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[1] Text with EEA relevance

I

(Legislative acts)

DIRECTIVES

DIRECTIVE (EU) 2016/2284 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 December 2016

on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Having regard to the opinion of the Committee of the Regions ([2]),

Acting in accordance with the ordinary legislative procedure ([3]),

Whereas:

(1) Significant progress has been achieved over the past 20 years in the Union in the field of anthropogenic air emissions and air quality, in particular through a dedicated Union policy, including the Communication from the Commission of 21 September 2005 entitled 'Thematic Strategy on Air Pollution' (the 'TSAP'). Directive 2001/81/EC of the European Parliament and of the Council ([4]) has been instrumental in that progress by setting caps on Member States' total annual emissions from 2010 onwards of sulphur dioxide (SO_2), nitrogen oxides (NO_x), non-methane volatile organic compounds (NMVOC) and ammonia (NH_3). As a result, sulphur dioxide emissions were reduced by 82 %, nitrogen oxides emissions by 47 %, non-methane volatile organic compounds emissions by 56 % and ammonia emissions by 28 % in the Union between 1990 and 2010. However, as indicated in the Communication from the Commission of 18 December 2013 entitled 'A Clean Air Programme for Europe' (the 'revised TSAP'), significant negative impacts on and risks to human health and the environment remain.

(2) The 7th Environment Action Programme ([5]) confirms the Union's long-term objective for air policy, to achieve levels of air quality that do not give rise to significant negative impacts on and risks to human health and the

([1]) OJ C 451, 16.12.2014, p. 134.
([2]) OJ C 415, 20.11.2014, p. 23.
([3]) Position of the European Parliament of 23 November 2016 (not yet published in the Official Journal) and decision of the Council of 8 December 2016.
([4]) Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ L 309, 27.11.2001, p. 22).
([5]) Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' (OJ L 354, 28.12.2013, p. 171).

environment, and calls, to that end, for full compliance with the current air quality legislation of the Union, post-2020 strategic targets and actions, enhanced efforts in areas where the population and ecosystems are exposed to high levels of air pollutants, and reinforced synergies between air quality legislation and the Union's policy objectives that have been set, in particular, for climate change and biodiversity.

(3) The revised TSAP sets out new strategic objectives for the period up to 2030 with a view to moving further towards the Union's long-term objective on air quality.

(4) Member States and the Union are in the process of ratifying the United Nations Environment Programme Minamata Convention on Mercury of 2013, which seeks to protect human health and the environment through the reduction of mercury emissions from existing and new sources with a view to its entry into force in 2017. Reported emissions of that pollutant should be kept under review by the Commission.

(5) Member States and the Union are parties to the United Nations Economic Commission for Europe (UNECE) Convention on Long-Range Transboundary Air Pollution of 1979 (the 'LRTAP Convention') and to several of its Protocols, including the Protocol to Abate Acidification, Eutrophication and Ground-level Ozone of 1999, which was revised in 2012 (the 'revised Gothenburg Protocol').

(6) As regards the year 2020 and thereafter, the revised Gothenburg Protocol sets out new emission reduction commitments, taking the year 2005 as a base year, for each party regarding sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds, ammonia and fine particulate matter, promotes the reduction of emissions of black carbon and calls for the collection and maintenance of information on the adverse effects of air pollutant concentrations and depositions on human health and the environment and for participation in the effects-oriented programmes under the LRTAP Convention.

(7) The national emission ceiling regime established by Directive 2001/81/EC should therefore be revised in order to align it with the international commitments of the Union and the Member States. To that effect, the national emission reduction commitments for any year from 2020 to 2029 in this Directive are identical to those set in the revised Gothenburg Protocol.

(8) Member States should implement this Directive in a way that contributes effectively to achieving the Union's long-term objective on air quality, as supported by the guidelines of the World Health Organisation, and the Union's biodiversity and ecosystem protection objectives by reducing the levels and deposition of acidifying, eutrophifying and ozone air pollution below critical loads and levels as set out by the LRTAP Convention.

(9) This Directive should also contribute to achieving, in a cost effective manner, the air quality objectives set out in Union legislation and to mitigating climate change impacts in addition to improving air quality globally and to improving synergies with Union climate and energy policies, while avoiding duplication of existing Union legislation.

(10) This Directive also contributes to reducing the health-related costs of air pollution in the Union by improving Union citizens' well-being, as well as to favouring the transition to a green economy.

(11) This Directive should contribute to the progressive reduction of air pollution, building on reductions delivered by Union source-based air pollution control legislation which addresses emissions of specific substances.

(12) Union source-based air pollution control legislation should effectively deliver expected emission reductions. Identifying and responding to non-effective Union source-based air pollution control legislation at an early stage is essential to achieving wider air quality objectives, as demonstrated by the discrepancy between real world emissions and test emissions of nitrogen oxides from EURO 6 diesel cars.

(13) Member States should comply with the emission reduction commitments set out in this Directive from 2020 to 2029 and from 2030 onwards. In order to ensure demonstrable progress towards the 2030 commitments, Member States should identify indicative emission levels in 2025 which would be technically feasible and would not entail disproportionate costs, and should endeavour to comply with such levels. Where the 2025 emissions cannot be limited in accordance with the determined reduction trajectory, Member States should explain the reasons for that deviation as well as the measures that would bring the Member States back on their trajectory in their subsequent reports to be prepared pursuant to this Directive.

(14) The national emission reduction commitments set out in this Directive for 2030 onwards are based on the estimated reduction potential of each Member State contained in the TSAP Report no 16 of January 2015 ('TSAP 16'), on technical examination of the differences between national estimates and those in TSAP 16, and on the political objective to maintain the overall health impact reduction by 2030 (compared with 2005) as close as possible to that of the Commission proposal for this Directive. To enhance transparency, the Commission should publish the underlying assumptions used in TSAP 16.

(15) Compliance with national emission reduction commitments should be assessed by reference to the specific methodological status at the time the commitment was set.

(16) Reporting requirements and emission reduction commitments should be based on national energy consumption and fuels sold. However, some Member States are able, under the LRTAP Convention, to use the national emission total calculated on the basis of fuels used in relation to the road transport sector as a basis for compliance. That option should be kept in this Directive in order to ensure coherence between international and Union law.

(17) In order to address some of the uncertainties inherent in setting national emission reduction commitments, the revised Gothenburg Protocol includes flexibilities which should be incorporated into this Directive. In particular, the revised Gothenburg Protocol establishes a mechanism to adjust national emission inventories and to average national annual emissions for a maximum of three years where certain conditions are met. In addition, flexibilities should be laid down in this Directive where it imposes a reduction commitment which exceeds the cost-effective reduction identified in TSAP 16 and also to assist Member States in case of sudden and exceptional events related to energy generation or supply provided that specific conditions are met. The use of those flexibilities should be monitored by the Commission while taking into account guidance developed under the LRTAP Convention. For the purposes of assessing applications for adjustments, the emission reduction commitments for the period between 2020 and 2029 should be considered to have been set on 4 May 2012, the date when the Gothenburg Protocol was revised.

(18) Each Member State should draw up, adopt and implement a national air pollution control programme with a view to complying with its emission reduction commitments, and to contributing effectively to the achievement of the air quality objectives. To that effect, Member States should take account of the need to reduce emissions, in particular of nitrogen oxides and fine particulate matter, in zones and agglomerations affected by excessive air pollutant concentrations and/or in those zones and agglomerations that contribute significantly to air pollution in other zones and agglomerations, including in neighbouring countries. National air pollution control programmes should, to that end, contribute to the successful implementation of air quality plans established under Article 23 of Directive 2008/50/EC of the European Parliament and of the Council [1].

(19) In order to reduce emissions from anthropogenic sources, national air pollution control programmes should consider measures applicable to all relevant sectors, including agriculture, energy, industry, road transport, inland shipping, domestic heating and use of non-road mobile machinery and solvents. However, Member States should be entitled to decide on the measures to adopt in order to comply with the emission reduction commitments set out in this Directive.

(20) In drawing up national air pollution control programmes, Member States should take into account best practices in addressing, inter alia, the most harmful pollutants within the scope of this Directive with respect to sensitive human population groups.

(21) Agriculture makes an important contribution to atmospheric ammonia and fine particulate matter emissions. In order to reduce those emissions, national air pollution control programmes should include measures applicable to the agricultural sector. Such measures should be cost-effective and based on specific information and data, taking account of scientific progress and previous measures undertaken by Member States. The common agricultural policy offers the possibility for Member States to contribute to air quality with specific measures. Future evaluation will provide a better understanding of the effects of those measures.

(22) Improvements in air quality should be achieved through proportionate measures. When taking measures to be included in national air pollution control programmes which are applicable to the agricultural sector, Member States should ensure that their impacts on small farms are fully taken into account in order to limit, as much as possible, any additional costs.

[1] Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L 152, 11.6.2008, p. 1).

(23) Where certain measures taken under national air pollution control programmes aimed at preventing emissions in the agricultural sector are eligible for financial support, in particular measures by farms requiring significant changes of practices or significant investments, the Commission should facilitate access to such financial support and to other available Union funding.

(24) In order to reduce emissions, Member States should consider supporting the shift of investments to clean and efficient technologies. Innovation can help to improve sustainability and to solve problems at source by improving sectoral responses to air quality challenges.

(25) National air pollution control programmes, including the analysis supporting the identification of policies and measures, should be regularly updated.

(26) In order to draw up well informed national air pollution control programmes and any significant updates, Member States should make those programmes and updates subject to consultation with the public and competent authorities at all levels and at a time when all options regarding policies and measures remain open. Member States should engage in transboundary consultations where the implementation of their programmes could affect the air quality in another Member State or third country, in accordance with the requirements set out in Union and international law, including the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (the 'Espoo Convention') of 1991 and its Protocol on Strategic Environmental Assessment of 2003.

(27) The aim of this Directive, inter alia, is to protect human health. As the Court of Justice has pointed out on numerous occasions, it would be incompatible with the binding effect which the third paragraph of Article 288 of the Treaty on the Functioning of the European Union (TFEU) ascribes to a directive to exclude, in principle, the possibility of an obligation imposed by a directive from being relied on by persons concerned. That consideration applies particularly in respect of a directive which has the objective of controlling and reducing atmospheric pollution and which is designed, therefore, to protect human health.

(28) Member States should prepare and report national emission inventories and projections as well as informative inventory reports for all air pollutants covered by this Directive, which should then enable the Union to comply with its reporting duties under the LRTAP Convention and its Protocols.

(29) In order to preserve overall consistency for the Union as a whole, Member States should ensure that their reporting to the Commission of their national emission inventories and projections as well as informative inventory reports are fully consistent with their reporting under the LRTAP Convention.

(30) In order to assess the effectiveness of the national emission reduction commitments laid down in this Directive, Member States should also monitor the impacts of air pollution on terrestrial and aquatic ecosystems, and report such impacts. In order to ensure a cost-effective approach, Member States should be able to use the optional monitoring indicators referred to in this Directive and should coordinate with other monitoring programmes established pursuant to related Directives and, if appropriate, to the LRTAP Convention.

(31) A European Clean Air Forum involving all stakeholders, including the competent authorities of the Member States at all relevant levels, should be established to exchange experience and good practices, in particular to provide input for guidance and facilitate the coordinated implementation of Union legislation and policies related to the improvement of air quality.

(32) In line with Directive 2003/4/EC of the European Parliament and of the Council ([1]), Member States should ensure active and systematic dissemination of information by electronic means.

(33) It is necessary to amend Directive 2003/35/EC of the European Parliament and of the Council ([2]) with a view to ensuring consistency of that Directive with the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of 1998 (the 'Aarhus Convention').

([1]) Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26).

([2]) Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ L 156, 25.6.2003, p. 17).

(34) In order to take into account technical and international developments, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending Annex I, as well as Part 2 of Annex III and Annex IV, to adapt them to developments within the framework of the LRTAP Convention and in respect of amending Annex V to adapt it to technical and scientific progress and to developments within the framework of the LRTAP Convention. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ([1]). In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(35) In order to ensure uniform conditions for the implementation of flexibilities and national air pollution control programmes under this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ([2]).

(36) Member States should lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.

(37) In view of the nature and extent of the modifications which should be made to Directive 2001/81/EC, that Directive should be replaced to enhance legal certainty, clarity, transparency and legislative simplification. In order to ensure continuity in improving air quality, Member States should comply with the national emission ceilings set out in Directive 2001/81/EC until the new national emission reduction commitments laid down in this Directive become applicable in 2020.

(38) Since the objective of this Directive, namely to ensure a high level of protection of human health and the environment, cannot be sufficiently achieved by the Member States, but can rather, by reason of the transboundary nature of air pollution, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(39) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ([3]), Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objectives and subject matter

1. In order to move towards achieving levels of air quality that do not give rise to significant negative impacts on and risks to human health and the environment, this Directive establishes the emission reduction commitments for the Member States' anthropogenic atmospheric emissions of sulphur dioxide (SO_2), nitrogen oxides (NO_x), non-methane volatile organic compounds (NMVOC), ammonia (NH_3) and fine particulate matter ($PM_{2,5}$) and requires that national air pollution control programmes be drawn up, adopted and implemented and that emissions of those pollutants and the other pollutants referred to in Annex I, as well as their impacts, be monitored and reported.

([1]) OJ L 123, 12.5.2016, p. 1.
([2]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).
([3]) OJ C 369, 17.12.2011, p. 14.

2. This Directive also contributes to achieving:

(a) the air quality objectives set out in Union legislation and progress towards the Union's long-term objective of achieving levels of air quality in line with the air quality guidelines published by the World Health Organisation;

(b) the Union's biodiversity and ecosystem objectives in line with the 7th Environment Action Programme;

(c) enhanced synergies between the Union's air quality policy and other relevant Union policies, in particular climate and energy policies.

Article 2

Scope

1. This Directive shall apply to emissions of the pollutants referred to in Annex I from all sources occurring in the territory of the Member States, their exclusive economic zones and pollution control zones.

2. This Directive does not cover emissions in the Canary Islands, the French overseas departments, Madeira, and the Azores.

Article 3

Definitions

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

(1) 'emission' means the release of a substance from a point or diffuse source into the atmosphere;

(2) 'anthropogenic emissions' means atmospheric emissions of pollutants associated with human activities;

(3) 'ozone precursors' means nitrogen oxides, non-methane volatile organic compounds, methane, and carbon monoxide;

(4) 'air quality objectives' means the limit values, target values and exposure concentration obligations for air quality set out in Directive 2008/50/EC and Directive 2004/107/EC of the European Parliament and of the Council ([1]);

(5) 'sulphur dioxide' or 'SO_2' means all sulphur compounds expressed as sulphur dioxide, including sulphur trioxide (SO_3), sulphuric acid (H_2SO_4), and reduced sulphur compounds such as hydrogen sulphide (H_2S), mercaptans and dimethyl sulphides;

(6) 'nitrogen oxides' or 'NO_x' means nitric oxide and nitrogen dioxide, expressed as nitrogen dioxide;

(7) 'non-methane volatile organic compounds' or 'NMVOC' means all organic compounds other than methane, that are capable of producing photochemical oxidants by reaction with nitrogen oxides in the presence of sunlight;

(8) 'fine particulate matter' or '$PM_{2,5}$' means particles with an aerodynamic diameter equal to or less than 2,5 micrometres (μm);

(9) 'black carbon' or 'BC' means carbonaceous particulate matter that absorbs light;

(10) 'national emission reduction commitment' means the Member States' obligation in the reduction of emissions of a substance; it specifies the emission reduction that as a minimum has to be delivered in the target calendar year, as a percentage of the total of emissions released during the base year (2005);

([1]) Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (OJ L 23, 26.1.2005, p. 3).

(11) 'landing and take-off cycle' means the cycle that includes taxi in and out, take-off, climb out, approach, landing and all other aircraft activities that take place below the altitude of 3 000 feet;

(12) 'international maritime traffic' means journeys at sea and in coastal waters by water-borne vessels of all flags, except fishing vessels, that depart from the territory of one country and arrive in the territory of another country;

(13) 'pollution control zone' means a sea area not exceeding 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, established by a Member State for the prevention, reduction and control of pollution from vessels in accordance with applicable international rules and standards;

(14) 'Union source-based air pollution control legislation' means Union legislation which aims at reducing the emissions of air pollutants covered by this Directive by undertaking mitigation measures at the source.

Article 4

National emission reduction commitments

1. Member States shall, as a minimum, limit their annual anthropogenic emissions of sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds, ammonia and fine particulate matter in accordance with the national emission reduction commitments applicable from 2020 to 2029 and from 2030 onwards, as laid down in Annex II.

2. Without prejudice to paragraph 1, Member States shall take the necessary measures aimed at limiting their 2025 anthropogenic emissions of sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds, ammonia and fine particulate matter. The indicative levels of those emissions shall be determined by a linear reduction trajectory established between their emission levels defined by the emission reduction commitments for 2020 and the emission levels defined by the emission reduction commitments for 2030.

Member States may follow a non-linear reduction trajectory if this is economically or technically more efficient, and provided that as from 2025 it converges progressively on the linear reduction trajectory and that it does not affect any emission reduction commitment for 2030. Member States shall set out that non-linear reduction trajectory and the reasons for following it in the national air pollution control programmes to be submitted to the Commission in accordance with Article 10(1).

Where the emissions for 2025 cannot be limited in accordance with the determined reduction trajectory, Member States shall explain the reasons for that deviation as well as the measures that would bring the Member States back on their trajectory in the subsequent informative inventory reports to be provided to the Commission in accordance with Article 10(2).

3. The following emissions are not accounted for the purpose of complying with paragraphs 1 and 2:

(a) aircraft emissions beyond the landing and take-off cycle;

(b) emissions from national maritime traffic to and from the territories referred to in Article 2(2);

(c) emissions from international maritime traffic;

(d) emissions of nitrogen oxides and non-methane volatile organic compounds from activities falling under the 2014 Nomenclature for Reporting (NFR) as provided by the LRTAP Convention categories 3B (manure management) and 3D (agricultural soils).

Article 5

Flexibilities

1. Member States may establish, in accordance with Part 4 of Annex IV, adjusted annual national emission inventories for sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds, ammonia and fine particulate matter where non-compliance with their national emission reduction commitments would result from applying improved emission inventory methods updated in accordance with scientific knowledge.

For the purpose of determining whether the relevant conditions set out in Part 4 of Annex IV are fulfilled, the emission reduction commitments for the years 2020 to 2029 shall be considered as having been set on 4 May 2012.

As from 2025 the following additional conditions shall apply to adjustments in case of there being significantly different emission factors or methodologies used for determining emissions from specific source categories in comparison with those which were expected as a result of the implementation of a given norm or standard under Union source-based air pollution control legislation, pursuant to points 1(d)(ii) and (iii) of Part 4 of Annex IV:

(a) the Member State concerned, after having taken into account the findings of national inspection and enforcement programmes monitoring the effectiveness of Union source-based air pollution control legislation, demonstrates that the significantly different emission factors do not arise from its domestic implementation or enforcement of that legislation;

(b) the Member State concerned has informed the Commission of the significant difference in the emission factors which, pursuant to Article 11(2), shall investigate the need for further action.

2. If in a given year a Member State, due to an exceptionally cold winter or an exceptionally dry summer, cannot comply with its emission reduction commitments, it may comply with those commitments by averaging its national annual emissions for the year in question, the year preceding that year and the year following it, provided that this average does not exceed the national annual emission level determined by the Member State's reduction commitment.

3. If in a given year a Member State, for which one or more reduction commitments laid down in Annex II are set at a more stringent level than the cost-effective reduction identified in TSAP 16, cannot comply with the relevant emission reduction commitment after having implemented all cost-effective measures, it shall be deemed to comply with that relevant emission reduction commitment for a maximum of five years, provided that for each of those years it compensates for that non-compliance by an equivalent emission reduction of another pollutant referred to in Annex II.

4. A Member State shall be deemed to comply with its obligations under Article 4 for a maximum of three years, where non-compliance with its emission reduction commitments for the relevant pollutants results from a sudden and exceptional interruption or loss of capacity in the power and/or heat supply or production system, which could not reasonably have been foreseen, and provided that the following conditions are met:

(a) the Member State concerned has demonstrated that all reasonable efforts, including the implementation of new measures and policies have been made to ensure compliance, and will continue to be made to keep the period of non-compliance as short as possible; and

(b) the Member State concerned has demonstrated that the implementation of measures and policies additional to those referred to in point (a) would lead to disproportionate costs, substantially jeopardise national energy security, or pose a substantial risk of energy poverty to a significant part of the population.

5. Members States that intend to apply paragraph 1, 2, 3 or 4 shall inform the Commission thereof by 15 February of the reporting year concerned. That information shall include the pollutants and sectors concerned and, where available, the magnitude of the impacts upon national emission inventories.

6. The Commission, assisted by the European Environment Agency, shall review and assess whether the use of any of the flexibilities for a particular year fulfils the relevant conditions set out in paragraph 1 of this Article and in Part 4 of Annex IV or in paragraphs 2, 3 or 4 of this Article, where applicable.

Where the Commission considers that the use of a given flexibility is not in accordance with the relevant conditions set out in paragraph 1 of this Article and in Part 4 of Annex IV, or in paragraphs 2, 3 or 4 of this Article, it shall adopt a decision within nine months from the date of receipt of the relevant report referred to in Article 8(4), informing the Member State concerned that the use of that flexibility cannot be accepted and stating the reasons for that refusal. Where the Commission has raised no objections within nine months from the date of receipt of the relevant report referred to in Article 8(4), the Member State concerned shall consider the use of that flexibility to be valid and accepted for that year.

7. The Commission may adopt implementing acts specifying the detailed rules for the use of the flexibilities referred to in paragraphs 1, 2, 3 and 4 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17.

8. The Commission, when exercising its powers under paragraphs 6 and 7, shall take into account the relevant guidance documents developed under the LRTAP Convention.

Article 6

National air pollution control programmes

1. Member States shall draw up, adopt and implement their respective national air pollution control programmes in accordance with Part 1 of Annex III in order to limit their annual anthropogenic emissions in accordance with Article 4, and to contribute to achieving the objectives of this Directive pursuant to Article 1(1).

2. When drawing up, adopting and implementing the programme referred to in paragraph 1, Member States shall:

(a) assess to what extent national emission sources are likely to have an impact on air quality in their territories and neighbouring Member States using, where appropriate, data and methodologies developed by the European Monitoring and Evaluation Programme (EMEP) under the Protocol to the LRTAP Convention on long-term financing of the cooperative programme for monitoring and evaluation of the long-range transmission of air pollutants in Europe;

(b) take account of the need to reduce air pollutant emissions for the purpose of reaching compliance with air quality objectives in their territories and, where appropriate, in neighbouring Member States;

(c) prioritise emission reduction measures for black carbon when taking measures to achieve their national reduction commitments for fine particulate matter;

(d) ensure coherence with other relevant plans and programmes established by virtue of the requirements set out in national or Union legislation.

With a view to complying with the relevant national emission reduction commitments, Member States shall include in their national air pollution control programmes the emission reduction measures laid down as obligatory in Part 2 of Annex III and may include in those programmes the emission reduction measures laid down as optional in Part 2 of Annex III or measures having equivalent mitigation effect.

3. Member States shall update their national air pollution control programmes at least every four years.

4. Without prejudice to paragraph 3, the emission reduction policies and measures contained in the national air pollution control programmes shall be updated within 18 months of the submission of the latest national emission inventory or national emission projections if, according to the submitted data, the obligations set out in Article 4 are not complied with or if there is a risk of non-compliance.

5. Member States shall consult the public, in accordance with Directive 2003/35/EC, and the competent authorities, which, by reason of their specific environmental responsibilities in the field of air pollution, quality and management at all levels, are likely to be concerned by the implementation of the national air pollution control programmes, on their draft national air pollution control programmes and any significant updates prior to the finalisation of those programmes.

6. Where appropriate, transboundary consultations shall be conducted.

7. The Commission shall facilitate the elaboration and implementation of the national air pollution control programmes, where appropriate, through an exchange of good practices.

8. The Commission is empowered to adopt delegated acts in accordance with Article 16 to amend this Directive with regard to the adaptation of Part 2 of Annex III to developments, including technical progress, within the framework of the LRTAP Convention.

9. The Commission may establish guidance on the elaboration and implementation of national air pollution control programmes.

10. The Commission shall also specify by means of implementing acts, the format of the national air pollution control programmes. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17.

Article 7

Financial support

The Commission shall endeavour to facilitate access to existing Union funds, in accordance with the legal provisions governing those funds, in order to support the measures to be taken with a view to complying with the objectives of this Directive.

Those Union funds include present and future available funding under, inter alia:

(a) the Framework Programme for Research and Innovation;

(b) the European Structural and Investment Funds, including relevant funding under the common agricultural policy;

(c) instruments for the funding of environment and climate action such as the LIFE programme.

The Commission shall evaluate the possibility of creating a one-stop shop, where any interested party can easily check the availability of Union funds, and the related access procedures, for projects which address air pollution concerns.

Article 8

National emission inventories and projections, and informative inventory reports

1. Member States shall prepare and annually update national emission inventories for the pollutants set out in Table A of Annex I, in accordance with the requirements set out therein.

Member States may prepare and annually update national emission inventories for the pollutants set out in Table B of Annex I, in accordance with the requirements set out therein.

2. Member States shall prepare and update every four years spatially disaggregated national emission inventories and large point source inventories and, every two years, national emission projections for the pollutants set out in Table C of Annex I, in accordance with the requirements set out therein.

3. Member States shall draw up an informative inventory report which shall accompany the national emission inventories and projections referred to in paragraphs 1 and 2, in accordance with the requirements set out in Table D of Annex I.

4. Member States that opt for a flexibility under Article 5 shall include the information demonstrating that the use of that flexibility fulfils the relevant conditions set out in Article 5(1) and Part 4 of Annex IV or in Article 5(2), (3) or (4), where applicable, in the informative inventory report of the year concerned.

5. Member States shall prepare and update the national emission inventories (including if appropriate adjusted national emission inventories), national emission projections, spatially disaggregated national emission inventories, large point source inventories and the accompanying informative inventory reports in accordance with Annex IV.

6. The Commission, assisted by the European Environment Agency, shall annually prepare and update Union-wide emission inventories and an informative inventory report as well as, every two years, Union-wide emission projections and, every four years, spatially disaggregated Union-wide emission inventories and Union-wide large point source inventories, for the pollutants referred to in Annex I, on the basis of the information referred to in paragraphs 1, 2 and 3 of this Article.

7. The Commission is empowered to adopt delegated acts in accordance with Article 16 to amend this Directive with regard to the adaptation of Annex I and Annex IV to developments, including technical and scientific progress, within the framework of the LRTAP Convention.

Article 9

Monitoring air pollution impacts

1. Member States shall ensure the monitoring of negative impacts of air pollution upon ecosystems based on a network of monitoring sites that is representative of their freshwater, natural and semi-natural habitats and forest ecosystem types, taking a cost-effective and risk-based approach.

To that end, Member States shall coordinate with other monitoring programmes established pursuant to Union legislation including Directive 2008/50/EC, Directive 2000/60/EC of the European Parliament and of the Council ([1]) and Council Directive 92/43/EEC ([2]) and, if appropriate, the LRTAP Convention and, where appropriate, make use of data collected under those programmes.

In order to comply with the requirements of this Article, Member States may use the optional monitoring indicators listed in Annex V.

2. The methodologies laid down in the LRTAP Convention and its Manuals for the International Cooperative Programmes may be used when collecting and reporting the information listed in Annex V.

3. The Commission is empowered to adopt delegated acts in accordance with Article 16 to amend this Directive with regard to the adaptation of Annex V to technical and scientific progress and to developments within the framework of the LRTAP Convention.

Article 10

Reporting by Member States

1. Member States shall provide their first national air pollution control programmes to the Commission by 1 April 2019.

Where a national air pollution control programme is updated under Article 6(4), the Member State concerned shall provide the updated programme to the Commission within two months.

The Commission shall examine the national air pollution control programmes and their updates in the light of the requirements set out in Article 4(2) and Article 6.

2. Member States shall provide their national emission inventories and projections, spatially disaggregated national emission inventories, large point source inventories and the informative inventory reports referred to in Article 8(1), (2) and (3) and, where relevant, in Article 8(4), to the Commission and to the European Environment Agency in accordance with the reporting dates set out in Annex I.

This reporting shall be consistent with the reporting to the Secretariat of the LRTAP Convention.

([1]) Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

([2]) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

3. The Commission, assisted by the European Environment Agency and in consultation with the Member States concerned, shall review the national emission inventory data in the first year of reporting and regularly thereafter. That review shall involve the following:

(a) checks to verify the transparency, accuracy, consistency, comparability and completeness of information submitted;

(b) checks to identify cases where inventory data is prepared in a manner which is inconsistent with the requirements set out under international law, in particular under the LRTAP Convention;

(c) where appropriate, calculation of the resulting technical corrections necessary, in consultation with the Member State concerned.

Where the Member State concerned and the Commission are unable to reach an agreement on the necessity or on the content of the technical corrections pursuant to point (c), the Commission shall adopt a decision laying down the technical corrections to be applied by the Member State concerned.

4. Member States shall report the following information referred to in Article 9 to the Commission and the European Environment Agency:

(a) by 1 July 2018 and every four years thereafter, the location of the monitoring sites and the associated indicators used for monitoring air pollution impacts; and

(b) by 1 July 2019 and every four years thereafter, the monitoring data referred to in Article 9.

Article 11

Reports by the Commission

1. The Commission shall, by 1 April 2020 and every four years thereafter, report to the European Parliament and the Council on the progress made in the implementation of this Directive, including an assessment of its contribution to the achievement of the objectives referred to in Article 1, including:

(a) progress towards:

(i) the indicative emission levels and emission reduction commitments referred to in Article 4 and, where applicable, the reasons for any non-achievement;

(ii) ambient air quality levels in line with the air quality guidelines published by the World Health Organisation;

(iii) the Union's biodiversity and ecosystem objectives in line with the 7th Environment Action Programme;

(b) identification of further measures required at Union and Member State level to achieve the objectives referred to in point (a);

(c) the uptake of Union funds to support the measures taken with a view to comply with the objectives of this Directive;

(d) the results of the Commission examination of the national air pollution control programmes and their updates pursuant to the third subparagraph of Article 10(1);

(e) an evaluation of the health, environmental and socioeconomic impacts of this Directive.

2. Where the report indicates that the non-achievement of the indicative emission levels and emission reduction commitments referred to in Article 4 could be the result of ineffective Union source-based air pollution control legislation, including its implementation at Member State level, the Commission shall, where appropriate, investigate the need for further action also considering the sectoral impacts of implementation. Where appropriate, the Commission shall present legislative proposals, including new source-based air control pollution legislation, in order to ensure compliance with the commitments of this Directive.

Article 12

European Clean Air Forum

The Commission shall set up a European Clean Air Forum to provide input for guidance and facilitate the coordinated implementation of Union legislation and policies related to improving air quality, bringing together all stakeholders including competent authorities of the Member States at all relevant levels, the Commission, industry, civil society, and the scientific community at regular intervals. The European Clean Air Forum shall exchange experience and good practices, including on emission reductions from domestic heating and road transport, that can inform and enhance the national air pollution control programmes and their implementation.

Article 13

Review

1. On the basis of the reports referred to in Article 11(1), the Commission shall review this Directive no later than 31 December 2025 with a view to safeguarding progress towards achieving the objectives referred to in Article 1(2), in particular by taking into account scientific and technical progress and the implementation of Union climate and energy policies.

