

Official Journal of the European Union

L 261



English edition

Legislation

Volume 63

11 August 2020

Contents

II *Non-legislative acts*

INTERNATIONAL AGREEMENTS

- ★ **Information concerning the entry into force of the Air Transport Agreement between the European Community and its Member States, of the one part, and the United States of America, of the other part** 1

REGULATIONS

- ★ **Commission Delegated Regulation (EU) 2020/1182 of 19 May 2020 amending, for the purposes of its adaptation to technical and scientific progress, Part 3 of Annex VI to Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures ⁽¹⁾** 2

DECISIONS

- ★ **Commission Decision (EU) 2020/1183 of 25 February 2020 on State aid SA.34445 (2012/C) implemented by Denmark for the transfer of property-related assets from FIH to the FSC ⁽¹⁾** 16
- ★ **Commission Decision (EU) 2020/1184 of 17 July 2020 on the national provisions notified by Hungary pursuant to Article 114(4) of the Treaty on the Functioning of the European Union concerning the cadmium content in phosphate fertilisers (notified under document C(2020) 4862)** 42
- ★ **Commission Implementing Decision (EU) 2020/1185 of 10 August 2020 amending the Annex to Implementing Decision 2014/709/EU concerning animal health control measures relating to African swine fever in certain Member States (notified under document C(2020) 5559) ⁽¹⁾** 55

⁽¹⁾ Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

RECOMMENDATIONS

★ Council Recommendation (EU) 2020/1186 of 7 August 2020 amending Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction	83
--	----

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Information concerning the entry into force of the Air Transport Agreement between the European Community and its Member States, of the one part, and the United States of America, of the other part

The Air Transport Agreement between the European Community and its Member States, of the one part, and the United States of America, of the other part, signed in Brussels on 25 April 2007, and in Washington DC on 30 April 2007, entered into force on 29 June 2020, in accordance with Article 26 of the Agreement, as the last notification was deposited on 29 May 2020.

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2020/1182

of 19 May 2020

amending, for the purposes of its adaptation to technical and scientific progress, Part 3 of Annex VI to Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures

(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 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 ⁽¹⁾, and in particular Article 37(5) thereof,

Whereas:

- (1) Table 3 of Part 3 of Annex VI to Regulation (EC) No 1272/2008 contains the list of harmonised classification and labelling of hazardous substances based on the criteria set out in Parts 2 to 5 of Annex I to that Regulation.
- (2) Proposals to introduce harmonised classification and labelling of certain substances and to update or delete the harmonised classification and labelling of certain other substances have been submitted to the European Chemicals Agency ('Agency') pursuant to Article 37 of Regulation (EC) No 1272/2008. Based on the opinions ⁽²⁾ on those proposals issued by the Committee for Risk Assessment of the Agency (RAC), as well as on the comments received from the parties concerned, it is appropriate to introduce, update or delete the harmonised classification and labelling of certain substances. Those RAC opinions are:
 - Opinion of 8 June 2018 concerning nitric acid ... %[C ≤ 70 %];
 - Opinion of 9 March 2018 concerning silicon carbide fibres (with diameter < 3 µm, length > 5 µm and aspect ratio ≥ 3:1);
 - Opinion of 8 June 2018 concerning trimethoxyvinylsilane; trimethoxy(vinyl)silane;
 - Opinion of 8 June 2018 concerning tris(2-methoxyethoxy)vinylsilane; 6-(2-methoxyethoxy)-6-vinyl-2,5,7,10-tetraoxa-6-silaundecane;
 - Opinion of 8 June 2018 concerning dimethyl disulphide;
 - Opinion of 8 June 2018 concerning granulated copper;
 - Opinion of 30 November 2018 concerning bis(N-hydroxy-N-nitrosocyclohexylaminato-O,O')copper; bis(N-cyclohexyl-diazonium-dioxy)-copper; [Cu-HDO];
 - Opinion of 14 September 2018 concerning dioctyltin dilaurate; [1] stannane, dioctyl-, bis(coco acyloxy) derivs. [2];
 - Opinion of 30 November 2018 concerning dibenzo[def,p]chrysene; dibenzo[a,l]pyrene;

⁽¹⁾ OJ L 353, 31.12.2008, p. 1.

⁽²⁾ The opinions are accessible via the following website: https://echa.europa.eu/registry-of-clh-intentions-until-outcome/-/dislist/name/-/ecNumber/-/casNumber/-/dte_receiptFrom/-/dte_receiptTo/-/prc_public_status/Opinion+Adopted/dte_withdrawnFrom/-/dte_withdrawnTo/-/sbm_expected_submissionFrom/-/sbm_expected_submissionTo/-/dte_finalise_deadlineFrom/-/dte_finalise_deadlineTo/-/haz_additional_hazard/-/lec_submitter/-/dte_assessmentFrom/-/dte_assessmentTo/-/prc_regulatory_programme/-/

- Opinion of 9 March 2018 concerning ipconazole (ISO); (1*RS*,2*SR*,5*RS*;1*RS*,2*SR*,5*SR*)-2-(4-chlorobenzyl)-5-isopropyl-1-(1*H*-1,2,4-triazol-1-ylmethyl)cyclopentanol;
- Opinion of 8 June 2018 concerning bis(2-(2-methoxyethoxy)ethyl)ether; tetraglyme;
- Opinion of 8 June 2018 concerning paclobutrazol (ISO); (2*RS*,3*RS*)-1-(4-chlorophenyl)-4,4-dimethyl-2-(1*H*-1,2,4-triazol-1-yl)pentan-3-ol;
- Opinion of 8 June 2018 concerning 2,2-bis(bromomethyl)propane-1,3-diol;
- Opinion of 14 September 2018 concerning geraniol; (2*E*)-3,7-dimethylocta-2,6-dien-1-ol;
- Opinion of 28 January 2019 concerning 2-(4-*tert*-butylbenzyl)propionaldehyde;
- Opinion of 9 March 2018 concerning MCPA-thioethyl (ISO); *S*-ethyl (4-chloro-2-methylphenoxy)ethanethioate; *S*-ethyl 4-chloro-*o*-tolylxythioacetate;
- Opinion of 9 March 2018 concerning diisooctyl phthalate;
- Opinion of 14 September 2018 concerning 4-[[6-chloropyridin-3-yl)methyl](2,2-difluoroethyl) amino}furan-2(5*H*)-one; flupyradifurone;
- Opinion of 30 November 2018 concerning thien carbazone-methyl (ISO); methyl 4- [(4,5-dihydro-3-methoxy-4-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl)carbonylsulfamoyl]-5-methylthiophene-3-carboxylate;
- Opinion of 9 March 2018 concerning L-(+)-lactic acid; (2*S*)-2-hydroxypropanoic acid;
- Opinion of 9 March 2018 concerning 2-methoxyethyl acrylate;
- Opinion of 8 June 2018 concerning glyoxylic acid ...%;
- Opinion of 14 September 2018 concerning sodium *N*-(hydroxymethyl)glycinate; [formaldehyde released from sodium *N*-(hydroxymethyl)glycinate];
- Opinion of 30 November 2018 concerning potassium (oxido-*NNO*-azoxy)cyclohexane; cyclohexylhydroxydiazene 1-oxide, potassium salt; [K-HDO];
- Opinion of 14 September 2018 concerning mecetronium etilsulfate; *N*-ethyl-*N,N*-dimethylhexadecan-1-aminium ethyl sulfate; mecetronium ethyl sulphate [MES];
- Opinion of 9 March 2018 concerning (2*RS*)-2-[4-(4-chlorophenoxy)-2-(trifluoromethyl)phenyl]-1-(1*H*-1,2,4-triazol-1-yl)propan-2-ol; mefentrifluconazole;
- Opinion of 30 November 2018 concerning oxathiapirolin (ISO); 1-(4-{4-[5-(2,6-difluorophenyl)-4,5-dihydro-1,2-oxazol-3-yl]-1,3-thiazol-2-yl}piperidin-1-yl)-2-[5-methyl-3-(trifluoromethyl)-1*H*-pyrazol-1-yl]ethanone;
- Opinion of 14 September 2018 concerning pyriothione zinc; (*T*-4)-bis[1-(hydroxy- κ .O) pyridine-2(1*H*)-thionato- κ .S]zinc;
- Opinion of 30 November 2018 concerning 3-chloro-4-(chloromethyl)-1-[3-trifluoromethyl)phenyl]pyrrolidin-2-one; flurochloridone (ISO);
- Opinion of 30 November 2018 concerning 4,5-dichloro-2-octyl-2*H*-isothiazol-3-one; [DCOIT];
- Opinion of 8 June 2018 concerning 2-methyl-1,2-benzothiazol-3(2*H*)-one; [MBIT];
- Opinion of 30 November 2018 concerning 3-(difluoromethyl)-1-methyl-*N*-(3',4',5'-trifluorobiphenyl-2-yl)pyrazole-4-carboxamide; fluxapyroxad;
- Opinion of 8 June 2018 concerning *N*-(hydroxymethyl)acrylamide; methylolacrylamide; [NMA];
- Opinion of 15 October 2018 concerning 5-fluoro-1,3-dimethyl-*N*-[2-(4-methylpentan-2-yl)phenyl]-1*H*-pyrazole-4-carboxamide; 2'-[(*RS*)-1,3-dimethylbutyl]-5-fluoro-1,3-dimethylpyrazole-4-carboxanilide; penflufen;
- Opinion of 30 November 2018 concerning iprovalicarb(ISO); isopropyl [(2*S*)-3-methyl-1-[[1-(4-methylphenyl)ethyl]amino]-1-oxobutan-2-yl]carbamate;

- Opinion of 30 November 2018 concerning silthiofam (ISO); *N*-allyl-4,5-dimethyl-2-(trimethylsilyl)thiophene-3-carboxamide;
 - Opinion of 9 March 2018 concerning Margosa, ext. [cold-pressed oil of *Azadirachta indica* seeds without shells extracted with super-critical carbon dioxide];
 - Opinion of 8 June 2018 concerning nitric acid ...%[C> 70 %];
 - Opinion of 9 March 2018 concerning octamethylcyclotetrasiloxane; [D4];
 - Opinion of 30 November 2018 concerning pirimiphos-methyl (ISO); O-[2-(diethylamino)-6-methylpyrimidin-4-yl] O,O-dimethyl phosphorothioate;
 - Opinion of 30 November 2018 concerning phosphine;
 - Opinion of 14 September 2018 concerning dichlorodioctylstannane;
 - Opinion of 30 November 2018 concerning 2-ethylhexyl 10-ethyl-4,4-dioctyl-7-oxo-8-oxa-3,5-dithia-4-stannatetradecanoate; [DOTE];
 - Opinion of 30 November 2018 concerning lead;
 - Opinion of 14 September 2018 concerning 2-butoxyethanol; ethylene glycol monobutyl ether;
 - Opinion of 30 November 2018 concerning *m*-bis(2,3-epoxypropoxy)benzene; resorcinol diglycidyl ether;
 - Opinion of 14 September 2018 concerning tribenuron-methyl (ISO); methyl 2- [N-(4-methoxy-6-methyl-1,3,5-triazin-2-yl)-N-methylcarbamoylsulfamoyl]benzoate;
 - Opinion of 8 June 2018 concerning azoxystrobin (ISO); methyl (E)-2-{2-[6-(2-cyanophenoxy)pyrimidin-4-yl]oxy}phenyl-3-methoxyacrylate;
 - Opinion of 9 March 2018 concerning ethofumesate (ISO); (RS)-2-ethoxy-2,3-dihydro-3,3-dimethylbenzofuran-5-yl methanesulfonate;
 - Opinion of 30 November 2018 concerning 2,4-dinitrophenol;
 - Opinion of 14 September 2018 concerning mesotrione (ISO); 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione;
 - Opinion of 30 November 2018 concerning octhilineone (ISO); 2-octyl-2*H*-isothiazol-3-one; [OIT];
 - Opinion of 14 September 2018 concerning hymexazol (ISO); 3-hydroxy-5-methylisoxazole;
 - Opinion of 30 November 2018 concerning hexythiazox (ISO); *trans*-5-(4-chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxo-3-thiazolidine-carboxamide;
 - Opinion of 9 March 2018 concerning pymetrozine (ISO); (E)-4,5-dihydro-6-methyl-4-(3-pyridylmethylene amino)-1,2,4-triazin-3(2*H*)-one;
 - Opinion of 9 March 2018 concerning imiprothrin (ISO); reaction mass of: [2,4-dioxo-(2-propyn-1-yl)imidazolidin-3-yl]methyl(1*R*)-*cis*-chrysanthemate; [2,4-dioxo-(2-propyn-1-yl)imidazolidin-3-yl]methyl(1*R*)-*trans*-chrysanthemate;
 - Opinion of 14 September 2018 concerning butanone oxime; ethyl methyl ketoxime; ethyl methyl ketone oxime;
 - Opinion of 8 June 2018 concerning bis(α,α -dimethylbenzyl) peroxide;
 - Opinion of 9 March 2018 concerning branched hexatriacontane;
 - Opinion of 30 November 2018 concerning hexyl 2-(1-(diethylaminohydroxyphenyl) methanoyl)benzoate; hexyl 2-[4-(diethylamino)-2-hydroxybenzoyl]benzoate.
- (3) With regard to the substance lead (CAS number 7439-92-1 and index numbers 082-013-00-1 (lead powder; [particle diameter < 1 mm]); and 082-014-00-7 (lead massive; [particle diameter $\geq$ 1 mm]));, RAC proposed in its opinion of 30 November 2018 to apply the same environmental classification to the massive and the powder form. However, in view of the lower dissolution rate of the massive form, the malleable structure of lead, the specific intentional production of the powder and the different environmental classification between massive and powder forms for existing entries in Annex VI for other metals, further assessment needs to be done by RAC on whether to apply the same environmental classification to the massive as to the powder form of lead. In addition, new scientific data has been made available suggesting that the environmental classification for the massive form as recommended in the RAC opinion might not be appropriate. Therefore, the environmental classification for the massive form will not be included in Annex VI to Regulation (EC) No 1272/2008 until RAC has had the opportunity to deliver a revised opinion.

- (4) With regard to the substance 2-butoxyethanol; ethylene glycol monobutyl ether; (CAS number 111-76-2), new scientific data has been made available for the hazard class 'acute toxicity (inhalation)' which suggests that the classification for this hazard class as recommended in the RAC opinion, which is based on older data, might not be appropriate. Therefore, this hazard class should not be modified in Annex VI to Regulation (EC) No 1272/2008 until RAC has had the opportunity to deliver a revised opinion based on the new information, while all other hazard classes covered by the RAC opinion should be included.
- (5) Regulation (EC) No 1272/2008 should therefore be amended accordingly.
- (6) Compliance with the new or updated harmonised classifications should not be required immediately as a certain period of time is necessary to allow suppliers to adapt the labelling and packaging of substances and mixtures to the new or revised classifications and to sell existing stocks subject to the pre-existing regulatory requirements. That period of time is also necessary to allow suppliers sufficient time to take the actions required to ensure continuing compliance with other legal requirements following the changes made under this Regulation. Such requirements may include those set out in point (f) of Article 22(1) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council ⁽³⁾ or those set out in Article 50 of Regulation (EU) No 528/2012 of the European Parliament and of the Council ⁽⁴⁾.
- (7) Suppliers should, however, have the possibility to apply the new classification, labelling and packaging provisions on a voluntary basis before the date of application of this Regulation. This is consistent with the approach taken under Article 61(2) of Regulation (EC) No 1272/2008,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 1272/2008

Table 3 of Part 3 of Annex VI to Regulation (EC) No 1272/2008 is amended as set out in the Annex to this Regulation.

Article 2

Entry into force and application

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

It shall apply from 1 March 2022.

By way of derogation from the second paragraph of this Article, substances and mixtures may, before 1 March 2022 be classified, labelled and packaged in accordance with Regulation (EC) No 1272/2008 as amended by this Regulation.

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

Done at Brussels, 19 May 2020.

For the Commission

The President

Ursula VON DER LEYEN

⁽³⁾ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

⁽⁴⁾ Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1).

In Annex VI to Regulation (EC) No 1272/2008, Table 3 of Part 3 is amended as follows:

(1) the following entries are inserted:

Index No	Chemical name	EC No	CAS No	Classification		Labelling			Specific Conc. Limits, M-factors and ATE	Notes
				Hazard Class and Category Code(s)	Hazard statement Code(s)	Pictogram, Signal Word Code(s)	Hazard statement Code(s)	Suppl. Hazard statement Code(s)		
'007-030-00-3	nitric acid ...% [C ≤ 70 %]	231-714-2	7697-37-2.	Ox. Liq. 3 Acute Tox. 3 Skin Corr. 1A	H272 H331 H314	GHS03 GHS06 GHS05 Dgr	H272 H331 H314	EUH071	Ox. Liq. 3; H272: C ≥ 65 % inhalation: ATE = 2,65 mg/L (vapours) Skin Corr. 1A; H314: C ≥ 20 % Skin Corr. 1B; H314: 5 % ≤ C < 20 %	B'
'014-048-00-5	silicon carbide fibres (with diameter < 3 µm, length > 5 µm and aspect ratio ≥ 3:1)	206-991-8	409-21-2 308076-74-6	Carc. 1B	H350i	GHS08 Dgr	H350i'			
'014-049-00-0	trimethoxyvinylsilane; trimethoxy(vinyl)silane	220-449-8	2768-02-7	Skin Sens. 1B	H317	GHS07 Wng	H317'			
'014-050-00-6	tris(2-methoxyethoxy)vinylsilane; 6-(2-methoxyethoxy)-6-vinyl-2,5,7,10-tetra-oxa-6-silaundecane	213-934-0	1067-53-4	Repr. 1B	H360FD	GHS08 Dgr	H360FD'			
'016-098-00-3	dimethyl disulphide	210-871-0	624-92-0	Flam. Liq. 2 Acute Tox. 3 Acute Tox. 3 STOT SE 3 STOT SE 1 Eye Irrit. 2 Skin Sens. 1 Aquatic Acute 1 Aquatic Chronic 1	H225 H331 H301 H336 H370 (upper respiratory tract, inhalation) H319 H317 H400 H410	GHS02 GHS06 GHS08 GHS09 Dgr	H225 H331 H301 H336 H370 (upper respiratory tract, inhalation) H319 H317 H410		inhalation: ATE = 5 mg/L (vapours) oral: ATE = 190 mg/kg bw M = 1 M = 10'	

Index No	Chemical name	EC No	CAS No	Classification		Labelling			Specific Conc. Limits, M-factors and ATE	Notes
				Hazard Class and Category Code(s)	Hazard statement Code(s)	Pictogram, Signal Word Code(s)	Hazard statement Code(s)	Suppl. Hazard statement Code(s)		
'029-024-00-X	granulated copper; [particle length: from 0,9 mm to 6,0 mm; particle width: from 0,494 to 0,949 mm]	231-159-6	7440-50-8	Aquatic Chronic 2	H411	GHS09	H411'			
'029-025-00-5	bis(N-hydroxy-N-nitrosocyclohexylamino-O,O')copper; bis(N-cyclohexyl-diazonium-dioxy)-copper; [Cu-HDO]	239-703-4	312600-89-8 15627-09-5	Flam. Sol. 1 Acute Tox. 4 STOT RE 2 Eye Dam. 1 Aquatic Acute 1 Aquatic Chronic 1	H228 H302 H373 (liver) H318 H400 H410	GHS02 GHS07 GHS08 GHS05 GHS09 Dgr	H228 H302 H373(liver) H318 H410		oral: ATE = 360 mg/kg bw M = 1 M = 1'	
'050-031-00-9	dioctyltin dilaurate; [1] stannane, dioctyl-, bis (coco acyloxy) derivs. [2]	222-883-3 [1] 293-901-5 [2]	3648-18-8 [1] 91648-39-4 [2]	Repr. 1B STOT RE 1	H360D H372 (immune system)	GHS08 Dgr	H360D H372 (immune system)'			
'601-092-00-0	dibenzo[def,p]chrysene; dibenzo[a,l]pyrene	205-886-4	191-30-0	Carc. 1B Muta. 2	H350 H341	GHS08 Dgr	H350 H341		Carc. 1B; H350: C ≥ 0,001 %'	
'603-237-00-3	ipconazole (ISO); (1RS,2SR,5RS;1RS,2S-R,5SR)-2-(4-chlorobenzyl)-5-isopropyl-1-(1H-1,2,4-triazol-1-ylmethyl)cyclopentanol	-	125225-28-7 115850-69-6 115937-89-8	Repr. 1B Acute Tox. 4 STOT RE 2 Aquatic Chronic 1	H360D H302 H373 (eyes, skin, liver) H410	GHS08 GHS07 GHS09 Dgr	H360D H302 H373 (eyes, skin, liver) H410		oral: ATE = 500 mg/kg bw M = 100'	
'603-238-00-9	bis(2-(2-methoxyethoxy)ethyl)ether; tetraglyme	205-594-7	143-24-8	Repr. 1B	H360FD	GHS08 Dgr	H360FD'			
'603-239-00-4	paclobutrazol (ISO); (2RS,3RS)-1-(4-chlorophenyl)-4,4-dimethyl-2-(1H-1,2,4-triazol-1-yl)pentan-3-ol	-	76738-62-0	Repr. 2 Acute Tox. 4 Acute Tox. 4 Eye Irrit. 2 Aquatic Acute 1 Aquatic Chronic 1	H361d H332 H302 H319 H400 H410	GHS08 GHS07 GHS09 Wng	H361d H332 H302 H319 H410		inhalation: ATE = 3,13 mg/L (dusts or mists) oral: ATE = 490 mg/kg bw M = 10 M = 10'	

Index No	Chemical name	EC No	CAS No	Classification		Labelling			Specific Conc. Limits, M-factors and ATE	Notes
				Hazard Class and Category Code(s)	Hazard statement Code(s)	Pictogram, Signal Word Code(s)	Hazard statement Code(s)	Suppl. Hazard statement Code(s)		
'603-240-00-X	2,2-bis(bromomethyl) propane-1,3-diol	221-967-7	3296-90-0	Carc. 1B Muta. 1B	H350 H340	GHS08 Dgr	H350 H340'			
'603-241-00-5	geraniol; (2E)-3,7-dimethylocta-2,6-dien-1-ol	203-377-1	106-24-1	Skin Sens. 1	H317	GHS07 Wng	H317'			
'605-041-00-3	2-(4-tert-butylbenzyl) propionaldehyde	201-289-8	80-54-6	Repr. 1B	H360Fd	GHS08 Dgr	H360Fd'			
'607-738-00-8	MCPA-thioethyl (ISO); S-ethyl (4-chloro-2-methylphenoxy)ethanethioate; S-ethyl 4-chloro-o-tolylox-ythioacetate	246-831-4	25319-90-8	Acute Tox. 4 STOT RE. 2 Aquatic Acute 1 Aquatic Chronic 1	H302 H373 (liver) H400 H410	GHS07 GHS08 GHS09 Wng	H302 H373 (liver) H410		oral: ATE = 450 mg/kg bw M = 10 M = 10'	
'607-740-00-9	diisooctyl phthalate	248-523-5	27554-26-3	Repr. 1B	H360FD	GHS08 Dgr	H360FD'			
'607-741-00-4	4-[[[6-chloropyridin-3-yl)methyl](2,2-difluoroethyl)amino]furan-2(5H)-one; flupyra-difurone	-	951659-40-8	Acute Tox. 4 STOT RE 2 Aquatic Acute 1 Aquatic Chronic 1	H302 H373 (muscle) H400 H410	GHS07 GHS08 GHS09 Wng	H302 H373 (muscle) H410		oral: ATE = 500 mg/kg bw M = 10 M = 10'	
'607-742-00-X	thien carbazone-methyl (ISO); methyl 4-[(4,5-dihydro-3-methoxy-4-methyl-5-oxo-1H-1,2,4-triazol-1-yl)carbonylsulfamoyl]-5-methylthiophene-3-carboxylate	-	317815-83-1	Aquatic Acute 1 Aquatic Chronic 1	H400 H410	GHS09 Wng	H410		M = 1000 M = 1000'	
'607-743-00-5	L-(+)-lactic acid; (2S)-2-hydroxypropionic acid	201-196-2	79-33-4	Skin Corr. 1C Eye Dam. 1	H314 H318	GHS05 Dgr	H314	EUH071'		

Index No	Chemical name	EC No	CAS No	Classification		Labelling			Specific Conc. Limits, M-factors and ATE	Notes
				Hazard Class and Category Code(s)	Hazard statement Code (s)	Pictogram, Signal Word Code(s)	Hazard statement Code(s)	Suppl. Hazard statement Code(s)		
'607-744-00-0	2-methoxyethyl acrylate	221-499-3	3121-61-7	Flam. Liq. 3 Muta. 2 Repr. 1B Acute Tox. 3 Acute Tox. 4 Skin Corr. 1C Eye Dam. 1 Skin Sens. 1	H226 H341 H360FD H331 H302 H314 H318 H317	GHS02 GHS05 GHS06 GHS08 Dgr	H226 H341 H360FD H331 H302 H314 H317	EUH071	inhalation: ATE = 2,7 mg/L (vapours) oral: ATE = 404 mg/kg bw	
'607-745-00-6	glyoxylic acid ...%	206-058-5	298-12-4	Eye Dam. 1 Skin Sens. 1B	H318 H317	GHS05 GHS07 Dgr	H318 H317			B'
'607-746-00-1	sodium N-(hydroxymethyl)glycinate; [formaldehyde released from sodium N-(hydroxymethyl)glycinate]	274-357-8	70161-44-3	Carc. 1B Muta. 2 Acute Tox. 4 Acute Tox. 4 STOT SE 3 Skin Irrit. 2 Eye Irrit. 2 Skin Sens. 1	H350 H341 H332 H302 H335 H315 H319 H317	GHS08 GHS07 Dgr	H350 H341 H332 H302 H335 H315 H319 H317		inhalation: ATE = 3 mg/L (dusts or mists) oral: ATE = 1100 mg/kg bw	8 9'
'611-181-00-6	potassium (oxido-N-NO-azoxy)cyclohexane; cyclohexylhydroxydiazene 1-oxide, potassium salt; [K-HDO]	-	66603-10-9	Flam. Sol. 1 Acute Tox. 3 STOT RE 2 Skin Irrit. 2 Eye Dam. 1 Aquatic Chronic 2	H228 H301 H373 (liver) H315 H318 H411	GHS02 GHS06 GHS08 GHS05 GHS09 Dgr	H228 H301 H373 (liver) H315 H318 H411		oral: ATE = 136 mg/kg bw	
'612-294-00-3	mecetronium etilsulfate; N-ethyl-N,N-dimethylhexadecan-1-aminium ethyl sulfate; mecetronium ethyl sulphate; [MES]	221-106-5	3006-10-8	Skin Corr. 1 Eye Dam. 1 Aquatic Acute 1 Aquatic Chronic 1	H314 H318 H400 H410	GHS05 GHS09 Dgr	H314 H410	EUH071	M = 100 M = 1000'	
'613-331-00-6	(2RS)-2-[4-(4-chlorophenoxy)-2-(trifluoromethyl)phenyl]-1-(1H-1,2,4-triazol-1-yl)propan-2-ol; mefentrifluconazole	-	1417782-03-6	Skin Sens. 1 Aquatic Acute 1 Aquatic Chronic 1	H317 H400 H410	GHS07 GHS09 Wng	H317 H410		M = 1 M = 1'	

Index No	Chemical name	EC No	CAS No	Classification		Labelling			Specific Conc. Limits, M-factors and ATE	Notes
				Hazard Class and Category Code(s)	Hazard statement Code(s)	Pictogram, Signal Word Code(s)	Hazard statement Code(s)	Suppl. Hazard statement Code(s)		
'613-332-00-1	oxathiapiprolin (ISO); 1-(4-{4-[5-(2,6-difluorophenyl)-4,5-dihydro-1,2-oxazol-3-yl]-1,3-thiazol-2-yl}piperidin-1-yl)-2-[5-methyl-3-(trifluoromethyl)-1H-pyrazol-1-yl]ethanone	-	1003318-67-9	Aquatic Chronic 1	H410	GHS09 Wng	H410		M = 1'	
'613-333-00-7	pyrithione zinc; (T-4)-bis[1-(hydroxy-kappa.O)pyridine-2(1H)-thionato-kappa.S]zinc	236-671-3	13463-41-7	Repr. 1B Acute Tox. 2 Acute Tox. 3 STOT RE 1 Eye Dam. 1 Aquatic Acute 1 Aquatic Chronic 1	H360D H330 H301 H372 H318 H400 H410	GHS08 GHS06 GHS05 GHS09 Dgr	H360D H330 H301 H372 H318 H410		inhalation: ATE = 0,14 mg/L (dusts or mists) oral: ATE = 221 mg/kg bw M = 1000 M = 10'	
'613-334-00-2	flurochloridone (ISO); 3-chloro-4-(chloromethyl)-1-[3-(trifluoromethyl)phenyl]pyrrolidin-2-one	262-661-3	61213-25-0	Repr. 1B Acute Tox. 4 Skin Sens. 1 Aquatic Acute 1 Aquatic Chronic 1	H360FD H302 H317 H400 H410	GHS08 GHS07 GHS09 Dgr	H360FD H302 H317 H410		oral: ATE = 500 mg/kg bw M = 100 M = 100'	
'613-335-00-8	4,5-dichloro-2-octyl-2H-isothiazol-3-one; [DCOIT]	264-843-8	64359-81-5	Acute Tox. 2 Acute Tox. 4 Skin Corr. 1 Eye Dam. 1 Skin Sens. 1A Aquatic Acute 1 Aquatic Chronic 1	H330 H302 H314 H318 H317 H400 H410	GHS06 GHS05 GHS09 Dgr	H330 H302 H314 H317 H410	EUH071	inhalation: ATE = 0,16 mg/L (dusts or mists) oral: ATE = 567 mg/kg bw Skin Irrit. 2; H315: 0,025 % ≤ C < 5 % Eye Irrit. 2; H319: 0,025 % ≤ C < 3 % Skin Sens. 1A; H317: C ≥ 0,0015 % M = 100 M = 100'	

Index No	Chemical name	EC No	CAS No	Classification		Labelling			Specific Conc. Limits, M-factors and ATE	Notes
				Hazard Class and Category Code(s)	Hazard statement Code(s)	Pictogram, Signal Word Code(s)	Hazard statement Code(s)	Suppl. Hazard statement Code(s)		
'613-336-00-3	2-methyl-1,2-benzothiazol-3(2H)-one; [MBIT]	-	2527-66-4	Acute Tox. 4 Acute Tox. 3 Skin Corr. 1C Eye Dam. 1 Skin Sens. 1A Aquatic Acute 1 Aquatic Chronic 2	H312 H301 H314 H318 H317 H400 H411	GHS06 GHS05 GHS09 Dgr	H312 H301 H314 H317 H410	EUH071	dermal: ATE = 1100 mg/kg bw oral: ATE = 175 mg/kg bw Skin Sens. 1A; H317: C ≥ 0,0015 % M = 1'	
'616-228-00-4	3-(difluoromethyl)-1-methyl-N-(3',4',5'-trifluorobiphenyl-2-yl)pyrazole-4-carboxamide; fluxapyroxad	-	907204-31-3	Lact. Aquatic Acute 1 Aquatic Chronic 1	H362 H400 H410	GHS09 Wng	H362 H410		M = 1 M = 1'	
'616-230-00-5	N-(hydroxymethyl)acrylamide; methylolacrylamide; [NMA]	213-103-2	924-42-5	Carc. 1B Muta. 1B STOT RE 1	H350 H340 H372 (peripheral nervous system)	GHS08 Dgr	H350 H340 H372 (peripheral nervous system)'			
'616-231-00-0	5-fluoro-1,3-dimethyl-N-[2-(4-methylpentan-2-yl)phenyl]-1H-pyrazole-4-carboxamide; 2'-[(RS)-1,3-dimethylbutyl]-5-fluoro-1,3-dimethylpyrazole-4-carboxanilide; penflufen	-	494793-67-8	Carc. 2 Aquatic Acute 1 Aquatic Chronic 1	H351 H400 H410	GHS08 GHS09 Wng	H351 H410		M = 1 M = 1'	
'616-232-00-6	iprovalicarb (ISO); isopropyl [(2S)-3-methyl-1-{{[1-(4-methylphenyl)ethyl]amino}-1-oxobutan-2-yl}carbamate	-	140923-17-7	Carc. 2	H351	GHS08 Wng	H351'			
'616-233-00-1	silthiofam (ISO); N-allyl-4,5-dimethyl-2-(trimethylsilyl)thiophene-3-carboxamide	-	175217-20-6	STOT RE 2 Aquatic Chronic 2	H373 H411	GHS08 GHS09 Wng	H373 H411'			

Index No	Chemical name	EC No	CAS No	Classification		Labelling			Specific Conc. Limits, M-factors and ATE	Notes
				Hazard Class and Category Code(s)	Hazard statement Code(s)	Pictogram, Signal Word Code(s)	Hazard statement Code(s)	Suppl. Hazard statement Code(s)		
'650-057-00-6	Margosa, ext. [cold-pressed oil of <i>Azadirachta indica</i> seeds without shells extracted with super-critical carbon dioxide]	283-644-7	84696-25-3	Aquatic Chronic 3	H412		H412'			

