system: Machine or remove the breech face at an angle of between 45 and 75 degrees as measured from the angle of the original face. Material must be removed across the entire surface of the breech face and elsewhere so that bolt/breech block is reduced by minimum 50 % of original mass. Permanently fix the breech block to the firearm by welding; bonding or by using appropriate measures with the equivalent degree of permanence.
6.14	Automatic system: In cases where bolt heads are incorporated into a bolt carrier, the carrier must be reduced by a minimum of 50 %. The bolt head must be permanently fixed to the carrier and the carrier must be permanently fixed to the firearm by welding, bonding or by using appropriate measures with the equivalent degree of permanence.
6.15	Magazines: Weld the magazine with spots or use appropriate measures with the equivalent degree of permanence, depending on type of arm and material to prevent removing the magazine.
6.16	Magazines: If the magazine is missing, place spots of weld or use appropriate measures in the magazine location or fix a lock to permanently prevent the insertion of a magazine.
6.17	Magazines: For tube magazines, drive one or several hardened steel pin(s) through magazine, chamber and frame connecting them permanently to each other. Secure by welding.
6.18	Silencer/Suppressor: Permanently prevent removal of the silencer/suppressor from the barrel by use of hardened steel pin or by welding, bonding or by using appropriate measures with the equivalent degree of permanence, if the silencer/suppressor is part of the weapon.
6.19	Silencer/Suppressor: Remove all the inner parts where possible and their attachment points of the moderator so that only a tube remains. Drill holes that are of a diameter larger than the calibre of the firearm and at a longitudinal interval of 3 cm (short firearms) or 5 cm (long firearms) through the casing and penetrating the expansion chamber. Or else cut a longitudinal slot of minimum 6 mm from rear end to front end through the casing and penetrating the expansion chamber.

7. AUTOMATIC FIREARMS: e.g. ASSAULT RIFLES, (SUB)MACHINE GUNS, AUTOMATIC PISTOLS

7.1	Barrel: Cut a longitudinal slot through the barrel including the chamber where present (width: > ½ calibre; length: for rifled barrels three times the length of chamber and for smoothbore barrels twice the length of the chamber).
7.2	Barrel: A hole must be drilled across the chamber through both walls and through which a hardened steel pin must be inserted and securely welded (diameter > 50 % chamber, min 4,5 mm). The same pin can be used to secure the barrel to the action. Alternatively, a plug of the size of the cartridge case must be inserted into the chamber and securely welded.
7.3	Barrel: Remove the feed ramp where present.

7. AUTOMATIC FIREARMS: e.g. ASSAULT RIFLES, (SUB)MACHINE GUNS, AUTOMATIC PISTOLS	
7.4	Barrel: The barrel must be permanently secured to the firearm by welding, bonding or by using appropriate measures with the equivalent degree of permanence. The pin used in operation 7.2 can be used for this purpose.
7.5	Barrel: For exchange barrels not affixed to the firearm, apply operations 7.1-7.3 as applicable. In addition, the barrels must be permanently prevented from being affixed to a firearm by cutting, welding, bonding or using appropriate measures with the equivalent degree of permanence.
7.6	Breech block/bolt head: Remove or shorten firing pin.
7.7	Breech block/bolt head: Machine or remove the breech face at an angle of between 45 and 75 degrees as measured from the angle of the original face. Material must be removed across the entire breech face. All locking lugs must be removed or substantially weakened.
7.8	Breech block/bolt head: Weld the firing pin hole.
7.9	Slide (for automatic pistols): Machine or remove the breech face at an angle of between 45 and 75 degrees as measured from the angle of the original face. Material must be removed across the entire surface.
7.10	Slide (for automatic pistols): Remove the firing pin.
7.11	Slide (for automatic pistols): Remove locking lugs in slide.
7.12	Slide (for automatic pistols): Where applicable, machine the inside of the locking edge of the ejection port in the slide to an angle at a range of 45 to 75 degrees.
7.13	Slide (for automatic pistols): If the breech block can be taken off the slide body, the deactivated breech block has to be permanently fixed to the slide body.
7.14	Frame/Receiver (for automatic pistols): Remove feed ramp where present.
7.15	Frame/Receiver (for automatic pistols): Machine away at least 2/3 of the slide rails on both sides of the frame.
7.16	Trigger mechanism: Ensure destruction of the physical operating link between the trigger blade and the hammer, striker or sear. Fuse the trigger mechanism together with weld within receiver/frame, where applicable. If such fusion of the trigger mechanism is not possible, remove the trigger mechanism and fill the area with weld or epoxy resin.
7.17	Trigger mechanism: The trigger mechanism and/or housing has to be welded to the receiver/frame (in case of steel frame) or glued to the receiver/frame with high temperature resistant glue (in case of light metal or polymer frame).
7.18	Automatic system: Destroy the gas piston, gas pipe and gas port by cutting or welding.
7.19	Automatic system: If there is no gas piston, remove gas pipe. If the barrel is used as a gas piston, weld the deactivated barrel to the housing. In all cases where present, close the barrel's gas vent by welding.
7.20	Automatic system: Machine or remove the breech face at an angle of between 45 and 75 degrees as measured from the angle of the original face. Material must be removed across the entire surface of the breech face and elsewhere so that bolt/breech block is reduced by minimum 50 % of original mass. Permanently fix the breech block to the firearm by welding; bonding or by using appropriate measures with the equivalent degree of permanence.

7. AUTOMATIC FIREARMS: e.g. ASSAULT RIFLES, (SUB)MACHINE GUNS, AUTOMATIC PISTOLS

7.21	Automatic system: In cases where bolt heads are incorporated into a bolt carrier, the carrier must be reduced by a minimum of 50 %. The bolt head must be permanently fixed to the carrier and the carrier must be permanently fixed to the firearm by welding, bonding or by using appropriate measures with the equivalent degree of permanence.
7.22	Magazines: Weld the magazine with spots or use appropriate measures with the equivalent degree of permanence, depending on type of arm and material to prevent removing the magazine.
7.23	Magazines: If the magazine is missing, place spots of weld or use appropriate measures in the magazine location or fix a lock to permanently prevent the insertion of a magazine.
7.24	Magazines: For tube magazines, drive one or several hardened steel pin(s) through magazine, chamber and frame connecting them permanently to each other. Secure by welding.
7.25	Silencer/Suppressor: Permanently prevent removal of the silencer/suppressor from the barrel by use of hardened steel pin or by welding, bonding or by using appropriate measures with the equivalent degree of permanence, if the silencer/suppressor is part of the weapon.
7.26	Silencer/Suppressor: Remove all the inner parts where possible and their attachment points of the moderator so that only a tube remains. Drill holes that are of a diameter larger than the calibre of the firearm and at a longitudinal interval of 3 cm (short firearms) or 5 cm (long firearms) through the casing and penetrating the expansion chamber. Or else cut a longitudinal slot of minimum 6 mm from rear end to front end through the casing and penetrating the expansion chamber.

8. MUZZLE LOADING FIREARMS INCLUDING BREAK ACTION (EXCEPT CYLINDER LOADING REVOLVERS)

8.1	Barrel: Cut a longitudinal slot through the barrel including the combustion chamber where present (width: > ½ calibre; length: three times the bullet diameter). For firearms without combustion chamber included in the barrel, cut a longitudinal slot (width > ½ calibre; length: minimum ½ the length of the barrel from the forcing cone).
8.2	Barrel: For firearms with combustion chamber included in the barrel, a hole must be drilled across the combustion chamber through both walls and through which a hardened steel pin must be inserted and securely welded (diameter > 50 % chamber, min 4,5 mm). The same pin can be used to secure the barrel to the action. For firearms without combustion chamber included in the barrel, securely weld a fitting hardened steel plug (length: minimum two times the length of bullet diameter), into the barrel from the forcing cone.
8.3	Barrel: For exchange barrels not affixed to the firearm, apply operations 8.1-8.2 as applicable. In addition, the barrels must be permanently prevented from being affixed to a firearm by cutting, welding, bonding or using appropriate measures with the equivalent degree of permanence.
8.4	In case of break action: Machine a cone of 60 degrees minimum (apex angle), in order to obtain a base diameter equal to 10 mm at least or the diameter of the breech face.
8.5	In case of break action: Remove the firing pin, enlarge the firing pin hole at a minimum diameter of 5 mm and weld the firing pin hole.
8.6	Trigger mechanism: Ensure destruction of the physical operating link between the trigger blade and the hammer, striker or sear. Fuse the trigger mechanism together with weld within receiver/frame, where applicable. If such fusion of the trigger mechanism is not possible, remove the trigger mechanism and fill the area with weld or epoxy resin.

8. MUZZLE LOADING FIREARMS INCLUDING BREAK ACTION (EXCEPT CYLINDER LOADING REVOLVERS)	
8.7	Trigger mechanism: The trigger mechanism and/or housing has to be welded to the receiver/frame (in case of steel frame) or glued to the receiver/frame with high temperature resistant glue (in case of light metal or polymer frame)
8.8	Nipples/holes: Remove or weld the nipple(s), weld the hole(s).
8.9	Separate (multiple) combustion chambers (except cylinder): For firearms with separate or multiple combustion chambers, remove internal wall(s) from the combustion chamber(s) for a minimum of 2/3 of its length by machining. Remove as much of the internal wall(s) as possible, ideally equal to the calibre diameter.

ANNEX II

Template for marking of deactivated firearms

EU ⁽¹⁾ **Aa** ⁽²⁾ **bb** ⁽³⁾ **cc** ⁽⁴⁾

(¹) Deactivation mark (to remain 'EU' in all national markings)

(²) Country of deactivation — official international code

(³) Symbol of the entity that certified the deactivation of the firearm

(⁴) Deactivation year

The full mark will be affixed only on the frame of the firearm, while the deactivation mark (1) and the country of deactivation (2) will be affixed on all other essential components.

ANNEX III

Model certificate for deactivated firearms

(this certificate should be prepared on non-falsifiable paper)

EU Logo

Name of entity that verified & certified the
conformity of the deactivation

Logo

DEACTIVATION CERTIFICATE**Certificate number:**

The deactivation measures conform to the requirements of the technical specifications for the deactivation of firearms as set out in Annex I to Commission Implementing Regulation (EU) 2018/337 of 5 March 2018.