If appropriate, the Commission shall present legislative proposals for emission reduction commitments for the period after 2030.

2. As regards ammonia, the Commission, in its review, shall assess in particular:

(a) the latest scientific evidence;

(b) updates of the UNECE Guidance Document on Preventing and Abating Ammonia Emissions from Agricultural Sources of 2014 (the 'Ammonia Guidance Document') ([1]), the UNECE Framework Code for Good Agricultural Practice for Reducing Ammonia Emissions ([2]), as last revised in 2014;

(c) updates of the Best Available Techniques as defined in point (10) of Article 3 of Directive 2010/75/EU of the European Parliament and of the Council ([3]);

(d) agri-environment measures in the framework of the common agricultural policy.

3. On the basis of the reported national emissions of mercury the Commission shall assess their impact on achieving the objectives set out in Article 1(2) and shall consider measures for reducing those emissions and, if appropriate, submit a legislative proposal.

Article 14

Access to information

1. Member States shall, in compliance with Directive 2003/4/EC, ensure the active and systematic dissemination to the public of the following information by publishing it on a publicly accessible website:

(a) the national air pollution control programmes and any updates;

(b) the national emission inventories (including, where applicable, the adjusted national emission inventories), the national emission projections, the informative inventory reports and additional reports and information provided to the Commission in accordance with Article 10.

([1]) Decision 2012/11/EC, ECE/EB/AIR/113/Add. 1.
([2]) Decision ECE/EB.AIR/127, paragraph 36e.
([3]) Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

2. The Commission shall, in compliance with Regulation (EC) No 1367/2006 of the European Parliament and of the Council ([1]), ensure the active and systematic dissemination to the public of Union-wide emission inventories, and projections as well as informative inventory reports on a publicly accessible website.

3. The Commission shall publish on its website:

(a) the underlying assumptions considered for each Member State for the definition of their national emission reduction potential used to prepare TSAP 16;

(b) the list of relevant Union source-based air pollution control legislation; and

(c) the results of the examination referred to in the third subparagraph of Article 10(1).

Article 15

Cooperation with third countries and coordination within international organisations

The Union and the Member States, as appropriate, shall pursue, without prejudice to Article 218 TFEU, bilateral and multilateral cooperation with third countries and coordination within relevant international organisations such as the United Nations Environment Programme (UNEP), UNECE, the Food and Agriculture Organization of the United Nations (FAO), the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO), including through the exchange of information, concerning technical and scientific research and development, with the aim of improving the basis for the facilitation of emission reductions.

Article 16

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 6(8), 8(7) and 9(3) shall be conferred on the Commission for a period of five years from 31 December 2016. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Articles 6(8), 8(7) and 9(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ([2]).

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 6(8), 8(7) and 9(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

([1]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13).

([2]) OJ L 123, 12.5.2016, p. 1.

Article 17

Committee procedure

1. The Commission shall be assisted by the Ambient Air Quality Committee established by Article 29 of Directive 2008/50/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 18

Penalties

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Article 19

Amendment to Directive 2003/35/EC

In Annex I of Directive 2003/35/EC, the following point is added:

'(g) Article 6(1) of Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC (*).

(*) OJ L 344, 17.12.2016, p. 1.'.

Article 20

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2018.

By way of derogation from the first subparagraph, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 10(2) by 15 February 2017.

Member States shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 21

Repeal and transitional provisions

1. Directive 2001/81/EC is repealed with effect from 1 July 2018.

By way of derogation from the first subparagraph:

(a) Articles 1 and 4 of and Annex I to Directive 2001/81/EC shall continue to apply until 31 December 2019;

(b) Articles 7 and 8 of and Annex III to Directive 2001/81/EC shall be repealed on 31 December 2016.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex VI.

2. Until 31 December 2019, Member States may apply Article 5(1) of this Directive in relation to the ceilings under Article 4 of and Annex I to Directive 2001/81/EC.

Article 22

Entry into force

This Directive shall enter into force on 31 December 2016.

Article 23

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 14 December 2016.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	I. KORČOK

ANNEX I

MONITORING AND REPORTING OF ATMOSPHERIC EMISSIONS

Table A

Annual emission reporting requirements as referred to in the first subparagraph of Article 8(1)

Element	Pollutants	Time series	Reporting dates
Total national emissions by NFR (1) source category (2)	— SO_2, NO_x, NMVOC, NH_3, CO — heavy metals (Cd, Hg, Pb) (3) — POPs (4) (total PAHs (5), benzo(a) pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, indeno (1,2,3-cd)pyrene, dioxins/furans, PCBs (6), HCB (7))	Annual, from 1990 to reporting year minus 2 (X-2)	15 February (9)
Total national emissions by NFR source category (2)	— $PM_{2,5}$, PM_{10} (8) and, if available, BC	Annual, from 2000 to reporting year minus 2 (X-2)	15 February (9)

(1) Nomenclature for reporting (NFR) as provided by the LRTAP Convention.
(2) natural emissions shall be reported in accordance with the methodologies laid down in the LRTAP Convention and the EMEP/EEA air pollutant emission inventory guidebook. They shall not be included in national totals and shall be reported separately.
(3) Cd (cadmium), Hg (mercury), Pb (lead).
(4) POPs (persistent organic pollutants).
(5) PAHs (Polycyclic aromatic hydrocarbons).
(6) PCBs (Polychlorinated biphenyls).
(7) HCB (hexachlorobenzene).
(8) 'PM_{10}' means particles with an aerodynamic diameter equal to or less than 10 micrometres (μm).
(9) re-submissions due to errors shall be provided within four weeks at the latest and include a clear explanation of the changes made.

Table B

Annual emission reporting requirements as referred to in the second subparagraph of Article 8(1)

Element	Pollutants	Time series	Reporting date
Total national emissions by NFR source category (1)	— heavy metals (As, Cr, Cu, Ni, Se and Zn and their compounds) (2) — TSP (3)	Annual, from 1990 (2000 for TSP,) to reporting year minus 2 (X-2)	15 February

(1) natural emissions shall be reported in accordance with the methodologies laid down in the LRTAP convention and the EMEP/EEA air pollutant emission inventory guidebook. They shall not be included in national totals and shall be reported separately.
(2) As (arsenic), Cr (chromium), Cu (copper), Ni (nickel), Se (selenium), Zn (zinc).
(3) TSP (total suspended particles).

Table C

Reporting requirements on emissions and projections as referred to in Article 8(2)

Element	Pollutants	Time series/target years	Reporting dates
National gridded data of emissions by source category (GNFR)	— SO_2, NO_x, NMVOC, CO, NH_3, PM_{10}, $PM_{2,5}$ — heavy metals (Cd, Hg, Pb) — POPs (total PAHs, HCB, PCBs, dioxins/furans) — BC (if available)	Every four years for reporting year minus 2 (X-2) as from 2017	1 May [1]
Large Point Sources (LPS) by source category (GNFR)	— SO_2, NO_x, NMVOC, CO, NH_3, PM_{10}, $PM_{2,5}$ — heavy metals (Cd, Hg, Pb) — POPs (total PAHs, HCB, PCBs, dioxins/furans) — BC (if available)	Every four years for reporting year minus 2 (X-2) as from 2017	1 May [1]
Projected emissions by aggregated NFR	— SO_2, NO_x, NH_3, NMVOC, $PM_{2,5}$ and, if available, BC	Biennial, covering projection years 2020, 2025, 2030 and, where available, 2040 and 2050 as from 2017	15 March

[1] re-submissions due to errors shall be provided within four weeks and include a clear explanation of the changes made.

Table D

Annual reporting requirements on informative inventory report referred to in Article 8(3)

Element	Pollutants	Time series/target years	Reporting dates
Informative Inventory Report	— SO_2, NO_x, NMVOC, NH_3, CO, $PM_{2,5}$, PM_{10} — heavy metals (Cd, Hg, Pb) and BC — POPs (total PAHs, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, indeno (1,2,3-cd)pyrene, dioxins/furans, PCBs, HCB) — If available, heavy metals (As, Cr, Cu, Ni, Se and Zn and their compounds) and TSP	All years (as indicated in tables A-B-C)	15 March

ANNEX II

NATIONAL EMISSION REDUCTION COMMITMENTS

Table A

Emission reduction commitments for sulphur dioxide (SO_2), nitrogen oxides (NO_x) and non-methane volatile organic compounds (NMVOC). The reduction commitments have the year 2005 as base year, and for road transport, apply to emissions calculated on the basis of fuels sold (*).

Member State	SO_2 reduction compared with 2005		NO_x reduction compared with 2005		NMVOC reduction compared with 2005	
	For any year from 2020 to 2029	For any year from 2030	For any year from 2020 to 2029	For any year from 2030	For any year from 2020 to 2029	For any year from 2030
Belgium	43 %	66 %	41 %	59 %	21 %	35 %
Bulgaria	78 %	88 %	41 %	58 %	21 %	42 %
Czech Republic	45 %	66 %	35 %	64 %	18 %	50 %
Denmark	35 %	59 %	56 %	68 %	35 %	37 %
Germany	21 %	58 %	39 %	65 %	13 %	28 %
Estonia	32 %	68 %	18 %	30 %	10 %	28 %
Greece	74 %	88 %	31 %	55 %	54 %	62 %
Spain	67 %	88 %	41 %	62 %	22 %	39 %
France	55 %	77 %	50 %	69 %	43 %	52 %
Croatia	55 %	83 %	31 %	57 %	34 %	48 %
Ireland	65 %	85 %	49 %	69 %	25 %	32 %
Italy	35 %	71 %	40 %	65 %	35 %	46 %
Cyprus	83 %	93 %	44 %	55 %	45 %	50 %
Latvia	8 %	46 %	32 %	34 %	27 %	38 %
Lithuania	55 %	60 %	48 %	51 %	32 %	47 %
Luxembourg	34 %	50 %	43 %	83 %	29 %	42 %
Hungary	46 %	73 %	34 %	66 %	30 %	58 %
Malta	77 %	95 %	42 %	79 %	23 %	27 %
Netherlands	28 %	53 %	45 %	61 %	8 %	15 %
Austria	26 %	41 %	37 %	69 %	21 %	36 %
Poland	59 %	70 %	30 %	39 %	25 %	26 %

Member State	SO_2 reduction compared with 2005		NO_x reduction compared with 2005		NMVOC reduction compared with 2005	
	For any year from 2020 to 2029	For any year from 2030	For any year from 2020 to 2029	For any year from 2030	For any year from 2020 to 2029	For any year from 2030
Portugal	63 %	83 %	36 %	63 %	18 %	38 %
Romania	77 %	88 %	45 %	60 %	25 %	45 %
Slovenia	63 %	92 %	39 %	65 %	23 %	53 %
Slovakia	57 %	82 %	36 %	50 %	18 %	32 %
Finland	30 %	34 %	35 %	47 %	35 %	48 %
Sweden	22 %	22 %	36 %	66 %	25 %	36 %
United Kingdom	59 %	88 %	55 %	73 %	32 %	39 %
EU 28	59 %	79 %	42 %	63 %	28 %	40 %

(*) Member States having the choice to use the national emission total calculated on the basis of fuels used as a basis for compliance under the LRTAP Convention may keep that option in order to ensure coherence between international and Union law.

Table B

Emission reduction commitments for ammonia (NH_3) and fine particulate matter ($PM_{2,5}$). The reduction commitments have the year 2005 as base year, and for road transport, apply to emissions calculated on the basis of fuels sold (*).

Member State	NH_3 reduction compared with 2005		$PM_{2,5}$ reduction compared with 2005	
	For any year from 2020 to 2029	For any year from 2030	For any year from 2020 to 2029	For any year from 2030
Belgium	2 %	13 %	20 %	39 %
Bulgaria	3 %	12 %	20 %	41 %
Czech Republic	7 %	22 %	17 %	60 %
Denmark	24 %	24 %	33 %	55 %
Germany	5 %	29 %	26 %	43 %
Estonia	1 %	1 %	15 %	41 %
Greece	7 %	10 %	35 %	50 %
Spain	3 %	16 %	15 %	50 %
France	4 %	13 %	27 %	57 %
Croatia	1 %	25 %	18 %	55 %
Ireland	1 %	5 %	18 %	41 %
Italy	5 %	16 %	10 %	40 %
Cyprus	10 %	20 %	46 %	70 %
Latvia	1 %	1 %	16 %	43 %

Member State	NH_3 reduction compared with 2005			$PM_{2,5}$ reduction compared with 2005		
	For any year from 2020 to 2029		For any year from 2030	For any year from 2020 to 2029		For any year from 2030
Lithuania	10 %		10 %	20 %		36 %
Luxembourg	1 %		22 %	15 %		40 %
Hungary	10 %		32 %	13 %		55 %
Malta	4 %		24 %	25 %		50 %
Netherlands	13 %		21 %	37 %		45 %
Austria	1 %		12 %	20 %		46 %
Poland	1 %		17 %	16 %		58 %
Portugal	7 %		15 %	15 %		53 %
Romania	13 %		25 %	28 %		58 %
Slovenia	1 %		15 %	25 %		60 %
Slovakia	15 %		30 %	36 %		49 %
Finland	20 %		20 %	30 %		34 %
Sweden	15 %		17 %	19 %		19 %
United Kingdom	8 %		16 %	30 %		46 %
EU 28	6 %		19 %	22 %		49 %

(*) Member States having the choice to use the national emission total calculated on the basis of fuels used as a basis for compliance under the LRTAP Convention may keep that option in order to ensure coherence between international and Union law.

ANNEX III

CONTENT OF NATIONAL AIR POLLUTION CONTROL PROGRAMMES REFERRED TO IN ARTICLES 6 AND 10

PART 1

Minimum content of national air pollution control programmes

1. The initial national air pollution control programmes referred to in Articles 6 and 10 shall at least cover the following content:

   (a) the national air quality and pollution policy framework in which context the programme has been developed, including:

      (i) the policy priorities and their relationship to priorities set in other relevant policy areas, including climate change and, when appropriate, agriculture, industry and transport;

      (ii) the responsibilities attributed to national, regional and local authorities;

      (iii) the progress made by current policies and measures in reducing emissions and improving air quality, and the degree of compliance with national and Union obligations;

      (iv) the projected further evolution assuming no change to already adopted policies and measures;

   (b) the policy options considered to comply with the emission reduction commitments for the period between 2020 and 2029 and for 2030 onwards and the intermediate emission levels determined for 2025 and to contribute to further improve the air quality, and their analysis, including the method of analysis; where available, the individual or combined impacts of the policies and measures on emission reductions, air quality and the environment and the associated uncertainties;

   (c) the measures and policies selected for adoption, including a timetable for their adoption, implementation and review and the competent authorities responsible;

   (d) where relevant, an explanation of the reasons why the indicative emission levels for 2025 cannot be met without measures entailing disproportionate costs;

   (e) where relevant, an account of the use of the flexibilities set out in Article 5 and any environmental consequences arising from such use;

   (f) an assessment of how selected policies and measures ensure coherence with plans and programmes set up in other relevant policy areas.

2. The national air pollution control programme updates referred to in Articles 6 and 10 shall at least include:

   (a) an assessment of the progress made with implementation of the programme, the reduction of emissions and the reduction of concentrations;

   (b) any significant changes in the policy context, assessments, the programme or the implementation timetable thereof.

PART 2

Emission reduction measures referred to in the second subparagraph of Article 6(2)

Member States shall take into account the relevant Ammonia Guidance Document, and shall make use of best available techniques in accordance with Directive 2010/75/EU.

A. Measures to control ammonia emissions

1. Member States shall establish a national advisory code of good agricultural practice to control ammonia emissions, taking into account the UNECE Framework Code for Good Agricultural Practice for Reducing Ammonia Emissions of 2014, covering at least the following items:

   (a) nitrogen management, taking into account the whole nitrogen cycle;

(b) livestock feeding strategies;

(c) low-emission manure spreading techniques;

(d) low-emission manure storage systems;

(e) low-emission animal housing systems;

(f) possibilities for limiting ammonia emissions from the use of mineral fertilisers.

2. Member States may establish a national nitrogen budget to monitor the changes in overall losses of reactive nitrogen from agriculture, including ammonia, nitrous oxide, ammonium, nitrates and nitrites, based on the principles set out in the UNECE Guidance Document on Nitrogen Budgets ([1]).

3. Member States shall prohibit the use of ammonium carbonate fertilisers and may reduce ammonia emissions from inorganic fertilisers by using the following approaches:

(a) replacing urea-based fertilisers by ammonium nitrate-based fertilisers;

(b) where urea-based fertilisers continue to be applied, using methods that have been shown to reduce ammonia emissions by at least 30 % compared with the use of the reference method, as specified in the Ammonia Guidance Document;

(c) promoting the replacement of inorganic fertilisers by organic fertilisers and, where inorganic fertilisers continue to be applied, spreading them in line with the foreseeable requirements of the receiving crop or grassland with respect to nitrogen and phosphorus, also taking into account the existing nutrient content in the soil and nutrients from other fertilisers.

4. Member States may reduce ammonia emissions from livestock manure by using the following approaches:

(a) reducing emissions from slurry and solid manure application to arable land and grassland, by using methods that reduce emissions by at least 30 % compared with the reference method described in the Ammonia Guidance Document and on the following conditions:

(i) only spreading manures and slurries in line with the foreseeable nutrient requirement of the receiving crop or grassland with respect to nitrogen and phosphorous, also taking into account the existing nutrient content in the soil and the nutrients from other fertilisers;

(ii) not spreading manures and slurries when the receiving land is water saturated, flooded, frozen or snow covered;

(iii) applying slurries spread to grassland using a trailing hose, trailing shoe or through shallow or deep injection;

(iv) incorporating manures and slurries spread to arable land within the soil within four hours of spreading;

(b) reducing emissions from manure storage outside of animal houses, by using the following approaches:

(i) for slurry stores constructed after 1 January 2022, using low emission storage systems or techniques which have been shown to reduce ammonia emissions by at least 60 % compared with the reference method described in the Ammonia Guidance Document, and for existing slurry stores at least 40 %;

(ii) covering stores for solid manure;

(iii) ensuring farms have sufficient manure storage capacity to spread manure only during periods that are suitable for crop growth:

(c) reducing emissions from animal housing, by using systems which have been shown to reduce ammonia emissions by at least 20 % compared with the reference method described in the Ammonia Guidance Document;

(d) reducing emissions from manure, by using low protein feeding strategies which have been shown to reduce ammonia emissions by at least 10 % compared with the reference method described in the Ammonia Guidance Document.

([1]) Decision 2012/10/EC, ECE/EB.AIR/113/Add 1.

B. Emission reduction measures to control emissions of fine particulate matter and black carbon

1. Without prejudice to Annex II on cross-compliance of Regulation (EU) No 1306/2013 of the European Parliament and of the Council [1], Member States may ban open field burning of agricultural harvest residue and waste and forest residue.

   Member States shall monitor and enforce the implementation of any ban implemented in accordance with the first subparagraph. Any exemptions to such a ban shall be limited to preventive programmes to avoid uncontrolled wildfires, to control pest or to protect biodiversity.

2. Member States may establish a national advisory code of good agricultural practices for the proper management of harvest residue, on the basis of the following approaches:

   (a) improvement of soil structure through incorporation of harvest residue;

   (b) improved techniques for incorporation of harvest residue;

   (c) alternative use of harvest residue;

   (d) improvement of the nutrient status and soil structure through incorporation of manure as required for optimal plant growth, thereby avoiding burning of manure (farmyard manure, deep-straw bedding).

C. Preventing impacts on small farms

In taking the measures outlined in Sections A and B, Member States shall ensure that impacts on small and micro farms are fully taken into account.

Member States may, for instance, exempt small and micro farms from those measures where possible and appropriate in view of the applicable reduction commitments.

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[1] Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

ANNEX IV

METHODOLOGIES FOR THE PREPARATION AND UPDATING OF NATIONAL EMISSION INVENTORIES AND PROJECTIONS, INFORMATIVE INVENTORY REPORTS AND ADJUSTED NATIONAL EMISSION INVENTORIES REFERRED TO IN ARTICLES 5 AND 8

For the pollutants referred to in Annex I, Member States shall prepare national emission inventories, adjusted national emission inventories where relevant, national emission projections, spatially disaggregated national emission inventories, large point source inventories and informative inventory reports, using the methodologies adopted by Parties to the LRTAP Convention (EMEP Reporting Guidelines), and are requested to use the EMEP/EEA air pollutant emission inventory Guidebook (EMEP/EEA Guidebook) referred to therein. In addition, supplementary information, in particular the activity data, needed for the assessment of the national emission inventories and projections shall be prepared in accordance with the same guidelines.

Reliance upon the EMEP Reporting Guidelines is without prejudice to the additional arrangements specified in this Annex and to the requirements on reporting nomenclature, time series and reporting dates specified in Annex I.

PART 1

National annual emission inventories

1. National emission inventories shall be transparent, consistent, comparable, complete and accurate.

2. Emissions from identified key categories shall be calculated in accordance with the methodologies defined in the EMEP/EEA Guidebook and with the aim of using a Tier 2 or higher (detailed) methodology.

   Member States may use other scientifically based and compatible methodologies for establishing national emission inventories where those methodologies produce more accurate estimates than the default methodologies set out in the EMEP/EEA Guidebook.

3. For emissions from transport, Member States shall calculate and report emissions consistent with national energy balances reported to Eurostat.

4. Emissions from road transport shall be calculated and reported on the basis of the fuels sold ([1]) in the Member State concerned. In addition, Member States may also report emissions from road transport based on fuels used or kilometres driven in the Member State.

5. Member States shall report their annual national emissions expressed in the applicable unit specified in the NFR reporting template of the LRTAP Convention.

PART 2

National emission projections

1. National emission projections shall be transparent, consistent, comparable, complete and accurate and reported information shall include at least the following:

   (a) clear identification of the adopted and planned policies and measures included in the projections;

   (b) where appropriate, the results of sensitivity analysis performed for the projections;

   (c) a description of methodologies, models, underlying assumptions and key input and output parameters.

2. Projections of emissions shall be estimated and aggregated to relevant source sectors. Member States shall provide a 'with measures' (adopted measures) projection and, where relevant, a 'with additional measures' (planned measures) projection for each pollutant in accordance with the guidance established in the EMEP/EEA Guidebook.

([1]) Member States having the choice to use the national emission total calculated on the basis of fuels used as a basis for compliance under the LRTAP Convention may keep this option in order to ensure coherence between international and Union law.

3. National emission projections shall be consistent with the national annual emission inventory for the year x-3 and with projections reported under Regulation (EU) No 525/2013 of the European Parliament and of the Council ([1]).

PART 3

Informative inventory report

The informative inventory reports shall be prepared in accordance with the EMEP Reporting Guidelines and reported using the template for inventory reports as specified therein. The inventory report shall include, as a minimum, the following information:

(a) descriptions, references and sources of information of the specific methodologies, assumptions, emission factors and activity data, as well as the rationale for their selection;

(b) a description of the national key categories of emission sources;

(c) information on uncertainties, quality assurance and verification;

(d) a description of the institutional arrangements for inventory preparation;

(e) recalculations and planned improvements;

(f) if relevant, information on the use of the flexibilities provided for under Article 5(1), (2), (3) and (4);

(g) if relevant, information on the reasons for deviating from the reduction trajectory determined in accordance with Article 4(2), as well as the measures to converge back on the trajectory;

(h) an executive summary.

PART 4

Adjustment of national emission inventories

1. A Member State that proposes an adjustment to its national emission inventory in accordance with Article 5(1) shall include in its proposal to the Commission, at least, the following supporting documentation:

   (a) evidence that the concerned national emission reduction commitment/s is/are exceeded;

   (b) evidence of the extent to which the adjustment to the emission inventory reduces the exceedance and contributes to compliance with the concerned national emission reduction commitment/s;

   (c) an estimation of whether and when the concerned national emission reduction commitment/s is/are expected to be attained based on national emission projections without the adjustment;

   (d) evidence that the adjustment is consistent with one or several of the following three circumstances. Reference can be made, as appropriate, to relevant previous adjustments:

      (i) in the case of new emission source categories:

         — evidence that the new emission source category is acknowledged in scientific literature and/or the EMEP/EEA Guidebook;

         — evidence that this source category was not included in the relevant historic national emission inventory at the time when the emission reduction commitment was set;

         — evidence that emissions from a new source category contribute to a Member State being unable to meet its emission reduction commitments, supported by a detailed description of the methodology, data and emission factors used to arrive at that conclusion;

([1]) Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13).

(ii) in the case of significantly different emission factors used for determining emissions from specific source categories:

— a description of the original emission factors, including a detailed description of the scientific basis upon which the emission factor was derived;

— evidence that the original emission factors were used for determining the emission reductions at the time when they were set;

— a description of the updated emission factors, including detailed information on the scientific basis upon which the emission factor was derived;

— a comparison of emission estimates made using the original and the updated emission factors, demonstrating that the change in emission factors contributes to a Member State being unable to meet its reduction commitments;

— the rationale for deciding whether the changes in emission factors are significant;

(iii) in the case of significantly different methodologies used for determining emissions from specific source categories:

— a description of the original methodology used, including detailed information on the scientific basis upon which the emission factor was derived;

— evidence that the original methodology was used for determining the emission reductions at the time when they were set;

— a description of the updated methodology used, including a detailed description of the scientific basis or reference upon which it has been derived;

— a comparison of emission estimates made using the original and updated methodologies demonstrating that the change in methodology contributes to a Member State being unable to meet its reduction commitment;

— the rationale for deciding whether the change in methodology is significant.

2. Member States may submit the same supporting information for adjustment procedures based on similar preconditions, provided that each Member State submits the required individual country-specific information as set out in paragraph 1.

3. Member States shall recalculate adjusted emissions to ensure consistency, to the extent possible, of the time series for every year that the adjustment/s is/are applied.

ANNEX V

OPTIONAL INDICATORS FOR MONITORING AIR POLLUTION IMPACTS REFERRED TO IN ARTICLE 9

(a) for freshwater ecosystems: establishing the extent of biological damage, including sensitive receptors (microphytes, macrophytes and diatoms), and loss of fish stock or invertebrates:

the key indicator acid neutralising capacity (ANC) and the supporting indicators acidity (pH), dissolved sulphate (SO_4), nitrate (NO_3) and dissolved organic carbon:

frequency of sampling: from yearly (in lake autumn turnover) to monthly (streams).

(b) for terrestrial ecosystems: assessing the soil acidity, soil nutrients loss, nitrogen status and balance as well as biodiversity loss:

(i) the key indicator soil acidity: exchangeable fractions of base cations (base saturation) and exchangeable aluminium in soils:

frequency of sampling: every 10 years;

supporting indicators: pH, sulphate, nitrate, base cations, aluminium concentrations in soil solution:

frequency of sampling: every year (where relevant);

(ii) the key indicator soil nitrate leaching ($NO_{3,leach}$):

frequency of sampling: every year;

(iii) the key indicator carbon-nitrogen ratio (C/N) and the supporting indicator of total nitrogen in soil (N_{tot}):

frequency of sampling: every 10 years;

(iv) the key indicator nutrient balance in foliage (N/P,N/K, N/Mg):

frequency of sampling: every four years.

(c) for terrestrial ecosystems: assessing ozone damage to vegetation growth and biodiversity:

(i) the key indicator vegetation growth and foliar damage and the supporting indicator carbon flux (C_{flux}):

frequency of sampling: every year;

(ii) the key indicator exceedance of flux-based critical levels:

frequency of sampling: every year during the growing season.

ANNEX VI

CORRELATION TABLE

Directive 2001/81/EC	This Directive
Article 1	Article 1
Article 2, 1st subparagraph, and 2nd subparagraph, points (c), (d) and (e)	Article 2
Article 3, point (e)	Article 3, point (1)
—	Article 3, points (2), (3), (4), (5), (8), (9), (12) and (13)
Article 3, point (i)	Article 3, point (6)
Article 3, point (k)	Article 3, point (7)
Article 3, point (h)	Article 3, point (10)
Article 3, point (g)	Article 3, point (11)
Article 4	Article 4(1) and (2)
Article 2, 2nd subparagraph, points (a) and (b)	Article 4(3)
—	Article 5
Article 6(1)	Article 6(1)
Article 6(2)	Article 6(2), (5) to(10)
Article 6(3)	Article 6(3) and (4)
—	Article 7
Article 7(1)	Article 8(1), first subparagraph
—	Article 8(1), second subparagraph, (2) to (4)
Article 7(2)	Article 8(5)
Article 7(3)	Article 8(6)
Article 7(4)	Article 8(7)
—	Article 9
Article 8(2)	Article 10(1)
Article 8(1)	Article 10(2)
—	Article 10(3) and (4)
Article 9	Article 11
—	Article 12
Article 10	Article 13
Article 6(4)	Article 14(1)
Article 7(3) and Article 8(3)	Article 14(2) and (3)
Article 11	Article 15
Article 13(3)	Article 16
Article 13(1) and (2)	Article 17

Directive 2001/81/EC	This Directive
Article 14	Article 18
—	Article 19
Article 15	Article 20
—	Article 21
Article 16	Article 22
Article 17	Article 23
Article 8(1) and Annex III	Annex I
Annex I	Annex II
—	Annexes III, V and VI
Annex III	Annex IV

Declaration by the Commission on the Review of Methane Emissions

The Commission considers that there is a strong air quality case for keeping the development of methane emissions in the Member States under review in order to reduce ozone concentrations in the EU and to promote methane reductions internationally.

The Commission confirms that on the basis of the reported national emissions, it intends to further assess the impact of methane emissions on achieving the objectives set out in Art. 1 paragraph 2 of the NEC Directive and will consider measures for reducing those emissions, and where appropriate, submit a legislative proposal to that purpose. In its assessment, the Commission will take into account a number of ongoing studies in this field, due to be finalised in 2017, as well as further international developments in this area.

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2016/2285

of 12 December 2016

fixing for 2017 and 2018 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks and amending Council Regulation (EU) 2016/72

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 43(3) of the Treaty provides that the Council, on a proposal from the Commission, is to adopt measures on the fixing and allocation of fishing opportunities.

(2) Regulation (EU) No 1380/2013 of the European Parliament and of the Council ([1]) requires that conservation measures be adopted taking into account available scientific, technical and economic advice, including, where relevant, reports drawn up by the Scientific, Technical and Economic Committee for Fisheries (STECF).

(3) It is incumbent upon the Council to adopt measures on the fixing and allocation of fishing opportunities, including certain conditions functionally linked thereto, as appropriate. Fishing opportunities should be distributed among Member States in such a way as to assure each Member State relative stability of fishing activities for each stock or fishery and having due regard to the objectives of the common fisheries policy established by Regulation (EU) No 1380/2013.

(4) The fishing opportunities for deep-sea species as defined in point (a) of Article 2 of Council Regulation (EC) No 2347/2002 ([2]) are decided on a biennial basis.

(5) The total allowable catches ('TACs') should be established on the basis of available scientific advice, taking into account biological and socioeconomic aspects whilst ensuring fair treatment between fishing sectors, as well as in the light of the opinions expressed during the consultation of stakeholders, and in particular the advisory councils concerned.

(6) Fishing opportunities should be in accordance with international agreements and principles, such as the 1995 United Nations agreement concerning the conservation and management of straddling stocks and highly migratory fish stocks ([3]), and the detailed management principles laid down in the 2008 International Guidelines

([1]) Regulation (EU) No 1380/2013 of 11 December 2013 of the European Parliament and of the Council on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

([2]) Council Regulation (EC) No 2347/2002 of 16 December 2002 establishing specific access requirements and associated conditions applicable to fishing for deep-sea stocks (OJ L 351, 28.12.2002, p. 6).