(2) the entries corresponding to index numbers 007-004-00-1; 014-018-00-1; 015-134-00-5; 015-181-00-1; 050-021-00-4; 050-027-00-7; 082-013-00-1; 603-014-00-0; 603-065-00-9; 605-019-00-3; 607-177-00-9; 607-256-00-8; 607-314-00-2; 609-041-00-4; 609-064-00-X; 613-112-00-5; 613-115-00-1; 613-125-00-6; 613-202-00-4; 613-259-00-5; 616-014-00-0 and 617-006-00-X are replaced by the following entries respectively:

Index No	Chemical name	EC No	CAS No	Classification		Labelling			Specific Conc. Limits, M-factors and ATE	Notes
				Hazard Class and Category Code(s)	Hazard statement Code(s)	Pictogram, Signal Word Code(s)	Hazard statement Code(s)	Suppl. Hazard statement Code(s)		
'007-004-00-1	nitric acid ...% [C > 70 %]	231-714-2	7697-37-2	Ox. Liq. 2 Acute Tox. 1 Skin Corr. 1A	H272 H330 H314	GHS03 GHS06 GHS05 Dgr	H272 H330 H314	EUH071	Ox. Liq. 2; H272: C ≥ 99 % Ox. Liq. 3; H272: 70 % ≤ C < 99 %	B'
'014-018-00-1	octamethylcyclotetrasiloxane; [D4]	209-136-7	556-67-2	Repr. 2 Aquatic Chronic 1	H361f *** H410	GHS08 GHS09 Wng	H361f *** H410		M = 10'	
'015-134-00-5	pirimiphos-methyl (ISO); O-[2-(diethylamino)-6-methylpyrimidin-4-yl] O,O-dimethyl phosphorothioate	249-528-5	29232-93-7	Acute Tox. 4 STOT RE 1 Aquatic Acute 1 Aquatic Chronic 1	H302 H372 (nervous system) H400 H410	GHS07 GHS08 GHS09 Dgr	H302 H372 (nervous system) H410		oral: ATE = 1414 mg/kg bw M = 1000 M = 1000'	
'015-181-00-1	phosphine	232-260-8	7803-51-2	Flam. Gas 1 Press. Gas Acute Tox. 1 Skin Corr. 1B Aquatic Acute 1	H220 H330 H314 H400	GHS02 GHS04 GHS06 GHS05 GHS09 Dgr	H220 H330 H314 H400		inhalation: ATE = 10 ppmV (gases)	U'

Index No	Chemical name	EC No	CAS No	Classification		Labelling			Specific Conc. Limits, M-factors and ATE	Notes
				Hazard Class and Category Code(s)	Hazard statement Code(s)	Pictogram, Signal Word Code(s)	Hazard statement Code(s)	Suppl. Hazard statement Code(s)		
'050-021-00-4	dichlorodioctylstannane	222-583-2	3542-36-7	Repr. 1B Acute Tox. 2 STOT RE 1 Aquatic Chronic 3	H360D H330 H372 ** H412	GHS08 GHS06 Dgr	H360D H330 H372 ** H412		Repr. 1B; H360 D: C ≥ 0,03 % inhalation: ATE = 0,098 mg/L (dusts or mists)	
'050-027-00-7	2-ethylhexyl 10-ethyl-4,4-dioctyl-7-oxo-8-oxa-3,5-dithia-4-stannatetradecanoate; [DOTE]	239-622-4	15571-58-1	Repr. 1B STOT RE 1 Aquatic Acute 1 Aquatic Chronic 1	H360D H372 (immune system) H400 H410	GHS08 GHS09 Dgr	H360D H372 (immune system) H410			
'082-013-00-1	lead powder; [particle diameter < 1 mm]	231-100-4	7439-92-1	Repr. 1A Lact. Aquatic Acute 1 Aquatic Chronic 1	H360FD H362 H400 H410	GHS08 GHS09 Dgr	H360FD H362 H410		Repr. 1A; H360D: C ≥ 0,03 % M = 1 M = 10'	
'603-014-00-0	2-butoxyethanol; ethylene glycol monobutyl ether	203-905-0	111-76-2	Acute Tox. 4* Acute Tox. 4 Skin Irrit. 2 Eye Irrit. 2	H332 H302 H315 H319	GHS07 Wng	H332 H302 H315 H319		oral: ATE = 1200 mg/kg bw	
'603-065-00-9	m-bis(2,3-epoxypropoxy)benzene; resorcinol diglycidyl ether	202-987-5	101-90-6	Carc. 1B Muta. 2 Acute Tox. 3 Acute Tox. 4 Skin Irrit. 2 Eye Irrit. 2 Skin Sens. 1 Aquatic Chronic 3	H350 H341 H311 H302 H315 H319 H317 H412	GHS08 GHS06 Dgr	H350 H341 H311 H302 H315 H319 H317 H412		dermal: ATE = 300 mg/kg bw oral: ATE = 500 mg/kg bw	
'607-177-00-9	tribenuron-methyl (ISO); methyl 2-[N-(4-methoxy-6-methyl-1,3,5-triazin-2-yl)-N-methyl-carbamoylsulfamoyl] benzoate	401-190-1	101200-48-0	STOT RE 2 Skin Sens. 1 Aquatic Acute 1 Aquatic Chronic 1	H373 H317 H400 H410	GHS08 GHS07 GHS09 Wng	H373 H317 H410		M = 100 M = 100'	

Index No	Chemical name	EC No	CAS No	Classification		Labelling			Specific Conc. Limits, M-factors and ATE	Notes
				Hazard Class and Category Code(s)	Hazard statement Code(s)	Pictogram, Signal Word Code(s)	Hazard statement Code(s)	Suppl. Hazard statement Code(s)		
'607-256-00-8	azoxystrobin (ISO); methyl (E)-2-{2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl}-3-methoxyacrylate	-	131860-33-8	Acute Tox. 3 Aquatic Acute 1 Aquatic Chronic 1	H331 H400 H410	GHS06 GHS09 Dgr	H331 H410		inhalation: ATE = 0,7 mg/L (dusts or mists) M = 10 M = 10'	
'607-314-00-2	ethofumesate (ISO); (RS)-2-ethoxy-2,3-dihydro-3,3-dimethyl-benzofuran-5-yl methanesulfonate	247-525-3	26225-79-6	Aquatic Acute 1 Aquatic Chronic 1	H400 H410	GHS09 Wng	H410		M = 1 M = 1'	
'609-041-00-4	2,4-dinitrophenol	200-087-7	51-28-5	Acute Tox. 3 * Acute Tox. 3 Acute Tox. 2 STOT RE 1 Aquatic Acute 1	H331 H311 H300 H372 H400	GHS06 GHS08 GHS09 Dgr	H331 H311 H300 H372 H400		dermal: ATE = 300 mg/kg bw oral: ATE = 30 mg/kg bw'	
'609-064-00-X	mesotrione (ISO); 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione	-	104206-82-8	Repr. 2 STOT RE 2 Aquatic Acute 1 Aquatic Chronic 1	H361d H373 (eyes, nervous system) H400 H410	GHS08 GHS09 Wng	H361d H373 (eyes, nervous system) H410		M = 10 M = 10'	
'613-112-00-5	octhilinone (ISO); 2-octyl-2H-isothiazol-3-one; [OIT]	247-761-7	26530-20-1	Acute Tox. 2 Acute Tox. 3 Acute Tox. 3 Skin Corr. 1 Eye Dam. 1 Skin Sens. 1A Aquatic Acute 1 Aquatic Chronic 1	H330 H311 H301 H314 H318 H317 H400 H410	GHS06 GHS05 GHS09 Dgr	H330 H311 H301 H314 H317 H410	EUH071	inhalation: ATE = 0,27 mg/L (dusts or mists) dermal: ATE = 311 mg/kg bw oral: ATE = 125 mg/kg bw Skin Sens. 1A; H317: C ≥ 0,0015 % M = 100 M = 100'	
'613-115-00-1	hymexazol (ISO); 3-hydroxy-5-methylisoxazole	233-000-6	10004-44-1	Repr. 2 Acute Tox. 4 Eye Dam. 1 Skin Sens. 1 Aquatic Chronic 2	H361d H302 H318 H317 H411	GHS08 GHS07 GHS05 GHS09 Dgr	H361d H302 H318 H317 H411		oral: ATE = 1600 mg/kg bw'	

Index No	Chemical name	EC No	CAS No	Classification		Labelling			Specific Conc. Limits, M-factors and ATE	Notes
				Hazard Class and Category Code(s)	Hazard statement Code(s)	Pictogram, Signal Word Code(s)	Hazard statement Code(s)	Suppl. Hazard statement Code(s)		
'613-125-00-6	hexythiazox (ISO); <i>trans</i> -5-(4-chlorophenyl)- <i>N</i> -cyclohexyl-4-methyl-2-oxo-3-thiazolidine-carboxamide	-	78587-05-0	Aquatic Acute 1 Aquatic Chronic 1	H400 H410	GHS09 Wng	H410		M = 1 M = 1'	
'613-202-00-4	pymetrozine (ISO); (E)-4,5-dihydro-6-methyl-4-(3-pyridyl-methylenamino)-1,2,4-triazin-3(2H)-one	-	123312-89-0	Carc. 2 Repr. 2 Aquatic Chronic 1	H351 H361fd H410	GHS08 GHS09 Wng	H351 H361fd H410		M = 1'	
'613-259-00-5	imiprothrin (ISO); reaction mass of: [2,4-dioxo-(2-propyn-1-yl)imidazolidin-3-yl]methyl(1R)- <i>cis</i> -chrysanthemate; [2,4-dioxo-(2-propyn-1-yl)imidazolidin-3-yl]methyl(1R)- <i>trans</i> -chrysanthemate	428-790-6	72963-72-5	Carc. 2 Acute Tox. 4 Acute Tox. 4 STOT SE 2 Aquatic Acute 1 Aquatic Chronic 1	H351 H332 H302 H371 (nervous system; oral, inhalation) H400 H410	GHS08 GHS07 GHS09 Wng	H351 H332 H302 H371 (nervous system; oral, inhalation) H410		inhalation: ATE = 1,4 mg/L (dusts or mists) oral: ATE = 550 mg/kg bw M = 10 M = 10'	
'616-014-00-0	butanone oxime; ethyl methyl ketoxime; ethyl methyl ketone oxime	202-496-6	96-29-7	Carc. 1B Acute Tox. 4 Acute Tox. 3 STOT SE 3 STOT SE 1 STOT RE 2 Skin Irrit. 2 Eye Dam. 1 Skin Sens. 1	H350 H312 H301 H336 H370 (upper respiratory tract) H373 (blood system) H315 H318 H317	GHS08 GHS06 GHS05 Dgr	H350 H312 H301 H336 H370 (upper respiratory tract) H373 (blood system) H315 H318 H317		dermal: ATE = 1100 mg/kg bw oral: ATE = 100 mg/kg bw'	
'617-006-00-X	bis(α,α-dimethylbenzyl) peroxide	201-279-3	80-43-3	Org. Perox. F Repr. 1B Skin Irrit. 2 Eye Irrit. 2 Aquatic Chronic 2	H242 H360D H315 H319 H411	GHS02 GHS08 GHS07 GHS09 Dgr	H242 H360D H315 H319 H411'			

(3) the entries corresponding to index numbers 601-064-00-8 and 607-693-00-4 are deleted.

DECISIONS

COMMISSION DECISION (EU) 2020/1183

of 25 February 2020

on State aid SA.34445 (2012/C) implemented by Denmark for the transfer of property-related assets from FIH to the FSC

(Only the English text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on Member States and other interested parties to submit their comments pursuant to those provisions ⁽¹⁾,

Whereas:

1. PROCEDURE

- (1) On 30 June 2009, Denmark injected DKK 1,9 billion as Tier 1 hybrid capital into FIH Erhvervsbank A/S including its subsidiaries ('FIH') under the Danish Act on State-Funded Capital Injections ⁽²⁾.
- (2) On 6 March 2012 Denmark notified a package of measures in favour of FIH. By decision of 29 June 2012 ('the Rescue and Opening Decision') ⁽³⁾ the Commission approved those measures ⁽⁴⁾ on a temporary basis finding them compatible with the internal market.
- (3) In the same decision the Commission initiated the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('the Treaty') because of concerns with regard to the appropriateness of those measures, the limitation of the aid to the minimum that is necessary and the bank's own contribution, in particular in view of the potentially low remuneration of the impaired asset measures granted in favour of FIH.
- (4) On 2 July 2012 FIH paid back the capital of DKK 1,9 billion it had received in 2009 under the Danish Act on State-Funded Capital Injections ⁽⁵⁾.
- (5) In line with the Rescue and Opening Decision Denmark submitted a restructuring plan on 4 January 2013 ⁽⁶⁾, which it subsequently modified. On 24 June 2013 Denmark submitted the final update of that plan ('the restructuring plan').
- (6) On 3 February 2014 Denmark submitted a term sheet setting out the terms for the restructuring of FIH, which Denmark has committed to implement (the 'commitments').

⁽¹⁾ OJ C 359, 21.11.2012, p. 1.

⁽²⁾ 'Act on State-Funded Capital Injections' (*lov om statsligt kapitalindskud*) means the Act Number 67 of 3 February 2009 and executive orders issued under it. The Act was approved by Commission Decision of 3 February 2009 (OJ C 50, 3.3.2009, p. 4).

⁽³⁾ Commission Decision of 29 June 2012 in case SA.34445 (2012/C) (ex 2012/N) (OJ C 359, 21.11.2012, p. 1).

⁽⁴⁾ Those aid measures are described in detail in recitals 10 to 23 of the Rescue and Opening Decision.

⁽⁵⁾ See recital 1.

⁽⁶⁾ The plan was subject to subsequent amendments.

- (7) The Danish authorities provided additional information during the period between 30 June 2012 and 3 February 2014.
- (8) On 11 March 2014, the Commission adopted a decision ⁽⁷⁾, by which it found the measures in favour of FIH to constitute State aid which was compatible with the internal market under Article 107(3)(b) of the Treaty in light of the restructuring plan and the commitments made ('the 2014 decision').
- (9) On 24 May 2014, FIH and its parent FIH Holding A/S ('FIH Holding') lodged an application to annul the 2014 decision. As a result of their action, by judgment of 15 September 2016 ⁽⁸⁾, the General Court of the European Union annulled the 2014 decision. On appeal, the General Court's judgment was set aside by the judgment of the Court of Justice of 6 March 2018 ⁽⁹⁾ and the case was referred back to the General Court. On 19 September 2019, the General Court of the European Union gave its judgment ⁽¹⁰⁾ in which it found that, when the Commission calculated the amount of capital relief resulting from the transfer of assets to the FSC, it had used an incorrect figure. Even if this incorrect figure had been previously used by FIH and the Danish financial supervisory authority, it was subsequently rectified from DKK 375 million to DKK 275 million ⁽¹¹⁾. As a result, the General Court annulled the 2014 decision. Consequently, the investigation opened with the Rescue and Opening Decision needed to be resumed to take into account the outcome of the court procedure in line with Article 266 of the Treaty, and the Commission needs to adopt a new decision closing the investigation and removing the abovementioned irregularity.
- (10) As part of the resumed formal investigation, additional information was provided by the Danish authorities on 13 January 2020. In that letter, the Danish authorities also confirmed that while all commitments submitted by them on 3 February 2014 (see recital 6) had either been implemented or were no longer relevant, the Danish authorities would not reverse the implemented commitments. Based on that new submission from the Danish authorities, the Commission is able to close the formal investigation by means of this Decision.
- (11) For reasons of urgency, Denmark accepts that this Decision be adopted exceptionally in the English language ⁽¹²⁾.

2. DESCRIPTION

2.1. The beneficiary

- (12) FIH is a limited liability company which was, at the time of the 2014 decision, regulated by the Danish banking legislation and supervised by the Danish Financial Supervisory Authority ('FSA'). It was founded in 1958 and has its headquarters in Copenhagen, Denmark. It is wholly owned by FIH Holding.
- (13) The FIH Group consists of FIH Holding and FIH Erhvervsbank, together with the latter's wholly-owned subsidiaries. Those subsidiaries, as of 31 December 2012, were FIH Partners A/S (covering the business segment corporate finance), FIH Kapital Bank A/S ⁽¹³⁾, FIH Realkredit A/S, which was a mortgage credit institution ⁽¹⁴⁾, and FIH Leasing og Finans A/S. FIH's activities consisted of three segments: banking ⁽¹⁵⁾, markets ⁽¹⁶⁾ and corporate finance ⁽¹⁷⁾.

⁽⁷⁾ Commission Decision 2014/884/EU of 11 March 2014 on State aid SA.34445 (12/C) implemented by Denmark for the transfer of property-related assets from FIH to the FSC (OJ L 357, 12.12.2014, p. 89).

⁽⁸⁾ Judgment of the General Court of 15 September 2016 in Case T-386/14, ECLI:EU:T:2016:474.

⁽⁹⁾ Judgment of the Court of Justice of 6 March 2018 in Case C-579/16 P, ECLI:EU:C:2018:159.

⁽¹⁰⁾ Judgment of the General Court of 19 September 2019 in Case T-386/14 RENV, ECLI:EU:T:2019:623.

⁽¹¹⁾ For more details, see recitals 120 and 121.

⁽¹²⁾ Language waiver submitted on 13 January 2020.

⁽¹³⁾ It merged with FIH Erhvervsbank A/S as continuing company on 23 August 2013.

⁽¹⁴⁾ It was liquidated in 2013, see recital 64.

⁽¹⁵⁾ Originally banking consisted of: 1) corporate banking, which is responsible for FIH's lending activities, in particular to small and medium-sized enterprises; 2) acquisition finance, providing structured financing for mergers and acquisitions in the Scandinavian market, and 3) property finance, providing capital and advisory services to property investors. As of the date of the 2014 decision, property finance was no longer a business area in FIH, as explained in recital 43.

⁽¹⁶⁾ The markets segment provided financial advisory services for large and medium-sized companies relating, for example, to risk management, liability management and capital structure. The markets segment was also responsible for handling trading and customer-oriented activities in the interest rate, foreign exchange and securities markets.

⁽¹⁷⁾ The corporate finance segment provided financial advisory services on mergers and acquisitions, privatisations and capital injections etc.

- (14) As of 31 December 2012, FIH Holding was owned by the Danish Labour Market Supplementary Pension Fund which held 48,8 % of the shares of FIH Holding, by PF I A/S ⁽¹⁸⁾ which held 48,8 % of the shares, and by the Executive Board and executive employees who held 2,3 % of the shares, with FIH Holding itself holding 0,1 % of the shares.
- (15) At the end of 2011, the FIH Group had a balance sheet of DKK 84,16 billion (EUR 11,28 billion) and its total capital ratio ⁽¹⁹⁾ was 17,8 % which increased to 21,2 % by 31 December 2012. On 31 December 2012 FIH had a balance sheet of DKK 60,76 billion (EUR 8,1 billion) ⁽²⁰⁾ and risk weighted assets of DKK 29,84 billion (EUR 3,98 billion).
- (16) FIH was a focused niche bank specialising in medium-term financing as well as risk management advisory and corporate finance services for Danish enterprises with a balance sheet exceeding DKK 10 million (EUR 1,34 million). Originally FIH's banking activities covered three segments: Property Finance, Acquisition Finance and Corporate Banking.
- (17) FIH constituted Denmark's sixth-largest bank by working capital ⁽²¹⁾ at the time of the Rescue and Opening Decision, servicing more than 2 000 banking customers at group level. The market share of FIH in bank and mortgage lending at that time was estimated at 1,7 %. It had a market share in SME/corporate lending of 2,5 %. In June 2012 FIH had a market share of 2,1 % of the total market for lending to corporates (both banks and mortgage banks).
- (18) The FIH Group had performed weakly in the years preceding the adoption of the 2014 decision. On 25 June 2009, it applied to the Danish Recapitalisation Scheme ⁽²²⁾ and on 30 June 2009 it received a State-funded Tier 1 hybrid capital injection of DKK 1,9 billion in the form of a loan note. The coupon of that note amounted to 11,46 % per annum. Over the entire year 2009 the FIH Group reported a pre-tax loss of DKK 148 million (EUR 19,9 million).
- (19) Although the FIH Group had a pre-tax profit of DKK 316 million (EUR 42,5 million) in 2010, that profit was mainly driven by non-recurring positive market value adjustments, including unrealised gains on an indirect holding. In 2011 the FIH Group reported a pre-tax loss of DKK 1,27 billion (EUR 170 million) due to impairment charges on loans and negative market value adjustments. On 31 December 2012 it had a pre-tax loss of DKK 47 million (EUR 6,4 million). For the end of 2013 a pre-tax profit of DKK 95 million (EUR 12,8 million) has been budgeted. In 2013 the third quarter net profit for continuing operations before taxation was DKK 23,2 million (EUR 3,09 million). For total operations after taxation FIH recorded a loss of DKK 20,1 million (EUR 2,71 million) in 2012.
- (20) In 2009 and in 2010 Moody's downgraded FIH's rating from A2 to Baa3. In 2010 the owners of FIH (the Icelandic Financial Supervisory Authority and the Central Bank of Iceland) ⁽²³⁾ agreed to sell their shares in FIH to the current owners. That new ownership was expected to bring about significant improvement to the credit rating of FIH, as the prior ownership by Kaupthing Bank hf had been one of the main concerns for Moody's regarding FIH. However, mainly due to circumstances specific to FIH such as the refinancing of government-guaranteed bond issues, credit quality and exposure to the property sector, in 2011 Moody's downgraded FIH further to B1 with negative outlook.

⁽¹⁸⁾ PF I A/S is the holding company for the ownership of FIH Holding of PFA Pension's, Folksam Ömsesidig Livsförsäkring/Folksam Ömsesidig Sakförsäkring's and C.P. Dyvig & Co A/S.

⁽¹⁹⁾ The restructuring plan uses the term 'Solvency Ratio'. However, the term 'solvency ratio in financial reporting' means the ratio of a company's profits after tax and depreciations to its total liabilities. It therefore measures the ability of a company to meet its debts. It quantifies the size of a company's income after tax, not counting non-cash depreciation expenses, in contrast to its total debt obligations. It also provides an assessment of the likelihood of a company to continue congregating its debt obligations. Therefore, where the restructuring plan uses that term, this Decision refers to the 'Total Capital Ratio', that is to say, the ratio of the bank's total capital to its total risk weighted assets.

⁽²⁰⁾ Exchange rate of 31 December 2012: EUR 1 = DKK 7,4610 (ECB).

⁽²¹⁾ Working capital is defined as the sum of deposits, issued bonds, subordinated debt and equity.

⁽²²⁾ See footnote 2.

⁽²³⁾ In 2010, the FIH Group was put up for sale by its previous owner, Icelandic Kaupthing Bank hf, which had gone into winding-down proceedings in 2008.

- (21) The rating downgrade in 2011 was in line with the market prices at that time for FIH bonds that did not benefit from a government guarantee: FIH's 2-4 year debt was priced at spreads of 600-700 basis points over the equivalent maturity EURIBOR-linked swap.

2.2. The events triggering the aid measures

- (22) In 2011 and 2012 FIH anticipated difficulties with regard to debt that would mature in 2012 and 2013. The resulting funding challenge was mainly caused by a decline in FIH's credit rating and changed capital market conditions ⁽²⁴⁾. In July 2009 FIH had already obtained liquidity assistance in the form of a government guarantee totalling DKK 50 billion (EUR 6,31 billion), which it had wholly utilised. It had also obtained a Tier 1 hybrid capital injection of DKK 1,9 billion (EUR 255 million) from the State under the Danish Guarantee Scheme. As of 31 December 2011 FIH held government-guaranteed bonds amounting to DKK 41,7 billion (EUR 5,56 billion), which constituted 49,94 % of the balance sheet of the bank.
- (23) With those State-guaranteed bonds maturing in 2012 and 2013, FIH was about to face a funding problem. The FSA estimated, in the second half of 2011, that there was a relatively high risk that FIH would be unable to comply with liquidity requirements in the following 12-18 months as a result of its expected inability to obtain funding from the open markets.
- (24) In order to address those emerging liquidity problems FIH was to carry out a substantial reduction of its balance sheet.

2.3. The aid measures

- (25) To solve the liquidity problems that FIH was then expected to face, in July 2012 Denmark proposed a complex impaired asset measure to transfer problematic property finance assets of FIH to a new subsidiary of FIH Holding ('Newco'). At the same time, Denmark committed to provide funding and recapitalisation to Newco whenever needed.
- (26) The 'measures' ⁽²⁵⁾ consisted of two phases of a share purchase agreement ⁽²⁶⁾ and several side agreements under which assets of the FIH Group amounting to approximately DKK 17,1 billion (EUR 2,3 billion or 28 % of total assets of FIH at the time of the transfer) were transferred to Newco. Newco ⁽²⁷⁾ was then purchased by the Danish Financial Stability Company ('FSC') ⁽²⁸⁾, after which it would be wound-up in an orderly manner under the approved Danish winding-up scheme ⁽²⁹⁾, in accordance with the scheme's principles ⁽³⁰⁾. The winding-up process was expected to last until 31 December 2016 but it could take until 31 December 2019 to complete. The FSC was able to finance almost the entire capital amount of DKK 2 billion for the purchase of Newco through an early redemption of the DKK 1,9 billion Tier 1 hybrid capital loan note which had been granted to FIH ⁽³¹⁾ by the State in 2009. The FSA approved the repayment by FIH of the State capital injection on 2 July 2012, based on a solvency and liquidity analysis that included the asset transfer measure ⁽³²⁾.

⁽²⁴⁾ See recital 20.

⁽²⁵⁾ See footnote 4. The measures are further described in recitals 27 to 33.

⁽²⁶⁾ Closing Memorandum between FIH and the FSC, dated 2 July 2012.

⁽²⁷⁾ Since its acquisition by the FSC, Newco had been renamed 'FS Property Finance A/S' but continued to be located at the same address as FIH's head office.

⁽²⁸⁾ The FSC is the Danish State-owned vehicle which takes care of the different measures entailing the use of State resources for financial institutions in the context of the financial crisis.

⁽²⁹⁾ See Decision N 407/2010 of 30.9.2010 (OJ C 312, 17.11.2010, p. 7); Decision SA.31938 (N 537/2010) of 7.12.2010 (OJ C 117, 15.2.2011, p. 2); Decision SA.33001 (2011/N) – Part A of 28.6.2011 (OJ C 237, 13.8.2011, p. 2); Decision SA.33001 (2011/N) – Part B of 1.8.2011 (OJ C 271, 14.9.2011, p. 4); Decision SA.33757 (2011/N) of 9.12.2011 (OJ C 22, 27.1.2012, p. 5); and Decision SA.34227(2012/N) of 17.2.2012 (OJ C 128, 3.5.2012, p. 1) as well as Decision SA.33639 (2011/N) – Rescue Aid for Max Bank of 7.10.2011 (OJ C 343, 23.11.2011, p. 13).

⁽³⁰⁾ The objective of the scheme is to preserve value in failing banks by means of a controlled winding-up on a going concern basis instead of those banks being subject to bankruptcy proceedings. Under the original scheme, equity holders and subordinated bond holders of the failing bank are fully wiped out. Assets and remaining liabilities are transferred to the FSC as the State's winding-up company. Sellable assets are sold to investors, and the remaining assets are put in run-off. The revenues generated by the sale and run-off of assets are used to compensate creditors (senior bondholders and depositors).

⁽³¹⁾ See recitals 1 and 4.

⁽³²⁾ Confirmed by a letter from the FSA dated 18 April 2013, submitted to the Commission by electronic mail on 29 April 2013.

- (27) In phase 1 there was a demerger of the assets and liabilities of FIH Erhvervsbank and FIH Kapital Bank A/S into Newco, the new subsidiary owned by FIH Holding. The assets transferred to Newco were real estate loans and securities amounting to DKK 15,2 billion (EUR 2,1 billion) and derivatives of DKK 1,6 billion (EUR 215 million). The initial liabilities of Newco consisted of two loans (Loan One and Loan Two) with a remaining equity part of DKK 2 billion.
- (28) Loan One was a loss-absorbing loan from FIH to Newco of DKK 1,65 billion (EUR 221 million). That loan would only be repaid by Newco to FIH if the winding-up process of the assets transferred to Newco generated proceeds in excess of the FSC's purchase price of DKK 2 billion (EUR 268 million). As for remuneration for Loan One, Newco was to pay the five-year Danish Government Bond rate plus 1,15 % ⁽³³⁾.
- (29) Loan Two was a loan from FIH Erhvervsbank to Newco of approximately DKK 13,45 billion (EUR 1,8 billion). As remuneration for Loan Two, Newco was to pay FIH the DKK CIBOR three-month rate plus 1,12 %. The maturity of Loan Two matched the maturity of loans which had previously been issued by FIH under the State guarantee. Loan Two and those matching loans thus fully matured in mid-2013 and it was contractually agreed that, as Newco repaid loans to FIH, FIH would repay outstanding loans that were guaranteed by the government. As the notional amount of Loan Two has been repaid by Newco to FIH, the FSC has provided funding to Newco in the amounts that were necessary to refinance Newco's assets.
- (30) In phase 2, which was executed immediately after the completion of phase 1, the FSC bought all the shares in Newco from FIH Holding. The price initially paid ⁽³⁴⁾ by the FSC to FIH Holding for Newco was the equity capital (net worth) as of 1 January 2012, which amounted to DKK 2 billion.
- (31) FIH Holding could then use the cash proceeds as immediate liquidity to pay back some of the government-guaranteed debt. At the same time, the asset transfer led to a replacement of real estate loans by loans to a government-sponsored entity, thus reducing FIH's risk weighted assets by about DKK 10 billion ⁽³⁵⁾.
- (32) In addition to the share purchase agreement, the measures include several side agreements between FIH Holding and the FSC:
- (a) On 1 July 2012 ⁽³⁶⁾ FIH Holding gave an unlimited loss guarantee to the FSC guaranteeing that when resolving Newco the FSC would fully recover all its funding and the capital it had provided to Newco. Remuneration for that guarantee was included in the variable purchase price of the share purchase agreement.
 - (b) On 1 July 2012 the FSC committed to provide funding to Newco once Loan Two had matured (in mid-2013). The FSC would receive interest from Newco equivalent to the EU Base rate plus 100 basis points. To implement that commitment, the FSC provided Newco with a DKK 13 billion (EUR 1,64 billion) loan facility for which it would not receive any facility fee.
 - (c) The FSC committed to fund and recapitalise Newco if it proved necessary to do so prior to the final winding-up process.
- (33) At Newco's resolution, the FSC was contractually entitled to recover at least its initial DKK 2 billion investment net of costs incurred by FIH and the FSC in the transaction. If the winding-up process generates proceeds of less than the purchase price of DKK 2 billion, FIH would cover the difference by Loan One, the loss-absorbing loan, and by the guarantee respectively. If the proceeds of the winding-up process exceeded DKK 1,5 billion, an additional 25 % of any excess amount would be paid to the FSC in addition to the DKK 2 billion minimal amount it was to receive. Any additional excess amount would be paid to FIH Holding. In practice, if the final proceeds were below DKK 1,5 billion, the FSC would obtain DKK 2 billion. If, for example, the final proceeds were DKK 1,9 billion, the FSC would receive DKK 2,1 billion.

⁽³³⁾ Contractually, Newco was to pay the two-, three-, or five-year Danish Government effective Bond rate plus 1,15 % depending on which maturity is chosen by FIH. However, *de facto* it became the five-year rate.

⁽³⁴⁾ The purchase price consisted of a fixed amount of DKK 2 billion and a variable amount, depending on the terminal realisation value of Newco, which is described in recital 33.

⁽³⁵⁾ Confirmed by a letter of the Danish supervisory authority FSA, dated 18 April 2009 (see footnote 32).

⁽³⁶⁾ An agreement in principle, outlining many of the details of the share purchase agreement and its side agreements was signed on 1 March 2012, with the final closing documents signed on 1 July 2012.

2.4. The formal investigation procedure

- (34) In the Rescue and Opening Decision, the Commission raised doubts with regard to the proportionality of the measures, their limitation to the minimum necessary, whether there was an adequate own contribution by the FIH Group and whether there was a sufficient limitation to the distortion of competition.
- (35) Those concerns originated from the significant intricacy of the measures which appeared to be unnecessarily complicated to fix the future liquidity challenges of FIH. In particular, it was unclear to what extent the various side agreements and the interconnectedness in the remuneration formula were necessary, appropriate and well-targeted for the purposes of the 2008 Banking Communication ⁽³⁷⁾.
- (36) Further, at the time of the Rescue and Opening Decision FIH intended to aggressively enter the internet retail deposit market by pursuing a 'price leadership' role. The entry into that market was a core component of FIH's strategy to address its funding problems.
- (37) Moreover, the suggested remuneration to be paid to the FSC for the transferred assets and liabilities appeared very unlikely to be in line with the remuneration level referred to in point 21 of the Impaired Asset Communication ⁽³⁸⁾ according to which banks should bear the losses associated with impaired assets to the maximum extent. Point 21 requires a correct remuneration of the State for any asset relief measures to ensure equivalent shareholder responsibility and burden-sharing irrespective of the specific model chosen.