Name of entity that performed the deactivation:**Country:****Date/year of certification of the deactivation:****Manufacturer/brand of firearm deactivated:****Type:****Make/Model:****Calibre:****Serial number(s):****Remarks:**

Official EU deactivation mark

Name, title and signature of the responsible person

PLEASE NOTE: This certificate is an important document. It should be retained by the owner of the deactivated firearm at all times. The essential components of the deactivated to which this certificate relates have been marked with an official inspection mark; these marks must not be removed or altered.

WARNING: Forging a deactivation certificate could constitute an offence under the national law.

COMMISSION IMPLEMENTING REGULATION (EU) 2018/338

of 7 March 2018

concerning the authorisation of a preparation of 6-phytase, produced by *Aspergillus niger* (DSM 25770) as feed additive for chickens for fattening, chickens reared for laying, pigs for fattening, sows, minor porcine species for fattening or for reproduction, turkeys for fattening, turkeys reared for breeding, all other avian species (excluding laying birds) and weaned piglets (holder of the authorisation BASF SE)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.
- (2) In accordance with Article 7 of Regulation (EC) No 1831/2003 an application was submitted for the authorisation of a preparation of 6-phytase, produced by *Aspergillus niger* (DSM 25770). That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (3) That application concerns the authorisation of the preparation of 6-phytase produced by *Aspergillus niger* (DSM 25770) as a feed additive for chickens for fattening, chickens reared for laying, pigs for fattening, sows, minor porcine species for fattening or for reproduction, turkeys for fattening, turkeys reared for breeding, all avian species for fattening or growing or reared for laying and weaned piglets to be classified in the additive category 'zootechnical additives'.
- (4) The European Food Safety Authority ('the Authority') concluded in its opinion of 28 September 2017 ⁽²⁾ that, under the proposed conditions of use, the preparation of 6-phytase produced by *Aspergillus niger* (DSM 25770) does not have an adverse effect on animal health, human health or the environment, and that it improves the zootechnical performance and/or phosphorus utilisation in the target species. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (5) The assessment of the preparation of 6-phytase produced by *Aspergillus niger* (DSM 25770) shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of that preparation should be authorised as specified in the Annex to this Regulation.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

The preparation specified in the Annex, belonging to the additive category 'zootechnical additives' and to the functional group 'digestibility enhancers', is authorised as an additive in animal nutrition, subject to the conditions laid down in that Annex.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ EFSA Journal 2017; 15(11):5024.

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, 7 March 2018.

For the Commission

The President

Jean-Claude JUNKER

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						Units of activity/kg of complete feedingstuff with a moisture content of 12 %			
Category of zootechnical additives. Functional group: digestibility enhancers									
4a27	BASF SE	6-phytase EC 3.1.3.26	<i>Additive composition:</i>	Pigs for fattening	—	100 FTU		1. In the directions for use of the additive and premixtures, the storage conditions and stability to heat treatment shall be indicated. 2. For users of the additive and premixtures, feed business operators shall establish operational procedures and organisational measures to address potential risks resulting from their use. Where those risks cannot be eliminated or reduced to a minimum by such procedures and measures, the additive and premixtures shall be used with personal protective equipment, including breathing protection. 3. For use in weaned piglets up to 35 kg.	28.3.2028
			Preparation of 6-phytase, produced by <i>Aspergillus niger</i> (DSM 25770) with a minimum content of:	Sows					
			Solid form: 5 000 FTU ⁽¹⁾ /g	Minor porcine species for fattening or for reproduction					
			Liquid form: 5 000 FTU/g	Weaned piglets					
			<i>Characterisation of the active substance:</i>	Chickens for fattening					
6-phytase produced by <i>Aspergillus niger</i> (DSM 25770)	Chickens reared for laying								
<i>Analytical method</i> ⁽²⁾ :									
For the quantification of phytase activity in the feed additive:	Turkeys for fattening								
— colorimetric method based on the enzymatic reaction of phytase on the phytate	Turkeys reared for breeding								
For the quantification of phytase activity in premixtures:	All other avian species (excluding laying birds)								
— colorimetric method based on the enzymatic reaction of phytase on the phytate — VDLUFA 27.1.3									

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						Units of activity/kg of complete feedingstuff with a moisture content of 12 %			
			For the quantification of phytase activity in feedingstuffs: — colorimetric method based on the enzymatic reaction of phytase on the phytate — EN ISO 30024						

(¹) 1 FTU is the amount of enzyme which liberates 1 micromole of inorganic phosphate per minute from sodium phytate at pH 5,5 and 37 °C

(²) Details of the analytical methods are available at the following address of the Reference Laboratory: <https://ec.europa.eu/jrc/en/eurl/feed-additives/evaluation-reports>

COMMISSION IMPLEMENTING REGULATION (EU) 2018/339**of 7 March 2018****amending and derogating from Regulation (EC) No 2535/2001 as regards the import licences for dairy products originating in Iceland**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 187 thereof,

Whereas:

- (1) Annex V to the Agreement in the form of an Exchange of Letters between the European Union and Iceland concerning additional trade preferences in agricultural products undertaken on the basis of Article 19 of the Agreement on the European Economic Area, approved by Council Decision (EU) 2017/1913 ⁽²⁾ provides for an increase in the annual duty free tariff quotas and for the introduction of a new quota for cheeses.
- (2) The new quota quantities will apply from 1 May 2018. Consequently, by way of derogation from Article 6 of Commission Regulation (EC) No 2535/2001 ⁽³⁾, a new period from 1 May to 31 December 2018 should be established replacing the period from 1 July to 31 December 2018 and for the quantities to be set for that new period in Point I.I of Annex I to that Regulation as amended by this Regulation.
- (3) The application period precedes the end of the approval procedure for applicants to be authorised to import under the quotas as from 1 July 2018. In order for applicants, not yet listed on an approval list, to participate in the quota allocation for the period 1 May to 31 December 2018, derogation from Article 10 of Regulation (EC) No 2535/2001 should be provided for.
- (4) The period for lodging import licence applications for the first half year of 2018, as provided for in Article 14(1)(a) of Regulation (EC) No 2535/2001, has expired. By way of derogation from Article 14(1)(b) of that Regulation provision should therefore be made for a new license application period from 1 to 10 April 2018.
- (5) Regulation (EC) No 2535/2001 should therefore be amended accordingly.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

*Article 1***Amendment of Regulation (EC) No 2535/2001**

Regulation (EC) No 2535/2001 is amended as follows:

- (a) In Article 5, point (i) is replaced by the following:

‘(i) the quotas provided for in Annex V to the Agreement between the European Union and Iceland concerning additional trade preferences in agricultural products, approved by Council Decision (EU) 2017/1913 ^(*) (‘the Agreement with Iceland’)

^(*) Council Decision (EU) 2017/1913 of 9 October 2017 on the conclusion of the Agreement in the form of an Exchange of Letters between the European Union and Iceland concerning additional trade preferences in agricultural products (OJ L 274, 24.10.2017, p. 57).’

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Council Decision (EU) 2017/1913 of 9 October 2017 on the conclusion of the Agreement in the form of an Exchange of Letters between the European Union and Iceland concerning additional trade preferences in agricultural products (OJ L 274, 24.10.2017, p. 57).

⁽³⁾ Commission Regulation (EC) No 2535/2001 of 14 December 2001 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the import arrangements for milk and milk products and opening tariff quotas (OJ L 341, 22.12.2001, p. 29).

(b) Point I.I of Annex I to Regulation (EC) No 2535/2001 is replaced by the text in the Annex to this Regulation.

Article 2

Derogation from Regulation (EC) No 2535/2001

1. By way of derogation from the second paragraph Article 6 of Regulation (EC) No 2535/2001, for the quantities set out in Point I.I of Annex I to that Regulation, the six-month period from 1 July to 31 December 2018 shall be replaced by the period from 1 May to 31 December 2018.
2. By way of derogation from the second subparagraph of Article 10(1) of Regulation (EC) No 2535/2001, in addition to importers included on a list, applicants who submitted a valid request for approval before 1 April 2018 in accordance with Article 8 of that Regulation shall also be authorised to apply for licenses for the quotas and for the period referred to in paragraph 1 of this Article.
3. By way of derogation from Article 14(1)(b) of Regulation (EC) No 2535/2001, for the period from 1 May to 31 December 2018 applications for import licences shall be submitted from 1 to 10 April 2018 for quantities set out in Point I.I of Annex I to that Regulation as amended by this Regulation.
4. The applications referred to in paragraph 3 shall relate to not less than 5 tonnes and not more than the available quantity. No applications shall be submitted for the period from 1 July to 31 December 2018.
5. Import licences issued for applications submitted in accordance with paragraph 3 shall be valid until 31 December 2018.

Article 3

Entry into force and application

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

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

It shall apply from 1 April 2018.

Done at Brussels, 7 March 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

II

Tariff quotas under Annex V to the Agreement with Iceland approved by Decision (EU) 2017/1913

Annual quota from 1 January to 31 December

(Quantity in tonnes)

Applicable duty: exemption

Quota number		09.4225	09.4226	09.4227
Description (*)		Natural butter	'Skyr'	Cheeses
CN code		0405 10 11 0405 10 19	ex 0406 10 50 (**)	ex 0406 Excluding 'Skyr' of CN subheading 0406 10 50 (**)
Quantity for May – December 2018		201	793	9
Annual quantity in 2019		439	2 492	31
Quantity for January – June		220	1 246	16
Quantity for July — December		219	1 246	15
Annual quantity in 2020		463	3 095	38
Quantity for January – June		232	1 548	19
Quantity for July — December		231	1 547	19
Annual quantity from 2021 and following		500	4 000	50
Quantity for January – June		250	2 000	25
Quantity for July — December		250	2 000	25

(*) 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 arrangements being determined, within the context of this Annex, by the coverage of the CN codes. Where ex CN codes are referred to, the applicability of the preferential arrangements is determined to the basis of the CN code and the corresponding description taken jointly.

(**) CN code subject to modification, pending confirmation of classification of the product.'