([3]) Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (OJ L 189, 3.7.1998, p. 16).

for the Management of Deep-sea Fisheries in the High Seas of the Food and Agriculture Organization of the United Nations, according to which, in particular, a regulator should be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information should not be used as a reason for postponing or failing to take conservation and management measures.

(7) The latest scientific advice from the International Council for the Exploration of the Sea (ICES) and from STECF indicates that most deep-sea stocks are still harvested unsustainably and that fishing opportunities for those stocks, in order to assure their sustainability, should be further reduced until the evolution of the stocks shows a positive trend.

(8) In view of the ICES advice, it is appropriate for the TAC for red seabream in the North-Western waters to be made a by-catch-only TAC.

(9) Significant catches of red seabream are taken from the relevant Fishery Committee for the Eastern Central Atlantic (CECAF) and General Fisheries Commission for the Mediterranean (GFCM) areas, which border on ICES subarea IX. Given that ICES data for those adjacent areas are incomplete, the scope of the TAC should remain limited to ICES subarea IX. Nevertheless, with a view to preparing future management decisions, provisions should be made for data reporting for those adjacent areas.

(10) ICES advises that there should be no catches of orange roughy until 2020. In the past, TACs have been established for orange roughy (those TACs have been set at zero since 2010). It is appropriate for the fishing, retaining on board, transhipping and landing of that species to be prohibited, as the stock is depleted and is not recovering. ICES notes that there have been no directed Union fisheries for orange roughy in the North-East Atlantic since 2010.

(11) According to the advice provided by ICES, limited on-board observations show that the percentage of roughhead grenadier has been less than 1 % of the reported catches of roundnose grenadier. On the basis of those considerations, ICES advises that there should be no directed fisheries for roughhead grenadier and that by-catches should be counted against the TAC for roundnose grenadier in order to minimise the potential for species misreporting. ICES indicates that there are considerable differences, of more than an order of magnitude (more than ten times), between the relative proportions of roundnose and roughhead grenadier reported in the official landings and the observed catches and scientific surveys in the areas where the fishery for roughhead grenadier currently occurs. There is very limited data available for this species, and some of the reported landing data are considered by ICES to be species misreporting. As a consequence, it is not possible to establish an accurate historical record of catches of roughhead grenadier. Therefore, any by-catches for roughhead grenadier should be limited to 1 % of each Member State's quota of roundnose grenadier and counted against that quota, in line with the scientific advice.

(12) ICES advises that directed catches of deep-sea sharks should be set at zero. However, ICES also indicates that the currently applicable restrictive catch limits lead to misreporting of unavoidable by-catches of deep-sea sharks. In particular, directed artisanal deep-sea fisheries for black scabbardfish that use longlines have unavoidable by-catches of deep-sea sharks, which are currently discarded dead. In view of those facts, and in order to collect scientific information on deep-sea sharks, a restrictive by-catch allowance for 2017 and 2018 should be introduced on a trial basis by permitting limited landings of unavoidable by-catches of deep-sea sharks in directed artisanal deep-sea fisheries for black scabbardfish that use longlines. Longlines are recognised as a selective fishing gear in such fisheries. Member States concerned should develop regional management measures for the fishing of black scabbardfish and establish specific data-collection measures for deep-sea sharks to ensure close monitoring of the stocks. Fixing a Union by-catch allowance for deep-sea sharks in Union and international waters of ICES subareas V, VI, VII, VIII and IX, in Union and international waters of ICES subarea X and in Union waters of CECAF 34.1.1, 34.1.2 and 34.2 is without prejudice to the principle of relative stability as regards deep-sea sharks in those areas.

(13) In accordance with Council Regulation (EC) No 847/96 [1], the stocks that are subject to various measures referred to therein should be identified. Precautionary TACs should apply for stocks for which no scientifically-based evaluation of fishing opportunities is available specifically for the year in which the TACs are to be set; analytical TACs should apply otherwise. In view of ICES and STECF advice for deep-sea stocks, those for which a science-based evaluation of the relevant fishing opportunities is not available should be subject to precautionary TACs.

[1] Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas (OJ L 115, 9.5.1996, p. 3).

(14) In accordance with Article 3(1) of Regulation (EC) No 847/96, on 15 September 2016 Portugal submitted a request addressed to the Commission to increase the 2016 anchovy TAC in ICES subareas IX and X and in Union waters of CECAF 34.1.1 to 15 000 tonnes. In its advice of 21 October 2016 ICES confirmed the exceptionally good state of that anchovy stock and the fact that catches of 15 000 tonnes in 2016 may be considered sustainable. Council Regulation (EU) 2016/72 ([1]) should therefore be amended accordingly.

(15) The fishing opportunities for anchovy in ICES subareas IX and X and in Union waters of CECAF 34.1.1 provided for in Regulation (EU) 2016/72 apply from 1 January 2016. The amending provisions set out in this Regulation should also apply from that date. Such retroactive application does not prejudice the principles of legal certainty and protection of legitimate expectations as the fishing opportunities concerned are increased compared to the opportunities established in Regulation (EU) 2016/72.

(16) In order to avoid the interruption of fishing activities and to ensure the livelihood of the fishermen of the Union, this Regulation should apply from 1 January 2017. For reasons of urgency, this Regulation should enter into force immediately after its publication,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation fixes for the years 2017 and 2018 the annual fishing opportunities available to Union fishing vessels for fish stocks of certain deep-sea species in Union waters and in certain non-Union waters where catch limits are required.

Article 2

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

(a) 'Union fishing vessel' means a fishing vessel flying the flag of a Member State and registered in the Union;

(b) 'Union waters' means the waters under the sovereignty or jurisdiction of the Member States, with the exception of waters adjacent to the territories listed in Annex II to the Treaty;

(c) 'total allowable catch' (TAC) means the quantity that can be taken and landed from each fish stock each year;

(d) 'quota' means a proportion of the TAC allocated to the Union or a Member State;

(e) 'international waters' means waters falling outside the sovereignty or jurisdiction of any State.

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

(a) ICES (International Council for the Exploration of the Sea) zones are the geographical areas specified in Annex III to Regulation (EC) No 218/2009 of the European Parliament and of the Council ([2]);

(b) CECAF (Committee for Eastern Central Atlantic Fisheries) zones are the geographical areas specified in Annex II to Regulation (EC) No 216/2009 of the European Parliament and of the Council ([3]).

([1]) Council Regulation (EU) 2016/72 of 22 January 2016 fixing for 2016 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, and amending Regulation (EU) 2015/104 (OJ L 22, 28.1.2016, p. 1).

([2]) Regulation (EC) No 218/2009 of the European Parliament and of the Council of 11 March 2009 on the submission of nominal catch statistics by Member States fishing in the north-east Atlantic (OJ L 87, 31.3.2009, p. 70).

([3]) Regulation (EC) No 216/2009 of the European Parliament and of the Council of 11 March 2009 on the submission of nominal catch statistics by Member States fishing in certain areas other than those of the North Atlantic (OJ L 87, 31.3.2009, p. 1).

Article 3

TACs and allocations

The TACs for deep-sea species caught by Union fishing vessels in Union waters or in certain non-Union waters, the allocation of such TACs among Member States and the conditions functionally linked thereto, where appropriate, are set out in the Annex.

Article 4

Special provisions on the allocation of fishing opportunities

1. The allocation of fishing opportunities among Member States as set out in this Regulation shall be without prejudice to:

(a) exchanges made pursuant to Article 16(8) of Regulation (EU) No 1380/2013;

(b) deductions and reallocations made pursuant to Article 37 of Council Regulation (EC) No 1224/2009 ([1]);

(c) reallocations made pursuant to Article 10(4) of Council Regulation (EC) No 1006/2008 ([2]);

(d) additional landings allowed pursuant to Article 3 of Regulation (EC) No 847/96;

(e) quantities withheld in accordance with Article 4 of Regulation (EC) No 847/96;

(f) deductions made pursuant to Articles 105 and 107 of Regulation (EC) No 1224/2009.

2. Article 3 of Regulation (EC) No 847/96 shall apply to stocks subject to precautionary TAC whereas Article 3(2) and (3) and Article 4 of that Regulation shall apply to stocks subject to analytical TAC, except where otherwise specified in the Annex to this Regulation.

Article 5

Conditions for landing catches and by-catches

Fish from stocks for which TACs are established shall be retained on board or landed only if the catches have been taken by fishing vessels flying the flag of a Member State having a quota and that quota is not exhausted.

Article 6

Prohibition

It shall be prohibited for Union fishing vessels to fish for orange roughy (*Hoplostethus atlanticus*) in Union and international waters of ICES subareas I, II, III, IV, V, VI; VII; VIII, IX, X, XII and XIV, and to retain on board, to tranship or to land orange roughy caught in that area.

([1]) Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

([2]) Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, amending Regulations (EEC) No 2847/93 and (EC) No 1627/94 and repealing Regulation (EC) No 3317/94 (OJ L 286, 29.10.2008, p. 33).

Article 7

Data transmission

When, pursuant to Articles 33 and 34 of Regulation (EC) No 1224/2009, Member States submit to the Commission data relating to landings of quantities of stocks caught, they shall use the stock codes set out in the Annex to this Regulation.

Article 8

Amendment to Regulation (EU) 2016/72

In Annex IA to Regulation (EU) 2016/72, the entry in the table for anchovy in ICES subareas IX, X and in Union waters of CECAF 34.1.1 (ANE/9/3411) is replaced by the following:

Species:	Anchovy *Engraulis encrasicolus*	**Zone:**	IX and X; Union waters of CECAF 34.1.1 (ANE/9/3411)
Spain	7 174		
Portugal	7 826		
Union	15 000		
TAC	15 000		Precautionary TAC

Article 9

Entry into force

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

It shall apply from 1 January 2017. However, Article 8 shall apply from 1 January 2016.

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

Done at Brussels, 12 December 2016.

For the Council
The President
G. MATEČNÁ

ANNEX

The references to fishing zones are references to ICES zones, unless otherwise specified.

PART 1

Definition of species and species groups

1. In the list set out in Part 2 of this Annex, fish stocks are referred to according to the alphabetical order of the Latin names of the species. However, deep-sea sharks are placed at the beginning of that list. For the purposes of this Regulation, the following comparative table of common names and Latin names is provided:

Common name	Alpha-3 code	Scientific name
Black scabbardfish	BSF	*Aphanopus carbo*
Alfonsinos	ALF	*Beryx* spp.
Roundnose grenadier	RNG	*Coryphaenoides rupestris*
Roughhead grenadier	RHG	*Macrourus berglax*
Red seabream	SBR	*Pagellus bogaraveo*
Greater forkbeard	GFB	*Phycis blennoides*

2. For the purposes of this Regulation, 'deep-sea sharks' means the following list of species:

Common name	Alpha-3 code	Scientific name
Deep-water catsharks	API	*Apristurus* spp.
Frilled shark	HXC	*Chlamydoselachus anguineus*
Gulper shark	CWO	*Centrophorus* spp.
Portuguese dogfish	CYO	*Centroscymnus coelolepis*
Longnose velvet dogfish	CYP	*Centroscymnus crepidater*
Black dogfish	CFB	*Centroscyllium fabricii*
Birdbeak dogfish	DCA	*Deania calcea*
Kitefin shark	SCK	*Dalatias licha*
Great lanternshark	ETR	*Etmopterus princeps*
Velvet belly	ETX	*Etmopterus spinax*
Mouse catshark	GAM	*Galeus murinus*
Bluntnose sixgill shark	SBL	*Hexanchus griseus*
Sailfin roughshark (Sharpback shark)	OXN	*Oxynotus paradoxus*
Knifetooth dogfish	SYR	*Scymnodon ringens*
Greenland shark	GSK	*Somniosus microcephalus*

PART 2

Annual fishing opportunities (in tonnes live weight)

Species:	Deep-sea sharks		**Zone:**	Union and international waters of V, VI, VII, VIII and IX (DWS/56789-)
Year	2017	2018		
Union	10 (1)	10 (1)		
TAC	10 (1)	10 (1)		Precautionary TAC Article 3 of Regulation (EC) No 847/96 shall not apply

(1) Exclusively for by-catches in longline fishery targeting black scabbardfish. No directed fishery shall be permitted.

Species:	Deep-sea sharks		**Zone:**	Union and international waters of X (DWS/10-)
Year	2017	2018		
Portugal	10 (1)	10 (1)		
Union	10 (1)	10 (1)		
TAC	10 (1)	10 (1)		Precautionary TAC Article 3 of Regulation (EC) No 847/96 shall not apply

(1) Exclusively for by-catches in longline fishery targeting black scabbardfish. No directed fishery shall be permitted.

Species:	Deep-sea sharks, *Deania hystricosa* and *Deania profundorum*		**Zone:**	International waters of XII (DWS/12INT-)
Year	2017	2018		
Ireland	0	0		
Spain	0	0		
France	0	0		
United Kingdom	0	0		
Union	0	0		
TAC	0	0		Precautionary TAC Article 3 of Regulation (EC) No 847/96 shall not apply

Species:	Deep-sea sharks	**Zone:**	Union waters of CECAF 34.1.1, 34.1.2 and 34.2 (DWS/F3412C)

Year	2017	2018	
Union	10 (1)	10 (1)	
TAC	10 (1)	10 (1)	Precautionary TAC Article 3 of Regulation (EC) No 847/96 shall not apply

(1) Exclusively for by-catches in longline fishery targeting black scabbardfish. No directed fishery shall be permitted.

Species:	Black scabbardfish *Aphanopus carbo*	**Zone:**	Union and international waters of I, II, III and IV (BSF/1234-)

Year	2017	2018	
Germany	3	3	
France	3	3	
United Kingdom	3	3	
Union	9	9	
TAC	9	9	Precautionary TAC

Species:	Black scabbardfish *Aphanopus carbo*	**Zone:**	Union and international waters of V, VI, VII and XII (BSF/56712-)

Year	2017	2018	
Germany	34	30	
Estonia	17	15	
Ireland	84	74	
Spain	168	148	
France	2 362	2 078	
Latvia	110	97	
Lithuania	1	1	
Poland	1	1	
United Kingdom	168	148	
Others	9 (1)	8 (1)	
Union	2 954	2 600	
TAC	2 954	2 600	Analytical TAC

(1) Exclusively for by-catches. No directed fisheries are permitted under this quota.

Species:	Black scabbardfish *Aphanopus carbo*		**Zone:**	Union and international waters of VIII, IX and X (BSF/8910-)
Year	2017	2018		
Spain	10	9		
France	26	23		
Portugal	3 294	2 965		
Union	3 330	2 997		
TAC	3 330	2 997		Analytical TAC

Species:	Black scabbardfish *Aphanopus carbo*		**Zone:**	Union and international waters of CECAF 34.1.2 (BSF/C3412-)
Year	2017	2018		
Portugal	2 488	2 189		
Union	2 488	2 189		
TAC	2 488	2 189		Precautionary TAC

Species:	Alfonsinos *Beryx* spp.		**Zone:**	Union and international waters of III, IV, V, VI, VII, VIII, IX, X, XII and XIV (ALF/3X14-)
Year	2017	2018		
Ireland	9	9		
Spain	63	63		
France	17	17		
Portugal	182	182		
United Kingdom	9	9		
Union	280	280		
TAC	280	280		Analytical TAC

Species:	Roundnose grenadier *Coryphaenoides rupestris*	**Zone:**	Union and international waters of I, II and IV (RNG/124-)

Year	2017	2018	
Denmark	1 (1)	1 (1)	
Germany	1 (1)	1 (1)	
France	7 (1)	7 (1)	
United Kingdom	1 (1)	1 (1)	
Union	10 (1)	10 (1)	
TAC	10 (1)	10 (1)	Precautionary TAC

(1) No directed fisheries of roughhead grenadier are permitted. By-catches of roughhead grenadier (RHG/124-) shall be counted against this quota. They may not exceed 1 % of the quota.

Species:	Roundnose grenadier *Coryphaenoides rupestris*	**Zone:**	Union and international waters of III (RNG/03-)

Year	2017	2018	
Denmark	263 (1) (2)	211 (1) (2)	
Germany	1 (1) (2)	1 (1) (2)	
Sweden	14 (1) (2)	11 (1) (2)	
Union	278 (1) (2)	223 (1) (2)	
TAC	278 (1) (2)	223 (1) (2)	Precautionary TAC

(1) No directed fishery for roundnose grenadier shall be conducted in ICES zone IIIa.

(2) No directed fisheries of roughhead grenadier are permitted. By-catches of roughhead grenadier (RHG/03-) shall be counted against this quota. They may not exceed 1 % of the quota.

Species:	Roundnose grenadier *Coryphaenoides rupestris*	**Zone:**	Union and international waters of Vb, VI and VII (RNG/5B67-)

Year	2017	2018	
Germany	6 (1) (2)	6 (1) (2)	
Estonia	45 (1) (2)	46 (1) (2)	
Ireland	198 (1) (2)	203 (1) (2)	
Spain	49 (1) (2)	50 (1) (2)	
France	2 513 (1) (2)	2 569 (1) (2)	
Lithuania	58 (1) (2)	59 (1) (2)	
Poland	29 (1) (2)	30 (1) (2)	
United Kingdom	148 (1) (2)	151 (1) (2)	
Others	6 (1) (2) (3)	6 (1) (2) (3)	
Union	3 052 (1) (2)	3 120 (1) (2)	
TAC	3 052 (1) (2)	3 120 (1) (2)	Analytical TAC

(1) A maximum of 10 % of each quota may be fished in Union and international waters of VIII, IX, X, XII and XIV (RNG/*8X14- for roundnose grenadier; RHG/*8X14- for roughhead grenadier by-catches)).
(2) No directed fisheries of roughhead grenadier are permitted. By-catches of roughhead grenadier (RHG/5B67-) shall be counted against this quota. They may not exceed 1 % of the quota.
(3) Exclusively for by-catches. No directed fisheries are permitted.

Species:	Roundnose grenadier *Coryphaenoides rupestris*	**Zone:**	Union and international waters of VIII, IX, X, XII and XIV (RNG/8X14-)

Year	2017	2018	
Germany	17 (1) (2)	14 (1) (2)	
Ireland	4 (1) (2)	3 (1) (2)	
Spain	1 883 (1) (2)	1 508 (1) (2)	
France	87 (1) (2)	69 (1) (2)	
Latvia	30 (1) (2)	24 (1) (2)	
Lithuania	4 (1) (2)	3 (1) (2)	
Poland	590 (1) (2)	472 (1) (2)	
United Kingdom	8 (1) (2)	6 (1) (2)	
Union	2 623 (1) (2)	2 099 (1) (2)	
TAC	2 623 (1) (2)	2 099 (1) (2)	Analytical TAC

(1) A maximum of 10 % of each quota may be fished in Union and international waters of Vb, VI, VII (RNG/*5B67- for roundnose grenadier; RHG/*5B67- for roughhead grenadier by-catches).
(2) No directed fisheries of roughhead grenadier are permitted. By-catches of roughhead grenadier (RHG/8X14-) shall be counted against this quota. They may not exceed 1 % of the quota.

Species:	Red seabream *Pagellus bogaraveo*	**Zone:**	Union and international waters of VI, VII and VIII (SBR/678-)

Year	2017	2018	
Ireland	4 (1)	4 (1)	
Spain	116 (1)	104 (1)	
France	6 (1)	5 (1)	
United Kingdom	14 (1)	13 (1)	
Others	4 (1)	4 (1)	
Union	144 (1)	130 (1)	
TAC	144 (1)	130 (1)	Analytical TAC

(1) Exclusively for by-catches. No directed fisheries are permitted under this quota.

Species:	Red seabream *Pagellus bogaraveo*	**Zone:**	Union and international waters of IX (1) (SBR/09-)

Year	2017	2018	
Spain	137 (2)	130 (2)	
Portugal	37 (2)	35 (2)	
Union	174 (2)	165 (2)	
TAC	174 (2)	165 (2)	Analytical TAC

(1) Catches in the GFCM area 37.1.1 shall nevertheless be reported (SBR/F3711). Catches in the CECAF area 34.1.11 shall nevertheless be reported (SBR/F34111).

(2) A maximum of 8 % of this quota may be fished in Union and international waters of VI, VII and VIII (SBR/*678-).

Species:	Red seabream *Pagellus bogaraveo*	**Zone:**	Union and international waters of X (SBR/10-)

Year	2017	2018	
Spain	5	5	
Portugal	507	507	
United Kingdom	5	5	
Union	517	517	
TAC	517	517	Analytical TAC

Species:	Greater forkbeard *Phycis blennoides*		**Zone:**	Union and international waters of I, II, III and IV (GFB/1234-)
Year	2017	2018		
Germany	9	8		
France	9	8		
United Kingdom	15	13		
Union	33	29		
TAC	33	29		Analytical TAC

Species:	Greater forkbeard *Phycis blennoides*		**Zone:**	Union and international waters of V, VI and VII (GFB/567-)
Year	2017	2018		
Germany	11 (1)	10 (1)		
Ireland	278 (1)	247 (1)		
Spain	628 (1)	559 (1)		
France	380 (1)	338 (1)		
United Kingdom	869 (1)	774 (1)		
Union	2 166 (1)	1 928 (1)		
TAC	2 166 (1)	1 928 (1)		Analytical TAC

(1) A maximum of 8 % of this quota may be fished in Union and international waters of VIII and IX (GFB/*89-).

Species:	Greater forkbeard *Phycis blennoides*		**Zone:**	Union and international waters of VIII and IX (GFB/89-)
Year	2017	2018		
Spain	258 (1)	230 (1)		
France	16 (1)	14 (1)		
Portugal	11 (1)	10 (1)		
Union	285 (1)	254 (1)		
TAC	285 (1)	254 (1)		Analytical TAC

(1) A maximum of 8 % of this quota may be fished in Union and international waters of V, VI, VII (GFB/*567-).

Species:	Greater forkbeard *Phycis blennoides*		**Zone:**	Union and international waters of X and XII (GFB/1012-)
Year	2017	2018		
France	9	8		
Portugal	40	36		
United Kingdom	9	8		
Union	58	52		
TAC	58	52		Analytical TAC

COMMISSION IMPLEMENTING REGULATION (EU) 2016/2286

of 15 December 2016

laying down detailed rules on the application of fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union ([1]), and in particular Article 6d(1) thereof,

After consulting the Body of European Regulators for Electronic Communications (BEREC),

Whereas:

(1) Pursuant to Regulation (EU) No 531/2012, roaming providers should not levy any surcharge additional to the domestic retail price on roaming customers in any Member State, for any regulated roaming call made or received, any regulated roaming SMS message sent or any regulated data roaming service used, including MMS messages, subject to a 'fair use policy'. This provision applies from 15 June 2017, provided that the legislative act to be adopted further to the proposal on the wholesale roaming market referred to in Article 19(2) of that Regulation has become applicable by that date.

(2) Regulation (EU) No 531/2012 provides that in specific and exceptional circumstances a roaming provider may apply to its national regulatory authority for an authorisation to apply a surcharge on its roaming customers. Any such request for authorisation is to be accompanied by all the information necessary to demonstrate that, in the absence of any retail roaming surcharges, the provider is unable to recover its costs of providing regulated retail roaming services, so that the sustainability of its domestic charging model is undermined.

(3) In order to ensure a consistent application across the Union of any policy which aims at preventing abusive or anomalous usage of roaming services ('fair use policy') and of authorisations to apply a surcharge, it is necessary to lay down detailed rules on the application of such fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment.

(4) According to Regulation (EU) No 531/2012, the objective of a fair use policy is to prevent abusive or anomalous usage by roaming customers of regulated retail roaming services at the applicable domestic price, such as the use of such services for purposes other than periodic travel, for instance the use of such services on a permanent basis. The implementing measures should ensure that the possibility to apply a roaming fair use policy to pursue this objective is not exploited by roaming providers for other purposes, to the detriment of roaming customers engaged in any form of periodic travel.

(5) With the abolition of retail roaming surcharges in the Union, the same tariff conditions apply for the use of mobile services while roaming abroad in the Union and at home (i.e. in the country of the mobile subscription of the customer). Regulation (EU) No 531/2012 aims at eliminating divergences between domestic prices and those

([1]) OJ L 172, 30.6.2012, p. 10.

applied to roaming when periodically travelling within the Union, leading to the realisation of 'roaming like at home'. However, its rules are not meant to enable permanent roaming across the Union, i.e. the situation where a customer in a Member State where domestic mobile prices are higher buys services from operators established in Member States where domestic mobile prices are lower, and in which the customer is neither normally resident nor has any other stable links entailing frequent and substantial presence on its territory, with a view to roam permanently in the former Member State.

(6) Use of regulated retail roaming services at the applicable domestic price on a permanent basis for purposes other than periodic travel would be likely to distort competition, put upward pressure on domestic prices in home markets and put at risk investment incentives in both home and visited markets. On the visited market, visited operators would have to compete directly with domestic service providers of other Member States, where prices, costs, regulatory and competitive conditions may be very different, and on the basis of wholesale roaming conditions set close to cost for the sole purpose of facilitating periodic roaming. For the home operator the permanent use of domestic tariffs while roaming may lead to the denial or restriction of wholesale roaming services by visited operators, or the provision by the home operator of restricted domestic volumes or the application of higher domestic prices, with consequential effects on the home operator's ability to serve its normal domestic clients both at home and abroad.

(7) It is necessary to lay down implementing rules based on clear and generally applicable principles capable of encompassing the many and varied patterns of periodic travel by roaming customers, in order to ensure that fair use policy does not act as a barrier to full enjoyment of 'roam-like-at-home' by such customers. For the purpose of a fair use policy to be applied by a roaming provider, a customer should ordinarily be considered to be periodically travelling abroad in the Union when that customer is normally residing in the Member State of the roaming provider or has stable links with that Member State entailing frequent and substantial presence on its territory, and consumes regulated retail roaming services in any other Member State.

(8) Regulation (EU) No 531/2012 provides that any fair use policy has to enable the roaming provider's customers to consume volumes of regulated retail roaming services at the applicable domestic retail price that are consistent with their respective domestic tariff plans.

(9) This Regulation should be without prejudice to the possibility for roaming providers to offer, and for roaming customers to deliberately choose, an alternative roaming tariff in accordance with Article 6e(3) of Regulation (EU) No 531/2012, which could include contractual usage conditions falling outside a fair use policy established in accordance with this Regulation.

(10) In order to ensure that retail roaming services are not subjected to abusive or anomalous usage unrelated to periodic travel outside the Member State of residence of the customer or with which the customer has stable links entailing frequent and substantial presence on its territory, roaming providers may need to determine the normal place of residence of their roaming customers or the existence of such stable links. Having regard to the forms of proof which are customary in the respective Member States and to the perceived level of risk of abusive or anomalous usage, the roaming provider should be able to specify the reasonable evidence of the place of residence to be provided, under the supervision of the national regulatory authority as to the proportionality of the overall documentary burden and its appropriateness in the national context. Such evidence, as regards individual users, could include a declaration by the customer, presentation of a valid document confirming the customer's Member State of residence, specification of the postal address or the billing address of the customer for other services provided in the Member State of the roaming provider, a declaration by a third-level educational institution of enrolment for full-time courses, proof of registration on local electoral rolls or of payment of local/poll taxes. In the case of business customers, such evidence could include documentation on the place of incorporation or of establishment of the corporate entity, the place of effective performance of its main economic activity, or the principal place where employees identified as using a given SIM card perform their tasks. Stable links with a Member State entailing frequent and substantial presence on its territory can arise from a full-time and durable employment relationship, including that of frontier workers; durable contractual relations entailing a similar degree of physical presence of a self-employed person, participation in full-time recurring courses of study; or from other situations, such as those of posted workers or retired persons, whenever they involve an analogous level of territorial presence.

(11) Roaming providers should limit requests for the submission of evidence of normal residence or other stable links entailing frequent and substantial presence on its territory after the conclusion of a given contract strictly to circumstances in which data that have to be collected for billing purposes appear to provide indications of abusive or anomalous usage unrelated to periodic travel. The evidence requested should only comprise what is strictly necessary and proportionate to confirm the customer's attachment to the Member State of the roaming provider. No documentation requirements should be imposed on customers for asserting compliance with the conditions for fair use policy absent such grounds. In particular, there should be no requirement for recurrent submission of such documentation unrelated to a risk-based assessment of the probability of abusive or anomalous usage.

(12) In order to enable customers to consume volumes of regulated retail roaming services at the applicable domestic retail price that are consistent with their respective domestic tariff plans, the roaming provider should as a general rule not impose a limit on the volumes of mobile services available to the roaming customer other than the domestic limit, when that customer is periodically travelling in the Union. Such domestic limits should include any applicable fair use policy as regards domestic usage of the tariff plan.

(13) Under certain domestic tariff plans, described hereafter as open data bundles, the data consumption may be unlimited or may provide data volumes at a low implicit domestic unit price relative to the regulated maximum wholesale roaming charge referred to in Article 12 of Regulation (EU) No 531/2012. In the absence of any exceptional volume safeguard specific to such open data bundles, such tariff plans are more likely than other tariff plans to be subject to organised resale to persons not residing in or having stable links entailing frequent and substantial presence in the Member State of the roaming provider. Moreover, such anomalous or abusive use of open data bundles while roaming may lead to the disappearance of such tariff plans in domestic markets, or to the restriction of roaming with such tariff plans, to the detriment of domestic users, and contrary to the objective of Regulation (EU) No 531/2012. This risk is considerably less acute for voice calls and SMS services as such services are subject to greater physical or temporal constraints, and actual usage patterns have been stable or declining over the last years. This is without prejudice to the right of operators to take measures to tackle highly atypical use patterns of voice or SMS roaming services arising from fraudulent activities. While it is necessary to provide for additional safeguards against such increased risks of abusive usage of regulated retail roaming data services at the applicable domestic retail price under open data bundles, the domestic customer periodically travelling in the Union should nevertheless be able to consume retail volumes of such services equivalent to twice the volumes that can be bought at the wholesale roaming data cap by a monetary amount equal to the overall retail domestic price, excluding VAT, of the mobile services component of the domestic tariff plan for the entire billing period in question. This represents a volume that is consistent with that domestic tariff plan, as it adapts to the domestic retail price of the tariff plan in question, and may therefore be applied in the case of open data bundles, including when bundled with other mobile retail services. The application of a multiplier of two adequately reflects the fact that operators often negotiate wholesale data roaming prices below the applicable caps, and that customers often do not consume the entire data allowance provided under their tariff plan. In this regard, customer transparency will be assured through compliance with the provisions of Regulation (EU) No 531/2012, according to which the roaming provider shall send a notification to the roaming customer when the applicable fair use volume of regulated data roaming services is fully consumed, indicating the surcharge that will be applied to any additional consumption of regulated roaming data services by the roaming customer.

(14) In order to address the risk that pre-paid subscriptions, which do not entail a long-term commitment, are used for permanent roaming purposes only, the roaming provider should be entitled, in the alternative to requiring the provision of evidence of residence or of stable links entailing frequent and substantial presence on the territory of the Member State of that roaming provider to limit the usage of regulated retail roaming data services at the applicable domestic retail price with a pre-paid subscription to the volumes that can be bought at the wholesale roaming data cap by the remaining monetary amount, excluding VAT, available on that pre-paid subscription at the time of the roaming consumption.