3. RESTRUCTURING

3.1. The restructuring plan

- (38) On 24 June 2013 Denmark presented a final updated version of the restructuring plan for the FIH Group for the period 2012 to 2016. The plan included a best case and a worst case scenario ⁽³⁹⁾ with the aim of demonstrating FIH's ability to restore its long-term viability, sufficient burden-sharing and adequate measures to address distortions of competition.
- (39) The restructuring plan was based on assumptions in respect of the evolution of gross domestic product growth as projected by the International Monetary Fund, and the evolution of short- and mid-term interest rates changes as based on the Danish Ministry of Business and Growth's estimate of developments in short-term interest rates until 2014. The plan assumed a moderate recovery of gross domestic product growth in 2013 and thereafter.
- (40) In the best case scenario ⁽⁴⁰⁾, FIH was expected to continuously improve its results until 2016. The pre-tax return on normalised equity ⁽⁴¹⁾ on group level was budgeted to be 10,3 % on 31 December 2013 and 11,2 % ⁽⁴²⁾ on 31 December 2016.
- (41) The worst case scenario ⁽⁴³⁾ was based on less favourable market assumptions, including, among others, worsening market conditions for funding to banks both in terms of volume and price; lower demand for loans and advisory services; unfavourable movement in foreign exchange rates, interest rates, etc.; and impairment charges remaining above historical levels through the business cycle. According to FIH's estimations those developments together would lead to a pre-tax return on normalised equity on group level of 0,9 % on 31 December 2013 and 2,0 % on 31 December 2016.

⁽³⁷⁾ Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (OJ C 270, 25.10.2008, p. 8).

⁽³⁸⁾ Communication from the Commission on the Treatment of Impaired Assets in the Community Banking Sector (OJ C 72, 26.3.2009, p. 1).

⁽³⁹⁾ With various sub-scenarios.

⁽⁴⁰⁾ Sub-scenario with lower impairment charges.

⁽⁴¹⁾ Calculated on the basis of the amount of equity corresponding to a core capital ratio of 16 %, given the risk positions of the bank, and assuming no effects on the profit/loss.

⁽⁴²⁾ It is worth noting that assuming a net cost increase in 2013 of DKK 310,25 million through a payment in accordance with the Impaired Asset Communication + interest and DKK 61,7 million of administration fee refunds (see further in recital 124), the net profit and loss figure for the bank was likely to be negative in 2013 in both scenarios. FIH had largely offset that effect through a liquidity management exercise in December 2013. The effect in 2016 would be negligible, as the figures were quoted as 'normalised' return on equity.

⁽⁴³⁾ Sub-scenario with high impairment charges.

- (42) In both cases there was a relatively low level of return on equity, which was mainly due to the dividend ban and the ban on coupon payments anticipated in Denmark's commitments made in the context of the State aid investigation. As a result of those commitments, the FIH Group would retain profits until the end of the restructuring period and the settlement of the measures.
- (43) Originally FIH's banking activities covered three segments: Property Finance, Acquisition Finance and Corporate Banking. The business segment Property Finance had been discontinued as part of FIH's restructuring, as loans within Property Finance were sold to the FSC in 2012. In addition, the loans in its Acquisition Finance business unit would be phased out. Therefore, Corporate Banking would be the only business unit to continue operating. As of March 2013 the number of full-time employees was down to 214 from 356.
- (44) According to the restructuring plan the balance sheet was to decrease to DKK 27,68 billion (EUR 3,74 billion) by 31 December 2013. On 31 December 2016 FIH projected a total capital ratio of 19,6 %.
- (45) The statutory liquidity ratio ⁽⁴⁴⁾ which on 31 December 2012 was 214 %, was expected to be 239,7 % on 31 December 2013.
- (46) Over the restructuring period the total capital ratio was expected to amount to 19,6 % and the statutory liquidity ratio to 175 % and thus significantly exceed the regulatory requirements.
- (47) According to the best case scenario ⁽⁴⁵⁾, the pre-tax return on so-called normalised equity ⁽⁴⁶⁾ of the restructuring plan was budgeted to be 9 % on 31 December 2013 and 10,1 % on 31 December 2016. In the worst case scenario, those figures were 0,9 % and 4,7 % respectively ⁽⁴⁷⁾.
- (48) The situation of the bank had significantly improved since mid-2011 when the FSA anticipated that FIH would face major liquidity needs that it would be unable to meet. FIH had repaid the remaining outstanding government-guaranteed bonds and the refinancing challenge was thus solved by 13 June 2013. In addition, FIH redeemed the government's Tier 1 hybrid capital on 2 July 2013.
- (49) As at the date of adoption of the 2014 decision, FIH had no problems in meeting either its regulatory solvency or its liquidity requirements.

3.2. Actions taken by Denmark to address the concerns raised by the Commission

- (50) In order to address the concerns raised by the Commission in the context of the Rescue and Opening Decision, Denmark and the FIH Group took a series of actions.
- (51) FIH made a "one-off" payment to the FSC of DKK 310,25 million (EUR 39,12 million) with a value date of 4 December 2013 ⁽⁴⁸⁾.
- (52) FIH paid, with value date 18 December 2013, an amount of DKK 61,7 million to Newco as partial repayment of fees received under the administration agreement for 2012, and retroactively reduced the management fees for administration and hedging for 2013 charged to Newco to 0,05 % of the outstanding loan portfolio.
- (53) FIH reduced its total assets from DKK 109,3 billion (EUR 14,67 billion) on 31 December 2010 to DKK 60,8 billion (EUR 8,16 billion) by 31 December 2012, corresponding to a decrease of 44 %.

⁽⁴⁴⁾ The Statutory Liquidity Ratio is defined as current statutory liquidity position in per cent of the statutory liquidity requirement. A ratio of 100 % was required to fulfil the statutory requirement, and a ratio of 214 % was thus more than double the statutory requirement.

⁽⁴⁵⁾ The best case assumed a lower average funding cost and higher income from Markets and Corporate Finance activities.

⁽⁴⁶⁾ See footnote 41.

⁽⁴⁷⁾ The worst case assumed significant negative developments at macroeconomic level with both lower credit demand and historically high impairment charges (although assumed to decline over the restructuring period).

⁽⁴⁸⁾ With effect from 4 December 2013, FIH transferred an amount of DKK 310,25 million to the FSC (the amount had been deposited on 30 September 2013). In addition, FIH transferred an amount of DKK 6 575 342. See recital 124.

- (54) FIH further reduced its loan book from DKK 58,0 billion (EUR 7,79 billion) on 31 December 2010 to DKK 16,2 billion (EUR 2,17 billion) by 31 December 2012, namely by DKK 41,8 billion in total corresponding to a decrease of 72 %.
- (55) In addition, FIH significantly reduced the risk lines in Markets ⁽⁴⁹⁾.
- (56) FIH reduced the number of its full-time employees from 356 at 31 December 2010 to 214 by 31 March 2013, which corresponds to a reduction of 41 %.
- (57) Furthermore, FIH reduced its geographical presence as two of its four regional offices were closed.

3.3. Commitments proposed by Denmark

- (58) In view of the concerns raised by the Commission in the Rescue and Opening Decision and to ensure compatibility with the Impaired Assets Communication, in particular with regard to the proper remuneration of the asset transfer measures, Denmark provided additional commitments which are set out in recitals 59 to 65. In its letter submitted on 13 January 2020, Denmark confirmed that all of those commitments had either been implemented or were no longer relevant; Denmark committed, moreover, not to reverse the implemented commitments.
- (59) FIH would make an annual payment of DKK 2,1 million (EUR 0,3 million) to the FSC from 30 September 2014 until final settlement of the transaction with an ACT/ACT ⁽⁵⁰⁾ *pro rata temporis* payment for the last period at settlement date (this could be up to 31 December 2019). Any amounts already paid by FIH to the FSC in excess of that amount in line with the 2014 decision, and in excess of the total amounts payable by FIH under this Decision, would be reimbursed to FIH without interest.
- (60) FIH would reduce the management fees charged to the FSC or make a lump sum payment to the FSC, with a present value of the reduction or of the payment equivalent to DKK 143,2 million (EUR 19,09 million).
- (61) In order to attain that outcome, FIH paid an amount of DKK 61,7 million to Newco as a partial repayment of fees received by FIH from Newco under the administration agreement for 2012. FIH also reduced the management fees for administration and hedging charged to Newco to 0,05 % on the outstanding loan portfolio for the year 2013.
- (62) In addition FIH would reduce the management fees for administration and hedging charged to Newco to 0,05 % per annum of the outstanding loan portfolio, from 1 January 2014.
- (63) FIH would pay an additional annual fee to the FSC of DKK 47,2 million (EUR 6,29 million) in the event that the FSA changed its regulatory stance as regards capital requirements at holding level so that FIH's regulatory lending capacity would remain unrestricted by the capital position of FIH Holding.
- (64) The commitments also provided for a withdrawal of FIH from certain business lines (property finance, private equity, private wealth management) as well as for a set of behavioural restrictions including a price leadership ban for deposits, a ban on commercially aggressive practices and a ban on acquisitions, as well as for the liquidation of FIH Realkredit A/S which was the mortgage bank of the FIH Group. FIH Realkredit A/S was liquidated in 2013.
- (65) A full list of commitments ⁽⁵¹⁾, as last updated by the Danish authorities in their letter submitted on 13 January 2020, is set out in the Annex.

4. POSITION OF THE DANISH AUTHORITIES

- (66) When Denmark notified the measures to the Commission, its initial position ⁽⁵²⁾ was that the transfer of equity to Newco involved State aid, but that any such aid would be compatible with the internal market pursuant to Article 107(3)(b) of the Treaty.

⁽⁴⁹⁾ For example, reduction of the Value at Risk from DKK 50 million (EUR 6,71 million) on 31 December 2011 to DKK 35 million (EUR 4,7 million) on 22 April 2013.

⁽⁵⁰⁾ Referring to the interest payment day count convention as the actual number of days in the last period (from the last payment date to the next) divided by the actual number of days between two consecutive 30 Septembers.

⁽⁵¹⁾ Comprised in the so-called Term sheet.

⁽⁵²⁾ SANI notification 6783 dated 2 March 2012, FIH Note to the Commission – final, section 3.

- (67) In the same submission Denmark claimed that the FIH Group had not received any State aid as the FSC would pay the market price for Newco. While not quantitatively substantiating that claim, whether by making reference to relevant market data or explaining the reasoning behind transaction costs, Denmark emphasised that:
- (a) procedures were in place to establish the market price of the transfer;
 - (b) initial funding and guarantees were provided by the FIH Group;
 - (c) the FIH Group had to pay all transaction and winding up costs;
 - (d) the FIH Group made additional commitments in connection with the transfer, in particular the obligation to submit a business plan.
- (68) Denmark concluded that FIH would not receive an advantage. If the Commission were to take a different view on that matter, Denmark submitted that any aid to FIH could be declared compatible with the internal market as the arrangement amounted to a restructuring of FIH in compliance with the Restructuring Communication ⁽⁵³⁾.
- (69) Denmark followed up its initial submission with a presentation on 20 March 2012 ⁽⁵⁴⁾ in which it pointed out that FIH had not requested the measures and that at the time FIH had concluded those measures it had had deleveraging alternatives that supported the claim that the transaction was negotiated on market terms. It also claimed that an initial write down on the book value of the assets of DKK 1,4 billion and a further risk adjustment discount of DKK 1,3 billion corresponded to a market price. Moreover, any earn-out losses would be corrected through the variable share purchase agreement formula, so that an effective *ex post* adjustment mechanism would ensure pricing in line with market conditions. Denmark did not elaborate on the amount of the proposed discount and risk adjustment or the reasons why they would lead to a market price.
- (70) In subsequent correspondence with the Commission ⁽⁵⁵⁾, Denmark asserted that that maximum loss to which the FSC was exposed was DKK 1,05 billion, namely the difference between, on the one hand, the loss-absorbing loan of DKK 1,65 billion and on the other, the sum of the book value write down and the FSC's preliminary risk adjustment amount which totals DKK 2,7 billion. It also claimed that the State enjoyed a considerable reduction of its risk related to FIH State-guaranteed loans and a repayment by FIH of a previous capital injection of DKK 1,9 billion.
- (71) By a memorandum submitted on 23 April 2012 ⁽⁵⁶⁾, Denmark informed the Commission that it would 'not for the moment supply the Commission with further arguments regarding the use of the Market Economy Investor Principle'. At the same time, it provided some explanations as regards the valuation methodologies used by the FSC's legal advisor.
- (72) Subsequently, on 16 May 2012, Denmark asserted that FIH Holding and the FSC had negotiated the transaction terms based on normal commercial considerations regarding the sharing of risk and profit and asserted that the transaction had been made on market terms. That statement was certified by the FSC's accountancy firm, KPMG ⁽⁵⁷⁾.
- (73) On 7 June 2012, Denmark submitted a KPMG report assessing the measures by considering all contributing elements at the same time. KPMG saw 'no reason to conclude that the terms of the agreement would not correspond to the risks for the FSC', citing the high level of collateral, the potential use of covered bonds, the loss-absorbing loan and a 25 % earn-out for the FSC.

⁽⁵³⁾ Commission Communication of 23 July 2009 on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (OJ C 195, 19.8.2009, p. 9).

⁽⁵⁴⁾ The Transfer of Assets from FIH to the FSC, submitted by Denmark on 20 March 2012.

⁽⁵⁵⁾ Electronic mail by Denmark to the Commission on 29 March 2012.

⁽⁵⁶⁾ 'Answers to Questionnaire of 4 April 2012 regarding FSC's purchase of shares from FIH Holding', submitted by Denmark to the Commission on 23 April 2012.

⁽⁵⁷⁾ 'Statement – FIH Erhvervsbank', undated, submitted to the Commission on 16 May 2012.

- (74) On 11 September 2012, in its reply to the opening of proceedings, Denmark did not directly contest the Commission's view that the measures constituted State aid, but it referred to its line of argument of 29 March 2012 ⁽⁵⁸⁾, arguing that any transfer above market value would be compensated by the loss-absorbing loan and the price-adjustment guarantee granted by FIH Holding. Moreover, Denmark cited margin increases on renewals and a higher than anticipated redemption rate as examples to support that view, but without explicitly reiterating that the market economy operator principle ('MEOP') ⁽⁵⁹⁾ should apply.
- (75) Instead, Denmark argued that the measures were compatible, giving arguments to show that they were appropriate, that the aid was limited to the minimum necessary and that distortion of competition was limited ⁽⁶⁰⁾.
- (76) The Danish authorities also recalled their position in the note of 23 April 2012 that the measures were the result of negotiations between FIH and the FSC ⁽⁶¹⁾ and argued that some of the guidance in the Banking Communication ⁽⁶²⁾ had necessitated a degree of complexity in the measures ⁽⁶³⁾, disputing that complexity might render them inappropriate.
- (77) When the Commission informed Denmark about the expert assessment as regards the market value and real economic value of the measures, Denmark contested the results and submitted a number of questions and clarifications between 7 February and 11 September 2013.
- (78) Denmark commented that the aid was limited to the minimum necessary ⁽⁶⁴⁾, because it assumed the transfer value would not exceed the real economic value, but added that only a final valuation by the Commission could establish that fact.
- (79) Aside from the valuation aspects, Denmark noted the positive effects of the transfer on the regulatory position of FIH, in line with the goal of restoration of long-term viability contained in the restructuring plan.
- (80) Denmark also argued that FIH's deposit acquisition strategy is independent of the State aid measure and does not convey the intention of a 'price leadership' role, but is an essential part of its funding strategy. Nevertheless, to alleviate the Commission's concerns, Denmark has provided a commitment that FIH will adhere to a price leadership ban.

5. ASSESSMENT

5.1. Existence of State aid

- (81) According to Article 107(1) of the Treaty, State aid is 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, insofar as it affects trade between Member States.
- (82) The Commission considers that the measures in favour of FIH described in recitals 25 to 33 should be considered together as a package. The measures are part of a single transaction as their elements are interdependent (chronologically and in terms of structure) and have been designed altogether in order to address FIH's funding problem.

⁽⁵⁸⁾ See footnote 55 and recital 70.

⁽⁵⁹⁾ 'Market economy investor principle' (MEIP) is a term equivalent to market economy operator principle (MEOP) for the purposes of this Decision. The term 'MEOP' was adopted to cover the situation of investors and other market actors, such as lenders, creditors, etc.

⁽⁶⁰⁾ Submission of 11 September 2012, Sections 2, 3 and 4.

⁽⁶¹⁾ Submission of 11 September 2012 p. 5.

⁽⁶²⁾ See footnote 37.

⁽⁶³⁾ Submission of 11 September 2012, Section 2, p. 5.

⁽⁶⁴⁾ Submission of 11 September 2012, pp. 6-7.

5.1.1. *State resources*

- (83) The measures described in recitals 25 to 33 involve State resources as they were directly financed by the FSC, which is a State-owned company (through the Danish Ministry of Business Affairs) responsible for providing different kinds of measures to Danish banks in the context of the financial crisis ⁽⁶⁵⁾. First, the FSC provided DKK 2 billion in cash for the Newco share purchase agreement. Second, the FSC committed to fund Newco's assets while FIH repaid its State-guaranteed loans. That commitment could exceed DKK 13 billion. Third, the FSC decided to forgo an amount of interest in order to pay for a guarantee from FIH Holding.

5.1.2. *Existence of an advantage*

- (84) The measures outlined in recitals 25 to 33 provided an advantage as they resulted in an asset relief for FIH, thus improving the group's capital ratios, while at the same time enabling the bank to better address its funding problems.
- (85) The Danish authorities argued that the measures respected the MEOP and therefore did not constitute State aid to the FIH Group.
- (86) The Commission will therefore assess whether the measures in favour of the FIH Group fulfil the MEOP test. That test examines whether a market operator would have taken part in a given operation on the same terms and conditions as the public investor at the time when the decision to make public resources available was taken. There is no State aid when public funds are granted in circumstances and on terms which correspond to market conditions.
- (87) In the particular case of the FIH Group the Commission considers that it is relevant to examine (i) whether initially there had been a private investor willing to finance the measures on the same terms and conditions as the Member State, (ii) if so, what was the return on investment it demanded in comparison with the return for the State, and (iii) in the absence of private interest, what the expected return ⁽⁶⁶⁾ and the distribution of the potential returns from the measures for the State would be, in comparison to those returns a market investor would expect if such an investor was to undertake the measures under normal market economy conditions. If the State accepts those conditions or better, the measures can be considered to be carried out on market terms. In particular, it is important to check whether the transaction in its entirety generates positive cash flow, because no private operator, aiming at maximising of its profit, would enter a loss-making operation.
- (88) The clearest evidence that a transaction is in line with the MEOP is to demonstrate that the terms of the deal would not only be acceptable to a hypothetical market economy operator, but that in fact there is such an operator participating in the same investment on the same terms as the State. The presence of other investors provides a benchmark for the Commission to make its assessment of the applicability of the MEOP.
- (89) At the time Denmark granted the measures, there was no market participant prepared to grant similar measures to FIH as those which were granted by entities under the control of the State. In particular, neither the consortium of owners nor any third party expressed any intention to invest in FIH. The Commission has no grounds to conclude that under those circumstances a market economy operator would be willing to participate in the measures. The absence of private interest is an indication of the financial difficulties and weak position of the bank.

⁽⁶⁵⁾ The FSC's activities are governed by the Act on Financial Stability and the Financial Business Act and executive orders issued in pursuance thereof. In addition, the FSC is subject to special provisions regarding State-owned companies. Other measures previously provided by the FSC were found imputable to the Danish State in the Commission Decision NN 51/08 of 10.10.2008 ('Guarantee scheme for banks in Denmark') (OJ C 273, 28.10.2008, p. 2).

⁽⁶⁶⁾ The expected return of the measures is calculated based on the future stream of cash flows, discounted to derive the net present value (see recitals 94 and 95).

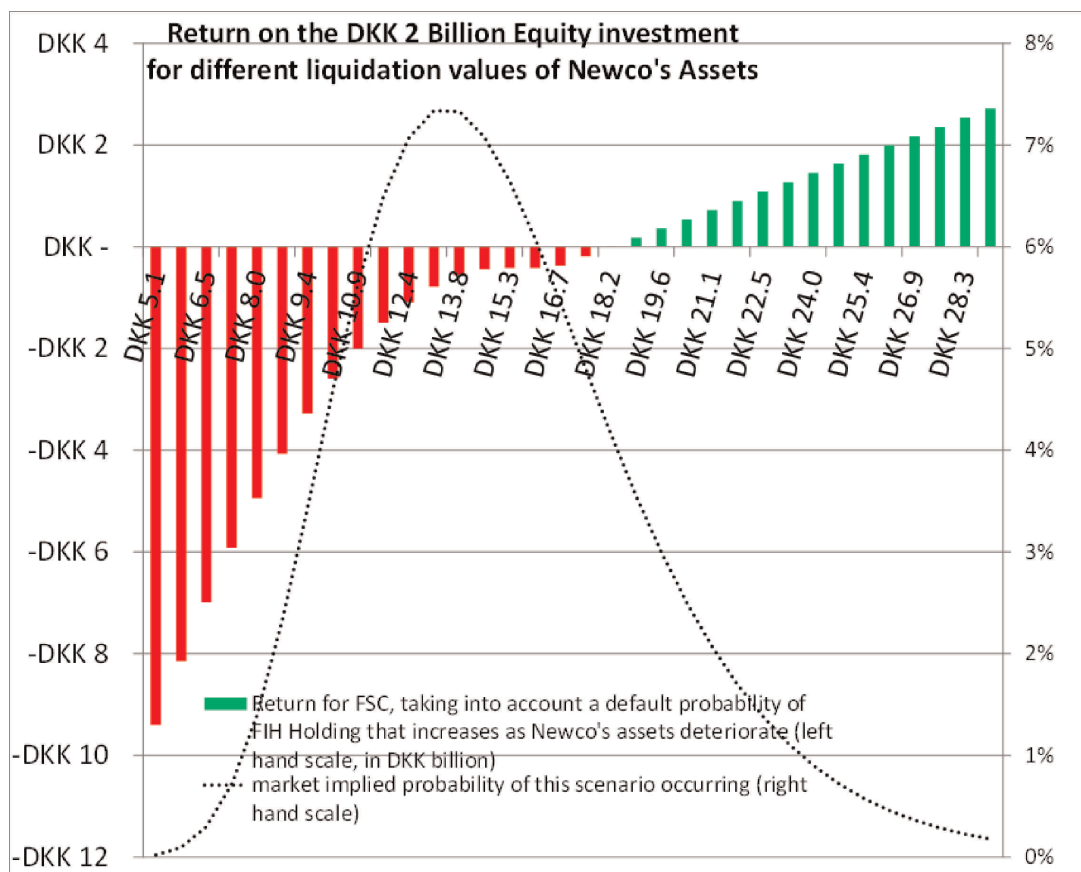
- (90) In the absence of an operator investing on the same terms as the State, a measure can still be free of aid, if in similar circumstances a private operator would have granted the same funding, asking a return at least as high as the return the State received. That assessment should, in principle, be based on a business plan taking into account available information and foreseeable developments at the time when the public funding was granted and it should not rely on any analysis based on a later situation.
- (91) Furthermore, one of the situations in which it is most difficult to apply the MEOP is where a company is already a beneficiary of State aid. In this case, FIH had already received a recapitalisation on 30 June 2009, which it repaid on 2 July 2012. The hybrid instruments used for the recapitalisation were remunerated at 11,45 %. FIH also participated in the Danish guarantee scheme. Whilst those facts do not exclude the application of the MEOP in this case per se, they are indicative of the difficulties faced by FIH and would affect the willingness of private investors to invest in the measures. The previous aid already distorts the economic circumstances, creating a perception of continued State support. In its evaluation, the Commission has taken the replacement of such advantages by new ones into consideration.
- (92) The FSA was of the view that FIH was in a precarious position as there was significant risk that FIH would not be able to meet its statutory requirements as regards liquidity when its government-guaranteed debt expired. That situation could, accordingly, have led to a withdrawal of FIH's banking license ⁽⁶⁷⁾. The position of the FSA therefore supports the Commission's assessment that a market operator would have been unlikely to invest in FIH. While it can be argued that the FSA's report was not in the public domain, a market operator would have had access to the maturity profile of FIH's government-guaranteed debt and thus have been able to derive the same conclusion.
- (93) In the absence of a private investor, to further check the applicability of the MEOP the Commission has to assess whether the overall return of the measures in favour of FIH is equal to or higher than the expected return that a hypothetical private investor would demand in order to make that investment. The expected return of the measures depends on the future stream of revenue from cash flows, which has to be discounted to the present day to derive its net present value using an appropriate rate of discount.
- (94) Relying on expert advice, the Commission estimated the market value of Newco's assets and modelled the expected return for the FSC for entire distribution of liquidation values of Newco's equity. In so doing, it has taken into account all elements of the share purchase agreement, such as the net liquidation value, revenues and costs incurred by the FSC and FIH Group and the purchase price adjustment, which included the loss-absorbing loan. The use of a distribution model is necessary to calculate the net present value of both the benefits stemming from a 25 % equity upside participation and the negative effects from the combination of large asset losses in Newco and a default of FIH Holding if such a scenario were to materialise ⁽⁶⁸⁾.

⁽⁶⁷⁾ Note by the FSA on FIH Erhvervsbank A/S dated 16 May 2012, submitted to the Commission.

⁽⁶⁸⁾ That phenomenon is known in financial markets as 'wrong way risk'. Following expert advice, the Commission assumed an average implied cumulative loss expectation of 16 %. However, it was distributed linearly across the negative returns, so that a 91 % loss expectation was applied in the extreme case that the asset portfolio were to devalue to a mere DKK 5,1 billion, and no loss expectation if the assets were to have a positive return.

Graph

Net Present Value of the measure for the FSC



- (95) The Graph shows, for different liquidation values of Newco's assets (from DKK 5,1 billion to DKK 28,3 billion), the net present value of the share purchase agreement. Each of the scenarios occurs with a probability indicated by the dotted line against the right-hand scale (0,1 % to 7,5 %). In the most likely scenarios, the return is slightly negative.
- (96) Furthermore, the Graph shows the overall probability-weighted average net present value of the share purchase agreement operation was also negative. The expert calculation shows it amounted to DKK 726 million. As a result, the share purchase agreement generated a loss instead of a profit. A market economy operator would have required an equity remuneration of at least 10 % ⁽⁶⁹⁾ per annum on a similar DKK 2 billion investment, which would have generated about DKK 1,33 billion over the seven-year existence period of Newco. The Commission therefore concludes that no market economy operator would have been willing to invest on terms and conditions equivalent to those of the share purchase agreement. As a result the measures are not in line with the MEOP ⁽⁷⁰⁾.

⁽⁶⁹⁾ In evidence, the Commission notes that in a crisis situation recapitalisation market remuneration levels could easily exceed 15 % (J.P. Morgan, European Credit Research, 27 October 2008 and Merrill Lynch data on Euro denominated Tier 1 debt for investment grade institutions). FIH itself could only obtain a recapitalisation from the Danish government in 2009, and had to pay an 11,45 % coupon to do so. Finally, in the beginning of March 2012, at the time of the signing of share purchase agreement, FIH's senior unsecured debt such as ISIN XS0259416757, with an annual coupon of 4,91 % and a 2021 maturity, was quoted in the market at 67 % of par value, implying a yield of more than 10,50 %. It is therefore logical to assume that equity, having a much more junior credit position, would require a much higher return for a market investor.

⁽⁷⁰⁾ The lack of compliance with market behaviour is established without even taking into account other elements that are part of the closing agreement, such as the cost Newco is paying for its original funding and the loss-absorbing loan, as well as the administration fees paid to FIH for asset management and hedging, which are counted towards the total aid amount in recitals 106 to 109.

- (97) It should be noted that in the calculation set out in recitals 94 to 96, the Commission took into account correspondence from Denmark dated 7 February and 11 March 2013, as well as subsequent correspondence ⁽⁷¹⁾, in which Denmark submitted previously undisclosed information such as specific interpretations of the components of the variable purchase price, the reference date of the submitted loan exposure tapes that were earmarked for transfer from FIH to Newco, the evolution of the credit quality of the portfolio between December 2011 and September 2012 and a more granular analysis of the 'uncommitted credit lines' in the portfolio.
- (98) Furthermore, the quantifications contained in Denmark's arguments ⁽⁷²⁾ do not withstand scrutiny. The *ex ante* write-down amounts and risk provisions were not substantiated by an independent valuation report ⁽⁷³⁾. Moreover, when considering the possibility of the FIH Group not being able to honour *ex post* guarantees, there is no reason why the losses of Newco could not exceed DKK 2,7 billion, in which case the FSC (and hence the Danish government) would be contractually required to recapitalise Newco prior to its final liquidation. The Commission therefore concludes that the claim that any investment losses would be limited to DKK 1,05 billion is not substantiated.
- (99) The fact that the terms of the measures were negotiated between the FSC and FIH Holding does not necessarily mean that the measures were executed on market terms. If Denmark intended to grant a substantial amount of additional aid to a bank facing grave liquidity difficulties, that fact alone would not exclude negotiations between the authorities and that bank on specific points of the transaction. Because of the bilateral aspect of the negotiation which took place, it lacked features such as those of an open non-discriminatory tender procedure or of a comparison to similar market transactions. Therefore, the conformity of the measures with market conditions does not follow automatically from the fact that negotiations occurred.
- (100) As regards the KPMG report of 7 June 2012, the Commission agrees that due to the complexity of the measures, their terms and conditions should be assessed in their entirety because there are no individual provisions that can be allocated to the remuneration of each individual element. However, the analysis contained in that KPMG report overlooked the possibility of more extreme downside scenarios under which FIH Holding might not be able to honour its commitments. Moreover, the analysis failed to address a remuneration on the DKK 2,0 billion of capital invested. As outlined in recital 98, there cannot be conformity with market behaviour given that there is no annual remuneration on the capital and given a mere 25 % participation of any equity upside over a seven-year investment period, both on a standalone basis and as a parameter in the entire remuneration model ⁽⁷⁴⁾.

⁽⁷¹⁾ Summarised in two notes submitted by Denmark on 24 June 2013 and further clarifying notes on 29 August and 11 September 2013.

⁽⁷²⁾ See recitals 69 and 70.

⁽⁷³⁾ The submitted one-page summary document 'Brev vedr FIH nedskrivning' notes a valuation team working on behalf of the FSC – and hence not independent – which concludes that a write-off of DKK 3,2 billion would be necessary under International Financial Reporting Standards rules. In addition, the risk adjustment of DKK 1,3 billion was justified by a 10 % collateral haircut, which itself was not explained. The non-independence of the valuation team was confirmed by the submission of Denmark of 11 March 2013, where the valuation exercise done by the FSC was described in greater detail.

⁽⁷⁴⁾ A straightforward equity investment would entail a 100 % participation in the equity returns. The Commission is of the view that lowering that equity return to 25 % is insufficient compensation for FIH Holding guaranteeing to make good on equity losses, because of FIH's and FIH Holding's weak credit stance. In addition, the Commission wishes to exercise care in valuing the contribution of the equity upside participation, as the majority of the underlying assets in Newco are real estate loans, whose return is limited to interest and principal, so that liquidation values of Newco's assets in excess of DKK 25 billion, as described in the model in recital 94 not only have a low probability of occurring, but might even be totally excluded. For that reason, adjusting the participation percentage to a higher figure (for example, 50 %) would underestimate the State aid amount in the model used.

(101) In that context, the Commission notes that under a previous Tier 1 hybrid recapitalisation ⁽⁷⁵⁾ FIH had to pay an annual coupon of 11,46 % per annum. Furthermore, in the beginning of March 2012 FIH's senior debt was quoted on the market with an implied yield exceeding 10 %. Therefore, the Commission's reasoning that a remuneration for capital should be at least 10 % is justified. A market operator would probably require a remuneration in excess of that level, in view of the particular risks related to the concentration and the inferior quality ⁽⁷⁶⁾ of the real estate portfolio of Newco in addition to the junior credit ranking of an equity investment. Therefore, a remuneration of 6,5 %, as put forward by Denmark ⁽⁷⁷⁾ is clearly insufficient. It should also be noted that the transaction generates a negative expected return.

(102) The Commission concludes that the measures in favour of FIH are not in line with the MEOP. This assessment, and in particular the fact that the Commission does not need to take account of the financial risks to which the FSC was exposed because of the 2009 aid measures, was confirmed by the Court of Justice's judgment of 6 March 2018 ⁽⁷⁸⁾.

5.1.3. Selectivity

(103) The use of the measures only concerned the FIH Group and Newco. The measures were therefore selective.

5.1.4. Distortions of competition and effect on trade between Member States

(104) The measures helped FIH strengthen its capital and liquidity position compared to that of its competitors who could not benefit from similar measures. The measure therefore enabled FIH to improve its market position. The measure could therefore lead to a distortion of competition.