DECISIONS

COUNCIL DECISION (CFSP) 2018/340

of 6 March 2018

establishing the list of projects to be developed under PESCO

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, in particular Article 46(6) thereof;

Having regard to Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States ⁽¹⁾,

Having regard to the proposal from the Federal Republic of Germany, the Kingdom of Spain, the French Republic and the Italian Republic,

Whereas:

- (1) On 11 December 2017, the Council adopted Decision (CFSP) 2017/2315.
- (2) Article 4(2)(e) of that Decision provides that the Council is to adopt a decision or recommendation establishing the list of projects to be developed under permanent structured cooperation (PESCO), reflecting both support for capability development and the provision of substantial support within means and capabilities to Common Security and Defence Policy operations and missions.
- (3) On 11 December 2017, the Member States participating in PESCO adopted a declaration identifying an initial list of 17 projects to be undertaken under PESCO, based on project proposals which had been presented. That declaration was adopted with a view towards a formal decision to be taken by the Council in early 2018 in accordance with Article 46(6) of the Treaty on European Union and Article 5 of Decision (CFSP) 2017/2315.
- (4) The second subparagraph of Article 5(2), of Decision (CFSP) 2017/2315 provides that the list of the project members of each individual project is to be attached to the Council decision referred to in Article 4(2)(e).
- (5) To ensure consistency, the implementation of all PESCO projects will be based on the common set of governance rules for projects, including, inter alia, rules on the role of observers if appropriate, to be adopted pursuant to Article 4(2)(f) of Decision (CFSP) 2017/2315, and which the participating Member States taking part in an individual project could adapt as necessary for that project.
- (6) The Council should therefore adopt a decision establishing the list of projects to be developed under PESCO,

⁽¹⁾ OJ L 331, 14.12.2017, p. 57.

HAS ADOPTED THIS DECISION:

Article 1

The following projects shall be developed under PESCO:

1. European Medical Command;
2. European Secure Software defined Radio (ESSOR);
3. Network of Logistic Hubs in Europe and Support to Operations
4. Military Mobility;
5. European Union Training Mission Competence Centre (EU TMCC);
6. European Training Certification Centre for European Armies;
7. Energy Operational Function (EOF);
8. Deployable Military Disaster Relief Capability Package;
9. Maritime (semi-) Autonomous Systems for Mine Countermeasures (MAS MCM);
10. Harbour & Maritime Surveillance and Protection (HARMSPRO);
11. Upgrade of Maritime Surveillance;
12. Cyber Threats and Incident Response Information Sharing Platform;
13. Cyber Rapid Response Teams and Mutual Assistance in Cyber Security;
14. Strategic Command and Control (C2) System for CSDP Missions and Operations;
15. Armoured Infantry Fighting Vehicle/Amphibious Assault Vehicle/Light Armoured Vehicle;
16. Indirect Fire Support (EuroArtillery);
17. EUFOR Crisis Response Operation Core (EUFOR CROC).

Article 2

The list of the project members of each individual project shall be as set out in the Annex.

Article 3

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

Done at Brussels, 6 March 2018.

For the Council
The President
F. MOGHERINI

ANNEX

List of the project members of each individual project

Project	Project members
1. European Medical Command	Germany, Czech Republic, Spain, France, Italy, Netherlands, Romania, Slovakia, Sweden
2. European Secure Software defined Radio (ESSOR)	France, Belgium, Germany, Italy, Netherlands, Poland, Portugal, Finland
3. Network of logistic Hubs in Europe and support to Operations	Germany, Belgium, Bulgaria, Greece, Spain, France, Croatia, Italy, Cyprus, Hungary, Netherlands, Slovenia, Slovakia
4. Military Mobility	Netherlands, Belgium, Bulgaria, Czech Republic, Germany, Estonia, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden
5. European Union Training Mission Competence Centre (EU TMCC)	Germany, Belgium, Czech Republic, Ireland, Spain, France, Italy, Cyprus, Luxembourg, Netherlands, Austria, Romania, Sweden
6. European Training Certification Centre for European Armies	Italy, Greece
7. Energy Operational Function (EOF)	France, Belgium, Spain, Italy
8. Deployable Military Disaster Relief Capability Package	Italy, Greece, Spain, Croatia, Austria
9. Maritime (semi-) Autonomous Systems for Mine Countermeasures (MAS MCM)	Belgium, Greece, Latvia, Netherlands, Portugal, Romania
10. Harbour & Maritime Surveillance and Protection (HARMSPRO)	Italy, Greece, Spain, Portugal
11. Upgrade of Maritime Surveillance	Greece, Bulgaria, Ireland, Spain, Croatia, Italy, Cyprus
12. Cyber Threats and Incident Response Information Sharing Platform	Greece, Spain, Italy, Cyprus, Hungary, Austria, Portugal
13. Cyber Rapid Response Teams and Mutual Assistance in Cyber Security	Lithuania, Spain, France, Croatia, Netherlands, Romania, Finland
14. Strategic Command and Control (C2) System for CSDP Missions and Operations	Spain, Germany, Italy, Portugal

Project	Project members
15. Armoured Infantry Fighting Vehicle/Amphibious Assault Vehicle/Light Armoured Vehicle	Italy, Greece, Slovakia
16. Indirect Fire Support (EuroArtillery)	Slovakia, Italy
17. EUFOR Crisis Response Operation Core (EUFOR CROC)	Germany, Spain, France, Italy, Cyprus

COMMISSION DECISION (EU) 2018/341**of 27 September 2017****on State aid scheme SA.34433 (2012/C) (ex 2012/NN) implemented by France (tax for the benefit of the national organisation of agriculture and fisheries products (FranceAgriMer) — Article 25 of Law No 2005-1720 of 30 December 2005)***(notified under document C(2017) 4431)***(Only the French text is authentic)**

THE EUROPEAN COMMISSION,

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

Having called on interested parties to submit their comments pursuant to that Article,

Whereas:

I. PROCEDURE

- (1) Following a complaint, the Commission asked the French authorities by fax of 28 November 2011 to provide it with any information necessary for an investigation, under Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU), into the tax established by Article 25 of Law No 2005-1720 of 30 December 2005 for the benefit of the national organisation of agriculture and fisheries products (FranceAgriMer) ('the tax'). The French authorities had one month to submit the information in question.
- (2) By letter of 11 December 2011, France asked the Commission to extend that deadline to 1 February 2012.
- (3) The Commission granted that extension by fax of 12 December 2011.
- (4) In an email of 14 February 2012, France sent the Commission the information requested on 28 November 2011.
- (5) By fax of 5 March 2012, the Commission informed the French authorities that a case of non-notified aid had been opened under reference number SA.34433 (2012-NN), since the tax had been implemented without the aid having been notified to the Commission pursuant to Article 108(3) TFEU and approved by it. By fax of 14 June 2012, the Commission informed the French authorities that the scope of the case would be expanded, as an analysis of the information available had shown that a *de minimis* regulation had not been applied properly, thereby transforming into non-notified aid a measure that, had the *de minimis* regulation been applied properly, would not have constituted State aid within the meaning of Article 107(1) TFEU.
- (6) By letter of 4 October 2012 ⁽¹⁾, the Commission informed France of its decision of 3 October 2012 to initiate the procedure provided for in Article 108(2) TFEU as regards the application of the tax. It invited the French authorities to submit within one month their comments on the initiation of the procedure.
- (7) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission invited interested parties to submit their comments on the measure.
- (8) The Commission did not receive any comments from interested parties.
- (9) By email of 16 October 2012, France asked the Commission to extend by one month (until 4 December 2012) the deadline for sending France's reply to the initiation of the procedure provided for in Article 108(2) TFEU.
- (10) The Commission granted that extension by fax of 18 October 2012.

⁽¹⁾ Letter SG-Greffe (2012) D/15827.

⁽²⁾ OJ C 361, 22.11.2012, p. 10.

- (11) By email of 5 December 2012, France submitted to the Commission its reply to the initiation of the procedure provided for in Article 108(2) TFEU.
- (12) After examining that reply, the Commission and the French authorities met on 12 December 2012 in order to clarify certain points relating to the case. Following that meeting, the Commission requested further information by fax of 15 January 2013.
- (13) By email of 18 February 2013, France sent the Commission a letter with the additional information requested on 15 January 2013. The French authorities submitted new information on 23 June 2016 in reply to the Commission's request for information of 8 October 2015 and on 20 January 2017 in reply to the Commission's request of 19 October 2016.

II. DESCRIPTION

- (14) Article 25 of Law No 2005-1720 of 30 December 2005 (Amending Finance Law for 2005) establishes a tax for the benefit of FranceAgriMer for the purpose of financing its measures in favour of the dairy market. Its latest consolidated version dates from 1 January 2012.
- (15) The tax is payable by cow's milk producers having an individual reference quantity for direct sales within the meaning of Council Regulation (EC) No 1788/2003 ⁽¹⁾, and by milk purchasers. It is based on:
 - the quantity of cow's milk delivered by the producer in the form of milk in the 12 months preceding 1 April of each year ('reference period') in excess of the reference quantity for milk deliveries during that period notified to the producer by FranceAgriMer (in that case, FranceAgriMer informs each purchaser to whom the producer has delivered milk of the amount of tax due and the milk purchaser pays to FranceAgriMer, within one month of that notification, the revenue from the tax levied on producers delivering milk to it),
 - the quantity of cow's milk sold, transferred or used to make milk products sold or transferred by the producer during the reference period in excess of the reference quantity for direct sales during that period notified to the producer (in that case, FranceAgriMer informs each producer having carried out direct sales of the amount of tax due and the producer pays to FranceAgriMer, within one month of that notification, the revenue from the tax that it is liable to pay).
- (16) Tax refunds may be ⁽²⁾ cumulative. The operative event for the tax is the delivery of milk or the direct sales of milk or milk products during the reference period. For example, under Article 4 of the Decree of 17 August 2010 on levying a tax on milk purchasers and producers who have exceeded their individual delivery quota for the 2009-2010 marketing year, and within the limits of what is available at national level at the end of the 2009-2010 marketing year, FranceAgriMer reimburses to purchasers part of the tax payable by producers delivering milk to them, according to the following arrangements:
 - all producers receive a refund equivalent to 1 % of their quota ⁽³⁾,
 - producers whose individual quota is equal to or less than 160 000 litres also receive a maximum refund of EUR 2 866, which corresponds to a quantity of 10 000 litres,
 - producers whose quota ranges between 160 000 and 169 000 litres receive an additional refund calculated so as to allow them to reach 171 600 litres.
- (17) If a producer is liable for paying the levy laid down in Article 1(1) of Regulation (EC) No 1788/2003, the tax will not be charged for the quantities in question. In accordance with this provision, a levy was established as from 1 April 2004 for 11 consecutive 12-month periods starting on 1 April on quantities of cow's milk and other milk products that are marketed during such a 12-month period and exceed the national reference quantity.