(15) The roaming provider should be able to take measures to detect and prevent abusive or anomalous usage of regulated retail roaming services at domestic prices, for purposes other than periodic travel. At the same time, roaming customers should be protected from any measure that may impinge in any manner on their ability to use regulated retail roaming services at domestic prices while periodically travelling abroad in the Union.

Measures to detect and prevent abusive or anomalous usage of regulated retail roaming services at domestic prices should be simple and transparent, and should minimise administrative burden for roaming customers as well as excessive and unnecessary alerts. In line with the requirement of residence or stable links entailing frequent and substantial presence in the country of the roaming provider, the indicators substantiating the likelihood of abusive or anomalous usage should be based on objective indicators linked to traffic patterns showing the lack of prevailing domestic presence of the customer in the country of the roaming provider or of prevailing domestic use of the mobile domestic services. By definition, such objective indicators need to be established over a certain period of time. Such a period of time should be sufficiently long, at least 4 months, to enable roaming customers to consume retail roaming services at domestic prices while engaging in foreseeable forms of periodic travel in the Union. Indicators of presence in the country of the roaming provider should not be negatively affected by inadvertent roaming in border regions. In this regard, the situation of both inadvertent roamers and of frontier workers should be taken into account by considering that a log-on to the roaming provider's network at any point in a given day indicates a day of domestic presence for the purposes of applying the objective indicators. In line with Regulation (EU) No 531/2012, roaming providers should also provide adequate information in order to empower their customers to actively prevent instances of inadvertent roaming. Presence and consumption outside the Union should not negatively affect the ability of the roaming customer to benefit from roam-like-at-home in the Union, as they cannot be considered as indicators of risk that the customer is availing of roaming at the applicable domestic retail price in the Member State of the roaming provider for purposes other than periodic travel in the Union. In this regard, such presence and consumption should be counted as domestic for the purposes of applying the objective indicators. The roaming provider may also rely on other clear evidence of abusive or anomalous usage of regulated retail roaming services at domestic prices such as a subscription being hardly used in the Member State of the roaming provider but mostly while roaming, or several subscriptions being used by the same customer in sequence while roaming.

(16) In accordance with the provisions of Regulation (EU) No 531/2012 safeguarding transparency in the use of roaming services and in line with the rules on contracts in the electronic communications sector, contractual clauses providing for a fair use policy should be clearly communicated to customers before they become applicable. Fair use policies applied by a roaming provider in accordance with this Regulation should be notified by the roaming provider to the national regulatory authority.

(17) Processing of traffic and location data is subject to the provisions of Directive 2002/58/EC of the European Parliament and of the Council ([1]). In particular, Article 6 enables the roaming provider to process traffic data necessary for the purposes of subscriber billing or interconnection payments. The application of measures by the roaming provider to detect and prevent abusive or anomalous usage of regulated retail roaming services at domestic prices should not lead to the storage and automated processing of personally identifiable customer data, including location and traffic data, that is unrelated or disproportionate to the purpose of detecting and preventing abusive or anomalous usage.

(18) In particular, the roaming provider should be able to detect and prevent that, in violation of contract conditions at wholesale or retail level, third parties exploit the 'roam-like-at-home traffic' for price arbitrage in order to gain an economic advantage through sales to customers which do not normally reside or have other stable links with the Member State of the roaming provider. Where the operator establishes, with objective and substantiated evidence, such a systematic abusive activity, the operator should notify to the national regulatory authority the evidence characterising the systematic abuse and the measures taken to ensure compliance with all conditions of the underlying contract no later than when the measure is taken.

(19) In specific cases, where the operator has substantiated evidence of a given roaming customer's usage patterns showing a likelihood of abusive or anomalous consumption of regulated retail roaming services at domestic price levels for purposes other than periodic travelling, despite the documentary evidence of residence or other stable links provided by that customer, it should first alert the customer to the risk of triggering roaming surcharges. The objective criteria which would serve as indicators substantiating the likelihood of abusive or anomalous usage should be spelled out in detail in advance in the contract.

([1]) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

(20) The possibility for the roaming provider to apply surcharges is without prejudice to any proportionate measures that can be taken, in accordance with national law in compliance with Union law, in case the customer has actively provided inaccurate information, in order to ensure compliance with all conditions of the underlying contract.

(21) Roaming providers which apply a fair use policy should put in place transparent, simple and efficient procedures to address complaints of customers relating to the application of that policy. Pursuant to Article 17(2) of Regulation (EU) No 531/2012, roaming customers should in any event have access to the competent out-of-court dispute resolution body, which shall settle fairly and promptly unresolved disputes between customers and roaming providers arising from the application of fair use policy in accordance with Article 34 of Directive 2002/22/EC of the European Parliament and of the Council ([1]), as amended by Directive 2009/136/EC of the European Parliament and of the Council ([2]).

(22) In accordance with Regulation (EU) No 531/2012, the national regulatory authorities have to strictly monitor and supervise the application of the fair use policy in order to ensure that any fair use policy applied by domestic providers does not impair the availability of 'roam-like-at-home' for the customer. If the national regulatory authority finds that a breach of the obligations set out in the Roaming Regulation has occurred, the national authority has the power to require the immediate cessation of such a breach.

(23) This Regulation should be without prejudice to existing rights and obligations under Union law, or under national law in compliance with Union law. This includes in particular the right of end users to avail themselves of mobile electronic communications networks and services in any Member State irrespective of their nationality or place of residence in the Union; any national rules requiring proof of identity or other documentary evidence in order to acquire a SIM card or otherwise subscribe to such networks or services; any national measures regarding continuity of service or of pre-paid credit with a given number or SIM card; and the right of providers of electronic communications services to apply adequate measures in compliance with national law in order to combat fraud.

(24) As roaming usage patterns vary over the course of a year, applications for authorisation to apply a roaming surcharge filed by a roaming provider pursuant to Article 6c(2) of Regulation (EU) No 531/2012 in order to ensure the sustainability of its domestic charging model should be assessed on the basis of traffic data covering at least 12 months. In order to calculate the volume of traffic over the year, the roaming provider should be allowed to show traffic projections. These projections should be based on actual data such as actual roaming usage data, extrapolations of actual domestic usage to roaming usage, extrapolations of actual roaming usage of a significant subset of roaming customers using 'roam-like-at-home' tariff plans to all roaming customers under the 'roam-like-at-home' rules, in accordance with Article 6a of Regulation (EU) No 531/2012. When reviewing the applications for a sustainability derogation by different applicants, national regulatory authorities should ensure that the assumptions used by each of these to derive projected volumes are consistent, after taking due account of relevant differences in commercial positioning and customer bases.

(25) Any cost and revenue data supporting the application for authorisations to apply a roaming surcharge filed by a roaming provider pursuant to Article 6c(2) of Regulation (EU) No 531/2012 in order to ensure the sustainability of its domestic charging model should be based on financial accounts which may be adjusted to traffic volume projections. Deviations from cost projections based on financial accounts should be allowed only if supported by proof of financial commitments already entered into at the time of the application.

(26) A harmonised methodology should be provided for determining the costs and revenues of providing regulated retail roaming services, with a view to ensuring consistent assessment of applications for authorisation to apply a surcharge filed by a roaming provider pursuant to Article 6c(2) of Regulation (EU) No 531/2012 in order to ensure the sustainability of its domestic charging model.

([1]) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 51).

([2]) Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJ L 337, 18.12.2009, p. 11).

(27) The provision of regulated retail roaming services entails two general categories of costs: the cost of purchasing wholesale roaming access from visited networks for unbalanced traffic, and other roaming-specific costs. In accordance with Regulation (EU) No 531/2012, the cost of purchasing wholesale roaming access from visited networks for unbalanced traffic is covered by the effective wholesale roaming charges applied to the volumes by which the roaming provider's outbound roaming traffic exceeds its inbound roaming traffic. In the case of roaming providers that, domestically, purchase wholesale access from another roaming provider (such as Mobile Virtual Network Operators), the cost of wholesale roaming access for the former may be higher than for the latter, when the domestic host network operator charges the roaming provider purchasing domestic wholesale access a higher wholesale roaming access price than that secured from visited network operators for itself and/or the provision of related services. Such high wholesale roaming access cost may make roaming providers purchasing domestic wholesale access more likely to seek an authorisation to apply a roaming surcharge and national regulatory authorities should have due regard to this aspect when reviewing such applications.

(28) Other roaming-specific costs of providing regulated retail roaming services are common to the provision of roaming services within the Union and in non-EU countries and some are also common to both wholesale and retail provision of roaming services. For the purposes of an application for authorisation to apply a roaming surcharge filed by a roaming provider pursuant to Article 6c(2) of Regulation (EU) No 531/2012 in order to ensure the sustainability of its domestic charging model, those common costs should be allocated to the provision of retail roaming services within the Union and, in the case of those common to retail and wholesale provision of roaming services, in accordance with the general ratio of inbound and outbound roaming revenues.

(29) The costs of providing regulated retail roaming services could also be calculated as including a proportion of joint and common costs incurred for the provision of mobile retail services in general, provided that the calculation reflects the ratio used for the allocation to such services of revenues from the provision of all other mobile retail services.

(30) In determining the revenues from the provision of regulated retail roaming services, the application for authorisation to apply a surcharge filed by a roaming provider pursuant to Article 6c(2) of Regulation (EU) No 531/2012 in order to ensure the sustainability of its domestic charging model should take full account of all retail revenues directly billed for the provision of mobile retail services originated in a visited Member State, such as revenues for traffic in excess of volumes under any fair use policy or from alternative regulated roaming services, as well as any other per-unit charge or other payment triggered by the use of mobile retail services in a visited Member State.

(31) As regulated retail roaming services are provided under applicable domestic conditions, they should be seen as generating some of the revenue from fixed periodic charges for the provision of domestic mobile retail services. They should therefore be taken into account when assessing the application for authorisation to apply a roaming surcharge filed by a roaming provider pursuant to Article 6c(2) of Regulation (EU) No 531/2012 in order to ensure the sustainability of its domestic charging model in accordance with the methodology set out in this Regulation. For that purpose revenues from each mobile retail service should be allocated on the basis of a key reflecting the ratio between traffic of various mobile services, as weighted in accordance with the ratio between per-unit average wholesale roaming charges.

(32) To be regarded as having the effect of undermining the sustainability of the operator's domestic charging model, any roaming retail net margin resulting from the deduction of the costs of providing regulated retail roaming services from the corresponding revenues should be negative at least by an amount that generates a risk of an appreciable effect on domestic price developments. In particular, to be regarded as giving rise to such a risk, the negative roaming retail net margin should represent at least an appreciable proportion of overall earnings, before interest tax depreciation and amortisation, from the provision of other mobile services.

(33) Even where the roaming retail net margin represents an appreciable proportion of the overall margin for the provision of other mobile services, specific circumstances, such as the level of competition in the domestic market, or the specific characteristics of the applicant could still rule out a risk of an appreciable effect on domestic price developments.

(34) In its application for authorisation to apply a roaming surcharge filed by a roaming provider pursuant to Article 6c(2) of Regulation (EU) No 531/2012 in order to ensure the sustainability of its domestic charging model, the roaming provider should estimate the losses due to the provision of 'roam-like-at-home' and the corresponding arrangements for applying the surcharge needed to recoup these, having regard to applicable maximum wholesale charges.

(35) It should be possible for the national regulatory authorities to grant an authorisation to apply a roaming surcharge on the first day of application of abolition of retail roaming surcharges in the Union in accordance with in Regulation (EU) No 531/2012. For that purpose, exchanges between the roaming provider considering such an application and the national regulatory authority, as well as the provision of information and relevant documentation in this regard, may be envisaged before that date.

(36) In accordance with Regulation (EU) No 531/2012, the authorisation to apply a roaming surcharge should be granted by a national regulatory authority for a period of 12 months. In order to renew that authorisation, the roaming provider should update the information and submit it to the national regulatory authority every 12 months in line with Article 6c(2) of Regulation (EU) No 531/2012.

(37) In view of national regulatory authorities' obligations to supervise strictly the application of fair use policy and the measures on the sustainability of the abolition of retail roaming surcharges, as well as to report annually to the Commission on the application of the relevant provisions, this Regulation should specify the minimum information that they should gather and transmit to the Commission to enable it to monitor its application.

(38) Pursuant to Regulation (EU) No 531/2012, the Commission is to periodically review this implementing act in the light of market developments.

(39) The Communications Committee has not delivered an opinion.

(40) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. Accordingly, this Regulation should be interpreted and applied in accordance with those rights and principles, in particular the right to respect for private and family life, the right to protection of personal data, the freedom of expression and the freedom to conduct a business. Any processing of personal data under this Regulation should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Directive 95/46/EC of the European Parliament and of the Council [1], Directive 2002/58/EC, as amended by Directives 2006/24/EC [2] and 2009/136/EC of the European Parliament and of the Council, and Regulation (EU) 2016/679 of the European Parliament and of the Council [3]. In particular, service providers must ensure that any processing of personal data under this Regulation must be necessary and proportionate in order to achieve the relevant purpose,

HAS ADOPTED THIS REGULATION:

SECTION I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation lays down detailed rules to ensure the consistent implementation of a fair use policy that roaming providers may apply to the consumption of regulated retail roaming services provided at the applicable domestic retail price in accordance with Article 6b of Regulation (EU) No 531/2012.

[1] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

[2] Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ L 105, 13.4.2006, p. 54).

[3] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

2. It also lays down detailed rules on:

(a) roaming providers' applications for authorisation to apply a roaming surcharge filed pursuant to Article 6c(2) of Regulation (EU) No 531/2012 in order to ensure the sustainability of their domestic charging model;

(b) the methodology to be applied by national regulatory authorities in assessing whether the roaming provider has established that it is unable to recover its costs of providing regulated roaming services, with the effect that the sustainability of its domestic charging model would be undermined.

Article 2

Definitions

1. For the purposes of this Regulation, the definitions in Regulation (EU) No 531/2012 apply.

2. The following definitions also apply:

(a) 'stable links' with a Member State means presence on the territory of the Member State arising from a full-time and durable employment relationship, including that of frontier workers; from durable contractual relations entailing a similar degree of physical presence of a self-employed person; from participation in full-time recurring courses of study; or from other situations, such as those of posted workers or retired persons, whenever they involve an analogous level of territorial presence;

(b) 'mobile retail services' means public mobile communications services provided to end users, including voice, SMS and data services;

(c) 'open data bundle' means a tariff plan for the provision of one or more mobile retail services which does not limit the volume of mobile data retail services included against the payment of a fixed periodic fee, or for which the domestic unit price of mobile data retail services, derived by dividing the overall domestic retail price, excluding VAT, for mobile services corresponding to the entire billing period by the total volume of mobile data retail services available domestically, is lower than the regulated maximum wholesale roaming charge referred to in Article 12 of Regulation (EU) No 531/2012;

(d) 'pre-paid tariff plan' means a tariff plan under which mobile retail services are provided upon deduction of credit made available by the customer to the provider on a per-unit basis, in advance of consumption, and from which a customer may withdraw without penalty upon exhaustion or expiry of credit;

(e) 'visited Member State' means a Member State other than that of the roaming customer's domestic provider;

(f) 'mobile services margin' means earnings, before interest tax depreciation and amortisation, from the sale of mobile services other than retail roaming services provided within the Union, thereby excluding costs and revenues from retail roaming services;

(g) 'group' means a parent undertaking and all its subsidiary undertakings subject to its control within the meaning of Council Regulation (EC) No 139/2004 ([1]).

SECTION II

FAIR USE POLICY

Article 3

Basic principle

1. A roaming provider shall provide regulated retail roaming services at domestic price to its roaming customers who are normally resident in or have stable links entailing a frequent and substantial presence in the Member State of that roaming provider while they are periodically travelling in the Union.

([1]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

2. Any fair use policy applied by a roaming provider in order to prevent abusive or anomalous usage of regulated retail roaming services shall be subject to the conditions set out in Articles 4 and 5 and shall ensure that all such roaming customers have access to regulated retail roaming services at domestic price during such periodic travel in the Union under the same conditions as if such services were consumed domestically.

Article 4

Fair use

1. For the purposes of any fair use policy the roaming provider may request from its roaming customers to provide proof of normal residence in the Member State of the roaming provider or of other stable links with that Member State entailing a frequent and substantial presence on its territory.

2. Without prejudice to any applicable domestic volume limit, in the case of an open data bundle, the roaming customer shall be able to consume when periodically travelling in the Union a volume of data roaming retail services at the domestic retail price equivalent to at least twice the volume obtained by dividing the overall domestic retail price of that open data bundle, excluding VAT, corresponding to the entire billing period by the regulated maximum wholesale roaming charge referred to in Article 12 of Regulation (EU) No 531/2012.

In the event of bundled sale of mobile retail services with other services or terminals, the overall domestic retail price of a data bundle shall be determined, for the purposes of Article 2(2)(c) and of this paragraph, by taking into account the price applied to the separate sale of the mobile retail services component of the bundle, excluding VAT, if available, or the price for the sale of such services with the same characteristics on a stand-alone basis.

3. In the case of pre-paid tariff plans, as an alternative to the fair use policy requirement in paragraph 1, the roaming provider may limit the consumption of data roaming retail services within the Union at the domestic retail price to volumes equivalent to at least the volume obtained by dividing the overall amount, excluding VAT, of the remaining credit available and already paid by the customer to the provider, at the moment of commencing roaming, by the regulated maximum wholesale roaming charge referred to in Article 12 of Regulation (EU) No 531/2012.

4. In the context of the processing of traffic data according to Article 6 of Directive 2002/58/EC, in order to prevent abusive or anomalous usage of regulated retail roaming services provided at the applicable domestic retail price, the roaming provider may apply fair, reasonable and proportionate control mechanisms based on objective indicators related to the risk of abusive or anomalous use beyond periodic travelling in the Union.

The objective indicators may include measures to establish whether customers have prevailing domestic consumption over roaming consumption or prevailing domestic presence of the customer over presence in other Member States of the Union.

In order to ensure that roaming customers engaged in periodic travel are not subjected to unnecessary or excessive alerts pursuant to Article 5(4), roaming providers which apply such measures to establish a risk of abusive or anomalous use of roaming services shall observe such indicators of presence and consumption cumulatively and for a period of time of at least 4 months.

The roaming provider shall specify in contracts with roaming customers to which mobile retail service or services the consumption indicator relates and the minimum duration of the observation period.

Either prevailing domestic consumption or prevailing domestic presence of the roaming customer during the defined observation period shall be considered as a proof of non-abusive and non-anomalous usage of regulated retail roaming services.

For the purpose of the second, third and fifth subparagraph, any day when a roaming customer has logged on to the domestic network shall be counted as a day of domestic presence of that customer.

Other objective indicators of a risk of abusive or anomalous use of regulated retail roaming services provided at the applicable domestic retail price may only include:

(a) long inactivity of a given SIM card associated with use mostly, if not exclusively, while roaming;

(b) subscription and sequential use of multiple SIM cards by the same customer while roaming.

5. Where the roaming provider establishes, with objective and substantiated evidence, that a number of SIM cards have been the object of organised resale to persons not effectively residing in or having stable links entailing frequent and substantial presence in the Member State of that retail roaming provider in order to enable consumption of regulated retail roaming services provided at the applicable domestic retail price other than for the purpose of periodic travel, the roaming provider may take immediate proportionate measures in order to ensure compliance with all conditions of the underlying contract.

6. The roaming provider shall comply with Directives 2002/58/EC and 95/46/EC and their national implementing measures, and Regulation (EU) 2016/679 when acting pursuant to this section.

7. This Regulation does not apply to any fair use policies defined in the contractual terms of alternative roaming tariffs provided in accordance with Article 6e(3) of Regulation (EU) No 531/2012.

Article 5

Transparency and supervision of fair use policies

1. When a roaming provider applies a fair use policy, it shall include in contracts with roaming customers all the terms and conditions associated with that policy, including any control mechanism applied in accordance with Article 4(4). As part of the fair use policy, the roaming provider shall put in place transparent, simple and efficient procedures to address complaints of customers relating to the application of a fair use policy. This is without prejudice to the rights of the roaming customer, pursuant to Article 17(2) of Regulation (EU) No 531/2012, to avail of transparent, simple, fair and prompt out-of-court dispute resolution procedures established in the Member State of the roaming provider in accordance with Article 34 of Directive 2002/22/EC. Such complaint mechanism and dispute resolution procedures shall permit the roaming customer to provide evidence that it is not using the regulated roaming retail services for other purposes than periodic travel, in response to an alert in accordance with paragraph (3), first subparagraph.

2. Fair use policies in accordance with this Regulation shall be notified by the roaming provider to the national regulatory authority.

3. Where there is objective and substantiated evidence, based on the objective indicators referred to in Article 4(4), indicating a risk of abusive or anomalous use of regulated roaming retail services within the Union at the domestic retail price by a given customer, the roaming provider shall alert the customer about the detected behaviour pattern indicating such a risk before applying any surcharge pursuant to Article 6e of Regulation (EU) No 531/2012.

In cases where such risk results from non-fulfilment of both the prevailing domestic consumption and the prevailing domestic presence criteria over the defined observation period, referred to in the fifth subparagraph of Article 4(4), additional indications of risk arising from the overall non-domestic presence or usage of the roaming customer shall be taken into account for the purposes of resolving any subsequent complaint as provided in paragraph (1) or dispute resolution procedure pursuant to Article 17(2) of Regulation (EU) No 531/2012, relative to the applicability of a surcharge.

This paragraph shall apply irrespective of the provision by the roaming customer of documentary evidence of residence or other stable links entailing frequent and substantial presence in the Member State of the roaming provider pursuant to Article 4(1).

4. When alerting the roaming customer pursuant to paragraph 3, the roaming provider shall inform the customer that, in the absence of a change in the usage pattern within a period which cannot be shorter than 2 weeks, demonstrating actual domestic consumption or presence, a surcharge pursuant to Article 6e of Regulation (EU) No 531/2012 may be applied for any further use of regulated retail roaming services with the SIM card in question after the date of such alert.

5. The roaming provider shall cease to apply the surcharge as soon as the customer's usage no longer indicates a risk of abusive or anomalous use of the regulated retail roaming services based on the objective indicators referred to in Article 4(4).

6. Where a roaming provider establishes that SIM cards have been the object of organised resale to persons who neither normally reside in nor have stable links entailing frequent and substantial presence in the Member State of the retail roaming provider to enable consumption of regulated retail roaming services other than for the purpose of periodic travel outside that Member State in accordance with Article 4(3), the operator shall notify to the national regulatory authority the evidence characterising the systematic abuse in question and the measure taken to ensure compliance with all conditions of the underlying contract at the latest at the same time as such measure is taken.

SECTION III

APPLICATION AND METHODOLOGY FOR ASSESSING THE SUSTAINABILITY OF THE ABOLITION OF RETAIL ROAMING CHARGES

Article 6

Data supporting the application for authorisation to apply a roaming surcharge filed by a roaming provider pursuant to Article 6c(2) of Regulation (EU) No 531/2012 in order to ensure the sustainability of its domestic charging model

1. Applications for authorisation to apply a roaming surcharge filed by a roaming provider pursuant to Article 6c(2) of Regulation (EU) No 531/2012 in order to ensure the sustainability of its domestic charging model ('application') shall be assessed on the basis of data on the overall volumes of regulated retail roaming services provided by the applicant roaming provider projected over a period of 12 months starting at the earliest on 15 June 2017. For the first application, these volume projections shall be estimated using one or a combination of the following options:

(a) actual volumes of regulated retail roaming services provided by the applicant at the applicable regulated retail roaming price prior to 15 June 2017;

(b) projected volumes of regulated retail roaming services after 15 June 2017, where the projected volumes of regulated retail roaming services over the period in question are estimated based on actual domestic retail consumption of mobile services and time spent abroad in the Union by the roaming customers of the applicant;

(c) projected volumes of regulated retail roaming services after 15 June 2017, where the volumes of regulated retail roaming services are estimated based on the proportional change in the volumes of regulated retail roaming services experienced in the applicant's tariff plans representing a substantial part of the customer base on which the prices of regulated retail roaming services were set by the applicant at the domestic level for a period of at least 30 days, in accordance with the methodology set out in Annex I.

In the event of updates to the application being submitted pursuant to Article 6c(2) of Regulation (EU) No 531/2012, the projected overall volumes of regulated roaming services shall be updated on the basis of the actual average pattern of consumption of domestic mobile services multiplied by the observed number of roaming customers and the time they have spent in visited Member States in the previous 12 months.

2. Any data on the applicant's costs and revenues shall be based on financial accounts, which shall be made available to the national regulatory authority, and may be adjusted according to volume estimates pursuant to paragraph 1. Where costs are projected, deviations from figures resulting from past financial accounts shall be considered only if supported by proof of financial commitments for the period covered by the projections.

3. The applicant shall provide all necessary data used to determine the mobile services margin and the overall actual and projected costs and revenues of providing regulated roaming services over the relevant period.

Article 7

Determination of roaming-specific costs for the provision of regulated retail roaming services

1. For the purposes of establishing that the applicant is unable to recover its costs, with the effect that the sustainability of its domestic charging system would be undermined, only the following roaming-specific costs shall be taken into consideration, if substantiated in the application for authorisation to apply a roaming surcharge:

(a) the costs for the purchase of wholesale roaming access;

(b) the roaming-specific retail costs.

2. With regard to the costs incurred for the purchase of regulated wholesale roaming services, only the amount by which the applicant's overall payments to counterparts providing such services in the Union is expected to exceed the overall sums due to it for the provision of the same services to other roaming providers in the Union shall be taken into account. As regards the sums due to the roaming provider for the provision of regulated wholesale roaming services, the roaming provider shall assume projected volumes of these wholesale roaming services that are consistent with the assumption underlying its projected volumes in Article 6(1).

3. With regard to the roaming-specific retail costs, only the following costs shall be taken into account, if substantiated in the application:

(a) the costs of operating and managing roaming activities, including all business intelligence systems and software dedicated to roaming operation and management;

(b) data-clearing and payment costs, including both data-clearing and financial clearing costs;

(c) contract negotiation and agreement costs, including external fees and use of internal resources;

(d) costs sustained in order to comply with the requirements for the provision of regulated retail roaming services laid down in Articles 14 and 15 of Regulation (EU) No 531/2012, taking into account the applicable fair use policy adopted by the roaming provider.

4. Costs referred to in points (a), (b) and (c) of paragraph 3 shall be taken into account only in proportion to the ratio of overall traffic volume of the applicant's regulated retail roaming services to the overall retail outbound and wholesale inbound traffic of its roaming services, in accordance with the methodology set out in Annex II, points (1) and (2), and in proportion to the ratio of overall amount of traffic of its retail roaming services within the Union to the overall traffic of its retail roaming services within and outside the Union, in accordance with the methodology set out in Annex II, points (1) and (3).

5. The costs referred to in point (d) of paragraph 3 shall be taken into account only in proportion to the ratio of overall traffic volume of the applicant's retail roaming services within the Union to the overall traffic of its retail roaming services within and outside the Union, in accordance with the methodology set out in Annex II, points (1) and (3).

Article 8

Allocation of retail joint and common costs to the provision of regulated retail roaming services

1. In addition to the costs determined pursuant to Article 7, a proportion of joint and common costs incurred for the provision of mobile retail services in general may be included in the application for authorisation to apply a roaming surcharge. Only the following costs shall be taken into account, if substantiated in the application:

(a) billing and collection costs, including all costs associated with processing, calculating, producing and notifying the actual customer bill;

(b) sales and distribution costs, including the costs of operating shops and other distribution channels for the sale of mobile retail services;

(c) customer care costs, including the cost of operating all customer care services available to the end user;

(d) bad debt management costs, including costs incurred in writing off customers' unredeemable debts and collecting bad debts;

(e) marketing costs, including all expenses for advertising mobile services.

2. The costs referred to in paragraph 1, if substantiated in the application, shall be taken into account only in proportion to the ratio of overall traffic of the applicant's retail roaming services within the Union to the overall retail traffic of all mobile retail services, obtained as a weighted average of that ratio per mobile service, with weights reflecting the respective average wholesale roaming prices paid by the applicant in accordance with the methodology set out in Annex II, points (1) and (4).

Article 9

Determination of revenues from the provision of regulated retail roaming services

1. For the purposes of establishing that the applicant is unable to recover its costs, with the effect that the sustainability of its domestic charging system would be undermined, only the following revenues shall be taken into account and included in the application for authorisation to apply a roaming surcharge:

(a) revenues deriving directly from traffic of mobile retail services originated in a visited Member State;

(b) a proportion of overall revenues from the sale of mobile retail services based on fixed periodic charges.

2. The revenues referred to in point (a) of paragraph 1 shall include:

(a) any retail charge levied pursuant to Article 6e of Regulation (EU) No 531/2012 for traffic exceeding any fair use policy applied by the roaming provider;

(b) any revenues from alternative regulated roaming services pursuant to Article 6e(3) of Regulation (EU) No 531/2012;

(c) any domestic retail price billed on a per-unit basis or in excess of fixed periodic charges for the provision of mobile retail services and triggered by the use of mobile retail services in a visited Member State.

3. For the purposes of determining the revenues referred to in point (b) of paragraph 1, in the event of bundled sale of mobile retail services with other services or terminals, only revenues linked to the sale of mobile retail services shall be considered. Those revenues shall be determined by reference to the price applied to the separate sale of each component of the bundle, if available, or to the sale of such services with the same characteristics on a stand-alone basis.

4. In order to determine the proportion of overall revenues from the sale of mobile retail services linked to the provision of regulated retail roaming services, the methodology set out in Annex II, points (1) and (5) shall be applied.

Article 10

Assessment of applications for authorisation to apply a roaming surcharge filed by a roaming provider pursuant to Article 6c(2) of Regulation (EU) No 531/2012 in order to ensure the sustainability of its domestic charging model

1. When assessing an application for authorisation to apply a roaming surcharge filed by a roaming provider pursuant to Article 6c(2) of Regulation (EU) No 531/2012 in order to ensure the sustainability of its domestic charging model, the national regulatory authority may conclude that the applicant is unable to recover its costs of providing regulated retail roaming services, with the effect that the sustainability of its domestic charging model would be undermined, only where the negative roaming retail net margin of the applicant is equivalent to 3 % or more of its mobile services margin.

The roaming retail net margin shall be the amount remaining after the costs of providing regulated retail roaming services are deducted from the revenues from providing such services, as determined in accordance with this Regulation. In order to determine it, the national regulatory authority shall review the data provided in the application to ensure compliance with the methodology for determining costs and revenues, as laid down in Articles 7, 8 and 9.

2. Where the absolute value of the roaming retail net margin is equivalent to 3 % or more of the mobile services margin, the national regulatory authority shall nevertheless refuse the surcharge where it can establish that specific circumstances make it unlikely that the sustainability of the domestic charging model would be undermined. Such circumstances include situations in which:

(a) the applicant is part of a group and there is evidence of internal transfer pricing in favour of the other subsidiaries of the group within the Union, in particular in view of substantive imbalance of wholesale roaming charges applied within the group;

(b) the degree of competition on domestic markets means that there is capacity to absorb reduced margins;

(c) the application of a more restrictive fair use policy, still in compliance with Articles 3 and 4, would reduce the roaming retail net margin to a proportion of less than 3 %.

3. In the exceptional circumstances where an operator has a negative mobile services margin and a negative roaming retail net margin, the national regulatory authority shall authorise the application of a surcharge on regulated roaming services.

4. When authorising the surcharge on regulated roaming services, the final decision of the national regulatory authority shall identify the amount of the ascertained negative retail roaming margin that may be recovered through the application of a retail surcharge on roaming services provided within the Union. The surcharge shall be consistent with the roaming traffic assumptions underpinning the assessment of the application and be set in accordance with the principles set out in Article 8 of Directive 2002/21/EC of the European Parliament and of the Council ([1]).

SECTION IV

FINAL PROVISIONS

Article 11

Monitoring of fair use policy and applications for authorisation to apply a roaming surcharge filed by a roaming provider pursuant to Article 6c(2) of Regulation (EU) No 531/2012 in order to ensure the sustainability of its domestic charging model

In order to monitor the consistent application of Articles 6b and 6c of Regulation (EU) No 531/2012 and of this Regulation, and with a view to informing the Commission annually of applications pursuant to Article 6d(5) of Regulation (EU) No 531/2012, the national regulatory authorities shall regularly collect information concerning:

(a) any action they take to supervise the application of Article 6b of Regulation (EU) No 531/2012 and the detailed rules laid down in this Regulation;

(b) the number of applications to apply a roaming surcharge filed, authorised and renewed in the course of the year pursuant to Article 6c(2) and (4) of Regulation (EU) No 531/2012;

(c) the extent of negative roaming retail net margins recognised in their decisions to authorise the roaming surcharge and the arrangements concerning a surcharge declared in the applications for authorisation to apply a roaming surcharge filed by a roaming provider pursuant to Article 6c(2) of Regulation (EU) No 531/2012 in order to ensure the sustainability of its domestic charging model.

([1]) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).

Article 12

Review

Without prejudice to the possibility to conduct an earlier review in the light of initial implementation experience and of any significant changes in the factors mentioned in Article 6d(2) of Regulation (EU) No 531/2012, the Commission shall review this implementing act at the latest by June 2019, after having consulted BEREC.

Article 13

Entry into force

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

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

Done at Brussels, 15 December 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Proportional change in actual volumes of regulated roaming services under 'roam-like-at-home' compared with the same period in the previous year:

$$\left(\frac{\sum_{1}^{n} volume_k\,(t)}{\sum_{1}^{n} volume_k\,(t-1)} - 1 \right) \times 100$$

where:

k = service (1 = voice, 2 = SMS, 3 = data);

n is the number of days of 'roam-like-at-home' application ($n \geq 30$); and

t is the year of first 'roam-like-at-home' application.

This percentage should be used to estimate the change in volumes over the projected 12-month period by multiplying it by the volumes in the previous year.

ANNEX II

(1) Weights w_i of mobile retail services:

$$w_k = \frac{\textit{average wholesale roaming price paid by operator}_{ki}}{\sum_{k=1}^{3} \textit{average wholesale roaming price paid by operator}_k}$$

where:

k = service (1 = voice, 2 = SMS, 3 = data);

'average wholesale roaming price paid by operator' refers to the average unit price for unbalanced traffic paid by the operator for each service, where the unit for each service is eurocents per (i) minutes for voice; (ii) SMS for SMS; and (iii) MB for data.

(2) Ratio of overall traffic volume of applicant's retail roaming services to overall retail outbound and wholesale inbound traffic of its roaming services:

$$\frac{\textit{retail outbound roaming traffic}}{(\textit{retail outbound} + \textit{wholesale inbound})\ \textit{roaming traffic}} = \sum_{k=1}^{3} w_k \times \frac{\textit{retail outbound roaming traffic}_k}{(\textit{retail outbound} + \textit{wholesale inbound})\ \textit{roaming traffic}_k}$$

where:

k = service (1 = voice, 2 = SMS, 3 = data).

(3) Ratio of overall traffic volume of applicant's retail roaming services within the Union to overall traffic of its retail roaming services within and outside the Union:

$$\frac{\textit{retail outbound EU roaming traffic}}{\textit{retail outbound}\ (EU + nonEU)\ \textit{roaming traffic}} = \sum_{k=1}^{3} w_k \times \frac{\textit{retail outbound EU roaming traffic}_k}{\textit{retail outbound}\ (EU + nonEU)\ \textit{roaming traffic}_k}$$

where:

k = service (1 = voice, 2 = SMS, 3 = data).

(4) Ratio of overall traffic of applicant's retail roaming services within the Union to overall retail traffic of all mobile retail services:

$$\frac{\textit{retail outbound EU roaming traffic}}{\textit{retail outbound}\ (EU + nonEU)\ \textit{roaming traffic} + \textit{retail domestic traffic}} = \sum_{k=1}^{3} w_k \times \frac{\textit{retail outbound EU roaming traffic}_k}{\textit{retail outbound}\ (EU + nonEU)\ \textit{roaming traffic}_k + \textit{retail domestic traffic}_k}$$

where:

k = service (1 = voice, 2 = SMS, 3 = data).

(5) Retail EU roaming revenue:

$$\textit{Retail EU roaming revenue} = \textit{mobile retail services revenues} \times \left(\sum_{k=1}^{3} w_k \times \frac{\textit{retail outbound EU roaming traffic}_k}{\textit{retail outbound (EU + nonEU) roaming traffic}_k + \textit{retail domestic traffic}_k} \right)$$

where:

k = service (1 = voice, 2 = SMS, 3 = data).

COMMISSION IMPLEMENTING REGULATION (EU) 2016/2287

of 16 December 2016

amending Regulation (EC) No 431/2008 opening and providing for the administration of an import tariff quota for frozen beef and Implementing Regulation (EU) No 593/2013 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat

THE EUROPEAN COMMISSION,

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

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

Whereas:

(1) Commission Regulation (EC) No 431/2008 ([2]) provides for the opening and administration of an import tariff quota for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91.

(2) Commission Implementing Regulation (EU) No 593/2013 ([3]) provides for the opening and administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat.

(3) With the accession of the Republic of Croatia, the EU enlarged its customs union. Consequently, the EU was obliged under World Trade Organisation (WTO) rules to enter into negotiations with WTO members having negotiating rights with the acceding Member State in order to agree on an eventual compensatory adjustment.

(4) The Agreement in the form of an Exchange of Letters between the European Union and the Eastern Republic of Uruguay pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the schedule of the Republic of Croatia in the course of its accession to the European Union, approved by Council Decision (EU) 2016/1884 ([4]), provides for the extension of two existing Union tariff rate quotas on beef. The existing quota for the boneless meat of bovine animals should be extended by 76 tonnes and the existing quota for the frozen meat of bovine animals should be extended by 1 875 tonnes.

(5) Since the Agreement between the European Union and the Eastern Republic of Uruguay shall apply from 1 January 2017, it is therefore appropriate that this Regulation applies as from that date.

(6) For the purposes of the appropriate administration of the tariff quota provided by Regulation (EC) No 431/2008 the additional quantity of frozen meat of bovine animals should be available from the quota period 2017/2018.

(7) Regulation (EC) No 431/2008 and Implementing Regulation (EU) No 593/2013 should be amended accordingly.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

([1]) OJ L 347, 20.12.2013, p. 671.
([2]) Commission Regulation (EC) No 431/2008 of 19 May 2008 opening and providing for the administration of an import tariff quota for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91 (OJ L 130, 20.5.2008, p. 3).
([3]) Commission Implementing Regulation (EU) No 593/2013 of 21 June 2013 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat (OJ L 170, 22.6.2013, p. 32).
([4]) Council Decision (EU) 2016/1884 of 18 October 2016 on the conclusion of the Agreements in the form of an Exchange of Letters between the European Union and the Eastern Republic of Uruguay pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the schedule of the Republic of Croatia in the course of its accession to the European Union (OJ L 291, 26.10.2016, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(1) of Regulation (EC) No 431/2008 is amended as follows:

(1) In the first subparagraph, the words '53 000 tonnes' are replaced by the words '54 875 tonnes';

(2) The following second subparagraph is inserted:

'However, for the import tariff quota period 2016/2017 the total amount shall be 53 000 tonnes.'

Article 2

Implementing Regulation (EU) No 593/2013 is amended as follows:

(1) In Article 1(1), point (a) is replaced by the following:

'(a) 66 826 tonnes for high quality fresh, chilled or frozen meat of bovine animals covered by CN codes 0201 and 0202 and for products covered by CN codes 0206 10 95 and 0206 29 91.'

(2) In the first subparagraph of Article 2 (c) the words '6 300 tonnes' are replaced by the words '6 376 tonnes';

Article 3

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

It shall apply from 1 January 2017.

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

Done at Brussels, 16 December 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2016/2288

of 16 December 2016

approving piperonyl butoxide as an existing active substance for use in biocidal products of product-type 18

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 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 ([1]), and in particular the third subparagraph of Article 89(1) thereof,

Whereas:

(1) Commission Delegated Regulation (EU) No 1062/2014 ([2]) establishes a list of existing active substances to be evaluated for their possible approval for use in biocidal products. That list includes piperonyl butoxide.

(2) Piperonyl butoxide has been evaluated for use in products of product-type 18, insecticides, acaricides and products to control other arthropods, as described in Annex V to Regulation (EU) No 528/2012.

(3) Greece was designated as evaluating competent authority and submitted the assessment report together with its recommendations on 29 May 2015.

(4) In accordance with Article 7(2) of Delegated Regulation (EU) No 1062/2014, the opinion of the European Chemicals Agency was formulated on 16 June 2016 by the Biocidal Products Committee, having regard to the conclusions of the evaluating competent authority.

(5) According to that opinion, biocidal products of product-type 18 containing piperonyl butoxide may be expected to satisfy the criteria of Article 19(1)(b) of Regulation (EU) No 528/2012, provided that certain specifications and conditions concerning their use are complied with.

(6) It is therefore appropriate to approve piperonyl butoxide for use in biocidal products of product-type 18, subject to compliance with certain specifications and conditions.

(7) Since piperonyl butoxide meets the criteria for being very persistent (vP) according to Annex XIII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council ([3]), treated articles treated with or incorporating piperonyl butoxide should be labelled appropriately when placed on the market.

(8) A reasonable period should be allowed to elapse before an active substance is approved in order to permit interested parties to take the preparatory measures necessary to meet the new requirements.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS REGULATION:

Article 1

Piperonyl butoxide is approved as an active substance for use in biocidal products of product-type 18, subject to the specifications and conditions set out in the Annex.

([1]) OJ L 167, 27.6.2012, p. 1.

([2]) Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 294, 10.10.2014, p. 1).

([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).

Article 2

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

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

Done at Brussels, 16 December 2016.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

Common Name	IUPAC Name Identification Numbers	Minimum degree of purity of the active substance (1)	Date of approval	Expiry date of approval	Product type	Specific conditions
Piperonyl butoxide	IUPAC Name: 5-{[2-(2-butoxyethoxy) ethoxy]methyl}-6-propyl-1,3-benzodioxole EC No: 200-076-7 CAS No: 51-03-6	94 % w/w	1 July 2018	30 June 2028	18	The authorisations of biocidal products are subject to the following conditions: 1. The product assessment shall pay particular attention to the exposures, the risks and the efficacy linked to any use covered by an application for authorisation, but not addressed in the Union-level risk assessment of the active substance. 2. In view of the risks identified for the uses assessed, the product assessment shall pay particular attention to: a) surface water and sediment compartments for products used indoor for fogging; b) surface water, sediment and soil for products used outdoor for fogging. 3. For products that may lead to residues in food or feed, the need to set new or to amend existing maximum residue levels (MRLs) in accordance with Regulation (EC) No 470/2009 of the European Parliament and of the Council (2) or Regulation (EC) No 396/2005 of the European Parliament and of the Council (3) shall be verified, and any appropriate risk mitigation measures shall be taken to ensure that the applicable MRLs are not exceeded. The placing on the market of treated articles is subject to the following condition: The person responsible for the placing on the market of a treated article treated with or incorporating piperonyl butoxide shall ensure that the label of that treated article provides the information listed in the second subparagraph of Article 58(3) of Regulation (EU) No 528/2012.

(1) The purity indicated in this column was the minimum degree of purity of the active substance evaluated in accordance with Article 89(1) of Regulation (EU) No 528/2012. The active substance in the product placed on the market can be of equal or different purity if it has been proven to be technically equivalent to the evaluated active substance.

(2) Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council (OJ L 152, 16.6.2009, p. 11).

(3) Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ L 70, 16.3.2005, p. 1).

COMMISSION IMPLEMENTING REGULATION (EU) 2016/2289

of 16 December 2016

approving *epsilon*-Momfluorothrin as an active substance for use in biocidal products of product-type 18

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 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 ([1]), and in particular Article 90(2) thereof,

Whereas:

(1) The United Kingdom received on 29 May 2013 an application, in accordance with Article 11(1) of Directive 98/8/EC of the European Parliament and of the Council ([2]), for the inclusion of the active substance *epsilon*-Momfluorothrin, in Annex I to that Directive for use in products of product-type 18, insecticides, acaricides and products to control other arthropods, as described in Annex V to that Directive, which correspond to product-type 18 as described in Annex V to Regulation (EU) No 528/2012.

(2) The United Kingdom submitted the assessment report together with its recommendations on 6 October 2015 in accordance with Article 90(2) of Regulation (EU) No 528/2012.

(3) The opinion of the European Chemicals Agency was formulated on 16 June 2016 by the Biocidal Products Committee, having regard to the conclusions of the evaluating competent authority.

(4) According to that opinion, biocidal products of product-type 18 and containing *epsilon*-Momfluorothrin may be expected to satisfy the criteria of Article 19(1)(b) of Regulation (EU) No 528/2012, provided that certain specifications and conditions concerning their use are complied with.

(5) It is therefore appropriate to approve *epsilon*-Momfluorothrin for use in biocidal products of product-type 18, subject to compliance with certain specifications and conditions.

(6) A reasonable period should be allowed to elapse before an active substance is approved in order to permit interested parties to take the preparatory measures necessary to meet the new requirements.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS REGULATION:

Article 1

epsilon-Momfluorothrin is approved as an active substance for use in biocidal products of product-type 18, subject to the specifications and conditions set out in the Annex.

Article 2

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

([1]) OJ L 167, 27.6.2012, p. 1.
([2]) Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ L 123, 24.4.1998, p. 1).

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

Done at Brussels, 16 December 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Common Name	IUPAC Name Identification Numbers	Minimum degree of purity of the active substance (1)	Date of approval	Expiry date of approval	Product type	Specific conditions
epsilon-Momfluorothrin	IUPAC Name: All isomers: 2,3,5,6-tetrafluoro-4-(methoxymethyl)benzyl (EZ)-(1RS,3RS;1SR,3SR)-3-(2-cyanoprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate RTZ isomer: 2,3,5,6-Tetrafluoro-4-(methoxymethyl)benzyl (Z)-(1R,3R)-3-(2-cyanoprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate EC No: none CAS No: All isomers: 609346-29-4 RTZ isomer: 1065124-65-3	All isomers: 93 % w/w RTZ isomers: 82,5 % w/w	1 July 2017	30 June 2027	18	The authorisations of biocidal products are subject to the following conditions: 1. The product assessment shall pay particular attention to the exposures, the risks and the efficacy linked to any use covered by an application for authorisation, but not addressed in the Union-level risk assessment of the active substance. 2. In view of the risks identified for the uses assessed, the product assessment shall pay particular attention to surface water, sediment and soil for products used (i) indoors as a space spray; and (ii) outdoors as a surface spray. 3. For products that may lead to residues in food or feed, the need to set new or to amend existing maximum residue levels (MRLs) in accordance with Regulation (EC) No 470/2009 of the European Parliament and of the Council (2) or Regulation (EC) No 396/2005 of the European Parliament and of the Council (3) shall be verified, and any appropriate risk mitigation measures shall be taken to ensure that the applicable MRLs are not exceeded.

(1) The purity indicated in this column was the minimum degree of purity of the active substance evaluated in accordance with Article 90(2) of Regulation (EU) No 528/2012. The active substance in the product placed on the market can be of equal or different purity if it has been proven to be technically equivalent to the evaluated active substance.

(2) Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council (OJ L 152, 16.6.2009, p. 11).

(3) Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ L 70, 16.3.2005, p. 1).

COMMISSION IMPLEMENTING REGULATION (EU) 2016/2290

of 16 December 2016

approving peracetic acid as an existing active substance for use in biocidal products of product-types 11 and 12

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 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 ([1]), and in particular the third subparagraph of Article 89(1) thereof,

Whereas:

(1) Commission Delegated Regulation (EU) No 1062/2014 ([2]) establishes a list of existing active substances to be evaluated for their possible approval for use in biocidal products. That list includes peracetic acid.

(2) Peracetic acid has been evaluated for use in products of product-type 11, preservatives for liquid-cooling and processing systems, and of product-type 12, slimicides, as described in Annex V to Regulation (EU) No 528/2012.

(3) Finland was designated as evaluating competent authority and submitted the assessment reports together with its recommendations on 3 July 2015.

(4) In accordance with Article 7(2) of Delegated Regulation (EU) No 1062/2014, the opinions of the European Chemicals Agency were formulated on 14 June 2016 by the Biocidal Products Committee, having regard to the conclusions of the evaluating competent authority.

(5) According to those opinions, biocidal products of product-types 11 and 12 and containing peracetic acid may be expected to satisfy the criteria of Article 19(1)(b) of Regulation (EU) No 528/2012, provided that certain specifications and conditions concerning their use are complied with.

(6) It is therefore appropriate to approve peracetic acid for use in biocidal products of product-types 11 and 12, subject to compliance with certain specifications and conditions.

(7) Peracetic acid is in an aqueous solution containing acetic acid and hydrogen peroxide. Due to the presence of hydrogen peroxide, which can be used in the production of explosives precursors, authorisations of biocidal products containing peracetic acid should be without prejudice to Regulation (EU) No 98/2013 of the European Parliament and of the Council ([3]).

(8) A reasonable period should be allowed to elapse before an active substance is approved in order to permit interested parties to take the preparatory measures necessary to meet the new requirements.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Biocidal Products,

([1]) OJ L 167, 27.6.2012, p. 1.
([2]) Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 294, 10.10.2014, p. 1).
([3]) Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors (OJ L 39, 9.2.2013, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Peracetic acid is approved as an active substance for use in biocidal products of product-types 11 and 12, subject to the specifications and conditions set out in the Annex.

Article 2

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

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

Done at Brussels, 16 December 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Common Name	IUPAC Name Identification Numbers	Minimum degree of purity of the active substance [1]	Date of approval	Expiry date of approval	Product type	Specific conditions
Peracetic acid	IUPAC Name: Peroxyethanoic acid EC No: 201-186-8 CAS No: 79-21-0	The specification is based on the starting materials hydrogen peroxide and acetic acid which are used to manufacture peracetic acid. Peracetic acid in an aqueous solution containing acetic acid and hydrogen peroxide.	1 July 2018	30 June 2028	11	The authorisations of biocidal products are subject to the following conditions: 1. The product assessment shall pay particular attention to the exposures, the risks and the efficacy linked to any use covered by an application for authorisation, but not addressed in the Union-level risk assessment of the active substance. 2. Due to the presence of hydrogen peroxide, authorisations of biocidal products shall be without prejudice to Regulation (EU) No 98/2013. 3. In view of the risks identified for the uses assessed, the product assessment shall pay particular attention to:. a) industrial and professional users; b) marine water for products used in once-through cooling systems; c) soil and surface water for products used in large open recirculating cooling systems.
					12	The authorisations of biocidal products are subject to the following conditions: 1. The product assessment shall pay particular attention to the exposures, the risks and the efficacy linked to any use covered by an application for authorisation, but not addressed in the Union-level risk assessment of the active substance. 2. Due to the presence of hydrogen peroxide, authorisations of biocidal products shall be without prejudice to Regulation (EU) No 98/2013. 3. In view of the risks identified for the uses assessed, the product assessment shall pay particular attention to industrial and professional users.

[1] The purity indicated in this column was the minimum degree of purity of the active substance evaluated in accordance with Article 89(1) of Regulation (EU) No 528/2012. The active substance in the product placed on the market can be of equal or different purity if it has been proven to be technically equivalent to the evaluated active substance.

COMMISSION IMPLEMENTING REGULATION (EU) 2016/2291

of 16 December 2016

approving L(+) Lactic acid as an active substance for use in biocidal products of product-type 1

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 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 ([1]), and in particular Article 90(2) thereof,

Whereas:

(1) Germany received on 29 August 2013 an application, in accordance with Article 11(1) of Directive 98/8/EC of the European Parliament and of the Council ([2]), for the inclusion of the active substance L(+) Lactic acid in Annex I to that Directive for use in products of product-type 1, human hygiene, as described in Annex V to that Directive, which correspond to product-type 1 as described in Annex V to Regulation (EU) No 528/2012.

(2) Germany submitted the assessment report together with its recommendations on 5 February 2015 in accordance with Article 90(2) of Regulation (EU) No 528/2012.

(3) The opinion of the European Chemicals Agency was formulated on 10 December 2015 by the Biocidal Products Committee, having regard to the conclusions of the evaluating competent authority.

(4) According to that opinion, biocidal products of product-type 1 and containing L(+) Lactic acid may be expected to satisfy the criteria of Article 19(1)(b) of Regulation (EU) No 528/2012, provided that certain specifications and conditions concerning their use are complied with.

(5) It is therefore appropriate to approve L(+) Lactic acid for use in biocidal products of product-type 1, subject to compliance with certain specifications and conditions.

(6) A reasonable period should be allowed to elapse before an active substance is approved in order to permit interested parties to take the preparatory measures necessary to meet the new requirements.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS REGULATION:

Article 1

L(+) Lactic acid is approved as an active substance for use in biocidal products of product-type 1, subject to the specifications and conditions set out in the Annex.

([1]) OJ L 167, 27.6.2012, p. 1.
([2]) Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ L 123, 24.4.1998, p. 1).

Article 2

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

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

Done at Brussels, 16 December 2016.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

Common Name	IUPAC Name Identification Numbers	Minimum degree of purity of the active substance (1)	Date of approval	Expiry date of approval	Product type	Specific conditions
L(+) Lactic acid	IUPAC Name: (S)-2-Hydroxypropanoic acid EC No: 201-196-2 CAS No: 79-33-4	95,5 % w/w	1 July 2017	30 June 2027	1	The authorisations of biocidal products are subject to the following conditions: 1. The product assessment shall pay particular attention to the exposures, the risks and the efficacy linked to any use covered by an application for authorisation, but not addressed in the Union-level risk assessment of the active substance. 2. In view of the risks identified for the uses assessed, the product assessment shall pay particular attention to non-professional users.

(1) The purity indicated in this column was the minimum degree of purity of the active substance evaluated in accordance with Article 89(1) of Regulation (EU) No 528/2012. The active substance in the product placed on the market can be of equal or different purity if it has been proven to be technically equivalent to the evaluated active substance.

COMMISSION IMPLEMENTING REGULATION (EU) 2016/2292

of 16 December 2016

setting out the weighted average of maximum mobile termination rates across the Union and repealing Implementing Regulation (EU) 2015/2352

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union ([1]), and in particular Article 6e(2) thereof,

Whereas:

(1) In accordance with Regulation (EU) No 531/2012, domestic providers should not levy any surcharge additional to the domestic retail price on roaming customers in any Member State, for any regulated roaming call received, within the limits allowed by fair use policy. This provision applies from 15 June 2017, provided that the legislative act to be adopted further to the proposal on the wholesale roaming market referred to in Article 19(2) of that Regulation has become applicable by that date.

(2) In accordance with Regulation (EU) No 531/2012 domestic providers may apply a surcharge, in addition to the domestic retail price, for the consumption of regulated retail roaming services, during a transitional period from 30 April 2016 until the date when the legislative act envisaged in Article 19(2) of that Regulation becomes applicable.

(3) Regulation (EU) No 531/2012 allows domestic providers to apply, after the transitional period, a surcharge, in addition to the domestic retail price, for the consumption of regulated retail roaming services in excess of any limit set under a fair use policy.

(4) Regulation (EU) No 531/2012 limits any surcharge applied for receiving regulated roaming calls to the weighted average of maximum mobile termination rates across the Union.

(5) Commission Implementing Regulation (EU) 2015/2352 ([2]) set out the weighted average of maximum mobile termination rates across the Union to be applied from 30 April 2016 on the basis of the values of the data of 1 July 2015.

(6) The Body of European Regulators for Electronic Communications has provided the Commission with updated information gathered from Member States' national regulatory authorities concerning: (i) the maximum level of mobile termination rates they imposed, in accordance with Articles 7 and 16 of Directive 2002/21/EC of the European Parliament and of the Council ([3]) (the 'Framework Directive') and Article 13 of Directive 2002/19/EC of the European Parliament and of the Council ([4]) (the 'Access Directive'), in each national market for wholesale voice call termination on individual mobile networks; and (ii) the total number of subscribers in Member States.

(7) Pursuant to Regulation (EU) No 531/2012, the Commission has calculated the weighted average of the maximum mobile termination rates across the Union by: (i) multiplying the maximum mobile termination rate permitted in a given Member State by the total number of subscribers in that Member State; (ii) summing this product over all Member States; and (iii) dividing the total obtained by the total number of subscribers in all Member States, on the basis of the values of the data of 1 July 2016. For non-Euro countries, the relevant exchange rate is the 2nd Quarter 2016 average obtained from the European Central Bank's database.

([1]) OJ L 172, 30.6.2012, p 10.
([2]) Commission Implementing Regulation (EU) 2015/2352 of 16 December 2015 setting out the weighted average of maximum mobile termination rates across the Union (OJ L 331, 17.12.2015, p. 7).
([3]) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).
([4]) Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ L 108, 24.4.2002, p. 7).

(8) It is therefore necessary to update the value of the weighted average of maximum mobile termination rates across the Union laid down in the Implementing Regulation (EU) 2015/2352.

(9) Implementing Regulation (EU) 2015/2352 should therefore be repealed.

(10) Pursuant to Regulation (EU) No 531/2012 the Commission is to review the weighted average of maximum mobile termination rates across the Union annually.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Communications Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The weighted average of maximum mobile termination rates across the Union is set out at EUR 0,0108 per minute.

Article 2

Implementing Regulation (EU) 2015/2352 is repealed.

Article 3

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

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

Done at Brussels, 16 December 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2016/2293

of 16 December 2016

amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [1], and in particular Article 9(1)(d),

Whereas:

(1) Regulation (EEC) No 2658/87 established a goods nomenclature (hereinafter referred to as the 'CN') to meet, at one and the same time, the requirements of the Common Customs Tariff, the external trade statistics of the Union, and other Union policies concerning the importation or exportation of goods.

(2) By Decision (EU) 2016/1885 [2], the Council concluded the Agreement in the form of an Exchange of Letters between the European Union and the People's Republic of China pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the schedule of the Republic of Croatia in the course of its accession to the Union ('the Agreement'). The Agreement provides for a reduction in customs duties for two categories of products. The Union and China have notified each other of the completion of their internal procedures for the entry into force of the Agreement and the Agreement is to enter into force on 1 January 2017.

(3) It is necessary to implement the measures provided for in Decision (EU) 2016/1885 in the Common Customs Tariff. Annex I to Regulation (EEC) No 2658/87 should therefore be amended accordingly.

(4) The changes to the rate of customs duties should apply from the date of entry into force of the Agreement. This Regulation should therefore enter into force as a matter of urgency.

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

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EEC) No 2658/87 is amended in accordance with the Annex to this Regulation.

Article 2

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

It shall apply from 1 January 2017.

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[1] OJ L 256, 7.9.1987, p. 1.

[2] Council Decision (EU) 2016/1885 of 18 October 2016 on the conclusion of the Agreement in the form of an Exchange of Letters between the European Union and the People's Republic of China pursuant to Article XXIV:6 and Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions in the schedule of the Republic of Croatia in the course of its accession to the European Union (OJ L 291, 26.10.2016, p. 7).

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

Done at Brussels, 16 December 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Part Two of Annex I to Regulation (EEC) No 2658/87 is amended as follows:

(1) in Section XII, in Chapter 64, the row concerning CN code 6404 19 90 is replaced by the following:

'6404 19 90	– – – Other	16,9	pa';

(2) in Section XVI, in Chapter 84, the row concerning CN code 8415 10 90 is replaced by the following:

'8415 10 90	– – Split-system	2,5	—'.

COMMISSION IMPLEMENTING REGULATION (EU) 2016/2294

of 16 December 2016

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

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

(1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

(2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 16 December 2016.

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

([1]) OJ L 347, 20.12.2013, p. 671.
([2]) OJ L 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	MA	99,7
	SN	241,4
	TN	269,5
	TR	111,3
	ZZ	180,5
0707 00 05	MA	79,2
	TR	154,2
	ZZ	116,7
0709 93 10	MA	150,3
	TR	167,9
	ZZ	159,1
0805 10 20	IL	126,4
	TR	73,7
	ZZ	100,1
0805 20 10	MA	70,4
	ZZ	70,4
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	IL	113,5
	JM	125,0
	MA	74,5
	TR	76,2
	ZZ	97,3
0805 50 10	AR	76,7
	TR	88,5
	ZZ	82,6
0808 10 80	US	132,4
	ZZ	132,4
0808 30 90	CN	94,8
	ZZ	94,8

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

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2016/2295

of 16 December 2016

amending Decisions 2000/518/EC, 2002/2/EC, 2003/490/EC, 2003/821/EC, 2004/411/EC, 2008/393/EC, 2010/146/EU, 2010/625/EU, 2011/61/EU and Implementing Decisions 2012/484/EU, 2013/65/EU on the adequate protection of personal data by certain countries, pursuant to Article 25(6) of Directive 95/46/EC of the European Parliament and of the Council

(notified under document C(2016) 8353)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([1]), and in particular Article 25(6) thereof,

After consulting the European Data Protection Supervisor,

Whereas:

(1) In its judgment of 6 October 2015 in Case C-362/14 *Maximillian Schrems v Data Protection Commissioner* ([2]) the Court of Justice of the European Union found that, in adopting Article 3 of Decision 2000/520/EC ([3]), the Commission exceeded the power which is conferred upon it in Article 25(6) of Directive 95/46/EC, read in the light of the Charter of Fundamental Rights of the European Union, and declared Article 3 of that Decision invalid.

(2) Article 3(1) first subparagraph of Decision 2000/520/EC laid down restrictive conditions under which national supervisory authorities could decide to suspend data flows to a U.S. self-certified company, notwithstanding the Commission's adequacy finding.

(3) In its *Schrems* judgment, the Court of Justice clarified that national supervisory authorities remain competent to oversee the transfer of personal data to a third country which has been the subject of a Commission adequacy decision and that the Commission has no competence to restrict their powers under Article 28 of Directive 95/46/EC. Pursuant to this Article, those authorities possess, in particular, investigative powers, such as the power to collect all the information necessary for the performance of their supervisory duties, effective powers of intervention, such as that of imposing a temporary or definitive ban on the processing of data, and the power to engage in legal proceedings ([4]).

(4) The Court of Justice recalled in the *Schrems* judgment that, in line with the second subparagraph of Article 25(6) of Directive 95/46/EC, Member States and their organs must take the measures necessary to comply with acts of the Union institutions, as the latter are in principle presumed to be lawful and accordingly produce legal effects until such time as they are withdrawn, annulled in an action for annulment, or declared invalid following a reference for a preliminary ruling or a plea of illegality.

([1]) OJ L 281, 23.11.1995, p. 31.
([2]) ECLI:EU:C:2015:650.
([3]) Commission Decision 2000/520/EC of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the Safe Harbour Privacy Principles and related Frequently Asked Questions issued by the U. S. Department of Commerce (OJ L 215, 25.8.2000, p. 7).
([4]) *Schrems*, paragraphs 40 et seq., 101 to 103.

(5) Consequently, a Commission adequacy decision adopted pursuant to Article 25(6) of Directive 95/46/EC is binding on all organs of the Member States to which it is addressed, including their independent supervisory authorities, in so far as it has the effect of authorising transfers of personal data from the respective Member State to the third country covered by it ([1]). It follows that national supervisory authorities cannot adopt measures contrary to a Commission adequacy decision, such as acts declaring that decision invalid or which are intended to determine with binding effect that the third country covered by it does not ensure an adequate level of protection. As clarified by the *Schrems* judgment, this does not prevent a national supervisory authority from examining the claim of an individual concerning the level of protection of personal data ensured in a third country subject to a Commission adequacy decision and, where it considers it well founded, to engage in legal proceedings before the national courts, in order for them, if they share the doubts as to the validity of the Commission decision, to make a reference for a preliminary ruling for the purpose of examination of the decision's validity ([2]).

(6) Commission Decisions 2000/518/EC ([3]), 2002/2/EC ([4]), 2003/490/EC ([5]), 2003/821/EC ([6]), 2004/411/EC ([7]), 2008/393/EC ([8]), 2010/146/EU ([9]), 2010/625/EU ([10]) and 2011/61/EU ([11]) and Commission Implementing Decisions 2012/484/EU ([12]) and 2013/65/EU ([13]), which are adequacy decisions, contain a limitation on the powers of the national supervisory authorities that is comparable to Article 3(1) first subparagraph of Decision 2000/520/EC, which the Court of Justice considered invalid.

(7) In the light of the *Schrems* judgment and pursuant to Article 266 of the Treaty, the provisions in those Decisions limiting the powers of national supervisory authorities should therefore be replaced.

(8) In the *Schrems* judgment, the Court of Justice further clarified that, as the level of protection ensured by a third country may be liable to change, it is incumbent on the Commission, after it has adopted a decision pursuant to Article 25(6) of Directive 95/46/EC, to check periodically whether the finding relating to the adequacy of the level of protection ensured by the third country in question is still factually and legally justified ([14]). In the light of the findings in that judgment as regards access to personal data by public authorities, the rules and practice governing such access should also be monitored.

(9) Therefore, for those countries for which it has adopted an adequacy decision, the Commission will, on an ongoing basis, monitor developments, both in law and in practice, that could affect the functioning of such decisions, including developments concerning access to personal data by public authorities.

(10) In order to facilitate the effective monitoring of the functioning of the adequacy decisions currently in force, the Commission should be informed by Member States about relevant action undertaken by national supervisory authorities.

([1]) *Schrems*, paragraphs 51, 52 and 62.
([2]) *Schrems*, paragraphs 52, 62 and 65.
([3]) Commission Decision 2000/518/EC of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided in Switzerland (OJ L 215, 25.8.2000, p. 1).
([4]) Commission Decision 2002/2/EC of 20 December 2001 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided by the Canadian Personal Information Protection and Electronic Documents Act (OJ L 2, 4.1.2002, p. 13).
([5]) Commission Decision 2003/490/EC of 30 June 2003 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data in Argentina (OJ L 168, 5.7.2003, p. 19).
([6]) Commission Decision 2003/821/EC of 21 November 2003 on the adequate protection of personal data in Guernsey (OJ L 308, 25.11.2003, p. 27).
([7]) Commission Decision 2004/411/EC of 28 April 2004 on the adequate protection of personal data in the Isle of Man (OJ L 151, 30.4.2004, p. 48).
([8]) Commission Decision 2008/393/EC of 8 May 2008 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data in Jersey (OJ L 138, 28.5.2008, p. 21).
([9]) Commission Decision 2010/146/EU of 5 March 2010 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection provided by the Faeroese Act on processing of personal data (OJ L 58, 9.3.2010, p. 17).
([10]) Commission Decision 2010/625/EU of 19 October 2010 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data in Andorra (OJ L 277, 21.10.2010, p. 27).
([11]) Commission Decision 2011/61/EU of 31 January 2011 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data by the State of Israel with regard to automated processing of personal data (OJ L 27, 1.2.2011, p. 39).
([12]) Commission Implementing Decision 2012/484/EU of 21 August 2012 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data by the Eastern Republic of Uruguay with regard to automated processing of personal data (OJ L 227, 23.8.2012, p. 11).
([13]) Commission Implementing Decision 2013/65/EU of 19 December 2012 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data by New Zealand (OJ L 28, 30.1.2013, p. 12).
([14]) *Schrems*, paragraph 76. Such a check is required, in any event, when the Commission acquires any information giving rise to a justified doubt in that regard.

(11) The Working Party on the Protection of Individuals with regard to the Processing of Personal Data established under Article 29 of Directive 95/46/EC has delivered an opinion, which has been taken into account in the preparation of this Decision.

(12) The measures provided for in this Decision are in accordance with the opinion of the Committee established under Article 31(1) of Directive 95/46/EC.

(13) Decisions 2000/518/EC, 2002/2/EC, 2003/490/EC, 2003/821/EC, 2004/411/EC, 2008/393/EC, 2010/146/EU, 2010/625/EU and 2011/61/EU and Implementing Decisions 2012/484/EU and 2013/65/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2000/518/EC is amended as follows:

(1) Article 3 is replaced by the following:

'*Article 3*

Whenever the competent authorities in Member States exercise their powers pursuant to Article 28(3) of Directive 95/46/EC leading to the suspension or definitive ban of data flows to Switzerland in order to protect individuals with regard to the processing of their personal data, the Member State concerned shall, without delay, inform the Commission which will forward the information to the other Member States.';

(2) the following Article 3*a* is inserted:

'*Article 3a*

1. The Commission shall, on an ongoing basis, monitor developments in the Swiss legal order that could affect the functioning of this Decision, including developments concerning access to personal data by public authorities, with a view to assessing whether Switzerland continues to ensure an adequate level of protection of personal data.

2. The Member States and the Commission shall inform each other of cases where the action of bodies responsible for ensuring compliance with the standard of protection in Switzerland fails to secure such compliance.

3. The Member States and the Commission shall inform each other of any indications that interferences by Swiss public authorities responsible for national security, law enforcement or other public interests with the right of individuals to the protection of their personal data go beyond what is strictly necessary, or that there is no effective legal protection against such interferences.

4. Where evidence shows that an adequate level of protection is no longer ensured, including in situations referred to in paragraphs 2 and 3 of this Article, the Commission shall inform the competent Swiss authority and, if necessary, propose draft measures in accordance with the procedure referred to in Article 31(2) of Directive 95/46/EC with a view to repealing or suspending this Decision or limiting its scope.'.

Article 2

Decision 2002/2/EC is amended as follows:

(1) Article 3 is replaced by the following:

'*Article 3*

Whenever the competent authorities in Member States exercise their powers pursuant to Article 28(3) of Directive 95/46/EC leading to the suspension or definitive ban of data flows to a recipient in Canada whose activities fall under the scope of the Canadian Personal Information Protection and Electronic Documents Act in order to protect individuals with regard to the processing of their personal data, the Member State concerned shall, without delay, inform the Commission which will forward the information to the other Member States.';

(2) the following Article 3*a* is inserted:

'*Article 3a*

1. The Commission shall, on an ongoing basis, monitor developments in the Canadian legal order that could affect the functioning of this Decision, including developments concerning access to personal data by public authorities, with a view to assessing whether Canada continues to ensure an adequate level of protection of personal data.

2. The Member States and the Commission shall inform each other of cases where the action of bodies responsible for ensuring compliance with the standard of protection in Canada fails to secure such compliance.

3. The Member States and the Commission shall inform each other of any indications that interferences by Canadian public authorities responsible for national security, law enforcement or other public interests with the right of individuals to the protection of their personal data go beyond what is strictly necessary, or that there is no effective legal protection against such interferences.

4. Where evidence shows that an adequate level of protection is no longer ensured, including in situations covered by paragraphs 2 and 3 of this Article, the Commission shall inform the competent Canadian authority and, if necessary, propose draft measures in accordance with the procedure referred to in Article 31(2) of Directive 95/46/EC with a view to repealing or suspending this Decision or limiting its scope.'.

Article 3

Decision 2003/490/EC is amended as follows:

(1) Article 3 is replaced by the following:

'*Article 3*

Whenever the competent authorities in Member States exercise their powers pursuant to Article 28(3) of Directive 95/46/EC leading to the suspension or definitive ban of data flows to Argentina in order to protect individuals with regard to the processing of their personal data, the Member State concerned shall, without delay, inform the Commission which will forward the information to the other Member States.';

(2) the following Article 3*a* is inserted:

'*Article 3a*

1. The Commission shall, on an ongoing basis, monitor developments in the Argentinian legal order that could affect the functioning of this Decision, including developments concerning access to personal data by public authorities, with a view to assessing whether Argentina continues to ensure an adequate level of protection of personal data.

2. The Member States and the Commission shall inform each other of cases where the action of bodies responsible for ensuring compliance with the standard of protection in Argentina fails to secure such compliance.

3. The Member States and the Commission shall inform each other of any indications that interferences by Argentinian public authorities responsible for national security, law enforcement or other public interests with the right of individuals to the protection of their personal data go beyond what is strictly necessary, or that there is no effective legal protection against such interferences.

4. Where evidence shows that an adequate level of protection is no longer ensured, including in situations referred to in paragraphs 2 and 3 of this Article, the Commission shall inform the competent Argentinian authority and, if necessary, propose draft measures in accordance with the procedure referred to in Article 31(2) of Directive 95/46/EC with a view to repealing or suspending this Decision or limiting its scope.'.

Article 4

Articles 3 and 4 of Decision 2003/821/EC are replaced by the following:

'Article 3

Whenever the competent authorities in Member States exercise their powers pursuant to Article 28(3) of Directive 95/46/EC leading to the suspension or definitive ban of data flows to the Bailiwick of Guernsey in order to protect individuals with regard to the processing of their personal data, the Member State concerned shall, without delay, inform the Commission which will forward the information to the other Member States.

Article 4

1. The Commission shall, on an ongoing basis, monitor developments in the Guernsey legal order that could affect the functioning of this Decision, including developments concerning access to personal data by public authorities, with a view to assessing whether Guernsey continues to ensure an adequate level of protection of personal data.

2. The Member States and the Commission shall inform each other of cases where the action of bodies responsible for ensuring compliance with the standard of protection in Guernsey fails to secure such compliance.

3. The Member States and the Commission shall inform each other of any indications that interferences by Guernsey public authorities responsible for national security, law enforcement or other public interests with the right of individuals to the protection of their personal data go beyond what is strictly necessary, or that there is no effective legal protection against such interferences.

4. Where evidence shows that an adequate level of protection is no longer ensured, including in situations referred to in paragraphs 2 and 3 of this Article, the Commission shall inform the competent Guernsey authority and, if necessary, propose draft measures in accordance with the procedure referred to in Article 31(2) of Directive 95/46/EC with a view to repealing or suspending this Decision or limiting its scope.'.

Article 5

Articles 3 and 4 of Decision 2004/411/EC are replaced by the following:

'Article 3

Whenever the competent authorities in Member States exercise their powers pursuant to Article 28(3) of Directive 95/46/EC leading to the suspension or definitive ban of data flows to the Isle of Man in order to protect individuals with regard to the processing of their personal data, the Member State concerned shall, without delay, inform the Commission which will forward the information to the other Member States.

Article 4

1. The Commission shall, on an ongoing basis, monitor developments in the legal order of the Isle of Man that could affect the functioning of this Decision, including developments concerning access to personal data by public authorities, with a view to assessing whether the Isle of Man continues to ensure an adequate level of protection of personal data.

2. The Member States and the Commission shall inform each other of cases where the action of bodies responsible for ensuring compliance with the standard of protection in the Isle of Man fails to secure such compliance.

3. The Member States and the Commission shall inform each other of any indications that interferences by public authorities of the Isle of Man responsible for national security, law enforcement or other public interests with the right of individuals to the protection of their personal data go beyond what is strictly necessary, or that there is no effective legal protection against such interferences.

4. Where evidence shows that an adequate level of protection is no longer ensured, including in situations referred to in paragraphs 2 and 3 of this Article, the Commission shall inform the competent Isle of Man authority and, if necessary, propose draft measures in accordance with the procedure referred to in Article 31(2) of Directive 95/46/EC with a view to repealing or suspending this Decision or limiting its scope.'.

Article 6

Articles 3 and 4 of Decision 2008/393/EC are replaced by the following:

'*Article 3*

Whenever the competent authorities in Member States exercise their powers pursuant to Article 28(3) of Directive 95/46/EC leading to the suspension or definitive ban of data flows to Jersey in order to protect individuals with regard to the processing of their personal data, the Member State concerned shall, without delay, inform the Commission which will forward the information to the other Member States.

Article 4

1. The Commission shall, on an ongoing basis, monitor developments in the Jersey legal order that could affect the functioning of this Decision, including developments concerning access to personal data by public authorities, with a view to assessing whether Jersey continues to ensure an adequate level of protection of personal data.

2. The Member States and the Commission shall inform each other of cases where the action of bodies responsible for ensuring compliance with the standard of protection in Jersey fails to secure such compliance.

3. The Member States and the Commission shall inform each other of any indications that interferences by Jersey public authorities responsible for national security, law enforcement or other public interests with the right of individuals to the protection of their personal data go beyond what is strictly necessary, or that there is no effective legal protection against such interferences.

4. Where evidence shows that an adequate level of protection is no longer ensured, including in situations referred to in paragraphs 2 and 3 of this Article, the Commission shall inform the competent Jersey authority and, if necessary, propose draft measures in accordance with the procedure referred to in Article 31(2) of Directive 95/46/EC with a view to repealing or suspending this Decision or limiting its scope.'.

Article 7

Articles 3 and 4 of Decision 2010/146/EU are replaced by the following:

'*Article 3*

Whenever the competent authorities in Member States exercise their powers pursuant to Article 28(3) of Directive 95/46/EC leading to the suspension or definitive ban of data flows to a recipient in the Faeroe Islands whose activities fall under the scope of the Faroese Act on Processing of Personal Data in order to protect individuals with regard to the processing of their personal data, the Member State concerned shall, without delay, inform the Commission which will forward the information to the other Member States.

Article 4

1. The Commission shall, on an ongoing basis, monitor developments in the Faeroese legal order that could affect the functioning of this Decision, including developments concerning access to personal data by public authorities, with a view to assessing whether the Faeroe Islands continue to ensure an adequate level of protection of personal data.

2. The Member States and the Commission shall inform each other of cases where the action of bodies responsible for ensuring compliance with the standard of protection in the Faeroe Islands fails to secure such compliance.

3. The Member States and the Commission shall inform each other of any indications that interferences by Faeroese public authorities responsible for national security, law enforcement or other public interests with the right of individuals to the protection of their personal data go beyond what is strictly necessary, or that there is no effective legal protection against such interferences.

4. Where evidence shows that an adequate level of protection is no longer ensured, including in situations referred to paragraphs 2 and 3 of this Article, the Commission shall inform the competent Faeroese authority and, if necessary, propose draft measures in accordance with the procedure referred to in Article 31(2) of Directive 95/46/EC with a view to repealing or suspending this Decision or limiting its scope.'.

Article 8

Articles 3 and 4 of Decision 2010/625/EU are replaced by the following:

'*Article 3*

Whenever the competent authorities in Member States exercise their powers pursuant to Article 28(3) of Directive 95/46/EC leading to the suspension or definitive ban of data flows to Andorra in order to protect individuals with regard to the processing of their personal data, the Member State concerned shall, without delay, inform the Commission which will forward the information to the other Member States.

Article 4

1. The Commission shall, on an ongoing basis, monitor developments in the Andorran legal order that could affect the functioning of this Decision, including developments concerning access to personal data by public authorities, with a view to assessing whether Andorra continues to ensure an adequate level of protection of personal data.

2. The Member States and the Commission shall inform each other of cases where the action of bodies responsible for ensuring compliance with the standard of protection in Andorra fails to secure such compliance.

3. The Member States and the Commission shall inform each other of any indications that interferences by Andorran public authorities responsible for national security, law enforcement or other public interests with the right of individuals to the protection of their personal data go beyond what is strictly necessary, or that there is no effective legal protection against such interferences.

4. Where evidence shows that an adequate level of protection is no longer ensured, including in situations referred to in paragraphs 2 and 3 of this Article, the Commission shall inform the competent Andorran authority and, if necessary, propose draft measures in accordance with the procedure referred to in Article 31(2) of Directive 95/46/EC with a view to repealing or suspending this Decision or limiting its scope.'.

Article 9

Articles 3 and 4 of Decision 2011/61/EU are replaced by the following:

'*Article 3*

Whenever the competent authorities in Member States exercise their powers pursuant to Article 28(3) of Directive 95/46/EC leading to the suspension or definitive ban of data flows to the State of Israel in order to protect individuals with regard to the processing of their personal data, the Member State concerned shall, without delay, inform the Commission which will forward the information to the other Member States.

Article 4

1. The Commission shall, on an ongoing basis, monitor developments in the Israeli legal order that could affect the functioning of this decision, including developments concerning access to personal data by public authorities, with a view to assessing whether the State of Israel continues to ensure an adequate level of protection of personal data.

2. The Member States and the Commission shall inform each other of cases where the action of bodies responsible for ensuring compliance with the standard of protection in the State of Israel fails to secure such compliance.

3. The Member States and the Commission shall inform each other of any indications that interferences by Israeli public authorities responsible for national security, law enforcement or other public interests with the right of individuals to the protection of their personal data go beyond what is strictly necessary, or that there is no effective legal protection against such interferences.

4. Where evidence shows that an adequate level of protection is no longer ensured, including in situations referred to in paragraphs 2 and 3 of this Article, the Commission shall inform the competent Israeli authority and, if necessary, propose draft measures in accordance with the procedure referred to in Article 31(2) of Directive 95/46/EC with a view to repealing or suspending this Decision or limiting its scope.'.

Article 10

Articles 2 and 3 of Implementing Decision 2012/484/EU are replaced by the following:

'*Article 2*

Whenever the competent authorities in Member States exercise their powers pursuant to Article 28(3) of Directive 95/46/EC leading to the suspension or definitive ban of data flows to the Eastern Republic of Uruguay in order to protect individuals with regard to the processing of their personal data, the Member State concerned shall, without delay, inform the Commission which will forward the information to the other Member States.

Article 3

1. The Commission shall, on an ongoing basis, monitor developments in the legal order of the Eastern Republic of Uruguay that could affect the functioning of this Decision, including developments concerning access to personal data by public authorities, with a view to assessing whether the Eastern Republic of Uruguay continues to ensure an adequate level of protection of personal data.

2. The Member States and the Commission shall inform each other of cases where the action of bodies responsible for ensuring compliance with the standard of protection in the Eastern Republic of Uruguay fails to secure such compliance.

3. The Member States and the Commission shall inform each other of any indications that interferences by Uruguayan public authorities responsible for national security, law enforcement or other public interests with the right of individuals to the protection of their personal data go beyond what is strictly necessary, or that there is no effective legal protection against such interferences.

4. Where evidence shows that an adequate level of protection is no longer ensured, including in situations referred to in paragraphs 2 and 3, the Commission shall inform the competent Uruguayan authority and, if necessary, propose draft measures in accordance with the procedure referred to in Article 31(2) of Directive 95/46/EC with a view to repealing or suspending this Decision or limiting its scope.'.

Article 11

Articles 2 and 3 of Implementing Decision 2013/65/EU are replaced by the following:

'*Article 2*

Whenever the competent authorities in Member States exercise their powers pursuant to Article 28(3) of Directive 95/46/EC leading to the suspension or definitive ban of data flows to New Zealand in order to protect individuals with regard to the processing of their personal data, the Member State concerned shall, without delay, inform the Commission which will forward the information to the other Member States.

Article 3

1. The Commission shall, on an ongoing basis, monitor developments in the New Zealand legal order that could affect the functioning of this Decision, including developments concerning access to personal data by public authorities, with a view to assessing whether New Zealand continues to ensure an adequate level of protection of personal data.

2. The Member States and the Commission shall inform each other of cases where the action of bodies responsible for ensuring compliance with the standard of protection in New Zealand fails to secure such compliance.

3. The Member States and the Commission shall inform each other of any indications that interferences by New Zealand public authorities responsible for national security, law enforcement or other public interests with the right of individuals to the protection of their personal data go beyond what is strictly necessary, or that there is no effective legal protection against such interferences.

4. Where evidence shows that an adequate level of protection is no longer ensured, including in situations referred to in paragraphs 2 and 3 of this Article, the Commission shall inform the competent New Zealand authority and, if necessary, propose draft measures in accordance with the procedure referred to in Article 31(2) of Directive 95/46/EC with a view to repealing or suspending this Decision or limiting its scope.'.

Article 12

This Decision is addressed to the Member States.

Done at Brussels, 16 December 2016.

For the Commission
Věra JOUROVÁ
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2016/2296

of 16 December 2016

setting up the independent group of experts designated as Performance Review Body of the single European sky

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) ([1]), and in particular Article 11(2) thereof,

Whereas:

(1) The work of the Performance Review Body of the single European sky makes a positive contribution towards improving the European air traffic management (ATM) network, in particular by providing the Commission with impartial, evidence-based recommendations on the performance of air navigation services at Union and local levels as well as of network functions. The assistance provided by the Performance Review Body is indispensable to help attain the objectives of completing the single European sky, for which the performance scheme, established in accordance with Commission Implementing Regulation (EU) No 390/2013 ([2]), including further necessary developments in the light of experiences made during its application so far, and the closely linked charging scheme, established in accordance with Commission Implementing Regulation (EU) No 391/2013 ([3]), are key drivers, and of the Commission's Aviation Strategy more generally ([4]).

(2) The designation of the present Performance Review Body will end on 31 December 2016, pursuant to Commission Implementing Decision 2014/672/EU ([5]). The Commission should designate a new Performance Review Body to continue assisting the Commission and the national supervisory authorities after that date. That designation should be for the period starting on 1 January 2017 and ending on 31 December 2024, so as to provide for a sufficiently long period, thus assuring continuity and stability, while also providing for a fixed term which is consistent with the reference periods, as required by Article 3(1) of Implementing Regulation (EU) No 390/2013.

(3) Considering that that period extends from the second to the third reference period, any renewal of membership of the Performance Review Body should be such as to ensure a smooth transition and continuity of the experience and knowledge available.

(4) With a view to strengthening the impartiality of the Performance Review Body an independent group of experts should be set up to assist in the implementation of the performance scheme and that group of experts should be designated as the Performance Review Body.

(5) Article 11(2) of Regulation (EC) No 549/2004 specifies in a general manner what the role of the Performance Review Body is in the context of the performance scheme. Article 3 of Implementing Regulation (EU) No 390/2013 provides further details as regards its tasks and activities, in a non-exhaustive manner. Article 6(1) of Regulation (EU) No 598/2014 of the European Parliament and of the Council ([6]) also attributes certain tasks. For the sake of clarity and completeness, in accordance with those provisions, all tasks of the Performance Review Body should now be listed. The Performance Review Body should assist the Commission by providing

([1]) OJ L 96, 31.3.2004, p. 1.
([2]) Commission Implementing Regulation (EU) No 390/2013 of 3 May 2013 laying down a performance scheme for air navigation services and network functions (OJ L 128, 9.5.2013, p. 1).
([3]) Commission Implementing Regulation (EU) No 391/2013 of 3 May 2013 laying down a common charging scheme for air navigation services (OJ L 128, 9.5.2013, p. 31).
([4]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: An Aviation Strategy for Europe COM(2015) 598 final.
([5]) Commission Implementing Decision 2014/672/EU of 24 September 2014 on the extension of the designation of the Performance Review Body of the single European sky (OJ L 281, 25.9.2014, p. 5).
([6]) Regulation (EU) No 598/2014 of the European Parliament and of the Council of 16 April 2014 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach and repealing Directive 2002/30/EC (OJ L 173, 12.6.2014, p. 65).

advice, expertise and other services. For this purpose, it should coordinate with the national supervisory authorities. It should also assist the national supervisory authorities on their request.

(6) With a view to ensuring the efficient and effective functioning of the Performance Review Body, it should be supported by a Secretariat provided by the Commission.

(7) The members of the Performance Review Body should be highly qualified specialists, with appropriate competence in the key performance areas. The members, other than the chair, should be selected through a call for applications and a selection procedure, respecting the principles of objectivity, equal opportunities and transparency and providing for the detection of actual or potential conflicts of interests, and they should be appointed in their personal capacity. Considering his or her particular tasks and responsibilities, the chair should be appointed by the Commission in accordance with its internal administrative arrangements, while respecting those principles and providing for such detection.

(8) In light of their qualifications and expertise and the requirements in terms of impartiality and absence of conflicts of interest, the fact that they are appointed in their personal capacity and the importance of their work, those members, other than the chair, should receive remuneration beyond reimbursement of expenses, which should be proportionate to the tasks attributed to them. The chair should be remunerated and reimbursed in accordance with the internal administrative arrangements of the Commission.

(9) It is therefore also appropriate that the activities of the Performance Review Body, as well as the costs of its administrative and technical support, are financed from the budget of the Union.

(10) The work of the Performance Review Body necessitates access to the performance-related data referred to in Implementing Regulation (EU) No 390/2013, available within Eurocontrol. Therefore, the Commission should establish appropriate arrangements with Eurocontrol to ensure access, including the collection, validation, pre-analysis and provision of this data. Those arrangements need to acknowledge the pan-European dimension of performance review, in accordance with the Council Decision (EU) 2015/2394 ([1]).

(11) In order to ensure the proper functioning of the Performance Review Body, appropriate rules should be set out on its rules of procedure and on its reporting to the Commission. Rules on disclosure of information should also be laid down.

(12) Personal data should be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council ([2]).

(13) This Decision should no longer apply once the period of the designation of the Performance Review Body, as set out in this Decision, has ended.

(14) The measures provided for in this Decision are in accordance with the opinion of the Single Sky Committee established by Article 5(1) of Regulation (EC) No 549/2004,

HAS ADOPTED THIS DECISION:

Article 1

Designation of the Performance Review Body

1. The independent group of experts on the performance of air navigation services and network functions in the single European sky is hereby set up for the period from 1 January 2017 until 31 December 2024.

([1]) Council Decision (EU) 2015/2394 of 8 December 2015 on the position to be taken by the Member States on behalf of the European Union, concerning the decisions to be adopted by the Permanent Commission of Eurocontrol, with regard to the roles and tasks of Eurocontrol and on centralised services (OJ L 332, 18.12.2015, p. 136).

([2]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

2. The group of experts referred to in paragraph 1 is hereby designated as the Performance Review Body of the single European sky, for the period from 1 January 2017 until 31 December 2024.

Article 2

Tasks

The tasks of the Performance Review Body shall be:

(a) to assist the Commission in the implementation of the performance scheme, in particular as regards the activities listed in Article 3(3) and (6)(a) of Implementing Regulation (EU) No 390/2013;

(b) to provide ad hoc information or reports on performance-related issues at the request of the Commission, in accordance with Article 3(4) of Implementing Regulation (EU) No 390/2013;

(c) to assist the Commission, on its request, in defining the modalities of accessing performance-related data referred to in Articles 21 and 22 of Implementing Regulation (EU) No 390/2013;

(d) to assist the national supervisory authorities on their request in the implementation of the performance scheme by providing an independent view of performance issues and determining ranges of indicative values for target setting, in accordance with Articles 3(6)(b) and (c) of Implementing Regulation (EU) No 390/2013;

(e) to support the competent authorities on their request in assessing the noise situation at airports for which they are responsible, in accordance with Article 6(1) of Regulation (EU) No 598/2014.

Article 3

Advisory role

1. The Commission may consult the Performance Review Body on any matter relating to the performance of air navigation services and network functions in the single European sky.

2. The Performance Review Body may, at its own initiative, report and make recommendations to the Commission for improvement of the performance scheme, in accordance with Article 3(5) of Implementing Regulation (EU) No 390/2013.

Article 4

Composition and appointment of members and chair

1. The Performance Review Body shall be composed of nine members, including its chair.

2. Members, other than the chair, shall be individuals appointed in their personal capacity following their selection based on a call for applications.

3. Members, other than the chair, shall be appointed by the Director-General of the Commission's Directorate-General for Mobility and Transport, on behalf of the Commission, from specialists with appropriate competence who have responded to the call for applications, after consultation of Member States on the intended appointments. The selection and eligibility criteria shall include the criteria set out in the Annex.

4. The Director-General of the Commission's Directorate-General for Mobility and Transport, on behalf of the Commission, shall appoint, in accordance with its administrative arrangements and after consultation of Member States, a specialist with appropriate competence as the chair of the Performance Review Body. The chair shall act as the representative of the Performance Review Body and preside over its meetings.

5. The term of office of the chair and the other members shall be a period of 2 years, and may be renewed twice. No more than two thirds of the members shall be renewed at the same time.

6. A member who is no longer capable of contributing effectively to the Performance Review Body's deliberations, who resigns or who does not comply with the conditions set out in Articles 5 and 6 may be replaced, in accordance with paragraphs 2, 3 and 4, as appropriate, for the remainder of the term of office of that member.

7. The Director-General of the Commission's Directorate-General for Mobility and Transport, on behalf of the Commission, may establish a reserve list of suitable candidates that may be used to appoint replacements of members, other than the chair. It shall ask applicants for their consent before including their names on the reserve list.

8. The names of individuals appointed as members of the Performance Review Body shall be published in the *Official Journal of the European Union*.

9. Personal data shall be collected, processed and published in accordance with Regulation (EC) No 45/2001.

Article 5

Membership principles

1. When performing the duties under this Decision, the Performance Review Body and its members shall be impartial and act independently of any external influence and in the public interest. Members shall sign a statement to this effect, by which they undertake to exercise their functions within the Performance Review Body to this end.

2. Members shall not delegate their responsibilities to any other person.

3. Individuals applying to be appointed as members shall disclose any circumstances that could give rise to a conflict of interest by submitting a declaration of interests, as set out in the call for applications referred to in Article 4(2). The individual to be appointed as chair shall also disclose any such circumstances in due time before his or her appointment. In that declaration, all those individuals shall disclose at least any relevant professional and financial interests and any situation where their interests may compromise or may reasonably be perceived to compromise their capacity to act impartially and in the public interest as a member of the Performance Review Body.

4. For the purposes of assessing whether there could be any conflict of interest, a number of factors shall be taken into account, including the nature, type and importance of the individual's interest, as well as the degree to which the interest may be reasonably expected to influence the individual's advice and the overall decision making process of the Performance Review Body. An interest shall be considered to be insignificant or minimal where it is unlikely to compromise or to be reasonably perceived as compromising the individual's capacity to act impartially and in the public interest when advising the Commission.

5. The Commission shall make the declaration of interests form of appointed members publicly available via a dedicated website. Technical measures shall be taken to indicate to search engines that declaration of interest forms should not appear in search results.

6. Members are subject to the obligation of professional secrecy and to the Commission's rules on security regarding the protection of Union classified information, laid down in Commission Decisions (EU, Euratom) 2015/443 [1] and (EU, Euratom) 2015/444 [2].

[1] Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).
[2] Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

7. Members shall sign a written declaration of confidentiality at the beginning of each term of office.

Article 6

Working method

1. Subject to prior approval by the Director-General of the Commission's Directorate-General for Mobility and Transport, on behalf of the Commission, in particular with regard to the financing of the Performance Review Body, the Performance Review Body shall adopt the following documents:

(a) its annual work programme and annual report;

(b) its rules of procedure;

(c) the modalities of its cooperation with the national supervisory authorities;

(d) the working arrangements with the air navigation service providers, airport operators, airport coordinators and air carriers referred to in Article 3(8) of Implementing Regulation (EU) No 390/2013;

(e) a data management plan.

2. The Performance Review Body shall adopt its reports and recommendations and the documents referred to in paragraph 1 by simple majority voting.

3. For the purpose of examining specific issues relevant to its work, the Performance Review Body may set up sub-groups from among its members, on the basis of terms of reference defined by the Performance Review Body and in agreement with the Director-General of the Commission's Directorate-General for Mobility and Transport, on behalf of the Commission. Sub-groups shall be dissolved as soon as their mandate is fulfilled.

4. The Performance Review Body, as well as its sub-groups, shall meet at the premises of the Commission. However, in exceptional cases meetings may be held elsewhere.

5. The attendance of members of Performance Review Body at meetings of the Performance Review Body, as well as its sub-groups, is mandatory. Justifications shall be sent to the chair and the Secretariat in case of absence.

6. The Performance Review Body shall ensure, with the support of the Secretariat, that its methodology reflects the latest scientific standards.

Article 7

Administrative and technical support

1. The Commission shall provide the necessary administrative and technical support for the functioning of the Performance Review Body, including the Secretariat for the Performance Review Body and its sub-groups, so as to ensure its efficient and effective functioning. The Secretariat shall convene and support the plenary meetings of the Performance Review Body and shall convene the meetings of the sub-groups.

The administrative and technical support shall be provided in a cost-efficient manner ensuring the Performance Review Body's functional and technical independence when accomplishing its tasks.

2. Where Eurocontrol is identified as the appropriate data provider, the Commission shall establish appropriate arrangements with Eurocontrol for the collection, validation, pre-analysis and provision of this data and to ensure continuous access of the Performance Review Body to the performance-related data referred to in Article 21 of Implementing Regulation (EU) No 390/2013, available within Eurocontrol.

Article 8

Reporting and transparency

1. In accomplishing the tasks attributed to it in Article 2, the Performance Review Body shall issue reports and recommendations to the Commission.

2. The Performance Review Body shall offer the national supervisory authorities the possibility to check factual data related to the assessment and monitoring of the performance plans before issuing its reports.

3. The Commission shall publish all reports and recommendations of the Performance Review Body via a dedicated website.

4. Such publication shall not take place where the disclosure of the report or recommendation, or a part thereof, would undermine the protection of any public or private interest, as defined in Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council ([1]).

5. The Performance Review Body shall adopt an annual report on its work, including on its cooperation with the European Aviation Safety Agency and the working arrangements with air navigation service providers, airport operators, airport coordinators and air carriers, referred to in Article 3(7) and (8) of Implementing Regulation (EU) No 390/2013, respectively, as well as the arrangement with Eurocontrol as regards the access to the performance-related data referred to in Article 7(2).

6. The Commission shall monitor the functioning of the Performance Review Body and regularly inform Member States on the progress of its work.

Article 9

Allowances, expenses and remuneration

1. Members of the Performance Review Body, other than the chair, shall be entitled to a special allowance of a maximum of EUR 600 in the form of a daily unit cost for each full working day. The total allowance shall be calculated and rounded upwards to the amount corresponding to the nearest half working day. The payment shall be made in euro.

2. Travel and subsistence expenses incurred by members, other than the chair, shall be reimbursed by the Commission in accordance with Commission Decision C(2007) 5858 ([2]). Those expenses shall be reimbursed within the limits of the available appropriations allocated under the annual procedure for the allocation of resources.

3. The chair of the Performance Review Body shall be remunerated and his or her travel and subsistence expenses shall be reimbursed by the Commission in accordance with its administrative arrangements.

Article 10

Financing

The costs of the activities carrying out the tasks referred to in Article 2, including the costs corresponding to the allowances and reimbursements of the members of the Performance Review Body referred to in Article 9, as well as the costs of the administrative and technical support referred to in Article 7, shall be financed from the budget of the

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

([2]) Commission Decision C(2007) 5858 of 5 December 2007 'Rules on the reimbursement of expenses incurred by people from outside the Commission invited to attend meetings in an expert capacity'.

Union. The costs corresponding to the allowances and reimbursements referred to in Article 9(1) and (2) shall be financed in accordance with Article 204 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council [1] and Article 287 of Commission Delegated Regulation (EU) No 1268/2012 [2].

Article 11

Repeal

Implementing Decision 2014/672/EU is repealed.

Article 12

Entry into force and application

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

It shall apply from 1 January 2017 until 31 December 2024.

Done at Brussels, 16 December 2016.

For the Commission
The President
Jean-Claude JUNCKER

[1] Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

[2] Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

ANNEX

Selection and eligibility criteria for the members of the Performance Review Body

The selection and eligibility criteria for the members of the Performance Review Body shall include the following:

(a) proven and relevant expertise, competence and high-level professional experience of the applicant, in areas relevant to the key performance areas;

(b) balanced representation of competence and expertise for all key performance areas, as well as of gender and geographical origin;

(c) balanced representation of knowledge in areas related, but not limited to:

— EU aviation policy and applicable legislation,

— airline and/or airport management,

— military mission requirements and military operations management,

— aviation economic matters, SESAR deployment management and union funding mechanisms,

— benchmarking, cost-benefit analysis techniques, and financial planning,

— interdependencies between cost and the other performance areas as well as between civil and military requirements,

— identification of safety risks and safety performance measurement,

— emissions trading scheme (ETS) and measurement of environmental performance (addressing i.a. aviation environmental impact, fuel efficiency, CO_2 and noise emissions),

— impact from interactions with adjoining airspace to the SES area including hot spots and flow management;

(d) the capability to analyse and assess interdependencies and interactions between the performance areas and to define future performance targets based on the planned operational and technological improvements;

(e) appropriate language skills, allowing the applicant to fully and effectively participate in the work of the Performance Review Body;

(f) independence and absence of conflicts of interest.

COMMISSION IMPLEMENTING DECISION (EU) 2016/2297

of 16 December 2016

amending Decisions 2001/497/EC and 2010/87/EU on standard contractual clauses for the transfer of personal data to third countries and to processors established in such countries, under Directive 95/46/EC of the European Parliament and of the Council

(notified under document C(2016) 8471)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([1]), and in particular Article 26(4) thereof,

After consulting the European Data Protection Supervisor,

Whereas:

(1) In its judgment of 6 October 2015 in Case C-362/14 *Maximillian Schrems v Data Protection Commissioner* ([2]) the Court of Justice of the European Union found that, in adopting Article 3 of Decision 2000/520/EC ([3]), the Commission exceeded the power which is conferred upon it in Article 25(6) of Directive 95/46/EC, read in the light of the Charter of Fundamental Rights of the European Union, and declared Article 3 of that Decision invalid.

(2) Article 3(1) first subparagraph of Decision 2000/520/EC laid down restrictive conditions under which national supervisory authorities could decide to suspend data flows to a U.S. self-certified company, notwithstanding the Commission's adequacy finding.

(3) In its *Schrems* judgment, the Court of Justice clarified that national supervisory authorities remain competent to oversee the transfer of personal data to a third country which has been the subject of a Commission adequacy decision and that the Commission has no competence to restrict their powers under Article 28 of Directive 95/46/EC. Pursuant to this Article, those authorities possess, in particular, investigative powers, such as the power to collect all the information necessary for the performance of their supervisory duties, effective powers of intervention, such as that of imposing a temporary or definitive ban on the processing of data, and the power to engage in legal proceedings ([4]).

(4) In the same judgment, the Court of Justice recalled that, in line with the second subparagraph of Article 25(6) of Directive 95/46/EC, Member States and their organs must take the measures necessary to comply with acts of the Union institutions, as the latter are in principle presumed to be lawful and accordingly produce legal effects until such time as they are withdrawn, annulled in an action for annulment or declared invalid following a reference for a preliminary ruling or a plea of illegality.

(5) *Mutatis mutandis*, a Commission decision adopted pursuant to Article 26(4) of Directive 95/46/EC is binding on all organs of the Member States to which it is addressed, including their independent supervisory authorities, in so far as it has the effect of recognising that transfers taking place on the basis of standard contractual clauses set out therein offer sufficient safeguards as required by Article 26(2) of that Directive. This does not prevent a national supervisory authority from exercising its powers to oversee data flows, including the power to suspend or ban a transfer of personal data when it determines that the transfer is carried out in violation of EU or national data protection law, such as, for instance, when the data importer does not respect the standard contractual clauses.

([1]) OJ L 281, 23.11.1995, p. 31.
([2]) ECLI:EU:C:2015:650.
([3]) Commission Decision 2000/520/EC of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the Safe Harbour Privacy Principles and related Frequently Asked Questions issued by the U.S. Department of Commerce (OJ L 215, 25.8.2000, p. 7).
([4]) *Schrems*, paragraphs 40 et seq., 101 to 103.

(6) Commission Decisions 2001/497/EC ([1]) and 2010/87/EU ([2]) contain a limitation on the powers of the national supervisory authorities that is comparable to Article 3(1) first subparagraph of Decision 2000/520/EC, which the Court of Justice considered invalid.

(7) In the light of the *Schrems* judgment and pursuant to Article 266 of the Treaty, the provisions in those Decisions limiting the powers of the national supervisory authorities should therefore be replaced.

(8) In order to facilitate the effective monitoring of the functioning of the decisions on standard contractual clauses currently in force, the Commission should be informed by Member States about relevant action undertaken by national supervisory authorities.

(9) The Working Party on the Protection of Individuals with regard to the Processing of Personal Data established under Article 29 of Directive 95/46/EC has delivered an opinion, which has been taken into account in the preparation of this Decision.

(10) The measures provided for in this Decision are in accordance with the opinion of the Committee established under Article 31(1) of Directive 95/46/EC.

(11) Decisions 2001/497/EC and 2010/87/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 4 of Decision 2001/497/EC is replaced by the following:

'*Article 4*

Whenever the competent authorities in Member States exercise their powers pursuant to Article 28(3) of Directive 95/46/EC leading to the suspension or definitive ban of data flows to third countries in order to protect individuals with regard to the processing of their personal data, the Member State concerned shall, without delay, inform the Commission, which will forward the information to the other Member States.'

Article 2

Article 4 of Decision 2010/87/EU is replaced by the following:

'*Article 4*

Whenever the competent authorities in Member States exercise their powers pursuant to Article 28(3) of Directive 95/46/EC leading to the suspension or definitive ban of data flows to third countries in order to protect individuals with regard to the processing of their personal data, the Member State concerned shall, without delay, inform the Commission which will forward the information to the other Member States.'

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 16 December 2016.

For the Commission
Věra JOUROVÁ
Member of the Commission

([1]) Commission Decision 2001/497/EC of 15 June 2001 on standard contractual clauses for the transfer of personal data to third countries, under Directive 95/46/EC (OJ L 181, 4.7.2001, p. 19).
([2]) Commission Decision 2010/87/EU of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council (OJ L 39, 12.2.2010, p. 5).

GUIDELINES

GUIDELINE (EU) 2016/2298 OF THE EUROPEAN CENTRAL BANK

of 2 November 2016

amending Guideline (EU) 2015/510 on the implementation of the Eurosystem monetary policy framework (ECB/2016/31)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first indent of Article 127 (2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the first indent of Article 3.1, Articles 9.2, 12.1, 14.3, 18.2 and the first paragraph of Article 20 thereof,

Whereas:

(1) Achieving a single monetary policy entails defining the tools, instruments and procedures to be used by the Eurosystem, which consists of the European Central Bank (ECB) and the national central banks of those Member States whose currency is the euro (hereinafter the 'NCBs'), in order to implement such a policy in a uniform manner throughout the Member States whose currency is the euro.

(2) For the purpose of monetary policy operations, the Eurosystem may conduct either fixed-rate or variable-rate tender procedures. Guideline (EU) 2015/510 of the European Central Bank (ECB/2014/60) [1] should be amended to incorporate some necessary technical and editorial refinements relating to the operational steps of tender procedures.

(3) The Eurosystem considers it necessary to amend the eligibility criteria and to adjust the risk control measures applicable to senior unsecured debt instruments issued by credit institutions or investment firms or their closely linked entities within its collateral framework to take into account the implementation of Directive 2014/59/EU of the European Parliament and the Council [2] in Member States.

(4) The Eurosystem has developed a single framework for assets eligible as collateral so that all Eurosystem credit operations are carried out in a harmonised manner by means of the implementation of this Guideline in all Member States whose currency is the euro. The Governing Council considers it necessary to introduce some changes to the Eurosystem's collateral framework to allow the inclusion of coupon structures with potential negative cash flows for marketable assets.

(5) The Eurosystem requires the provision of comprehensive and standardised loan-level data on the pool of cash-flow generating assets backing asset-backed securities. Loan-level data must be submitted by the relevant parties to a loan-level data repository designated by the Eurosystem. Eurosystem requirements for designating loan-level data repositories, as well as the actual designation process, need to be further clarified in the interest of transparency.

(6) With the aim of safeguarding the adequacy of Eurosystem collateral, the eligibility criteria for credit claims, and, in particular, the criterion on restrictions to realisation should be amended. NCBs should take specific measures to exclude or significantly mitigate set-off risk when they accept credit claims as collateral. Credit claims originated before 1 January 2018 which have not been subject to those measures may be mobilised as collateral until 31 December 2019 provided that all other eligibility criteria are fulfilled.

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[1] Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) (General Documentation Guideline) (OJ L 91, 2.4.2015, p. 3).

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

(7) In order to protect the Eurosystem against the risk of financial losses in the event of a counterparty's default, eligible assets mobilised as collateral for Eurosystem credit operations should be subject to the risk control measures laid down in Title VI of Part Four of Guideline (EU) 2015/510 (ECB/2014/60). As a result of the regular review of the Eurosystem risk control framework, the Governing Council considers that several adjustments should be made.

(8) Eligible assets are required to meet the Eurosystem's credit quality requirements specified in the Eurosystem credit assessment framework (ECAF), which lays down the procedures, rules and techniques to ensure that the Eurosystem's requirement for high credit standards for eligible assets is maintained. Following a review of the ECAF rules, specific changes should be made, in particular in relation to the general acceptance criteria of external credit assessment institutions (ECAIs) and additional operational requirements for ECAIs with respect to covered bonds.

(9) Several minor technical amendments need to be made in the interests of clarity, for example with regard to the terminology of covered bonds.

(10) Therefore, Guideline (EU) 2015/510 (ECB/2014/60) should be amended accordingly,

HAS ADOPTED THIS GUIDELINE:

Article 1

Amendments

Guideline (EU) 2015/510 (ECB/2014/60) is amended as follows:

1. Article 2 is amended as follows:

(a) point (12) is replaced by the following:

'(12) "covered bond" means a debt instrument that is dual recourse: (a) directly or indirectly to a credit institution; and (b) to a dynamic cover pool of underlying assets, and for which there is no tranching of risk.';

(b) the following point (46a) is inserted:

'(46a) "investment firm" means an investment firm within the meaning of point (2) of Article 4(1) of Regulation (EU) No 575/2013.';

(c) point (48) is replaced by the following:

'(48) "jumbo covered bond" means a covered bond with an issuing volume of at least EUR 1 billion, for which at least three market-makers provide regular bid and ask quotes;';

(d) point (71) is replaced by the following:

'(71) "other covered bonds" means structured covered bonds or *multi cédulas*;';

(e) point (74) is replaced by the following:

'(74) "public credit rating" means a credit rating which is: (a) issued or endorsed by a credit rating agency registered in the Union that is accepted as an external credit assessment institution by the Eurosystem; and (b) disclosed publicly or distributed by subscription;'

(f) point (88) is replaced by the following:

'(88) "structured covered bond" means a covered bond, with the exception of *multi cédulas*, which is not issued in accordance with the requirements under Article 52(4) of Directive 2009/65/EC of the European Parliament and the Council (*).

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

(g) point (94) is replaced by the following:

'(94) "UCITS compliant covered bond" means a covered bond which is issued in accordance with the requirements under Article 52(4) of Directive 2009/65/EC.';

2. Article 25 is amended as follows:

(a) in paragraph 1, Table 4 is replaced by the following:

'Table 4

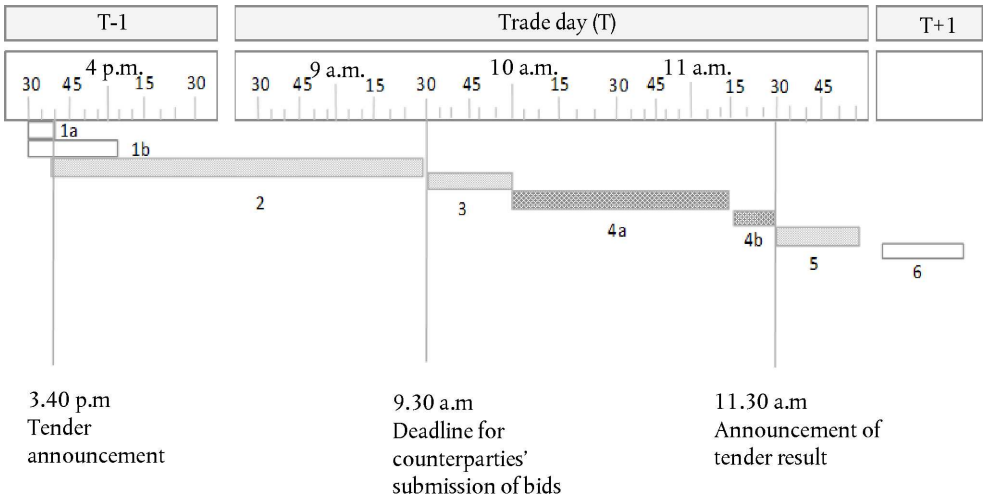
Operational steps for tender procedures

Step 1	Tender announcement (a) ECB public announcement (b) NCBs' public announcement and direct announcement to individual counterparties (if deemed necessary)
Step 2	Counterparties' preparation and submission of bids
Step 3	Compilation of bids by the Eurosystem
Step 4	Tender allotment and announcement of tender results (a) ECB tender allotment decision (b) ECB public announcement of the allotment results
Step 5	Certification of individual allotment results
Step 6	Settlement of the transactions';

(b) in paragraph 2, Tables 5 and 6 are replaced by the following:

'Table 5

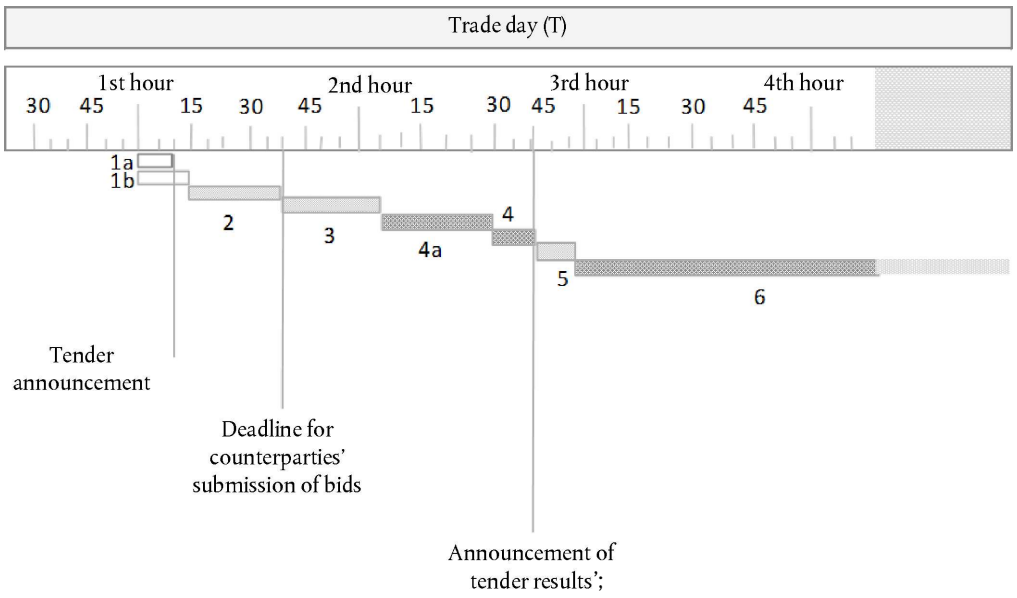
Indicative time frame for the operational steps in standard tender procedures (times are stated in Central European Time [1])



[1] Central European Time (CET) takes account of the change to Central European Summer Time.

Table 6

Indicative time frame for the operational steps in quick tender procedures (times are stated in CET)



3. in Article 30, paragraphs 1 and 2 are replaced by the following:

'1. Standard tender procedures shall be publicly announced by the ECB in advance. In addition, the NCBs may announce standard tender procedures publicly and directly to counterparties, if deemed necessary.

2. Quick tender procedures may be publicly announced by the ECB in advance. In quick tender procedures that are publicly announced in advance, the NCB may contact the selected counterparties directly if deemed necessary. In quick tender procedures that are not announced publicly in advance, the selected counterparties shall be contacted directly by the NCBs.';

4. in Article 43, paragraph 1 is replaced by the following:

'1. The ECB shall publicly announce its tender allotment decision with respect to the tender results. In addition, the NCBs may announce the ECB's tender allotment decision publicly and directly to counterparties if they deem it necessary.';

5. in Article 55a, paragraph 3 is replaced by the following:

'3. In the case of branches, the information reported under paragraph 1 shall relate to the institution to which the branch belongs.';

6. in Article 61, paragraph 1 is replaced by the following:

'1. The ECB shall publish an updated list of eligible marketable assets on its website, in accordance with the methodologies indicated on its website and shall update it every day on which TARGET2 is operational. Marketable assets included on the list of eligible marketable assets become eligible for use in Eurosystem credit operations upon their publication on the list. As an exception to this rule, in the specific case of short-term debt instruments with same-day value settlement, the Eurosystem may grant eligibility from the date of issue. Assets assessed in accordance with Article 87(3) shall not be published on this list of eligible marketable assets.';

7. in Article 63, paragraph 1 is replaced by the following:

'1. In order to be eligible, debt instruments shall have either of the following coupon structures until final redemption:

(a) fixed, zero or multi-step coupons with a pre-defined coupon schedule and pre-defined coupon values; or

(b) floating coupons that have the following structure: coupon rate = (reference rate * l) ± x, with f ≤ coupon rate ≤ c, where:

(i) the reference rate is only one of the following at a single point in time:

— a euro money market rate, e.g. Euribor, LIBOR or similar indices,

— a constant maturity swap rate, e.g. CMS, EIISDA, EUSA,

— the yield of one or an index of several euro area government bonds that have a maturity of one year or less,

— a euro area inflation index;

(ii) f (floor), c (ceiling), l (leveraging/deleveraging factor) and x (margin) are, if present, numbers that are either pre-defined at issuance, or may change over time only according to a path predefined at issuance, where l is greater than zero throughout the entire lifetime of the asset. For floating coupons with an inflation index reference rate, l shall be equal to one.';

8. the following Article 77a is inserted:

'Article 77a

Restrictions on investments for asset-backed securities

Any investments of monies standing to the credit of the issuer's or of any intermediary SPV's bank accounts under the transaction documentation shall not consist, in whole or in part, actually or potentially, of tranches of other ABSs, credit-linked notes, swaps or other derivative instruments, synthetic securities or similar claims.';

9. in Article 73, paragraph 7 is deleted;

10. in Article 78, paragraph 1 is replaced by the following:

'1. Comprehensive and standardised loan-level data on the pool of cash-flow generating assets backing the ABSs shall be made available in accordance with the procedures set out in Annex VIII, which include the information on the required data quality score and the requirements for the Eurosystem's designation of loan-level data repositories. In its eligibility assessment, the Eurosystem takes account of: (a) any failure to deliver data, and (b) how frequently individual loan-level data fields are found not to contain meaningful data.';

11. in Section 2, Chapter 1 of Title II of Part Four the following Subsection 4 is inserted:

'Subsection 4

Specific eligibility criteria for certain unsecured debt instruments

Article 81a

Eligibility criteria for certain unsecured debt instruments

1. To be eligible for Eurosystem credit operations, unsecured debt instruments issued by credit institutions or investment firms, or by their closely-linked entities as defined in Article 138(2), shall comply with the general eligibility criteria relating to all types of marketable assets laid down in Section 1, with the exception of the requirement laid down in Article 64 to the extent that the unsecured debt instrument is subject to statutory subordination.

2. For the purposes of this subsection, statutory subordination means the subordination, based on a statutory framework applicable to the issuer, of an unsecured debt instrument that is not subject to subordination pursuant to the terms and conditions of the debt instrument, i.e. contractual subordination.';

12. in Article 83, point (a) is replaced by the following:

'(a) An ECAI issue rating: this rating refers to an ECAI credit assessment assigned to either an issue or, in the absence of an issue rating from the same ECAI, the programme or issuance series under which an asset is issued. An ECAI assessment for a programme or issuance series shall only be relevant if it applies to the particular asset in question and is explicitly and unambiguously matched with the asset's ISIN code by the ECAI, and a different issue rating from the same ECAI does not exist. For ECAI issue ratings, the Eurosystem shall make no distinction in respect of the original maturity of the asset.';

13. in Article 104, the following paragraph 3a is inserted:

'3a. From 1 January 2018, NCBs shall employ a mechanism to ensure that set-off risk has been excluded or significantly mitigated when they accept as collateral credit claims originated after that date. Credit claims originated before 1 January 2018 which have not been subject to that mechanism may be mobilised as collateral until 31 December 2019 provided that all other eligibility criteria are fulfilled.';

14. Article 120 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

'1. For the purposes of the ECAF, the general acceptance criteria for ECAIs shall be the following:

(a) ECAIs shall be registered by the European Securities and Markets Authority in accordance with Regulation (EC) No 1060/2009.

(b) ECAIs shall fulfil operational criteria and provide relevant coverage so as to ensure the efficient implementation of the ECAF. In particular, the use of an ECAI credit assessment is subject to the availability to the Eurosystem of information on these assessments, as well as information for the comparison and the assignment, i.e. mapping of the assessments to the Eurosystem's credit quality steps and for the purposes of the performance monitoring process under Article 126.

2. The Eurosystem reserves the right to decide whether to initiate an ECAF acceptance procedure upon request from a credit rating agency (CRA). In making its decision, the Eurosystem shall take into account, among other things, whether the CRA provides relevant coverage for the efficient implementation of the ECAF in accordance with the requirements set out in Annex IXa.';

(b) the following paragraph 2a is inserted:

'2a. Following the initiation of an ECAF acceptance procedure, the Eurosystem shall investigate all additional information deemed relevant to ensure the efficient implementation of the ECAF, including the ECAI's capacity to fulfil the criteria and rules of the ECAF performance monitoring process in accordance with the requirements set out in Annex IX and the specific criteria in Annex IXb (if relevant). The Eurosystem reserves the right to decide whether to accept an ECAI for the purposes of the ECAF on the basis of the information provided and its own due diligence assessment.';

15. in Article 122(3), point (b) is replaced by the following:

'(b). an up-to-date assessment by the competent authority reflecting the currently available information on all issues affecting the use of the IRB for collateral purposes and all issues relating to the data used for the ECAF performance monitoring process';

16. in Article 137, paragraph 2 is replaced by the following:

'2. The general eligibility criteria for marketable assets laid down in Title II of Part Four shall apply, except that marketable assets:

(a) may be issued, held and settled outside the EEA;

(b) may be denominated in currencies other than the euro; and

(c) shall not have a coupon value that results in a negative cash flow.';

17. in Article 138(3), point (a) is replaced by the following:

'(a) close links between the counterparty and an EEA public sector entity that has the right to levy taxes, or cases where a debt instrument is guaranteed by one or more EEA public sector entities that have the right to levy taxes and the relevant guarantee complies with the features laid down in Article 114, subject in all cases to Article 139(1);';

18. in Article 139, paragraph 1 is replaced by the following:

'1. Unsecured debt instruments issued by a counterparty or any other entity closely linked to that counterparty, as defined in paragraph 2 of Article 138, and fully guaranteed by one or several EEA public sector entities which have the right to levy taxes shall not be mobilised as collateral for Eurosystem credit operations by that counterparty either:

(a) directly; or

(b) indirectly, where they are included in a pool of covered bonds.';

19. in Article 141, paragraph 1 is replaced by the following:

'1. A counterparty shall not submit or use as collateral unsecured debt instruments issued by a credit institution, or by any other entity with which that credit institution has close links, to the extent that the value of such collateral issued by that credit institution or other entity with which it has close links taken together exceeds 2,5 % of the total value of the assets used as collateral by that counterparty after the applicable haircut. This 2,5 % threshold shall not apply in either of the following cases:

(a) if the value of such assets does not exceed EUR 50 million after any applicable haircut; or

(b) if such assets are guaranteed by a public sector entity which has the right to levy taxes by way of a guarantee that complies with the features laid down in Article 114.';

20. Article 143 is deleted;

21. the following Article 144a is inserted:

'Article 144a

Eligible assets with negative cash flows

1. NCBs shall provide that a counterparty shall remain liable for the timely payment of any amount of negative cash flows related to eligible assets submitted or used by it as collateral.

2. If a counterparty fails to effect timely payment pursuant to paragraph 1, the Eurosystem may, but is not obliged to, discharge the relevant payment. NCBs shall provide that a counterparty shall refund the Eurosystem, immediately upon request from the Eurosystem, of any amount of negative cash flows paid by the Eurosystem as a result of the counterparty's failure. If a counterparty fails to make a timely payment pursuant to paragraph 1, the Eurosystem shall have the right to debit immediately and without prior notification an amount equal to the amount the Eurosystem has to pay on behalf of such counterparty either from:

(a) the relevant counterparty's payment module (PM) account in TARGET2, as provided for in Article 36(6) of Annex II to Guideline ECB/2012/27; or

(b) with the prior authorisation of a settlement bank, the TARGET2 PM account of a settlement bank, used for the relevant counterparty's Eurosystem credit operations; or

(c) any other account that can be used for Eurosystem monetary policy operations and that the relevant counterparty has with the NCB,

3. Any amount paid by the Eurosystem under paragraph 2 that is not refunded by a counterparty immediately upon request and that cannot be debited by the Eurosystem from any relevant account as provided for under paragraph 2, shall be considered as a credit from the Eurosystem, for which a sanction is applicable in accordance with Article 154.';

22. in Article 154(1), point (a) is replaced by the following:

'(a) as regards reverse transactions and foreign exchange swaps for monetary policy purposes, the obligations, as laid down in Article 15, to adequately collateralise and settle the amount the counterparty has been allotted over the whole term of a particular operation including any outstanding amount of a particular operation in the case of early termination executed by the NCB over the remaining term of an operation.';

23. in Article 154(1), the following point (e) is added:

'(e) any payment obligations pursuant to Article 144a(3).';

24. in Article 156(1), point (a) is replaced by the following:

'(a) a financial penalty was imposed;';

25. in Article 156(4), point (a) is replaced by the following:

'(a) a financial penalty was imposed;';

26. in Article 166, the following paragraph 4a is added:

'4a. Each NCB shall apply contractual or regulatory arrangements which ensure that, at all times, the home NCB is in a legal position to impose a financial penalty for a failure of a counterparty to reimburse or pay, in full or in part, any amount of the credit or of the repurchase price, or to deliver the purchased assets, at maturity or when otherwise due, in the event that no remedy is available to it pursuant to Article 166(2). The financial penalty shall be calculated in accordance with Annex VII, Section I, paragraph 1(a) to this Guideline and Annex VII, Section I, paragraphs 2 and 4 to this Guideline, taking into account the amount of cash that the counterparty could not pay or reimburse, or of the assets the counterparty could not deliver, and the number of calendar days during which the counterparty did not pay, reimburse or deliver.';

27. Annexes VII, VIII and XII are amended, and a new Annex IXa and Annex IXb is inserted, in accordance with the Annex to this Guideline.

Article 2

Taking effect and implementation

1. This Guideline shall take effect on the day of its notification to the national central banks of the Member States whose currency is the euro.

2. The national central banks of the Member States whose currency is the euro shall take the necessary measures to comply with this Guideline and apply them from 1 January 2017. They shall notify the ECB of the texts and means relating to those measures by 5 December 2016 at the latest.

Article 3

Addressees

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 2 November 2016.

For the Governing Council of the ECB
The President of the ECB
Mario DRAGHI

ANNEX

Annexes VII, VIII and XII to Guideline (EU) 2015/510(ECB/2014/60) are amended, and new Annexes IXa and IXb are inserted, as follows:

1. in Annex VII, paragraph 1(b) is replaced by the following:

   '(b) For failure to comply with an obligation referred to in Article 154(1)(d) or (e), a financial penalty is calculated using the marginal lending facility rate that applied on the day when the non-compliance began plus 5 percentage points. For repeated infringements of the obligation referred to in Article 154(1)(d) or of the obligation referred to in Article 154(1)(e) within a 12-month period, starting from the day of the first infringement, the penalty rate increases by a further 2,5 percentage points for each infringement.'

2. in Annex VII, paragraph 5(a) is replaced by the following:

   '(a) A grace period of seven calendar days applies if the breach resulted from a change in the valuation, without a submission of additional such unsecured debt instruments and without removal of assets from the total collateral pool, on the basis of the following:

      (i) the value of those already submitted unsecured debt instruments has increased; or

      (ii) the total value of the collateral pool has decreased.

      In such cases the counterparty is required to adjust the value of its total collateral pool and/or the value of such unsecured debt instruments within the grace period, to ensure compliance with the applicable limit.';

3. in Annex VII, paragraph 6 is replaced by the following:

   '6. If the counterparty has provided information that affects the value of its collateral negatively from the Eurosystem's perspective with regard to Article 145(4), e.g. incorrect information on the outstanding amount of a used credit claim that is or has been false or out of date, or if the counterparty fails to timely provide information as required under Article 101(a)(iv), the amount (value) of the collateral that has been negatively affected is taken into account for the calculation of the financial penalty under paragraph 3 and no grace period shall be applicable. If the incorrect information is corrected within the applicable notification period, e.g. for credit claims within the course of the next business day pursuant to Article 109(2), no penalty is to be applied.';

4. in Annex VII, paragraph 7 is replaced by the following:

   '7. For failure to comply with the obligations referred to in Article 154(1)(d) or (e), a financial penalty is calculated by applying the penalty rate, in accordance with paragraph 1(b), to the amount of the counterparty's unauthorised access to the marginal lending facility or unpaid credit from the Eurosystem.';

5. Annex VIII is amended as follows:

   (a) the title is replaced by the following:

   'LOAN-LEVEL DATA REPORTING REQUIREMENTS FOR ASSET-BACKED SECURITIES AND THE PROCEDURE FOR THE EUROSYSTEM'S DESIGNATION OF LOAN-LEVEL DATA REPOSITORIES';

   (b) the introductory wording is replaced by the following:

   'This Annex applies to the provision of comprehensive and standardised loan-level data on the pool of cash-flow generating assets backing asset-backed securities (ABSs), as specified in Article 78, and sets out the procedure for the Eurosystem's designation of loan-level data repositories.';

   (c) Section I.1 is replaced by the following:

   '1. Loan-level data must be submitted by the relevant parties to a loan-level data repository designated by the Eurosystem. The loan-level data repository publishes such data electronically.';

(d) The following new Section IV is inserted:

'IV. DESIGNATION OF LOAN-LEVEL DATA REPOSITORIES

I. Requirements for designation

1. In order to be designated, loan-level data repositories must comply with the applicable Eurosystem requirements, including open access, non-discrimination, coverage, appropriate governance structure and transparency.

2. In relation to the requirements of open access and non-discrimination, a loan-level data repository:

   (a) may not unfairly discriminate between data users when providing access to loan-level data;

   (b) must apply criteria for access to loan-level data which are objective, non-discriminatory and publicly available;

   (c) may only restrict access to the least possible extent so as to meet the requirement of proportionality;

   (d) must establish fair procedures for instances where it denies access to data users or data providers;

   (e) must have the necessary technical capabilities to provide access to both data users and data providers in all reasonable circumstances, including data backup procedures, data security safeguards, and disaster recovery arrangements;

   (f) may not impose costs for data users for the supply or extraction of loan-level data which are discriminatory or give rise to undue restrictions on access to loan-level data.

3. In relation to the requirement of coverage, a loan-level data repository:

   (a) must establish and maintain robust technology systems and operational controls to enable it to process loan-level data in a manner that supports the Eurosystem's requirements for submission of loan-level data in relation to eligible assets subject to loan-level data disclosure requirements, as specified both in Article 78 and in this Annex;

   (b) must credibly demonstrate to the Eurosystem that its technical and operational capacity would permit it to achieve substantial coverage should it obtain designated loan-level data repository status.

4. In relation to the requirements of an appropriate governance structure and transparency, a loan-level data repository:

   (a) must establish governance arrangements that serve the interests of stakeholders in the ABS market in fostering transparency;

   (b) must establish clearly documented governance arrangements, respect appropriate governance standards and ensure the maintenance and operation of an adequate organisational structure to ensure continuity and orderly functioning; and

   (c) must grant the Eurosystem sufficient access to documents and supporting information in order to monitor, on an ongoing basis, the continued appropriateness of the loan-level data repository's governance structure.

II. Procedures for designation and withdrawal of designation

1. An application for designation by the Eurosystem as a loan-level data repository must be submitted to the ECB's Directorate Risk Management. The application must provide appropriate reasoning and complete supporting documentation demonstrating the applicant's compliance with the requirements for loan-level data repositories set out in this Guideline. The application, reasoning and supporting documentation must be provided in writing and, wherever possible, in electronic format.

2. Within 25 working days of receipt of the application, the ECB will assess whether the application is complete. If the application is not complete, the ECB will set a deadline by which the loan-level data repository is to provide additional information.

3. After assessing an application as complete, the ECB will notify the loan-level data repository accordingly.

4. The Eurosystem will, within a reasonable time frame (aiming for 60 working days of the notification referred to in paragraph 3), examine an application for designation made by a loan-level data repository based on the compliance of the loan-level data repository with the requirements set out in this Guideline. As part of its examination, the Eurosystem may require the loan-level data repository to conduct one or more live interactive demonstrations with Eurosystem staff, to illustrate the loan-level data repository's technical capabilities in relation to the requirements set out in Section IV.I, paragraphs 2 and 3 of this Annex. If such a demonstration is required, it shall be considered a mandatory requirement of the application process.

5. The Eurosystem may extend the period of examination by 20 working days, in cases where additional clarification is deemed necessary by the Eurosystem or where a demonstration has been required in accordance with paragraph 4.

6. The Eurosystem will aim to adopt a reasoned decision to designate or to refuse designation within 60 working days of the notification referred to in paragraph 3, or within 80 working days thereof where paragraph 5 applies.

7. Within five working days of the adoption of a decision under paragraph 6, the Eurosystem will notify its decision to the loan-level data repository concerned. Where the Eurosystem refuses to designate the loan-level data repository or withdraws the designation of the loan-level data repository, it will provide reasons for its decision in the notification.

8. The decision adopted by the Eurosystem pursuant to paragraph 6 will take effect on the fifth working day following its notification pursuant to paragraph 7.

9. A designated loan-level data repository must, without undue delay, notify the Eurosystem of any material changes to its compliance with the requirements for designation.

10. The Eurosystem will withdraw the designation of a loan-level data repository where the loan-level data repository:

    (a) obtained the designation by making false statements or by any other irregular means; or

    (b) no longer fulfils the requirements under which it was designated.

11. A decision to withdraw the designation of a loan-level data repository will take effect immediately. ABSs in relation to which loan-level data was made available through a loan-level data repository whose designation was withdrawn in accordance with paragraph 10 may remain eligible as collateral for Eurosystem credit operations, providing all other requirements are fulfilled, for a period

    (a) until the next required loan-level data reporting date specified in Section I.4 of Annex VIII; or

    (b) if the period permitted under (a) is technically infeasible for the party submitting loan-level data and a written explanation has been provided to the NCB assessing eligibility by the next required loan-level data reporting date specified in Section I.4 of Annex VIII, three months following the decision under paragraph 10.

    After the expiry of this period the loan-level data for such ABSs must be made available through a designated loan-level data repository in accordance with all applicable Eurosystem requirements.

12. The Eurosystem will publish on the ECB's website a list of loan-level data repositories designated in accordance with this Guideline. That list will be updated within five working days following the adoption of a decision under paragraph 6 or paragraph 10.';

6. The following Annex IXa is inserted:

'ANNEX IXa

Minimum coverage requirements for external credit assessment institutions in the Eurosystem credit assessment framework

This Annex applies to the acceptance of a credit rating agency (CRA) as an ECAI in the Eurosystem credit assessment framework, as specified in Article 120(2).

1. COVERAGE REQUIREMENTS

1. Concerning current coverage, in each of at least three out of the four asset classes (a) uncovered bank bonds, (b) corporate bonds, (c) covered bonds and (d) ABS, the CRA must provide a minimum coverage of:

   (i) 10 % in the eligible universe of euro area assets, computed in terms of rated assets and rated issuers, except for the ABS asset class, for which coverage in terms of rated assets only will apply;

   (ii) 20 % in the eligible universe of euro area assets, computed in terms of nominal amounts outstanding;

   (iii) in at least 2/3 of the euro area countries with eligible assets in the respective asset classes, the CRA must provide the required coverage of rated assets, rated issuers or rated nominal amounts as referred to in points (i) and (ii).

2. The CRA must provide sovereign ratings for, at a minimum, all euro area issuer residence countries where assets in one of the four asset classes mentioned in paragraph 1 are rated by this CRA, with the exception of assets for which the Eurosystem considers the respective country risk assessment to be irrelevant for the credit rating provided by the CRA for the issue, issuer or guarantor.

3. Concerning historical coverage, the CRA must meet at least 80 % of the minimum coverage requirements outlined in paragraphs 1 and 2 in each of the last three years prior to the application for ECAF acceptance, and must meet 100 % of those requirements at the time of application and during the entire period of ECAF acceptance.

2. CALCULATION OF COVERAGE

1. Coverage is calculated on the basis of credit ratings issued or endorsed by the CRA in accordance with Regulation (EC) No 1060/2009 and meeting all other requirements for ECAF purposes.

2. The coverage of a given CRA is based on credit ratings of eligible assets for Eurosystem monetary policy operations, and is computed in line with the priority rules under Article 84 by considering only that CRA's ratings.

3. In the calculation of the minimum coverage of a CRA not yet accepted for ECAF purposes, the Eurosystem also includes relevant credit ratings provided for assets that are not eligible because of the lack of a rating from ECAF-accepted external credit assessment institutions (ECAI).

3. REVIEW OF COMPLIANCE

1. The compliance of ECAIs accepted with these coverage requirements will be reviewed annually.

2. Non-compliance with the coverage requirements may be sanctioned in accordance with ECAF rules and procedures.';

7. The following Annex [IXb] is inserted:

'ANNEX IXb

Minimum requirements in the Eurosystem credit assessment framework for new issue and surveillance reports on covered bond programmes

1. INTRODUCTION

For the purposes of the Eurosystem credit assessment framework (ECAF), external credit assessment institutions (ECAIs), in respect of the Article 120(2), must comply with specific operational criteria in relation to covered bonds, with effect from 1 July 2017. In particular, ECAIs shall:

(a) explain newly rated covered bond programmes in a publicly available credit rating report; and

(b) make surveillance reports on covered bond programmes available on a quarterly basis.

This Annex sets out these minimum requirements in detail.

ECAIs' compliance with these requirements will be regularly reviewed. If the criteria are not fulfilled for a particular covered bond programme, the Eurosystem may deem the public credit rating(s) related to the relevant covered bond programme not to meet the high credit standards of the ECAF. Thus, the relevant ECAI's public credit rating may not be used to establish the credit quality requirements for marketable assets issued under the specific covered bond programme.

2. MINIMUM REQUIREMENTS

(a) The publicly available credit rating reports (new issue report) referred to in paragraph 1(a) must include a comprehensive analysis of the structural and legal aspects of the programme, a detailed collateral pool assessment, an analysis of the refinancing and market risk, an analysis of the transaction participants, ECAI proprietary assumptions and metrics, and an analysis of any other relevant details of the transaction.

(b) The surveillance reports referred to in paragraph 1(b) must be published by the ECAI no later than eight weeks after the end of each quarter. The surveillance reports must contain the following information.

(i) Any ECAI proprietary metrics, including the latest available dynamic proprietary metrics used in the determination of the rating. If the date to which the proprietary metrics refer differs from the publication date of the report, the date to which the proprietary metrics refer should be specified.

(ii) A programme overview, to include, at a minimum, the outstanding assets and liabilities, the issuer and other key transaction parties, the main collateral asset type, the legal framework to which the programme is subject, and the rating of the programme and the issuer.

(iii) Overcollateralisation levels, including current and committed overcollateralisation.

(iv) The asset-liability profile, including the maturity type of the covered bonds, e.g. hard bullet, soft bullet, or pass through, the weighted average life of the covered bonds and of the cover pool and information on interest rate and currency mismatches.

(v) Interest rate and currency swap arrangements existing at the time of the publication of the report, including the swap counterparty names and, where available, their legal entity identifiers.

(vi) The distribution of currencies, including a breakdown in terms of value at the level of both the cover pool and the individual bonds.

(vii) Cover pool assets, including the asset balance, asset types, number and average size of loans, seasoning, maturity, loan-to-valuation ratios, regional distribution and arrears distribution.

(viii) Cover pool substitute assets, including the asset balance.

(ix) The list of all rated securities in the programme, identified by their international securities identification number (ISIN). This disclosure can also be made via a separate, downloadable file published on the ECAI's website.

(x) A list of data definitions and data sources used in the production of the surveillance report. This disclosure can also be made via a separate file published on the ECAI's website.'

8. Annex XII, Section VI is amended as follows:

(a) Table 1 is replaced by the following:

'Table 1

Marketable assets mobilised in the transactions

Characteristics

Name	Asset class	Maturity date	Coupon definition	Coupon frequency	Residual maturity	Haircut
Asset A	UCITS compliant jumbo covered bond	30.8.2018	Fixed rate	6 months	4 years	2,50 %
Asset B	Central government bond	19.11.2018	Variable rate	12 months	4 years	0,50 %
Asset C	Corporate bond	12.5.2025	Zero coupon rate		> 10 years	13,00 %

Prices in percentages (including accrued interest) (*)

30.7.2014	31.7.2014	1.8.2014	4.8.2014	5.8.2014	6.8.2014	7.8.2014
101,61	101,21	99,50	99,97	99,73	100,01	100,12
	98,12	97,95	98,15	98,56	98,59	98,57
					53,71	53,62

(*) The prices shown for a specific valuation date correspond to the most representative price on the business day preceding this valuation date.';

(b) paragraph 1 under 'EARMARKING SYSTEM' is replaced by the following:

'1. On 30 July 2014, the counterparty enters into a repurchase transaction with the NCB, which purchases EUR 50,6 million of Asset A. Asset A is a UCITS compliant jumbo covered bond with a fixed coupon maturing on 30 August 2018 and allocated to credit quality step 1-2. It thus has a residual maturity of four years, therefore requiring a valuation haircut of 2,5 %. The market price of Asset A on its reference market on that day is 101,61 %, which includes the accrued interest on the coupon. The counterparty is required to provide an amount of Asset A, which, after deduction of the 2,5 % valuation haircut, exceeds the allotted amount of EUR 50 million. The counterparty therefore delivers Asset A for a nominal amount of EUR 50,6 million, the adjusted market value of which is EUR 50 129 294 on that day.'.

GUIDELINE (EU) 2016/2299 OF THE EUROPEAN CENTRAL BANK

of 2 November 2016

amending Guideline (EU) 2016/65 on the valuation haircuts applied in the implementation of the Eurosystem monetary policy framework (ECB/2016/32)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the first indent of Article 3.1, Articles 9.2, 12.1, 14.3, 18.2 and the first paragraph of Article 20 thereof,

Whereas:

(1) All eligible assets for Eurosystem credit operations are subject to specific risk control measures in order to protect the Eurosystem against financial losses in circumstances where its collateral has to be realised due to an event of default of a counterparty. As a result of the regular review of the Eurosystem risk control framework, several adjustments must be made in order to ensure adequate protection.

(2) Therefore, Guideline (EU) 2016/65 of the European Central Bank (ECB/2015/35) [1] should be amended accordingly,

HAS ADOPTED THIS GUIDELINE:

Article 1

Amendments

Guideline (EU) 2016/65 (ECB/2015/35) is amended as follows:

1. Article 1 is replaced by the following:

'*Article 1*

Valuation haircuts applied to eligible marketable assets

1. In accordance with Title VI of Part Four of Guideline (EU) 2015/510 (ECB/2014/60), marketable assets shall be subject to valuation haircuts, as defined in point 97 of Article 2 of Guideline (EU) 2015/510 (ECB/2014/60), at the levels set forth in Tables 2 and 2a in the Annex to this Guideline.

2. The valuation haircut for a specific asset depends on the following factors:

(a) the haircut category to which the asset is allocated, as defined in Article 2;

(b) the residual maturity or the weighted average life of the asset, as defined in Article 3;

(c) the coupon structure of the asset; and

(d) the credit quality step to which the asset is allocated';

2. in Article 2, points (b) and (c) are replaced by the following:

'(b) debt instruments issued by local and regional government, entities classified as agencies by the Eurosystem, multilateral development banks and international organisations, as well as UCITS compliant jumbo covered bonds, are included in haircut category II;

(c) UCITS compliant covered bonds other than UCITS compliant jumbo covered bonds, other covered bonds and debt instruments issued by non-financial corporations are included in haircut category III;';

[1] Guideline (EU) 2016/65 of the European Central Bank of 18 November 2015 on the valuation haircuts applied in the implementation of the Eurosystem monetary policy framework (ECB/2015/35) (OJ L 14, 21.1.2016, p. 30).

3. Article 3 is replaced by the following:

'Article 3

Valuation haircuts for marketable assets

1. The valuation haircuts for marketable assets allocated to haircut categories I to IV shall be determined based on:

(a) the allocation of the specific asset to credit quality step 1, 2 or 3;

(b) the residual maturity of the asset as detailed in paragraph 2;

(c) the coupon structure of the asset as detailed in paragraph 2.

2. For marketable assets allocated to haircut categories I to IV, the applicable valuation haircut shall depend on the residual maturity and coupon structure as follows.

(a) For marketable assets with zero and fixed rate coupons, the applicable valuation haircuts shall be determined based on Table 2 in the Annex to this Guideline. The relevant maturity for determining the valuation haircut shall be the residual maturity of the asset.

(b) For marketable assets with floating coupons, the applicable valuation haircuts shall equal the valuation haircut applied to fixed coupon marketable assets with zero-to-one year residual maturity, except in the following cases:

(i) floating coupons with a resetting period longer than one year shall be treated as fixed rate coupons and the relevant maturity for the valuation haircut to be applied shall be the residual maturity of the asset;

(ii) floating coupons that have a euro area inflation index as a reference rate shall be treated as fixed rate coupons and the relevant maturity for the valuation haircut to be applied shall be the residual maturity of the asset;

(iii) floating coupons with a floor that does not equal zero and/or floating coupons with a ceiling shall be treated as fixed rate coupons.

(c) The valuation haircut applied to assets that have more than one type of coupon structure shall solely depend on the coupon structure in place during the remaining life of the asset and shall equal the highest haircut applicable to a marketable asset with the same residual maturity and credit quality step. Any type of coupon structure in place during the remaining life of the asset may be considered for this purpose.

3. For marketable assets allocated to haircut category V, regardless of their coupon structure, the valuation haircuts shall be determined based on the weighted average life of the asset as detailed in paragraphs 4 and 5. The valuation haircuts applicable to marketable assets in category V are laid down in Table 2a in the Annex to this Guideline.

4. The weighted average life of the senior tranche of an asset-backed security shall be estimated as the expected weighted average time remaining until repayment has been made for that tranche. For retained mobilised asset-backed securities, the calculation of the weighted average life shall assume that issuer call options will not be exercised.

5. For the purposes of paragraph 4, "retained mobilised asset-backed securities" shall mean asset-backed securities used in a percentage greater than 75 % of the outstanding nominal amount by a counterparty that originated the asset-backed security or by entities closely linked to the originator. Such close links shall be determined in accordance with Article 138 of Guideline (EU) 2015/510 (ECB/2014/60).';

4. in Article 5, paragraph 5 is replaced by the following:

'5. Non-marketable retail mortgage-backed debt instruments shall be subject to a valuation haircut of 36,5 %.';

5. in Article 5, paragraph 7 is replaced by the following:

'7. Each underlying credit claim included in the cover pool of a non-marketable debt instrument backed by eligible credit claims (hereinafter "DECC") shall be subject to a valuation haircut applied at an individual level following the rules set out in paragraphs 1 to 4 above. The aggregate value of the underlying credit claims included in the cover pool after the application of valuation haircuts shall, at all times, remain equal to or above the value of the principal amount of the DECC that is outstanding. If the aggregate value falls below the threshold referred to in the previous sentence, the DECC shall be deemed ineligible.'.

6. The Annex to Guideline (EU) 2016/65 (ECB/2015/35) is replaced by the Annex to this Guideline.

Article 2

Taking effect and implementation

1. This Guideline shall take effect on the day of its notification to the national central banks of the Member States whose currency is the euro.

2. The national central banks of the Member States whose currency is the euro shall take the necessary measures to comply with this Guideline and apply them from 1 January 2017. They shall notify the ECB of the texts and means relating to those measures by 5 December 2016 at the latest.

Article 3

Addressees

This Guideline is addressed to the national central banks of the Member States whose currency is the euro.

Done at Frankfurt am Main, 2 November 2016.

For the Governing Council of the ECB
The President of the ECB
Mario DRAGHI

ANNEX

The Annex to Guideline (EU) 2016/65 (ECB/2015/35) is replaced by the following:

'*ANNEX*

Table 1

Haircut categories for eligible marketable assets based on the type of issuer and/or type of asset

Category I	Category II	Category III	Category IV	Category V
debt instruments issued by central governments ECB debt certificates debt certificates issued by national central banks (NCBs) prior to the date of adoption of the euro in their respective Member State	debt instruments issued by local and regional governments debt instruments issued by entities classified as agencies by the Eurosystem debt instruments issued by multilateral development banks and international organisations UCITS compliant jumbo covered bonds	UCITS compliant covered bonds other than UCITS compliant jumbo covered bonds other covered bonds debt instruments issued by non-financial corporations and corporations in the government sector	unsecured debt instruments issued by credit institutions unsecured debt instruments issued by financial corporations other than credit institutions	asset-backed securities

Table 2

Valuation haircut levels applied to eligible marketable assets in haircut categories I to IV

		Haircut categories							
Credit quality	Residual maturity (years) (*)	Category I		Category II		Category III		Category IV	
		fixed coupon	zero coupon	fixed coupon	zero coupon	fixed coupon	zero coupon	fixed coupon	zero coupon
Steps 1 and 2	[0-1)	0,5	0,5	1,0	1,0	1,0	1,0	7,5	7,5
	[1-3)	1,0	2,0	1,5	2,5	2,0	3,0	10,0	10,5
	[3-5)	1,5	2,5	2,5	3,5	3,0	4,5	13,0	13,5
	[5-7)	2,0	3,0	3,5	4,5	4,5	6,0	14,5	15,5
	[7-10)	3,0	4,0	4,5	6,5	6,0	8,0	16,5	18,0
	[10,∞)	5,0	7,0	8,0	10,5	9,0	13,0	20,0	25,5

		Haircut categories							
Credit quality	Residual maturity (years) (*)	Category I		Category II		Category III		Category IV	
		fixed coupon	zero coupon	fixed coupon	zero coupon	fixed coupon	zero coupon	fixed coupon	zero coupon
Step 3	[0-1)	6,0	6,0	7,0	7,0	8,0	8,0	13,0	13,0
	[1-3)	7,0	8,0	9,5	13,5	14,5	15,0	22,5	25,0
	[3-5)	9,0	10,0	13,5	18,5	20,5	23,5	28,0	32,5
	[5-7)	10,0	11,5	14,0	20,0	23,0	28,0	30,5	35,0
	[7-10)	11,5	13,0	16,0	24,5	24,0	30,0	31,0	37,0
	[10,∞)	13,0	16,0	19,0	29,5	24,5	32,0	31,5	38,0

(*) i.e. [0-1) residual maturity less than one year, [1-3) residual maturity equal to or greater than one year and less than three years, etc.

Table 2a

Valuation haircut levels applied to eligible marketable assets in haircut category V

		Category V
Credit quality	Weighted Average Life (WAL) (*)	Valuation haircut
Steps 1 and 2 (AAA to A-)	[0-1)	4,0
	[1-3)	4,5
	[3-5)	5,0
	[5-7)	9,0
	[7-10)	13,0
	[10,∞)	20,0

(*) i.e. [0-1) WAL less than one year, [1-3) WAL equal to or greater than one year and less than three years, etc.

Table 3

Valuation haircut levels applied to eligible credit claims with fixed interest payments

		Valuation methodology	
Credit quality	Residual maturity (years) (*)	Fixed interest payment and a valuation based on a theoretical price assigned by the NCB	Fixed interest payment and a valuation according to the outstanding amount assigned by the NCB
Steps 1 and 2 (AAA to A-)	[0-1)	10,0	12,0
	[1-3)	12,0	16,0
	[3-5)	14,0	21,0
	[5-7)	17,0	27,0
	[7-10)	22,0	35,0
	[10,∞)	30,0	45,0
		Valuation methodology	
Credit quality	Residual maturity (years) (*)	Fixed interest payment and a valuation based on a theoretical price assigned by the NCB	Fixed interest payment and a valuation according to the outstanding amount assigned by the NCB
Step 3 (BBB+ to BBB-)	[0-1)	17,0	19,0
	[1-3)	28,5	33,5
	[3-5)	36,0	45,0
	[5-7)	37,5	50,5
	[7-10)	38,5	56,5
	[10,∞)	40,0	63,0

(*) i.e. [0-1) residual maturity less than one year, [1-3) residual maturity equal to or greater than one year and less than three years, etc.'.

GUIDELINE (EU) 2016/2300 OF THE EUROPEAN CENTRAL BANK

of 2 November 2016

amending Guideline ECB/2014/31 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral (ECB/2016/33)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the first indent of Article 3.1 and Articles 5.1, 12.1, 14.3 and 18.2 thereof,

Whereas:

(1) All eligible assets for Eurosystem credit operations are subject to specific risk control measures in order to protect the Eurosystem against financial losses in circumstances where its collateral has to be realised due to an event of default of a counterparty. As a result of the regular review of the Eurosystem risk control framework, several adjustments in respect of asset-backed securities must be made in order to ensure adequate protection.

(2) Therefore, Guideline ECB/2014/31 of the European Central Bank [1] should be amended accordingly,

HAS ADOPTED THIS GUIDELINE:

Article 1

Amendments to Guideline ECB/2014/31

Guideline ECB/2014/31 is amended as follows:

1. Article 3 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. ABS referred to in paragraph 1 that do not have two public credit ratings of at least credit quality step 2 in the Eurosystem harmonised rating scale in accordance with Article 82(1)(b) of Guideline (EU) 2015/510 of the European Central Bank (ECB/2014/60) (*) shall be subject to a valuation haircut that depends on their weighted average life as detailed in Annex IIa.

(*) Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) (General Documentation Guideline) (OJ L 91, 2.4.2015, p. 3).';

(b) the following paragraph 2a is inserted:

'2a. The weighted average life of the senior tranche of an ABS shall be estimated as the expected weighted average time remaining until repayment has been made for that tranche. For retained mobilised ABS, the calculation of the weighted average life shall assume that issuer call options will not be exercised.';

(c) paragraph 3 is deleted;

(d) paragraph 5 is replaced by the following:

'5. An NCB may accept as collateral for Eurosystem monetary policy operations ABS whose underlying assets include residential mortgages or loans to SMEs or both and which do not fulfil the credit assessment requirements under Chapter 2 of Title II of Part Four of Guideline (EU) 2015/510 (ECB/2014/60) and the

[1] Guideline ECB/2014/31 of the European Central Bank of 9 July 2014 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral and amending Guideline ECB/2007/9 (OJ L 240, 13.8.2014, p. 28)

requirements referred to in points (a) to (d) of paragraph 1 and in paragraph 4, but which otherwise comply with all eligibility criteria applicable to ABS pursuant to Guideline (EU) 2015/510 (ECB/2014/60) and have two public credit ratings of at least credit quality step 3 in the Eurosystem harmonised rating scale. Such ABS shall be limited to those issued before 20 June 2012 and shall be subject to a valuation haircut that depends on their weighted average life as detailed in Annex IIa.';

(e) paragraph 6 is deleted;

(f) in paragraph 7, point (g) is replaced by the following:

'(g) "servicing continuity provisions" means provisions in the legal documentation of an asset-backed security that consist of either back-up servicer provisions or back-up servicer facilitator provisions (if there are no back-up servicer provisions). In the case of back-up servicer facilitator provisions, a back-up servicer facilitator should be nominated and the facilitator should be mandated to find a suitable back-up servicer within 60 days of the occurrence of a trigger event in order to ensure timely payment and servicing of the asset-backed security. These provisions shall also include servicer replacement triggers for the appointment of a back-up servicer, which can be rating-based and/or non-rating-based, e.g. non-performance of obligations by the current servicer. In the case of back-up servicer provisions, the back-up servicer shall not have close links to the servicer. In the case of back-up servicer facilitator provisions, there shall not be close links between each of the servicer, the back-up servicer facilitator and the issuer account bank at the same time;';

(g) in paragraph 7, the following points (h) and (i) are inserted:

'(h) "close links" has the meaning given in Article 138(2) of Guideline (EU) 2015/510 (ECB/2014/60);

(i) "retained mobilised ABS" means ABS used in a percentage greater than 75 % of the outstanding nominal amount by a counterparty that originated the ABS or by entities with close links to the originator.';

2. the Annex to this Guideline is inserted as Annex IIa.

Article 2

Taking effect and implementation

1. This Guideline shall take effect on the day of its notification to the national central banks of the Member States whose currency is the euro.

2. The national central banks of the Member States whose currency is the euro shall take the necessary measures to comply with this Guideline and apply them from 1 January 2017. They shall notify the ECB of the texts and means relating to those measures by 5 December 2016 at the latest.

Article 3

Addressees

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 2 November 2016.

The President of the ECB

Mario DRAGHI

ANNEX

'ANNEX IIa

Valuation haircut levels applied to asset-backed securities (ABS) eligible under Article 3(2) of this Guideline

Weighted Average Life	Valuation haircut
0-1	6,0
1-3	9,0
3-5	13,0
5-7	15,0
7-10	18,0
> 10	30,0'

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