(105) Given the integration of the banking market at European level, the advantage provided to FIH was felt by competitors both in Denmark (where banks from other Member States operate) and in other Member States. The measures must therefore be regarded as potentially affecting trade between Member States.

5.2. Amount of aid

(106) The total aid amount of the measures ⁽⁷⁹⁾ is calculated to be approximately DKK 2,25 billion (approximately EUR 300 million). To quantify the amount of aid, the Commission has considered:

- (a) a benefit related to the share purchase agreement formula (DKK 0,73 billion) ⁽⁸⁰⁾;
- (b) a foregone equity investment remuneration (DKK 1,33 billion) ⁽⁸¹⁾;
- (c) excess interest payments by Newco on Loan One, the loss-absorbing loan, and the initial funding (DKK 0,33 billion);
- (d) excess administration fees (DKK 0,14 billion).

(107) As a mitigating factor, the Commission considered the early cancellation of government guarantees amounting to DKK 0,28 billion should be deducted from the total aid amount.

⁽⁷⁵⁾ See recital 1.

⁽⁷⁶⁾ The submission by Denmark of 2 April 2013 highlighted that, with reference date June 2012, about 25 % of the assets were in default and another 25 % had a 'low' rating. The expert report (Advisory Services Related to Case FIH- 20 December 2012) further qualified that statement by indicating that only 6,3 % of the portfolio had an FIH credit quality rating of 7 or higher, corresponding to 'Investment Grade'. Therefore, with more than 90 % of the portfolio being sub-investment grade and 25 % in actual default, the Commission believes an equity investment in such a portfolio to be risky and commanding a high remuneration.

⁽⁷⁷⁾ Submitted in its notes of 11 March 2013 and reiterated in Annex 1 of its summary note of 24 June 2013.

⁽⁷⁸⁾ See, more precisely, paragraphs 62 and 63 of that judgment.

⁽⁷⁹⁾ Comprised in the share purchase agreement of 1 March 2012 and the following closing agreements of 2 July 2012.

⁽⁸⁰⁾ See recital 100.

⁽⁸¹⁾ See recital 100.

- (108) As indicated in recitals 82 and 100, the Commission took a holistic approach in valuing all interest and other cash flows, fees and guarantees given, taking into consideration:
- (a) Denmark's concern that the Commission would pay insufficient attention to at the economic reality of all aspects of the measures, such as the loss-absorbing loan;
 - (b) the fact that not all elements of the transaction could be linked to a specific item in the remuneration formula.
- (109) In line with the Impaired Asset Communication, the Commission has relied on external experts for valuation advice ⁽⁸²⁾.

5.3. Compatibility of State aid

5.3.1. *Legal basis for the compatibility of the aid*

- (110) Article 107(3)(b) of the Treaty provides that State aid may be considered to be compatible with the internal market where it is intended to 'remedy a serious disturbance in the economy of a Member State'. Given the present circumstances and also the circumstances in the financial markets at the time of the Rescue and Opening Decision, the Commission considers that the measures may be examined under that provision.
- (111) The Commission accepts that the financial crisis has created exceptional circumstances in which the bankruptcy of one bank may undermine trust in the financial system at large, both at national and international level. That may be the case even for a small bank which is not in immediate difficulty but under tightened supervision by the financial regulator, such as FIH. The two-four year debt of that bank was priced at spreads of 600-700 basis points over EURIBOR at the time of the Rescue and Opening Decision. That pricing level is a clear indication of imminent distress. In such cases, early intervention to avoid the institution concerned becoming unstable can be necessary to avoid threats to financial stability. It is particularly so in the case of a small economy such as Denmark where counterparts may tend not to distinguish between individual banks, thus extending the lack of confidence generated by the failure of one bank to the whole sector. Therefore, the legal basis for the compatibility assessment of all the measures covered by this Decision is Article 107(3)(b) of the Treaty.
- (112) As regards specifically the compatibility of the transfer of assets to the FSC, the Commission will assess the measures with regard to the Impaired Assets Communication.
- (113) The Commission will then assess the compatibility of the restructuring measures with regard to the Restructuring Communication.

5.3.2. *Compatibility of the aid with the Impaired Assets Communication*

- (114) The Impaired Assets Communication lays down the principles regarding the valuation and transfer of impaired assets and compatibility of measures with the Treaty. It has to be assessed whether the aid has been limited to the minimum and there is sufficient own contribution of the bank and its shareholders.
- (115) According to point 21 of the Impaired Assets Communication banks should bear the losses associated with impaired assets to the maximum extent. Point 21 requires a correct remuneration of the State for the asset relief measure, whatever its form, so as to ensure equivalent shareholder responsibility and burden-sharing irrespective of the exact model chosen.

⁽⁸²⁾ Final Report – Advisory Services Related to Case FIH – Phase II – Case SA.34445 Denmark, 19 September 2013.

- (116) In their original form, the measures provided for remuneration equal to the funding cost of the Danish government plus a mere 100 basis points for the liquidity. No remuneration for the equity investment was foreseen, apart from a partial (25 %) upside in case the net resolution yields an excess through the price adjustment mechanism. Moreover, in a negative scenario where the asset portfolio of Newco would deteriorate significantly, compensation to the FSC would be provided by FIH Holding which, under those circumstances, would probably not have the capacity to honour its obligations. It seemed therefore unlikely, as stated in recitals 66 to 73 of the Rescue and Opening Decision, that the remuneration and own contribution would be sufficient to make the aid compatible with the internal market according to the guidance in the Impaired Assets Communication.
- (117) In line with point 39 of the Impaired Assets Communication, the Commission therefore thoroughly analysed the market value of the measures. Aided by an external expert, it estimated a probabilistic distribution of outcomes for the Newco asset portfolio and calculated the effect on the likely terminal liquidation asset values through the share purchase agreement.
- (118) In its assessment, the Commission found advantages through foregone equity remuneration and potential losses linked to the credit quality of FIH Holding, excess interests for the loss-absorbing loan, excess spreads on funding to Newco by FIH and excess fees for administration and derivative hedging. The Commission also found mitigating factors such as the early cancellation of government guarantees. In total, the measures contained a State aid element of about DKK 2,25 billion.
- (119) Taking into consideration points 40 and 41 of the Impaired Assets Communication, the difference between transfer value and real economic value was assessed by performing the same calculation as for the market value assessment with two adaptations. First, the distribution of outcomes was based on real economic values of the asset portfolio, instead of the market values. Second, the required remuneration for equity was based on the effective net capital relief of the measures.
- (120) In the 2014 decision, following a statement by the FSA, the Commission assessed the gross capital relief effect of the measures, at the level of FIH Holding, to be DKK 375 million ⁽⁸³⁾. This amount could be broken down into:
- (a) DKK 275 million due to reduced liquidity risk;
 - (b) DKK 100 million due to earnings risk.
- (121) The earnings risk corresponded to the risk of FIH having to attract additional capital to cover the losses anticipated for the coming year. However, in this case, FIH had erroneously attributed a positive development into the calculation of the earnings risk as it assumed anticipated savings of interest due to an early redemption of the DKK 1,9 billion of hybrid capital ⁽⁸⁴⁾. Such savings could not have created a risk of additional capital being necessary, and thus no capital relief arose for FIH under the earnings risk position. This miscalculation was reiterated in a statement by the FSA, but was later rectified in subsequent correspondence. However, since in the 2014 decision the Commission relied on the initial calculation, it fixed the capital relief effect at DKK 375 million and not DKK 275 million. For this reason, the General Court, by its judgment of 19 September 2019, annulled the 2014 decision. It follows that the correct amount of the gross capital relief of the aid measures should be set at DKK 275 million. This capital relief should be duly remunerated for the measure to be compatible with the Impaired Asset Communication. The Commission estimates that the remuneration required for the capital relief to be compatible with the Impaired Asset Communication should amount to at least 10 % per year ⁽⁸⁵⁾.

⁽⁸³⁾ The Commission accepted that, although the FSA indicated that the capital relief to FIH Erhvervsbank A/S amounted to DKK 847 million (the equivalent of DKK 10,5 billion of risk weighted assets), the unlimited loss guarantee given by FIH Holding significantly reduced the overall effect for the lending risk weight capacity of the group. In order to mitigate concerns by the Commission, Denmark added a commitment to increase the remuneration by FIH to the FSC, should the FSA change its regulatory view regarding capital requirements at holding level such that FIH's lending capacity would no longer be restricted by FIH Holding's capital position.

⁽⁸⁴⁾ See the replies submitted on 8 February 2019 by FIH Holding and FIH to the General Court in Case T-384/14 RENV, pages 9 and 10.

⁽⁸⁵⁾ The Commission notes that this remuneration threshold was upheld in the General Court's judgment of 19 September 2019.

- (122) Moreover, the Commission also found that the transfer value of the assets was DKK 254 million above their real economic value ⁽⁸⁶⁾, which needed to be remunerated and clawed back.
- (123) In addition, DKK 143,2 million in excess fees needed to be recovered.
- (124) To bring the measures in line with the Impaired Assets Communication:
- (a) on 4 December 2013, FIH repaid the amount by which the transfer value exceeded the real economic value of the assets, that is to say, DKK 254 million ⁽⁸⁷⁾;
 - (b) on 4 December 2013, FIH also paid a remuneration of 10 % per annum on the initial amount of the capital relief effect (namely on DKK 275 million) for the period between March 2012 and 4 December 2013 ⁽⁸⁸⁾;
 - (c) FIH would also pay to the FSC a remuneration of 10 % per annum on the modified capital relief effect of the measures applicable from 4 December 2013 onwards, that is to say on DKK 21 million (DKK 275 million less DKK 254 million);
 - (d) FIH would repay the excess administration fees ⁽⁸⁹⁾.
- (125) Denmark has ensured that FIH paid those amounts ⁽⁹⁰⁾ in addition to honouring all agreements under the closing documents of the measures ⁽⁹¹⁾.
- (126) Denmark commits that FIH will pay no dividends until the final settlement of the Newco accounts under the share purchase agreement, so as to mitigate the credit risk faced by FIH Holding for the FSC.
- (127) In conclusion, the measures in their entirety are proportionate, limited to the minimum and provide sufficient own contribution by FIH. Moreover, due to the payment made on 4 December 2013 ⁽⁹²⁾ to the FSC as well as the additional commitments as regards remuneration and fees, the measures provide for an appropriate remuneration in accordance with the Impaired Assets Communication.

5.3.3. *Compatibility of the aid with the Restructuring Communication and the 2011 Prolongation Communication* ⁽⁹³⁾

(a) Viability

- (128) According to the Restructuring Communication, in order to be compatible with the internal market under Article 107(3)(b) of the Treaty, the restructuring of a financial institution in the context of the current financial crisis must lead to a restoration of the viability of the bank, or to the orderly winding-up thereof, ensure that the aid is limited to the minimum necessary and include sufficient own contribution by the beneficiary (burden-sharing), and contain sufficient measures limiting the distortion of competition.

⁽⁸⁶⁾ The Commission's analysis was validated by an expert report which took into consideration all elements submitted by Denmark in its correspondence up to and including the summary note of 24 June 2013, as well as the clarifications of 29 August 2013.

⁽⁸⁷⁾ See recital 122. This was part of the amount of DKK 310,25 million paid into a deposit on 30 September 2013 and then released to the FSC on 4 December 2013 (see recital 51).

⁽⁸⁸⁾ This was part of the amount of DKK 310,25 million outlined in footnote 88, and also of the amount of DKK 6 575 342 outlined in footnote 48. Note that the amounts actually paid on 4 December 2013 were higher than required under Denmark's commitments attached to this Decision, as they were based on an amount of the capital relief effect that was considered incorrect under the General Court's judgment of 19 September 2019.

⁽⁸⁹⁾ The excess administration fees are estimated at DKK 143,2 million over the lifetime of the measures. Denmark mitigated this by paying back DKK 61,7 million to Newco as an excess earned up to the adoption of the 2014 decision and by reducing the future administration fee to 0,05 % of the outstanding notional, which is in line with market practice.

⁽⁹⁰⁾ See recital 51.

⁽⁹¹⁾ Note that since the remuneration paid on 4 December 2013 was calculated based on an incorrect (and higher) amount of the capital relief effect, any payment made in excess of what is required under Denmark's commitments attached to this Decision could be returned to FIH.

⁽⁹²⁾ See recital 51.

⁽⁹³⁾ Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis (OJ C 356, 6.12.2011, p. 7).

- (129) According to the Restructuring Communication a Member State needs to provide a comprehensive restructuring plan which demonstrates how the long-term viability of the beneficiary will be restored without State aid within a reasonable period of time and within a maximum of five years. Long-term viability is achieved when a bank is able to compete in the marketplace for capital on its own merits in compliance with the relevant regulatory requirements. For a bank to do so, it must be able to cover all its costs and provide an appropriate return on equity, taking into account the risk profile of the bank. The return to viability should mainly derive from internal measures and be based on a credible restructuring plan.
- (130) The restructuring plan submitted by Denmark in respect of FIH covering the period up to 31 December 2016 showed a return to viability at the end of that restructuring period. The bank was expected to remain profitable and improve its yearly results in particular during the period 2013 – 2016, with an adequate return on equity on newly generated business. In a worst case scenario, the bank would still generate profits, with net profit improving from DKK 51 million (EUR 6,8 million) in 2013 to DKK 122 million (EUR 16,27 million) in 2016.
- (131) According to the restructuring plan, by 31 December 2016 the total capital ratio of FIH would be as high as 19,6 % and the statutory liquidity ratio then was expected to be 160 %. All those ratios would exceed significantly the regulatory minimum requirements. The group would therefore appear well capitalised and endowed with a comfortable liquidity position.
- (132) Following the measures, in particular the transfer of loans, FIH was a position not only to redeem the government-guaranteed bonds in 2013 in due time but also to repay on 2 July 2013 the hybrid capital it had received from the government.
- (133) The measures improved the liquidity profile of FIH which was able to obtain a statutory liquidity ratio of 214 % as of 31 December 2012 and was expected to obtain a ratio of 239,7 % as of 31 December 2013 ⁽⁹⁴⁾ thus exceeding the regulatory liquidity requirements significantly.
- (134) In particular, the funding gap which previously threatened FIH was closed through a hive-off of assets, with the help of the DKK 13 billion funding facility provided by the FSC to Newco. In addition, the FSC committed to recapitalise Newco over the lifetime of the measures, if necessary ⁽⁹⁵⁾. As a result, any immediate recapitalisation issues for FIH were pre-empted.
- (135) In summary, with both profitability and liquidity assured, and a sufficient capital base FIH seemed to be in a good position to attain long-term viability on a standalone basis.
- (136) Although in the worst case scenario the pre-tax return on normalised equity was budgeted to be only 0,9 % at 31 December 2013 and 2,0 % ⁽⁹⁶⁾ at 31 December 2016, the best case projected a return on normalised equity of 10,3 % and 11,2 % for 2013 and 2016 respectively.
- (137) The Commission does not usually use the concept of ‘normalised equity’ because it regularly leads to a higher return on equity than if the calculations were based on the actual equity. In this case, however, Denmark has given a commitment that FIH Holding and FIH would retain accumulated earnings to a high level, so as to better guarantee an appropriate payment to the FSC. In particular if Newco realised significantly lower proceeds than planned by FIH, FIH (via the loss-absorbing loan) and FIH Holding (via the guarantee given to the FSC) would bear costs to ensure the remuneration of the FIH at a level commensurate with the State aid rules. The accumulation of retained earnings nevertheless increased equity to a relatively high level (DKK 8,4 billion in the best case, DKK 7,3 billion in the worst case) which reduced the return on equity ratio. FIH was not in a position to counteract that process unless it produced losses (which is neither foreseen nor desirable). The concept of ‘normalised equity’ is therefore preferable in the current case to allow the Commission to assess properly the profitability of the bank, setting aside the results of the accumulation of retained earnings.

⁽⁹⁴⁾ See recital 45.

⁽⁹⁵⁾ This could be the case if the asset value were to deteriorate further. If that were to occur Newco might have negative equity after which, in line with standard commercial law, it could be obliged to file for bankruptcy. Such an outcome is prevented by the recapitalisation clause which means that Newco would receive a new capital injection from the FSC if need be and which the FSC would only get back from FIH Holding at the final settlement of the transaction (between 31 December 2016 and 31 December 2019).

⁽⁹⁶⁾ See recital 41.

(138) Further, FIH would exit the relatively risky business area of acquisition finance which led to a risk reduction of its business activities and put its business model on a more solid foundation. Moreover, with a total capital ratio of 20,8 % ⁽⁹⁷⁾ at the end of the restructuring period FIH seemed overcapitalised ⁽⁹⁸⁾ in view of its business model and thus much less exposed to market risks which might jeopardise its existence as a going-concern than before.

(139) The Commission therefore considers that the restructuring plan was apt to restore FIH's long-term viability.

(ii) Viability

(140) Denmark committed not to request of FIH to pay any dividends during the restructuring phase and to repay a previous State recapitalisation of DKK 1,9 billion. Further, FIH would not make any coupon payments to investors in hybrid instruments or any instrument for which financial institutions have discretion to pay coupons or to call, regardless of their regulatory classification, including subordinated debt instruments, if no legal obligation to make payments existed.

(141) In addition, as concluded in recital 127, the remuneration of the impaired asset measures was set at an appropriate level.

(142) The Commission therefore considers that the restructuring plan sufficiently addressed the burden-sharing requirement.

(iii) Distortion of competition

(143) The restructuring plan provided for FIH to withdraw from certain business lines (property finance, private equity and private wealth management). In particular, DKK 15,4 billion of property finance assets (25 % of the 2012 balance sheet) were hived off to Newco.

(144) The amended term sheet also provided for a price leadership ban for deposits if the market share of FIH exceeded 5 %. That commitment allowed FIH to further improve its funding position by raising deposits on the market while at the same time establishing a threshold preventing excessive practices. In addition, there would be a ban on commercial aggressive practices safeguarding competitors from excessive market behaviour. It should be noted that no market participant commented on FIH's policy concerning deposit pricing after the Commission opened proceedings on that question.

(145) Further, FIH would divest its investments in private equity funds and other equity investments and would no longer have a mortgage institute in its company structure after 31 December 2014. Thus, those business areas would also be left to competitors and the presence of FIH on the market reduced accordingly.

(146) Moreover, FIH Realkredit ⁽⁹⁹⁾ was liquidated in 2013 and all business activities in the business field Acquisition Finance were ceased.

(147) In addition, FIH had already reduced its total assets from DKK 109,3 billion (EUR 14,67 billion) on 31 December 2010 to DKK 60,8 billion (EUR 8,16 billion) by 31 December 2012, corresponding to a decrease of 44 %.

(148) Altogether, those commitments have led to a sufficient mitigation of distortion of competition because business opportunities which could potentially be profitable for FIH were abandoned and left to its competitors.

⁽⁹⁷⁾ The ratio would be 19,6 % after the one-off payment of DKK 310,25 million.

⁽⁹⁸⁾ The overcapitalisation was solely due to the fact that FIH had to retain its profits over the restructuring period and thus was not to pay any dividends over the whole period in order to preserve a high capital buffer. That course of action was a precaution to ensure the correct and complete remuneration of the impaired asset measures as FIH and FIH Holding guaranteed the final payment to the State.

⁽⁹⁹⁾ See recitals 13 and 64.

5.4. Conclusion and closure of the opening of the formal investigation procedure

- (149) The Commission expressed doubts in its Rescue and Opening Decision as to whether the measures at stake were well-targeted as required by the 2008 Banking Communication ⁽¹⁰⁰⁾. In particular at that stage, it was unclear whether investors would consider FIH as fully relieved from its worst assets, and whether they would be ready to provide funding under bearable conditions. FIH's restructuring plan demonstrated that the bank had a sufficient capital buffer even under a stress scenario and that it was likely to remain viable under unfavourable macroeconomic developments.
- (150) In the Rescue and Opening Decision the Commission also raised doubts as to whether the measures were limited to the minimum and envisaged sufficient own contribution ⁽¹⁰¹⁾, in particular in view of the complexity of the measures.
- (151) Following a detailed assessment of the elements and their links the Commission considers that the remuneration FIH would pay for the measures serves as a sufficient own contribution and is in line with the Impaired Assets Communication. The Commission welcomes the one-off payment to the FSC and the commitments made in that respect ⁽¹⁰²⁾. The Commission notes further that the measures improved the liquidity profile of the bank which, under all scenarios, remained liquid and viable according to the restructuring plan.
- (152) In the Rescue and Opening Decision the Commission expressed further doubts in relation to whether the requirement that distortion of competition be limited had been met. However, Denmark subsequently committed that FIH would be subject to a coupon ban, a dividend ban, a price leadership ban (including for deposits) and a ban on commercial aggressive practices, and to divestment commitments.
- (153) Overall, the Commission notes that the restructuring plan presented by Denmark adequately addressed the issues of viability, burden-sharing and distortion of competition, and hence it was in line with the requirements of the Restructuring Communication and Impaired Assets Communication.
- (154) Based on the assessment above the Commission finds that the measures were well-targeted, limited to the minimum and provided for limited distortion of competition. Therefore the Commission's doubts related to the compatibility of the measures, initially raised in the Rescue and Opening Decision, have been allayed.

6. COMPLIANCE OF THE MEASURES WITH THE PROVISIONS OF DIRECTIVE 2014/59/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ⁽¹⁰³⁾ ON BANK RECOVERY AND RESOLUTION

- (155) Although Member States transposed Directive 2014/59/EU into national law, the Commission needs to assess whether the measure violates indissolubly linked provisions of Directive 2014/59/EU.
- (156) That obligation is in line with the jurisprudence of the Union Courts, which have consistently held ⁽¹⁰⁴⁾ 'that those aspects of aid which contravene specific provisions of the Treaty other than [Articles 107 and 108 of the Treaty] may be so indissolubly linked to the object of the aid that it is impossible to evaluate them separately to that their effect on the compatibility or incompatibility of the aid viewed as a whole must therefore of necessity be determined in the light of the procedure prescribed in [Article 108]' ⁽¹⁰⁵⁾.

⁽¹⁰⁰⁾ See section 2.1 of the Rescue and Opening Decision.

⁽¹⁰¹⁾ See section 2.2 of the Rescue and Opening Decision.

⁽¹⁰²⁾ See recital 124.

⁽¹⁰³⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and EU No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

⁽¹⁰⁴⁾ See, inter alia, the judgment of the Court of Justice of 12 November 1992 in Joined Cases C-134/91 and C-135/91, *Keramina-Keramische v Greece*, EU:C:1992:434, paragraph 20; judgments of the Court of First Instance of 27 September 2000, *T-184/97 BP Chemicals v Commission*, EU:T:2000:217, paragraph 55; and of 12 February 2008, *T-289/03, BUPA and others v Commission*, EU:T:2005:78, paragraphs 313 and 314.

⁽¹⁰⁵⁾ Judgment of the Court of Justice of 22 March 1977 in Case 74/76, *Ianelli v Meroni*, EU:C:1977:51, paragraph 14.

- (157) To assess whether a violation of a provision of Union law is indissolubly linked to the measure, it has to be established whether the State aid measure necessarily breaches a specific provision of Union law which is relevant for the compatibility analysis under paragraphs 2 and 3 of Article 107 of the Treaty.
- (158) This Decision refers to measures put in place by the Danish authorities before the adoption of Directive 2014/59/EU. Directive 2014/59/EU was indeed adopted on 15 May 2014 and the deadline for its transposition into the law of the Member States was 1 January 2015 ⁽¹⁰⁶⁾, while the measures concerned by the case at hand were granted in 2012. As a consequence, Directive 2014/59/EU does not apply to the present case.

7. CONCLUSION

- (159) Based on the notification and in view of the commitments presented by Denmark (and which Denmark has upheld in its letter submitted on 13 January 2020) it is concluded that the notified measures constitute State aid and are compatible with the internal market. The appropriateness of the measures as well as the viability of the bank and own contributions together with the measures to mitigate distortion of competition appear sufficient. Consequently, the measures should be approved pursuant to Article 107(3)(b) of the Treaty and the opened proceedings should be closed,

HAS ADOPTED THIS DECISION:

Article 1

The asset transfer from the FIH Group to the Danish Financial Stability Company, together with the side agreements, constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

This State aid is compatible with the internal market within the meaning of Article 107(3)(b) of the Treaty, in the light of the restructuring plan and the commitments set out in the Annex.

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 25 February 2020.

For the Commission
Margrethe VESTAGER
Executive Vice-President

⁽¹⁰⁶⁾ Article 130(1) of Directive 2014/59/EU.

ANNEX

TERM SHEET (CASE SA.34445) Denmark – Restructuring plan of FIH

1. BACKGROUND

The Kingdom of Denmark undertakes to ensure that the Restructuring Plan for FIH submitted on 24 June 2013 is correctly and fully implemented. This document (the 'Term Sheet') sets out the terms (the 'Commitments') for the restructuring of FIH Erhvervsbank A/S including subsidiaries ('FIH'), which the Kingdom of Denmark has committed to implement.

2. DEFINITIONS

In this document, unless the context requires otherwise, the singular shall include the plural (and vice versa) and the capitalised terms used herein have the following meanings:

Term	Meaning
Commitments	mean the undertakings related to the restructuring of FIH set out in this Term Sheet
Decision	means the decision of the European Commission on the restructuring of FIH in the context of which these Commitments are undertaken and to which this Term Sheet is attached
Restructuring Period	is the time period specified in clause 3.2
Restructuring Plan	means the plan submitted by FIH to the European Commission, via the Kingdom of Denmark, on the 24 June 2013, as amended and supplemented by written communications
FIH or FIH Group	FIH Erhvervsbank A/S including subsidiaries
FIH Holding	FIH Holding A/S
FIH Holding Group	FIH Holding A/S including direct and indirect subsidiaries
FS Property Finance A/S	The wholly-owned subsidiary of the Financial Stability Company FSC, also referred to in the decision as 'Newco';
Acquisition Finance	The separate and dedicated business unit with employees solely focusing on financing solutions in connection with mergers and acquisitions, and which was marketed specifically towards existing and potential clients

3. GENERAL

- 3.1. The Kingdom of Denmark undertakes to ensure that the Commitments are fully observed during the implementation of the Restructuring Plan.
- 3.2. The Restructuring Period shall end on 31 December 2016. The Commitments apply during the Restructuring Period, unless otherwise indicated.
- 3.3. All commitments have either been implemented or are no longer relevant, unless otherwise indicated. The Kingdom of Denmark commits not to reverse the implemented commitments.

4. STRUCTURAL MEASURES

4.1. Acquisition Finance

FIH will cease all business activities in the business field Acquisition Finance by 30 June 2014. The existing portfolio will be placed in run off by 30 June 2014.

4.2. Closure of the Property Finance business

FIH has withdrawn from the business area of investment properties ⁽¹⁾ and closed that business area by 31 December 2013. There will be no re-entry into that business area which means in particular that no new lending (capital) to finance investment in investment properties in Denmark, Sweden, Germany or any other country will take place ⁽²⁾.

4.3. Divestiture of the Private Equity business

FIH will divest its investments in private equity funds and other equity investments to the extent permitted by law as early as possible and in any case not later than 31 December 2016. If a divestment by that date is not possible, the investments will be put in run-off which means in particular that no funding or renewals of investments may take place anymore ⁽³⁾. Further, from the date of the Decision, no new private equity or other investments will be made *(with the exceptions stated in footnote 3)*.

4.4. Mortgage Bank

FIH shall not have a mortgage institute in its company structure by end of 2014, and shall not act as a mortgage bank thereafter.

5. BEHAVIOURAL MEASURES AND CORPORATE GOVERNANCE

- 5.1. **Ban on acquisitions:** FIH shall not acquire any stake in any undertaking. This applies both to undertakings which have the legal form of a company and packages of assets which form a business.

Activities not comprised by the acquisition ban: This ban does not apply to acquisitions that must be made in exceptional circumstances to maintain financial stability or in the interests of effective competition, provided they have been approved beforehand by the Commission. This does neither apply to acquisitions that take place in the ordinary course of the banking business in the management of existing claims towards ailing firms and to disposal and restructuring within FIH Holding Group.

Exemptions not requiring the Commission's prior approval: FIH may acquire stakes in undertakings provided that the purchase price paid by FIH for any acquisition is less than 0,01 % of the balance sheet size of FIH at the date of the Commission decision and that the cumulative purchase prices paid by FIH for all such acquisitions over the whole restructuring period is less than 0,025 % of the balance sheet size of FIH at the date of the Commission decision.

- 5.2. **Ban on commercial aggressive practices:** FIH shall avoid engaging in aggressive commercial practices throughout the duration of the Restructuring Plan.

⁽¹⁾ Defined as loans granted in the context of financing shops, offices, blocks of flats, warehouses, showrooms, factories or similar premises if granted to a company that does not reside at the premises for their primary business activity or to a company that is specialised in developing real estate.

⁽²⁾ Does not apply in the following instances: a) FIH Holding/FIH/other current or future entities in the FIH Holding Group buys back FSPF A/S (alternatively the loan portfolio of FSPF A/S, or part thereof), b) if FIH is contractually/legally obliged to provide such loan, or if a loan is made in connection with a restructuring/refinancing/recapitalisation/work-out solution for debtors in FIH or FSPF, or c) non-lending advisory services.

⁽³⁾ Does not apply in the ordinary course of the banking business (e.g. if FIH obtains a shareholding through a restructuring or similar of debtors) or if FIH is legally obliged to make such investment.

- 5.3. Deposits: FIH will not offer more favourable prices for deposit products (notably but not exclusively for retail deposits in FIH Direct Bank) than the two best priced competitors in a given market.

The restriction does not apply if FIH's share of the total deposit market is less than 5 % ⁽⁴⁾.

- 5.4. Advertising: FIH must not use the granting of the aid measures or any advantages arising therefrom for advertising purposes. Further, its overall annual advertising expenses will be below EUR 1 million.

- 5.5. Ban on coupon payments: FIH will refrain during the Restructuring Period from making any payments on capital instruments, unless those payments stem from a legal obligation, and not call or buy back those instruments without prior approval of the Commission. Coupons on capital instruments held by the state may be paid, unless such payments would trigger coupon payments to other investors that otherwise would not be mandatory. This commitment not to pay coupons during the Restructuring Period does not apply for newly issued instruments (meaning instruments issued after the Commission's final approval of the restructuring plan), provided any payment of coupons on such newly issued instruments will not create a legal obligation to make any coupon payments on FIH's securities existing at the moment of the adoption of the Commission's Restructuring Decision.

- 5.6. Ban on dividend payments: All dividends paid to FIH Holding will be retained until settlement of the share purchase agreement respectively the end of the Restructuring Period, whichever is longer. Thus, FIH Holding shall not distribute funds to its shareholders by way of dividends or otherwise until the final settlement of the purchase price agreement. To retain earnings in the FIH Holding group, FIH shall not pay dividends to other entities than FIH Holding.

- 5.7. Restrictions on FIH Holding related to ownership: FIH Holding shall not pledge its shareholding in FIH. Related party transactions shall be on arm's length. No decision affecting the credit-worthiness or liquidity of FIH Holding compromising its capability of paying a negative variable purchase price if required shall be taken.

FIH Holding is only allowed to conduct business as holding company for FIH and any shareholder loans shall not be repaid.

- 5.8. Buy Back of Hybrid Capital Instruments or other Capital Instruments:

With regard to the buy-back of hybrid capital instruments or other capital instruments existing in FIH on 2 March 2012, FIH will respect the rules concerning Tier 1 and Tier 2 capital transactions as set out in the MEMO/09/441 of 8 October 2008 ⁽⁵⁾. In any case FIH will consult the Commission before making announcements to the market concerning Tier 1 and Tier 2 capital transactions.

6. CAPITAL RELIEF

FIH will remunerate the measure in line with the IAC. Specifically, in addition to making a one off payment of DKK 295,25 Million + 27,5 Million × N/365, where N is the number of days between 30 September 2013 and the final payment date, which, according to the Danish authorities has already occurred with value date 4 December 2013, FIH will:

- Each year, from 2014 to 2020 or the year following the final settlement of the purchase price agreement, whichever is earlier, pay a fee of DKK 2,1 million per annum with value date 30 September (or, if 30 September of the respective date is not a business day, on the following business day). The final fee is to be paid on the settlement date of the purchase price agreement, and reduced *pro rata temporis* (on an actual over actual basis) for the period between the penultimate fee payment (30 September) and the settlement of the purchase price agreement as well as for the first period, from 4 December 2013 to 30 September 2014.

⁽⁴⁾ FIH's share of the market is derived from the Danish Central Bank's MFI-statistics (www.statistikbanken.dk/DNMIN). It is based on the total amount of deposits from Danish residents in the Danish MFI sector relative to deposits from Danish residents in FIH.

⁽⁵⁾ http://europa.eu/rapid/press-release_MEMO-09-441_en.htm

- Reduce the management fees for administration and hedging charged to FS Property Finance A/S to 0,05 % per annum of the outstanding loan portfolio, retroactively effective from 1 January 2013;
- Pay an annual fee of DKK 47,2 million to FSC if the FSA changes its regulatory view regarding capital requirements at holding level such that FIH's lending capacity would no longer be restricted by FIH Holding's capital position. Value dates and time limitations similar to the first indent above apply ⁽⁶⁾.