⁽¹⁾ Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector (OJ L 270, 21.10.2003, p. 123).

⁽²⁾ That term also covers the 'rebates' referred to in the decision to initiate an investigation.

⁽³⁾ In fact, according to the information provided by the French authorities, the refund is not calculated on the quota but on the quantity in excess of the quota (see recital 29).

- (18) The tax rate was set at EUR 28,54 per 100 kilograms of milk for the 2006-2007 marketing year and at EUR 27,83 for the following marketing years.
- (19) The revenue from the tax is used to finance the partial or total cessation of dairy production through special aid for this purpose (ACAL). In practice, the beneficiary receives compensation per litre from FranceAgriMer, which is a public body. The other sources of financing for the aid scheme for the cessation of dairy production consist of funds from the system of specific transfers of quotas without land (TSST) ⁽¹⁾, the State budget and, possibly, local funds. A part of the revenue from the tax has also been used to support dairy companies forced to destroy milk contaminated by polychlorinated biphenyls (PCBs) during the 2007-2008 marketing year. According to the French authorities, this financial support was granted under a *de minimis* scheme pursuant to Commission Regulation (EC) No 1998/2006 ⁽²⁾.
- (20) The amount of aid for the cessation of dairy production is calculated as follows:

EUR/litre	2010-2011	2011-2012	2012-2013	2013-2014
Up to 100 000 litres	0,15	0,1125	0,075	0,0375
100 001 to 150 000 litres	0,08	0,06	0,04	0,02
150 001 to 200 000 litres	0,05	0,0375	0,025	0,0125
Over 200 000 litres	0,01	0,0075	0,005	0,0025

- (21) The revenue from the tax and its use varied as follows until the 2010-2011 marketing year:

(EUR)						
Marketing year	Tax levied	Aid for the cessation of dairy production, financed by the tax	Aid for the cessation of dairy production, financed by other taxes	Including the specific transfer of quotas without land	Total aid for the cessation of dairy production	Other activities financed by the tax
2005/2006	17 080 881	No aid scheme for the cessation of dairy production				
2006/2007	11 858 443	12 851 977	21 509 339	21 454 252	34 361 316	
2007/2008	2 959 456	13 228 140	33 848 558	32 798 510	47 076 698	1 260 753
2008/2009	17 183 670	2 571 271	23 411 722	21 311 722	25 982 992	
2009/2010	10 093 611	17 909 294	12 349 799	12 349 799	30 259 093	
2010/2011	12 629 142	9 904 398	18 021 681	18 021 681	27 926 079	
Total	71 805 202	56 465 080	109 141 098	105 935 964	165 606 178	

III. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (22) The Commission decided to initiate the procedure provided for under Article 108(2) TFEU for the following reasons:
- it appeared that the very levying of the tax involved State aid within the meaning of Article 107(1) TFEU, because it included refunds that did not seem to be justified by the logic of the tax system in place; furthermore, those aid elements did not seem justifiable in the light of the State aid rules applied in the agricultural sector,

⁽¹⁾ System for purchasing quotas

⁽²⁾ Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 379, 28.12.2006, p. 5).

- the cessation of dairy production, financed, in particular, by the tax, could be partial or total; however, under the State aid rules applied in the agricultural sector, aid for the cessation of an activity may be declared compatible with the internal market only if all commercial farming activities are discontinued,
- a part of the tax has been used to finance the destruction of milk contaminated by PCBs under a *de minimis* scheme based on Regulation (EC) No 1998/2006; however, it is not certain whether that Regulation was the appropriate legal basis for granting *de minimis* aid in this particular case, besides, choosing an inappropriate legal basis might give rise to State aid whose compatibility with the internal market has not yet been demonstrated,
- the levying of the tax and aid for the cessation of activities might be incompatible with the common organisation of the market in milk or disrupt its operation; the State aid rules concerning agriculture specify that a measure having such characteristics cannot be declared compatible with the internal market.

IV. THE FRENCH AUTHORITIES' COMMENTS ON THE INITIATION OF THE FORMAL PROCEDURE

- (23) In their letter sent by email of 5 December 2012, the French authorities emphasise first of all that there is a legal basis for aid for the cessation of dairy production in Union legislation on the common organisation of the market. That legal basis, provided by Article 75(1)(a) of Council Regulation (EC) No 1234/2007 ⁽¹⁾, allows Member States to grant compensation in one or more annual instalments to producers who undertake to abandon permanently all or part of their milk production and to place the individual reference quantities thus released in the national reserve. According to the French authorities, that Article applies independently of other provisions on the management of milk quotas and on the imposition of a possible levy in the case of overrun quotas.
- (24) The French authorities, referring to the Commission's position whereby financing the cessation of dairy production corresponds *prima facie* to the definition of State aid, go on to underline that Union legislation prior to 2007, and in particular Regulation (EC) No 1788/2003, contained no express reference to the obligation to notify aid concerning products in the milk and milk products sector. They point out that the situation was clarified by Article 180 of Regulation (EC) No 1234/2007, which explicitly subjects aid for the cessation of dairy production to the notification procedure, and that they honestly believed they had complied with Union legislation by regularly submitting information on the compensation system to the Commission via questionnaires. In any case, according to the French authorities, the Commission knew of the existence of aid for the cessation of dairy production, since it had questioned France about the measure when investigating aid for voluntary dairy production cutbacks in Brittany (aid measure N 290/2007 — ARVAL). The authorities conclude their argument by undertaking to notify the Commission of the system in future (as has been done, see recital 53).
- (25) As regards the compatibility of aid for the cessation of dairy production with the internal market and, in particular, the Commission's observation that the scheme does not seem to comply with point 88 of the Community Guidelines for State aid in the agriculture and forestry sector 2007 to 2013 (the '2007-2013 Guidelines') ⁽²⁾, the French authorities argue that the aid scheme for the cessation of dairy production falls under Article 75 of Regulation (EC) No 1234/2007 and that the Commission should take this into account in its analysis. Furthermore, they indicate that only a part of producers' applications for aid for the cessation of dairy production concerns the cessation of activities due to retirement (around 10 % of all eligible producers); those applications meet the conditions for the full and permanent cessation of all commercial farming activities. As regards the other producers, the French authorities consider that the aid scheme for the cessation of dairy production is compatible with the internal market according to points 143 and 144 of the 2007-2013 Guidelines concerning aid for closing of production, processing and marketing capacity for agricultural products.
- (26) As regards points 143 and 144 of the 2007-2013 Guidelines, the French authorities point out that there is overcapacity in the milk sector, as referred to in recital 30 of Regulation (EC) No 1234/2007, and stress that under that Regulation the cessation of activities may be partial or full. In addition, according to the French authorities, aid for the cessation of dairy production meets the condition that the beneficiary must offer a counterpart. The counterpart consists of the specific transfer of quotas without land, a measure introduced

⁽¹⁾ Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ L 299, 16.11.2007, p. 1).

⁽²⁾ OJ C 319, 27.12.2006, p. 1.

in 2006 under Article 18(1)(b) of Regulation (EC) No 1788/2003. Transfers are made against payment by producers who have been granted released milk reference quantities according to a defined scale. Compensation calculated using the same scale as for aid for the cessation of dairy production is paid to producers transferring the milk reference quantity available to them. The scale and its link to aid for the cessation of dairy production are subject to an annual order issued for each marketing year. According to the French authorities, through the specific transfer of quotas without land the receiving sector contributes collectively to aid for the cessation of dairy production equivalent to at least 50 % of the actual public expenditure for implementing the scheme. The aid measure excludes undertakings in difficulty, is accessible under the same conditions to all economic operators, does not create a competitive advantage on the basis of its compensatory nature, since compensation is granted only if the quota is abandoned, and does not result under any circumstance in overcompensation of capital losses and future income, since compensation is granted on a degressive basis (during the period under review the average compensation for abandonment was EUR 0,083/litre, while the value of the quota during the same period was EUR 0,10/litre).

- (27) As regards compensation paid following the destruction of milk contaminated by PCBs, the French authorities stress that the decision of the director of the Office for Livestock on introducing an aid measure to compensate operators for their losses is based both on Regulation (EC) No 1998/2006 and Commission Regulation (EC) No 1535/2007 ⁽¹⁾. Regulation (EC) No 1535/2007 has been applied to aid paid to dairies for the destruction of purchased milk that has undergone first-stage processing after collection, while Regulation (EC) No 1535/2007 has been applied to finance the destruction of raw milk of producers making direct sales. In none of the cases has the loss incurred been overcompensated.
- (28) Finally, as regards refunds, the French authorities point out that the ministerial decrees provided for the application of the refund scheme solely in cases where the surplus levy is payable by the producer under the special fiscal charge system (Taxe Fiscale Affectée, TFA) or the levy under Article 78 of Regulation (EC) No 1234/2007. In other words, the refund was applied as part of a penalty system, which cannot be compared to any preferential treatment of operators. If an overrun of the national quota were found, the refund would apply under Article 84(1) of the Regulation. Consequently, while the effects of the system varied for the different categories of operators, it did not distort competition between producers. Despite incurring a higher tax, a producer with the infrastructure and financial means to produce in excess of its quota was not disadvantaged compared to a producer who could not compete with that producer, despite a reduction of the tax rate. According to the French authorities, trade could not be affected either, because the taxation system was tied to a national production volume and, while the reduced rate allowed certain producers to produce more without any financial consequences, that was because other producers produced less. The quantity of milk finally placed on the market remained the same, and this did not affect trade between Member States.
- (29) As regards the Commission's argument that the scope for public authorities to adjust refunds seems to point to discretionary treatment of economic operators that goes beyond the simple management of tax revenue by reference to objective criteria, which, in the Court of Justice's view, may mean that the individual application of a general measure takes on the features of a selective measure ⁽²⁾, the French authorities underline that a general measure covering all producers was introduced starting in the 2009-2010 marketing year in view of the end of the milk quota system and that the refund threshold of 1 % or 2 % is not discriminatory, because it applies to all milk producers on the basis of the quantity in excess of the individual quota, which *de facto* means a reduction of the tax applied. Similarly, a refund was granted to all small producers on grounds of their fragile situation (production costs, sensitivity to economic fluctuations) in order to adapt their contribution to their capacity level and the size of their production structure, in accordance with the progressivity principles applied to tax brackets. These small producers are producers whose individual quota represents a maximum of 55 % of the average individual quota at national level. Taken together, they represent 25 % of producers and less than 20 % of the national quota.
- (30) For all these reasons, and taking account of the transparent and public nature of the refund measure, the implementation rules for which were clearly explained in the end-of-marketing-year decrees that were published in the *Official Journal of the French Republic* and on the websites of decentralised State services, the French authorities consider that the refund measure does not meet the criteria for a State aid measure within the meaning of Article 107(1) TFEU.