7. REPORTING

- 7.1. The Kingdom of Denmark shall ensure that the full and correct implementation of the Restructuring Plan and the full and correct implementation of all Commitments within this Term Sheet are continuously monitored.
 - 7.2. The Kingdom of Denmark will report semi-annually to the Commission on the evolution of the Restructuring Plan and the above mentioned commitments until the end of the Restructuring Period.
 - 7.3. Within three months of the final settlement of the transaction the Kingdom of Denmark will provide a report made by an external certified accountant on the accurateness of the settlement of the transaction.
-

⁽⁶⁾ It is worth mentioning that (i) FIH has already made a one off payment of DKK 350,97 million, and (ii) paid an amount of DKK 61,7 million to FS Property Finance A/S as partial repayment of fees received under the administration agreement for 2012, which according to the Danish authorities has already occurred with value date 18 December 2013. The FSC will return the part of the payment without interest exceeding the minimum payment described in Section 6 of these commitments.

COMMISSION DECISION (EU) 2020/1184**of 17 July 2020****on the national provisions notified by Hungary pursuant to Article 114(4) of the Treaty on the Functioning of the European Union concerning the cadmium content in phosphate fertilisers***(notified under document C(2020) 4862)***(Only the Hungarian text is authentic)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114(6) thereof,

Whereas:

1. FACTS AND PROCEDURE

- (1) On 19 July 2019 Hungary notified the Commission, based on Article 114(4) of the Treaty on the Functioning of the European Union (TFEU), of its intention to maintain national provisions on cadmium content in phosphate fertilisers derogating from Regulation (EU) 2019/1009 of the European Parliament and of the Council ⁽¹⁾.

1.1. Union Legislation**1.1.1. Article 114(4) and (6) TFEU**

- (2) Article 114, paragraphs 4 and 6 TFEU provide:

‘4. If, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 36, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

[...]

6. The Commission shall, within six months of the notifications referred to in paragraphs 4 [...] approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 [...] shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.’

1.2. Harmonisation rules in the field of fertilising products**1.2.1. Regulation (EC) No 2003/2003**

- (3) Regulation (EC) No 2003/2003 of the European Parliament and the Council ⁽²⁾ applies to products which are placed on the market as fertilisers designated ‘EC fertilisers’. A fertiliser belonging to a type of fertilisers listed in Annex I to Regulation (EC) No 2003/2003 and complying with the conditions laid down in that Regulation may be designated ‘EC fertiliser’ and move freely in the internal market.

⁽¹⁾ Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003 (OJ L 170, 25.6.2019, p. 1).

⁽²⁾ Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers (OJ L 304, 21.11.2003, p. 1).

- (4) Annex I to Regulation (EC) No 2003/2003 sets an exhaustive list of types of fertilisers covered by the harmonisation rules. For each type of fertiliser there are specific requirements concerning for instance nutrient content, nutrient solubility, or processing methods.
- (5) Regulation (EC) No 2003/2003 applies mainly to inorganic fertilisers. Some of the types of fertilisers covered have a phosphorus content of 5 % phosphorus pentoxide (P_2O_5)-equivalent or more by mass.
- (6) Article 5 of Regulation (EC) No 2003/2003 sets the principle of free circulation of EC fertilisers on the internal market, stating that Member States shall not, on grounds of composition, identification, labelling or packaging, and other provisions contained in that Regulation, prohibit, restrict or hinder the placing on the market of EC fertilisers which comply with that Regulation.
- (7) That Regulation sets no limit values for contaminants in EC fertilisers. Therefore, with a few exceptions based on the Commission Decisions in application of the respective TFEU provisions ⁽³⁾, EC fertilisers with a phosphorus content of at least 5 % P_2O_5 move freely in the internal market irrespective of their cadmium content.
- (8) Nevertheless, the Commission's intention to address the issue of unintentional cadmium content in mineral fertilisers was already announced in recital 15 of Regulation (EC) No 2003/2003. According to it 'Fertilisers can be contaminated by substances that can potentially pose a risk to human and animal health and the environment. Further to the opinion of the Scientific Committee on Toxicity, Ecotoxicity and the Environment (SCTEE), the Commission intends to address the issue of unintentional cadmium content in mineral fertilisers and will, where appropriate, draw up a proposal for a Regulation, which it intends to present to the European Parliament and the Council. Where appropriate, a similar review will be undertaken for other contaminants'.

1.2.2. Regulation (EU) 2019/1009

- (9) Regulation (EU) 2019/1009 sets harmonisation rules for 'EU fertilising products'. It repeals Regulation (EC) No 2003/2003 as of 16 July 2022.
- (10) EU fertilising products are fertilising products which are CE marked when made available on the internal market. An EU fertilising product must meet the requirements set out in Regulation (EU) 2019/1009 for the relevant product function category ('PFC') and component material category or categories, and be labelled in accordance with the labelling requirements laid down therein. There are seven PFCs for EU fertilising products, one of which covers fertilisers.
- (11) Regulation (EU) 2019/1009 covers inorganic fertilisers in a more generic manner than Annex I to Regulation (EC) No 2003/2003, subject to some general requirements concerning their quality and safety. In addition, Regulation (EU) 2019/1009 applies to organic and organo-mineral fertilisers, which are outside the material scope of Regulation (EC) No 2003/2003.
- (12) Regulation (EU) 2019/1009 introduces at Union level the notion of 'phosphate fertilisers' for inorganic macronutrient fertilisers or organo-mineral fertilisers with a phosphorus content of at least 5 % P_2O_5 .
- (13) The Regulation sets, for the first time at Union level, limit values for contaminants in EU fertilising products. Based on point 3(a)(ii) in PFC 1(B), Organo-mineral fertiliser, and point 2(a)(ii) in PFC 1(C)(I), Inorganic macronutrient fertiliser, of Annex I to Regulation (EU) 2019/1009, the cadmium content in phosphate fertilisers must not exceed the limit value of 60 mg/kg P_2O_5 .

⁽³⁾ See Commission Decisions of 3 January 2006: 2006/347/EC on the national provisions notified by the Kingdom of Sweden under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers (OJ L 129, 17.5.2006, p. 19), 2006/348/EC on the national provisions notified by the Republic of Finland under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers (OJ L 129, 17.5.2006, p. 25), and 2006/349/EC on the national provisions notified by the Republic of Austria under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers (OJ L 129, 17.5.2006, p. 31).

- (14) The principle of free movement is enshrined in Article 3(1) of Regulation (EU) 2019/1009, according to which Member States shall not impede, for reasons relating to composition, labelling or other aspects covered by that Regulation, the making available on the market of EU fertilising products which comply with that Regulation. However, in accordance with Article 3(2) of Regulation (EU) 2019/1009, a Member State which, on 14 July 2019, benefits from a derogation from Regulation (EC) No 2003/2003 in relation to cadmium content in fertilisers granted in accordance with Article 114(4) TFEU may continue to apply the national limit values for cadmium content in phosphate fertilisers until such time as harmonised limit values for cadmium content in phosphate fertilisers which are equal to or lower than the national limit value are applicable at Union level.
- (15) In addition, by 16 July 2026, the Commission has an obligation to review the limit values for cadmium content in phosphate fertilisers, with a view to assess the feasibility of reducing these limit values to a lower appropriate level. The Commission has to take into account environmental factors, in particular in the context of soil and climatic conditions, health factors, as well as socioeconomic factors, including considerations of security of supply.

1.2.3. *Optional regime*

- (16) The EU market for fertilising products is only partly harmonised.
- (17) Regulation (EC) No 2003/2003 aims to ensure the free circulation on the internal market of EC fertilisers. However, it does not affect the so-called 'national fertilisers' placed on the market of the Member States in accordance with national legislation. Producers can choose to market fertiliser as 'EC fertiliser' or as 'national fertiliser'.
- (18) Regulation (EU) 2019/1009 maintains unchanged the optional regime. Thus, it ensures the free movement in the internal market of EU fertilising products and continues to allow the placing on the market of national fertilising products. The choice remains with the manufacturer.
- (19) Based on both Regulation (EC) No 2003/2003 and Regulation (EU) 2019/1009, Member States must not impede the making available on the market of compliant EC fertilisers and, respectively, EU fertilising products, for reasons relating to, inter alia, cadmium content.
- (20) However, Member States may maintain or introduce any limit values deemed appropriate for contaminants in national fertilising products, which are outside the scope of Regulation (EU) 2019/1009. Every Member State is concerned to a greater or lesser extent by the threat that accumulation of cadmium poses to the long-term sustainability of crop production. The majority of Member States have already introduced rules limiting the cadmium content in national fertilising products with the objective of reducing emissions of cadmium in the environment and thereby the exposure of humans to cadmium. This Decision does not refer to this type of rules.
- (21) Thus, Union harmonisation rules coexist with the national provisions applicable to fertilising products.

1.3. **National provisions notified**

- (22) The national provisions notified by Hungary ('the notified national provisions') are contained in the Hungarian Minister for Agriculture and Rural Development Decree No 36/2006 of 18 May 2006 on the authorisation, storage, marketing and use of fertilising products. Decree No 36/2006 contains certain conditions. In particular, Point 1.2 of Annex 3 to the Decree sets a national limit value of 20 mg/kg P₂O₅ for cadmium. This limit value applies to three categories of national fertilisers: phosphoric fertilisers, NPK fertilisers and NPK + micronutrient fertilisers irrespective of their content of P₂O₅. In its letter dated 27 September 2019, Hungary confirmed that that limit value is not applicable to EC fertilisers.
- (23) Hungary has specified in its notification and the additional information submitted to the Commission that it intends to apply the above mentioned limit value to inorganic and organo-mineral fertilisers covered by Regulation (EU) 2019/1009 and made available on the market in Hungary. In particular, if approved, the notified national provisions will only apply as a derogation from the provisions on phosphate fertilisers in point 3(a)(ii) PFC 1(B) and point 2(a)(ii) PFC 1(C)(I) of Part II of Annex I to Regulation (EU) 2019/1009. These provisions concern inorganic and organo-mineral fertilisers with a total phosphorus content that is equal or more than 5 % phosphorus pentoxide (P₂O₅) equivalent by mass.

- (24) Regarding the various conditions of Decree No 36/2006 other than the cadmium limits, Hungary has confirmed that, those other conditions are not to be considered as notified national provisions derogating from Regulation (EU) 2019/1009 to be approved by the Commission, as it has no intention to derogate from that Regulation beyond the limit value for cadmium.

1.4. Procedure

- (25) At the time of the adoption of Regulation (EU) 2019/1009, Hungary along with Slovakia and the Czech Republic signed a political declaration expressing their regret as regards the low ambition of the final compromise on the cadmium limit value in phosphate fertilisers, and already indicating their support for national derogations from it based on Article 114(4) TFEU.
- (26) By letter of 17 July 2019, registered on 19 July 2019, Hungary notified the Commission of its intention to maintain national provisions on cadmium content in phosphate fertilisers derogating from Regulation (EU) 2019/1009. According to Article 114(4) read in conjunction with Article 36 TFEU, Hungary's justification is based on grounds of major needs relating to the long-term protection of the soil and the resulting protection of human health and the protection of the environment.
- (27) By letter of 26 July 2019, the Commission acknowledged receipt of the notification and informed the Hungarian authorities that the six-month period for its examination according to Article 114(6) TFEU started on 20 July 2019.
- (28) In support of their notification based on Article 114(4) TFEU, the Hungarian authorities sent by letters dated 27 September 2019 and 15 October 2019 additional information to the Commission. That information provides clarifications as regards the material scope of the national provisions that Hungary seeks to maintain, as well as detailed data on the fertilisers market in Hungary.
- (29) Further, the Commission published a notice regarding the notification in the *Official Journal of the European Union* ⁽⁴⁾ in order to inform interested parties of Hungary's intention to maintain its national provisions, as well as the grounds invoked to support the request. By letter of 19 November 2019, the Commission also informed the other Member States on the notification and gave them the opportunity to submit comments thereon within 30 days.
- (30) The Commission received comments within this deadline from two Member States, namely: Latvia and the Czech Republic. Latvia stated that it did not object to the intention of Hungary to maintain national provisions derogating from the provisions of Regulation (EU) 2019/1009 in relation to cadmium limit value of phosphate fertilisers. The Czech Republic mentioned that it does not have any comments as regards the notification. No comments were received following the publication of the notice in the Official Journal.
- (31) In its Decision notified on 17 January 2020 ⁽⁵⁾, pursuant to Article 114(6), third paragraph, TFEU, and in view of the complexity of the matter, and the absence of danger for human health caused by the extension as such, the Commission considered it justified to extend the period referred to in Article 114(6), first subparagraph, TFEU for a further period of six months expiring on 20 July 2020. Since the complexity of the matter was related to the conditions of admissibility, the Commission reserved the ruling on the admissibility of the notification to this decision.

2. ASSESSMENT

2.1. Admissibility

- (32) Under Article 114(4) and (6) TFEU a Member State may, after the adoption of a harmonisation measure, maintain its more stringent national provisions on grounds of major needs referred to in Article 36 TFEU, or relating to the protection of the environment or the working environment, provided that it notifies those national provisions to the Commission and the Commission approves them.

⁽⁴⁾ OJ C 394, 21.11.2019, p. 2.

⁽⁵⁾ Commission Decision extending the period referred to in Article 114(6) of the Treaty on the Functioning of the European Union in relation to national provisions concerning the maximum admissible content of cadmium in fertilisers notified by Hungary pursuant to Article 114(4) of the Treaty (C(2020) 134 final).

- (33) Hungary is asking the Commission to grant a derogation allowing the placing on the Hungarian market of only those phosphate fertilisers with a phosphorus pentoxide (P_2O_5) content of at least 5 % P_2O_5 which contain no more than 20 mg cadmium/kg P_2O_5 . In its letter dated 27 September 2019, Hungary clarifies that their intention is to maintain a derogation from the limit value set for cadmium in phosphate fertilisers, both inorganic macronutrient fertilisers and organo-mineral fertilisers.
- (34) To ascertain the admissibility of the request, the Commission has to assess if the notified national provisions concerned is a pre-existent measure derogating from the newly introduced harmonisation rule and if it is more stringent.

2.1.1. *On the pre-existence of the notified national provisions*

- (35) For the purpose of this assessment, it is important to take note of the particular complexity of the situation at hand.
- (36) First, the exhaustive list of narrowly defined EC fertiliser types laid down in Regulation (EC) No 2003/2003 will be replaced by an entirely different regulatory regime. Regulation (EU) 2019/1009 will thus replace those fertiliser types by much more generic fertiliser categories, and extend the scope of harmonisation to product categories other than fertilisers. In other words, while Regulation (EU) 2019/1009 will cover all products previously harmonised under Regulation (EC) No 2003/2003, it will constitute the first EU harmonisation measure for certain fertiliser categories falling under its extended scope.
- (37) Second, while Regulation (EC) No 2003/2003 harmonises EC fertilisers, it does not impose a harmonised limit value for cadmium. In other words, while some of the fertilisers targeted by the notified national provisions have – as such – already been subject to harmonisation measures, those harmonisation measures have so far not targeted the risk that the notified national provisions seeks to address.
- (38) Third, Hungary, did not apply for a derogation from Regulation (EC) No 2003/2003, and currently does not apply any cadmium limit for the EC fertilisers.
- (39) These complexities raise the question whether the notified national provisions could be considered as maintained in force and notifiable to the Commission in accordance with Article 114(4) TFEU with respect to Regulation (EU) 2019/1009 while having regard to the harmonisation established by Regulation (EC) No 2003/2003.
- (40) On the one hand, Article 3(2) of Regulation (EU) 2019/1009 extends past derogations from Article 5 of Regulation (EC) No 2003/2003 to Article 3(1) of Regulation (EU) 2019/1009, thus allowing existing national measures lawfully applying, on the basis of notifications under Article 114(4) TFEU and Commission decisions under Article 114(6) TFEU, to fertilisers covered by the scope of harmonisation provided for by Regulation (EC) No 2003/2003 to also apply to EU fertilising products which will fall within the newly extended scope of harmonisation for the first time by virtue of Regulation (EU) 2019/1009. That also confirms that Regulation (EU) 2019/1009 is a continuation of the harmonisation stemming from Regulation (EC) No 2003/2003.
- (41) On the other hand, Recital 11 of Regulation (EU) 2019/1009 confirms that the legislator, by paraphrasing Article 114(4) TFEU, regarded that Regulation (EU) 2019/1009 should be considered for the purpose of assessments under Article 114(4) TFEU:

‘Several Member States have in place national provisions limiting cadmium content in phosphate fertilisers on grounds relating to the protection of human health and of the environment. Should a Member State deem it necessary to maintain such national provisions after the adoption of harmonised limit values under this Regulation, and until those harmonised limit values are equal to or lower than the national limit values already in place, it should notify them to the Commission in accordance with Article 114(4) TFEU. Furthermore, in accordance with Article 114(5) TFEU, if a Member State deems it necessary to introduce new national provisions, such as provisions limiting cadmium content in phosphate fertilisers, based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of this Regulation, it should notify the Commission of the envisaged provisions as well as the grounds for introducing them. [...]’.

- (42) This interpretation is further supported by the difference in the material scopes of Regulation (EC) No 2003/2003 and Regulation (EU) 2019/1009, where Regulation (EU) 2019/1009 replaces Regulation (EC) No 2003/2003 not only with an extended scope but also with an entirely different regulatory regime.

- (43) It can also be noted that in past cases where a new harmonisation measure had replaced an existing one, the Court of Justice of the European Union ('Court'), has referred only to the newly adopted harmonisation measure as the one that should be considered for the purpose of assessments under Article 114(4) TFEU ⁽⁶⁾.
- (44) In conclusion, since Regulation (EU) 2019/1009 is the harmonisation measure that should be considered for the purpose of the notified national provisions under Article 114(4) TFEU, it is for the Commission to ascertain whether the notified national provisions were pre-existing to that Regulation, in accordance with the requirement of Article 114(4) TFEU.
- (45) Fourth, both Regulation (EU) 2019/1009 and Regulation (EC) No 2003/2003 operate with optional regime as described above, which implies that national rules may co-exist with the EU harmonisation rules, within the same material scope as the harmonisation rules, but only to products that are not placed on the market based on the harmonisation rules. The notified national provisions have so far applied only to the latter products i.e. to fertilisers referred to in recital 17 above as 'national fertilisers'. Therefore, the current application of the notified national provisions to such national fertilisers is lawful, because the harmonisation rules are optional for the person placing the fertilisers on the market. However, Hungary now intends to apply the same notified national provisions as a derogation from Regulation (EU) 2019/1009 while they are not applied as a derogation from Regulation (EC) No 2003/2003.
- (46) This complexity raises the question whether the notification made by Hungary can be considered as maintaining national provisions for the purpose of Article 114(4) TFEU, rather than introducing national provisions after the adoption of the harmonisation measure pursuant to Article 114(5) TFEU.
- (47) It can first be noted that the notified national provisions have been in force at their current state since 2006. Thus, they were in force at the time of drawing up Regulation (EU) 2019/1009 and therefore predate that Regulation. Hungary is thus not requesting to introduce national provisions after the adoption of the harmonisation measure, as would be the case for a notification under Article 114(5) TFEU.
- (48) On the other hand, it could be questioned whether the notified national provisions will be maintained within the meaning of Article 114(4) TFEU, since the notified national provisions do not, in their current state, apply to EC fertilisers. However, it is the intention of Hungary to also apply the notified national provisions to EU fertilising products. In order for this to be the case, an adjustment in the Hungarian legislation is needed.
- (49) In order to determine whether the notified national provisions are pre-existing within the meaning of Article 114(4) TFEU, although they would need to be slightly adapted in order to include EU fertilising products whereas EC fertilisers remain excluded, it is important to look to the purpose of the distinction between Article 114(4) and (5) TFEU.
- (50) This distinction has been addressed by case law of the Court. In the case C-3/00 *Denmark v Commission*, the Court concluded with respect to Article 95 TEC, which corresponds to Article 114 TFEU:

'The difference between the two situations envisaged in Article 95 is that, in the first, the national provisions predate the harmonisation measure. They are thus known to the Community legislature, but the legislature cannot or does not seek to be guided by them for the purpose of harmonisation. It is therefore considered acceptable for the Member State to request that its own rules remain in force. To that end, the EC Treaty requires that such national provisions must be justified on grounds of the major needs referred to in Article 30 EC or relating to the protection of the environment or the working environment. By contrast, in the second situation, the adoption of new national legislation is more likely to jeopardise harmonisation. The Community institutions could not, by definition, have taken account of the national text when drawing up the harmonisation measure. In that case, the requirements referred to in Article 30 EC are not taken into account, and only grounds relating to protection of the environment or the working environment are accepted, on condition that the Member State provides new scientific evidence and that the need to introduce new national provisions results from a problem specific to the Member State concerned arising after the adoption of the harmonisation measure' ⁽⁷⁾.

⁽⁶⁾ See C-360/14 P *Germany v European Commission*.

⁽⁷⁾ C-3/00 *Denmark v Commission*, para. 58. Further confirmed in e.g. T-234/04 *Kingdom of the Netherlands v Commission*, para. 58, Joined Cases T 366/03 T-235/04 *Land Oberösterreich and Austria v Commission*, para. 62 and C-512/99 *Germany v Commission*, para. 41.

- (51) In the light of the cited case-law, it should be considered that the purpose of the distinction between Article 114(4) and (5) TFEU is to impose higher justification requirements in cases where harmonisation is more likely to be jeopardised since the national provision in question was not known to the legislator at the time of the adoption of the harmonised measure and was therefore not taken into account when the harmonisation measure was drawn up.
- (52) As has already been established, the notified national provisions have been in force at their current state since 2006. Thus, they were in force at the time of drawing up Regulation (EU) 2019/1009 and therefore also predate that Regulation.
- (53) Further, it is evident from the Impact Assessment Accompanying the Proposal for a Regulation of the European Parliament and of the Council laying down the rules on the making available on the market of CE marked fertilising products⁽⁸⁾ that the notified national provisions were known to the Union legislature when drawing up Regulation (EU) 2019/1009. Consequently, the notified national provisions should be considered as pre-existing in the light of Article 114(4) TFEU.
- (54) As has been noted above, Regulation (EU) 2019/1009 is considered the relevant harmonisation measure for this particular assessment. Therefore, the notified national provisions should be assessed in the light of that regulation. It remains to be examined whether the notified national provisions are a derogation to Regulation (EU) 2019/1009 and are more stringent than that regulation.

2.1.2. *On the stringency of the notified national provisions in relation to Regulation (EU) 2019/1009*

- (55) Whereas the limit value for the cadmium content in phosphate fertilisers laid down in point 3(a)(ii) PFC 1(B) and point 2(a)(ii) PFC 1(C)(I) of Part II of Annex I to Regulation (EU) 2019/1009, from which the notified national provisions derogate, is established at 60 mg/kg P₂O₅, the notified national provisions set a limit value of 20 mg/kg P₂O₅ for cadmium. It is therefore clear that the notified national provisions derogate from and are more stringent than the provisions of Regulation (EU) 2019/1009.
- (56) In light of the foregoing, the following conclusions can be drawn: 1) the notified national provisions predate the harmonisation measure and were known to the legislature at the time of drawing up the harmonisation measure, namely Regulation (EU) 2019/1009. They should therefore be considered a pre-existing measure under Article 114 (4) TFEU and 2) the notified national provisions derogating from point 3(a)(ii) PFC 1(B) and point 2(a)(ii) PFC 1(C)(I) of Part II of Annex I to Regulation (EU) 2019/1009 are more stringent than Regulation (EU) 2019/1009.
- (57) The Commission therefore considers that the notification submitted by Hungary is admissible in its entirety under Article 114(4) TFEU.

2.2. **Assessment of merits**

- (58) In accordance with Article 114(4) and first subparagraph of Article 114(6) TFEU, the Commission must ascertain that all the conditions enabling a Member State to maintain its national provisions derogating from a Union harmonisation measure provided for in that Article are fulfilled.
- (59) In particular, the Commission must assess whether or not the notified national provisions are justified by the major needs referred to in Article 36 TFEU or relating to the protection of the environment or the working environment and do not exceed what is necessary to attain the legitimate objective pursued. In addition, when the Commission considers that the national provisions fulfil the above conditions, it must verify, pursuant to Article 114(6) TFEU, whether or not the national provisions are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they constitute an obstacle to the functioning of the internal market.
- (60) In the light of the timeframe established by Article 114(6) TFEU, the Commission, when examining whether the national measures notified under Article 114(4) TFEU are justified, has to take as a basis the justifications put forward by the notifying Member State. The burden of proof lies with the requesting Member State that seeks to maintain its national measures.

⁽⁸⁾ See the impact assessment accompanying the Commission's proposal which was specifically devoted to the cadmium limit, SWD (2016) 64 final, PART 2/2; <https://ec.europa.eu/transparency/regdoc/rep/10102/2016/EN/SWD-2016-64-F1-EN-MAIN-PART-2.PDF>; see in particular pages 5, 6, 25, 28, 29 and 32, and Annex I.

- (61) However, where the Commission is in possession of information in the light of which the Union harmonisation measure from which the notified national provisions derogate may need to be reviewed, it can take such information into consideration in the assessment of the notified national provisions.

2.2.1. *The position of Hungary*

- (62) Hungary's position with regard to the cadmium content in phosphate fertilisers with at least 5 % P_2O_5 is motivated by the long-term protection of the soil and the resulting protection of human health and the protection of the environment.
- (63) Hungary has, in its notification to the Commission, analysed the expected effects of the limit value of 60 mg/kg P_2O_5 set in Regulation (EU) 2019/1009 in its national territory. This limit value raised important concerns as regards the protection of human health and of the environment. Cadmium is qualified as a carcinogenic substance, classified among the most toxic elements. Plants easily absorb cadmium and, in this way, cadmium enters into the food chain. Hungary tops the ranking in the Union and in the world in lung cancer deaths. Hungary, therefore, emphasises the need to reduce further exposure to cadmium entering the body with food.
- (64) Given that exposure to cadmium in the general population has been statistically associated with increased risk of cancer, *inter alia*, in the lung, Hungary wishes to reduce further exposure of its population to cadmium by means of a lower limit value in phosphate fertilisers.
- (65) In addition to human health concerns, Hungary also presents justifications related to the protection of the environment and the long-term protection of its soils which being in their majority acidic or extremely acidic, they are more vulnerable to cadmium accumulation and therefore stand in need of higher protection.
- (66) In its reasoning, Hungary relies on studies linking the accumulation of cadmium in the human body to several health issues, most severely to lung cancer, but also to chronic renal insufficiency and osteoporosis ⁽⁹⁾. In its notification, Hungary also relies on various sources in relation to the accumulation of cadmium in the soil ⁽¹⁰⁾. Hungary maintains the existence of a direct link between the accumulation of cadmium in the soil, the inevitable uptake in food and feed and the adverse health effects on humans.
- (67) The vast majority of phosphate fertilisers in the Hungarian market are EC fertilisers. Nevertheless, the majority of EC fertilisers on the Hungarian market have a cadmium content below 20 mg/kg P_2O_5 . As 95 % of imported fertilisers already respect the future 60 mg/kg P_2O_5 limit value set in Regulation (EU) 2019/1009, Hungary is concerned that the pattern of imports will change in the future leading to a significant increase in the marketing of products with higher cadmium levels than 20 mg/kg P_2O_5 resulting in further accumulation of cadmium in soil and consequently transfer to the food chain.

2.2.2. *Evaluation of the position of Hungary*

2.2.2.1. Justification on grounds of major needs referred to in Article 36 TFEU or relating to the protection of the environment or the working environment

- (68) The notified national provisions aim to achieve a higher level of protection of health and life of humans and the environment than that provided in Regulation (EU) 2019/1009 with regard to exposure to cadmium, by preventing the further accumulation of cadmium in the soil. The means for achieving this objective is maintaining a lower maximum limit value of cadmium in phosphate fertilisers containing at least 5 % P_2O_5 by mass compared to the harmonised limit value set out in Regulation (EU) 2019/1009.

⁽⁹⁾ E.g. HORVÁTH O, MAKRAINÉ HORVÁTH A ZS., 2006. A csonttritkulás, korunk „néma járványa”. *Nővér* 2006 (19) 2, MÁTYUS J, OLÁH A, ÚJHELYI L, KÁRPÁTI I, BALLA J., 2008. Az idült vesebetegség epidémiája szükségessé teszi a glomerulus filtrációs ráta számítását. *Orvosi Hetilap* 149(2): 77-82 and IARC Monographs Volume 100C Cadmium and Cadmium Compounds. 2012.

⁽¹⁰⁾ E.g. ADRIANO, D.C., 2001. Trace Elements in Terrestrial Environments. Biogeochemistry, Bioavailability and Risks of Metals. (2nd edn.). Springer-Verlag. New York, ALLOWAY, B.J. (ed.), 1990. Heavy Metals in Soils. Blackie and Son Ltd. Glasgow and London. John Wiley and Sons Inc. New York.

- (69) As regards the protection of health and life of humans, it should be noted that cadmium is a non-essential and toxic element for humans, and has no benefit for plants or animals. In particular, cadmium oxide has been classified as a carcinogen substance, category 2, under Regulation (EC) 1272/2008 of the European Parliament and of the Council ⁽¹¹⁾.
- (70) The presence of cadmium in plants and cadmium intake from foodstuffs could eventually lead to adverse effects on human health in the longer term. Further, once absorbed by the human body, it is efficiently retained and accumulates in it throughout one's life ⁽¹²⁾.
- (71) Cadmium can damage the kidneys, causing excess production of beta-2-microglobulin, a protein excreted in the urine, which is a biological indicator of kidney function. The duration and level of exposure to cadmium determines the severity of the effect. Skeletal damage is another critical effect of chronic cadmium exposure at levels somewhat higher than those where the protein beta-2-microglobulin in the urine would be an early indicator. Mainly stored in the liver and kidneys, excretion of cadmium is slow, and it can remain in the human body for decades.
- (72) The general public is exposed to cadmium from multiple sources, including smoking. For the non-smoking population, food stands for the most dominant source of cadmium intake. Cadmium is primarily toxic to the kidney, but can also cause bone demineralisation and has been statistically associated with increased risk of cancer in the lung, endometrium, bladder and breast ⁽¹³⁾. Further, health risks cannot be excluded for adult smokers and people with depleted iron body stores and/or living near industrial sources ⁽¹⁴⁾.
- (73) Given the high rate of lung cancer deaths in Hungary, its interest to avoid further exposure to cadmium is justified.
- (74) Moreover, in addition to human health impacts, further cadmium accumulation in soils could have negative effects on soil biodiversity and therefore soil functions (e.g. decay of organic matter) as well as on groundwater quality via leaching in soils. Both toxicity and bioavailability of cadmium are influenced by soil characteristics. Cadmium mobility and bioavailability are higher in more acidic soils, and lower in chalky/lime soils. Approximately half of Hungary's soils are acidic or extremely acidic, which leads to a situation specific to that Member State making it particularly vulnerable to cadmium accumulation in soils.
- (75) Concerns regarding the risks posed by cadmium to human health and the environment were already referred to by the Council in its Resolution of 25 January 1988 ⁽¹⁵⁾. The Council emphasized the importance of reducing inputs of cadmium into soils from all sources including diffuse sources (e.g. atmospheric deposition, phosphate fertilisers, sewage sludge...) by among others 'appropriate control measures for the cadmium content of phosphate fertilisers based on suitable technology not entailing excessive costs and taking into account environmental conditions in the different regions of the Community'.
- (76) In recital 15 of Regulation (EC) No 2003/2003, the Commission's intention to address the issue of unintentional cadmium content in mineral fertilisers was already announced.
- (77) In 2002, the Scientific Committee on Health and Environmental Risks concluded that a limit of 40 mg/kg P₂O₅ or more would lead to cadmium accumulation in most European Union soils. By contrast, a limit of 20 mg/kg P₂O₅ or less was not expected to result in long-term soil accumulation over 100 years if other cadmium inputs are not considered.

⁽¹¹⁾ Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1).

⁽¹²⁾ See the scientific report of the European Food Safety Authority on Cadmium dietary exposure in the European population of 2012, published at: https://www.efsa.europa.eu/sites/default/files/scientific_output/files/main_documents/2551.pdf (EFSA Journal 2012;10(1)).

⁽¹³⁾ EFSA Journal 2012;10(1).

⁽¹⁴⁾ EU Risk assessment report on cadmium and cadmium oxide, as quoted in SWD(2016) 64 final, p. 11.

⁽¹⁵⁾ OJ C 30, 4.2.1988, p. 1.

- (78) In its proposal for Regulation (EU) 2019/1009 ⁽¹⁶⁾, based on the scientific data available when assessing the impacts, the Commission concluded that cadmium metal and cadmium oxide in general can pose serious risks to health. The Commission proposed setting a limit value of 60 mg/kg P₂O₅ in phosphate fertilisers and reducing gradually this limit value to 20 mg/kg P₂O₅ in 12 years after the application of the new Regulation.
- (79) It is also generally agreed that cadmium in fertilisers is by far the most important source of cadmium input to soil and to the food chain. ⁽¹⁷⁾ Regulation (EU) 2019/1009 sets a limit value of 60 mg/kg P₂O₅ applicable as of 16 July 2022. The vast majority of fertilisers available on the European market already comply with this limit value. While the introduction of this limit is a step in the right direction, based on available scientific data, it is not likely to significantly decrease the accumulation of cadmium in soils over long term.
- (80) Recognising the need for a more ambitious harmonised limit value for cadmium in phosphate fertilisers in the future, Regulation (EU) 2019/1009 sets an obligation upon the Commission to reassess these limits with the purpose of lowering them if feasible.
- (81) Based on the above, it must be considered that the maximum limit value set out in the notified national provisions is justified by needs to protect human health and life and the environment.

2.2.2.2. Absence of any arbitrary discrimination, any disguised restriction on trade between Member States or any obstacle to the functioning of the internal market

(a) Absence of arbitrary discrimination

- (82) Article 114(6) TFEU requires the Commission to verify that maintaining the notified measures are not a means of arbitrary discrimination. According to the jurisprudence of the Court ⁽¹⁸⁾, in order for there to be no discrimination, similar situations must not be treated in different ways and different situations must not be treated in the same way unless objectively justified. The absence of discrimination means that national restrictions on trade cannot be used in such a way as to create discrimination in respect of goods originating in other Member States.
- (83) The notified national provisions apply to both domestic products and products produced in other Member States. In the absence of any evidence to the contrary, it can be concluded that the notified national provisions are not a means of arbitrary discrimination.

(b) Absence of a disguised restriction on trade

- (84) National measures, which set more stringent conditions for placing on the market of products than a Union Regulation, would normally constitute a barrier to trade. This is because some of the products that are lawfully placed on the market in the rest of the Union are not expected, as a result of the national provision, to be placed on the market in the Member State concerned. The pre-conditions laid down in Article 114(6) TFEU are intended to prevent restrictions based on the criteria set out in paragraphs 4 and 5 thereof from being applied for inappropriate reasons, and constituting in effect economic measures to impede the importation of products from other Member States, that is to say, a means of indirectly protecting national production ⁽¹⁹⁾.

⁽¹⁶⁾ COM/2016/0157 final – 2016/084 (COD).

⁽¹⁷⁾ See the study 'Revisiting and updating the effect of phosphate fertilizers to cadmium accumulation in European agricultural soils' by Erik Smolders & Laetitia Six, commissioned by Fertilizers Europe in 2013, published at http://ec.europa.eu/health/scientific_committees/environmental_risks/docs/scher_o_168_rd_en.pdf.

⁽¹⁸⁾ E.g. C-492/14, *Essent Belgium*, p. 80, Commission Decision of 8 May 2018 concerning national provisions notified by Denmark on the addition of nitrite to certain meat products, C/2018/2721, para. 52 (OJ L 118, 14.5.2018, p. 7), Commission Decision of 3 January 2006 on the national provisions notified by the Republic of Finland under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers, 2006/348/EC, para. 38, Commission Decision of 3 January 2006 on the national provisions notified by the Kingdom of Sweden under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers, 2006/347/EC, para. 39, Commission Decision of 3 January 2006 on the national provisions notified by the Republic of Austria under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers, 2006/349/EC, para. 39.

⁽¹⁹⁾ Commission Decision of 8 May 2018 concerning national provisions notified by Denmark on the addition of nitrite to certain meat products, C/2018/2721, para. 54 Commission Decision of 3 January 2006 on the national provisions notified by the Republic of Finland under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers, 2006/348/EC, para. 40, Commission Decision of 3 January 2006 on the national provisions notified by the Kingdom of Sweden under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers, 2006/347/EC, para. 41, Commission Decision of 3 January 2006 on the national provisions notified by the Republic of Austria under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers, 2006/349/EC, para. 41.

- (85) Given that the notified national provisions also impose a stricter limit value to cadmium content in phosphate fertilisers on economic operators based in other Member States in an otherwise harmonised area, they are liable to constitute a disguised restriction on trade or an obstacle to the functioning of the internal market.
- (86) In the absence of any evidence suggesting that the national provisions constitute in effect a measure intended to protect national production, it can be concluded that they are not a disguised restriction to trade between Member States. Therefore, it remains for the Commission to consider, whether the notified national provisions present an obstacle to the functioning of the internal market.

(c) Absence of obstacles to the functioning of the internal market

- (87) Article 114(6) TFEU requires the Commission to verify whether or not maintaining the notified measures constitutes an obstacle to the functioning of the internal market. The condition cannot be interpreted in such a way that it precludes the approval of any national measure likely to affect the functioning of the internal market. Indeed, any national measure derogating from a harmonisation measure aimed at the establishment and operation of the internal market constitutes in substance a measure likely to affect the internal market. Consequently, in order to preserve the useful character of the procedure laid down in Article 114 TFEU, the concept of obstacle to the functioning of the internal market must, in the context of Article 114(6) TFEU, be understood as a disproportionate effect in relation to the pursued objective ⁽²⁰⁾.
- (88) When assessing whether the notified national provisions are appropriate and necessary for achieving its objective, a number of factors need to be taken into account. The Commission has to evaluate whether the level of protection stemming from the cadmium limit value set in the Hungarian legislation is effective in protecting the health and life of humans on the one hand, and the environment on the other.
- (89) The notified national provisions seek to protect the human health and the environment by avoiding the accumulation of cadmium in soil. In its notification to the Commission, Hungary motivates the necessity of the derogation by referring to the specific circumstances of the special vulnerability of the Hungarian population due to the high numbers of lung cancer deaths and of the acidity of the soil.
- (90) Hungary tops the ranking in the Union and in the world in lung cancer deaths. Due to this fact, Hungary emphasises the need to reduce further exposure to cadmium entering the body with food. Additionally, approximately half of Hungary's soils are acidic or extremely acidic, which leads to a situation specific to that Member State making it particularly vulnerable to cadmium accumulation in soils.
- (91) Further, a maximum limit value of 20 mg/kg P₂O₅ or less of cadmium concentration in fertilisers has been identified as efficient to avoid long-term soil accumulation of cadmium over 100 years.
- (92) Taking also into account the elements related to the specific situation of Hungary, the notified national provisions may be considered to be necessary to achieve the aims pursued by them.
- (93) Furthermore, Hungary claims that the majority of fertilisers on the market have a cadmium content below the limit of 20 mg/kg P₂O₅, though this is currently not required for EC fertilisers. Therefore, setting a limit value at 20 mg/kg P₂O₅ will not cause significant disruption to the market.

⁽²⁰⁾ Commission Decision of 8 May 2018 concerning national provisions notified by Denmark on the addition of nitrite to certain meat products, C/2018/2721, para. 55 (OJ L 118, 14.5.2018, p. 7), Commission Decision of 3 January 2006 on the national provisions notified by the Republic of Finland under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers, 2006/348/EC, para. 42, Commission decision of 3 January 2006 on the national provisions notified by the Kingdom of Sweden under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers, 2006/347/EC, para. 43, Commission Decision of 3 January 2006 on the national provisions notified by the Republic of Austria under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers, 2006/349/EC, para. 43.

- (94) The application of other measures such as use restrictions would be very hard to control in practice and could not attain the objective pursued. The Commission considers that maintaining the notified national provisions, is not disproportionate and does not constitute an obstacle to the functioning of the internal market in the sense of Article 114(6) TFEU.
- (95) In the light of this analysis, the Commission considers that the condition relating to the absence of obstacles to the functioning of the internal market is fulfilled.

2.2.2.3. Limitation in time

- (96) In order to ensure that the national measure, and the potential obstacle to the functioning of the internal market, is limited to what is strictly necessary to achieve the objectives pursued by Hungary, the national derogation should be limited in time. The derogation would cease to be necessary if, in the future, the harmonised limit value would be set at or below the level of the Hungarian limit value.
- (97) The harmonised limit value could only be set at or below the level of the Hungarian limit value through a decision of the European Parliament and the Council based on a proposal from the Commission, for example in the context of the review referred to in Article 49(b) of Regulation (EU) 2019/1009. The period for which the derogation is granted should therefore not be limited to a certain date by this Decision, but be aligned with such a future decision by the legislator.
- (98) This is in line with Article 3(2) of Regulation (EU) 2019/1009, which provides that derogations from Regulation (EC) No 2003/2003 in accordance with Article 114(4) TFEU in relation to cadmium content may continue to apply until harmonised limit values for cadmium content in phosphate fertilisers which are equal or lower than the national ones are applicable at Union level.
- (99) The approval of the notified national provisions should therefore apply until a revised harmonised limit value equal or lower to the Hungarian limit value is applicable at Union level.

3. CONCLUSIONS

- (100) In the light of the foregoing, it should be concluded that the notification by Hungary for maintaining national provisions derogating from Regulation (EU) 2019/1009 as submitted on 19 July 2019 is admissible.
- (101) Moreover, the Commission finds that the notified national provisions:
- meet needs on grounds of the protection of human health and the environment,
 - are proportionate to the objectives pursued,
 - are not a means of arbitrary discrimination,
 - do not constitute a disguised restriction on trade between Member States.
- (102) The Commission therefore considers that the notified national provisions should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The national provisions notified by Hungary pursuant to Article 114(4) of the Treaty on the Functioning of the European Union, derogating from Regulation (EU) 2019/1009 as regards cadmium content in phosphate fertilisers, i.e. the prohibition of the placing on the Hungarian market of phosphate fertilisers containing at least 5 % P₂O₅ by mass referred to in points 3(a)(ii) in PFC 1(B) and 2(a)(ii) in PFC 1(C)(I) in Annex I to Regulation (EU) 2019/1009 with a cadmium content exceeding 20 mg/kg, P₂O₅, are approved until a revised harmonised limit value equal to or lower than the Hungarian limit value is applicable at Union level.

Article 2

This Decision is addressed to Hungary.

Done at Brussels, 17 July 2020.

For the Commission
Thierry BRETON
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2020/1185**of 10 August 2020****amending the Annex to Implementing Decision 2014/709/EU concerning animal health control measures relating to African swine fever in certain Member States***(notified under document C(2020) 5559)***(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 checks applicable in intra-Union trade in certain live animals and products with a view to the completion of the internal market ⁽²⁾, and in particular Article 10(4) thereof,

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

Whereas:

- (1) Commission Implementing Decision 2014/709/EU ⁽⁴⁾ lays down animal health control measures in relation to African swine fever in certain Member States, where there have been confirmed cases of that disease in domestic or feral pigs (the Member States concerned). The Annex to that Implementing Decision demarcates and lists certain areas of the Member States concerned in Parts I to IV thereof, differentiated by the level of risk based on the epidemiological situation as regards that disease. The Annex to Implementing Decision 2014/709/EU has been amended several times to take account of changes in the epidemiological situation in the Union as regards African swine fever that need to be reflected in that Annex. The Annex to Implementing Decision 2014/709/EU was last amended by Commission Implementing Decision (EU) 2020/1150 ⁽⁵⁾, following changes in the epidemiological situation as regards that disease in Lithuania, Poland and Slovakia.
- (2) Council Directive 2002/60/EC ⁽⁶⁾ lays down the minimum Union measures to be taken for the control of African swine fever. In particular, Article 9 of Directive 2002/60/EC provides for the establishment of a protection zone and a surveillance zone when African swine fever has been officially confirmed in pigs on a holding, and Articles 10 and 11 of that Directive lay down the measures to be taken in the protection and surveillance zones in order to prevent the spread of that disease. In addition, Article 15 of Directive 2002/60/EC lays down the measures to be taken where African swine fever is confirmed in feral pigs. Recent experience has shown that the measures laid down in Directive 2002/60/EC are effective in controlling the spread of that disease, and in particular, the measures providing for the cleaning and disinfecting of infected holdings and the other measures related to the eradication of that disease in domestic and feral pig populations.

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ OJ L 18, 23.1.2003, p. 11.

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

⁽⁵⁾ Commission Implementing Decision (EU) 2020/1150 of 3 August 2020 amending the Annex to Implementing Decision 2014/709/EU concerning animal health control measures relating to African swine fever in certain Member States (OJ L 252, 4.8.2020, p. 30).

⁽⁶⁾ Council Directive 2002/60/EC of 27 June 2002 laying down specific provisions for the control of African swine fever and amending Directive 92/119/EEC as regards Teschen disease and African swine fever (OJ L 192, 20.7.2002, p. 27).

- (3) Since the date of adoption of Implementing Decision (EU) 2020/1150, there have been new occurrences of African swine fever in domestic pigs in Poland and Slovakia and in feral pigs in Latvia.
- (4) At the end of July and in August 2020, ten outbreaks of African swine fever in domestic pigs were observed in powiat chełmski, biłgorajski, garwoliński, hrubieszowski, lubartowski, przeworski and zielonogórski in Poland in areas currently listed in Part II of the Annex to Implementing Decision 2014/709/EU or in areas currently listed in Part III of that Annex, located in close proximity to areas currently listed in Part II thereof. These outbreaks of African swine fever in domestic pigs constitute an increased level of risk, which should be reflected in that Annex. Accordingly, these areas of Poland, affected by these recent outbreaks of African swine fever, should now be listed in Part III of the Annex to Implementing Decision 2014/709/EU instead of in Part II thereof; and the area of Poland listed in Part II of that Annex, that are in close proximity to the areas listed in Part III affected by these recent cases of African swine fever, should now be listed in Part III of that Annex instead of in Part II thereof.
- (5) In August 2020, one case of African swine fever in a feral pig was observed in novads Ventpils in Latvia in an area currently listed in Part I of the Annex to Implementing Decision 2014/709/EU. This case of African swine fever in a feral pig constitutes an increased level of risk, which should be reflected in that Annex. Accordingly, this area of Latvia currently listed in Part I of the Annex to Implementing Decision 2014/709/EU, affected by this recent case of African swine fever, should now be listed in Part II of that Annex instead of in Part I thereof.
- (6) In August 2020, one outbreak of African swine fever in domestic pigs was observed in the district of Košice-okolie in Slovakia in an area currently listed in Part II of the Annex to Implementing Decision 2014/709/EU. This outbreak of African swine fever in domestic pigs constitutes an increased level of risk, which should be reflected in that Annex. Accordingly, this area of Slovakia, affected by this recent outbreak of African swine fever, should now be listed in Part III of the Annex to Implementing Decision 2014/709/EU instead of in Part II thereof.
- (7) Following these recent outbreaks of African swine fever in domestic pigs Poland and Slovakia, and the recent case of African swine fever in a feral pig in Latvia, and taking into account the current epidemiological situation in the Union, regionalisation in these Member States has been reassessed and updated. In addition, the risk management measures in place have also been reassessed and updated. These changes need to be reflected in the Annex to Implementing Decision 2014/709/EU.
- (8) In order to take account of recent developments in the epidemiological situation of African swine fever in the Union, and in order to combat the risks associated with the spread of that disease in a proactive manner, new high-risk areas of a sufficient size should be demarcated for Poland, Slovakia and Latvia and duly listed in Parts II and III of the Annex to Implementing Decision 2014/709/EU. Given that Parts II and III of the Annex to Implementing Decision 2014/709/EU list the areas where the epidemiological situation is still evolving and very dynamic, when any amendments are made to areas listed in these Parts, particular consideration must always be given to the effect on the surrounding areas, as has been done in this instance. Parts I, II and III of that Annex should therefore be amended accordingly.
- (9) Given the urgency of the epidemiological situation in the Union as regards the spread of African swine fever, it is important that the amendments made to the Annex to Implementing Decision 2014/709/EU by this Decision take effect as soon as possible.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

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

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 10 August 2020.

For the Commission
Stella KYRIAKIDES
Member of the Commission

ANNEX

The Annex to Implementing Decision 2014/709/EU is replaced by the following:

'ANNEX

PART I

1. Belgium

Les zones suivantes en Belgique:

dans la province de Luxembourg:

- la zone est délimitée, dans le sens des aiguilles d'une montre, par:
 - Frontière avec la France,
 - Rue Mersinhat à Florenville,
 - La N818 jusqu'à son intersection avec la N83,
 - La N83 jusqu'à son intersection avec la N884,
 - La N884 jusqu'à son intersection avec la N824,
 - La N824 jusqu'à son intersection avec Le Routeux,
 - Le Routeux,
 - Rue d'Orgéo,
 - Rue de la Vierre,
 - Rue du Bout-d'en-Bas,
 - Rue Sous l'Eglise,
 - Rue Notre-Dame,
 - Rue du Centre,
 - La N845 jusqu'à son intersection avec la N85,
 - La N85 jusqu'à son intersection avec la N40,
 - La N40 jusqu'à son intersection avec la N802,
 - La N802 jusqu'à son intersection avec la N825,
 - La N825 jusqu'à son intersection avec la E25-E411,
 - La E25-E411 jusqu'à son intersection avec la N40,
 - N40: Burnaimont, Rue de Luxembourg, Rue Ranci, Rue de la Chapelle,
 - Rue du Tombois,
 - Rue Du Pierroy,
 - Rue Saint-Orban,
 - Rue Saint-Aubain,
 - Rue des Cottages,
 - Rue de Relune,
 - Rue de Rulune,
 - Route de l'Ermitage,
 - N87: Route de Habay,
 - Chemin des Ecoliers,
 - Le Routy,

- Rue Burgknapp,
- Rue de la Halte,
- Rue du Centre,
- Rue de l'Eglise,
- Rue du Marquisat,
- Rue de la Carrière,
- Rue de la Lorraine,
- Rue du Beynert,
- Millewée,
- Rue du Tram,
- Millewée,
- N4: Route de Bastogne, Avenue de Longwy, Route de Luxembourg,
- Frontière avec le Grand-Duché de Luxembourg,
- Frontière avec la France, jusque son intersection avec la Rue Mersinhat à Florenville.

2. Estonia

The following areas in Estonia:

- Hiiu maakond.

3. Hungary

The following areas in Hungary:

- Békés megye 950950, 950960, 950970, 951950, 952050, 952750, 952850, 952950, 953050, 953150, 953650, 953660, 953750, 953850, 953960, 954250, 954260, 954350, 954450, 954550, 954650, 954750, 954850, 954860, 954950, 955050, 955150, 955250, 955260, 955270, 955350, 955450, 955510, 955650, 955750, 955760, 955850, 955950, 956050, 956060, 956150 és 956160 kódszámú vadgazdálkodási egységeinek teljes területe,
- Bács-Kiskun megye 600150, 600850, 601550, 601650, 601660, 601750, 601850, 601950, 602050, 603250, 603750 és 603850 kódszámú vadgazdálkodási egységeinek teljes területe,
- Budapest 1 kódszámú, vadgazdálkodási tevékenységre nem alkalmas területe,
- Csongrád-Csanád megye 800150, 800160, 800250, 802220, 802260, 802310 és 802450 kódszámú vadgazdálkodási egységeinek teljes területe,
- Fejér megye 400150, 400250, 400351, 400352, 400450, 400550, 401150, 401250, 401350, 402050, 402350, 402360, 402850, 402950, 403050, 403250, 403350, 403450, 403550, 403650, 403750, 403950, 403960, 403970, 404570, 404650, 404750, 404850, 404950, 404960, 405050, 405750, 405850, 405950, 406050, 406150, 406550, 406650 és 406750 kódszámú vadgazdálkodási egységeinek teljes területe,
- Jász-Nagykun-Szolnok megye 750150, 750160, 750260, 750350, 750450, 750460, 754450, 754550, 754560, 754570, 754650, 754750, 754950, 755050, 755150, 755250, 755350 és 755450 kódszámú vadgazdálkodási egységeinek teljes területe,
- Komárom-Esztergom megye 250150, 250250, 250350, 250450, 250460, 250550, 250650, 250750, 250850, 250950, 251050, 251150, 251250, 251350, 251360, 251450, 251550, 251650, 251750, 251850, 252150 és 252250, kódszámú vadgazdálkodási egységeinek teljes területe,
- Pest megye 571550, 572150, 572250, 572350, 572550, 572650, 572750, 572850, 572950, 573150, 573250, 573260, 573350, 573360, 573450, 573850, 573950, 573960, 574050, 574150, 574350, 574360, 574550, 574650, 574750, 574850, 574860, 574950, 575050, 575150, 575250, 575350, 575550, 575650, 575750, 575850, 575950, 576050, 576150, 576250, 576350, 576450, 576650, 576750, 576850, 576950, 577050, 577150, 577350, 577450, 577650, 577850, 577950, 578050, 578150, 578250, 578350, 578360, 578450, 578550, 578560, 578650, 578850, 578950, 579050, 579150, 579250, 579350, 579450, 579460, 579550, 579650, 579750, 580250 és 580450 kódszámú vadgazdálkodási egységeinek teljes területe.

4. Latvia

The following areas in Latvia:

- Pāvilostas novads Vērgales pagasts,
- Stopiņu novada daļa, kas atrodas uz rietumiem no autoceļa V36, P4 un P5, Acones ielas, Daugulupes ielas un Daugulupītes,
- Grobiņas novads,
- Rucavas novada Dunikas pagasts.

5. Lithuania

The following areas in Lithuania:

- Klaipėdos rajono savivaldybės: Agluonėnų, Priekulės, Veiviržėnų, Judrėnų, Endriejavo ir Vėžaičių seniūnijos,
- Kretingos rajono savivaldybės: Darbėnų, Kretingos ir Žalgirio seniūnijos,
- Plungės rajono savivaldybės: Nausodžio sen. dalis nuo kelio 166 į pietryčius ir Kulių seniūnija,
- Skuodo rajono savivaldybės: Lenkimų, Mosėdžio, Skuodo, Skuodo miesto seniūnijos.

6. Poland

The following areas in Poland:

w województwie warmińsko-mazurskim:

- gminy Wielbark i Rozogi w powiecie szczycieńskim,
- gminy Janowiec Kościelny, Janowo i część gminy Kozłowo położona na południe od linii wyznaczonej przez drogę łączącą miejscowości Rączki – Kownatki – Gardyny w powiecie nidzickim,
- powiat działdowski,
- gminy Dąbrówno, miasto Ostróda i część gminy wiejskiej Ostróda położona na zachód od linii wyznaczonej przez drogę nr S7 w powiecie ostródzkim,
- gminy Kisielice, Susz, Iława z miastem Iława, Lubawa z miastem Lubawa, w powiecie iławskim,
- gmina Grodziczno w powiecie nowomiejskim,

w województwie podlaskim:

- gminy Wysokie Mazowieckie z miastem Wysokie Mazowieckie, Czyżew i część gminy Kulesze Kościelne położona na południe od linii wyznaczonej przez linię kolejną w powiecie wysokomazowieckim,
- gminy Miastkowo, Nowogród, Śniadowo i Zbójna w powiecie łomżyńskim,
- gminy Szumowo, Zambrów z miastem Zambrów i część gminy Kołaki Kościelne położona na południe od linii wyznaczonej przez linię kolejową w powiecie zambrowskim,

w województwie mazowieckim:

- powiat ostrołęcki,
- powiat miejski Ostrołęka,
- gminy Bielsk, Brudzeń Duży, Drobin, Gąbin, Łąck, Nowy Duninów, Radzanowo, Słupno i Stara Biała w powiecie płońskim,
- powiat miejski Płock,
- powiat sierpecki,
- powiat żuromiński,
- gminy Andrzejewo, Brok, Małkinia Górna, Stary Lubotyń, Szulborze Wielkie, Wąsewo, Zaręby Kościelne i Ostrów Mazowiecka z miastem Ostrów Mazowiecka w powiecie ostrowskim,

- gminy Dzierzgowo, Lipowiec Kościelny, miasto Mława, Radzanów, Szreńsk, Szydłowo i Wieczfnia Kościelna, w powiecie mławskim,
- powiat przasnyski,
- powiat makowski,
- gminy Gzy, Obryte, Zatory, Pułtusk i część gminy Winnica położona na wschód od linii wyznaczonej przez drogę łączącą miejscowości Bielany, Winnica i Pokrzywnica w powiecie pułtuskim,
- gminy Brańszczyk, Długosiodło, Rząśnik, Wyszków, Zabrodzie i część gminy Somianka położona na północ od linii wyznaczonej przez drogę nr 62 w powiecie wyszkowskim,
- gminy Kowala, Wierzbica, część gminy Wolanów położona na południe od linii wyznaczonej przez drogę nr 12 w powiecie radomskim,
- powiat miejski Radom,
- powiat szydłowiecki,
- powiat gostyniński,

w województwie podkarpackim:

- gminy Chłopice, Rokietnica, gmina wiejska Jarosław, część miasta Jarosław położona na północ od linii wyznaczonej przez drogę nr 94, część gminy Radymno położona na południe od linii wyznaczonej przez autostradę A4, w powiecie jarosławskim,
- gminy Medyka, Orły, Stubno, Żurawica, Przemyśl w powiecie przemyskim,
- powiat miejski Przemyśl,
- gminy Przeworsk z miastem Przeworsk, Gać Jawornik Polski, Kańczuga, Tryńcza i Zarzecze w powiecie przeworskim,
- powiat łańcucki,
- gminy Trzebownisko, Głogów Małopolski i część gminy Sokołów Małopolski położona na południe od linii wyznaczonej przez drogę nr 875 w powiecie rzeszowskim,
- gminy Dzikowiec, Kolbuszowa, Niwiska i Raniżów w powiecie kolbuszowskim,
- gminy Borowa, Czermin, Gawłuszowice, Mielec z miastem Mielec, Padew Narodowa, Przecław, Tuszów Narodowy w powiecie mieleckim,

w województwie świętokrzyskim:

- powiat opatowski,
- powiat sandomierski,
- gminy Bogoria, Łubnice, Oleśnica, Osiek, Połaniec, Rytwiany i Staszów w powiecie staszowskim,
- gmina Skarżysko Kościelne w powiecie skarżyskim,
- gmina Wąchock, część gminy Brody położona na zachód od linii wyznaczonej przez drogę nr 9 oraz na południowy - zachód od linii wyznaczonej przez drogi: nr 0618T biegnącą od północnej granicy gminy do skrzyżowania w miejscowości Lipie, drogę biegnącą od miejscowości Lipie do wschodniej granicy gminy oraz na północ od drogi nr 42 i część gminy Mirzec położona na zachód od linii wyznaczonej przez drogę nr 744 biegnącą od południowej granicy gminy do miejscowości Tychów Stary a następnie przez drogę nr 0566T biegnącą od miejscowości Tychów Stary w kierunku północno - wschodnim do granicy gminy w powiecie starachowickim,
- powiat ostrowiecki,
- gminy Gowarczów, Końskie i Stąporków w powiecie koneckim,

w województwie łódzkim:

- gminy Łyszkowice, Kocierzew Południowy, Kiernoza, Chąsno, Nieborów, część gminy wiejskiej Łowicz położona na północ od linii wyznaczonej przez drogę nr 92 biegnącej od granicy miasta Łowicz do zachodniej granicy gminy oraz część gminy wiejskiej Łowicz położona na wschód od granicy miasta Łowicz i na północ od granicy gminy Nieborów w powiecie łowickim,

- gminy Biała Rawska, Cielądz, Rawa Mazowiecka z miastem Rawa Mazowiecka i Regnów w powiecie rawskim,
- powiat skierniewicki,
- powiat miejski Skierniewice,
- gminy Białaczów, Mniszków, Paradyż, Sławno i Żarnów w powiecie opoczyńskim,
- gminy Czerniewice, Inowłódz, Lubochnia, Rzeczyca, Tomaszów Mazowiecki z miastem Tomaszów Mazowiecki i Zelechlinek w powiecie tomaszowskim,

w województwie pomorskim:

- gminy Ostaszewo, miasto Krynica Morska oraz część gminy Nowy Dwór Gdański położona na południowy - zachód od linii wyznaczonej przez drogę nr 55 biegnącą od południowej granicy gminy do skrzyżowania z drogą nr 7, następnie przez drogę nr 7 i S7 biegnącą do zachodniej granicy gminy w powiecie nowodworskim,
- gminy Lichnowy, Miłoradz, Nowy Staw, Malbork z miastem Malbork w powiecie malborskim,
- gminy Mikołajki Pomorskie, Stary Targ i Sztum w powiecie sztumskim,
- powiat gdański,
- Miasto Gdańsk,
- powiat tczewski,
- powiat kwidzyński,

w województwie lubuskim:

- gmina Gubin z miastem Gubin w powiecie krośnieńskim,
- gminy Międzyrzecz, Pszczew, Trzciel w powiecie międzyrzeckim,
- część gminy Lubrza położona na północ od linii wyznaczonej przez autostradę A2, część gminy Łągów położona na północ od linii wyznaczonej przez autostradę A2, część gminy Zbąszynek położona na północ od linii wyznaczonej przez linię kolejową biegnącą od Zbąszynia do Świebodzina oraz część położona na północ od linii wyznaczonej przez linię kolejową biegnącą od miasta Zbąszynek w kierunku zachodniej granicy gminy do skrzyżowania z drogą nr 1210F, a następnie przez drogę 1210F biegnącą od skrzyżowania z linią kolejową do zachodniej granicy gminy, część gminy Szczaniec położona na północ od linii wyznaczonej przez linię kolejową, część gminy Świebodzin położona na północ od linii wyznaczonej przez autostradę A2 w powiecie świebodzińskim,
- gminy Cybinka, Ośno Lubuskie i Rzepin w powiecie ślubickim,
- gmina Sulęcín i część gminy Torzym położona na północ od linii wyznaczonej przez autostradę A2 w powiecie sulęcińskim,

w województwie dolnośląskim:

- gminy Bolesławiec z miastem Bolesławiec, Gromadka i Osiecznica w powiecie bolesławieckim,
- gmina Węglińiec w powiecie zgorzeleckim,
- gminy Chocianów, Polkowice, część gminy Przemków położona na południe od linii wyznaczonej przez drogę nr 12, w powiecie polkowickim,
- gmina Jemielno, Niechlów i Góra w powiecie górowskim,
- gmina Rudna i Lubin z miastem Lubin w powiecie lubińskim,

w województwie wielkopolskim:

- gminy Krzemieniewo, Rydzyna, część gminy Świąciechowa położona na południe od linii wyznaczonej przez drogę nr 12 w powiecie leszczyńskim,
- powiat nowotomyski,
- gminy Granowo, Grodzisk Wielkopolski i część gminy Kamieniec położona na wschód od linii wyznaczonej przez drogę nr 308 w powiecie grodziskim,
- gminy Czempiń, miasto Kościan, część gminy wiejskiej Kościan położona na północny - zachód od linii wyznaczonej przez drogę nr 5 oraz na wschód od linii wyznaczonej przez kanał Obry, część gminy Krzywiń położona na wschód od linii wyznaczonej przez kanał Obry w powiecie kościańskim,
- powiat miejski Poznań,

- gminy Rokietnica, Suchy Las, Mosina, miasto Luboń, miasto Puszczykowo, część gminy Komorniki położona na wschód od linii wyznaczonej przez drogę nr 5, część gminy Stęszew położona na południowy – wschód od linii wyznaczonej przez drogi nr 5 i 32 i część gminy Kórnik położona na zachód od linii wyznaczonych przez drogi: nr S11 biegnącą od północnej granicy gminy do skrzyżowania z drogą nr 434 i drogę nr 434 biegnącą od tego skrzyżowania do południowej granicy gminy w powiecie poznańskim,
- gminy Pniewy, Szamotuły, część gminy Duszniki położona na zachód od linii wyznaczonej przez drogę nr 306 biegnącą od południowej granicy gminy do skrzyżowania z drogą nr 92 oraz na północ od linii wyznaczonej przez drogę nr 92 biegnącą od wschodniej granicy gminy do skrzyżowania z drogą nr 306, część gminy Kaźmierz położona na północ i na zachód od linii wyznaczonych przez drogi: nr 92 biegnącą od zachodniej granicy gminy do skrzyżowania z drogą łączącą miejscowości Witkowice – Gorszewice – Kaźmierz (wzdłuż ulic Czereśniowa, Dworcowa, Marii Konopnickiej) – Chlewiska, biegnącą do wschodniej granicy gminy w powiecie szamotulskim.