⁽¹⁾ Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the sector of agricultural production (OJ L 337, 21.12.2007, p. 35).

⁽²⁾ Judgment of the Court of Justice of 26 September 1996, *France v Commission*, C-241/94, ECLI: EU:C:1996:353.

- (31) Finally, the French authorities would point out that refunds of the special fiscal charge were also granted on a case-by-case basis in the 2006-2007 and 2007-2008 marketing years to breeders dealing with bluetongue.

V. ADDITIONAL OBSERVATIONS FROM THE FRENCH AUTHORITIES

- (32) In the letter sent by email on 18 February 2013 ⁽¹⁾, the French authorities, who were asked to demonstrate compliance with all State aid rules applicable to aid for retirement and aid for the cessation of activities, provided the following clarifications, having regard to their comments submitted after the initiation of the procedure provided for in Article 108(2) TFEU ⁽²⁾ and following the meeting of 12 December 2012.

Aid for the cessation of dairy production on grounds of retirement

- (33) According to the French authorities, aid for the cessation of dairy production on grounds of retirement became available to farmers starting in the 2009-2010 marketing year, after abolition of national early retirement support. The rules for implementing the latter measure were in line with Article 23 of Council Regulation (EC) No 1698/2005 ⁽³⁾ and, in particular, made the granting of aid conditional upon the cessation of all agricultural activities. These rules have also been applied in relation to aid for the cessation of dairy production. In practice, checks on whether all dairy production has ceased are carried out on the spot by inspectors who visit a sample of farms selected on the basis of a risk analysis made by FranceAgriMer. The inspection rate complies with that laid down in Union legislation. The French authorities state that no irregularities have been detected.

Aid for the cessation of dairy production granted as aid for closing of production, processing and marketing capacity

- (34) After pointing out that aid for the cessation of dairy production may be triggered when the producer ceases dairy production partially or fully, pursuant to Article 75(1)(a) of Regulation (EC) No 1234/2007 and point 144(f) of the 2007-2013 Guidelines, and that in most cases (80 to 90 % depending on the marketing year) this aid is for the full cessation of dairy production, the French authorities analysed the measure in the light of the various conditions provided for in point 144 of the 2007-2013 Guidelines concerning aid for closing of capacity.
- (35) As regards the question of knowing whether the aid implemented serves the general interest of a sector suffering from overcapacity (points 144(a) to (e) of the 2007-2013 Guidelines), the French authorities, after drawing attention to the arguments set out in recital 26, would add that the circulars governing aid for the cessation of dairy production underline that part of the recovered quotas revert to the national reserve for redistribution in connection with the ordinary allocation of quotas and that there is a stated desire to redistribute quotas for the benefit of producers with the capacity to produce in excess of their initial reference quantity and thereby contribute to the competitiveness of the dairy sector by supporting its economic restructuring. Furthermore, they reiterate their request to benefit from point 144(e) of the 2007-2013 Guidelines whereby aid schemes applicable to sectors subject to production limits or quotas will be examined case by case.
- (36) As regards the question of knowing whether the beneficiary of the aid offers a counterpart (point 144(f) of the 2007-2013 Guidelines), the French authorities are examining the case of producers who market their milk through deliveries to a collector and that of producers who market their milk directly to consumers, as direct sales.
- (37) In the case of producers who market their milk through deliveries to a collector, a producer ceasing all production undertakes to give up completely and definitively the delivery and marketing of milk and milk products and must provide a certificate of full and definitive cessation within 30 days of the cessation date and

⁽¹⁾ See recital 13.

⁽²⁾ See recital 25.

⁽³⁾ Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277, 21.10.2005, p. 1).

not later than on 31 March of the year N + 1 (N being the year when the application for cessation aid was submitted). Such a producer must also undertake to no longer apply for quotas. In the case of partial cessation, the producer commits to proving the closure of an establishment (when he owns several establishments) or showing a reduction in the maximum production volume proportional to the reduction in the reference volume for producers who have only one farm. To that end, the producer must be able to present the quota notification drawn up by the purchaser for the marketing year under way as well as the notification of the new quota for the following marketing year. These checks will remain in place until the abolition of the quotas at the end of 2015. A producer who has applied for compensation for partial cessation of activities may not obtain other compensation for this purpose later on. If he applies for and obtains compensation for full cessation, any quotas already compensated on the basis of partial cessation are taken into account in the calculations.

- (38) Producers who market their milk directly to final consumers must send a declaration of cessation of production for direct sales within 30 days of the cessation date.
- (39) Whatever the scenario, FranceAgriMer verifies that the declarations have been made, not only through administrative checks but also on the spot. If irregularities are found, wrongfully obtained compensation is recovered with interest calculated at the statutory rate, and penalties may be imposed under the Criminal Code.
- (40) As regards the principle whereby only producers who have actually been producing and only production capacities that have actually been in use (point 144(g) of the 2007-2013 Guidelines) may be subject to compensation, the French authorities indicate that aid for the cessation of dairy production may be granted only for producers engaged in production.
- (41) As regards limiting eligibility for aid to undertakings fulfilling compulsory minimum standards and excluding producers for which the production capacity has already closed or for which such closure appears inevitable (points 144(i) and (j) of the 2007-2013 Guidelines), the French authorities would stress that the milk, which is delivered and paid for after being analysed, must comply with the minimum requirements for its use by the dairy. No milk-producing undertaking is in a situation where it is obliged to cease production because of lack of compliance with minimum standards. Furthermore, the French authorities have explained that producers subject to judicial reorganisation or liquidation proceedings are not eligible for the aid, nor are undertakings that, although not subject to such proceedings, meet the other criteria for the definition of an undertaking in difficulty (cash-flow difficulties, a sharply reduced turnover, increasing losses, mounting debt, weakening assets).
- (42) As regards accessibility of the scheme to all economic operators in the sector (point 144(k) of the 2007-2013 Guidelines), the French authorities highlight the transparency and publicity of the measure, which render it accessible to all. The rules for accessing and implementing aid for the cessation of dairy production have been described in the various decrees published at the end of marketing years in the *Official Journal of the French Republic* and in circulars.
- (43) As regards the absence of overcompensation of capital losses and future income (point 144(l) of the 2007-2013 Guidelines), the French authorities point out that the compensation scale is degressive according to volume and time. In addition, an individual reference quantity is set at an average of 20 % of the quantities allocated in the five marketing years preceding the application for aid for the cessation of dairy production, and that part is excluded from the calculation of the compensation. In this scheme, the amount of the compensation does not exceed the value of the quota for France as estimated by the Commission. This argument is supported by figures showing that in 2012 the Commission estimated the value of the French quota at EUR 200/1 000 litres, while the value calculated on the basis of the scales used in France is EUR 90/1 000 litres, which serves as a basis for calculating the compensation.
- (44) As for the counterpart offered by the sector (point 144(m) of the 2007-2013 Guidelines), the French authorities indicate that the aid scheme for the cessation of dairy production is financed principally by revenue from the specific transfer of quotas without land, which was established pursuant to Article 75(1)(e) of Regulation (EC) No 1234/2007 and allows producers to acquire quotas against payment. The rest of the financing comes from public and private funds (the State, local and regional authorities and inter-branch organisations).

- (45) Regarding the application of point 144(n) of the 2007-2013 Guidelines, which stipulates that if a Member State introduces a scheme for closing capacity, it must undertake to grant no aid for creating new production capacities in the sector concerned for the five years following the termination of the capacity closure programme, the French authorities stress that aid for the cessation of dairy production aims at restructuring the sector pursuant to the option offered by Regulation (EC) No 1234/2007, that the quotas released within the aid scheme are available to other producers and that the compatibility of this measure provided for by the Regulation should therefore be interpreted by the Commission.

Other considerations

- (46) In its fax of 15 January 2013, the Commission drew attention to the fact that the tax was paid by producers to purchasers but that the refunds provided for by the decrees establishing the tax were also paid to purchasers. Therefore the Commission asked the French authorities to show that purchasers retroceded to producers the amounts refunded.
- (47) In the letter sent by email on 18 February 2013, the French authorities pointed out that the amounts of possible refunds due to producers who have exceeded their reference quantity are deducted at source and consequently deducted directly from the amount of the tax set at the end of the marketing year, and that this retrocession mechanism deducting from the tax owed by the producer in the case of overruns is one of the obligations of approved purchasers under Articles 65 and 85 of Regulation (EC) No 1234/2007, as amended. In addition, purchasers are required to account for refunds under the Rural and Maritime Fisheries Code.
- (48) As regards the refund threshold ⁽¹⁾, the French authorities confirm that the percentages provided for (1 and 2 %) apply to all producers having exceeded their individual quota, and this at an identical rate throughout the marketing year.
- (49) As for determining the quantities entitling to a refund ⁽²⁾, the French authorities explain that the mechanism was designed to adapt the sector in France to the abolition of quotas, the aim being to maintain at an even level the tax on surpluses by granting a refund to small producers in a fragile situation (15 % of producers, or 10 % of the national quota). According to the French authorities, the mechanism complies with the progressivity principles applied to tax brackets referred to in point 24 of the Commission notice on the application of the State aid rules to measures relating to direct business taxation ⁽³⁾, and a supplementary refund mechanism has been introduced for producers who are not eligible for the refund for 'small producers' but are nonetheless in a fragile situation in terms of the reference quantity held, the aim being to avoid threshold effects.
- (50) In their letter of 20 January 2017, the French authorities specified that the refunds referred to in the second and third indents of recital 16 have been placed under a *de minimis* scheme pursuant to the provisions of Commission Regulation (EU) No 1408/2013 ⁽⁴⁾, since at the time they were granted under the conditions laid down in that Regulation, which is retroactively applicable.
- (51) As regards compensation of losses caused by bluetongue, the French authorities explain that the disease changed the behaviour of certain producers, who, seeing their gross margins fall and facing difficulties related, among other things, to the exit ban for cattle, compensated for the reduced margins by producing in excess of their quotas. In this situation, a measure was introduced for refunding the levy applicable under the national scheme for the special fiscal charge or under Article 84(1)(b) of Regulation (EC) No 1234/2007 in case of overruns of the national quota referred to in Article 78 of that Regulation. Refunds were paid as follows:

- during the 2006-2007 marketing year, 5 % of the quota in prohibited areas and 2,5 % in other restricted areas, where losses were smaller,
- during the 2007-2008 marketing year, a maximum refund of 10 000 litres (equivalent to 4 % of the average quota), regardless of the area.

⁽¹⁾ See recital 29.

⁽²⁾ See recital 16, second and third indents.

⁽³⁾ OJ C 384, 10.12.1998, p. 3.

⁽⁴⁾ Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013, p. 9).

- (52) The French authorities state that, if the national quota is not exceeded, the refund scheme complies with all the provisions of sub-chapter V.B.4 of the 2007-2013 Guidelines and with the conditions listed in Article 10(2) of Commission Regulation (EC) No 1857/2006 ⁽¹⁾. They stress the following, in particular:

- the aid has been granted to farmers (points 131, 132(e) and 137 of the 2007-2013 Guidelines),
- the refund intended to compensate eligible farmers for their losses falls under Article 107(3)(c) TFEU, (point 132(a) of the 2007-2013 Guidelines and Article 10(2) and (3) of Regulation (EC) No 1857/2006,
- the refund measure was established on the basis of Union provisions (Council Directive 2000/75/EC ⁽²⁾) and national provisions (Article L 221-1 of the Rural and Maritime Fisheries Code) in order to act against the disease in question (action programmes), which demonstrates the public authorities' concern over this health issue (point 132(b) of the 2007-2013 Guidelines and Article 10(4) of Regulation (EC) No 1857/2006),
- the objective of the refund is to compensate for the different measures recommended or ordered by the competent authorities (point 132(c) of the 2007-2013 Guidelines) and, in particular, for measures restricting or even prohibiting movements of animals,
- the farmer's behaviour has not increased the risk of disease (point 132(d) of the 2007-2013 Guidelines),
- there is no risk of overcompensation (point 136 of the 2007-2013 Guidelines), since it is the only measure relating to the animal disease and therefore there is no risk of accumulation.

VI. EVALUATION

Scope

- (53) Since it was demonstrated at the time of initiating the procedure pursuant to Article 108(2) TFEU (see recitals 24 and 25 of the initiation decision) that the tax levied was not a specific tax within the meaning of the case-law, this analysis concerns two separate components: the tax refunds referred to in recital 16, on the one hand, and aid for the cessation of dairy production financed until the 2011/2012 marketing year, on the other, bearing in mind that the Commission approved on 15 May 2013 an aid scheme for the cessation of dairy production covering the 2012/2013 and 2013/2014 marketing years ⁽³⁾.
- (54) This analysis does not cover aid for the destruction of milk contaminated by PCBs, because the French authorities have provided also in this respect more details on the exact application of the relevant *de minimis* regulations ⁽⁴⁾ and, since aid complying with the conditions of those regulations is considered, on the basis of those rules, as not constituting State aid within the meaning of Article 107(1) of TFEU, the Commission no longer needs to state a position on them. Nor is compensatory aid related to bluetongue the subject of this analysis.

Existence of aid

- (55) According to Article 107(1) TFEU, '[s]ave as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.
- (56) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State

⁽¹⁾ Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001 (OJ L 358, 16.12.2006, p. 3).

⁽²⁾ Council Directive 2000/75/EC of 20 November 2000 laying down specific provisions for the control and eradication of bluetongue (OJ L 327, 22.12.2000, p. 74).

⁽³⁾ State Aid SA.36009 — France, aid for the cessation of dairy production (document C(2013) 2762 final of 15 May 2013).

⁽⁴⁾ See recital 27.

resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States. In the case under review, having regard to the scope of application defined in recitals 53 and 54, this qualification must be assessed at the level of the refunds referred to in recital 16 and of aid for the cessation of dairy production.

- (57) As regards the refunds referred to in the second and third indents of recital 16, the Commission notes that the French authorities have placed them under a *de minimis* scheme in accordance with the provisions of Regulation (EU) No 1408/2013, which is applicable retroactively. This means that they do not constitute State aid within the meaning of Article 107(1) TFEU.
- (58) With respect to the refund referred to in the first indent of recital 16, the Commission, on the basis of information in its possession, considered in connection with the decision initiating the formal investigation procedure that the refund (which was part of the rebates referred to in that decision) contained an aid element, because it was financed by the State, which, by granting the refund, deprived itself of resources. In addition, the refund favoured certain undertakings (the eligible dairy undertakings were relieved from a financial burden imposed on other, taxable, dairy undertakings) and was liable to distort competition and affect trade owing to France's position on the market. The Commission also specified that it was therefore not possible to determine whether the existence and modulation of the refund was justified by the logic of the tax system in place and emphasised that the scope for public authorities to modulate refunds seems to point to discretionary treatment of economic operators that goes beyond the simple management of tax revenue. Finally, there was no indication that the grant equivalent of the rebates could fall under a *de minimis* scheme whereby it could be considered that small amounts of aid do not constitute State aid within the meaning of Article 107(1) TFEU.
- (59) In order to evaluate the relevance of the French authorities' argument that the refund did not constitute preferential treatment of a category of operators, a reference system should be established to verify whether the measure is selective by nature, in other words, whether it favoured certain operators over others who were in an identical factual and legal situation. In the case under review such a system is the one applied to producers who have exceeded their quota (all producers in this category are in an identical factual and legal situation since they are subject to the tax; in contrast, producers who have not exceeded their quota are not in the same factual and legal situation, not only because they remained within the limits of their quota, but also because they were not subject to the tax).
- (60) Considering the information provided by the French authorities, the Commission finds that the refund has been granted without discrimination to all producers who have exceeded their quota and has been modulated from one marketing year to the next and not between eligible producers in the course of the same marketing year. Thus the decree of 17 August 2010 ⁽¹⁾ provided for a refund of the tax on 1 % of the quota for all producers who had exceeded their quota and the decree of 16 August 2011 ⁽²⁾, a refund of the tax on 2 % of the quota, likewise for all producers who had exceeded their quota. The Commission notes further that the system constitutes a penalty, because it applies only in the case of quota overruns. Since this penalty only concerns producers who are in the same factual and legal situation, the refund, applied consistently, does not favour any one of them and therefore is not selective. In other words, the refund does not meet one of the criteria of Article 107(1) TFEU and may therefore be deemed not to constitute State aid, without it being necessary to analyse the other criteria of Article 107(1).
- (61) As for aid for the cessation of dairy production, it confers an advantage to beneficiaries by providing them with resources that their competitors do not have for financing other activities related to agriculture. This advantage is granted through State resources (revenue from the tax and additional resources from public authorities — see recital 11 of the decision initiating the formal investigation procedure) and favours certain undertakings (undertakings in the dairy production sector). According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition ⁽³⁾.

⁽¹⁾ See recital 16.

⁽²⁾ Decree of 16 August 2010 on imposing a tax on milk purchasers and producers who have exceeded their individual delivery quota for the 2010-2011 marketing year (delivery quota decree for end of marketing year).

⁽³⁾ Judgment of the Court of 17 September 1980, Case 730/79, *Philip Morris Holland BV v Commission of the European Communities*, ECLI:EU:C:1980:209.

- (62) Pursuant to the case law of the Court of Justice, State aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade ⁽¹⁾. In the case at hand, the beneficiaries of the aid operate on the dairy product market, where intra-EU trade takes place ⁽²⁾. The sector concerned is open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore aid for the cessation of dairy production is liable to distort competition and affect trade between Member States.
- (63) In light of the above, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that aid for the cessation of milk production constitutes State aid within the meaning of that Article. The aid may only be considered compatible with the internal market if it can benefit from one of the derogations provided for in the TFEU.
- (64) In the case under review, considering the nature of aid for the cessation of dairy production, the only derogation that could be invoked is the one referred to in Article 107(3)(c) TFEU, whereby aid may be considered compatible with the internal market if it is found to facilitate the development of certain economic activities or certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (65) Since aid for the cessation of dairy production has not been notified to the Commission, the applicability of the derogation provided for in Article 107(3)(c) TFEU must be analysed in the light of the State aid rules applicable when the aid was granted. According to the information provided by the French authorities, aid for the cessation of dairy production took two distinct forms: aid for retirement and aid for the closure of capacity. As indicated in recital 33, aid for the cessation of dairy production granted as aid for retirement took over the role of national early retirement support financed as part of rural development policy starting in the 2009-2010 marketing year. Thus the compatibility criteria to be taken into account for the aid are those laid down in the 2007-2013 Guidelines. As regards aid for the closure of capacity, the table in recital 21 shows that aid was granted for the 2006-2007 marketing year. However, the provisions of the decree governing the aid ⁽³⁾ show that the first decisions to grant aid were most likely taken in 2007, in other words after the starting date for applying the 2007-2013 Guidelines. Therefore it is those guidelines that will also serve as a reference when analysing the compatibility of the aid in question.

Aid for retirement

- (66) It is stated in point 85 of the 2007-2013 Guidelines that the aid must be reserved for primary producers (farmers). Under point 87, the Commission will declare State aid for early retirement compatible with Article 87(3)(c) of the Treaty (now Article 107(3)(c) TFEU) if it fulfils the conditions of Article 23 of Regulation (EC) No 1698/2005. In addition, point 88 of the 2007-2013 Guidelines provides for the permanent and definitive cessation of commercial farming activities.
- (67) In the case under review the Commission finds, in the light of recital 33, that only farmers have received aid for the cessation of dairy production in the form of aid for retirement, that the early retirement arrangements implemented in France have been approved as part of rural development policy, in other words notably because they complied with the provisions of Article 23 of Regulation (EC) No 1698/2005, and that the conditions for its approval, including the cessation of all farming activities, were met at the time of granting aid for the cessation of dairy production.
- (68) On the basis of these elements, the Commission concludes that the provisions of the 2007-2013 Guidelines on aid for early retirement or aid for the cessation of farming activities have been complied with.

⁽¹⁾ See in particular the judgment of the Court of 13 July 1988 in Case 102/87, *French Republic v Commission of the European Communities*, ECLI:EU:C:1988:391.

⁽²⁾ In 2011, which is one of the years during which the aid was paid, France was the second largest milk producer in the Union, with 25,27 million tonnes, on a market where intra-Community trade reached some 14 million tonnes, including both imports and exports.

⁽³⁾ Decree of 28 August 2006 on granting compensation for the full or partial cessation of dairy production and implementing specific arrangements for the transfer of reference quantities of milk in the 2006-2007 marketing year.

Aid for the cessation of activity

(69) The 2007-2013 Guidelines lay down the following relevant compatibility conditions:

- the aid must be in the general interest of the sector concerned (point 144(a)),
- if there is overcapacity, the aid must be part of a programme for restructuring, which has defined objectives and a specific timetable, the period for collecting applications being limited to not more than six months and to a further 12 months for actually closing down (points 144(b) and (c)),
- no aid may be granted which would interfere with the mechanisms of the common organisation of the market in agricultural products, with aid schemes applying to sectors which are subject to production limits or quota being evaluated on a case-by-case basis (point 144(e)),
- there must be a counterpart from the beneficiaries, normally consisting of a definitive and irrevocable decision to scrap or irrevocably close the production facility concerned; this will involve either the complete closure of capacity by the undertaking concerned or — in the case of a company operating more than one production site — the closure of a specific production site; legally binding commitments must be obtained from the beneficiary that the closure is definitive and irreversible, and that the beneficiary will not start the same activity elsewhere; these commitments must also bind any future purchaser of the facility concerned (point 144(f));
- only producers who have actually been producing, and only production capacities that have actually been in constant use over the past five years before closing, may be admitted to capacity closure schemes (point 144(g)),
- only undertakings fulfilling compulsory minimum standards are eligible (point 144(i)),
- it should be possible to exclude aid from being paid for the rescue and restructuring of companies in difficulty (point 144(j)),
- the scheme should be accessible to all economic operators in the sector, under the same conditions (point 144(k)),
- the amount of aid should be strictly limited to compensation for the loss of value of assets, plus an incentive payment which may not exceed 20 % of this value (point 144(l)),
- at least half the costs of these aids should be met by a contribution from the sector (point 144(m)),
- no aid should be granted for creating new production capacities in the sector concerned for the five years following the termination of the capacity closure programme (point 144(n)).

(70) Considering that under point 11 of the 2007-2013 Guidelines, the application of Articles 107, 108 and 109 TFEU to sectors covered by the common organisations of the market is subject to the provisions of the regulations concerned, the first condition examined will be compliance with non-interference with the common organisation of the market.

(71) Article 75 of Regulation (EC) No 1234/2007 provides as follows:

‘1. With a view to successfully restructuring milk production or improving the environment, Member States may, in accordance with detailed rules which they shall lay down taking account of the legitimate interests of the parties concerned:

- (a) grant compensation in one or more annual instalments to producers who undertake to abandon permanently all or part of their milk production and place the individual quotas thus released in the national reserve;
- (b) determine on the basis of objective criteria the conditions subject to which producers may obtain, in return for payment, at the beginning of a 12-month period, the re-allocation by the competent authority or a body designated by that authority of individual quotas released definitively at the end of the preceding 12-month period by other producers in return for compensation in one or more annual instalments equal to the abovementioned payment;

[...]’.

- (72) Since said Article 75 describes precisely the intrinsic mechanisms of aid for the cessation of dairy production implemented by France and leaves it up to Member States to adopt methods for implementing the aid scheme for the cessation of dairy production, the Commission concludes that the scheme does not interfere with the common organisation of the market or with its proper functioning.
- (73) As regards the condition that the aid must be in the interest of the sector, the lack of overcapacity cannot be invoked in the case under review, as shown in recital 74 below, nor is the aid linked to any requirements related to health or environmental protection. However, these are not the only criteria that might be involved (their presence is enough to justify the relevance of the aid, but it does not mean that other criteria could not be taken into account) and, in the case under review, the Commission notes that the arguments put forward by the French authorities ⁽¹⁾ are valid, not only because granting aid effectively opens up production possibilities, which have been redistributed in order to improve the competitiveness of undertakings in a quota scheme but also because the mechanism used corresponds to the one applied in the context of the common organisation of the market in question.
- (74) As regards the existence of a restructuring programme with defined objectives and a specific timetable if there is overcapacity in the sector, the Commission finds that the criteria set have been met for the following reasons:
- the sector is in a situation of overcapacity: the main objective of the milk quota scheme provided for in Regulation (EC) No 1234/2007 (and, before that, Regulation (EC) No 1788/2003) is to reduce the imbalance between supply and demand on the market in question as well as the ensuing structural surpluses and to achieve a better market equilibrium (see recital 36 of Regulation (EC) No 1234/2007 and recital 3 of Regulation (EC) No 1788/2003),
 - the granting of aid for the cessation of dairy production is part of arrangements aiming at restructuring production by allowing farmers wishing to do so to leave the sector and make available to others the quantities they could produce,
 - as for the timetable, the decrees governing aid for the cessation of dairy production provide for a deadline for submitting applications of less than six months and for closing down (which in the case under review corresponds to a capacity closure since the quota is withdrawn from the person in question) of less than 12 months. For example, under the decree of 23 June 2009 governing aid for the cessation of dairy production for the 2009-2010 marketing year, aid applications must be submitted by 31 August 2009 and production ceased by 31 March 2010; the decrees concerning the other marketing years set the same deadlines, which vary depending on the date of adoption of the decree but always within the limits laid down in the 2007-2013 Guidelines.
- (75) As regards the counterpart to be offered, the Commission notes, in the light of recitals 36, 37 and 38 that, in order to obtain aid, the beneficiary must abandon permanently all or part of his milk quota. While point 144(f) indicates that the counterpart normally consists of the complete closure of a holding's capacity, it should be pointed out that in the case under review the partial closure of production capacity was provided for by the quota scheme under Regulation (EC) No 1234/2007. In this context, partial closure may be considered a sufficient counterpart on the beneficiary's part. Furthermore, in this case the abandonment of quotas may be equated to the effective closure of an establishment. As regards the commitments to be made, the eligible applicant is required to submit a certificate attesting the permanent cessation of production and may not apply for any new quotas in future. In the case of partial cessation, the declarations to be submitted to the purchaser from one year to another attest the effective reduction of production. Consequently the counterpart criterion has been met.
- (76) As regards the eligibility criterion related to the practice of the activity and the use of the production capacity over the past five years before the closing of the capacity, the Commission notes, as indicated by the French authorities ⁽²⁾, that the beneficiaries must effectively produce and, thereby, use their quota in order to be eligible for the aid. While the decrees governing aid for the cessation of dairy production contain no reference to the five-year period referred to in point 144(g) of the Guidelines, compliance with this period is evidenced by the methods of calculating the aid itself, because, as indicated in recital 43, an individual reference quantity is set at an average of 20 % of the quantities allocated in the five marketing years preceding the application for aid for the cessation of dairy production, and this demonstrates the existence of production during that period. Therefore the Commission considers that the criterion relating to the length of production has been met. As it is necessary

⁽¹⁾ See recital 35.

⁽²⁾ See recital 40.

to examine case-by-case aid applicable to sectors subject to production limits or quotas, the Commission further notes that the provisions of Regulations (EC) No 1788/2003 and (EC) No 1234/2007 contain no indication of a need to comply with the five-year requirement.

- (77) As regards compliance with standards, the explanations given by the French authorities ⁽¹⁾ provide sufficient evidence that the criterion has been met.
- (78) With regard to the possibility to exclude aid from being paid to companies in difficulty, the Commission points out that the criteria listed in recital 41 correspond to those in the definition of a company in difficulty in points 10(c) and 11 of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty ⁽²⁾ of 2004, applicable at the time of awarding the aid in question. Therefore the Commission considers that the criterion relating to the exclusion of companies in difficulty has been met.
- (79) As regards accessibility of the scheme to all economic operators in the sector, the Commission finds that the only exclusions in the aid scheme for the cessation of dairy production concern producers infringing the applicable legislation, for example on the environment or upgrading to standards. Since all those who comply with the legislation have access to the scheme, the Commission considers that the criterion relating to the general accessibility of the scheme has been met.
- (80) As regards strictly limiting the aid to compensation for the loss of value of assets plus an incentive payment which may not exceed 20 % of the value of the assets, the Commission concludes that there is no overcompensation of the actual value of the quota in the light of the figures cited in recital 43 and, in particular, of the fact that one of the components of the individual quantities representing 20 % of those quantities is automatically excluded from the basis for calculating the aid.
- (81) As regards meeting at least half of the costs by a contribution from the sector, the Commission notes, from the table in recital 21 and the explanations by the French authorities ⁽³⁾, that the aid is largely financed by the specific transfer of quotas without land, where it is the producers who contribute to the system by purchasing quotas. The ratio between the amounts derived from the specific transfer of quotas without land and those from other sources of financing, in particular, show that the specific transfer of quotas without land (in other words, producers) finances more than 50 % of the aid for the cessation of dairy production. Therefore the Commission concludes that the criterion related to meeting at least half of the costs by a contribution from the sector has been met.
- (82) Finally, with regard to the ban on creating new capacities in the sector concerned for the five years following the termination of the capacity closure programme, the Commission notes that this criterion is irrelevant in the case under review, because the aid scheme for the cessation of dairy production does not aim at ensuring a net reduction in production capacity in the dairy sector at the national level but at restructuring production within the framework of the national quota, in accordance with Article 75 of Regulation (EC) No 1234/2007 ⁽⁴⁾.

VII. CONCLUSION

- (83) The Commission notes that the refunds referred to in recital 16 do not involve State aid within the meaning of Article 107(1) TFEU.
- (84) Furthermore, the Commission notes that aid for the cessation of dairy production has been granted in compliance with the 2007-2013 Guidelines and that it may therefore be declared compatible with the internal market under Article 107(3)(c) TFEU despite having been unlawfully implemented in breach of Article 108(3) TFEU.

⁽¹⁾ See recital 41.

⁽²⁾ OJ C 244, 1.10.2004, p. 2. The period of validity of those guidelines, originally to expire on 9 October 2009, was extended first until 9 October 2012 (Commission Communication concerning the prolongation of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 156, 9.7.2009, p. 3)), and then a second time (Commission Communication concerning the prolongation of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty of 1 October 2004 (OJ C 296, 2.10.2012, p. 3)), until they were replaced by new rules applied since 1 August 2014 (Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1)).

⁽³⁾ See recital 44.

⁽⁴⁾ See State aid SA.36009 — France, aid for the cessation of dairy production

HAS ADOPTED THIS DECISION:

Article 1

The refunds relating to the tax established by Article 25 of Law No 2005-1720 of 30 December 2005 for the benefit of the national organisation of agriculture and fisheries products (FranceAgriMer) do not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 2

Aid for the cessation of dairy production financed from the beginning of the 2006/2007 marketing year to the end of the 2011/2012 marketing year constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. That aid is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Article 3

This decision is addressed to the French Republic.

Done at Brussels, 27 September 2017.

For the Commission

Phil HOGAN

Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2018/342**of 7 March 2018****amending the Annex to Implementing Decision (EU) 2017/247 on protective measures in relation to outbreaks of highly pathogenic avian influenza in certain Member States***(notified under document C(2018) 1509)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

- (1) Commission Implementing Decision (EU) 2017/247 ⁽³⁾ was adopted following outbreaks of highly pathogenic avian influenza of subtype H5 in a number of Member States ('the concerned Member States'), and the establishment of protection and surveillance zones by the competent authority of the concerned Member States in accordance with Article 16(1) of Council Directive 2005/94/EC ⁽⁴⁾.
- (2) Implementing Decision (EU) 2017/247 provides that the protection and surveillance zones established by the competent authorities of the concerned Member States in accordance with Directive 2005/94/EC are to comprise at least the areas listed as protection and surveillance zones in the Annex to that Implementing Decision. Implementing Decision (EU) 2017/247 also lays down that the measures to be applied in the protection and surveillance zones, as provided for in Article 29(1) and Article 31 of Directive 2005/94/EC, are to be maintained until at least the dates for those zones set out in the Annex to that Implementing Decision.
- (3) Since the date of its adoption, Implementing Decision (EU) 2017/247 has been amended several times to take account of developments in the epidemiological situation in the Union as regards avian influenza. In particular, Implementing Decision (EU) 2017/247 was amended by Commission Implementing Decision (EU) 2017/696 ⁽⁵⁾ in order to lay down rules regarding the dispatch of consignments of day-old chicks from the areas listed in the Annex to Implementing Decision (EU) 2017/247. That amendment took into account the fact that day-old chicks pose a very low risk for the spread of highly pathogenic avian influenza compared to other poultry commodities.
- (4) Implementing Decision (EU) 2017/247 was also subsequently amended by Commission Implementing Decision (EU) 2017/1841 ⁽⁶⁾ in order to strengthen the disease control measures applicable where there is an increased risk for the spread of highly pathogenic avian influenza. Consequently, Implementing Decision (EU) 2017/247 now provides for the establishment at Union level of further restricted zones in the concerned Member States, as referred to in Article 16(4) of Directive 2005/94/EC, following an outbreak or outbreaks of highly pathogenic avian influenza, and the duration of the measures to be applied therein. Implementing Decision (EU) 2017/247 now also lays down rules for the dispatch of live poultry, day-old chicks and hatching eggs from the further restricted zones to other Member States, subject to certain conditions.

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ Commission Implementing Decision (EU) 2017/247 of 9 February 2017 on protective measures in relation to outbreaks of the highly pathogenic avian influenza in certain Member States (OJ L 36, 11.2.2017, p. 62).

⁽⁴⁾ Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC (OJ L 10, 14.1.2006, p. 16).

⁽⁵⁾ Commission Implementing Decision (EU) 2017/696 of 11 April 2017 amending Implementing Decision (EU) 2017/247 on protective measures in relation to outbreaks of the highly pathogenic avian influenza in certain Member States (OJ L 101, 13.4.2017, p. 80).

⁽⁶⁾ Commission Implementing Decision (EU) 2017/1841 of 10 October 2017 amending Implementing Decision (EU) 2017/247 on protective measures in relation to outbreaks of the highly pathogenic avian influenza in certain Member States (OJ L 261, 11.10.2017, p. 26).

- (5) In addition, the Annex to Implementing Decision (EU) 2017/247 has been amended numerous times, mainly to take account of changes in the boundaries of the protection and surveillance zones established by the concerned Member States in accordance with Directive 2005/94/EC.
- (6) The Annex to Implementing Decision (EU) 2017/247 was last amended by Commission Implementing Decision (EU) 2018/314 ⁽¹⁾, following the notification by the Netherlands of a new outbreak of highly pathogenic avian influenza in the province of Groningen of that Member State. The Netherlands also notified the Commission that it had duly taken the necessary measures required in accordance with Directive 2005/94/EC following that outbreak, including the establishment of protection and surveillance zones around the infected poultry holding.
- (7) Since the date of the last amendment made to Implementing Decision (EU) 2017/247 by Implementing Decision (EU) 2018/314, Bulgaria has notified the Commission of a new outbreak of highly pathogenic avian influenza of subtype H5N8 in a poultry holding in the region of Dobrich of that Member State. In addition, Italy has also notified the Commission of a new outbreak of highly pathogenic avian influenza of subtype H5N8 in the region of Lombardia of that Member State.
- (8) Bulgaria and Italy have also notified the Commission that they have taken the necessary measures required in accordance with Directive 2005/94/EC following those recent outbreaks, including the establishment of protection and surveillance zones around the infected poultry holdings in those Member States.
- (9) The Commission has examined those measures in collaboration with Bulgaria and Italy, and the Commission is satisfied that the boundaries of the protection and surveillance zones, established by the competent authorities of Bulgaria and Italy, are at a sufficient distance to the poultry holdings where the outbreaks were confirmed.
- (10) In order to prevent any unnecessary disturbance to trade within the Union, and to avoid unjustified barriers to trade being imposed by third countries, it is necessary to rapidly describe at Union level, in collaboration with Bulgaria and Italy, the protection and surveillance zones established in Bulgaria and Italy, in accordance with Directive 2005/94/EC, following the recent outbreaks of highly pathogenic avian influenza in those Member States.
- (11) Implementing Decision (EU) 2017/247 should therefore be updated to take account of the up-to-date epidemiological situation in Bulgaria and Italy as regards highly pathogenic avian influenza. In particular, the protection and surveillance zones in Bulgaria and Italy, now subject to restrictions in accordance with Directive 2005/94/EC, should be listed in the Annex to Implementing Decision (EU) 2017/247.
- (12) The Annex to Implementing Decision (EU) 2017/247 should therefore be amended to update regionalization at Union level in order to include the protection and surveillance zones established in Bulgaria and in Italy in accordance with Directive 2005/94/EC, following the recent outbreaks of highly pathogenic avian influenza in those Member States, and the duration of the restrictions applicable therein.
- (13) Implementing Decision (EU) 2017/247 should therefore be amended accordingly.
- (14) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Implementing Decision (EU) 2017/247 is amended in accordance with the Annex to this Decision.

⁽¹⁾ Commission Implementing Decision (EU) 2018/314 of 1 March 2018 amending Implementing Decision (EU) 2017/247 on protective measures in relation to outbreaks of the highly pathogenic avian influenza in certain Member States (OJ L 60, 2.3.2018, p. 44).

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 7 March 2018.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX

The Annex to Implementing Decision (EU) 2017/247 is amended as follows:

(1) Part A is amended as follows:

(a) the entry for Bulgaria is replaced by the following:

Member State: Bulgaria

Area comprising:	Date until applicable in accordance with Article 29(1) of Directive 2005/94/EC
Dobrich region, General Toshevo Municipality	
— General Toshevo	30.3.2018'

(b) the entry for Italy is replaced by the following:

Member State: Italy

Area comprising:	Date until applicable in accordance with Article 29(1) of Directive 2005/94/EC
— The area of the parts of Lombardia Region (ADNS 18/0001) contained within a circle of radius of three kilometres, centred on WGS84 dec. coordinates N45.561533 E9.752275	28.3.2018'

(2) Part B is amended as follows:

(a) the entry for Bulgaria is replaced by the following:

Member State: Bulgaria

Area comprising:	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
Dobrich region, General Toshevo Municipality	
— General Toshevo	From 30.3.2018 to 8.4.2018
— Prasad — Yovkovo — Ravnets — Lyulyakovo — Plenimir — Petleshkovo — Malina — Preselentsi — Pizarovo — Chernookovo — Kardam — Snyagovo — Ograzhden — Kapinovo — Dubovik	8.4.2018'

(b) the entry for Italy is replaced by the following:

Member State: Italy

Area comprising:	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
— The area of the parts of Lombardia Region (ADNS 18/0001) contained within a circle of radius of three kilometres, centred on WGS84 dec. coordinates N45.561533 E9.752275	From 29.3.2018 to 6.4.2018
— The area of the parts of Lombardia Region (ADNS 18/0001) extending beyond the area described in the protection zone and within the circle of a radius of ten kilometres, centred on WGS84 dec. coordinates N45.561533 E9.752275	6.4.2018'

CORRIGENDA**Corrigendum to Regulation (EU) 2017/1538 of the European Central Bank of 25 August 2017 amending Regulation (EU) 2015/534 on reporting of supervisory financial information (ECB/2017/25)**

(Official Journal of the European Union L 240 of 19 September 2017)

On page 20, point 2(b) of Annex I:

for: ‘(b) the following paragraph 3 is added:

“3. As an exception to paragraph 2, each NCA may decide that entities referred to in paragraph 2 and established in its Member State report:

- (a) the information specified in template 9.1 or the information specified in template 9.1.1 from Annex IV to Implementing Regulation (EU) No 680/2014;
- (b) the information specified in template 11.1 or the information specified in template 11.2 from Annex IV to Implementing Regulation (EU) No 680/2014;
- (c) the information specified in template 12.0 or the information specified in template 12.1 from Annex IV to Implementing Regulation (EU) No 680/2014”;

read: ‘(b) the following paragraph 4 is added:

“4. As an exception to paragraph 2, each NCA may decide that entities referred to in paragraph 2 and established in its Member State report:

- (a) the information specified in template 9.1 or the information specified in template 9.1.1 from Annex IV to Implementing Regulation (EU) No 680/2014;
 - (b) the information specified in template 11.1 or the information specified in template 11.2 from Annex IV to Implementing Regulation (EU) No 680/2014;
 - (c) the information specified in template 12.0 or the information specified in template 12.1 from Annex IV to Implementing Regulation (EU) No 680/2014”;
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