7. Slovakia

The following areas in Slovakia:

- the whole district of Vranov nad Topľou,
- the whole district of Humenné,
- the whole district of Snina,
- the whole district of Sobrance, except municipalities included in part III
- in the district of Michalovce, the whole municipalities of Tušice, Moravany, Pozdišovce, Michalovce, Zalužice, Lúčky, Závadka, Hnojné, Poruba pod Vihorlatom, Jovsa, Kusín, Klokočov, Kaluža, Vinné, Trnava pri Laborci, Oreské, Staré, Zbudza, Petrovce nad Laborcom, Lesné, Suché, Rakovec nad Ondavou, Nacina Ves, Voľa, Pusté Černé and Strážske,
- in the district of Gelnica, the whole municipalities of Uhorná, Smolnícka Huta, Mníšek nad Hnilcom, Prakovce, Helcmanovce, Gelnica, Kojšov, Veľký Folkmár, Jaklovce, Žakarovce, Margecany, Henclová and Stará Voda,
- in the district of Prešov, the whole municipalities of Klenov, Miklušovce, Sedlice, Suchá dolina, Janov, Radatice, Lubovec, Ličartovce, Drienovská Nová Ves, Kendice, Petrovany, Drienov, Lemešany, Janovík, Bretejovce, Seniakovce, Šarišské Bohdanovce, Varhaňovce, Brestov Mirkovce, Žehňa, Tuhrina, Lúčina and Červenica,
- in the district of Rožňava, the whole municipalities of Brzotín, Gočaltovo, Honce, Jovice, Kružná, Kunová Teplica, Pača, Pašková, Pašková, Rakovnica, Rozložná, Rožňavské Bystré, Rožňava, Rudná, Štítnik, Vidová, Čučma and Betliar,
- in the district of Revúca, the whole municipalities of Držkovce, Chvalová, Gemerské Teplice, Gemerský Sad, Hucín, Jelšava, Leváre, Licince, Nadraž, Prihradzaný, Sekerešovo, Šivetice, Kameňany, Višňové, Rybník and Sása,
- in the district of Rimavská Sobota, municipalities located south of the road No.526 not included in Part II,
- in the district of Lučenec, the whole municipalities of Trenč, Veľká nad Ipľom, Jelšovec, Panické Dravce, Lučenec, Kalonda, Rapovce, Trebeľovce, Mučín, Lipovany, Pleš, Fiľakovské Kováče, Ratka, Fiľakovo, Biskupice, Belina, Radzovce, Čakanovce, Šiatorská Bukovinka, Čamovce, Šurice, Halič, Mašková, Luboreč, Šíd and Prša,
- in the district of Veľký Krtíš, the whole municipalities of Ipeľské Predmostie, Veľká Ves nad Ipľom, Sečianky, Kleňany, Hrušov, Vinica, Balog nad Ipľom, Dolinka, Kosihy nad Ipľom, Ďurkovce, Širákov, Kamenné Kosihy, Seľany, Veľká Čalomija, Malá Čalomija, Koláre, Trebušovce, Chrastince, Lesenice, Slovenské Ďarmoty, Opatovská Nová Ves, Bátorová, Nenince, Záhorce, Želovce, Sklabiná, Nová Ves, Obeckov, Vrbovka, Kiarov, Kováčovce, Zombor, Olováry, Čeláre, Glabušovce, Veľké Straciny, Malé Straciny, Malý Krtíš, Veľký Krtíš, Pôtor, Veľké Zlievce, Malé Zlievce, Bušince, Muľa, Luboriečka, Dolná Strehová, Vieska, Slovenské Kľačany, Horná Strehová, Chrtány and Závada.

8. Greece

The following areas in Greece:

- in the regional unit of Drama:
 - the community departments of Sidironero and Skaloti and the municipal departments of Livadero and Ksiropotamo (in Drama municipality),
 - the municipal department of Paranesti (in Paranesti municipality),

- the municipal departments of Kokkinogeia, Mikropoli, Panorama, Pyrgoi (in Prosotsani municipality),
- the municipal departments of Kato Nevrokopi, Chrysokéfalo, Achladea, Vathytopos, Volakas, Granitis, Dasotos, Eksohi, Katafyto, Lefkogeia, Mikrokleisoura, Mikromilea, Ochyro, Pagoneri, Perithorio, Kato Vrontou and Potamoi (in Kato Nevrokopi municipality),
- in the regional unit of Xanthi:
 - the municipal departments of Kimmerion, Stavroupoli, Gerakas, Dafnonas, Komnina, Kariofyto and Neochori (in Xanthi municipality),
 - the community departments of Satres, Thermes, Kotyli, and the municipal departments of Myki, Echinós and Oraio and (in Myki municipality),
 - the community department of Selero and the municipal department of Sounio (in Avdira municipality),
- in the regional unit of Rodopi:
 - the municipal departments of Komotini, Anthochorio, Gratini, Thrylorio, Kalhas, Karydia, Kikidio, Kosmio, Pandrosos, Aigeiros, Kallisti, Meleti, Neo Sidirochori and Mega Doukato (in Komotini municipality),
 - the municipal departments of Ipio, Arriana, Darmeni, Archontika, Fillyra, Ano Drosini, Aratos and the Community Departments Kehros and Organi (in Arriana municipality),
 - the municipal departments of Iasmos, Sostis, Asomatoi, Polyanthos and Amvrosia and the community department of Amaxades (in Iasmos municipality),
 - the municipal department of Amaranta (in Maroneia Sapon municipality),
- in the regional unit of Evros:
 - the municipal departments of Kyriaki, Mandra, Mavrokklisi, Mikro Dereio, Protokklisi, Roussa, Goniko, Geriko, Sidirochori, Megalo Derio, Sidiro, Giannouli, Agriani and Petrolofos (in Soufli municipality),
 - the municipal departments of Dikaia, Arzos, Elaia, Therapio, Komara, Marasia, Ormenio, Pentalofos, Petrola, Plati, Ptelea, Kyprinos, Zoni, Fulakio, Spilaio, Nea Vyssa, Kavili, Kastanies, Rizia, Sterna, Ampelakia, Valtos, Megali Doxipara, Neochori and Chondras (in Orestiada municipality),
 - the municipal departments of Asvestades, Ellinochori, Karoti, Koufovouno, Kiani, Mani, Sitochori, Alepochori, Asproneri, Metaxades, Vrysika, Doksa, Elafoxori, Ladi, Paliouri and Poimeniko (in Didymoteicho municipality),
- in the regional unit of Serres:
 - the municipal departments of Kerkini, Livadia, Makrynitsa, Neochori, Platanakia, Petritsi, Akritochori, Vyroneia, Gonimo, Mandraki, Megalochori, Rodopoli, Ano Poroia, Katw Poroia, Sidirokastro, Vamvakophyto, Promahonas, Kamaroto, Strymonochori, Charopo, Kastanousi and Chorero and the community departments of Achladochori, Agkistro and Kapnophyto (in Sintiki municipality),
 - the municipal departments of Serres, Elaionas and Oinoussa and the community departments of Orini and Ano Vrontou (in Serres municipality),
 - the municipal departments of Dasochoriou, Irakleia, Valtero, Karperi, Koimisi, Lithotopos, Limnochori, Podismeno and Chrysochorafa (in Irakleia municipality).

PART II

1. Belgium

Les zones suivantes en Belgique:

dans la province de Luxembourg:

- la zone est délimitée, dans le sens des aiguilles d'une montre, par:
 - La Rue de la Station (N85) à Florenville jusque son intersection avec la N894,
 - La N894 jusque son intersection avec la rue Grande,
 - La rue Grande jusque son intersection avec la rue de Neufchâteau,
 - La rue de Neufchâteau jusque son intersection avec Hosseuse,
 - Hosseuse,

- La Roquignole,
- Les Chanvières,
- La Fosse du Loup,
- Le Sart,
- La N801 jusque son intersection avec la rue de l'Accord,
- La rue de l'Accord,
- La rue du Fet,
- La N40 jusque son intersection avec la E25-E411,
- La E25-E411 jusque son intersection avec la N81 au niveau de Weyler,
- La N81 jusque son intersection avec la N883 au niveau d'Aubange,
- La N883 jusque son intersection avec la N88 au niveau d'Aubange,
- La N88 jusque son intersection avec la N811,
- La N811 jusque son intersection avec la rue Baillet Latour,
- La rue Baillet Latour jusque son intersection avec la N88,
- La N88 (rue Baillet Latour, rue Fontaine des Dames, rue Yvan Gils, rue de Virton, rue de Gérardville, Route de Meix) jusque son intersection avec la N981,
- La N981 (rue de Virton) jusque son intersection avec la N83,
- La N83 (rue du Faing, rue de Bouillon, rue Albert 1er, rue d'Arlon) jusque son intersection avec la N85 (Rue de la Station) à Florenville.

2. Bulgaria

The following areas in Bulgaria:

- the whole region of Haskovo,
- the whole region of Yambol,
- the whole region of Stara Zagora,
- the whole region of Pernik,
- the whole region of Kyustendil,
- the whole region of Plovdiv,
- the whole region of Pazardzhik,
- the whole region of Smolyan,
- the whole region of Burgas excluding the areas in Part III.

3. Estonia

The following areas in Estonia:

- Eesti Vabariik (välja arvatud Hiiumaa maakond).

4. Hungary

The following areas in Hungary:

- Békés megye 950150, 950250, 950350, 950450, 950550, 950650, 950660, 950750, 950850, 950860, 951050, 951150, 951250, 951260, 951350, 951450, 951460, 951550, 951650, 951750, 952150, 952250, 952350, 952450, 952550, 952650, 953250, 953260, 953270, 953350, 953450, 953550, 953560, 953950, 954050, 954060, 954150, 956250, 956350, 956450, 956550, 956650 és 956750 kódszámú vadgazdálkodási egységeinek teljes területe,

- Borsod-Abaúj-Zemplén megye valamennyi vadgazdálkodási egységének teljes területe,
- Fejér megye 403150, 403160, 403260, 404250, 404550, 404560, 405450, 405550, 405650, 406450 és 407050 kódszámú vadgazdálkodási egységeinek teljes területe,
- Hajdú-Bihar megye valamennyi vadgazdálkodási egységének teljes területe,
- Heves megye valamennyi vadgazdálkodási egységének teljes területe,
- Jász-Nagykun-Szolnok megye 750250, 750550, 750650, 750750, 750850, 750970, 750980, 751050, 751150, 751160, 751250, 751260, 751350, 751360, 751450, 751460, 751470, 751550, 751650, 751750, 751850, 751950, 752150, 752250, 752350, 752450, 752460, 752550, 752560, 752650, 752750, 752850, 752950, 753060, 753070, 753150, 753250, 753310, 753450, 753550, 753650, 753660, 753750, 753850, 753950, 753960, 754050, 754150, 754250, 754360, 754370, 754850, 755550, 755650 és 755750 kódszámú vadgazdálkodási egységeinek teljes területe,
- Komárom-Esztergom megye: 251950, 252050, 252350, 252450, 252460, 252550, 252650, 252750, 252850, 252860, 252950, 252960, 253050, 253150, 253250, 253350, 253450 és 253550 kódszámú vadgazdálkodási egységeinek teljes területe,
- Nógrád megye valamennyi vadgazdálkodási egységeinek teljes területe,
- Pest megye 570150, 570250, 570350, 570450, 570550, 570650, 570750, 570850, 570950, 571050, 571150, 571250, 571350, 571650, 571750, 571760, 571850, 571950, 572050, 573550, 573650, 574250, 577250, 580050 és 580150 kódszámú vadgazdálkodási egységeinek teljes területe,
- Szabolcs-Szatmár-Bereg megye valamennyi vadgazdálkodási egységének teljes területe.

5. Latvia

The following areas in Latvia:

- Ādažu novads,
- Aizputes novads, Aizputes un Cīravas pagasts, Kalvenes pagasta daļa uz rietumiem no ceļa pie Vārtājas upes līdz autoceļam A9, uz dienvidiem no autoceļa A9, uz rietumiem no autoceļa V1200, Kazdangas pagasta daļa uz rietumiem no ceļa V1200, P115, P117, V1296 un Lažas pagasta daļa uz dienvidiem no autoceļa caur Miķeļišu mežu līdz autoceļam I265, uz rietumiem no autoceļa, kas savieno autoceļu I265 pie Mežmaļiem līdz robežai ar Rīvas upi, Aizputes pilsēta,
- Aglonas novads,
- Aizkraukles novads,
- Aknīstes novads,
- Alojas novads,
- Alūksnes novads,
- Amatas novads,
- Apes novads,
- Auces novads,
- Babītes novads,
- Baldones novads,
- Baltinavas novads,
- Balvu novads,
- Bauskas novads,
- Beverīnas novads,
- Brocēnu novads,
- Burtnieku novads,

- Carnikavas novads,
- Cēsu novads,
- Cesvaines novads,
- Ciblas novads,
- Dagdas novads,
- Daugavpils novads,
- Dobeles novads,
- Dundagas novads,
- Durbes novads,
- Engures novads,
- Ērgļu novads,
- Garkalnes novads,
- Gulbenes novads,
- Iecavas novads,
- Ikšķiles novads,
- Ilūkstes novads,
- Inčukalna novads,
- Jaunjelgavas novads,
- Jaunpiebalgas novads,
- Jaunpils novads,
- Jēkabpils novads,
- Jelgavas novads,
- Kandavas novads,
- Kārsavas novads,
- Ķeguma novads,
- Ķekavas novads,
- Kocēnu novads,
- Kokneses novads,
- Krāslavas novads,
- Krimuldas novads,
- Krustpils novads,
- Kuldīgas novada Ēdoles pagasta daļa uz ziemeļiem no autoceļa 1269, 1271, uz austrumiem no autoceļa 1288, uz ziemeļiem no autoceļa P119, Īvandes pagasta daļa uz ziemeļiem no autoceļa P119, uz austrumiem no autoceļa 1292, 1279, uz austrumiem no autoceļa, kas savieno autoceļu 1279 no Upītēm līdz autoceļam 1290, Kurmāles pagasta daļa uz ziemeļiem no autoceļa 1290, uz austrumiem no autoceļa, kas savieno autoceļu 1290 no Alejām līdz autoceļam 1283, uz austrumiem no autoceļa 1283 un P112, Turlavas pagasta daļa uz dienvidiem no autoceļa P112, Laidu pagasta daļa uz ziemeļiem no autoceļa V1296, Padures, Rumbas, Rendas, Kables, Vārmes, Pelču un Snēpeles pagasts, Kuldīgas pilsēta,
- Lielvārdes novads,
- Līgatnes novads,
- Limbažu novads,

- Līvānu novads,
- Lubānas novads,
- Ludzas novads,
- Madonas novads,
- Mālpils novads,
- Mārupes novads,
- Mazsalacas novads,
- Mērsraga novads,
- Naukšēnu novads,
- Neretas novads,
- Ogres novads,
- Olaines novads,
- Ozolnieku novads,
- Pārgaujas novads,
- Pāvilostas novada Sakas pagasts, Pāvilostas pilsēta,,
- Pļaviņu novads,
- Preiļu novads,
- Priekules novads,
- Priekuļu novads,
- Raunas novads,
- republikas pilsēta Daugavpils,
- republikas pilsēta Jelgava,
- republikas pilsēta Jēkabpils,
- republikas pilsēta Jūrmala,
- republikas pilsēta Rēzekne,
- republikas pilsēta Valmiera,
- Rēzeknes novads,
- Riebiņu novads,
- Rojas novads,
- Ropažu novads,
- Rugāju novads,
- Rundāles novads,
- Rūjienas novads,
- Salacgrīvas novads,
- Salas novads,
- Salaspils novads,
- Saldus novads,
- Saulkrastu novads,
- Sējas novads,

- Siguldas novads,
- Skrīveru novads,
- Skrundas novada Raņķu pagasta daļa uz ziemeļiem no autoceļa V1272 līdz robežai ar Ventas upi, Skrundas pagasta daļa no Skrundas uz ziemeļiem no autoceļa A9 un austrumiem no Ventas upes,
- Smiltenes novads,
- Stopiņu novada daļa, kas atrodas uz austrumiem no autoceļa V36, P4 un P5, Acones ielas, Dauguļupes ielas un Dauguļupītes,
- Strenču novads,
- Talsu novads,
- Tērvetes novads,
- Tukuma novads,
- Vaiņodes novada Vaiņodes pagasts un Embūtes pagasta daļa uz dienvidiem autoceļa P116, P106,
- Valkas novads,
- Varakļānu novads,
- Vārkavas novads,
- Vecpiebalgas novads,
- Vecumnieku novads,
- Ventspils novads,
- Viesītes novads,
- Viļakas novads,
- Viļānu novads,
- Zilupes novads.

6. Lithuania

The following areas in Lithuania:

- Alytaus miesto savivaldybė,
- Alytaus rajono savivaldybė: Alytaus, Alovės, Butrimonių, Daugų, Nemunaičio, Pivašiūnų, Punios, Raitininkų seniūnijos,
- Anykščių rajono savivaldybė,
- Akmenės rajono savivaldybė,
- Biržų miesto savivaldybė,
- Biržų rajono savivaldybė,
- Druskininkų savivaldybė,
- Elektrėnų savivaldybė,
- Ignalinos rajono savivaldybė,
- Jonavos rajono savivaldybė,
- Joniškio rajono savivaldybė,
- Jurbarko rajono savivaldybė,
- Kaišiadorių rajono savivaldybė,
- Kalvarijos savivaldybė,
- Kauno miesto savivaldybė,

- Kauno rajono savivaldybė: Domeikavos, Garliavos, Garliavos apylinkių, Karmėlavos, Lapių, Linksmakalnio, Neveronių, Rokų, Samylų, Taurakiemio, Vandžiogalos ir Vilkijos seniūnijos, Babtų seniūnijos dalis į rytus nuo kelio A1, Užliedžių seniūnijos dalis į rytus nuo kelio A1 ir Vilkijos apylinkių seniūnijos dalis į vakarus nuo kelio Nr. 1907,
- Kazlų rūdų savivaldybė: Kazlų rūdų seniūnija į šiaurę nuo kelio Nr. 230, į rytus nuo kelio Kokė-Užbaliai-Čečetai iki kelio Nr. 2610 ir į pietus nuo kelio Nr. 2610,
- Kelmės rajono savivaldybė,
- Kėdainių rajono savivaldybė,
- Kupiškio rajono savivaldybė,
- Kretingos rajono savivaldybė: Imbarės, Kūlupėnų ir Kartenos seniūnijos,
- Lazdijų rajono savivaldybė,
- Marijampolės savivaldybė: Degučių, Marijampolės, Mokolų, Liudvinavo ir Narto seniūnijos,
- Mažeikių rajono savivaldybė,
- Molėtų rajono savivaldybė: Alantos seniūnijos dalis į vakarus nuo kelio 119 ir į šiaurę nuo kelio Nr. 2828, Balninkų, Dubingių, Giedraičių, Jonišio ir Videniškių seniūnijos,
- Pagėgių savivaldybė,
- Pakruojo rajono savivaldybė,
- Panevėžio rajono savivaldybė,
- Panevėžio miesto savivaldybė,
- Pasvalio rajono savivaldybė,
- Radviliškio rajono savivaldybė,
- Rietavo savivaldybė,
- Prienų rajono savivaldybė: Stakliškių ir Veiverių seniūnijos,
- Plungės rajono savivaldybė: Žlibinų, Stalgėnų, Nausodžio sen. dalis nuo kelio Nr. 166 į šiaurės vakarus, Plungės miesto ir Šateikių seniūnijos,
- Raseinių rajono savivaldybė,
- Rokiškio rajono savivaldybė,
- Skuodo rajono savivaldybės: Aleksandrijos ir Ylakių seniūnijos,
- Šakių rajono savivaldybė,
- Šalčininkų rajono savivaldybė,
- Šiaulių miesto savivaldybė,
- Šiaulių rajono savivaldybė,
- Šilutės rajono savivaldybė,
- Širvintų rajono savivaldybė,
- Šilalės rajono savivaldybė,
- Švenčionių rajono savivaldybė,
- Tauragės rajono savivaldybė,
- Telšių rajono savivaldybė,
- Trakų rajono savivaldybė,
- Ukmergės rajono savivaldybė,
- Utenos rajono savivaldybė,
- Varėnos rajono savivaldybė,

- Vilniaus miesto savivaldybė,
- Vilniaus rajono savivaldybė,
- Vilkaviškio rajono savivaldybė: Bartninkų, Gražiškių, Keturvalakių, Kybartų, Klausučių, Pajevonio, Šeimenos, Vilkaviškio miesto, Virbalio, Vištyčio seniūnijos,
- Visagino savivaldybė,
- Zarasų rajono savivaldybė.

7. Poland

The following areas in Poland:

w województwie warmińsko-mazurskim:

- gminy Kalinowo, Stare Juchy, część gminy Prostki położona na wschód od linii wyznaczonej przez drogę biegnącą od północnej granicy gminy łączącą miejscowości Żelazki – Dąbrowskie – Długosze do południowej granicy gminy i część gminy wiejskiej Elk położona na północ od linii wyznaczonej przez drogę nr 667 biegnącą od miejscowości Bajtkowo do miejscowości Nowa Wieś Elcka, a następnie na północ od linii wyznaczonej przez rzekę Elk biegnącą od miejscowości Nowa Wieś Elcka do wschodniej granicy gminy w powiecie elckim,
- gminy Elbląg, Gronowo Elbląskie, Milejewo, Młynary, Markusy, Rychliki i Tolkmicko w powiecie elbląskim,
- powiat miejski Elbląg,
- powiat gołdapski,
- gminy Orzysz, Pisz, Ruciane - Nida oraz część gminy Biała Piska położona na zachód od linii wyznaczonej przez drogę 667 biegnącą od północnej granicy gminy do miejscowości Biała Piska, a następnie na południe od linii wyznaczonej przez drogę nr 58 biegnącą od miejscowości Biała Piska do wschodniej granicy gminy w powiecie piskim,
- gmina Górowo Iławeckie z miastem Górowo Iławeckie w powiecie bartoszyckim,
- gminy Biskupiec, Kolno, Purda, Stawiguda, , Olsztynek, część gminy Świątki położona na zachód od linii wyznaczonej przez rzekę Pasłęka, część gminy Barczewo położona na południe od linii wyznaczonej przez linię kolejową, część gminy Gietrzwałd położona na południe od linii wyznaczonej przez linię kolejową w powiecie olsztyńskim,
- gminy Grunwald, Łukta, Małdyty, Miłomłyn, Miłakowo, część gminy wiejskiej Ostróda położona na wschód od linii wyznaczonej przez drogę nr S7 i część gminy Morąg położona na południe od linii wyznaczonej przez linię kolejową biegnącą od Olsztyna do Elbląga w powiecie ostródzkim,
- część gminy Ryn położona na południe od linii wyznaczonej przez linię kolejową łączącą miejscowości Giżycko i Kętrzyn w powiecie giżyckim,
- gminy Braniewo i miasto Braniewo, Frombork, Lelkowo, Pieniężno, Płoskinia oraz część gminy Wilczęta położona na północ od linii wyznaczonej przez drogę nr 509 w powiecie braniewskim,
- gmina Reszel, część gminy Kętrzyn położona na południe od linii kolejowej łączącej miejscowości Giżycko i Kętrzyn biegnącej do granicy miasta Kętrzyn, na zachód od linii wyznaczonej przez drogę nr 591 biegnącą od miasta Kętrzyn do północnej granicy gminy oraz na zachód i na południe od zachodniej i południowej granicy miasta Kętrzyn, miasto Kętrzyn i część gminy Korsze położona na południe od linii wyznaczonej przez drogę biegnącą od wschodniej granicy łączącą miejscowości Kreliekijmy i Sątoczno i na wschód od linii wyznaczonej przez drogę łączącą miejscowości Sątoczno, Sajna Wielka biegnącą do skrzyżowania z drogą nr 590 w miejscowości Glitajny, a następnie na wschód od drogi nr 590 do skrzyżowania z drogą nr 592 i na południe od linii wyznaczonej przez drogę nr 592 biegnącą od zachodniej granicy gminy do skrzyżowania z drogą nr 590 w powiecie kętrzyńskim,
- gminy Lubomino i Orneta w powiecie lidzbarskim,
- gmina Nidzica i część gminy Kozłowo położona na północ od linii wyznaczonej przez drogę łączącą miejscowości Rączki – Kownatki – Gardyny w powiecie nidzickim,

- gminy Dźwierzuty, Jedwabno, Pasym, Szczytno i miasto Szczytno i Świętajno w powiecie szczycieńskim,
- powiat mrągowski,
- gmina Zalewo w powiecie iławskim,

w województwie podlaskim:

- gminy Orla, Rudka, Brańsk z miastem Brańsk, Boćki w powiecie bielskim,
- gminy Radziłów, Rajgród Wąsosz, część gminy wiejskiej Grajewo położona na południe o linii wyznaczonej przez drogę biegnącą od zachodniej granicy gminy łączącą miejscowości: Mareckie – Łękowo – Kacprowo – Ruda, a następnie od miejscowości Ruda na południe od rzeki Binduga uchodzącej do rzeki Elk i następnie na południe od linii wyznaczonej przez rzekę Elk od ujścia rzeki Binduga do wschodniej granicy gminy w powiecie grajewskim,
- powiat moniecki,
- powiat sejneński,
- gminy Łomża, Piątnica, Jedwabne, Przytuły i Wiznaw powiecie łomżyńskim,
- powiat miejski Łomża,
- gminy Dziadkowice, Grodzisk, Mielnik, Milejczyce, Nurzec-Stacja i Siemiatycze z miastem Siemiatycze w powiecie siemiatyckim,
- powiat hajnowski,
- gminy Klukowo, Szepietowo, Kobylin-Borzemy, Nowe Piekuty, Sokoły i część gminy Kulesze Kościelne położona na północ od linii wyznaczonej przez linię kolejową w powiecie wysokomazowieckim,
- gmina Rutki i część gminy Kołaki Kościelne położona na północ od linii wyznaczonej przez linię kolejową w powiecie zambrowskim,
- powiat kolneński z miastem Kolno,
- gminy Czarna Białostocka, Dobrzyniewo Duże, Gródek, Michałowo, Supraśl, Tykocin, Wasilków, Zabłudów, Zawady, Choroszcz i część gminy Poświętne położona na zachód od linii wyznaczonej przez drogę nr 681 w powiecie białostockim,
- gminy Filipów, Jeleniewo, Przerośl, Raczki, Rutka -Tartak, Suwałki, Szypliszki Wizajny oraz część gminy Bakalarzewo położona na północ od linii wyznaczonej przez drogę 653 biegnącej od zachodniej granicy gminy do skrzyżowania z drogą 1122B oraz na wschód od linii wyznaczonej przez drogę nr 1122B biegnącą od drogi 653 w kierunku południowym do skrzyżowania z drogą 1124B i następnie na północny - wschód od drogi nr 1124B biegnącej od skrzyżowania z drogą 1122B do granicy z gminą Raczki w powiecie suwalskim
- powiat miejski Suwałki,
- powiat augustowski,
- powiat sokółski,
- powiat miejski Białystok,

w województwie mazowieckim:

- powiat siedlecki,
- powiat miejski Siedlce,
- gminy Bielany, Ceranów, Kosów Lacki, Repki i gmina wiejska Sokołów Podlaski w powiecie sokołowskim,
- powiat węgrowski,
- powiat łosicki,
- powiat ciechanowski,
- powiat sochaczewski,
- powiat zwoleński,

- gminy Garbatka – Letnisko, Gniewoszków i Sieciechów w powiecie kozienickim,
 - powiat lipski,
 - gminy Gózd, Iłża, Jastrzębia, Jedlnia Letnisko, Pionki z miastem Pionki, Skaryszew, Jedlińsk, Przytyk, Zakrzew, część gminy Wolanów położona na północ od drogi nr 12 i w powiecie radomskim,
 - gminy Bodzanów, Bulkowo, Staroźreby, Słubice, Wyszogród i Mała Wieś w powiecie płońskim,
 - powiat nowodworski,
 - powiat płoński,
 - gminy Pokrzywnica, Świercze i część gminy Winnica położona na zachód od linii wyznaczonej przez drogę łączącą miejscowości Bielany, Winnica i Pokrzywnica w powiecie pułuskim,
 - powiat wołomiński,
 - część gminy Somianka położona na południe od linii wyznaczonej przez drogę nr 62 w powiecie wyszkowskim,
 - gminy Borowie, Garwolin z miastem Garwolin, Miastków Kościelny, Parysów, Pilawa, część gminy Wilga położona na północ od linii wyznaczonej przez rzekę Wilga biegnącą od wschodniej granicy gminy do ujścia do rzeki Wisły, część gminy Górzno położona na północ od linii wyznaczonej przez drogę łączącą miejscowości Łąki i Górzno biegnącą od wschodniej granicy gminy, następnie od miejscowości Górzno na północ od drogi nr 1328W biegnącej do drogi nr 17, a następnie na północ od linii wyznaczonej przez drogę biegnącą od drogi nr 17 do zachodniej granicy gminy przez miejscowości Józefów i Kobyła Wola w powiecie garwolińskim,
 - gmina Boguty – Pianki w powiecie ostrowskim,
 - gminy Stupsk, Wiśniewo i Strzegowo w powiecie mławskim,
 - powiat miński,
 - powiat otwocki,
 - powiat warszawski zachodni,
 - powiat legionowski,
 - powiat piaseczyński,
 - powiat pruszkowski,
 - powiat grójecki,
 - powiat grodziski,
 - powiat żyrardowski,
 - gminy Białobrzegi, Promna, Radzanów, Stara Błotnica, Wyśmierzyce w powiecie białobrzeskim,
 - powiat przysuski,
 - powiat miejski Warszawa,
- w województwie lubelskim:
- powiat bialski,
 - powiat miejski Biała Podlaska,
 - gminy Batorz, Godziszów, Janów Lubelski, Modliborzyce i Potok Wielki w powiecie janowskim,
 - powiat puławski,
 - gminy Nowodwór, Ułęż, miasto Dęblin i część gminy Ryki położona na południe od linii wyznaczonej przez linię kolejową powiecie ryckim,
 - gminy Adamów, Krzywdą, Stoczek Łukowski z miastem Stoczek Łukowski, Wola Mysłowska, Trzebieszów, Stanin, gmina wiejska Łuków i miasto Łuków w powiecie łukowskim,

- gminy Bychawa, Głusk, Jabłonna, Krzczonów, Garbów Strzyżewice, Wysokie, Bełżyce, Borzechów, Niedrzwica Duża, Konopnica, Wojciechów i Zakrzew w powiecie lubelskim,
- gmina Uścimów w powiecie lubartowskim,
- gminy Mełgiew, Rybczewice, Piaski i miasto Świdnik w powiecie świdnickim,
- gmina Fajslawice, część gminy Żółkiewka położona na północ od linii wyznaczonej przez drogę nr 842 i część gminy Łopiennik Górny położona na zachód od linii wyznaczonej przez drogę nr 17 w powiecie krasnostawskim,
- gminy Chełm, Ruda – Huta, Sawin, część gminy Dorohusk położona na północ od linii wyznaczonej przez linię kolejową, część gminy Wojsławice położona na zachód od linii wyznaczonej przez drogę 1839L, część gminy Leśniowice położona na zachód od linii wyznaczonej przez drogę 1839L w powiecie chełmskim,
- powiat miejski Chełm,
- powiat kraśnicki,
- powiat opolski,
- gminy Dębowa Kłoda, Jabłoń, Podedwórze, Sosnowica w powiecie parczewskim,
- gminy Stary Brus, Wola Uhruska, część gminy wiejskiej Włodawa położona na południe od południowej granicy miasta Włodawa i część gminy Hańsk położona na wschód od linii wyznaczonej od drogi nr 819 w powiecie włodawskim,
- gmina Kąkolewnica, Komarówka Podlaska i Ulan Majorat w powiecie radzyńskim,

w województwie podkarpackim:

- powiat stalowowolski,
- gminy Horyniec-Zdrój, Oleszyce, Lubaczów z miastem Lubaczów, Wielkie Oczy i część gminy Cieszanów położona na wschód od linii wyznaczonej przez drogę nr 865 biegnącą od południowej granicy gminy do skrzyżowania z drogą 863, a następnie na zachód od drogi nr 863 biegnącej do miejscowości Lubliniec i dalej na zachód od drogi biegnącej przez Nowy Lubliniec do północnej granicy gminy w powiecie lubaczowskim,
- gminy Laszki, część gminy Radymno położona na północ od linii wyznaczonej przez autostradę A4 z miastem Radymno, część gminy Wiązownica położona na południe od linii wyznaczonej przez drogę nr 867 w powiecie jarosławskim,
- gmina Kamień, część gminy Sokołów Małopolski położona na północ od linii wyznaczonej przez drogę nr 875 w powiecie rzeszowskim,
- gminy Cmolas i Majdan Królewski w powiecie kolbuszowskim,
- gminy Grodzisko Dolne, Nowa Sarzyna, miasto Leżajsk, część gminy wiejskiej Leżajsk położona na zachód od linii wyznaczonej przez rzekę San, część gminy Kuryłówka położona na zachód od linii wyznaczonej przez drogę biegnącą od północnej granicy gminy łączącej miejscowości Brzyska Wola – Dąbrowica - Ożanna do południowej granicy gminy w powiecie leżajskim,
- powiat niżański,
- powiat tarnobrzeski,

w województwie pomorskim:

- gminy Dzierżgoń i Stary Dzierżgoń w powiecie sztumskim,
- gmina Stare Pole w powiecie malborskim,
- gminy Stegny, Sztutowo i część gminy Nowy Dwór Gdański położona na północny - wschód od linii wyznaczonej przez drogę nr 55 biegnącą od południowej granicy gminy do skrzyżowania z drogą nr 7, następnie przez drogę nr 7 i S7 biegnącą do zachodniej granicy gminy w powiecie nowodworskim,

w województwie świętokrzyskim:

- gmina Tarłów i część gminy Ożarów położona na północ od linii wyznaczonej przez drogę nr 74 w powiecie opatowskim,

- część gminy Brody położona na wschód od linii wyznaczonej przez drogę nr 9 oraz na północny - wschód od linii wyznaczonej przez drogę nr 0618T biegnącą od północnej granicy gminy do skrzyżowania w miejscowości Lipie oraz przez drogę biegnącą od miejscowości Lipie do wschodniej granicy gminy i część gminy Mirzec położona na wschód od linii wyznaczonej przez drogę nr 744 biegnącą od południowej granicy gminy do miejscowości Tychów Stary a następnie przez drogę nr 0566T biegnącą od miejscowości Tychów Stary w kierunku północno - wschodnim do granicy gminy w powiecie starachowickim,

w województwie lubuskim:

- powiat wschowski,
- gminy Bobrowice, Maszewo, część gminy Krosno Odrzańskie położona na zachód od linii wyznaczonej przez drogę nr 1157F biegnącą od północnej granicy gminy do skrzyżowania z drogą nr 29, a następnie przez drogę nr 29 biegnącą od tego skrzyżowania do południowej granicy gminy, część gminy Bytnica położona na zachód od linii wyznaczonej przez drogę nr 1157F w powiecie krośnieńskim,
- część gminy Torzym położona na południe od linii wyznaczonej przez autostradę A2 w powiecie sulęcińskim,
- gminy Kolsko, część gminy Koźuchów położona na południe od linii wyznaczonej przez drogę nr 283 biegnącą od wschodniej granicy gminy do skrzyżowania z drogą nr 290 i na południe od linii wyznaczonej przez drogę nr 290 biegnącej od miasta Miłocin Dolny do zachodniej granicy gminy, część gminy Bytom Odrzański położona na północny zachód od linii wyznaczonej przez drogi nr 293 i 326, część gminy Nowe Miasteczko położona na zachód od linii wyznaczonych przez drogi 293 i 328, część gminy Siedlisko położona na północny zachód od linii wyznaczonej przez drogę biegnącą od rzeki Odry przy południowej granicy gminy do drogi nr 326 łączącej się z drogą nr 325 biegnącą w kierunku miejscowości Różanówka do skrzyżowania z drogą nr 321 biegnącą od tego skrzyżowania w kierunku miejscowości Bielawy, a następnie przedłużoną przez drogę przeciwpożarową biegnącą od drogi nr 321 w miejscowości Bielawy do granicy gminy w powiecie nowosolskim,
- gminy Babimost, Kargowa, Nowogród Bobrzański, Trzebiechów część gminy Bojadła położona na północ od linii wyznaczonej przez drogę nr 278 biegnącą od wschodniej granicy gminy do skrzyżowania z drogą nr 282 i na północ od linii wyznaczonej przez drogę nr 282 biegnącej od miasta Bojadła do zachodniej granicy gminy i część gminy Sulechów położona na wschód od linii wyznaczonej przez drogę nr S3 w powiecie zielonogórskim,
- powiat żarski,
- gminy Brzeźnica, Iłowa, Małomice, Szprotawa, Wymiarki, Żagań, miasto Żagań, miasto Gozdnicza, część gminy Niegosławice położona na zachód od linii wyznaczonej przez drogę nr 328 w powiecie żagańskim,
- część gminy Lubrza położona na południe od linii wyznaczonej przez autostradę A2, część gminy Łagów położona na południe od linii wyznaczonej przez autostradę A2, część gminy Zbąszynek położona na południe od linii wyznaczonej przez linię kolejową biegnącą od Zbąszynia do Świebodzina oraz część położona na południe od linii wyznaczonej przez linię kolejową biegnącą od miasta Zbąszynek w kierunku zachodniej granicy gminy do skrzyżowania z drogą nr 1210F, a następnie przez drogę 1210F biegnącą od skrzyżowania z linią kolejową do zachodniej granicy gminy, część gminy Szczaniec położona na południe od linii wyznaczonej przez linię kolejową, część gminy Świebodzin położona na południe od linii wyznaczonej przez autostradę A2 w powiecie świebodzińskim,

w województwie dolnośląskim:

- gmina Pęcław, część gminy Kotla położona na północ od linii wyznaczonej przez rzekę Krzycki Rów, część gminy wiejskiej Głogów położona na wschód od linii wyznaczonej przez drogi nr 12, 319 oraz 329, część miasta Głogów położona na wschód od linii wyznaczonej przez drogę nr 12 w powiecie głogowskim,
- gmina Grębocice w powiecie polkowickim,

w województwie wielkopolskim:

- powiat wolsztyński,
- gminy Rakoniewice, Wielichowo i część gminy Kamieniec położona na zachód od linii wyznaczonej przez drogę nr 308 w powiecie grodziskim,
- gminy Wijewo, część gminy Włoszakowice położona na zachód od linii wyznaczonej przez drogi 3903P biegnącą od północnej granicy gminy do miejscowości Boguszyn, a następnie przez drogę łączącą miejscowość Boguszyn z miejscowością Krzycko aż do południowej granicy gminy i część gminy Świąciechowa położona na północ od linii wyznaczonej przez drogę nr 12 w powiecie leszczyńskim,

- część gminy Śmigiel położona na zachód od linii wyznaczonej przez drogi nr 3903P biegnącej od południowej granicy gminy przez miejscowości Bronikowo i Morowice aż do miejscowości Śmigiel do skrzyżowania z drogą 3820P i dalej drogą 3820P, która przechodzi w ul. Jagiellońską, następnie w Lipową i Glinkową, aż do skrzyżowania z drogą S5, następnie przez drogą nr S5 do północnej granicy gminy w powiecie kościańskim,

w województwie łódzkim:

- gminy Drzewica, Opoczno i Poświętne w powiecie opoczyńskim,
- gmina Sadkowiec w powiecie rawskim.

8. Slovakia

The following areas in Slovakia:

- in the district of Gelnica, the whole municipality of Smolník,
- the whole district of Košice – okolie, except municipalities included in part III,
- the whole city of Košice,
- the whole district of Trebišov, except municipalities included in Part III,
- in the district of Michalovce, the whole municipalities of the district not included in Part I and Part III,
- in the district of Revúca, the whole municipalities of Gemer, Tornaľa, Žiar, Gemerská Ves, Levkuška, Otročok, Polina, Rašice,
- in the district of Rimavská Sobota, the whole municipalities of Abovce, Barca, Bátka, Cakov, Chanava, Dulovo, Figa, Gemerské Michalovce, Hubovo, Ivanice, Kaloša, Kesovce, Kráľ, Lenartovce, Lenka, Neporadza, Orávka, Radnovce, Rakytník, Riečka, Rimavská Seč, Rumince, Stránska, Uzovská Panica, Valice, Vieska nad Blhom, Vlkyňa, Vyšné Valice, Včelince, Zádor, Číz, Štrkovec Tomášovce and Žíp,
- in the district of Rožňava, the whole municipalities of Ardoovo, Bohúňovo, Bretka, Čoltovo, Dlhá Ves, Gemerská Hôrka, Gemerská Panica, Kečovo, Meliata, Plešivec, Silica, Silická Brezová, Slavec, Hrušov, Krásnohorská Dlhá Lúka, Krásnohorské podhradie, Lipovník, Silická Jablonica.

9. Romania

The following areas in Romania:

- Județul Bistrița-Năsăud,
- Județul Suceava.

PART III

1. Bulgaria

The following areas in Bulgaria:

- the whole region of Blagoevgrad,
- the whole region of Dobrich,
- the whole region of Gabrovo,
- the whole region of Kardzhali,
- the whole region of Lovech,
- the whole region of Montana,
- the whole region of Pleven,
- the whole region of Razgrad,
- the whole region of Ruse,
- the whole region of Shumen,
- the whole region of Silistra,

- the whole region of Sliven,
- the whole region of Sofia city,
- the whole region of Sofia Province,
- the whole region of Targovishte,
- the whole region of Vidin,
- the whole region of Varna,
- the whole region of Veliko Tarnovo,
- the whole region of Vratza,
- in Burgas region:
 - the whole municipality of Burgas,
 - the whole municipality of Kameno,
 - the whole municipality of Malko Tarnovo,
 - the whole municipality of Primorsko,
 - the whole municipality of Sozopol,
 - the whole municipality of Sredets,
 - the whole municipality of Tsarevo,
 - the whole municipality of Sungurlare,
 - the whole municipality of Ruen,
 - the whole municipality of Aytos.

2. Latvia

The following areas in Latvia:

- Aizputes novada Lažas pagasta daļa uz ziemeļiem no autoceļa caur Miķeļišu mežu līdz autoceļam 1265, uz austrumiem no autoceļa, kas savieno autoceļu 1265 pie Mežmaļiem līdz robežai ar Rīvas upi, Kalvenes pagasta daļa uz austrumiem no ceļa pie Vārtājas upes līdz autoceļam A9, uz ziemeļiem no autoceļa A9, uz austrumiem no autoceļa V1200, Kazdangas pagasta daļa uz austrumiem no ceļa V1200, P115, P117, V1296,
- Alsungas novads,
- Kuldīgas novada Gudenieku pagasts, Ēdoles pagasta daļa uz dienvidiem no autoceļa 1269, 1271, uz rietumiem no autoceļa 1288, uz dienvidiem no autoceļa P119, Īvandes pagasta daļa uz dienvidiem no autoceļa P119, uz rietumiem no autoceļa 1292, 1279, uz rietumiem no autoceļa, kas savieno autoceļu 1279 no Upītēm līdz autoceļam 1290, Kurmāles pagasta daļa uz dienvidiem no autoceļa 1290, uz rietumiem no autoceļa, kas savieno autoceļu 1290 no Alejām līdz autoceļam 1283, uz rietumiem no autoceļa 1283 un P112, Turlavas pagasta daļa uz ziemeļiem no autoceļa P112, Laidu pagasta daļa uz dienvidiem no autoceļa V1296,
- Skrundas novada Rudbāržu, Nīkrāces pagasts, Raņķu pagasta daļa uz dienvidiem no autoceļa V1272 līdz robežai ar Ventas upi, Skrundas pagasts (izņemot pagasta daļa no Skrundas uz ziemeļiem no autoceļa A9 un austrumiem no Ventas upes), Skrundas pilsēta,
- Vaiņodes novada Embūtes pagasta daļa uz ziemeļiem autoceļa P116, P106.

3. Lithuania

The following areas in Lithuania:

- Alytaus rajono savivaldybė: Simno, Krokialaukio ir Miroslovo seniūnijos,
- Birštono savivaldybė,

- Kauno rajono savivaldybė: Akademijos, Alšėnų, Batniavos, Čekiškės, Ežerėlio, Kačerginės, Kulautuvos, Raudondvario, Ringaudų ir Zapyškio seniūnijos, Babtų seniūnijos dalis į vakarus nuo kelio A1, Užliedžių seniūnijos dalis į vakarus nuo kelio A1 ir Vilkijos apylinkių seniūnijos dalis į rytus nuo kelio Nr. 1907,
- Kazlų Rūdos savivaldybė: Antanavo, Jankų, Kazlų rūdos seniūnijos dalis Kazlų Rūdos seniūnija į pietus nuo kelio Nr. 230, į vakarus nuo kelio Kokė-Užbaliai-Čečetai iki kelio Nr. 2610 ir į šiaurę nuo kelio Nr. 2610, Plutiškių seniūnijos,
- Marijampolės savivaldybė: Gudelių, Igliaukos, Sasnavos ir Šunskų seniūnijos,
- Molėtų rajono savivaldybė: Alantos seniūnijos dalis į rytus nuo kelio Nr. 119 ir į pietus nuo kelio Nr. 2828, Čiulėnų, Inturkės, Luokesos, Mindūnų ir Suginčių seniūnijos,
- Plungės rajono savivaldybė: Alsėdžių, Babrungo, Paukštakių, Platelių ir Žemaičių Kalvarijos seniūnijos,
- Prienų rajono savivaldybė: Ašmintos, Balbieriškio, Išlaužo, Jiezno, Naujosios Ūtos, Pakuonio, Prienų ir Šilavotos seniūnijos,
- Skuodo rajono savivaldybės: Barstyčių, Notėnų ir Šačių seniūnijos,
- Vilkaviškio rajono savivaldybės: Gižų ir Pilviškių seniūnijos.

4. Poland

The following areas in Poland:

w województwie warmińsko-mazurskim:

- gminy Bisztynek, Sępopol i Bartoszyce z miastem Bartoszyce w powiecie bartoszyckim,
- gminy Kiwity i Lidzbark Warmiński z miastem Lidzbark Warmiński w powiecie lidzbarskim,
- gminy Srokowo, Barciany, część gminy Kętrzyn położona na północ od linii kolejowej łączącej miejscowości Giżycko i Kętrzyn biegnącej do granicy miasta Kętrzyn oraz na wschód od linii wyznaczonej przez drogę nr 591 biegnącą od miasta Kętrzyn do północnej granicy gminy i część gminy Korsze położona na północ od linii wyznaczonej przez drogę biegnącą od wschodniej granicy łączącą miejscowości Krelikiejmy i Sątoczno i na zachód od linii wyznaczonej przez drogę łączącą miejscowości Sątoczno, Sajna Wielka biegnącą do skrzyżowania z drogą nr 590 w miejscowości Glitajny, a następnie na zachód od drogi nr 590 do skrzyżowania z drogą nr 592 i na północ od linii wyznaczonej przez drogę nr 592 biegnącą od zachodniej granicy gminy do skrzyżowania z drogą nr 590 w powiecie kętrzyńskim,
- część gminy Wilczęta położona na południe od linii wyznaczonej przez drogę nr 509 w powiecie braniewskim,
- część gminy Morąg położona na północ od linii wyznaczonej przez linię kolejową biegnącą od Olsztyna do Elbląga w powiecie ostródzkim,
- gminy Godkowo i Pasłęk w powiecie elbląskim,
- powiat olecki,
- powiat węgorzewski,
- gminy Kruklanki, Wydmyny, Miłki, Giżycko z miastem Giżycko i część gminy Ryn położona na północ od linii kolejowej łączącej miejscowości Giżycko i Kętrzyn w powiecie giżyckim,
- gminy Jeziorany, Jonkowo, Dywity, Dobre Miasto, część gminy Świątki położona na wschód od linii wyznaczonej przez rzekę Pasłękę, część gminy Gietrzwałd położona na północ od linii wyznaczonej przez linię kolejową i część gminy Barczewo położona na północ od linii wyznaczonej przez linię kolejową w powiecie olsztyńskim,
- powiat miejski Olsztyn,
- część gminy Prostki położona na zachód od linii wyznaczonej przez drogę biegnącą od północnej granicy gminy łączącą miejscowości Żelazki – Dąbrowskie – Długosze do południowej granicy gminy, część gminy wiejskiej Elk położona na południe od linii wyznaczonej przez drogę nr 667 biegnącą od miejscowości Bajtkowo do miejscowości Nowa Wieś Elcka, a następnie na południe od linii wyznaczonej przez rzekę Elk biegnącą od miejscowości Nowa Wieś Elcka do wschodniej granicy gminy w powiecie elckim,
- część gminy Biała Piska położona na wschód od linii wyznaczonej przez drogę 667 biegnącą od północnej granicy gminy do miejscowości Biała Piska, a następnie na północ od linii wyznaczonej przez drogę nr 58 biegnącą od miejscowości Biała Piska do wschodniej granicy gminy w powiecie piskim,

w województwie podlaskim:

- gminy Wysзки, Bielsk Podlaski z miastem Bielsk Podlaski w powiecie bielskim,
- gminy Łapy, Juchnowiec Kościelny, Suraż, Turośń Kościelna, część gminy Poświętne położona na wschód od linii wyznaczonej przez drogę nr 681 w powiecie białostockim,
- gminy Perlejewo i Drohiczyn w powiecie siemiatyckim,
- gmina Ciechanowiec w powiecie wysokomazowieckim,
- część gminy Bakalarzewo położona na południe od linii wyznaczonej przez drogę 653 biegnącej od zachodniej granicy gminy do skrzyżowania z drogą 1122B oraz na zachód od linii wyznaczonej przez drogę nr 1122B biegnącą od drogi 653 w kierunku południowym do skrzyżowania z drogą 1124B i następnie na południowo-zachód od drogi nr 1124B biegnącej od skrzyżowania z drogą 1122B do granicy z gminą Raczki w powiecie suwalskim,
- gmina Szczuczyn, część gminy wiejskiej Grajewo położona na północ o linii wyznaczonej przez drogę biegnącą od zachodniej granicy gminy łączącej miejscowości: Mareckie – Łękowo – Kacprowo – Ruda, a następnie od miejscowości Ruda na północ od rzeki Binduga uchodzącej do rzeki Elk i następnie na północ od linii wyznaczonej przez rzekę Elk od ujścia rzeki Binduga do wschodniej granicy gminy i miasto Grajewo w powiecie grajewskim,

w województwie mazowieckim:

- gminy Łaskarzew z miastem Łaskarzew, Maciejowice, Sobolew, Trojanów, Żelechów, część gminy Wilga położona na południe od linii wyznaczonej przez rzekę Wilga biegnącą od wschodniej granicy gminy do ujścia dorzeki Wisły, część gminy Górzno położona na południe od linii wyznaczonej przez drogę łączącą miejscowości Łąki i Górzno biegnącą od wschodniej granicy gminy, następnie od miejscowości Górzno na południe od drogi nr 1328W biegnącej do drogi nr 17, a następnie na południe od linii wyznaczonej przez drogę biegnącą od drogi nr 17 do zachodniej granicy gminy przez miejscowości Józefów i Kobyla Wola w powiecie garwolińskim,
- gminy Jabłonna Lacka, Sabnie i Sterdyń w powiecie sokołowskim,
- gmina Nur w powiecie ostrowskim,
- gminy Grabów nad Pilicą, Magnuszew, Głowaczów, Kozienice w powiecie kozienickim,
- gmina Stromiec w powiecie białobrzeskim,

w województwie lubelskim:

- powiat tomaszowski,
- gminy Białopole, Dubienka, Kamień, Wierzbica, Rejowiec, Rejowiec Fabryczny z miastem Rejowiec Fabryczny, Siedliszcze, Żmudź, część gminy Dorohusk położona na południe od linii wyznaczonej przez linię kolejową, część gminy Wojsławice położona na wschód od linii wyznaczonej przez drogę 1839L, część gminy Leśniowice położona na wschód od linii wyznaczonej przez drogę 1839L w powiecie chełmskim,
- gminy Izbica, Gorzków, Rudnik, Kraśniczyn, Krasnystaw z miastem Krasnystaw, Siennica Różana i część gminy Łopiennik Górny położona na wschód od linii wyznaczonej przez drogę nr 17, część gminy Żółkiewka położona na południe od linii wyznaczonej przez drogę nr 842 w powiecie krasnostawskim,
- powiat zamojski,
- powiat miejski Zamość,,
- powiat biłgorajski,
- powiat hrubieszowski,
- gminy Dzwola i Chrzanów w powiecie janowskim,
- gminy Hanna, Wiryki, Urszulin, część gminy Hańsk położona na zachód od linii wyznaczonej przez drogę nr 819 i część gminy wiejskiej Włodawa położona na północ od linii wyznaczonej przez północną granicę miasta Włodawa i miasto Włodawa w powiecie włodawskim,
- powiat łęczyński,
- gmina Trawniki w powiecie świdnickim,
- gminy Serokomla i Wojcieszków w powiecie łukowskim,

- gminy Milanów, Parczew, Siemień w powiecie parczewskim,
- gminy Borki, Czemierniki, Radzyń Podlaski z miastem Radzyń Podlaski, Wołyń w powiecie radzyńskim,
- gminy Abramów, Kamionka, Michów, Lubartów z miastem Lubartów, Firlej, Jeziorzany, Kock, Niedźwiada, Ostrów Lubelski, Ostrówek, Serniki w powiecie lubartowskim,
- gminy Jastków, Niemce i Wólka w powiecie lubelskim,
- powiat miejski Lublin,
- gminy Kłoczew, Stężyca i część gminy Ryki położona na północ od linii wyznaczonej przez linię kolejową w powiecie rymkowskim,

w województwie podkarpackim:

- gminy Narol, Stary Dzików i część gminy Cieszanów położona na zachód od linii wyznaczonej przez drogę nr 865 biegnącą od południowej granicy gminy do skrzyżowania z drogą 863, a następnie na zachód od drogi nr 863 biegnącej do miejscowości Lubliniec i dalej na zachód od drogi biegnącej przez Nowy Lubliniec do północnej granicy gminy w powiecie lubaczowskim,
- część gminy wiejskiej Leżajsk położona na wschód od linii wyznaczonej przez rzekę San, część gminy Kuryłówka położona na wschód od linii wyznaczonej przez drogę biegnącą od północnej granicy gminy łączącej miejscowości Brzyska Wola – Dąbrowica - Ożanna do południowej granicy gminy w powiecie leżańskim,
- część gminy Wiązownica położona na północ od linii wyznaczonej przez drogę nr 867 w powiecie jarosławskim,
- gminy Adamówka i Sieniawa w powiecie przeworskim,

w województwie lubuskim:

- gminy Nowa Sól i miasto Nowa Sól, Otyń oraz część gminy Koźuchów położona na północ od linii wyznaczonej przez drogę nr 283 biegnącą od wschodniej granicy gminy do skrzyżowania z drogą nr 290 i na północ od linii wyznaczonej przez drogę nr 290 biegnącej od miasta Mirocin Dolny do zachodniej granicy gminy, część gminy Bytom Odrzański położona na południowy wschód od linii wyznaczonej przez drogi nr 293 i 326, część gminy Nowe Miasteczko położona na wschód od linii wyznaczonych przez drogi 293 i 328, część gminy Siedlisko położona na południowy wschód od linii wyznaczonej przez drogę biegnącą od rzeki Odry przy południowej granicy gminy do drogi nr 326 łączącej się z drogą nr 325 biegnącą w kierunku miejscowości Różanówka do skrzyżowania z drogą nr 321 biegnącą od tego skrzyżowania w kierunku miejscowości Bielawy, a następnie przedłużoną przez drogę przeciwpożarową biegnącą od drogi nr 321 w miejscowości Bielawy do granicy gminy w powiecie nowosolskim,
- gminy Czerwieńsk, Świdnica, Zabór, część gminy Bojadła położona na południe od linii wyznaczonej przez drogę nr 278 biegnącą od wschodniej granicy gminy do skrzyżowania z drogą nr 282 i na południe od linii wyznaczonej przez drogę nr 282 biegnącej od miasta Bojadła do zachodniej granicy gminy i część gminy Sulechów położona na zachód od linii wyznaczonej przez drogę nr S3 w powiecie zielonogórskim,
- część gminy Niegosławice położona na wschód od linii wyznaczonej przez drogę nr 328 w powiecie żagańskim,
- powiat miejski Zielona Góra,
- gmina Skąpe w powiecie świebodzińskim,
- gmina Dąbie, część gminy Krosno Odrzańskie położona na wschód od linii wyznaczonej przez drogę nr 1157F biegnącą od północnej granicy gminy do skrzyżowania z drogą nr 29, a następnie przez drogę nr 29 biegnącą od tego skrzyżowania do południowej granicy gminy, część gminy Bytnica położona na zachód od linii wyznaczonej przez drogę nr 1157F w powiecie krośnieńskim,

w województwie wielkopolskim:

- gminy Buk, Dopiewo, Tarnowo Podgórne, część gminy Komorniki położona na zachód od linii wyznaczonej przez drogę nr 5, część gminy Stęszew położona na północny – zachód od linii wyznaczonej przez drogi nr 5 i 32 w powiecie poznańskim,
- część gminy Duszniki położona na wschód od linii wyznaczonej przez drogę nr 306 biegnącą od południowej granicy gminy do skrzyżowania z drogą nr 92 oraz na południe od linii wyznaczonej przez drogę nr 92 biegnącą od wschodniej granicy gminy do skrzyżowania z drogą nr 306, część gminy Kaźmierz położona na południe i na wschód od linii wyznaczonych przez drogi: nr 92 biegnącą od zachodniej granicy gminy do skrzyżowania z drogą łączącą miejscowości Witkowo – Górzewice – Kaźmierz (wzdłuż ulic Czeresniowa, Dworcowa, Marii Konopnickiej) – Chlewiska, biegnącą do wschodniej granicy gminy w powiecie szamotulskim,

- gminy Lipno, Osieczna, część gminy Włoszakowice położona na wschód od linii wyznaczonej przez drogi 3903P biegnącą od północnej granicy gminy do miejscowości Boguszyn, a następnie przez drogę łączącą miejscowość Boguszyn z miejscowością Krzycko aż do południowej granicy gminy w powiecie leszczyńskim,
- powiat miejski Leszno,
- część gminy Śmigiel położona na wschód od linii wyznaczonej przez drogi nr 3903P biegnącej od południowej granicy gminy przez miejscowości Bronikowo i Morowice aż do miejscowości Śmigiel do skrzyżowania z drogą 3820P i dalej drogą 3820P, która przechodzi w ul. Jagiellońską, następnie w Lipową i Glinkową, aż do skrzyżowania z drogą S5, następnie przez drogą nr S5 do północnej granicy gminy, część gminy wiejskiej Kościan położona na południowy – wschód od linii wyznaczonej przez drogę nr 5 oraz na zachód od linii wyznaczonej przez kanał Obry, część gminy Krzywiń położona na zachód od linii wyznaczonej przez kanał Obry w powiecie kościańskim.

w województwie dolnośląskim:

- gminy Jerzmanowa, Żukowice, część gminy Kotla położona na południe od linii wyznaczonej przez rzekę Krzycki Rów, część gminy wiejskiej Głogów położona na zachód od linii wyznaczonej przez drogi nr 12, 319 oraz 329, część miasta Głogów położona na zachód od linii wyznaczonej przez drogę nr 12 w powiecie głogowskim,
- gminy Gaworzycze, Radwanice i część gminy Przemków położona na północ od linii wyznaczonej przez drogę nr 12 w powiecie polkowickim.

5. Romania

The following areas in Romania:

- Zona oraşului Bucureşti,
- Judeţul Constanţa,
- Judeţul Satu Mare,
- Judeţul Tulcea,
- Judeţul Bacău,
- Judeţul Bihor,
- Judeţul Brăila,
- Judeţul Buzău,
- Judeţul Călăraşi,
- Judeţul Dâmboviţa,
- Judeţul Galaţi,
- Judeţul Giurgiu,
- Judeţul Ialomiţa,
- Judeţul Ilfov,
- Judeţul Prahova,
- Judeţul Sălaj,
- Judeţul Vaslui,
- Judeţul Vrancea,
- Judeţul Teleorman,
- Judeţul Mehedinţi,
- Judeţul Gorj,
- Judeţul Argeş,
- Judeţul Olt,

- Județul Dolj,
- Județul Arad,
- Județul Timiș,
- Județul Covasna,
- Județul Brașov,
- Județul Botoșani,
- Județul Vâlcea,
- Județul Iași,
- Județul Hunedoara,
- Județul Alba,
- Județul Sibiu,
- Județul Caraș-Severin,
- Județul Neamț,
- Județul Harghita,
- Județul Mureș,
- Județul Cluj,
- Județul Maramureș.

6. Slovakia

- Region Trebišov – municipalities located east of river Bodrog,
- Region Michalovce the municipalities of Odorín, Petříkovce, Malčice, Markovce, Sliepkovce, Budkovce, Slavkovce, Zemplínske Kopčany, Malé Raškovce, Veľké Raškovce, Beša, Ižkovce, Drahňov, Stretavka, Stretava, Palín, Senné, Pavlovce nad Uhom, Krišovská Liesková, Vojany, Čičarovce, Veľké Kapušany, Čierne Pole, Kapušianske Kľačany, Ptrukša, Veľké Slemence, Ruská, Budince, Maťovské Vojkovce, Bajany, Vysoká nad Uhom,
- Region Sobrance – municipalities Lekárovce, Pinkovce, Záhó, Bežovce,
- In the district Košice okolie, the municipalities of Janík, Hosťovce, Chorváty, Turnianska Nová Ves, Turňa nad Bodvou, Žarnov, Peder, Drienovec, Moldava nad Bodvou, Mokrance, Rešica, Buzica, Čečejevce, Budulov, Dvorníky, Zádiel, Háj, Debraď, Jasov, Rudník, Veľká Ida, Paňovce, Cestice, Komárovce, Nižný Lánec, Hačava, Medzev,
- In the district Rožnava, the municipalities of Bôrka, Lúčka, Jablonov nad Turňou, Drnava, Kováčová, Hrhov.

PART IV

Italy

The following areas in Italy:

- tutto il territorio della Sardegna.'

RECOMMENDATIONS

COUNCIL RECOMMENDATION (EU) 2020/1186

of 7 August 2020

amending Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article Article 77 (2) (b) and (e) and Article 292, first and second sentence thereof,

Whereas:

- (1) On 30 June 2020, the Council adopted a Recommendation on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction ⁽¹⁾ ("Council Recommendation"). On 16 July 2020, the Council adopted Recommendation (EU) 2020/1052 of 16 July 2020 amending Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction ⁽²⁾. On 30 July 2020, the Council adopted Recommendation (EU) 2020/1144 of 30 July 2020 amending Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction ⁽³⁾.
- (2) The Council Recommendation provides that Member States should gradually lift the temporary restriction on non-essential travel to the EU as from 1 July 2020 in a coordinated manner with regard to the residents of the third countries listed in Annex I to the Council Recommendation. Every two weeks, the list of third countries referred to in Annex I should be reviewed, and as the case may be updated, by the Council, after close consultation with the Commission and the relevant EU agencies and services following an overall assessment based on the methodology, criteria and information referred to in the Council Recommendation.
- (3) Discussions have since then taken place within the Council, in close consultation with the Commission and the relevant EU agencies and services, on the review of the list of third countries set out in Annex I to the Council Recommendation and in application of the criteria and methodology laid down in the Council Recommendation. As a result of these discussions, the list of third countries set out in Annex I should be amended. In particular, Morocco should be deleted from the list.
- (4) Border control is in the interest not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border control. Member States should therefore ensure that measures taken at the external borders are coordinated in order to ensure a well functioning Schengen area. To that end, as of 8 August 2020, Member States should continue lifting the temporary restriction on non-essential travel into the EU in a coordinated manner with regard to the residents of the third countries listed in Annex I of the Council Recommendation as amended by this Recommendation.
- (5) In accordance with Articles 1 and 2 of Protocol No 22 on the Position of Denmark annexed to the Treaty on European Union and to the TFEU, Denmark is not taking part in the adoption of this Recommendation and is not bound by it or subject to its application. Given that this Recommendation builds upon the Schengen acquis, Denmark shall, in accordance with Article 4 of the said Protocol, decide within a period of six months after the Council has decided on this Recommendation whether it will implement it.

⁽¹⁾ OJ L 208I, 1.7.2020, p. 1.

⁽²⁾ OJ L 230, 17.7.2020, p. 26.

⁽³⁾ OJ L 248, 31.7.2020, p. 26.

- (6) This Recommendation constitutes a development of the provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ⁽⁴⁾; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (7) As regards Iceland and Norway, this Recommendation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC ⁽⁵⁾.
- (8) As regards Switzerland, this Recommendation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC ⁽⁶⁾ read in conjunction with Article 3 of Council Decision 2008/146/EC ⁽⁷⁾.
- (9) As regards Liechtenstein, this Recommendation constitutes a development of provisions of the Schengen acquis within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 1 point A, of Decision 1999/437/EC ⁽⁸⁾ read in conjunction with Article 3 of Decision 2011/350/EU ⁽⁹⁾.

HAS ADOPTED THIS RECOMMENDATION:

Council Recommendation (EU) 2020/912, as amended by Recommendation (EU) 2020/1052 and by Recommendation (EU) 2020/1144, on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction is amended as follows:

- (1) First paragraph of point 1 of the Council Recommendation is replaced by the following:

'1. As from 8 August 2020, Member States should gradually lift the temporary restriction on non-essential travel to the EU in a coordinated manner with regard to the residents of the third countries listed in Annex I.'

- (2) Annex I to the Recommendation is replaced by the following:

'ANNEX I

Third countries whose residents should not be affected by temporary external borders restriction on non-essential travel into the EU

1. AUSTRALIA
2. CANADA
3. GEORGIA

⁽⁴⁾ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L 64, 7.3.2002, p. 20).

⁽⁵⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁶⁾ OJ L 53, 27.2.2008, p. 52.

⁽⁷⁾ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 53, 27.2.2008, p. 1).

⁽⁸⁾ OJ L 160, 18.6.2011, p. 21.

⁽⁹⁾ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

4. JAPAN
5. NEW ZEALAND
6. RWANDA
7. SOUTH KOREA
8. THAILAND
9. TUNISIA
10. URUGUAY
11. CHINA (*).

(*) subject to confirmation of reciprocity'

Done at Brussels, 7 August 2020.

For the Council
The President
M. ROTH

ISSN 1977-0677 (electronic edition)
ISSN 1725-2555 (paper edition)



Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN