Official Journal of the European Union

L 157

English edition

Legislation

Volume 57

27 May 2014

Contents

EN

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

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

REGULATIONS

[1] Text with EEA relevance

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2014/66/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 May 2014

on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer

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 points (a) and (b) of Article 79(2) 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) For the gradual establishment of an area of freedom, security and justice, the Treaty on the Functioning of the European Union (TFEU) provides for measures to be adopted in the field of immigration which are fair towards third-country nationals.

(2) The TFEU provides that the Union is to develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows and fair treatment of third-country nationals residing legally in Member States. To that end, the European Parliament and the Council are to adopt measures on the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, as well as the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States.

(3) The Commission's Communication of 3 March 2010 entitled 'Europe 2020: A strategy for smart, sustainable and inclusive growth' sets the objective of the Union becoming an economy based on knowledge and innovation, reducing the administrative burden on companies and better matching labour supply with demand. Measures to make it easier for third-country managers, specialists and trainee employees to enter the Union in the framework of an intra-corporate transfer have to be seen in that broader context.

([1]) OJ C 218, 23.7.2011, p. 101.
([2]) OJ C 166, 7.6.2011, p. 59.
([3]) Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and decision of the Council of 13 May 2014.

(4) The Stockholm Programme, adopted by the European Council on 11 December 2009, recognises that labour immigration can contribute to increased competitiveness and economic vitality and that, in the context of the important demographic challenges that will face the Union in the future and, consequently, an increased demand for labour, flexible immigration policies will make an important contribution to the Union's economic development and performance in the longer term. The Stockholm Programme thus invites the Commission and the Council to continue implementing the Policy Plan on Legal Migration set out in the Commission's Communication of 21 December 2005.

(5) As a result of the globalisation of business, increasing trade and the growth and spread of multinational groups, in recent years movements of managers, specialists and trainee employees of branches and subsidiaries of multinationals, temporarily relocated for short assignments to other units of the company, have gained momentum.

(6) Such intra-corporate transfers of key personnel result in new skills and knowledge, innovation and enhanced economic opportunities for the host entities, thus advancing the knowledge-based economy in the Union while fostering investment flows across the Union. Intra-corporate transfers from third countries also have the potential to facilitate intra-corporate transfers from the Union to third-country companies and to put the Union in a stronger position in its relationship with international partners. Facilitation of intra-corporate transfers enables multinational groups to tap their human resources best.

(7) The set of rules established by this Directive may also benefit the migrants' countries of origin as this temporary migration may, under its well-established rules, foster transfers of skills, knowledge, technology and know-how.

(8) This Directive should be without prejudice to the principle of preference for Union citizens as regards access to Member States' labour market as expressed in the relevant provisions of the relevant Acts of Accession.

(9) This Directive should be without prejudice to the right of Member States to issue permits other than intra-corporate transferee permits for any purpose of employment if a third-country national does not fall within the scope of this Directive.

(10) This Directive should establish a transparent and simplified procedure for admission of intra-corporate transferees, based on common definitions and harmonised criteria.

(11) Member States should ensure that appropriate checks and effective inspections are carried out in order to guarantee the proper enforcement of this Directive. The fact that an intra-corporate transferee permit has been issued should not affect or prevent the Member States from applying, during the intra-corporate transfer, their labour law provisions having — in accordance with Union law — as their objective checking compliance with the working conditions as set out in Article 18(1).

(12) The possibility for a Member State to impose, on the basis of national law, sanctions against an intra-corporate transferee's employer established in a third country should remain unaffected.

(13) For the purpose of this Directive, intra-corporate transferees should encompass managers, specialists and trainee employees. Their definition should build on specific commitments of the Union under the General Agreement on Trade in Services (GATS) and bilateral trade agreements. Since those commitments undertaken under GATS do not cover conditions of entry, stay and work, this Directive should complement and facilitate the application of those commitments. However, the scope of the intra-corporate transfers covered by this Directive should be broader than that implied by trade commitments, as the transfers do not necessarily take place within the services sector and may originate in a third country which is not party to a trade agreement.

(14) To assess the qualifications of intra-corporate transferees, Member States should make use of the European Qualifications Framework (EQF) for lifelong learning, as appropriate, for the assessment of qualifications in a comparable and transparent manner. EQF National Coordination Points may provide information and guidance on how national qualifications levels relate to the EQF.

(15) Intra-corporate transferees should benefit from at least the same terms and conditions of employment as posted workers whose employer is established on the territory of the Union, as defined by Directive 96/71/EC of the European Parliament and of the Council ([1]). Member States should require that intra-corporate transferees enjoy equal treatment with nationals occupying comparable positions as regards the remuneration which will be granted during the entire transfer. Each Member State should be responsible for checking the remuneration granted to the intra-corporate transferees during their stay on its territory. That is intended to protect workers and guarantee fair competition between undertakings established in a Member State and those established in a third country, as it ensures that the latter will not be able to benefit from lower labour standards to take any competitive advantage.

(16) In order to ensure that the skills of the intra-corporate transferee are specific to the host entity, the transferee should have been employed within the same group of undertakings from at least three up to twelve uninterrupted months immediately prior to the transfer in the case of managers and specialists, and from at least three up to six uninterrupted months in the case of trainee employees.

(17) As intra-corporate transfers constitute temporary migration, the maximum duration of one transfer to the Union, including mobility between Member States, should not exceed three years for managers and specialists and one year for trainee employees after which they should leave for a third country unless they obtain a residence permit on another basis in accordance with Union or national law. The maximum duration of the transfer should encompass the cumulated durations of consecutively issued intra-corporate transferee permits. A subsequent transfer to the Union might take place after the third-country national has left the territory of the Member States.

(18) In order to ensure the temporary character of an intra-corporate transfer and prevent abuses, Member States should be able to require a certain period of time to elapse between the end of the maximum duration of one transfer and another application concerning the same third-country national for the purposes of this Directive in the same Member State.

(19) As intra-corporate transfers consist of temporary secondment, the applicant should provide evidence, as part of the work contract or the assignment letter, that the third-country national will be able to transfer back to an entity belonging to the same group and established in a third country at the end of the assignment. The applicant should also provide evidence that the third-country national manager or specialist possesses the professional qualifications and adequate professional experience needed in the host entity to which he or she is to be transferred.

(20) Third-country nationals who apply to be admitted as trainee employees should provide evidence of a university degree. In addition, they should, if required, present a training agreement, including a description of the training programme, its duration and the conditions in which the trainee employees will be supervised, proving that they will benefit from genuine training and not be used as normal workers.

(21) Unless it conflicts with the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession, no labour market test should be required.

(22) A Member State should recognise professional qualifications acquired by a third-country national in another Member State in the same way as those of Union citizens and should take into account qualifications acquired in a third country in accordance with Directive 2005/36/EC of the European Parliament and the Council ([2]). Such recognition should be without prejudice to any restrictions on access to regulated professions deriving from reservations to the existing commitments as regards regulated professions made by the Union or by the Union and its Member States in the framework of trade agreements. In any event, this Directive should not provide for a more favourable treatment of intra-corporate transferees, in comparison with Union or European Economic Area nationals, as regards access to regulated professions in a Member State.

([1]) Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

([2]) Directive 2005/36/EC of the European Parliament and the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

(23) This Directive should not affect the right of the Member States to determine the volumes of admission in accordance with Article 79(5) TFEU.

(24) With a view to fighting possible abuses of this Directive, Member States should be able to refuse, withdraw or not renew an intra-corporate transferee permit where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees and/or does not have a genuine activity.

(25) This Directive aims to facilitate mobility of intra-corporate transferees within the Union ('intra-EU mobility') and to reduce the administrative burden associated with work assignments in several Member States. For this purpose, this Directive sets up a specific intra-EU mobility scheme whereby the holder of a valid intra-corporate transferee permit issued by a Member State is allowed to enter, to stay and to work in one or more Member States in accordance with the provisions governing short-term and long-term mobility under this Directive. Short-term mobility for the purposes of this Directive should cover stays in Member States other than the one that issued the intra-corporate transferee permit, for a period of up to 90 days per Member State. Long-term mobility for the purposes of this Directive should cover stays in Member States other than the one that issued the intra-corporate transferee permit for more than 90 days per Member State. In order to prevent circumvention of the distinction between short-term and long-term mobility, short-term mobility in relation to a given Member State should be limited to a maximum of 90 days in any 180-day period and it should not be possible to submit a notification for short-term mobility and an application for long-term mobility at the same time. Where the need for long-term mobility arises after the short-term mobility of the intra-corporate transferee has started, the second Member State may request that the application be submitted at least 20 days before the end of the short-term mobility period.

(26) While the specific mobility scheme established by this Directive should lay down autonomous rules regarding entry and stay for the purpose of work as an intra-corporate transferee in Member States other than the one that issued the intra-corporate transferee permit, all the other rules governing the movement of persons across borders as laid down in the relevant provisions of the Schengen *acquis* continue to apply.

(27) In order to facilitate checks, if the transfer involves several locations in different Member States, the competent authorities of second Member States should be provided where applicable with the relevant information.

(28) Where intra-corporate transferees have exercised their right to mobility, the second Member State should, under certain conditions, be in a position to take steps so that the intra-corporate transferees' activities do not contravene the relevant provisions of this Directive.

(29) Member States should provide for effective, proportionate and dissuasive sanctions, such as financial sanctions, to be imposed in the event of failure to comply with this Directive. Those sanctions could, inter alia, consist of measures as provided for in Article 7 of Directive 2009/52/EC of the European Parliament and of the Council [1]. Those sanctions could be imposed on the host entity established in the Member State concerned.

(30) Provision for a single procedure leading to one combined title encompassing both residence and work permit ('single permit') should contribute to simplifying the rules currently applicable in Member States.

(31) It should be possible to set up a simplified procedure for entities or groups of undertakings which have been recognised for that purpose. Recognition should be regularly assessed.

(32) Once a Member State has decided to admit a third-country national fulfilling the criteria laid down in this Directive, that third-country national should receive an intra-corporate transferee permit allowing him or her to carry out, under certain conditions, his or her assignment in diverse entities belonging to the same transnational corporation, including entities located in other Member States.

[1] Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24).

(33) Where a visa is required and the third-country national fulfils the criteria for being issued with an intra-corporate transferee permit, the Member State should grant the third-country national every facility to obtain the requisite visa and should ensure that the competent authorities effectively cooperate for that purpose.

(34) Where the intra-corporate transferee permit is issued by a Member State not applying the Schengen *acquis* in full and the intra-corporate transferee, in the framework of intra-EU mobility, crosses an external border within the meaning of Regulation (EC) No 562/2006 of the European Parliament and of the Council ([1]), a Member State should be entitled to require evidence proving that the intra-corporate transferee is moving to its territory for the purpose of an intra-corporate transfer. Besides, in case of crossing of an external border within the meaning of Regulation (EC) No 562/2006, the Members States applying the Schengen *acquis* in full should consult the Schengen information system and should refuse entry or object to the mobility for persons for whom an alert for the purposes of refusing entry or stay, as referred to in Regulation (EC) No 1987/2006 of the European Parliament and of the Council ([2]), has been issued in that system.

(35) Member States should be able to indicate additional information in paper format or store such information in electronic format, as referred to in Article 4 of Council Regulation (EC) No 1030/2002 ([3])and point (a)16 of the Annex thereto, in order to provide more precise information on the employment activity during the intra-corporate transfer. The provision of this additional information should be optional for Member States and should not constitute an additional requirement that would compromise the single permit and the single application procedure.

(36) This Directive should not prevent intra-corporate transferees from exercising specific activities at the sites of clients within the Member State where the host entity is established in accordance with the provisions applying in that Member State with regard to such activities.

(37) This Directive does not affect the conditions of the provision of services in the framework of Article 56 TFEU. In particular, this Directive does not affect the terms and conditions of employment which, pursuant to Directive 96/71/EC, apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State. This Directive should not apply to third-country nationals posted by undertakings established in a Member State in the framework of a provision of services in accordance with Directive 96/71/EC. Third-country nationals holding an intra-corporate transferee permit cannot avail themselves of Directive 96/71/EC. This Directive should not give undertakings established in a third country any more favourable treatment than undertakings established in a Member State, in line with Article 1(4) of Directive 96/71/EC.

(38) Adequate social security coverage for intra-corporate transferees, including, where relevant, benefits for their family members, is important for ensuring decent working and living conditions while staying in the Union. Therefore, equal treatment should be granted under national law in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/2004 of the European Parliament and of the Council ([4]). This Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the persons falling within its scope. The right to equal treatment in the field of social security applies to third-country nationals who fulfil the objective and non-discriminatory conditions laid down by the law of the Member State where the work is carried out with regard to affiliation and entitlement to social security benefits.

In many Member States, the right to family benefits is conditional upon a certain connection with that Member State since the benefits are designed to support a positive demographic development in order to secure the future work force in that Member State. Therefore, this Directive should not affect the right of a Member State to restrict, under certain conditions, equal treatment in respect of family benefits, since the intra-corporate transferee and the accompanying family members are staying temporarily in that Member State. Social security rights

([1]) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

([2]) Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4).

([3]) Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1).

([4]) Regulation (EC) No 883/04 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

should be granted without prejudice to provisions of national law and/or bilateral agreements providing for the application of the social security legislation of the country of origin. However, bilateral agreements or national law on social security rights of intra-corporate transferees which are adopted after the entry into force of this Directive should not provide for less favourable treatment than the treatment granted to nationals of the Member State where the work is carried out. As a result of national law or such agreements, it may be, for example, in the interests of the intra-corporate transferees to remain affiliated to the social security system of their country of origin if an interruption of their affiliation would adversely affect their rights or if their affiliation would result in their bearing the costs of double coverage. Member States should always retain the possibility to grant more favourable social security rights to intra-corporate transferees. Nothing in this Directive should affect the right of survivors who derive rights from the intra-corporate transferee to receive survivor's pensions when residing in a third country.

(39) In the event of mobility between Member States, Regulation (EU) No 1231/2010 of the European Parliament and of the Council ([1]) should apply accordingly. This Directive should not confer more rights than those already provided for in existing Union law in the field of social security for third-country nationals who have cross-border interests between Member States.

(40) In order to make the specific set of rules established by this Directive more attractive and to allow it to produce all the expected benefits for competitiveness of business in the Union, third-country national intra-corporate transferees should be granted favourable conditions for family reunification in the Member State which issued the intra-corporate transferee permit and in those Member States which allow the intra-corporate transferee to stay and work on their territory in accordance with the provisions of this Directive on long-term mobility. This right would indeed remove an important obstacle to potential intra-corporate transferees for accepting an assignment. In order to preserve family unity, family members should be able to join the intra-corporate transferee in another Member State, and their access to the labour market should be facilitated.

(41) In order to facilitate the fast processing of applications, Member States should give preference to exchanging information and transmitting relevant documents electronically, unless technical difficulties occur or essential interests require otherwise.

(42) The collection and transmission of files and data should be carried out in compliance with the relevant data protection and security rules.

(43) This Directive should not apply to third -country nationals who apply to reside in a Member State as researchers in order to carry out a research project, as they fall within the scope of Council Directive 2005/71/EC ([2]).

(44) Since the objectives of this Directive, namely a special admission procedure and the adoption of conditions of entry and residence for the purpose of intra-corporate transfers of third-country nationals, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action, 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 (TEU). 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 those objectives.

(45) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, which itself builds upon the rights deriving from the Social Charters adopted by the Union and by the Council of Europe.

([1]) Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 on nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (OJ L 344, 29.12.2010, p. 1).

([2]) Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research (OJ L 289, 3.11.2005, p. 15).

(46) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011 ([1]), 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.

(47) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive, and are not bound by or subject to its application.

(48) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and the TFEU, Denmark is not taking part in the adoption of this Directive, and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject-matter

This Directive lays down:

(a) the conditions of entry to, and residence for more than 90 days in, the territory of the Member States, and the rights, of third-country nationals and of their family members in the framework of an intra-corporate transfer;

(b) the conditions of entry and residence, and the rights, of third-country nationals, referred to in point (a), in Member States other than the Member State which first grants the third-country national an intra-corporate transferee permit on the basis of this Directive.

Article 2

Scope

1. This Directive shall apply to third-country nationals who reside outside the territory of the Member States at the time of application and apply to be admitted or who have been admitted to the territory of a Member State under the terms of this Directive, in the framework of an intra-corporate transfer as managers, specialists or trainee employees.

2. This Directive shall not apply to third-country nationals who:

(a) apply to reside in a Member State as researchers, within the meaning of Directive 2005/71/EC, in order to carry out a research project;

(b) under agreements between the Union and its Member States and third countries, enjoy rights of free movement equivalent to those of Union citizens or are employed by an undertaking established in those third countries;

([1]) OJ C 369, 17.12.2011, p. 14.

(c) are posted in the framework of Directive 96/71/EC;

(d) carry out activities as self-employed workers;

(e) are assigned by employment agencies, temporary work agencies or any other undertakings engaged in making available labour to work under the supervision and direction of another undertaking;

(f) are admitted as full-time students or who are undergoing a short-term supervised practical training as part of their studies.

3. This Directive shall be without prejudice to the right of Member States to issue residence permits, other than the intra-corporate transferee permit covered by this Directive, for any purpose of employment for third-country nationals who fall outside the scope of this Directive.

Article 3

Definitions

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

(a) 'third-country national' means any person who is not a citizen of the Union, within the meaning of Article 20(1) TFEU;

(b) 'intra-corporate transfer' means the temporary secondment for occupational or training purposes of a third-country national who, at the time of application for an intra-corporate transferee permit, resides outside the territory of the Member States, from an undertaking established outside the territory of a Member State, and to which the third-country national is bound by a work contract prior to and during the transfer, to an entity belonging to the undertaking or to the same group of undertakings which is established in that Member State, and, where applicable, the mobility between host entities established in one or several second Member States;

(c) 'intra-corporate transferee' means any third-country national who resides outside the territory of the Member States at the time of application for an intra-corporate transferee permit and who is subject to an intra-corporate transfer;

(d) 'host entity' means the entity to which the intra-corporate transferee is transferred, regardless of its legal form, established, in accordance with national law, in the territory of a Member State;

(e) 'manager' means a person holding a senior position, who primarily directs the management of the host entity, receiving general supervision or guidance principally from the board of directors or shareholders of the business or equivalent; that position shall include: directing the host entity or a department or subdivision of the host entity; supervising and controlling work of the other supervisory, professional or managerial employees; having the authority to recommend hiring, dismissing or other personnel action;

(f) 'specialist' means a person working within the group of undertakings possessing specialised knowledge essential to the host entity's areas of activity, techniques or management. In assessing such knowledge, account shall be taken not only of knowledge specific to the host entity, but also of whether the person has a high level of qualification including adequate professional experience referring to a type of work or activity requiring specific technical knowledge, including possible membership of an accredited profession;

(g) 'trainee employee' means a person with a university degree who is transferred to a host entity for career development purposes or in order to obtain training in business techniques or methods, and is paid during the transfer;

(h) 'family members' means the third-country nationals referred to in Article 4(1) of Council Directive 2003/86/EC ([1]);

(i) 'intra-corporate transferee permit' means an authorisation bearing the acronym 'ICT' entitling its holder to reside and work in the territory of the first Member State and, where applicable, of second Member States, under the terms of this Directive;

([1]) Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12).

(j) 'permit for long-term mobility' means an authorisation bearing the term 'mobile ICT' entitling the holder of an intra-corporate transferee permit to reside and work in the territory of the second Member State under the terms of this Directive;

(k) 'single application procedure' means the procedure leading, on the basis of one application for the authorisation for residence and work of a third-country national in the territory of a Member State, to a decision on that application;

(l) 'group of undertakings' means two or more undertakings recognised as linked under national law in the following ways: an undertaking, in relation to another undertaking directly or indirectly, holds a majority of that undertaking's subscribed capital; controls a majority of the votes attached to that undertaking's issued share capital; is entitled to appoint more than half of the members of that undertaking's administrative, management or supervisory body; or the undertakings are managed on a unified basis by the parent undertaking;

(m) 'first Member State' means the Member State which first issues a third-country national an intra-corporate transferee permit;

(n) 'second Member State' means any Member State in which the intra-corporate transferee intends to exercise or exercises the right of mobility within the meaning of this Directive, other than the first Member State;

(o) 'regulated profession' means a regulated profession as defined in point (a) of Article 3(1) of Directive 2005/36/EC.

Article 4

More favourable provisions

1. This Directive shall apply without prejudice to more favourable provisions of:

(a) Union law, including bilateral and multilateral agreements concluded between the Union and its Member States on the one hand and one or more third countries on the other;

(b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.

2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for third-country nationals to whom it applies in respect of point (h) of Article 3, and Articles 15, 18 and 19.

CHAPTER II

CONDITIONS OF ADMISSION

Article 5

Criteria for admission

1. Without prejudice to Article 11(1), a third-country national who applies to be admitted under the terms of this Directive or the host entity shall:

(a) provide evidence that the host entity and the undertaking established in a third country belong to the same undertaking or group of undertakings;

(b) provide evidence of employment within the same undertaking or group of undertakings, from at least three up to twelve uninterrupted months immediately preceding the date of the intra-corporate transfer in the case of managers and specialists, and from at least three up to six uninterrupted months in the case of trainee employees;

(c) present a work contract and, if necessary, an assignment letter from the employer containing the following:

(i) details of the duration of the transfer and the location of the host entity or entities;

(ii) evidence that the third-country national is taking a position as a manager, specialist or trainee employee in the host entity or entities in the Member State concerned;

(iii) the remuneration as well as other terms and conditions of employment granted during the intra-corporate transfer;

(iv) evidence that the third-country national will be able to transfer back to an entity belonging to that undertaking or group of undertakings and established in a third country at the end of the intra-corporate transfer;

(d) provide evidence that the third-country national has the professional qualifications and experience needed in the host entity to which he or she is to be transferred as manager or specialist or, in the case of a trainee employee, the university degree required;

(e) where applicable, present documentation certifying that the third-country national fulfils the conditions laid down under the national law of the Member State concerned for Union citizens to exercise the regulated profession to which the application relates;

(f) present a valid travel document of the third-country national, as determined by national law, and, if required, an application for a visa or a visa; Member States may require the period of validity of the travel document to cover at least the period of validity of the intra-corporate transferee permit;

(g) without prejudice to existing bilateral agreements, provide evidence of having, or, if provided for by national law, having applied for, sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work carried out in that Member State.

2. Member States may require the applicant to present the documents listed in points (a), (c), (d), (e) and (g) of paragraph 1 in an official language of the Member State concerned.

3. Member States may require the applicant to provide, at the latest at the time of the issue of the intra-corporate transferee permit, the address of the third-country national concerned in the territory of the Member State.

4. Member States shall require that:

(a) all conditions in the law, regulations, or administrative provisions and/or universally applicable collective agreements applicable to posted workers in a similar situation in the relevant occupational branches are met during the intra-corporate transfer with regard to terms and conditions of employment other than remuneration.

In the absence of a system for declaring collective agreements of universal application, Member States may base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers and employee organisations at national level and which are applied throughout their national territory;

(b) the remuneration granted to the third-country national during the entire intra-corporate transfer is not less favourable than the remuneration granted to nationals of the Member State where the work is carried out occupying comparable positions in accordance with applicable laws or collective agreements or practices in the Member State where the host entity is established.

5. On the basis of the documentation provided pursuant to paragraph 1, Member States may require that the intra-corporate transferee will have sufficient resources during his or her stay to maintain himself or herself and his or her family members without having recourse to the Member States' social assistance systems.

6. In addition to the evidence required under paragraph 1, any third-country national who applies to be admitted as a trainee employee may be required to present a training agreement relating to the preparation for his or her future position within the undertaking or group of undertakings, including a description of the training programme, which demonstrates that the purpose of the stay is to train the trainee employee for career development purposes or in order to obtain training in business techniques or methods, its duration and the conditions under which the trainee employee is supervised during the programme.

7. Any modification during the application procedure that affects the criteria for admission set out in this Article shall be notified by the applicant to the competent authorities of the Member State concerned.

8. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted for the purposes of this Directive.

Article 6

Volumes of admission

This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals in accordance with Article 79(5) TFEU. On that basis, an application for an intra-corporate transferee permit may either be considered inadmissible or be rejected.

Article 7

Grounds for rejection

1. Member States shall reject an application for an intra-corporate transferee permit in any of the following cases:

(a) where Article 5 is not complied with;

(b) where the documents presented were fraudulently acquired, or falsified, or tampered with;

(c) where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees;

(d) where the maximum duration of stay as defined in Article 12(1) has been reached.

2. Member States shall, if appropriate, reject an application where the employer or the host entity has been sanctioned in accordance with national law for undeclared work and/or illegal employment.

3. Member States may reject an application for an intra-corporate transferee permit in any of the following cases:

(a) where the employer or the host entity has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;

(b) where the employer's or the host entity's business is being or has been wound up under national insolvency laws or no economic activity is taking place;

(c) where the intent or effect of the temporary presence of the intra-corporate transferee is to interfere with, or otherwise affect the outcome of, any labour management dispute or negotiation.

4. Member States may reject an application for an intra-corporate transferee permit on the ground set out in Article 12(2).

5. Without prejudice to paragraph 1, any decision to reject an application shall take account of the specific circumstances of the case and respect the principle of proportionality.

Article 8

Withdrawal or non-renewal of the intra-corporate transferee permit

1. Member States shall withdraw an intra-corporate transferee permit in any of the following cases:

(a) where it was fraudulently acquired, or falsified, or tampered with;

(b) where the intra-corporate transferee is residing in the Member State concerned for purposes other than those for which he or she was authorised to reside;

(c) where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees.

2. Member States shall, if appropriate, withdraw an intra-corporate transferee permit where the employer or the host entity has been sanctioned in accordance with national law for undeclared work and/or illegal employment.

3. Member States shall refuse to renew an intra-corporate transferee permit in any of the following cases:

(a) where it was fraudulently acquired, or falsified, or tampered with;

(b) where the intra-corporate transferee is residing in the Member State concerned for purposes other than those for which he or she was authorised to reside;

(c) where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees;

(d) where the maximum duration of stay as defined in Article 12(1) has been reached.

4. Member States shall, if appropriate, refuse to renew an intra-corporate transferee permit where the employer or the host entity has been sanctioned in accordance with national law for undeclared work and/or illegal employment.

5. Member States may withdraw or refuse to renew an intra-corporate transferee permit in any of the following cases:

(a) where Article 5 is not or is no longer complied with;

(b) where the employer or the host entity has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;

(c) where the employer's or the host entity's business is being or has been wound up under national insolvency laws or if no economic activity is taking place;

(d) where the intra-corporate transferee has not complied with the mobility rules set out in Articles 21 and 22.

6. Without prejudice to paragraphs 1 and 3, any decision to withdraw or to refuse to renew an intra-corporate transferee permit shall take account of the specific circumstances of the case and respect the principle of proportionality.

Article 9

Sanctions

1. Member States may hold the host entity responsible for failure to comply with the conditions of admission, stay and mobility laid down in this Directive.

2. The Member State concerned shall provide for sanctions where the host entity is held responsible in accordance with paragraph 1. Those sanctions shall be effective, proportionate and dissuasive.

3. Member States shall provide for measures to prevent possible abuses and to sanction infringements of this Directive. Measures shall include monitoring, assessment and, where appropriate, inspection in accordance with national law or administrative practice.

CHAPTER III

PROCEDURE AND PERMIT

Article 10

Access to information

1. Member States shall make easily accessible to applicants the information on all the documentary evidence needed for an application and information on entry and residence, including the rights, obligations and procedural safeguards, of the intra-corporate transferee and of his or her family members. Member States shall also make easily available information on the procedures applicable to the short-term mobility referred to in Article 21(2) and to the long-term mobility referred to in Article 22(1).

2. The Member States concerned shall make available information to the host entity on the right of Member States to impose sanctions in accordance with Articles 9 and 23.

Article 11

Applications for an intra-corporate transferee permit or a permit for long-term mobility

1. Member States shall determine whether an application is to be submitted by the third-country national or by the host entity. Member States may also decide to allow an application from either of the two.

2. The application for an intra-corporate transferee permit shall be submitted when the third-country national is residing outside the territory of the Member State to which admission is sought.

3. The application for an intra-corporate transferee permit shall be submitted to the authorities of the Member State where the first stay takes place. Where the first stay is not the longest, the application shall be submitted to the authorities of the Member State where the longest overall stay is to take place during the transfer.

4. Member States shall designate the authorities competent to receive the application and to issue the intra-corporate transferee permit or the permit for long-term mobility.

5. The applicant shall be entitled to submit an application in a single application procedure.

6. Simplified procedures relating to the issue of intra-corporate transferee permits, permits for long-term mobility, permits granted to family members of an intra-corporate transferee, and visas may be made available to entities or to undertakings or groups of undertakings that have been recognised for that purpose by Member States in accordance with their national law or administrative practice.

Recognition shall be regularly reassessed.

7. The simplified procedures provided for in paragraph 6 shall at least include:

(a) exempting the applicant from presenting some of the evidence referred to in Article 5 or in point (a) of Article 22(2);

(b) a fast-track admission procedure allowing intra-corporate transferee permits and permits for long-term mobility to be issued within a shorter time than specified in Article 15(1) or in point (b) of Article 22(2); and/or

(c) facilitated and/or accelerated procedures in relation to the issue of the requisite visas.

8. Entities or undertakings or groups of undertakings which have been recognised in accordance with paragraph 6 shall notify to the relevant authority any modification affecting the conditions for recognition without delay and, in any event, within 30 days.

9. Member States shall provide for appropriate sanctions, including revocation of recognition, in the event of failure to notify the relevant authority.

Article 12

Duration of an intra-corporate transfer

1. The maximum duration of the intra-corporate transfer shall be three years for managers and specialists and one year for trainee employees after which they shall leave the territory of the Member States unless they obtain a residence permit on another basis in accordance with Union or national law.

2. Without prejudice to their obligations under international agreements, Member States may require a period of up to six months to elapse between the end of the maximum duration of a transfer referred to in paragraph 1 and another application concerning the same third-country national for the purposes of this Directive in the same Member State.

Article 13

Intra-corporate transferee permit

1. Intra-corporate transferees who fulfil the admission criteria set out in Article 5 and for whom the competent authorities have taken a positive decision shall be issued with an intra-corporate transferee permit.

2. The period of validity of the intra-corporate transferee permit shall be at least one year or the duration of the transfer to the territory of the Member State concerned, whichever is shorter, and may be extended to a maximum of three years for managers and specialists and one year for trainee employees.

3. The intra-corporate transferee permit shall be issued by the competent authorities of the Member State using the uniform format laid down in Regulation (EC) No 1030/2002.

4. Under the heading 'type of permit', in accordance with point (a) 6.4 of the Annex to Regulation (EC) No 1030/2002, the Member States shall enter 'ICT'.

Member States may also add an indication in their official language or languages.

5. Member States shall not issue any additional permits, in particular work permits of any kind.

6. Member States may indicate additional information relating to the employment activity during the intra-corporate transfer of the third-country national in paper format, and/or store such data in electronic format as referred to in Article 4 of Regulation (EC) No 1030/2002 and point (a)16 of the Annex thereto.

7. The Member State concerned shall grant third-country nationals whose application for admission has been accepted every facility to obtain the requisite visa.

Article 14

Modifications affecting the conditions for admission during the stay

Any modification during the stay that affects the conditions for admission set out in Article 5 shall be notified by the applicant to the competent authorities of the Member State concerned.

Article 15

Procedural safeguards

1. The competent authorities of the Member State concerned shall adopt a decision on the application for an intra-corporate transferee permit or a renewal of it and notify the decision to the applicant in writing, in accordance with the notification procedures under national law, as soon as possible but not later than 90 days from the date on which the complete application was submitted.

2. Where the information or documentation supplied in support of the application is incomplete, the competent authorities shall notify the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it. The period referred to in paragraph 1 shall be suspended until the competent authorities have received the additional information required.

3. Reasons for a decision declaring inadmissible or rejecting an application or refusing renewal shall be given to the applicant in writing. Reasons for a decision withdrawing an intra-corporate transferee permit shall be given in writing to the intra-corporate transferee and to the host entity.

4. Any decision declaring inadmissible or rejecting the application, refusing renewal, or withdrawing an intra-corporate transferee permit shall be open to legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the court or administrative authority with which an appeal may be lodged and the time-limit for lodging the appeal.

5. Within the period referred to in Article 12(1) an applicant shall be allowed to submit an application for renewal before the expiry of the intra-corporate transferee permit. Member States may set a maximum deadline of 90 days prior to the expiry of the intra-corporate transferee permit for submitting an application for renewal.

6. Where the validity of the intra-corporate transferee permit expires during the procedure for renewal, Member States shall allow the intra-corporate transferee to stay on their territory until the competent authorities have taken a decision on the application. In such a case, they may issue, where required under national law, national temporary residence permits or equivalent authorisations.

Article 16

Fees

Member States may require the payment of fees for the handling of applications in accordance with this Directive. The level of such fees shall not be disproportionate or excessive.

CHAPTER IV

RIGHTS

Article 17

Rights on the basis of the intra-corporate transferee permit

During the period of validity of an intra-corporate transferee permit, the holder shall enjoy at least the following rights:

(a) the right to enter and stay in the territory of the first Member State;

(b) free access to the entire territory of the first Member State in accordance with its national law;

(c) the right to exercise the specific employment activity authorised under the permit in accordance with national law in any host entity belonging to the undertaking or the group of undertakings in the first Member State.

The rights referred to in points (a) to (c) of the first paragraph of this Article shall be enjoyed in second Member States in accordance with Article 20.

Article 18

Right to equal treatment

1. Whatever the law applicable to the employment relationship, and without prejudice to point (b) of Article 5(4), intra-corporate transferees admitted under this Directive shall enjoy at least equal treatment with persons covered by Directive 96/71/EC with regard to the terms and conditions of employment in accordance with Article 3 of Directive 96/71/EC in the Member State where the work is carried out.

2. Intra-corporate transferees shall enjoy equal treatment with nationals of the Member State where the work is carried out as regards:

(a) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the rights and benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;

(b) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;

(c) provisions in national law regarding the branches of social security defined in Article 3 of Regulation (EC) No 883/2004, unless the law of the country of origin applies by virtue of bilateral agreements or the national law of the Member State where the work is carried out, ensuring that the intra-corporate transferee is covered by the social security legislation in one of those countries. In the event of intra-EU mobility, and without prejudice to bilateral agreements ensuring that the intra-corporate transferee is covered by the national law of the country of origin, Regulation (EU) No 1231/2010 shall apply accordingly;

(d) without prejudice to Regulation (EU) No 1231/2010 and to bilateral agreements, payment of old-age, invalidity and death statutory pensions based on the intra-corporate transferees' previous employment and acquired by intra-corporate transferees moving to a third country, or the survivors of such intra-corporate transferees residing in a third country deriving rights from the intra-corporate transferee, in accordance with the legislation set out in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member State concerned when they move to a third country;

(e) access to goods and services and the supply of goods and services made available to the public, except procedures for obtaining housing as provided for by national law, without prejudice to freedom of contract in accordance with Union and national law, and services afforded by public employment offices.

The bilateral agreements or national law referred to in this paragraph shall constitute international agreements or Member States' provisions within the meaning of Article 4.

3. Without prejudice to Regulation (EU) No 1231/2010, Member States may decide that point (c) of paragraph 2 with regard to family benefits shall not apply to intra-corporate transferees who have been authorised to reside and work in the territory of a Member State for a period not exceeding nine months.

4. This Article shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the permit in accordance with Article 8.

Article 19

Family members

1. Directive 2003/86/EC shall apply in the first Member State and in second Member States which allow the intra-corporate transferee to stay and work on their territory in accordance with Article 22 of this Directive, subject to the derogations laid down in this Article.

2. By way of derogation from Article 3(1) and Article 8 of Directive 2003/86/EC, family reunification in the Member States shall not be made dependent on the requirement that the holder of the permit issued by those Member States on the basis of this Directive has reasonable prospects of obtaining the right of permanent residence and has a minimum period of residence.

3. By way of derogation from the third subparagraph of Article 4(1) and from Article 7(2) of Directive 2003/86/EC, the integration measures referred to therein may be applied by the Member States only after the persons concerned have been granted family reunification.

4. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, residence permits for family members shall be granted by a Member State, if the conditions for family reunification are fulfilled, within 90 days from the date on which the complete application was submitted. The competent authority of the Member State shall process the residence permit application for the intra-corporate transferee's family members at the same time as

the application for the intra-corporate transferee permit or the permit for long-term mobility, in cases where the residence permit application for the intra-corporate transferee's family members is submitted at the same time. The procedural safeguards laid down in Article 15 shall apply accordingly.

5. By way of derogation from Article 13(2) of Directive 2003/86/EC, the duration of validity of the residence permits of family members in a Member State shall, as a general rule, end on the date of expiry of the intra-corporate transferee permit or the permit for long-term mobility issued by that Member State.

6. By way of derogation from Article 14(2) of Directive 2003/86/EC and without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession, the family members of the intra-corporate transferee who have been granted family reunification shall be entitled to have access to employment and self-employed activity in the territory of the Member State which issued the family member residence permit.

CHAPTER V

INTRA-EU MOBILITY

Article 20

Mobility

Third-country nationals who hold a valid intra-corporate transferee permit issued by the first Member State may, on the basis of that permit and a valid travel document and under the conditions laid down in Article 21 and 22 and subject to Article 23, enter, stay and work in one or several second Member States.

Article 21

Short-term mobility

1. Third-country nationals who hold a valid intra-corporate transferee permit issued by the first Member State shall be entitled to stay in any second Member State and work in any other entity, established in the latter and belonging to the same undertaking or group of undertakings, for a period of up to 90 days in any 180-day period per Member State subject to the conditions laid down in this Article.

2. The second Member State may require the host entity in the first Member State to notify the first Member State and the second Member State of the intention of the intra-corporate transferee to work in an entity established in the second Member State.

In such cases, the second Member State shall allow the notification to take place either:

(a) at the time of the application in the first Member State, where the mobility to the second Member State is already envisaged at that stage; or

(b) after the intra-corporate transferee was admitted to the first Member State, as soon as the intended mobility to the second Member State is known.

3. The second Member State may require the notification to include the transmission of the following documents and information:

(a) evidence that the host entity in the second Member State and the undertaking established in a third country belong to the same undertaking or group of undertakings;

(b) the work contract and, if necessary, the assignment letter, which were transmitted to the first Member State in accordance with point (c) of Article 5(1);

(c) where applicable, documentation certifying that the intra-corporate transferee fulfils the conditions laid down under the national law of the Member State concerned for Union citizens to exercise the regulated profession to which the application relates;

(d) a valid travel document, as provided for in point (f) of Article 5(1); and

(e) where not specified in any of the preceding documents, the planned duration and dates of the mobility.

The second Member State may require those documents and that information to be presented in an official language of that Member State.

4. Where the notification has taken place in accordance with point (a) of paragraph 2, and where the second Member State has not raised any objection with the first Member State in accordance with paragraph 6, the mobility of the intra-corporate transferee to the second Member State may take place at any moment within the period of validity of the intra-corporate transferee permit.

5. Where the notification has taken place in accordance with point (b) of paragraph 2, the mobility may be initiated after the notification to the second Member State immediately or at any moment thereafter within the period of validity of the intra-corporate transferee permit.

6. Based on the notification referred to in paragraph 2, the second Member State may object to the mobility of the intra-corporate transferee to its territory within 20 days from having received the notification, where:

(a) the conditions set out in point (b) of Article 5(4) or in point (a), (c) or (d) of paragraph 3 of this Article are not complied with;

(b) the documents presented were fraudulently acquired, or falsified, or tampered with;

(c) the maximum duration of stay as defined in Article 12(1) or in paragraph 1 of this Article has been reached.

The competent authorities of the second Member State shall inform without delay the competent authorities of the first Member State and the host entity in the first Member State about their objection to the mobility.

7. Where the second Member State objects to the mobility in accordance with paragraph 6 of this Article and the mobility has not yet taken place, the intra-corporate transferee shall not be allowed to work in the second Member State as part of the intra-corporate transfer. Where the mobility has already taken place, Article 23(4) and (5) shall apply.

8. Where the intra-corporate transferee permit is renewed by the first Member State within the maximum duration provided for in Article 12(1), the renewed intra-corporate transferee permit shall continue to authorise its holder to work in the second Member State, subject to the maximum duration provided for in paragraph 1 of this Article.

9. Intra-corporate transferees who are considered to pose a threat to public policy, public security or public health shall not be allowed to enter or to stay on the territory of the second Member State.

Article 22

Long-term mobility

1. In relation to third-country nationals who hold a valid intra-corporate transferee permit issued by the first Member State and who intend to stay in any second Member State and work in any other entity, established in the latter and belonging to the same undertaking or group of undertakings, for more than 90 days per Member State, the second Member State may decide to:

(a) apply Article 21 and allow the intra-corporate transferee to stay and work on its territory on the basis of and during the period of validity of the intra-corporate transferee permit issued by the first Member State; or

(b) apply the procedure provided for in paragraphs 2 to 7.

2. Where an application for long-term mobility is submitted:

(a) the second Member State may require the applicant to transmit some or all of the following documents where they are required by the second Member State for an initial application:

(i) evidence that the host entity in the second Member State and the undertaking established in a third country belong to the same undertaking or group of undertakings;

(ii) a work contract and, if necessary, an assignment letter, as provided for in point (c) of Article 5(1);

(iii) where applicable, documentation certifying that the third-country national fulfils the conditions laid down under the national law of the Member State concerned for Union citizens to exercise the regulated profession to which the application relates;

(iv) a valid travel document, as provided for in point (f) of Article 5(1);

(v) evidence of having, or, if provided for by national law, having applied for, sickness insurance, as provided for in point (g) of Article 5(1).

The second Member State may require the applicant to provide, at the latest at the time of issue of the permit for long-term mobility, the address of the intra-corporate transferee concerned in the territory of the second Member State.

The second Member State may require those documents and that information to be presented in an official language of that Member State;

(b) the second Member State shall take a decision on the application for long-term mobility and notify the decision to the applicant in writing as soon as possible but not later than 90 days from the date on which the application and the documents provided for in point (a) were submitted to the competent authorities of the second Member State;

(c) the intra-corporate transferee shall not be required to leave the territories of the Member States in order to submit the application and shall not be subject to a visa requirement;

(d) the intra-corporate transferee shall be allowed to work in the second Member State until a decision on the application for long-term mobility has been taken by the competent authorities, provided that:

(i) the time period referred to in Article 21(1) and the period of validity of the intra-corporate transferee permit issued by the first Member State has not expired; and

(ii) if the second Member State so requires, the complete application has been submitted to the second Member State at least 20 days before the long-term mobility of the intra-corporate transferee starts;

(e) an application for long-term mobility may not be submitted at the same time as a notification for short-term mobility. Where the need for long-term mobility arises after the short-term mobility of the intra-corporate transferee has started, the second Member State may request that the application for long-term mobility be submitted at least 20 days before the short-term mobility ends.

3. Member States may reject an application for long-term mobility where:

(a) the conditions set out in point (a) of paragraph 2 of this Article are not complied with or the criteria set out in Article 5(4), Article 5(5) or Article 5(8) are not complied with;

(b) one of the grounds covered by point (b) or (d) of Article 7(1) or by Article 7(2), (3) or (4) applies; or

(c) the intra-corporate transferee permit expires during the procedure.

4. Where the second Member State takes a positive decision on the application for long-term mobility as referred to in paragraph 2, the intra-corporate transferee shall be issued with a permit for long-term mobility allowing the intra-corporate transferee to stay and work in its territory. This permit shall be issued using the uniform format laid down in Regulation (EC) No 1030/2002. Under the heading 'type of permit', in accordance with point (a)6.4 of the Annex to Regulation (EC) No 1030/2002, the Member States shall enter: 'mobile ICT'. Member States may also add an indication in their official language or languages.

Member States may indicate additional information relating to the employment activity during the long-term mobility of the intra-corporate transferee in paper format, and/or store such data in electronic format as referred to in Article 4 of Regulation (EC) No 1030/2002 and point (a)16 of the Annex thereto.

5. Renewal of a permit for long-term mobility is without prejudice to Article 11(3).

6. The second Member State shall inform the competent authorities in the first Member State where a permit for long-term mobility is issued.

7. Where a Member State takes a decision on an application for long-term mobility, Article 8, Article 15(2) to (6) and Article 16 shall apply accordingly.

Article 23

Safeguards and sanctions

1. Where the intra-corporate transferee permit is issued by a Member State not applying the Schengen *acquis* in full and the intra-corporate transferee crosses an external border, the second Member State shall be entitled to require as evidence that the intra-corporate transferee is moving to the second Member State for the purpose of an intra-corporate transfer:

(a) a copy of the notification sent by the host entity in the first Member State in accordance with Article 21(2); or

(b) a letter from the host entity in the second Member State that specifies at least the details of the duration of the intra-EU mobility and the location of the host entity or entities in the second Member State.

2. Where the first Member State withdraws the intra-corporate transferee permit, it shall inform the authorities of the second Member State immediately.

3. The host entity of the second Member State shall inform the competent authorities of the second Member State of any modification which affects the conditions on which basis the mobility was allowed to take place.

4. The second Member State may request that the intra-corporate transferee immediately cease all employment activity and leave its territory where:

(a) it has not been notified in accordance with Article 21(2) and (3) and requires such notification;

(b) it has objected to the mobility in accordance with Article 21(6);

(c) it has rejected an application for long-term mobility in accordance with Article 22(3);

(d) the intra-corporate transferee permit or the permit for long-term mobility is used for purposes other than those for which it was issued;

(e) the conditions on which the mobility was allowed to take place are no longer fulfilled.

5. In the cases referred to in paragraph 4, the first Member State shall, upon request of the second Member State, allow re-entry of the intra-corporate transferee, and, where applicable, of his or her family members, without formalities and without delay. That shall also apply if the intra-corporate transferee permit issued by the first Member State has expired or has been withdrawn during the period of mobility within the second Member State.

6. Where the holder of an intra-corporate transferee permit crosses the external border of a Member State applying the Schengen *acquis* in full, that Member State shall consult the Schengen information system. That Member State shall refuse entry or object to the mobility of persons for whom an alert for the purposes of refusing entry and stay has been issued in the Schengen information system.

7. Member States may impose sanctions against the host entity established on its territory in accordance with Article 9, where:

(a) the host entity has failed to notify the mobility of the intra-corporate transferee in accordance with Article 21(2) and (3);

(b) the intra-corporate transferee permit or the permit for long-term mobility is used for purposes other than those for which it was issued;

(c) the application for an intra-corporate transferee permit has been submitted to a Member State other than the one where the longest overall stay takes place;

(d) the intra-corporate transferee no longer fulfils the criteria and conditions on the basis of which the mobility was allowed to take place and the host entity fails to notify the competent authorities of the second Member State of such a modification;

(e) the intra-corporate transferee started to work in the second Member State, although the conditions for mobility were not fulfilled in case Article 21(5) or point (d) of Article 22(2) applies.

CHAPTER VI

FINAL PROVISIONS

Article 24

Statistics

1. Member States shall communicate to the Commission statistics on the number of intra-corporate transferee permits and permits for long-term mobility issued for the first time, and, where applicable, the notifications received pursuant to Article 21(2) and, as far as possible, on the number of intra-corporate transferees whose permit has been renewed or withdrawn. Those statistics shall be disaggregated by citizenship and by the period of validity of the permit and, as far as possible, by the economic sector and transferee position.

2. The statistics shall relate to reference periods of one calendar year and shall be communicated to the Commission within six months of the end of the reference year. The first reference year shall be 2017.

3. The statistics shall be communicated in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council ([1]).

Article 25

Reporting

Every three years, and for the first time by 29 November 2019, the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive in the Member States and shall propose any amendments necessary. The report shall focus in particular on the assessment of the proper functioning of the intra-EU mobility scheme and on possible misuses of such a scheme as well as its interaction with the Schengen *acquis*. The Commission shall in particular assess the practical application of Articles 20, 21, 22, 23 and 26.

([1]) Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (JO L 199, 31.7.2007, p. 23).

Article 26

Cooperation between contact points

1. Member States shall appoint contact points which shall cooperate effectively and be responsible for receiving and transmitting the information needed to implement Articles 21, 22 and 23. Member States shall give preference to exchanging of information via electronic means.

2. Each Member State shall inform the other Member States, via the national contact points referred to in paragraph 1, about the designated authorities referred to in Article 11(4) and about the procedure applied to mobility referred to in the Articles 21 and 22.

Article 27

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 29 November 2016. They shall forthwith communicate the text of those measures to the Commission.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 28

Entry into force

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

Article 29

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels, 15 May 2014.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	D. KOURKOULAS

DECISIONS

DECISION No 565/2014/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 May 2014

introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC

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 points (a) and (b) of Article 77(2) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure ([1]),

Whereas:

(1) Pursuant to Article 4(1) of the 2011 Act of Accession, Croatia, which acceded to the Union on 1 July 2013, is required from that date to subject nationals of the third countries listed in Annex I to Council Regulation (EC) No 539/2001 ([2]) to a visa requirement.

(2) Pursuant to Article 4(2) of the 2011 Act of Accession, the provisions of the Schengen *acquis* on the conditions and criteria for issuing uniform visas, as well as the provisions on mutual recognition of visas and on the equivalence between residence permits/long stay visas and short stay visas, only apply to Croatia after adoption of a Council decision to that effect. However, they are binding on Croatia from the date of accession.

(3) Croatia is therefore required to issue national visas for entry into or transit through its territory to third-country nationals holding a uniform visa or long-stay visa or residence permit issued by a Member State fully implementing the Schengen *acquis* or a similar document issued by Bulgaria, Cyprus and Romania, which do not yet fully implement it.

(4) The holders of documents issued by Member States fully implementing the Schengen *acquis* and documents issued by Bulgaria, Cyprus and Romania do not represent any risk for Croatia as they have been subject to all

([1]) Position of the European Parliament of 27 February 2014 (not yet published in the Official Journal) and decision of the Council of 6 May 2014.

([2]) Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1).

necessary controls by those Member States. In order to avoid imposing unjustified additional administrative burdens on Croatia, common rules should be adopted authorising Croatia unilaterally to recognise certain documents issued by those Member States as equivalent to its national visas and to establish a simplified regime for the control of persons at its external borders based on that unilateral equivalence.

(5) The common rules introduced by Decision No 895/2006/EC of the European Parliament and of the Council ([1]) and by Decision No 582/2008/EC of the European Parliament and of the Council ([2]) should be repealed. With regard to Cyprus, which has implemented the common regime established by Decision No 895/2006/EC since 10 July 2006, and to Bulgaria and Romania, which have implemented the common regime established by Decision No 582/2008/EC since 18 July 2008, common rules should be adopted authorising Bulgaria, Cyprus and Romania, like Croatia, unilaterally to recognise certain documents issued by Member States fully implementing the Schengen *acquis* as well as similar documents issued by Croatia, as equivalent to its national visas and to establish a simplified regime for the control of persons at their external borders based on that unilateral equivalence. This Decision is without prejudice to Bulgaria and Romania's objective of becoming Schengen Member States without delay.

(6) The simplified regime laid down in this Decision should apply for a transitional period, until the date to be determined in a Council decision as referred to in the first subparagraph of Article 3(2) of the 2003 Act of Accession in respect of Cyprus, in the first subparagraph of Article 4(2) of the 2005 Act of Accession in respect of Bulgaria and Romania and in the first subparagraph of Article 4(2) of the 2011 Act of Accession in respect of Croatia, subject to possible transitional provisions in respect of documents issued before that date.

(7) Participation in the simplified regime should be optional, without imposing on the Member States obligations additional to those laid down by the 2003 Act of Accession, the 2005 Act of Accession or the 2011 Act of Accession.

(8) The common rules should apply to short-term uniform visas, long-stay visas and residence permits issued by Member States fully implementing the Schengen *acquis*, to visas with limited territorial validity issued to an applicant who holds a travel document that is not recognised by one or more, but not all, Member States, in accordance with Regulation (EC) No 810/2009 of the European Parliament and of the Council ([3]) (the 'Visa Code') and by the countries associated with the implementation, application and development of the Schengen *acquis* as well as to short-term visas, long-term visas and residence permits issued by Bulgaria, Croatia, Cyprus and Romania. The recognition of a document should be limited to the period of its validity.

(9) The entry conditions for third-country nationals whose intended stays on the territory of the Member States have a duration of no more than 90 days in any 180-day period, as laid down in Regulation (EC) No 562/2006 of the European Parliament and of the Council ([4]), must be fulfilled, with the exception of the requirement to be in possession of a valid visa, if required pursuant to Regulation (EC) No 539/2001, in so far as this Decision sets up a regime of unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents issued by Member States fully implementing the Schengen *acquis* and similar documents issued by Bulgaria, Croatia, Cyprus and Romania for transit through or intended stays on their territories not exceeding 90 days in any 180-day period.

(10) Since the objective of this Decision, namely the introduction of a regime of unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents issued by other Member States, cannot be sufficiently achieved by the Member States but can rather 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 Decision does not go beyond what is necessary in order to achieve that objective.

([1]) Decision No 895/2006/EC of the European Parliament and of the Council of 14 June 2006 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia of certain documents as equivalent to their national visas for the purposes of transit through their territories (OJ L 167, 20.6.2006, p. 1).

([2]) Decision No 582/2008/EC of the European Parliament and of the Council of 17 June 2008 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Cyprus and Romania of certain documents as equivalent to their national visas for the purposes of transit through their territories (OJ L 161, 20.6.2008, p. 30).

([3]) Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

([4]) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

(11) As regards Iceland and Norway, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis* ([1]), which fall within the area referred to in Article 1, point (B), of Council Decision 1999/437/EC ([2]).

(12) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ([3]), which fall within the area referred to in Article 1, point (B), of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC ([4]).

(13) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ([5]), which fall within the area referred to in Article 1, point (B), of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU ([6]).

(14) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(15) This Decision constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC ([7]); the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(16) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ([8]); Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application,

HAVE ADOPTED THIS DECISION:

Article 1

This Decision introduces a simplified regime for the control of persons at the external borders whereby Bulgaria, Croatia, Cyprus and Romania may recognise unilaterally as equivalent to their national visas for transit through or intended stays on their territory not exceeding 90 days in any 180-day period the documents referred to in Article 2(1) and Article 3 of this Decision issued to third-country nationals subject to a visa obligation pursuant to Regulation (EC) No 539/2001.

([1]) OJ L 176, 10.7.1999, p. 36.
([2]) Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).
([3]) OJ L 53, 27.2.2008, p. 52.
([4]) Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).
([5]) OJ L 160, 18.6.2011, p. 21.
([6]) Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).
([7]) Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (OJ L 131, 1.6.2000, p. 43).
([8]) Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

The implementation of this Decision shall not affect the checks to be carried out on persons at the external borders in accordance with Articles 5 to 13 and 18 and 19 of Regulation (EC) No 562/2006.

Article 2

1. Bulgaria, Croatia, Cyprus and Romania may consider as equivalent to their national visas, for transit through or intended stays on their territory not exceeding 90 days in any 180-day period, the following documents issued by the Member States fully implementing the Schengen *acquis*, irrespective of the nationality of the holders:

(a) a 'uniform visa' as defined in point (3) of Article 2 of the Visa Code, valid for two or multiple entries;

(b) a 'long-stay visa' as referred to in Article 18 of the Convention implementing the Schengen Agreement ([1]);

(c) a 'residence permit' as defined in point (15) of Article 2 of Regulation (EC) No 562/2006.

2. Bulgaria, Croatia, Cyprus and Romania may also consider as equivalent to their national visas, for transit through or intended stays on their territory not exceeding 90 days in any 180-day period visas with limited territorial validity issued in accordance with the first sentence of Article 25(3) of the Visa Code.

3. If Bulgaria, Croatia, Cyprus or Romania decide to apply this Decision, they shall recognise all the documents referred to in paragraphs 1 and 2, regardless of which Member State issued the document, unless they are affixed to travel documents that they do not recognise or to travel documents issued by a third country with which they do not have diplomatic relations.

Article 3

1. If Bulgaria, Croatia, Cyprus or Romania decide to apply Article 2, they may, in addition to the documents referred to in that Article, recognise as equivalent to their national visas for transit through or intended stays on their territory not exceeding 90 days in any 180-day period:

(a) national short-stay visas and national long-stay visas issued by Bulgaria, Croatia, Cyprus, or Romania in the uniform format laid down by Council Regulation (EC) No 1683/95 ([2]);

(b) residence permits issued by Bulgaria, Croatia, Cyprus or Romania in accordance with the uniform format laid down by Council Regulation (EC) No 1030/2002 ([3]),

unless such visas and residence permits are affixed to travel documents that those Member States do not recognise or to travel documents issued by a third country with which they do not have diplomatic relations.

2. Documents issued by Bulgaria which may be recognised are listed in Annex I.

Documents issued by Croatia which may be recognised are listed in Annex II.

Documents issued by Cyprus which may be recognised are listed in Annex III.

Documents issued by Romania which may be recognised are listed in Annex IV.

Article 4

The period of validity of the documents referred to in Articles 2 and 3 shall cover the duration of the transit or stay.

([1]) OJ L 239, 22.9.2000, p. 19.
([2]) Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1).
([3]) Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157 15.6.2002, p. 1).

Article 5

Bulgaria, Croatia, Cyprus and Romania shall notify the Commission within 20 working days of the entry into force of this Decision, if they decide to apply this Decision. The Commission shall publish the information communicated by those Member States in the *Official Journal of the European Union*.

Those notifications shall, where relevant, specify the third countries with regard to which Bulgaria, Croatia, Cyprus and Romania do not, in the absence of diplomatic relations, apply this Decision pursuant to Article 2(3) and Article 3(1).

Article 6

Decisions No 895/2006/EC and No 582/2008/EC are repealed.

Article 7

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

It shall apply until the date determined by a Council decision adopted pursuant to the first subparagraph of Article 3(2) of the 2003 Act of Accession in respect of Cyprus, to the first subparagraph of Article 4(2) of the 2005 Act of Accession in respect of Bulgaria and Romania and to the first subparagraph of Article 4(2) of the 2011 Act of Accession in respect of Croatia, on which all the provisions of the Schengen *acquis* in the field of the common visa policy and the movement of third-country nationals legally residing within the territory of the Member States shall apply to the Member State concerned.

Article 8

This Decision is addressed to Bulgaria, Croatia, Cyprus and Romania.

Done at Brussels, 15 May 2014.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	D. KOURKOULAS

ANNEX I

LIST OF DOCUMENTS ISSUED BY BULGARIA

Visas

Bulgaria issues the following types of visas in compliance with the Foreigners in the Republic of Bulgaria Act

— Виза за летищен транзит (виза вид A) — Airport transit visa (type A)

— Виза за краткосрочно пребиваване (виза вид C) — Short — stay visa (type C)

— Виза за дългосрочно пребиваване (виза вид D) — Long — term residence visa (type D)

Residence permits

Bulgaria issues the following residence permits mentioned in point 15 of Article 2 of Regulation (EC) No 562/2006:

1. Разрешение за пребиваване на продължително пребиваващ в Република България чужденец — Prolonged residence.

2. Разрешение за пребиваване на дългосрочно пребиваващ в ЕС чужденец — Long-term resident — EC.

3. Разрешение за пребиваване на постоянно пребиваващ в Република България чужденец — Residence permit.

4. Разрешение за пребиваване на продължително пребиваващ член на семейството на гражданин на ЕС, който не е упражнил правото си на свободно придвижване, с отбелязване 'член на семейство' — Prolonged Residence — Family member under Directive 2004/38/EC of the European Parliament and of the Council ([1]).

5. Разрешение за пребиваване на постоянно пребиваващ член на семейството на гражданин на ЕС, който не е упражнил правото си на свободно придвижване, с отбелязване 'член на семейство' — Residence permit — Family member under Directive 2004/38/EC.

6. Разрешение за пребиваване на продължително пребиваващ с отбелязване 'бенефициер съгласно член 3, параграф 2 от Директива 2004/38/ЕО' — Prolonged Residence– beneficiary under Article 3(2) of Directive 2004/38/EC.

7. Разрешение за пребиваване на постоянно пребиваващ с отбелязване 'бенефициер съгласно член 3, параграф 2 от Директива 2004/38/ЕО' — Residence permit — beneficiary under Article 3(2) of Directive 2004/38/EC.

8. Разрешение за пребиваване тип 'синя карта на ЕС' — Residence permit — EU Blue Card.

9. Единно разрешение за пребиваване и работа — Single permit.

10. Временно разрешение за пребиваване на притежател на синя карта на ЕС, издадена от друга държава — членка на ЕС — Temporary residence permit.

11. Разрешение за продължително пребиваване на член на семейството на бежанец или на чужденец с предоставено убежище — Prolonged Residence — Family member of refugee or foreigner with granted asylum.

12. Разрешение за продължително пребиваване на член на семейството на чужденец с хуманитарен статут — Prolonged Residence — Family member of subsidiary protection beneficiary.

13. Разрешение за продължително пребиваване на член на семейството на чужденец с предоставена временна закрила — Prolonged Residence — Family member of temporary protection beneficiary.

([1]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

14. Разрешение за продължително пребиваване на чужденец с отбелязване ‘научен работник’ — Prolonged residence — Researcher.

15. Удостоверение за завръщане в Република България на чужденец — Temporary passport of a foreigner for return to Republic of Bulgaria.

16. ‘Карта за пребиваване на член на семейството на гражданин на Съюза’ на продължително пребиваващ член на семейство на гражданин на ЕС — Residence card of a family member of a Union citizen — long term residence.

17. ‘Карта за пребиваване на член на семейството на гражданин на Съюза’ на постоянно пребиваващ член на семейство на гражданин на ЕС — Residence card of a family member of a Union citizen — residence permit.

ANNEX II

LIST OF DOCUMENTS ISSUED BY CROATIA

Visas

— Kratkotrajna viza (C) — Short-stay visa (C)

Residence permits

— Odobrenje boravka — Approval of stay

— Osobna iskaznica za stranca — Identity card for foreign nationals

---

ANNEX III

LIST OF DOCUMENTS ISSUED BY CYPRUS

Θεωρήσεις (Visas)

— Θεώρηση διέλευσης — Κατηγορία Β (transit visa — type B)

— Θεώρηση για παραμονή βραχείας διάρκειας — Κατηγορία Γ (short-stay visa — type C)

— Ομαδική θεώρηση — Κατηγορίες Β και Γ (group visa — type B and C)

Άδειες παραμονής (Residence permits)

— Προσωρινή άδεια παραμονής (απασχόληση, επισκέπτης, φοιτητής) — Temporary residence permit (employment, visitor, student)

— Άδεια εισόδου (απασχόληση, φοιτητής) — Entry permit (employment, student)

— Άδεια μετανάστευσης (μόνιμη άδεια) — Immigration permit (permanent permit)

ANNEX IV

LIST OF DOCUMENTS ISSUED BY ROMANIA

Visas

— viză de tranzit, identificată prin simbolul B (transit visa, marked B);

— viză de scurtă ședere, identificată prin simbolul C (short stay visa, marked C);

— viză de lungă ședere, identificată prin unul dintre următoarele simboluri, în funcție de activitatea pe care urmează să o desfășoare în România străinul căruia i-a fost acordată (long-stay visa, identified by one of the following symbols, according to the activity that the holder of the visa will carry out in Romania):

(i) desfășurarea de activități economice, identificată prin simbolul D/AE (economic activities, marked D/AE);

(ii) desfășurarea de activități profesionale, identificată prin simbolul D/AP (professional activities, marked D/AP);

(iii) desfășurarea de activități comerciale, identificată prin simbolul D/AC (commercial activities, marked D/AC);

(iv) angajare în munca, identificată prin simbolul D/AM (employment, marked D/AM);

(v) detașare, identificată prin simbolul D/DT (secondment, marked D/DT);

(vi) studii, identificată prin simbolul D/SD (studies, marked D/SD);

(vii) reîntregirea familiei, identificată prin simbolul D/VF (family reunification, marked D/VF);

(viii) activități religioase, identificată prin simbolul D/AR (religious activities, marked D/AR);

(ix) activități de cercetare științifică, identificată prin simbolul D/CS (research activities, marked D/CS);

(x) viză diplomatică și viză de serviciu, identificată prin simbolul DS (diplomatic and service visa, marked DS);

(xi) alte scopuri, identificată prin simbolul D/AS (other purposes, marked D/AS).

Residence permits

— permis de ședere (residence permit);

— carte albastra a UE (EU Blue Card);

— carte de rezidență pentru membrul de familie al unui cetățean al Uniunii (residence card for family member of Union citizen);

— carte de rezidență pentru membrul de familie al unui cetățean al Confederației Elvețiene (residence card for family member of citizen of the Swiss Confederation);

— carte de rezidență permanentă pentru membrul de familie al unui cetățean al Uniunii(permanent residence card for family member of Union citizen);

— carte de rezidență permanentă pentru membrul de familie al unui cetățean al Confederației Elvețiene (permanent residence card for family member of citizen of the Swiss Confederation).

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 15 July 2013

on the conclusion of the Agreement on certain aspects of air services between the European Union and the Government of the Democratic Socialist Republic of Sri Lanka

(2014/300/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2), in conjunction with Article 218(6)(a) and 218(8) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) By its Decision of 5 June 2003, the Council authorised the Commission to open negotiations with third countries on the replacement of certain provisions in existing bilateral agreements with an agreement at Union level.

(2) On behalf of the Union, the Commission has negotiated an Agreement on certain aspects of air services with the Government of the Democratic Socialist Republic of Sri Lanka [1] ('the Agreement') in accordance with the mechanisms and directives in the Annex to the Council Decision of 5 June 2003.

(3) The Agreement was signed on behalf of the Union on 27 September 2012 subject to its possible conclusion at a later date, in conformity with Council Decision 2013/100/EU [2].

(4) The Agreement should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement on certain aspects of air services between the European Union and the Government of the Democratic Socialist Republic of Sri Lanka is hereby approved on behalf of the Union.

Article 2

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 7 of the Agreement [3].

---

[1] The Agreement has been published in OJ L 49, 22.2.2013, p. 2, together with the decision on signing.
[2] OJ L 49, 22.2.2013, p. 1.
[3] The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Article 3

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

Done at Luxembourg, 15 July 2013.

For the Council
The President
V. JUKNA

COUNCIL DECISION

of 19 May 2014

on the conclusion of the Arrangement between the European Union and the Kingdom of Norway on the modalities of its participation in the European Asylum Support Office

(2014/301/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 74 and Article 78(1) and (2), in conjunction with point (a) of Article 218(6), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) In accordance with Council Decision 2014/204/EU [1], the Arrangement between the European Union and the Kingdom of Norway on the modalities of its participation in the European Asylum Support Office (the 'Arrangement') was signed on 19 March 2014, subject to its conclusion.

(2) The Arrangement should be approved.

(3) As specified in recital 21 of Regulation (EU) No 439/2010 of the European Parliament and of the Council [2], the United Kingdom and Ireland are taking part in and are bound by that Regulation. They should therefore give effect to Article 49(1) of Regulation (EU) No 439/2010 by taking part in this Decision. The United Kingdom and Ireland are therefore taking part in this Decision.

(4) As specified in recital 22 of Regulation (EU) No 439/2010, Denmark is not taking part in and is not bound by that Regulation. Denmark is therefore not taking part in this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The Arrangement between the European Union and the Kingdom of Norway on the modalities of its participation in the European Asylum Support Office is hereby approved on behalf of the Union [3].

Article 2

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 13(1) of the Arrangement [4].

---

[1] Council Decision 2014/204/EU of 11 February 2014 on the signing, on behalf of the Union, and provisional application of the Arrangement between the European Union and the Kingdom of Norway on the modalities of its participation in the European Asylum Support Office (OJ L 109, 12.4.2014, p. 1).

[2] Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (OJ L 132, 29.5.2010, p. 11).

[3] The Arrangement has been published in the OJ L 109, 12.4.2014, p. 3, together with the decision on its signature.

[4] The date of entry into force of the Arrangement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Article 3

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

Done at Brussels, 19 May 2014.

For the Council
The President
A. TSAFTARIS

REGULATIONS

COUNCIL REGULATION (EU) No 566/2014

of 26 May 2014

amending Regulation (EC) No 617/2007 as regards the application of the transition period between the 10th EDF and the 11th EDF until the entry into force of the 11th EDF Internal Agreement

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific (ACP) Group of States of the one part, and the European Community and its Member States, of the other part, as last amended ([1]) ('the ACP-EU Partnership Agreement'),

Having regard to the Internal Agreement between the Representatives of the Governments of the Member States, meeting within the Council, on the financing of Community aid under the multiannual financial framework for the period 2008 to 2013 in accordance with the ACP-EC Partnership Agreement and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies ([2]) (the 'Internal Agreement'), and in particular Article 10(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Investment Bank,

Whereas:

(1) Council Decision 2013/759/EU ([3]) established transitional European Development Fund (EDF) management measures ('Bridging Facility') to ensure the availability of funds for cooperation with African, Caribbean and Pacific countries and with Overseas Countries and Territories, as well as for support expenditure, from 1 January 2014 until the entry into force of the 11th EDF.

(2) It is necessary to modify Council Regulation (EC) No 617/2007 ([4]) as regards the operational and financial management by the Commission of the Bridging Facility in the transition period between the 10th EDF and the 11th EDF until the entry into force of the 11th EDF Internal Agreement and the 11th EDF Implementation Regulation.

(3) It is appropriate to modify in the same way the implementing rules for the operational and financial management of the Investment Facility during this transitional period.

(4) The organisation and functioning of the European External Action Service are established in Council Decision 2010/427/EU ([5]).

(5) Regulation (EC) No 617/2007 should be therefore amended accordingly,

([1]) OJ L 317, 15.12.2000, p. 3.
([2]) OJ L 247, 9.9.2006, p. 32.
([3]) Council Decision 2013/759/EU of 12 December 2013 regarding transitional EDF management measures from 1 January 2014 until the entry into force of the 11th European Development Fund (OJ L 335, 14.12.2013, p. 48).
([4]) OJ L 152, 13.6.2007, p. 1.
([5]) Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (OJ L 201, 3.8.2010, p. 30).

HAS ADOPTED THIS REGULATION:

Article 1

For the transition period between the 10th EDF and the 11th EDF until the entry into force of the 11th EDF Internal Agreement, Articles 1 to 16 of Regulation (EC) No 617/2007 are replaced by those laid down in the Annex to this Regulation.

Article 2

This Regulation shall apply in accordance with Decision 2010/427/EU.

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 until the entry into force of the 11th EDF Implementation Regulation.

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

Done at Brussels, 26 May 2014.

For the Council
The President
Ch. VASILAKOS

ANNEX

'TITLE I

OBJECTIVES AND GENERAL PRINCIPLES

Article 1

Objectives and eligibility criteria

1. Geographic cooperation with the ACP countries and regions in the context of the European Development Fund (EDF) shall be founded on the objectives, basic principles and values reflected in the general provisions of the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, as last amended [1] ("the ACP-EU Partnership Agreement").

2. In particular, and within the framework of the principles and objectives of the Union's external action, of the European Consensus on Development and of the Agenda for Change and subsequent modifications and additions thereto:

(a) the primary objective of cooperation under this Regulation shall be the reduction and, in the long term, the eradication of poverty;

(b) cooperation under this Regulation will also contribute to:

(i) fostering sustainable and inclusive economic, social and environmental development,

(ii) consolidating and supporting democracy, the rule of law, good governance, human rights and the relevant principles of international law, and

(iii) implementing a rights-based approach encompassing all human rights.

The achievement of those objectives shall be measured using relevant indicators, including human development indicators, in particular Millennium Development Goal (MDG) 1 for point (a) and MDG 1 to 8 for point (b) and, after 2015, other indicators agreed at international level by the Union and its Member States.

3. Programming shall be designed so as to fulfil to the greatest extent possible the criteria for official development assistance (ODA) established by the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD/DAC), taking into account the Union's aim to ensure that over the period 2014-20 at least 90 % of its overall external assistance be counted as ODA.

4. Actions covered by Council Regulation (EC) No 1257/96 [2] and eligible for funding under that Regulation shall not, in principle, be funded under this Regulation, without prejudice to the need to ensure continuity of cooperation from crisis to stable conditions for development. In those cases, special consideration shall be given to ensuring that humanitarian relief, rehabilitation and development assistance are effectively linked and contribute to disaster risk reduction and resilience.

Article 2

General principles

1. In implementing this Regulation, consistency with other areas of Union external action and with other relevant Union policies and policy coherence for development shall be ensured, in accordance with Article 208 of the Treaty on the Functioning of the European Union (TFEU). To this end, measures financed under this Regulation, including those managed by the European Investment Bank (EIB), shall be based on the cooperation policies set out in documents such as arrangements, declarations and action plans between the Union and the third countries and regions concerned, and on the Union's decisions, specific interests, policy priorities and strategies.

[1] OJ L 317, 15.12.2000, p. 3.
[2] Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid (OJ L 163, 2.7.1996, p. 1).

2. The Union and the Member States shall work towards joint multiannual programming, based on partner countries' poverty reduction or equivalent development strategies. They may undertake joint action including joint analysis of and joint response to those strategies identifying priority sectors of intervention and in-country division of labour, by joint donor-wide missions and by the use of co-financing and delegated cooperation arrangements.

3. The Union shall promote a multilateral approach to global challenges and shall cooperate with Member States and partner countries in that respect. Where appropriate, it shall foster cooperation with international organisations and bodies and other bilateral donors.

4. Relations between the Union and its Member States and partner countries are based on and will promote shared values of human rights, democracy and the rule of law as well as the principles of ownership and of mutual accountability. Support to partners will be adapted to their development situation and commitment and progress with regard to human rights, democracy, the rule of law and good governance.

Furthermore, relations with partner countries shall take into account their commitment and track record in implementing international agreements and contractual relations with the Union, including within the area of migration as stipulated by the ACP-EU Partnership Agreement.

5. The Union shall promote effective cooperation with partner countries and regions in line with international best practice. It shall align its support with partners' national or regional development strategies, reform policies and procedures wherever possible, and support democratic ownership, as well as domestic and mutual accountability. To that end, it shall promote:

(a) a development process that is transparent, partner country or region led and owned, including the promotion of local expertise;

(b) a rights-based approach encompassing all human rights, whether civil and political, economic, social and cultural, in order to integrate human rights principles into the implementation of this Regulation, to assist partner countries in implementing their international human rights obligations and to support the right holders, with a focus on poor and vulnerable groups, in claiming their rights;

(c) the empowerment of the population of partner countries, inclusive and participatory approaches to development and a broad involvement of all segments of society in the development process and in national and regional dialogue, including political dialogue. Particular attention shall be given to the respective roles of parliaments, local authorities and civil society, inter alia, regarding participation, oversight and accountability;

(d) effective cooperation modalities and instruments in line with OECD/DAC best practices, including the use of innovative instruments such as blending grants and loans and other risk-sharing mechanisms in selected sectors and countries, and private sector engagement, with due regard to the issues of debt sustainability and the number of such mechanisms, and the requirement for systematic assessment of the impact in accordance with the objectives of this Regulation, in particular poverty reduction, as well as specific budget support mechanisms such as state building contracts. All programmes, interventions and cooperation modalities and instruments shall be adapted to the particular circumstances of each partner country or region, with a focus on programme-based approaches, on the delivery of predictable aid funding, on the mobilisation of private resources, including from the local private sector, on universal and non-discriminatory access to basic services, and on the development and use of country systems;

(e) mobilisation of domestic revenue and reinforcement of partner countries' fiscal policy with the purpose of reducing poverty and aid dependence;

(f) improved impact of policies and programming through coordination, consistency and harmonisation between donors to create synergies and avoid overlap and duplication, to improve complementarity and to support donor-wide initiatives and through coordination in partner countries and regions using agreed guidelines and best practice principles on coordination and aid effectiveness;

(g) results-based approaches to development, including through transparent and country-led results frameworks based on, where appropriate, internationally agreed targets and comparable and aggregatable indicators such as those of the MDGs, in order to assess and communicate the results, including the outputs, outcomes and impact of development aid.

6. The Union shall support, as appropriate, the implementation of bilateral, regional and multilateral cooperation and dialogue, the development dimension of partnership agreements and triangular cooperation. The Union shall promote south-south cooperation.

7. In its development cooperation activities the Union shall, as appropriate, draw on and share the reform and transition experiences of Member States and the lessons learned.

8. The Union shall seek regular exchanges of information with the actors of the partnership in line with Article 4 of the ACP-EU Partnership Agreement.

TITLE II

PROGRAMMING AND ALLOCATION OF FUNDS

Article 3

General framework for allocating funds

1. The Commission shall determine the multiannual indicative resource allocations for each ACP country and region and for Intra-ACP cooperation on the basis of the criteria laid down in Articles 3, 9 and 12c of Annex IV to the ACP-EU Partnership Agreement, within the financial limits set out in Article 2 of the Internal Agreement between the Representatives of the Governments of the Member States, meeting within the Council, on the financing of Community aid under the multiannual financial framework for the period 2008 to 2013 in accordance with the ACP-EC Partnership Agreement and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies ([1]) (the "Internal Agreement").

2. In the determination of the indicative national allocations, a differentiated approach shall be pursued, in order to ensure that partner countries are provided with specific, tailor-made cooperation based on:

(a) their needs;

(b) their capacities to generate and access financial resources and absorption capacities;

(c) their commitments and performance; and

(d) the potential impact of Union assistance.

The countries most in need, in particular the least developed countries, low income countries and countries in crisis, post-crisis, fragile and vulnerable situations, shall be given priority in the resource allocation process.

The Union will adapt its assistance through dynamic, result-oriented and country-specific measures, as referred to in Article 7(2), according to the country's situation and commitment and progress with regard to issues such as good governance, human rights, democracy, rule of law and its ability to conduct reforms and to meet the demands and needs of its people.

3. The European Development Fund Committee established by Article 8 of the Internal Agreement ("the EDF Committee") shall hold an exchange of views on the method for determining the multiannual indicative resource allocations referred to in paragraph 1 of this Article.

Article 4

General framework for programming

1. The process of programming for assistance to the ACP countries and regions under the ACP-EU Partnership Agreement shall be undertaken in accordance with the general principles referred to in Articles 1 to 14 of Annex IV to that Agreement and in Articles 1 and 2 of this Regulation.

([1]) OJ L 247, 9.9.2006, p. 32.

2. Programming will, except in the cases provided for in paragraph 3, be undertaken jointly with the partner country or region concerned and will be increasingly aligned with the partner country or region's poverty reduction, or equivalent, strategies.

The Union and the Member States shall consult each other at an early stage and throughout the programming process in order to promote coherence, complementarity and consistency among their cooperation activities. This consultation may lead to joint programming with Member States locally represented. Joint programming should build on the comparative advantages of the Union donors. Other Member States are invited to contribute for the purpose of reinforcing joint external action of the Union.

The EIB financing operations shall contribute to the general principles of the Union, in particular those defined in Article 21 of the Treaty on European Union (TEU) and the objectives of the ACP-EU Partnership Agreement, such as reducing poverty through inclusive and sustainable growth and economic, environmental and social development. The EIB and the Commission should seek to maximise synergies in the EDF programming process where appropriate. The EIB shall be consulted at an early stage on matters related to its expertise and operations with a view to increasing the coherence of Union external action.

Other donors and development actors, including representatives of civil society and regional and local authorities, shall be consulted as well.

3. In circumstances such as those referred to in Article 3(3) and Article 4(5) of Annex IV to the ACP-EU Partnership Agreement, the Commission may establish specific provisions for programming and implementing development aid by managing itself the resources allocated to the State in question in accordance with the relevant Union policies.

4. The Union will in principle concentrate its bilateral assistance on a maximum of three sectors, to be agreed with the partner countries.

Article 5

Programming documents

1. Strategy papers are documents drawn up by the Union and the partner country or region concerned to provide a coherent policy framework for development cooperation, consistent with the overall purpose and scope, objectives and general principles of the ACP-EU Partnership Agreement, and in line with the principles established in Articles 2, 8 and 12a of Annex IV to that Agreement.

The preparation and implementation of strategy papers shall comply with the principles of aid effectiveness: national ownership, partnership, coordination, harmonisation, alignment with recipient country or regional systems, transparency, mutual accountability and results orientation as laid down in Article 2 of this Regulation. The programming period must become, in principle, synchronised with partner country strategy cycles.

2. With the consent of the partner country or region concerned, no strategy paper will be required for:

(a) countries or regions having a development strategy in the form of a development plan or a similar development document accepted by the Commission as a basis for the corresponding multiannual indicative programme, when adopting the latter document;

(b) countries or regions for which a joint multiannual programming document between the Union and Member States has been agreed;

(c) countries or regions where a Joint Framework Document (JFD) already exists that provides a comprehensive Union approach to the relations with that partner country or region, including Union development policy;

(d) regions having a jointly agreed strategy with the Union;

(e) countries where the Union intends to synchronise its strategy with a new national cycle starting before 1 January 2017; in such cases the multiannual indicative programme for the interim period between 2014 and the beginning of the new national cycle will contain the Union's response for that country.

3. Strategy papers shall not be required for the countries or regions receiving an initial allocation of Union funds under this Regulation not exceeding EUR 50 million for the 2014-20 period. In such cases, the multiannual indicative programmes will contain the Union's response for these countries or regions.

If the options referred to in paragraphs 2 and 3 are not acceptable for the partner country or region, a strategy paper shall be prepared.

4. Except in the circumstances referred to in Article 4(3), multiannual indicative programmes shall be based on a dialogue with the partner country or region and be drawn up on the basis of the strategy papers or similar documents referred to in this Article, and will be the subject of an agreement with the country or region concerned.

For the purpose of this Regulation, the joint multiannual programming document referred to in point (b) of paragraph 2 of this Article and complying with the principles and conditions established in this paragraph, including an indicative allocation of funds, may in accordance with the procedure set out in Article 14 be considered as the multiannual indicative programme in agreement with the partner country or region.

5. Multiannual indicative programmes shall set out the priority sectors selected for Union financing, the specific objectives, the expected results, the performance indicators and the indicative financial allocation, both overall and per priority area. They will also explain how the proposed programmes will contribute to the overall country strategy referred to in this Article and how they will contribute to delivery of the Agenda for Change.

In accordance with aid effectiveness principles, the intra-ACP strategy shall avoid fragmentation, and ensure complementarity and real value added with the country and regional programmes.

6. In addition to programming documents for countries and regions, an intra-ACP strategy paper and related multiannual indicative programme shall be prepared jointly by the Commission and the ACP through the ACP secretariat, in line with the principles established in Articles 12 to 14 of Annex IV to the ACP-EU Partnership Agreement.

7. The specific provisions referred to in Article 4(3) may take the form of special support programmes, taking into account the special considerations referred to in Article 6(1).

Article 6

Programming for countries and regions in crisis, post-crisis or fragility situations

1. When drawing up programming documents for countries and regions in crisis, post-crisis, or fragility situations, or prone to natural disasters, due account shall be taken of the vulnerability, special needs and circumstances of the populations, countries or regions concerned.

The Union remains fully committed to implementing the New Deal for Engagement in Fragile States and its principles, including by focusing on the five peace and statebuilding goals, by ensuring local ownership and by closely aligning with national plans developed as part of the New Deal implementation.

Proper attention will be given to conflict prevention and resolution, state and peace building, post-conflict reconciliation and reconstruction measures by focusing specifically on inclusive and legitimate politics, security, justice, economic foundations, and by building capacity for accountable and fair service delivery. Particular attention will be paid to the role of women and the perspective of children in those processes.

Where partner countries or regions are directly involved in, or affected by, a crisis, post-crisis or fragility situation, special emphasis shall be placed on stepping up coordination between relief, rehabilitation and development amongst all relevant actors, including for political initiatives, to help the transition from an emergency situation to the development phase. Programming for countries and regions in fragility or regularly subject to natural disasters shall provide for disaster preparedness and prevention and for managing the consequences of such disasters, and shall address vulnerability to shocks and strengthen resilience.

2. For countries or regions experiencing crisis, post-crisis or fragility situations, an ad hoc review of the country's or region's cooperation strategy may be carried out. Such reviews may propose a specific and adapted strategy to ensure the transition to long-term cooperation and development, promoting a better coordination and transition between the humanitarian and development policy instruments.

Article 7

Approval and modification of programming documents

1. The programming documents, including the indicative allocations therein, shall be approved by the Commission in accordance with the procedure set out in Article 14.

At the same time as the programming documents are transmitted to the EDF Committee, the Commission shall also transmit them to the Joint Parliamentary Assembly for information, while fully respecting the decision-making procedure in accordance with Title IV of this Regulation.

The programming documents shall be subsequently endorsed by the ACP State or region concerned as stipulated in Annex IV to the ACP-EU Partnership Agreement. Countries or regions without a signed programming document remain eligible to funding under the conditions laid down in Article 4(3) of this Regulation.

2. Strategy papers and multiannual indicative programmes, including the indicative allocations therein, may be adjusted taking into account the reviews as foreseen in Articles 5, 11 and 14 of Annex IV of the ACP-EU Partnership Agreement.

In line with the provisions of Article 2(4) and Article 3(2) of this Regulation, and building on previous EDF and other experience acquired on incentives, including lessons learnt, indicative country allocations may be supplemented through, amongst others, a performance-based mechanism. In this respect, while acknowledging that special treatment shall be given to fragile and vulnerable states to ensure that their particular needs are duly taken into account, resources, if possible up to the range of the volume of the governance incentive tranche under the 10th EDF, are to be made available in order to provide incentives for result-oriented reforms in line with the Agenda for Change and for the fulfilment of the commitments established in the ACP-EU Partnership Agreement. The EDF Committee shall in accordance with Article 14(2) of this Regulation hold an exchange of views on the performance-based mechanism.

3. The procedure set out in Article 14 shall also apply to substantial modifications which have the effect of significantly modifying the strategy, its programming documents and/or its programmable resource allocation. Where applicable, the corresponding addenda to the programming documents shall be subsequently endorsed by the ACP State or region concerned.

4. On duly justified imperative grounds of urgency, such as crises or immediate threats to democracy, the rule of law, human rights or fundamental freedoms, including those cases referred to in Article 6(2), the procedure referred to in Article 14(4) may be used to modify the programming documents referred to in Article 5.

TITLE III

IMPLEMENTATION

Article 8

General framework for implementation

The implementation of the assistance provided to the ACP countries and regions managed by the Commission and the EIB under the ACP-EU Partnership Agreement shall be undertaken in accordance with the Financial Regulation referred to in Article 10(2) of the Internal Agreement (the "EDF Financial Regulation").

Article 9

Adoption of action programmes, individual measures and special measures

1. The Commission shall adopt annual action programmes, based on the indicative programming documents referred to in Article 5.

In the case of recurrent actions, it may also adopt multiannual action programmes for a period of up to three years.

When necessary and duly justified, an action may be adopted as an individual measure before or after the adoption of annual or multiannual action programmes.

2. The action programmes and individual measures shall be prepared by the Commission with the partner country or region, involving the Member States locally represented and coordinating where appropriate with other donors, in particular in cases of joint programming, and with the EIB. Member States that are not locally represented will be informed about activities in the field.

Action programmes shall contain a specific description of each foreseen operation. That description will specify the objectives pursued, the expected results and the main activities.

The description shall set out the expected results in terms of outputs, outcomes and impacts, with quantified or qualified targets, and will provide explanations on the links between each as well as with the objectives set in the multiannual indicative programme. The outputs and, in principle, the outcomes shall have specific, measurable and realistic indicators, with baselines and time bound benchmarks, aligning with the partner country or region's own outputs and benchmarks to the maximum extent possible. A cost-benefit analysis will be completed, where relevant.

The description shall set out the risks, with proposals for their mitigation where appropriate, the analysis of the specific sector context and key stakeholders, methods of implementation, budget and indicative timetable and in the case of budget support, the criteria for disbursement, inclusive of possible variable tranches. It shall also specify any associated support measures as well as arrangements for monitoring, audit and evaluation.

Where appropriate, the description shall indicate the complementarity with current or planned EIB activities in the partner country or region.

3. In the cases referred to in Article 4(3) and in cases of unforeseen and duly justified needs or exceptional circumstances, the Commission may adopt special measures, including measures to ease the transition from emergency aid to long-term development operations, or measures to better prepare people to deal with recurring crises.

4. The action programmes and the individual measures provided for in paragraph 1 for which the Union's financial assistance exceeds EUR 5 million, and special measures for which the Union's financial assistance exceeds EUR 10 million, shall be adopted by the Commission in accordance with the procedure set out in Article 14 of this Regulation. That procedure shall not be required for action programmes and measures below those thresholds, and for non-substantial amendments thereto. Non-substantial amendments are technical adjustments such as extending the implementation period, reassigning funds within the forecast budget, or increasing or reducing the size of the budget by less than 20 % of the initial budget, but not exceeding EUR 10 million, provided that those amendments do not substantially affect the objectives of the initial action programme or measure. In such cases, action programmes and measures and non-substantial amendments thereto shall be adopted by the Commission, which shall inform the EDF Committee within one month of their adoption.

Each Member State may request the withdrawal of a project or programme from an action programme submitted to the EDF Committee in accordance with the procedure set out in Article 14 of this Regulation. If such a request is supported by a blocking minority of Member States as laid down in Article 8(3) in connection with Article 8(2) of the Internal Agreement, the action programme shall be adopted by the Commission without the project or programme concerned. Unless the Commission, in line with the views of the Member States in the EDF Committee, wishes not to pursue the

withdrawn project or programme it shall, at a later stage, be resubmitted to the EDF Committee outside the action programme in the form of an individual measure which shall then be adopted by the Commission in accordance with the procedure set out in Article 14 of this Regulation.

On duly justified imperative grounds of urgency, such as crises, natural or man-made disasters or immediate threats to democracy, the rule of law, human rights or fundamental freedoms, the Commission may adopt individual or special measures or amendments to existing action programmes and measures, in accordance with the procedure referred to in Article 14(4) of this Regulation.

5. The Commission shall adopt specific action programmes for support expenditures referred to in Article 6 of the Internal Agreement in accordance with the procedure set out in Article 14 of this Regulation. Any changes in the action programmes for support expenditures shall be adopted in accordance with the same procedure.

6. Appropriate environmental screening, including for climate change, biodiversity and related social impacts, shall be undertaken at project level, including where applicable environmental impact assessment (EIA) for environmentally sensitive projects, in particular if they are likely to have significant adverse environmental and/or social impacts that are sensitive, diverse, or unprecedented. That screening shall be guided by internationally recognised practices. Where relevant, strategic environmental assessments (SEA) shall be used in the implementation of sectoral programmes. The involvement of interested stakeholders in environmental assessments and public access to the results shall be ensured.

Article 10

Additional Member State contributions

1. On their own initiative, Member States may provide the Commission or the EIB with voluntary contributions in accordance with Article 1(9) of the Internal Agreement to help achieve the objectives of the ACP-EU Partnership Agreement outside joint co-financing arrangements. Such contributions shall not affect the overall allocation of funds under the EDF. They shall be treated in the same way as Member States' regular contributions referred to in Article 1(2) of the Internal Agreement except for the provisions of Articles 6 and 7 of the Internal Agreement for which specific arrangements may be laid down in a bilateral contribution agreement.

2. Earmarking shall only be made in duly justified circumstances, for example in response to the exceptional circumstances as referred to in Article 4(3). In such a case, voluntary contributions entrusted to the Commission shall be treated as assigned revenue in accordance with the EDF Financial Regulation.

3. The additional funds shall be integrated in the programming and review process and in the annual action programmes, in the individual measures and in the special measures referred to in this Regulation, and shall reflect partner country or region ownership.

4. Any resulting change in the action programmes, individual measures or special measures shall be adopted by the Commission in accordance with Article 9.

5. Member States entrusting the Commission or the EIB with additional voluntary contributions to help achieve the objectives of the ACP-EU Partnership Agreement shall inform the Council and the EDF Committee, or the Investment Facility Committee, of those contributions in advance.

Article 11

Taxes, duties and charges

Union assistance shall not generate or activate the collection of specific taxes, duties or charges.

Without prejudice to Article 31 of Annex IV to the ACP-EU Partnership Agreement, such taxes, duties and charges may be eligible under the conditions laid down in the EDF Financial Regulation referred to in Article 10(2) of the Internal Agreement.

Article 12

Protection of the financial interests of the Union

1. The Commission shall take appropriate measures ensuring that, when actions financed under this Regulation are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery, or where appropriate by the restitution, of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties.

2. The Commission or its representatives and the Court of Auditors shall have the power of audit, or in the case of international organisations the power of verification in accordance with agreements reached with them, and verification, on the basis of documents and on-the-spot checks, over all grant beneficiaries, contractors and subcontractors who have received Union funds under this Regulation.

3. The European Anti-Fraud Office (OLAF) may carry out investigations including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ([1]) and Council Regulation (Euratom, EC) No 2185/96 ([2]) with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded under this Regulation.

4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and with international organisations, contracts, grant agreements and grant decisions resulting from the implementation of this Regulation shall contain provisions expressly empowering the Commission, the Court of Auditors and OLAF to conduct such audits, on-the-spot checks and inspections, according to their respective competences.

Article 13

Rules on nationality and origin for public procurement, grants and other award procedures

The rules on nationality and origin for public procurement, grants and other award procedures are defined in Article 20 of Annex IV to the ACP-EU Partnership Agreement.

TITLE IV

DECISION-MAKING PROCEDURES

Article 14

Responsibilities of the EDF Committee

1. The EDF Committee shall give its opinion in accordance with the procedure set out in paragraphs 3 and 4 of this Article.

An observer from the EIB shall take part in the EDF Committee's proceedings with regard to questions concerning the EIB.

2. The EDF Committee's tasks shall cover the responsibilities laid down in Titles II and III of this Regulation:

(a) programming of Union aid under the EDF and programming reviews focusing in particular on country, regional and intra-ACP strategies; and

(b) monitoring the implementation and evaluation of Union aid, covering amongst others the impact of assistance on the reduction of poverty, sectoral aspects, cross-cutting issues, the functioning of field-level coordination with Member States and other donors and progress on the aid effectiveness principles referred to in Article 2.

([1]) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

([2]) Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

For budget support programmes on which the EDF Committee expressed a positive opinion but that are suspended during implementation, the Commission shall inform the Committee in advance about the suspension and the subsequent decision to resume disbursements.

Each Member State can invite the Commission at any moment to provide the EDF Committee with information and to have an exchange of views on issues related to the tasks referred to in this paragraph. Such an exchange of view may lead to the formulation of recommendations by the Member States, which the Commission shall take into account.

3. When the EDF Committee is called upon to give its opinion, the representative of the Commission shall submit to the EDF Committee, within the time-limits set out in the Council Decision on the rules of procedures of the EDF Committee referred to in Article 8(5) of the Internal Agreement, a draft of the measures to be taken. The EDF Committee shall deliver its opinion within a time-limit which the chair may lay down according to the urgency of the matter, but which shall not exceed 30 days. The EIB shall take part in the exchange of views. The opinion shall be delivered by the qualified majority laid down in Article 8(3) of the Internal Agreement on the basis of the votes of the Member States weighted in the manner set out in Article 8(2) of the Internal Agreement.

When the EDF Committee has delivered its opinion, the Commission shall adopt measures which shall apply immediately.

However, if those measures are not in accordance with the opinion of the EDF Committee, they shall be communicated by the Commission to the Council forthwith. In such a case, the Commission shall defer the application of the measures for a period which shall in principle not exceed 30 days from the date of such communication, but which may be prolonged for a period of up to 30 days in exceptional circumstances. The Council, acting by the same qualified majority as the EDF Committee, may take a different decision within this period.

4. On duly justified imperative grounds of urgency as provided for in Article 7(4) and Article 9(4), the Commission shall adopt the measures which shall apply immediately, without prior submission to the EDF Committee, and which shall remain in force for the duration of the adopted or modified document, action programme or measure.

At the latest 14 days after their adoption, the chair shall submit the measures to the EDF Committee in order to obtain its opinion.

In the event of the EDF Committee delivering a negative opinion as referred to in paragraph 3 of this Article, the Commission shall immediately repeal the measures adopted in accordance with the first subparagraph of this paragraph.

Article 15

The African Peace Facility

The intra-ACP indicative programmes shall earmark funding for the African Peace Facility. That funding may be complemented by the regional indicative programmes. A specific procedure shall apply as follows:

(a) on a request from the African Union, endorsed by the ACP Committee of Ambassadors, pluriannual action programmes shall be prepared by the Commission specifying the objectives pursued, the scope and nature of the possible interventions and the implementation arrangements; an agreed format for reporting shall be specified at intervention level. An annex to each action programme shall describe the specific decision-making procedures for each possible type of intervention according to its nature, size and urgency;

(b) the action programmes, including the annex referred to in point (a), and any changes thereto shall be discussed by the relevant preparatory Council working groups and the Political and Security Committee, and shall be approved by Coreper by qualified majority laid down in Article 8(3) of the Internal Agreement, before being adopted by the Commission;

(c) the action programmes, excluding the annex referred to in point (a), shall be the basis for the financing agreement to be concluded between the Commission and the African Union;

(d) each intervention to be implemented under the financing agreement shall be subject to the prior approval of the Political and Security Committee; the relevant preparatory Council working groups shall be informed or, at least when new peace support operations are to be financed, consulted in due time prior to their transmission to the Political and Security Committee in accordance with the specific decision-making procedures referred to in point (a) in order to ensure that, in addition to the military and security dimension, the development and finance related aspects of the envisaged measures are being taken into account. Without prejudice to the financing of peace support operations, special attention shall be given to activities recognised as ODA;

(e) the Commission shall prepare an activity report on the use of the funds for the information of the Council and the EDF Committee on an annual basis, and at the request of the Council or the EDF Committee, distinguishing between ODA and non-ODA related commitments and disbursements.

At the end of the first pluriannual action programme, the Union and its Member States will review the results and procedures of the African Peace Facility and will discuss options regarding future funding possibilities. In that context, and in order to put the African Peace Facility on a sounder footing, the Union and its Member States will hold discussions addressing both the issue of funds for Peace Support Operations, including those financed from the EDF, and the issue of sustainable Union support to African-led peace support operations beyond 2020. In addition, the Commission will conduct an evaluation of the Facility no later than 2018.

Article 16

The Investment Facility Committee

1. The Investment Facility Committee set up under the auspices of the EIB by Article 9 of the Internal Agreement (the "IF Committee") shall consist of the representatives of the Member States and a representative of the Commission. An observer from the General Secretariat of the Council and an observer from the European External Action Service shall be invited to attend. Each Member State, as well as the Commission, shall nominate one representative and one designated alternate. With a view to maintaining continuity, the Chairman of the IF Committee shall be elected by and from among the members of the IF Committee for a period of two years. The EIB shall provide the Committee's secretariat and support services. Only the members of the IF Committee designated by the Member States, or their alternates, shall vote.

The Council, acting unanimously, shall adopt the rules of procedure of the IF Committee on the basis of a proposal drawn up by the EIB after consulting the Commission.

The IF Committee shall act by qualified majority. The weighting of the votes shall be as laid down in Article 8 of the Internal Agreement.

The IF Committee shall meet at least four times a year. Additional meetings may be convened at the request of the EIB or of the members of the IF Committee as set out in its rules of procedure. In addition, the IF Committee may deliver an opinion by written procedure in accordance with its rules of procedure.

2. The IF Committee shall approve:

(a) the operational guidelines on the implementation of the Investment Facility (the "IF");

(b) the investment strategies and business plans of the IF, including performance indicators, on the basis of the objectives of the ACP-EU Partnership Agreement and of the general principles of Union development policy;

(c) the annual reports of the IF;

(d) any general policy document, including evaluation reports, concerning the IF.

3. The IF Committee shall deliver an opinion on:

(a) proposals to grant an interest subsidy under paragraph 7 of Article 2 and point (b) of paragraph 2 of Article 4 of Annex II to the ACP-EU Partnership Agreement. In such cases, the IF Committee shall also deliver an opinion on the use of such an interest subsidy;

(b) proposals for an IF investment for any project in respect of which the Commission has delivered a negative opinion;

(c) other proposals relating to the IF based on the general principles defined in the operational guidelines of the IF;

(d) proposals related to the development of the EIB's result measurement framework to the extent that such framework is applicable to operations pursuant to the ACP-EU Partnership Agreement.

In order to streamline the approval process for small operations, the IF Committee may give its favourable opinion on proposals from the EIB for a global allocation (interest subsidies, technical assistance) or global authorisation (lending, equity), that shall subsequently, without further opinion from the IF Committee and/or the Commission, be sub-allocated by the EIB to individual projects in accordance with criteria set out in the global allocation or authorisation, including the maximum sub-allocation per project.

In addition, the governing bodies of the EIB may, from time to time, request the IF Committee to deliver an opinion on all financing proposals, or on certain categories of financing proposals.

4. The EIB shall submit to the IF Committee in a timely manner any matters that require the approval or opinion of the IF Committee, as provided for in paragraphs 2 and 3 respectively. Any proposal submitted to the IF Committee for an opinion shall be made in accordance with the relevant criteria and principles set out in the operational guidelines of the IF.

5. The EIB shall cooperate closely with the Commission and, where applicable, shall coordinate its operations with other donors. In particular, the EIB shall:

(a) prepare or revise jointly with the Commission the operational guidelines of the IF referred to in point (a) of paragraph 2. The EIB shall be held accountable for compliance with the guidelines and shall ensure that the projects it supports respect international social and environmental standards, and are coherent with the objectives of the ACP-EU Partnership Agreement, with the general principles of Union development policy and with the relevant country or regional cooperation strategies;

(b) request the opinion of the Commission in the preparation of the investment strategies, business plans and general policy documents;

(c) inform the Commission on the projects it administers in accordance with Article 18(1). At the appraisal stage of a project, it shall request the opinion of the Commission on its coherence with the relevant country cooperation strategy or regional cooperation strategy or, as the case may be, with the general objectives of the IF;

(d) with the exception of interest subsidies falling within the global allocation referred to in point (a) of paragraph 3, request the agreement of the Commission at the appraisal stage of a project on any proposal made to the IF Committee for an interest subsidy, as regards its compliance with Article 2(7) and Article 4(2) of Annex II to the ACP-EU Partnership Agreement, and with the criteria defined in the operational guidelines of the IF.

The Commission shall be deemed to have rendered a favourable opinion on or to have agreed to a proposal unless it notifies a negative opinion on such a proposal within three weeks following the submission of the proposal. As regards opinions for financial or public sector projects, as well as agreements to interest rate subsidies, the Commission may request that the final project proposal be submitted for its opinion or approval two weeks before it being sent to the IF Committee.

6. The EIB shall not proceed with any action referred to in points (a), (b) or (c) of paragraph 3 unless the IF Committee has given a favourable opinion.

Following a favourable opinion of the IF Committee, the EIB shall decide on the proposal in accordance with its own procedures. In particular, it may decide not to proceed with the proposal. The EIB shall periodically inform the IF Committee and the Commission of cases in which it decides not to proceed with the proposal.

For loans from its own resources and for IF investments for which no opinion of the IF Committee is required, the EIB shall decide on the proposal in accordance with its own procedures and, in the case of the IF, in accordance with the operational guidelines of the IF and the investment strategies approved by the IF Committee.

Notwithstanding a negative opinion of the IF Committee on a proposal to grant an interest subsidy, the EIB may proceed with the loan in question without the benefit of the interest subsidy. The EIB shall periodically inform the IF Committee and the Commission of each occasion on which it so decides to proceed with the loan.

The EIB may, subject to conditions laid down in the operational guidelines of the IF and provided that the essential objective of the loan or IF investment in question is unchanged, decide to modify the terms of an IF loan or investment on which the IF Committee has given a favourable opinion under paragraph 3 or of any loan on which the IF Committee has given a favourable opinion regarding interest subsidies. In particular, the EIB may decide to increase the amount of the loan or IF investment by up to 20 %.

Such an increase may, for projects with interest subsidies referred to in Article 2(7) of Annex II to the ACP-EU Partnership Agreement, result in a proportionate increase in the value of the interest subsidy. The EIB shall periodically inform the IF Committee and the Commission of each occasion on which it so decides to proceed. For projects pursuant to Article 2(7) of Annex II to the ACP-EU Partnership Agreement, if an increase in the value of the subsidy is requested, the IF Committee shall be required to deliver an opinion before the EIB proceeds.

7. The EIB shall manage IF investments and all funds held on account of the IF in accordance with the objectives of the ACP-EU Partnership Agreement. It may, in particular, take part in the management and supervisory bodies of legal persons in which the IF is invested, and may compromise, discharge and modify the rights held on account of the IF in accordance with the operational guidelines of the IF.

TITLE V

FINAL PROVISIONS

Article 17

Participation by a third country or region

In order to ensure the coherence and effectiveness of Union assistance, the Commission may decide that non-ACP developing countries and regional integration bodies with ACP participation that promote regional cooperation and integration eligible for Union assistance under other Union financing instruments for external action, where the project or programme concerned is of a regional or cross-border nature and complies with Article 6 of Annex IV to the ACP-EU Partnership Agreement, are eligible for funds referred to in point (a)(i) of Article 1(2) of the Internal Agreement. The overseas countries and territories (OCTs) eligible for Union assistance pursuant to Council Decision 2013/755/EU [1] and the Union's outermost regions can also participate in regional cooperation projects or programmes; the funding to enable the participation of those territories or outermost regions shall be additional to funds referred to in point (a)(i) of Article 1(2) of the Internal Agreement. The objective of a reinforced cooperation between the Member States, the Union's outermost regions, the OCTs and the ACP States should be taken into account and, where appropriate, coordination mechanisms be set up. Provision for this funding and for the types of financing referred to in Council Regulation (EC) No 215/2008 [2] may be made in the strategy papers and multiannual indicative programmes and in the action programmes and measures referred to in Article 9 of this Regulation.

Article 18

Monitoring, reporting and evaluation of EDF assistance

1. The Commission and the EIB shall regularly monitor their actions and measures financed and review the progress made towards delivering expected results. The Commission will also conduct evaluations of the impact and effectiveness of its sectoral policies and actions, and the effectiveness of programming, where appropriate by means of independent external evaluations. Proposals by the Council for independent external evaluations will be taken into due account. Evaluations should be based on OECD/DAC good practice principles, seeking to ascertain whether the specific objectives, taking into account gender equality, have been met, to formulate recommendations and to provide evidence to facilitate learning with a view to improving future operations. Those evaluations shall be carried out on the basis of pre-defined, clear, transparent and, where appropriate, country-specific and measurable indicators.

---

[1] Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union ("Overseas Association Decision") (OJ L 344, 19.12.2013, p. 1).

[2] Council Regulation (EC) No 215/2008 of 18 February 2008 on the Financial Regulation applicable to the 10th European Development Fund (OJ L 78, 19.3.2008, p. 1).

The EIB shall periodically inform the Commission and the Member States of the implementation of projects financed from the EDF resources it administers, following the procedures set out in the operational guidelines of the IF.

2. The Commission shall send its evaluation reports, together with the response of the services to the main recommendations, to the Member States through the EDF Committee and to the EIB for information. Any evaluation, including recommendations and follow-up actions, may be discussed in the EDF Committee at the request of a Member State. In such cases, the Commission will report back to the EDF Committee, one year later, on the implementation of agreed follow-up actions. The results shall feed back into programme design and resource allocation.

3. The Commission shall associate to an appropriate extent all relevant stakeholders in the evaluation phase of the Union assistance provided under this Regulation and may, where appropriate, seek to undertake joint evaluations with Member States, other donors and development partners.

4. The Commission shall examine the progress made in implementing the EDF, including the multiannual indicative programmes, and as from 2016 shall submit to the Council an annual report on the implementation. The report will include an analysis of key outputs and outcomes and, whenever possible, the contribution of the Union's financial assistance to impacts. A results framework will be created for this purpose. That report shall also be sent to the European Parliament, to the European Economic and Social Committee and to the Committee of the Regions.

5. The annual report shall also contain information relating to the previous year on the measures financed, the results of monitoring and evaluation exercises, the involvement of the relevant development partners, and the implementation of commitments and of payments appropriations broken down by country, region and cooperation sector. It shall also contain a qualitative analysis of the initially foreseen and achieved results, based on, among others, data from monitoring systems, and a follow-up on the lessons learned.

6. The report shall use as far as possible specific and measurable indicators of its role in meeting the objectives of the ACP-EU Partnership Agreement. It shall reflect the main lessons learned and the follow-up to the recommendations of the evaluations of the previous years. The report shall also assess, where possible and relevant, the adherence to aid effectiveness principles, including for innovative financial instruments.

7. The Union and its Member States shall conduct, at the latest by the end of 2018, a performance review, assessing the degree of realisation of commitments and disbursements, and the results and impact of the aid provided by means of output, outcome and impact indicators measuring the efficiency of the use of resources as well as the effectiveness of the EDF. It shall also address the contribution of the measures financed to the achievement of the objectives of the ACP-EU Partnership Agreement and to the Union priorities, as set out in the Agenda for Change. The review shall be undertaken on the basis of a proposal by the Commission.

8. The EIB shall provide the IF Committee with information as regards progress towards achieving the objectives of the IF. In accordance with Article 6b of Annex II to the ACP-EU Partnership Agreement, the overall performance of the IF shall be subject to a joint review at the mid- and end-term of the EDF. The mid-term review shall be carried out by an independent external expert, in cooperation with the EIB, and shall be made available to the IF Committee.

Article 19

Climate action and biodiversity expenditure

An annual estimate of the overall spending related to climate action and biodiversity shall be made on the basis of the adopted indicative programming documents. The funding allocated in the context of the EDF shall be subject to an annual tracking system based on the OECD methodology ("Rio markers"), without excluding the use of more precise methodologies where such are available, integrated into the existing methodology for performance management of Union programmes, to quantify the expenditure related to climate action and biodiversity at the level of the action programmes, individual and special measures referred to in Article 9, and recorded within evaluations and the annual reports.

Article 20

European External Action Service

This Regulation shall apply in accordance with Council Decision 2010/427/EU [1].'

---

[1] Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (OJ L 201, 3.8.2010, p. 30).

COUNCIL REGULATION (EU) No 567/2014

of 26 May 2014

amending Regulation (EC) No 215/2008 on the Financial Regulation applicable to the 10th European Development Fund as regards the application of the transition period between the 10th European Development Fund and the 11th European Development Fund until the entry into force of the 11th European Development Fund Internal Agreement

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, as last amended ([1]) ('the ACP-EU Partnership Agreement'),

Having regard to the Internal Agreement between the Representatives of the Governments of the Member States, meeting within the Council, on the financing of Community aid under the multiannual financial framework for the period 2008 to 2013 in accordance with the ACP-EC Partnership Agreement and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies ([2]) ('the 10th EDF Internal Agreement'), and in particular Article 10(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the Court of Auditors,

Having regard to the opinion of the European Investment Bank,

Whereas:

(1) Council Decision No 2013/759/EU ([3]) established transitional European Development Fund (EDF) management measures ('Bridging Facility') to ensure the availability of funds for cooperation with African, Caribbean and Pacific (ACP) States and with Overseas Countries and Territories (OCTs), as well as for support expenditure, from 1 January 2014 until the entry into force of the 11th EDF Internal Agreement.

(2) It is necessary to modify Council Regulation (EC) No 215/2008 ([4]) as regards the operational and financial management by the Commission of the Bridging Facility in the transition period between the 10th EDF and the 11th EDF until the entry into force of the 11th EDF Internal Agreement and the 11th EDF Implementation Regulation.

(3) It is appropriate to modify in the same way the implementing rules for the operational and financial management of the Investment Facility implemented by the European Investment Bank (EIB) during this transitional period and until the entry into force of the 11th EDF Internal Agreement.

(4) Regulation (EC) No 215/2008 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

For the transition period between the 10th EDF and the 11th EDF, Articles 1 to 159 of Regulation (EC) No 215/2008 are replaced by those laid down in the Annex to this Regulation.

([1]) OJ L 317, 15.12.2000, p. 3. Agreement as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L 287, 28.10.2005, p. 4) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L 287, 4.11.2010, p. 3).
([2]) OJ L 247, 9.9.2006, p. 32.
([3]) Council Decision No 2013/759/EU of 12 December 2013 regarding transitional EDF management measures from 1 January 2014 until the entry into force of the 11th European Development Fund (OJ L 335, 14.12.2013, p. 48).
([4]) Council Regulation (EC) No 215/2008 of 18 February 2008 on the Financial Regulation applicable to the 10th European Development Fund (OJ L 78, 19.3.2008, p. 1).

Article 2

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 until the entry into force of the 11th EDF Financial Regulation.

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

Done at Brussels, 26 May 2014.

For the Council
The President
Ch. VASILAKOS

ANNEX

'PART ONE

MAIN PROVISIONS

TITLE I

Subject Matter, Scope And General Provisions

Article 1

Scope

This Regulation lays down the rules for the financial implementation of the resources of the European Development Fund (EDF) and the presentation and auditing of its accounts.

Article 2

Relation to Regulation (EU, Euratom) No 966/2012

1. Unless specifically provided otherwise, direct references in this Regulation to the provisions of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ([1]) shall be deemed to include also references to the corresponding provisions of Commission Delegated Regulation (EU) No 1268/2012 ([2]).

2. References in this Regulation to the applicable provisions of Regulation (EU, Euratom) No 966/2012 shall not be deemed to include procedural provisions which are not relevant to the EDF, in particular those concerning the empowerment to adopt delegated acts.

3. Internal references in Regulation (EU, Euratom) No 966/2012 or in Delegated Regulation (EU) No 1268/2012 shall not render the provisions referred to indirectly applicable to the EDF.

4. Terms used in this Regulation shall have the same meaning as those in Regulation (EU, Euratom) No 966/2012, with the exception of the definitions referred to in points (a) to (e) of Article 2 of that Regulation.

However, for the purposes of this Regulation, the following terms in Regulation (EU, Euratom) No 966/2012 shall be defined as follows:

(a) "budget" or "budgetary" means "EDF";

(b) "budgetary commitment" means "financial commitment";

(c) "institution" means "the Commission";

(d) "appropriations" or "operational appropriations" means "EDF resources";

([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).

(e) "budget line" or "line in the budget" means "allocation";

(f) "basic act" means, according to the relevant context, the 10th EDF Internal Agreement, Council Decision 2013/755/EU [1] ("the Overseas Association Decision"), or Council Regulation (EC) No 617/2007 [2] ("the Implementation Regulation");

(g) "third country" means any beneficiary country or territory covered by the geographical scope of the EDF.

5. The interpretation of this Regulation shall aim at preserving coherence with Regulation (EU, Euratom) No 966/2012 unless such interpretation would be incompatible with the specificities of the EDF as provided for in the ACP-EU Partnership Agreement, the 10th EDF Internal Agreement, the Overseas Association Decision, or the Implementation Regulation.

Article 3

Periods, dates and time limits

Unless otherwise provided, Council Regulation (EEC, Euratom) No 1182/71 [3] shall apply to deadlines set by this Regulation.

Article 4

Protection of personal data

This Regulation is without prejudice to the requirements of Directive 95/46/EC of the European Parliament and of the Council [4] and to the requirements of Regulation (EC) No 45/2001 of the European Parliament and of the Council [5].

Article 29 of Delegated Regulation (EU) No 1268/2012 concerning information on transfers of personal data for audit purposes shall apply.

TITLE II

Financial Principles

Article 5

Financial principles

The EDF resources shall be implemented in compliance with the following principles:

(a) unity and budgetary accuracy;

(b) unit of account;

(c) universality;

(d) specification;

(e) sound financial management;

(f) transparency.

The financial year shall run from 1 January to 31 December.

---

[1] Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union ("Overseas Association Decision") (OJ L 344, 19.12.2013, p. 1).

[2] Council Regulation (EC) No 617/2007 of 14 May 2007 on the implementation of the 10th European Development Fund under the ACP-EC Partnership Agreement (OJ L 152, 13.6.2007, p. 1).

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

[4] 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).

[5] 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).

Article 6

Principles of unity and budgetary accuracy

No revenue shall be collected and no expenditure effected unless booked to the EDF.

Article 8(2) and (3) and the first subparagraph of Article 8(4) of Regulation (EU, Euratom) No 966/2012 shall apply.

Article 7

Principle of unit of account

Article 19 of Regulation (EU, Euratom) No 966/2012 on the use of the euro shall apply *mutatis mutandis*.

Article 8

Principle of universality

Without prejudice to Article 9 of this Regulation, total revenue shall cover total estimated payments.

All revenue and expenditure shall be entered in full without any adjustment against each other, and without prejudice to Article 23 of Regulation (EU, Euratom) No 966/2012 concerning rules on deductions and exchange rate adjustments, which shall apply.

However, the revenue referred to in point (c) of Article 9(2) of this Regulation shall automatically decrease payments made against the commitment from which it was generated.

The Union may not raise loans within the framework of the EDF.

Article 9

Assigned revenue

1. Assigned revenue shall be used to finance specific items of expenditure.

2. The following shall constitute assigned revenue:

(a) financial contributions from Member States and third countries, including in both cases their public agencies, entities or natural persons; and from international organisations to certain external aid projects or programmes financed by the Union and managed by the Commission or the European Investment Bank (EIB) on their behalf in accordance with Article 10 of the Implementation Regulation;

(b) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests;

(c) revenue arising from the repayment, following recovery, of amounts wrongly paid;

(d) revenue generated by interest on pre-financing payments, subject to Article 8(4) of Regulation (EU, Euratom) No 966/2012;

(e) repayments and revenues generated by financial instruments pursuant to Article 140(6) of Regulation (EU, Euratom) No 966/2012;

(f) revenue arising from subsequent reimbursement of taxes pursuant to point (b) of Article 23(3) of Regulation (EU, Euratom) No 966/2012.

3. Assigned revenue referred to in points (a) and (b) of paragraph 2 shall finance such items of expenditure as are determined by the donor provided that it is accepted by the Commission.

Assigned revenue referred to in points (e) and (f) of paragraph 2 shall finance items of expenditure similar to those from which it was generated.

4. Article 184(3) of Regulation (EU, Euratom) No 966/2012 shall apply *mutatis mutandis*.

5. Article 22(1) and (2) of Regulation (EU, Euratom) No 966/2012 concerning donations shall apply to the assigned revenue referred to in point (b) of paragraph 2 of this Article. With regard to Article 22(2) of Regulation (EU, Euratom) No 966/2012, acceptance of a donation shall be subject to the authorisation of the Council.

6. The EDF resources corresponding to assigned revenue shall be made available automatically when that revenue has been received by the Commission. However, an estimate of amounts receivable shall have the effect of making EDF resources available in the case of the assigned revenue referred to in point (a) of paragraph 2 where the agreement with the Member State is expressed in euro; payments may be carried out against that revenue only when it has been received.

Article 10

Principle of specification

EDF resources shall be earmarked for specific purposes per the ACP States or OCTs and in accordance with the main instruments of cooperation.

In respect of the ACP States, those instruments are laid down by the Financial Protocol annexed to the ACP-EU Partnership Agreement. Earmarking of resources (indicative allocations) shall also be based on the provisions of the 10th EDF Internal Agreement and of the Implementation Regulation and shall take account of the resources reserved for support expenditure linked to programming and implementation under Article 6 of the 10th EDF Internal Agreement.

In respect of the OCTs, those instruments are laid down in Part Four of the Overseas Association Decision and Annex II thereto. Earmarking of those resources shall also take into account the non-allocated reserve provided for in Article 3(3) of that Annex and the resources for studies or technical assistance measures under point (c) of Article 1(1) thereof.

Article 11

Principle of sound financial management

1. Article 30(1) and (2) of Regulation (EU, Euratom) No 966/2012 concerning the principles of economy, efficiency and effectiveness shall apply. Without prejudice to point (a) of paragraph 3 of this Article, Article 18 of Delegated Regulation (EU) No 1268/2012 shall not apply.

2. Specific, measurable, achievable, relevant and timed objectives shall be set. The achievement of those objectives shall be monitored by performance indicators.

3. In order to improve decision-making, in particular to justify and specify the determination of the contributions to be paid by Member States referred to in Article 21 of this Regulation, the following evaluations are required:

(a) the use of EDF resources shall be preceded by an *ex ante* evaluation of the operation to be undertaken, covering the elements listed in Article 18(1) of Delegated Regulation (EU) No 1268/2012;

(b) the operation shall be submitted to an *ex post* evaluation with a view to ensuring that the intended results justified the means deployed.

4. The types of financing provided for in Title VIII of this Regulation, and the methods of implementation provided for in Article 17 of this Regulation, shall be chosen on the basis of their ability to achieve the specific objectives of the actions and their ability to deliver results, taking into account, in particular, the costs of controls, the administrative burden, and the expected risk of non-compliance. For grants, this shall include a consideration of the use of lump sums, flat rates and unit costs.

Article 12

Internal control

Article 32 of Regulation (EU, Euratom) No 966/2012 shall apply.

Article 13

Principle of transparency

1. The EDF shall be implemented and the accounts presented in accordance with the principle of transparency.

2. The annual statement of the commitments, payments and the annual amount of calls for contributions under Article 7 of the 10th EDF Internal Agreement shall be published in the *Official Journal of the European Union*.

3. Without prejudice to Article 4 of this Regulation, the first subparagraph of Article 35(2) and Article 35(3) of Regulation (EU, Euratom) No 966/2012, concerning the publication of information on recipients and other information, shall apply. For the purpose of the second subparagraph of Article 21(2) of Delegated Regulation (EU) No 1268/2012, the term "locality" shall mean, where necessary, the equivalent to the region at NUTS 2 level when the recipient is a natural person.

4. Actions financed under the EDF may be implemented with parallel or joint co-financing.

In the case of parallel co-financing, an action is to be split into a number of clearly identifiable components which are each financed by the different partners providing co-financing in such a way that the end-use of the financing can always be identified.

In the case of joint co-financing, the total cost of an action is to be shared between the partners providing the co-financing and the resources are to be pooled in such a way that it is no longer possible to identify the source of financing for any given activity undertaken as part of the action. In such cases, *ex-post* publication of grant and procurement contracts as required by the first subparagraph of Article 35(2) and Article 35(3) of Regulation (EU, Euratom) No 966/2012 shall comply with the rules of the entrusted entity, if any.

5. When providing financial assistance, the Commission shall, where appropriate, take all necessary measures in order to ensure the visibility of the Union's financial support. This shall include measures imposing visibility requirements on recipients of Union funds, except in duly justified cases. The Commission shall be responsible for monitoring recipients' compliance with those requirements.

TITLE III

EDF Resources and Implementation

Article 14

Sources of EDF resources

The EDF resources shall consist of the ceiling referred to in Article 1 of Decision 2013/759/EU and of other assigned revenue referred to in Article 9 of this Regulation.

The EDF resources managed by the EIB shall also consist of those resources of the Investment Facility managed as a revolving fund.

Article 15

Structure of the EDF

The EDF revenue and expenditure shall be classified according to their type or the use to which they are assigned.

Article 16

EDF implementation in accordance with the principle of sound financial management

1. The Commission shall assume the responsibilities of the Union as defined in Article 57 of the ACP-EU Partnership Agreement and in the Overseas Association Decision. To that end, it shall implement the revenue and expenditure of the EDF in accordance with the provisions of this Part and Part Three of this Regulation, under its own responsibility and within the limits of the EDF resources.

2. The Member States shall cooperate with the Commission so that the EDF resources are used in accordance with the principle of sound financial management.

Article 17

Methods of implementation

1. Articles 56 and 57 of Regulation (EU, Euratom) No 966/2012 shall apply.

2. Subject to the provisions of paragraphs 3 to 5 of this Article, the rules on methods of implementation provided for in Chapter 2 of Title IV of Part One of Regulation (EU, Euratom) No 966/2012, and Articles 188 and 193 of that Regulation, shall apply. However, point (b) of Article 58(1) and Article 59 of that Regulation, concerning shared management with Member States, shall not be applicable.

3. The entrusted entities shall ensure consistency with the Union's external policy and may entrust budget implementation tasks to other entities under conditions equivalent to those applying to the Commission. They shall fulfil their obligations under Article 60(5) of Regulation (EU, Euratom) No 966/2012 annually. The audit opinion shall be submitted within one month of the report and management declaration, to be taken into account in the assurance of the Commission.

International organisations as referred to in point (c)(ii) of Article 58(1) of Regulation (EU, Euratom) No 966/2012 and bodies of the Member States as referred to in points (c)(v) and (vi) of Article 58(1) of that Regulation which have been entrusted by the Commission may also entrust budget implementation tasks to non-profit organisations possessing the appropriate operational and financial capacity, under conditions equivalent to those applying to the Commission.

ACP States and OCTs may also entrust budget implementation tasks to their departments and to bodies governed by private law on the basis of a service contract. Those bodies shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflict of interests. The financing agreement shall stipulate the terms of the service contract.

4. Where the EDF is implemented in indirect management with ACP States or OCTs, without prejudice to the responsibilities of the ACP States or the OCTs acting in their capacity of contracting authorities, the Commission:

(a) shall, where necessary, recover amounts due from recipients according to Article 80 of Regulation (EU, Euratom) No 966/2012, including by means of a decision which shall be enforceable under the same conditions as those laid down in Article 299 of the Treaty;

(b) may, where the circumstances so require, impose administrative and/or financial penalties under the same conditions as those laid down in Article 109 of Regulation (EU, Euratom) No 966/2012.

The financing agreement shall contain provisions on the cooperation between the Commission and the ACP State or OCTs to this end.

5. The Union's financial assistance may be provided through contributions to international, regional or national funds, such as those established or managed by the EIB, Member States, or by partner countries and regions or by international organisations, for attracting joint financing from a number of donors, or to funds set up by one or more donors for the purpose of the joint implementation of projects.

Reciprocal access by Union financial institutions to financial instruments set up by other organisations shall be promoted, as appropriate.

TITLE IV

Financial Actors

Article 18

General provisions on financial actors and their liability

1. The Commission shall provide each financial actor with the resources required to perform his or her duties and a charter describing in detail his or her tasks, rights, and obligations.

2. Article 64 of Regulation (EU, Euratom) No 966/2012 on the segregation of duties shall apply.

3. Chapter IV of Title IV of Part One of Regulation (EU, Euratom) No 966/2012 concerning the liability of the financial actors shall apply *mutatis mutandis*.

Article 19

Authorising officer

1. Articles 65, 66 and 67 of Regulation (EU, Euratom) No 966/2012 concerning, respectively, the authorising officer, his or her powers and duties, and those of Heads of Union Delegations, shall apply.

The annual activity report referred to in Article 66(9) of Regulation (EU, Euratom) No 966/2012 shall include, as an annex, tables showing by allocation, country, territory, region or sub-region, the total commitments, assigned funds and payments effected during the financial year and aggregate totals since the opening of the respective EDF.

2. Where the responsible authorising officer of the Commission becomes aware of problems in carrying out procedures relating to the management of EDF resources, he or she shall, in conjunction with the appointed national, regional, intra-ACP, or territorial authorising officer, make all contacts necessary to remedy the situation and take any steps that are necessary. In case the national, regional, intra-ACP, or territorial authorising officer does not or is unable to perform the duties incumbent on him or her under the ACP-EU Partnership Agreement or the Overseas Association Decision, the responsible authorising officer of the Commission may temporarily take the former's place and act in the name and on behalf of the former; in that case, the Commission may receive financial compensation for the additional administrative workload incurred from the resources allocated to the ACP State or OCTs in question.

Article 20

Accounting officer

1. The accounting officer of the Commission shall be the accounting officer of the EDF.

2. Article 68, with the exception of the second subparagraph of its paragraph 1, and Article 69 of Regulation (EU, Euratom) No 966/2012 concerning, respectively, powers and duties of the accounting officer, and powers which may be delegated by the accounting officer, shall apply. Article 54 and Article 57(3), the second subparagraph of Article 58(5), and Article 58(6) of Delegated Regulation (EU) No 1268/2012 shall not apply.

TITLE V

Revenue Operations

Article 21

Annual contribution and its instalments

1. In accordance with Article 7 of the 10th EDF Internal Agreement, the ceiling for the annual amount of the contribution for the year n + 2 and the annual amount of the contribution for the year n + 1, as well as its payment in three instalments, shall be determined according to the procedure set out in paragraphs 2 to 7 of this Article.

The instalments to be paid by each Member State shall be set in such a way as to be in proportion to that Member State's contributions to the EDF as fixed in Article 1(2) of the 10th EDF Internal Agreement.

2. The Commission shall present a proposal by 15 October of the year n, setting out:

(a) the ceiling for the annual amount of the contribution for the year n + 2;

(b) the annual amount of the contribution for the year n + 1;

(c) the amount of the first instalment of the contribution for the year n + 1;

(d) an indicative, non-binding forecast based on a statistical approach for the expected annual amounts of contributions for the years n + 3 and n + 4.

The Council shall decide on this proposal by 15 November of the year n.

The Member States shall pay the first instalment of the contribution for the year n + 1 at the latest by 21 January of the year n + 1.

3. The Commission shall present a proposal by 15 June of the year n + 1, setting out:

(a) the amount of the second instalment of the contribution for the year n + 1;

(b) a revised annual amount of the contribution for the year n + 1 in line with actual needs, in cases where, in accordance with Article 7(3) of the 10th EDF Internal Agreement, the annual amount deviates from actual needs.

The Council shall decide on the proposal at the latest 21 calendar days following the presentation by the Commission of its proposal.

The Member States shall pay the second instalment at the latest 21 calendar days following the adoption of the Council decision.

4. By 15 June of the year n + 1, the Commission, taking into account the EIB's forecasts concerning the management and operation of the Investment Facility, including those interest rate subsidies which are implemented by the EIB, shall establish and communicate to the Council a statement of the commitments, payments, and the annual amount of the calls for contributions made in the year n and to be made in the years n + 1 and n + 2. The Commission shall provide the annual amounts of the contributions by Member State, as well as the amount still to be paid by the EDF, distinguishing between the shares of the EIB and of the Commission. The amounts for the years n + 1 and n + 2 shall be based on the capacity to deliver effectively the proposed level of resources while endeavouring to avoid significant variations between the different years, as well as significant end-of-year balances.

5. The Commission shall present a proposal by 10 October of the year n + 1, setting out:

(a) the amount of the third instalment of the contribution for the year n + 1;

(b) a revised annual amount of the contribution for the year n + 1 in line with actual needs, in cases where, in accordance with Article 7(3) of the 10th EDF Internal Agreement, the annual amount deviates from actual needs.

The Council shall decide on the proposal at the latest 21 calendar days following the presentation by the Commission of its proposal.

The Member States shall pay the third instalment at the latest 21 calendar days following the adoption of the Council decision.

6. The sum of the instalments relating to a certain year cannot exceed the annual amount of the contribution determined for that year. The annual amount of the contribution cannot exceed the ceiling determined for that year. The ceiling cannot be increased except in accordance with Article 7(4) of the 10th EDF Internal Agreement. A possible increase of the ceiling shall be made part of the proposals referred to in paragraphs 2, 3 and 5 of this Article.

7. The ceiling for the annual amount of the contribution to be paid by each Member State for the year n + 2, the annual amount of the contribution for the year n + 1 and the instalments of the contributions shall specify:

(a) the amount managed by the Commission; and

(b) the amount managed by the EIB, including the interest rates subsidies managed by it.

Article 22

Payment of the instalments

1. Calls for contributions shall first use up the amounts laid down for previous European Development Funds, one after the other.

2. The contributions of the Member States shall be expressed in euro and shall be paid in euro.

3. The contribution referred to in point (a) of Article 21(7) shall be credited by each Member State to a special account entitled "European Commission — European Development Fund" opened with the central bank of the relevant Member State or the financial institution designated by it. The amount of such contributions shall remain in those special accounts until the payments need to be made. The Commission shall endeavour to make any withdrawals from the special accounts in such a way as to maintain a distribution of assets in those accounts corresponding to the contribution key pursuant to point (a) of Article 1(2) of the 10th EDF Internal Agreement.

The contribution referred to in point (b) of Article 21(7) of this Regulation shall be credited by each Member State in accordance with Article 53(1).

Article 23

Interest for unpaid contribution amounts

1. On expiry of the time limits laid down in Article 21(2), (3) and (5), the Member State concerned shall be obliged to pay interest in accordance with the following conditions:

(a) the interest rate shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the time limit expires, increased by two percentage points. That rate shall be increased by a quarter of a percentage point for each month of delay.

(b) the interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment.

2. In respect of the contribution referred to in point (a) of Article 21(7), the interest shall be credited to one of the accounts provided for in Article 1(6) of the 10th EDF Internal Agreement.

In respect of the contribution referred to in point (b) of Article 21(7), the interest shall be credited to the Investment Facility in accordance with Article 53(1).

Article 24

Calling on unpaid contributions

Upon expiry of the financial protocol annexed to the ACP-EU Partnership Agreement, the part of the contributions which the Member States remain obliged to pay in accordance with Article 21 of this Regulation shall be called on by the Commission and the EIB, as required, in accordance with the conditions laid down in this Regulation.

Article 25

Other revenue operations

1. Articles 77 to 79, Article 80(1) and (2) and Articles 81 to 82 of Regulation (EU, Euratom) No 966/2012 concerning the estimate of the amount receivable, the establishment of amounts receivable, the authorisation and rules of recovery, the limitation period and national treatment of Union entitlements, shall apply. Recovery may be done by way of a Commission decision enforceable pursuant to Article 299 of the Treaty.

2. With regard to Articles 77(3) and 78(2) of Regulation (EU, Euratom) No 966/2012, the reference to own resources shall be understood as reference to the Member States' contributions defined in Article 21 of this Regulation.

3. Article 83(2) of Delegated Regulation (EU) No 1268/2012 shall apply to recoveries established in euro. For recoveries in local currency, it shall apply using the rate of the central bank of the country issuing the currency in force on the first calendar day of the month in which the recovery order is established.

4. With regard to Article 84(3) of Delegated Regulation (EU) No 1268/2012, the list of entitlements shall be established separately for the EDF and shall be added to the report referred to in Article 44(2) of this Regulation.

5. Articles 85 and 90 of Delegated Regulation (EU) No 1268/2012 shall not apply.

TITLE VI

Expenditure Operations

Article 26

Financing decisions

The commitment of expenditure shall be preceded by a financing decision adopted by the Commission.

Article 84 of Regulation (EU, Euratom) No 966/2012 shall apply, with the exception of paragraph 2 thereof.

Article 27

Rules applicable to commitments

1. Article 85, with the exception of point (c) of paragraph 3 thereof, Articles 86, 87, 185, and Article 189(1) and (2) of Regulation (EU, Euratom) No 966/2012 concerning commitments and the implementation of external actions shall apply. Article 95(2), points (a) and (e) of Article 97(1) and Article 98 of Delegated Regulation (EU) No 1268/2012 shall not apply.

2. With regard to the application of Article 189(2) of Regulation (EU, Euratom) No 966/2012, the period to conclude individual contracts and grants agreements which implement the action may be extended beyond three years following the date of the conclusion of the financing agreement where ACP States and OCTs entrust budget implementation tasks pursuant to Article 17(3) of this Regulation.

3. Where the EDF resources are implemented in indirect management with ACP States or OCTs, the responsible authorising officer may, upon accepting justification, extend the two-year period referred to in the third subparagraph of Article 86(5) of Regulation (EU, Euratom) No 966/2012 and the three-year period referred to in the second subparagraph of Article 189(2) thereof.

4. At the end of the extended periods referred to in paragraph 3 of this Article, or the periods referred to in the third subparagraph of Article 86(5) and in the second subparagraph of Article 189(2) of Regulation (EU, Euratom) No 966/2012, the unused balances shall be, as applicable, decommitted.

5. Where measures are adopted under Articles 96 and 97 of the ACP-EU Partnership Agreement, the running of the extended periods referred to in paragraph 3 of this Article, in the third subparagraph of Article 86(5) and the second subparagraph of Article 189(2) of Regulation (EU, Euratom) No 966/2012 may be suspended.

6. For the purposes of point (c) of paragraph 1 and of point (b) of paragraph 2 of Article 87 of Regulation (EU, Euratom) No 966/2012, compliance and regularity shall be assessed against the relevant provisions, in particular the Treaties, the ACP-EU Partnership Agreement, the Overseas Association Decision, the 10th EDF Internal Agreement, this Regulation, and all acts adopted in implementation of those provisions.

7. Each legal commitment shall expressly provide for the Commission and the Court of Auditors to have the power of verification and audit and for OLAF to have the power of investigations, on the basis of documents and on the spot, over all beneficiaries, contractors, and subcontractors who have received EDF funds.

Article 28

Validation, authorisation and payment of expenditure

Articles 88, 89, Article 90, with the exception of the second subparagraph of paragraph 4 thereof, Article 91 and Article 184(4) of Regulation (EU, Euratom) No 966/2012 shall apply.

Article 29

Time limits for payment

1. Subject to paragraph 2, Article 92 of Regulation (EU, Euratom) No 966/2012 shall apply to payments carried out by the Commission.

2. Where EDF resources are implemented in indirect management with ACP States or OCTs and the Commission executes payments on their behalf, the time limit referred to in point (b) of Article 92(1) of Regulation (EU, Euratom) No 966/2012 shall apply to all payments not referred to in point (a) thereof. The financing agreement shall contain the necessary provisions to ensure the timely collaboration of the contracting authority.

3. Claims for delayed payments for which the Commission is responsible shall be charged to the account or accounts provided for in Article 1(6) of the 10th EDF Internal Agreement.

TITLE VII

Various Implementation Provisions

Article 30

Internal auditor

The internal auditor of the Commission shall be the internal auditor of the EDF. Articles 99 and 100 of Regulation (EU, Euratom) No 966/2012 shall apply.

Article 31

IT systems, electronic transmission and e-Government

Articles 93, 94 and 95 of Regulation (EU, Euratom) No 966/2012, concerning the electronic management of operations and documents, shall apply *mutatis mutandis*.

Article 32

Good administration and redress

Articles 96 and 97 of Regulation (EU, Euratom) No 966/2012 shall apply.

Article 33

Use of the central exclusion database

The central exclusion database set up pursuant to Article 108(1) of Regulation (EU, Euratom) No 966/2012 which contains details of candidates and tenderers, and applicants and beneficiaries who are in one of the situations referred to in Article 106, point (b) of the first subparagraph of Article 109(1), and point (a) of Article 109(2) of that Regulation shall be used for the implementation of the EDF.

Article 108(2) and (5) of Regulation (EU, Euratom) No 966/2012 and Articles 142 and 144 of Delegated Regulation (EU) No 1268/2012 on the use of the central exclusion database and on the access to it shall apply *mutatis mutandis*.

With regard to Article 108(2) of Regulation (EU, Euratom) No 966/2012, the Union's financial interests shall include the implementation of the EDF.

Article 34

Administrative arrangements with the EEAS

Detailed arrangements may be agreed between the European External Action Service (EEAS) and the Commission services in order to facilitate the implementation by Union Delegations of the resources foreseen for support expenditure linked to the EDF under Article 6 of the 10th EDF Internal Agreement.

TITLE VIII

Types Of Financing

Article 35

General provisions on types of financing

1. For the purpose of providing financial assistance under this Title, cooperation between the Union, the ACP States and OCTs may take the form, inter alia, of:

(a) triangular arrangements by which the Union coordinates with any third country its assistance to an ACP State, OCTs or region;

(b) administrative cooperation measures such as twinning between the public institutions, local authorities, national public bodies or private law entities entrusted with public service tasks of a Member State or an outermost region, and those of an ACP State or OCTs or their region, as well as cooperation measures involving public-sector experts dispatched from the Member States and their regional and local authorities;

(c) expert facilities for targeted capacity building in the ACP State, OCTs or their region and short term technical assistance and advice to them, as well as support of sustainable centres of knowledge and excellence on governance and reform in the public sector;

(d) contributions to the costs necessary to set up and administer a public-private partnership;

(e) sector policy support programmes, by which the Union provides support to an ACP State's or OCTs' sector programme; or

(f) interest rate subsidies in accordance with Article 37.

2. In addition to the types of financing provided for in Articles 36 to 42, financial assistance may also be provided through the following:

(a) debt relief, under internationally agreed debt relief programmes;

(b) in exceptional cases, sectoral and general import programmes, which may take the form of:

— sectoral import programmes in kind;

— sectoral import programmes providing foreign exchange to finance imports for the sector in question; or

— general import programmes providing foreign exchange to finance general imports of a wide range of products.

3. Financial assistance may also be provided through contributions to international, regional or national funds, such as those established or managed by the European Investment Bank, Member States or by ACP States or OCTs and regions or by international organisations, for attracting joint financing from a number of donors, or to funds set up by one or more donors for the purpose of the joint implementation of projects.

Reciprocal access by Union financial institutions to financial instruments set up by other organisations shall be promoted, as appropriate.

4. In implementing its support to transition and reform in ACP States and OCTs, the Union shall draw on and share the experiences of Member States and lessons learned.

Article 36

Procurement

1. Article 101 of Regulation (EU, Euratom) No 966/2012 defining public contracts shall apply.

2. For the purposes of this Regulation, the contracting authorities shall be:

(a) the Commission on behalf of, and on account of, one or more ACP States or OCTs;

(b) entities and persons referred to in Article 185 of Regulation (EU, Euratom) No 966/2012 and entrusted with the corresponding budget implementation tasks.

3. For procurement contracts awarded by the contracting authorities referred to in paragraph 2 of this Article, or on their behalf, the provisions of Chapter 1 of Title V of Part One and of Chapter 3 of Title IV of Part Two of Regulation (EU, Euratom) No 966/2012 shall apply, with the exception of:

(a) Article 103, the second subparagraph of Article 104(1) and Article 111 of Regulation (EU, Euratom) No 966/2012;

(b) Article 127(3) and (4), Article 128, Articles 134 to 137, Article 139(3) to (6), Article 148(4), Article 151(2), Article 160, Article 164, the second sentence of Article 260, and Article 262 of Delegated Regulation (EU) No 1268/2012.

Article 124(2) of Delegated Regulation (EU) No 1268/2012 shall apply to building contracts.

The first subparagraph of this paragraph shall not apply to the contracting authorities referred to in point (b) of paragraph 2 of this Article where, following the checks referred to in Article 61 of Regulation (EU, Euratom) No 966/2012, the Commission has authorised them to use their own procurement procedures.

4. For procurement contracts awarded by the Commission on its own account as well as the implementing actions relating to crisis management aid and civil protection and humanitarian aid operations, the provisions of Title V of Part One of Regulation (EU, Euratom) No 966/2012 shall apply.

5. In the event of failure to comply with the procedures referred to in paragraph 3, expenditure on the operations in question shall not be eligible for EDF financing.

6. The procurement procedures referred to in paragraph 3 shall be laid down in the financing agreement.

7. With regard to point (a) of Article 263(1) of Delegated Regulation (EU) No 1268/2012:

(a) "a prior information notice" is the notice by which the contracting authorities make known, by way of indication, the estimated total value and subject of contracts and framework contracts which they intend to award during a financial year, but excluding contracts under the negotiated procedure without prior publication of a contract notice;

(b) "a contract notice" is the means by which the contracting authorities make known their intention to launch a procedure for the award of a contract or framework contract or to set up a dynamic purchasing system in accordance with Article 131 of Delegated Regulation (EU) No 1268/2012;

(c) "an award notice" is the notice which gives the outcome of the procedure for the award of contracts, framework contracts or contracts based on a dynamic purchasing system.

Article 37

Grants

1. Subject to paragraphs 2 and 3 of this Article, Title VI of Part One and Article 192 of Regulation (EU, Euratom) No 966/2012 shall apply.

2. Grants are direct financial contributions, by way of donation, from the EDF in order to finance any of the following:

(a) an action intended to help achieve an objective of the ACP-EU Partnership Agreement or the Overseas Association Decision, or of a programme or project adopted in accordance with that Agreement or Decision; or

(b) the functioning of a body which pursues an objective referred to in point (a).

A grant within the meaning of point (a) may be awarded to a body referred to in Article 208(1) of Regulation (EU, Euratom) No 966/2012.

3. When working with stakeholders of ACP States and OCTs, the Commission shall take into account their specificities, including needs and context, when defining the modalities of financing, the type of contribution, the award modalities and the administrative provisions for the management of grants with the purpose of reaching and best responding to the widest possible range of stakeholders of ACP States and OCTs, and most efficiently achieving objectives of the ACP-EU Partnership Agreement or the Overseas Association Decision. Specific modalities shall be encouraged, such as partnership agreements, financial support to third parties, direct award or eligibility-restricted calls for proposals or lump sums.

4. The following shall not constitute grants within the meaning of this Regulation:

(a) items referred to in points (b) to (f), (h) and (i) of Article 121(2) of Regulation (EU, Euratom) No 966/2012;

(b) financial assistance referred to in Article 35(2) of this Regulation.

5. Articles 175 and 177 of Delegated Regulation (EU) No 1268/2012 shall not apply.

Article 38

Prizes

Title VII of Part One of Regulation (EU, Euratom) No 966/2012 shall apply, with the exception of the second subparagraph of Article 138(2) thereof.

Article 39

Budget support

Article 186 of Regulation (EU, Euratom) No 966/2012 shall apply.

Union general or sector budget support is based on mutual accountability and shared commitments to universal values, and aims at strengthening contractual partnerships between the Union and ACP States or OCTs in order to promote democracy, human rights and the rule of law, to support sustainable and inclusive economic growth and to eradicate poverty.

Any decision to provide budget support shall be based on budget support policies agreed by the Union, a clear set of eligibility criteria and a careful assessment of the risks and benefits.

One of the key determinants of such a decision shall be an assessment of the commitment, record and progress of ACP States and OCTs with regard to democracy, human rights and the rule of law. Budget support shall be differentiated to better respond to the political, economic and social context of the ACP States and OCTs, taking into account situations of fragility.

When providing budget support, the Commission shall clearly define and monitor its conditionality, and shall also support the development of parliamentary control and audit capacities and increase transparency and public access to information.

Disbursement of budget support shall be conditional on satisfactory progress towards achieving the objectives agreed with the ACP States and OCTs.

When providing budget support to OCTs, their institutional links to the Member State concerned shall be taken into account.

Article 40

Financial instruments

Financial instruments may be established in the financing decisions referred to in Article 26. They shall be, whenever possible, under the lead of the EIB, a multilateral European financial institution, such as the European Bank for Reconstruction and Development (EBRD), or a bilateral European financial institution, e.g. bilateral development banks, possibly pooled with additional grants from other sources.

The Commission may implement financial instruments under direct management, or under indirect management by entrusting tasks to entities pursuant to point (c)(ii), (iii), (v) and (vi) of Article 58(1) of Regulation (EU, Euratom) No 966/2012. Those entities shall fulfil the requirements of Regulation (EU, Euratom) No 966/2012 and shall comply with Union objectives, standards and policies, as well as best practices regarding the use of and reporting on Union funds.

Entities which fulfil the criteria of Article 60(2) of Regulation (EU, Euratom) No 966/2012 are deemed to meet the selection criteria referred to in Article 139 of that Regulation. Title VIII of Part One of Regulation (EU, Euratom) No 966/2012 shall apply, with the exception of paragraph 1, the first subparagraph of paragraph 4 and paragraph 5 of Article 139 thereof.

Financial instruments may be grouped into facilities for implementation and reporting purposes.

Article 41

Experts

The second paragraph of Article 204 of Regulation (EU, Euratom) No 966/2012 and Article 287 of Delegated Regulation (EU) No 1268/2012 concerning remunerated external experts shall apply.

Article 42

Union trust funds

1. Subject to paragraph 2 of this Article, Article 187 of Regulation (EU, Euratom) No 966/2012 shall apply.

2. With regard to Article 187(8) of Regulation (EU, Euratom) No 966/2012, the competent committee shall be the committee referred to in Article 8 of the 10th EDF Internal Agreement.

TITLE IX

Presentation Of The Accounts And Accounting

Article 43

EDF accounts

1. The EDF accounts describing its financial situation as of 31 December of a given year shall comprise:

(a) the financial statements;

(b) the report on financial implementation.

The financial statements shall be accompanied by the information supplied by the EIB in accordance with Article 57.

2. The accounting officer shall send the provisional accounts to the Court of Auditors by 31 March of the following year.

3. The Court of Auditors shall, by 15 June of the following year, make its observations on the provisional accounts as regards the part of the EDF resources for the financial management of which the Commission is responsible, so that the Commission can make the corrections deemed necessary for drawing up the final accounts.

4. The Commission shall approve the final accounts and send them to the European Parliament, to the Council and to the Court of Auditors by 31 July of the following year at the latest.

5. The second subparagraph of Article 148(3) of Regulation (EU, Euratom) No 966/2012 shall apply.

6. The final accounts shall be published in the *Official Journal of the European Union* together with the statement of assurance given by the Court of Auditors in accordance with Article 49 by 15 November of the following year.

7. The provisional and final accounts may be sent, pursuant to paragraphs 2 and 4, by electronic means.

Article 44

Financial statements and the report on financial implementation

1. Article 145 of Regulation (EU, Euratom) No 966/2012 shall apply.

2. The report on financial implementation shall be prepared by the responsible authorising officer and transmitted to the accounting officer by 15 March for the inclusion in the EDF accounts. It shall present a true and fair view of the revenue and expenditure operations from EDF resources. It shall be presented in millions of euro and shall comprise:

(a) the financial outturn account, which sets out all financial operations for the year in terms of revenue and expenditure;

(b) the annex to the financial outturn account, which shall supplement and comment on the information given in that account.

3. The financial outturn account shall contain the following:

(a) a table describing changes over the preceding financial year in the allocations;

(b) a table showing by allocation the total commitments, assigned funds and payments effected during the financial year and aggregate totals since the opening of the EDF.

Article 45

Monitoring and reporting by the Commission and the EIB

1. The Commission and the EIB shall monitor, each to the extent to which it is concerned, the use of EDF assistance by the ACP States, the OCTs or any other beneficiary, and the implementation of projects financed by the EDF, having particular regard to the objectives referred to in Articles 55 and 56 of the ACP-EU Partnership Agreement and in the corresponding provisions of the Overseas Association Decision.

2. The EIB shall periodically inform the Commission regarding the implementation of projects financed by the EDF resources it administers, following the procedures set out in the operational guidelines of the Investment Facility.

3. The Commission and the EIB shall provide the Member States with information on the operational implementation of EDF resources as foreseen in Article 18 of the Implementation Regulation. The Commission shall send that information to the Court of Auditors in accordance with Article 11(5) of the 10th EDF Internal Agreement.

Article 46

Accounting

The accounting rules referred to in Article 143(1) of Regulation (EU, Euratom) No 966/2012 shall apply to the EDF resources managed by the Commission. Those rules shall be applied to the EDF while taking into account the specific nature of its activities.

The accounting principles contained in Article 144 of Regulation (EU, Euratom) No 966/2012 shall apply to the financial statements referred to in Article 44 of this Regulation.

Articles 151, 153, 154 and 155 of Regulation (EU, Euratom) No 966/2012 shall apply.

The accounting officer shall prepare and, after consulting the responsible authorising officer, adopt the chart of accounts to be applied to the EDF's operations.

Article 47

Budgetary accounting

1. The budgetary accounts shall provide a detailed record of the financial implementation of the EDF resources.

2. The budgetary accounts shall show all:

(a) allocations and the corresponding EDF resources;

(b) financial commitments;

(c) payments; and

(d) established debts and collection operations for the financial year, in full and without any adjustment against each other.

3. When commitments, payments and debts are expressed in national currencies, the accounting system shall make it possible, where necessary, for them to be recorded in national currencies as well as in euro.

4. Global financial commitments shall be recorded in euro for the value of the financing decisions taken by the Commission. Individual financial commitments shall be recorded in euro at the equivalent of the value of the legal commitments. That value shall include where appropriate:

(a) provision for the payment of reimbursable expenses on presentation of supporting documents;

(b) provision for the revision of prices, for the increase in quantities, and for contingencies as defined in EDF-funded contracts;

(c) financial provision for exchange rate fluctuations.

5. All accounting records referring to the fulfilment of a commitment shall be kept for a period of five years from the date of the decision giving discharge in respect of the financial implementation of EDF resources referred to in Article 50, concerning the financial year during which the commitment was closed for accounting purposes.

TITLE X

External Audit And Discharge

Article 48

External audit

1. Regarding the operations financed from EDF resources managed by the Commission in accordance with Article 16, the Court of Auditors shall exercise its powers in accordance with this Article and Article 49.

2. Articles 159, 160, Article 161, with the exception of paragraph 6 thereof, Article 162, with the exception of the first sentence of paragraph 3 and of paragraph 5 thereof, and Article 163 of Regulation (EU, Euratom) No 966/2012 shall apply.

3. For the purposes of Article 159(1) of Regulation (EU, Euratom) No 966/2012, the Court of Auditors shall have regard to the Treaties, the ACP-EU Partnership Agreement, the Overseas Association Decision, the 10th EDF Internal Agreement, this Regulation and all other acts adopted pursuant to those instruments.

4. For the purposes of Article 162(1) of Regulation (EU, Euratom) No 966/2012, the date set out in the first sentence shall be 15 June.

5. The Court of Auditors shall be informed of the internal rules referred to in Article 56(1) of Regulation (EU, Euratom) No 966/2012, including the appointment of authorising officers, as well as of the instrument of delegation referred to in Article 69 of Regulation (EU, Euratom) No 966/2012.

6. The national audit authorities of the ACP States and the OCTs shall be encouraged to cooperate with the Court of Auditors at its invitation.

7. The Court of Auditors may, at the request of one of the other Union institutions, issue opinions on matters relating to the EDF.

Article 49

Statement of assurance

At the same time as the annual report referred to in Article 162 of Regulation (EU, Euratom) No 966/2012, the Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions, which shall be published in the *Official Journal of the European Union*.

Article 50

Discharge regarding the Commission

1. The discharge decision shall cover the accounts referred to in Article 43, except the part thereof provided by the EIB in accordance with Article 57, and shall be adopted in accordance with Article 164 and Article 165(2) and (3) of Regulation (EU, Euratom) No 966/2012. The discharge referred to in Article 164(1) of Regulation (EU, Euratom) No 966/2012 shall be given in respect of those EDF resources that are managed by the Commission in accordance with Article 16(1) of this Regulation for year n.

2. The discharge decision shall be published in the *Official Journal of the European Union*.

3. Articles 166 and 167 of Regulation (EU, Euratom) No 966/2012 shall apply.

PART TWO

INVESTMENT FACILITY

Article 51

Role of the European Investment Bank

The EIB shall manage the Investment Facility and conduct operations thereunder, including interest rate subsidies and technical assistance, on behalf of the Union in accordance with Part Two of this Regulation.

In addition, the EIB shall undertake the financial implementation of other operations carried out by means of financing from its own resources in accordance with Article 4 of the 10th EDF Internal Agreement, where applicable combined with interest rate subsidies drawn from the EDF resources.

The implementation of Part Two of this Regulation shall not give rise to any obligations or liabilities on the part of the Commission.

Article 52

Estimates of commitments and payments of the Investment Facility

Before 1 September of each year, the EIB shall send the Commission its estimates of commitments and payments, which are necessary for drawing up the statement referred to in Article 7(1) of the 10th EDF Internal Agreement, in respect of the operations of the Investment Facility, including those interest rate subsidies that it implements, in accordance with the 10th EDF Internal Agreement. The EIB shall send the Commission updated estimates of commitments and payments when deemed necessary. Modalities shall be defined in the management agreement provided for in Article 55(4) of this Regulation.

Article 53

Management of contributions to the Investment Facility

1. The contributions referred to in point (b) of Article 21(7) and adopted by the Council shall be paid without cost for the beneficiary by the Member States to the EIB via a special account opened by the EIB in the name of the Investment Facility in accordance with detailed rules laid down in the management agreement provided for in Article 55(4).

2. Save where the Council decides otherwise regarding the remuneration of the EIB, in accordance with Article 5 of the 10th EDF Internal Agreement, proceeds received by the EIB via the credit balance of the special accounts referred to in paragraph 1 shall supplement the Investment Facility and shall be taken into consideration for the calls for contribution referred to in Article 21.

3. The EIB shall undertake the treasury management of the amounts referred to in paragraph 1 in accordance with the detailed rules laid down in the management agreement provided for in Article 55(4).

4. The Investment Facility shall be managed in accordance with the conditions laid down in the ACP-EU Partnership Agreement, the Overseas Association Decision, the 10th EDF Internal Agreement and Part Two of this Regulation.

Article 54

Remuneration of the EIB

The EIB shall be remunerated on a full indemnity basis for the management of the Investment Facility operations. The Council shall decide on the resources and mechanisms for remuneration of the EIB in accordance with Article 5(4) of the 10th EDF Internal Agreement. The measures implementing that decision shall be incorporated in the management agreement provided for in Article 55(4).

Article 55

Implementation of the Investment Facility

1. The EIB's own rules shall apply to instruments financed by the EDF resources which it manages.

2. Where programmes or projects are co-financed by the Member States or their implementing bodies, and correspond to the priorities which are laid down in the Country Cooperation Strategies and Programming Documents provided for in the Implementation Regulation foreseen in Article 10(1) of the 10th EDF Internal Agreement and in Article 83 of the Overseas Association Decision, the EIB may entrust tasks in the implementation of the Investment Facility to Member States or their implementing bodies.

3. The names of the recipients of financial support under the Investment Facility shall be published by the EIB, unless such disclosure risks harming the commercial interests of the recipients, with due observance of the requirements of confidentiality and security, in particular the protection of personal data. The criteria for disclosure and the level of detail published shall take into account specificities of the sector and the nature of the Investment Facility.

4. The detailed rules for implementing this Part shall be the subject of a management agreement between the Commission, acting on behalf of the Union, and the EIB.

Article 56

Reporting under the Investment Facility

The EIB shall regularly inform the Commission of the operations carried out under the Investment Facility, including interest rate subsidies, the use made of each call for contributions paid to the EIB, and, in particular, of the total quarterly amounts of commitments, contracts and payments, in accordance with the detailed rules laid down in the management agreement provided for in Article 55(4).

Article 57

Accounting, financial statements and annual report of the Investment Facility

1. The EIB shall keep the accounts of the Investment Facility, including those interest rate subsidies that are implemented by it and financed by the EDF, to provide a trail for the full circuit of the funds, from receipt to disbursement and then to the revenue to which they give rise and any subsequent recoveries. The EIB shall draw up the relevant accounting rules and methods which are guided by international accounting standards and inform the Commission and the Member States accordingly.

2. Each year the EIB shall send the Council and the Commission a report on the implementation of operations financed from EDF resources under its management, including the financial statements drawn up in accordance with the rules and methods referred to in paragraph 1 and the information referred to in Article 44(3).

Those documents shall be submitted in draft form no later than 28 February and in their final version no later than 30 June of the financial year following the one which they concern, so that they can be used by the Commission in preparing the accounts referred to in Article 43 in accordance with Article 11(6) of the 10th EDF Internal Agreement. The report on the financial management of the resources managed by the EIB shall be submitted by the latter to the Commission by 31 March.

Article 58

External audit and discharge on EIB operations

The operations financed from EDF resources managed by the EIB in accordance with this Part shall be subject to the audit and discharge procedures laid down in the Statute of the EIB for all its operations. Detailed rules for auditing by the Court of Auditors are set out in a Tripartite Agreement between the EIB, the Commission and the Court of Auditors.

PART THREE

TRANSITIONAL PROVISIONS

Article 59

Revenue from interest on resources of the Eighth, Ninth and Tenth EDFs

The balance of revenue accruing from interest on the resources of the Eighth, Ninth and Tenth EDFs shall be transferred to the EDF and allocated for the same purposes as the revenue provided for in Article 1(6) of the 10th EDF Internal Agreement. The same shall apply to miscellaneous revenue of the Eighth, Ninth and Tenth EDFs comprising, for example, default interest received in the event of late payment of contributions to those EDFs by Member States. The interest generated by the EDF resources managed by the EIB shall supplement the Investment Facility.

Article 60

Application of this Regulation to operations under the Eighth, Ninth and Tenth EDFs

The provisions of this Regulation shall apply to operations financed from the Eighth, Ninth and Tenth EDFs without prejudice to existing legal commitments. This rule shall not apply to the Investment Facility.

Article 61

Commencement of contribution procedures

The procedure concerning Member States' contributions laid down in Articles 21 to 24 of this Regulation shall apply for the first time with regard to the contributions of the year 2016. Articles 57 to 61 of Regulation (EC) No 215/2008 shall continue to apply until then.'

COMMISSION DELEGATED REGULATION (EU) No 568/2014

of 18 February 2014

amending Annex V to Regulation (EU) No 305/2011 of the European Parliament and of the Council as regards the assessment and verification of constancy of performance of construction products

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC [1], and in particular Article 60(e) thereof,

Whereas:

(1) Pursuant to Article 28 of Regulation (EU) No 305/2011, assessment and verification of constancy of performance of construction products in relation to their essential characteristics is to be carried out in accordance with the systems set out in Annex V to Regulation (EU) No 305/2011.

(2) Annex V should be adapted in order to respond to technological progress, to make provision for the specific case of products for which European Technical Assessments have been issued, as well as to enhance the clarity, accuracy and consistency to the descriptions and terms used therein, in line with practical experience gained in the course of the application of Annex V.

(3) This adaptation would facilitate the work of manufacturers and notified bodies authorised to carry out third-party tasks in the process of assessment and verification of constancy of performance of construction products, reduce administrative burden and increase clarity on the interpretation of Regulation (EU) No 305/2011, thus having a favourable impact on the competitiveness of the construction sector as a whole.

(4) Regulation (EU) No 305/2011 implies that the manufacturer is responsible for determining the product-type for any product the manufacturer wishes to place on the market. In the same context, the underlying logic of Regulation (EU) No 305/2011 does not imply the existence of product certification, but notified bodies are only responsible for assessing the performance of construction products, the constancy of which is then to be certified. This repartition of competences between manufacturer and notified bodies should be better reflected in Annex V, without entailing a shift in the responsibilities of these actors.

(5) Since constant surveillance of factory production control by notified bodies in fact is not possible and is not carried out in practice, reference should rather be made to the continuing nature of the surveillance.

(6) For construction products not covered or not fully covered by harmonised standards, European Technical Assessments (ETA) can be issued by a Technical Assessment Body. Pursuant to Article 2(13) of Regulation (EU) No 305/2011, such an ETA already contains an assessment of the performance of the product in question in relation to its essential characteristics. Additional subsequent controls of the correctness of this assessment process would not bring about any added value, but only generate unnecessary costs for manufacturers. Enterprises have already made requests for ETAs and need legal certainty with respect to the third-party tasks to be carried out in the process of assessment and verification of constancy of performance of these construction products.

(7) In order to better reflect the current practice the names of the types of notified bodies and the description of their respective tasks should be adjusted.

[1] OJ L 88, 4.4.2011, p. 5.

(8) A technical adaptation is necessary concerning the term 'noise absorption' referred to in Section 3 of Annex V to Regulation (EU) No 305/2011 to achieve a more accurate description of the essential characteristics to be assessed and more consistency with terminology used in relevant harmonised technical specifications.

(9) In order to ensure a smooth transition for manufacturers they should have the right to continue using certificates and other documents which were issued by notified bodies in accordance with Annex V to Regulation (EU) No 305/2011 before the entry into force of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Annex V to Regulation (EU) No 305/2011 is replaced by the text in the Annex to this Regulation.

Article 2

Certificates and other documents issued by notified bodies in accordance with Annex V to Regulation (EU) No 305/2011 before the entry into force of this Regulation shall be deemed to comply with this Regulation.

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, 18 February 2014.

For the Commission
The President
José Manuel BARROSO

ANNEX

'ANNEX V

ASSESSMENT AND VERIFICATION OF CONSTANCY OF PERFORMANCE

1. SYSTEMS OF ASSESSMENT AND VERIFICATION OF CONSTANCY OF PERFORMANCE

The manufacturer shall draw up the declaration of performance and determine the product-type on the basis of the assessments and verifications of constancy of performance carried out under the following systems:

1.1. **System 1+**

(a) The manufacturer shall carry out:

(i) factory production control;

(ii) further testing of samples taken at the manufacturing plant by the manufacturer in accordance with the prescribed test plan.

(b) The notified product certification body shall decide on the issuing, restriction, suspension or withdrawal of the certificate of constancy of performance of the construction product on the basis of the outcome of the following assessments and verifications carried out by that body:

(i) an assessment of the performance of the construction product carried out on the basis of testing (including sampling), calculation, tabulated values or descriptive documentation of the product;

(ii) initial inspection of the manufacturing plant and of factory production control;

(iii) continuing surveillance, assessment and evaluation of factory production control;

(iv) audit — testing of samples taken by the notified product certification body at the manufacturing plant or at the manufacturer's storage facilities.

1.2. **System 1**

(a) The manufacturer shall carry out:

(i) factory production control;

(ii) further testing of samples taken at the manufacturing plant by the manufacturer in accordance with the prescribed test plan.

(b) The notified product certification body shall decide on the issuing, restriction, suspension or withdrawal of the certificate of constancy of performance of the construction product on the basis of the outcome of the following assessments and verifications carried out by that body:

(i) an assessment of the performance of the construction product carried out on the basis of testing (including sampling), calculation, tabulated values or descriptive documentation of the product;

(ii) initial inspection of the manufacturing plant and of factory production control;

(iii) continuing surveillance, assessment and evaluation of factory production control.

1.3. **System 2+**

(a) The manufacturer shall carry out:

(i) an assessment of the performance of the construction product on the basis of testing (including sampling), calculation, tabulated values or descriptive documentation of that product;

(ii) factory production control;

(iii) testing of samples taken at the manufacturing plant by the manufacturer in accordance with the prescribed test plan.

(b) The notified factory production control certification body shall decide on the issuing, restriction, suspension or withdrawal of the certificate of conformity of the factory production control on the basis of the outcome of the following assessments and verifications carried out by that body:

(i) initial inspection of the manufacturing plant and of factory production control;

(ii) continuing surveillance, assessment and evaluation of factory production control.

1.4. **System 3**

(a) The manufacturer shall carry out factory production control.

(b) The notified laboratory shall assess the performance on the basis of testing (based on sampling carried out by the manufacturer), calculation, tabulated values or descriptive documentation of the construction product.

1.5. **System 4**

(a) The manufacturer shall carry out:

(i) an assessment of the performance of the construction product on the basis of testing, calculation, tabulated values or descriptive documentation of that product;

(ii) factory production control.

(b) No tasks require the intervention of notified bodies.

1.6. **Construction products for which a European Technical Assessment has been issued**

Notified bodies undertaking tasks under Systems 1+, 1 and 3 as well as manufacturers undertaking tasks under Systems 2+ and 4 shall consider the European Technical Assessment issued for the construction product in question as the assessment of the performance of that product. Notified bodies and manufacturers shall therefore not undertake the tasks referred to in points 1.1.(b)(i), 1.2.(b)(i), 1.3.(a)(i), 1.4.(b) and 1.5.(a)(i) respectively.

2. BODIES INVOLVED IN THE ASSESSMENT AND VERIFICATION OF CONSTANCY OF PERFORMANCE

With respect to the function of notified bodies involved in the assessment and verification of constancy of performance for construction products, distinction shall be made between:

(1) product certification body: a body notified, in accordance with Chapter VII, to carry out constancy of performance certification;

(2) factory production control certification body: a body notified, in accordance with Chapter VII, to carry out factory production control certification;

(3) laboratory: a body notified, in accordance with Chapter VII, to measure, examine, test, calculate or otherwise assess the performance of construction products.

3. HORIZONTAL NOTIFICATIONS: CASES OF ESSENTIAL CHARACTERISTICS WHERE REFERENCE TO A RELEVANT HARMONISED TECHNICAL SPECIFICATION IS NOT REQUIRED

1. Reaction to fire

2. Resistance to fire

3. External fire performance

4. Acoustic performance

5. Emissions of dangerous substances.'

COMMISSION IMPLEMENTING REGULATION (EU) No 569/2014

of 23 May 2014

amending Council Implementing Regulation (EU) No 1389/2011 imposing a definitive anti-dumping duty on imports of trichloroisocyanuric acid originating in the People's Republic of China following a 'new exporter' review pursuant to Article 11(4) of Council Regulation (EC) No 1225/2009

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ([1]) ('the basic Regulation'), and in particular Article 11(4) thereof,

Whereas:

A. MEASURES IN FORCE

(1) In October 2005, the Council imposed definitive anti-dumping measures on imports of trichloroisocyanuric acid ('TCCA'), originating in the People's Republic of China ('PRC') by Regulation (EC) No 1631/2005 ([2]) ('the original Regulation'). The anti-dumping duty rates ranged from 7,3 % to 42,6 %.

(2) By Implementing Regulation (EU) No 855/2010 ([3]), the Council amended the original Regulation by lowering the anti-dumping duty rate for one exporting producer to 3,2 %.

(3) Following an expiry review, pursuant to Article 11(2) of the basic Regulation, the Council imposed definitive anti-dumping measures consisting of individual duties ranging from 3,2 % to 40,5 % with a residual duty of 42,6 % on imports of TCCA originating in the PRC by Implementing Regulation (EU) No 1389/2011 ([4]).

B. CURRENT PROCEDURE

1. Request for a review

(4) On 3 May 2013, the European Commission ('the Commission') received a request to initiate a 'new exporter' review pursuant to Article 11(4) of the basic Regulation. The request was lodged by Liaocheng City Zhonglian Industry Co. Ltd ('the applicant'), an exporting producer in PRC.

(5) The applicant claimed that it did not export the TCCA to the Union during the original period of investigation, i.e. the period from 1 April 2003 to 31 March 2004 ('the original investigation period').

(6) Furthermore, the applicant claimed that it was not related to any of the exporting producers of TCCA which are subject to the abovementioned anti-dumping measures.

(7) The applicant further claimed that it had begun exporting TCCA to the Union after the end of the original investigation period.

2. Initiation of a new exporter review

(8) The Commission examined the *prima facie* evidence submitted by the applicant and considered it sufficient to justify the initiation of a review in accordance with Article 11(4) of the basic Regulation. After consultation of the Advisory Committee and after the Union industry concerned had been given the opportunity to comment, the Commission initiated by Regulation (EU) No 809/2013 ([5]), a review of Implementing Regulation (EU) No 1389/2011 with regard to the applicant.

([1]) OJ L 343, 22.12.2009, p. 51.
([2]) OJ L 261, 7.10.2005, p. 1.
([3]) OJ L 254, 29.9.2010, p. 1.
([4]) OJ L 346, 30.12.2011, p. 6.
([5]) OJ L 229, 28.8.2013, p. 2.

(9) Pursuant to Regulation (EU) No 809/2013, the anti-dumping duty imposed by Implementing Regulation (EU) No 1389/2011 was repealed with regard to imports of TCCA produced and sold for export to the Union by the applicant. Simultaneously, pursuant to Article 14(5) of the basic Regulation, customs authorities were directed to take appropriate steps to register such imports.

3. **Product concerned**

(10) The product concerned by the current review is the same as that described in the original Regulation, trichloroisocyanuric acid and preparations thereof also referred to as 'symclosene' under the international non-proprietary name (INN), currently falling within CN codes ex 2933 69 80 and ex 3808 94 20 and originating in the People's Republic of China ('the product concerned' or 'TCCA').

(11) TCCA is a chemical product used as a broad spectrum organic chlorine disinfectant and bleacher, in particular used for disinfecting water in swimming pools. It is sold in the form of powder, granules, tablets or chips. All forms of TCCA and preparations thereof share the same basic characteristics (chemical composition) and properties (disinfectant), are all intended for similar use and are therefore considered as a single product.

4. **Parties concerned**

(12) The Commission officially advised the applicant, the Union industry as well as the representatives of the exporting country, of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to be heard.

(13) In order to obtain the information deemed necessary for this investigation, the Commission sent a market economy treatment (MET) claim form and a questionnaire to the applicant and received replies within the deadlines set for that purpose. The Commission sought to verify all the information it deemed necessary for the determination of the new exporter status and the dumping margin. A verification visit was carried out at the premises of the applicant in the PRC.

5. **Investigation period**

(14) The investigation of dumping covered the period from 1 August 2012 until 31 July 2013 ('investigation period' or 'IP').

C. **RESULTS OF THE INVESTIGATION**

1. **'New exporter' qualification**

(15) The investigation confirmed that the applicant had not exported the product concerned during the original investigation period and that it had started to export it to the Union after that period.

(16) As concerns the other conditions for the recognition of a 'new exporter' status, the applicant was able to demonstrate that it did not have any links, direct or indirect, with any of the Chinese exporting producers subject to the anti-dumping measures in force with regard to the product concerned.

(17) Accordingly, it is confirmed that the applicant should be considered a 'new exporter' in accordance with Article 11(4) of the basic Regulation and thus an individual margin should be determined for it.

2. **Dumping**

Market economy treatment (MET)

(18) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of Article 2 of the basic Regulation for those exporting producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is shown that market economic conditions prevail in respect of the manufacture and sale of the like product.

(19) These criteria are set out in summarised form below:

— business decisions are made in response to market signals without significant State interference, and costs reflect market values,

— firms have one clear set of independently audited accounting records in line with international accounting standards (IAS) and applied for all purposes,

— no significant distortions are carried over from the former non-market economy system,

— bankruptcy and property laws guarantee stability and legal certainty,

— exchange rate conversions are carried out at market rates.

(20) The investigation established that the applicant's accounting records were not in line with international accounting standards and that, therefore, the company's accounting practice does not fulfil the requirements of the second criterion. In particular, the applicant failed to report in its accounts the implementation of an incentive scheme for management staff in line with international accounting standards.

(21) As a consequence, the balance sheet did not faithfully represent the financial position of the company and the profit and loss account and cash flow statement were burdened by financial costs for which there was no justification.

(22) Based on these considerations, the applicant could not be granted MET.

(23) The applicant and other interested parties were given an opportunity to comment on the above findings.

(24) The applicant pointed out that the incentive scheme should be booked in 2013, that it has no connection with the balance sheet of 2012 and that in 2012 the nature of the scheme was not yet determined. According to the applicant, such determination would be made in accordance with recommendations to be made by the auditors at the moment of the auditing exercise of the financial accounts for 2013 and could take the form of remuneration, interest on loan or quasi-contribution.

(25) The scheme was contractually concluded upon between the company and the management in 2012. However, there was no indication of it in the audited accounts of 2012, not even in the notes to the financial accounts. No accounting entry, identifying the incentive scheme, was made during the financial year 2013 up to the time of the investigation (November 2013) either.

(26) This absence of reporting in the accounts is serious. Indeed, the total liabilities reported in the trial balance at the end of the IP, 31 July 2013, were significantly underreported since the total loan amount pledged by managers would have increased the figure of the liabilities by 14 %. Moreover, the profit and loss account of 2013 will contain financial costs for which there is no legal basis, since no incoming cash flow corresponding to the incentive scheme occurred and interests were nevertheless effectively paid in 2013. As a consequence, the 2013 financial costs will be 9 times higher than the costs reported for 2012. Therefore, the financial information contained in the accounts did not provide for a reliable and faithful representation of the financial position of the company.

(27) It should also be noted that the nature of the scheme and the accounting thereof cannot depend on auditing qualification and that the booking thereof should be correctly made in a timely manner and not retrospectively. Therefore, a failure to report with accuracy the financial position and flows related to the scheme, cannot be considered to be in line with international accounting standards.

(28) In reaction to the disclosure of the Commission's findings, the applicant reiterated its request for MET, without however bringing any new argument. The findings on the MET determination are therefore confirmed.

Normal value

(29) According to Article 2(7)(a) of the basic Regulation, for non-market economy countries and, to the extent that MET could not be granted, for countries in transition, normal value has to be established on the basis of the price or constructed value in an analogue country.

(30) As announced in the Regulation (EU) No 809/2013, the Commission envisaged using Japan as an analogue country for the purpose of establishing normal value for the applicant in the event that it was not granted market economy treatment and as it was done in the investigation which led to the imposition of measures by the original Regulation.

(31) Interested parties were invited to comment on the appropriateness of Japan as an analogue country and did not submit any comments. The Commission also contacted producers in the United States of America, but did not obtain any cooperation. Consequently, Japan is considered to be an appropriate analogue country. One producer in Japan agreed to cooperate and submitted the requested information.

(32) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the Japanese producer's domestic sales of TCCA to independent customers were representative. In this respect, it was found that the total volume of such sales was equal to at least 5 % of the total volume of applicant's export sales to the Union.

(33) The Commission subsequently examined whether there were types of TCCA sold domestically by the Japanese cooperating producer that were sufficiently comparable to the types sold by the applicant for export to the Union. The Commission identified the types of TCCA found to be identical or directly comparable to the type sold for export to the Union by the applicant. It was also established that these types were sold at profitable levels and in the ordinary course of trade by the Japanese company and that the domestic sales prices could be considered for the determination of the normal value.

(34) Therefore, normal value was based on the actual domestic price, calculated as a weighted average, of the product types of TCCA deemed comparable.

Export price

(35) As the product concerned was exported directly to independent customers in the Union, the export price was established in accordance with Article 2(8) of the basic regulation, i.e. on the basis of the export prices actually paid or payable for the product when sold for export to the Union.

Comparison

(36) The normal value and export prices were compared on an ex-works basis and at the same level of trade. For the purpose of ensuring a fair comparison between the normal value and the export price, account was taken, in accordance with article 2(10) of the basic Regulation, of differences which affected price comparability. For this purpose, transport costs and packaging expenses were removed from both the Chinese export prices and the Japanese cooperating producer's domestic sales prices.

Dumping margin

(37) As provided for under Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of a weighted average normal value by type with the weighted average export price of the corresponding type of the product concerned. This comparison showed the existence of dumping.

(38) The dumping margin for the applicant, expressed as a percentage of the net, free-at-Union-frontier price was found to be 32,8 %.

D. **AMENDMENT OF MEASURES BEING REVIEWED**

(39) In view of the findings of the investigation and in accordance with the lesser duty rule, it is concluded that a definitive anti-dumping measure should be imposed for the applicant at the level of the dumping margin found, which in this case is lower than the injury margin in the original case.

E. **REGISTRATION**

(40) In the light of the above findings, the anti-dumping duty applicable to the applicant shall be levied retroactively on imports of the product concerned which have been made subject to registration pursuant to Article 3 of Regulation (EU) No 809/2013.

F. **DISCLOSURE AND DURATION OF THE MEASURES**

(41) The parties concerned were informed of the essential facts and considerations on the basis of which it was intended to impose on imports of TCCA from the applicant an amended definitive anti-dumping duty and to levy this duty retroactively on imports made subject to the registration. Comments were received from the applicant, however, as explained above, they were not of a nature to change the above conclusions.

(42) This review does not affect the date on which the measures imposed by Implementing Regulation (EU) No 1389/2011 will expire.

G. **OPINION OF THE COMMITTEE**

(43) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. In Article 1(2) of Implementing Regulation (EU) No 1389/2011 the following row shall be inserted into the table:

Company	Anti-dumping duty rate	TARIC additional code
'Liaocheng City Zhonglian Industry Co. Ltd	32,8 %	A998'

2. As stipulated in Article 1(3) of Implementing Regulation (EU) No 1389/2011, the application of the individual duty shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to that Regulation. If no such invoice is presented, the anti-dumping duty rate applicable to 'all other companies' mentioned in the table of Article 1(2) of Implementing Regulation (EU) No 1389/2011 shall apply.

The duty hereby imposed shall also be levied retroactively on imports of the product concerned which have been registered pursuant to Article 3 of Regulation (EU) No 809/2013. These imports are not subject to the condition of presentation of a commercial invoice since they were registered.

The customs authorities are hereby directed to cease the registration of imports of the product concerned originating in the People's Republic of China produced and sold for export to the Union by Liaocheng City Zhonglian Industry Co. Ltd

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

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

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

Done at Brussels, 23 May 2014.

For the Commission
The President
José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 570/2014

of 26 May 2014

terminating the partial reopening of the anti-dumping investigation concerning imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ([1]) ('the basic Regulation'), and in particular Article 9(4) thereof,

Whereas:

A. EXISTING MEASURES

(1) The Council, by Implementing Regulation (EU) No 1138/2011 ([2]) imposed a definitive anti-dumping duty on imports of certain fatty alcohols and their blends ('FOH') originating in India, Indonesia and Malaysia ('definitive Regulation'). The definitive Regulation was preceded by Commission Regulation (EU) No 446/2011 ([3]) imposing a provisional anti-dumping duty on imports of FOH originating in India, Indonesia and Malaysia ('provisional Regulation'). The findings that led to the imposition of the definitive anti-dumping duties will be referred to as 'the findings of the original investigation'.

(2) On 21 January 2012, PT Ecogreen Oleochemicals, an Indonesian exporting producer of FOH, Ecogreen Oleochemicals (Singapore) Pte. Ltd and Ecogreen Oleochemicals GmbH (herein jointly referred to as 'Ecogreen') lodged an application (case T- 28/12) before the General Court for the annulment of the definitive Regulation as far as the anti-dumping duty with regard to Ecogreen was concerned. Ecogreen contested the adjustment made on the basis of Article 2(10)(i) of the basic Regulation to its export price for the purpose of comparing that export price with the company's normal value.

(3) In case T-249/06 (Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT) and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT) v. Council of the European Union), the General Court annulled Article 1 of Regulation (EC) No 954/2006 with regard to Interpipe NTRP VAT, inter alia, on the grounds of a manifest error of assessment in making the adjustment based on Article 2(10)(i) and with regard to Interpipe Niko Tube ZAT on other grounds. On 16 February 2012, the Court of Justice rejected the appeal lodged by the Council and the Commission (Joined Cases C-191/09 P and C-200/09 P).

(4) Given that the factual circumstances for Ecogreen were similar to those of Interpipe NTRP VAT in respect of the adjustment made pursuant to Article 2(10)(i) of the basic Regulation, it was considered appropriate to re-calculate the dumping margin of Ecogreen without making an adjustment pursuant to Article 2(10)(i).

(5) Council Implementing Regulation (EU) No 1241/2012 of 11 December 2012 amending Implementing Regulation (EU) No 1138/2011 imposing a definitive duty and collecting definitively the provisional duty imposed on imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia ([4]) was therefore published on 21 December 2012, with retroactive application as from 12 November 2011 ('amending Regulation').

(6) The dumping margin therein established for Ecogreen was *de minimis* in accordance with Article 9(3) of the basic Regulation. The investigation in respect of Ecogreen was therefore terminated without the imposition of measures. The General Court decided subsequently on 9 April 2013 that there was no need to adjudicate on the action brought in case T-28/12.

(7) Although all the other exporting producers in India, Indonesia and Malaysia remained subject to anti-dumping duties, the findings of the original investigation in particular the injurious effects of the dumped imports should be reassessed in the light of the revised dumping findings contained in the amending Regulation.

([1]) OJ L 343, 22.12.2009, p. 51.
([2]) OJ L 293, 11.11.2011, p. 1.
([3]) OJ L 122, 11.5.2011, p. 47.
([4]) OJ L 352, 21.12.2012, p. 1.

B. REASSESSMENT OF THE FINDINGS OF THE ORIGINAL INVESTIGATION

1. Framework of the reassessment

(8) A Notice concerning a partial reopening of the anti-dumping investigation concerning imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia ('countries concerned') was published on 28 February 2013 [1] ('reopening'). The notice mentioned that the reopening was limited in scope to the examination of the impact the newly established dumping margins may have on the findings relating in particular to injury and causation established in the original investigation ('re-investigation').

(9) The Commission officially advised the exporting producers, the importers and users known to be concerned and the Union industry of the partial reopening of the investigation. Interested parties were given the opportunity to make their views known in writing and to be heard within the time limit set out in the notice.

(10) Several parties argued that it was unclear on which legal basis the Commission reopened the original investigation and which data the Commission would collect to establish the facts and reach conclusions in the current re-investigation.

(11) Parties also claimed that it was not clear what type of investigation was initiated and what the final outcome could be in the context of the level of the definitive measures, what period would be covered and which aspects of the original investigation were being reassessed.

(12) It is recalled that this reopening is the necessary consequence of the adoption of the amending Regulation, which was itself the result of the findings of the General Court in case T-249/06 (Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT) and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT) v. Council of the European Union.

(13) It is recalled that in the original investigation the so-called investigation period (IP) was the period running from 1 July 2009 to 30 June 2010. The assessment of injury covered the period from 1 January 2007 up to the end of the IP and was referred to as 'the period considered'.

(14) The current re-investigation is focussing on the same IP and the same period considered. The findings reached for these periods during the original investigation as far as injury and causality are concerned are being re-assessed in the light of the newly established dumping margins for the Indonesian exporters in the amending Regulation.

(15) More specifically, and as mentioned in the reopening notice, the aim of the current re-investigation is to determine whether the '*de minimis*' dumping margin established for one exporting producer in Indonesia and the change in the level of the dumping margins for the other Indonesian companies established by the amending Regulation, may have any impact on the findings of the original investigation relating to injury and to causation.

(16) The results of the re-investigation are set out below. As was the case in the original investigation, certain data and information is provided in indexed form in particular to preserve the confidentiality of data originally submitted.

2. Product concerned and like product

(17) It is recalled that the product concerned is the one defined in the original investigation, namely, saturated fatty alcohols with a carbon chain length of C8, C10, C12, C14, C16 or C18 (not including branched isomers) including single saturated fatty alcohols (also referred to as 'single cuts') and blends predominantly containing a combination of carbon chain lengths C6-C8, C6-C10, C8-C10, C10-C12 (commonly categorised as C8-C10), blends predominantly containing a combination of carbon chain lengths C12-C14, C12-C16, C12-C18, C14-C16 (commonly categorised as C12-C14) and blends predominantly containing a combination of carbon chain lengths C16-C18, originating in India, Indonesia, and Malaysia, currently falling within CN codes ex 2905 16 85, 2905 17 00, ex 2905 19 00 and ex 3823 70 00 ('fatty alcohol').

(18) The findings of the amending Regulation do not affect the findings set out in the original investigation concerning the product under consideration and the like product.

3. Dumping

(19) As mentioned in recital (7) of the amending Regulation, the dumping margins for all companies in Indonesia, other than for the other exporting producer with an individual margin, which was based on that of the cooperating Indonesian exporting producer with the highest dumping margin, were revised to take account of the recalculated dumping margin of Ecogreen.

[1] OJ C 58, 28.2.2013, p. 24.

(20) The dumping margins established in recital (23) of the definitive Regulation for Indian exporting producers and those established in recital (55) for Malaysian exporting producers were not affected by the amending Regulation.

(21) As mentioned in recital (6) of the amending Regulation, the dumping margin for Ecogreen was established at less than 2 % and is therefore below the *de minimis* threshold foreseen in Article 9(3) of the basic Regulation. The imports into the Union made by this exporting producer should thus be considered as non-dumped imports in the re-investigation.

(22) The volume, price and market share of the non-dumped imports made by the said Indonesian exporter developed as shown in the table below during the period considered. As mentioned in recital (16) above, data submitted is indexed.

Imports	2007	2008	2009	IP
Tonnes				
Index: 2007 = 100	*100*	*110*	*107*	*115*
Annual Δ %		9,6	– 2,3	7,5
Market Share				
Index: 2007 = 100	*100*	*107*	*110*	*113*
Annual Δ %		6,8	2,9	2,8
Average price EUR/tonne				
Index: 2007 = 100	*100*	*110*	*91*	*91*
Annual Δ %		9,9	– 17,0	0,2

Source: Questionnaire replies.

(23) With reference to the table shown in recital (70) of the provisional Regulation, which was confirmed by recital (64) of the definitive Regulation, and the above table, the investigation showed that the non-dumped imports represented a limited share of the total imports from the countries concerned and that they grew proportionally less than the dumped imports during the period considered. Indeed, the non-dumped imports represented around 15 %-18 % of the total volume of imports from the countries concerned in 2007 and only around 10 %-13 % during the IP.

(24) The re-investigation shows that the average prices of the non-dumped imports from Ecogreen decreased by 9 % in the period considered but they remained stable between 2009 and the IP.

4. **Injury**

4.1. *Union production and Union Industry*

(25) The findings set out in recitals (57) to (61) of the definitive Regulation regarding Union production and Union industry are not affected by the re-investigation and are hereby confirmed.

4.2. *Union consumption*

(26) The findings set out in recitals (64) to (66) of the provisional Regulation which were confirmed by recital (62) of the definitive Regulation remain unaffected. It is confirmed that, as shown in the table below, Union consumption of fatty alcohol was fairly stable and increased only slightly by 2 % during the period considered. As mentioned in recital (64) of the provisional Regulation the information concerning consumption was provided in indexed form to preserve the confidentiality of data.

Consumption	2007	2008	2009	IP
Index: 2007 = 100	*100*	*102*	*97*	*102*
Annual Δ %		2,2	– 4,8	4,6

4.3. *Imports into the Union from the countries concerned and price undercutting*

4.3.1. Cumulative assessment of dumped imports

(27) As was the case in the original investigation, it was examined whether or not a cumulative assessment of the dumped imports for the three countries concerned was still warranted in accordance with the provisions of Article 3(4) of the basic Regulation in view of the revised dumping margins for Indonesian exporting producers mentioned in recitals (19) and (21) above.

(28) It is recalled that Article 3(4) of the basic Regulation states that where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the effects of such imports shall be cumulatively assessed only if it is determined that: (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 9(3) of that Regulation and that the volume of imports from each country is not negligible; and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Union product.

(29) The findings concerning the volumes and price of dumped imports for each of the countries concerned were reassessed for the period considered. The information relating to import volume used to establish the average prices mentioned in the table in recital (63) (b) of the definitive Regulation remain unchanged as far as Malaysia and India are concerned. The data relating to Indonesia was revised to take account of the fact that, as mentioned above in recital (21) above, one exporting producer was no longer considered to be dumping its products in the Union market. The newly established dumped imports developed as shown below. With reference to recital (16) above, the information concerning import volume is provided in indexed form for each of the countries concerned.

Import volume of dumped imports	2007	2008	2009	IP
Malaysia				
Index: 2007 = 100	*100*	*161*	*141*	*137*
Annual Δ %		61,4	– 12,5	– 2,9
India				
Index: 2007 = 100	*100*	*118*	*104*	*143*
Annual Δ %		18,2	– 11,8	37,5
Indonesia				
Index: 2008 = 100		*100*	*142*	*168*
Annual Δ %			42,1	17,9

(30) The investigation showed that the volume of dumped imports for each of the countries concerned was not negligible during the IP and that the presence of dumped imports in the Union market remained significant during the period considered and in particular during the IP. The fact that one of the Indonesian exporting producers was found by the amending Regulation not to be dumping does not change this conclusion.

(31) The findings concerning the pricing of the dumped imports for each of the countries concerned were also reassessed for the period considered and are shown in the table below. The prices mentioned in the table in recital (63) (b) of the definitive Regulation remain unchanged as far as Malaysia and India are concerned. The data relating to Indonesia was revised to take account of the fact that, as mentioned above in recital (21), one exporting producer was not considered to be dumping its products in the Union market. With reference to recital (16) above the information concerning the price of the Indonesian exporter found to dump is provided in indexed form.

Imports based on Eurostat (adjusted to cover the product concerned and the dumped imports)	2007	2008	2009	IP
Average price in EUR/tonne Malaysia	911	944	799	857
Index: 2007 = 100	*100*	*104*	*88*	*94*
Annual Δ %		3,6	– 15,4	7,3
Average price in EUR/tonne India	997	1 141	897	915
Index: 2007 = 100	*100*	*114*	*90*	*92*
Annual Δ %		14,4	– 21,4	2,1
Average price in EUR/tonne Indonesia				
Index: 2008 = 100		*100*	*70*	*72*
Annual Δ %			– 30,0	2,6

Source: Eurostat and Questionnaire replies.

(32) The investigation showed that, except for 2007 when there were no imports from Indonesia, the pricing of Indonesian exporting producers remained almost the same as in the original investigation. Hence, the finding made in recital (63) (b) of the definitive Regulation that the pricing and the pricing behaviour of the countries concerned were largely similar in particular during the IP can be confirmed. The fact that one of the Indonesian exporting producers was found by the amending regulation not to be dumping does not change this conclusion.

(33) Moreover, the findings made in recital (127) of the provisional Regulation and confirmed in recital (122) of the definitive Regulation and in particular that the injury elimination levels established for the countries concerned were significantly above the *de minimis* threshold of 2 % also remain valid. Also, the sales channels and the price trends for each of the countries concerned were analysed and found to be similar, as the table above shows. The import prices from the countries concerned followed a declining trend after the peak in 2008 and were on a global level particularly low compared to the average Union industry's prices as the investigation showed.

(34) The table below shows that the market share of dumped imports from each country concerned overall increased during the period considered. With reference to recital (16) above, the information is provided in indexed form.

Market share of dumped imports	2007	2008	2009	IP
Malaysia				
Index: 2007 = 100	*100*	*157*	*145*	*135*
Annual Δ %		57	– 8	– 7
India				
Index: 2007 = 100	*100*	*115*	*107*	*141*
Annual Δ %		15	– 7	31
Indonesia				
Index: 2008 = 100		*100*	*142*	*168*
Annual Δ %			50	13

(35) Based on the above facts and considerations, the re-investigation shows that the findings made in the original investigation concerning cumulation remain unchanged. It is thus considered that the conditions set forth in Article 3(4) of the basic Regulation concerning the cumulative assessment of the dumped imports from the countries concerned continue to be met. The effects of the dumped imports originating in the countries concerned can thus be assessed jointly for the purpose of the re-investigation of injury and causality.

4.3.2. Volume, price and market share of dumped imports

(36) In order to establish the cumulative level of dumped imports into the Union market during the period considered, account is taken of the fact that the amending Regulation confirmed the positive findings of dumping for all the exporting producers in Indonesia with the exception of Ecogreen. Their exports are considered to be dumped and thus remain subject to anti-dumping duties.

(37) Similarly, the re-investigation takes account of the fact that the dumping margins established in the original investigation for all exporting producers in India and Malaysia remain unchanged, and that their imports are considered to be dumped and remain subject to anti-dumping duties.

(38) The volume of dumped imports from the countries concerned has been adjusted by deducting the volume of the non-dumped imports from one Indonesian exporting producer, as referred to in recital (29) above.

(39) Based on the above, the data mentioned in recital (70) of the provisional Regulation, and confirmed by recital (64) of the definitive Regulation, and the findings contained in recitals (71) to (73) of the provisional Regulation concerning the assessment of the dumped imports during the period considered, as confirmed by recital (65) of the definitive Regulation, are revised as shown below. With reference to recital (16) above, the information concerning total import volumes and market share of dumped imports is provided in indexed form.

Dumped Imports from the countries concerned	2007	2008	2009	IP
Tonnes				
Index: 2007 = 100	*100*	*167*	*155*	*165*
Annual Δ %		67,0	– 7,3	6,5
Market share				
Index: 2007 = 100	*100*	*163*	*159*	*162*
Annual Δ %		62,7	– 2,3	1,8
Average price EUR/tonne dumped imports	931	1 007	827	878
Index: 2007 = 100	*100*	*108*	*89*	*94*
Annual Δ %		8,2	– 17,9	6,1

Source: Eurostat and Questionnaire replies.

(40) The volume of dumped imports from the countries concerned established in the current re-investigation increased significantly by 65 % during the period considered. The biggest increase took place between 2007 and 2008 when imports increased by 67 %. Imports then decreased slightly in 2009 to increase again almost to the 2008 level during the IP.

(41) The revised average prices of dumped imports from the countries concerned fluctuated heavily during the period considered, reflecting an overall 6 % decrease. But it is noteworthy that between 2008 and the IP the rate of decrease was as high as 14 %. Throughout the period considered, average prices of the imports from the countries concerned were always lower than those set by the rest of the world and were undercutting those of the Union Industry, thus resulting in an increase in the market share of the dumped imports.

(42) The market share of the dumped imports from the countries concerned increased significantly, by 62 %, during the period considered. The biggest increase took place between 2007 and 2008. There was a slight decrease of imports during the economic crisis, which slightly reduced the market share of the countries concerned by 4 %, between 2008 and 2009, but then they regained market share by the end of the period considered.

(43) The exclusion of non-dumped imports from Ecogreen does therefore not alter in any way the findings made in the original investigation regarding volume, price and market share of dumped imports, which are therefore confirmed.

4.3.3. Price Undercutting

(44) It is recalled that the ranges concerning the price undercutting found in the original investigation were explained in recitals (74) and (75) of the provisional Regulation and confirmed in recital (67) of the definitive Regulation. The individual calculations established for each of the exporters concerned were not affected by the amending Regulation. These findings are therefore confirmed.

(45) The average undercutting found for the dumped imports cumulatively assessed for three countries together after exclusion of the non-dumped imports is 2 %. This apparently low undercutting has to be seen in the light of the fact that the Union industry saw itself forced to lower its prices due to the presence of the low priced imports on the EU market. These prices were however not covering the cost of production in particular during the IP. The average underselling for the cumulatively assessed dumped imports, Ecogreen excluded, was 22 %.

(46) In reaction to the disclosure of the Commission's findings, an importer of FOH originating in Indonesia claimed the average price of the non-dumped imports would be lower than the average price of the imports produced by the Indonesian exporting producer remaining under measures. However, that claim does not affect the finding of price undercutting for the dumped imports cumulatively assessed.

4.4. *Economic situation of the Union Industry*

(47) The findings made in recitals (76) to (91) of the provisional Regulation and confirmed in recitals (71) to (84) of the definitive Regulation concerning the economic situation of the Union industry are not affected by the amending Regulation and can therefore be confirmed.

(48) It is recalled that the original investigation showed that most of the injury indicators pertaining to the Union industry such as production (– 17 %), capacity utilization (– 15 %), sales volume (– 18 %), market share (– 12 %) and employment (– 13 %) deteriorated during the period considered. In particular the injury indicators relating to the financial performance of the Union industry such as cash flow and profitability were seriously affected. This means that the ability of the Union industry to raise capital was undermined, in particular during the IP.

(49) In the light of the foregoing, the conclusion that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation is confirmed.

5. **Causation**

(50) Further to the confirmation of the existence of material injury suffered by the Union industry it has been reassessed whether there is still a causal link between the said injury following the revised findings for dumping as established in the amending Regulation and the revised dumped imports from the countries concerned.

5.1. *Effect of the dumped imports*

(51) As shown in recital (26) above, consumption in the Union was fairly stable and only increased by 2 % during the period considered.

(52) The table in recital (39) above, which excludes the imports made by the Indonesian exporter found by the amending Regulation not to have dumped its products on the Union market, shows that the revised volume of dumped imports from the three countries concerned remained important and increased significantly by over 60 000 tonnes in absolute terms and by over 60 % in relative terms during the period considered. Likewise, the market share held by the dumped imports increased significantly and gained more than 5 percentage points during that period.

(53) These trends are very similar to those established in the original investigation and in particular in recitals (86) to (94) of the definitive Regulation. The increase in market share, which was established at 57 % in the original investigation, is now for the period considered to be more than 60 % with the revised data.

(54) Indeed, the re-investigation confirmed that the dumped imports from the countries concerned exerted pressure on the Union industry, starting from the year 2008, when these imports grew by 67 %. In that year, the prices of dumped imports, as shown in recital (39), were much lower than the Union industry's prices. This resulted in a significant loss in sales volume (– 15,4 %) and market share for the Union industry, which they could never regain in the remainder of the period considered. At the same time, the dumped imports from the countries concerned increased their market share by over 9 percentage points.

(55) It was shown in recital (72) of the definitive Regulation that in order to respond to this pressure, the Union industry had to significantly reduce its sales prices by 16,9 % in 2009 and even had to further decrease them by 5,3 % during the IP. Even if this price behaviour allowed the Union industry to limit the loss in market share, it led to significant losses accumulated during the period considered, as illustrated in recital (86) of the provisional regulation, and confirmed in recital (78) of the definitive regulation. This situation coincided with the presence of large volumes of low-priced dumped imports in the Union market in particular during the IP.

(56) In 2009, although the absolute volume of dumped imports from the countries concerned decreased by 7,3 %, in line with the economic downturn and the contraction in the EU market, it is observed that the average price of the dumped imports decreased by 17,9 %, thus more than the 16,9 % reduction in the Union industry's price. During the IP, the Union industry had to decrease its prices and accumulated financial losses.

(57) The above considerations show the severe consequences the presence of large volumes of low-priced dumped imports in the Union market had on the pricing behaviour of the Union industry on its core market and the negative impact it had on its economic situation in particular during the IP.

(58) The above mentioned importer claimed that in the analysis of the causal link, the remaining dumped Indonesian imports should be decumulated from the imports originating in India and Malaysia, on the basis of factors such as the stable market share, the higher price level, the lack of undercutting, the lower underselling margin of those Indonesian imports and the parallel evolution of the Indonesian and Union industry market shares. The importer further claimed that no causal link existed between the injury and the dumped Indonesian imports, once decumulated.

(59) The claim was rejected because the factors raised by the importer, sometimes on a selective basis, are not those considered relevant under Article 3(4) of the basic Regulation to determine whether or not cumulation should be applied, in particular as concerns the conditions of competition between imported products and the like Union products. Indeed, the original investigation concluded that the product concerned is an intermediary commodity product mainly used as input for the production of fatty alcohol sulphates, ethoxylates and ether sulphates, and that the imported product competes directly with the Union produced product, regardless of the country of origin. The uniformity of the competition on the Union market therefore warrants the cumulative assessment of imports in the sense of Article 3(4)(b) of the basic Regulation. The arguments of the importer do not address this finding, and could only become relevant once decumulation applies. Given that there is no basis to amend the findings of the original investigation on cumulation, the analysis of the effects of the dumped imports is confirmed.

(60) In addition, it should be noted that the remaining Indonesian imports were made at dumped price levels, they increased strongly their market share over the period concerned and they were underselling the Union industry's sales prices.

(61) Finally, the importer mentioned that Ecogreen was underselling more than the remaining Indonesian exporting producer and that therefore, because Ecogreen's imports are considered to have a negligible impact, the same conclusion should apply *a fortiori* to the remaining Indonesian imports.

(62) This conclusion is based on a wrong premiss. The Court ruling caused a change in the dumping calculation of Ecogreen, which then became *de minimis*. It is only for that reason that the impact of Ecogreen's imports had to be considered negligible. The claim is therefore rejected.

(63) Based on the above findings it is concluded that the dumped imports caused material injury to the Union industry.

5.2. *Effect of other factors*

(64) The effect of other factors on the situation of the Union industry in the context of causality was likewise re-examined.

5.2.1. Non-dumped Imports from Indonesia

(65) As mentioned in recital (23) above, the non-dumped imports grew proportionally less than the dumped imports and only represented a limited share of the total imports from the countries concerned during the IP. In addition, the investigation also showed that these imports only had a modest market share during the period considered and in particular during the IP.

(66) The volume of dumped imports increased by 6,5 % between 2009 and the IP, namely more than the market recovery illustrated by the 4,6 % increase in the Union consumption, and thus gained market share.

(67) It is thus considered that any impact the non-dumped imports may have had on the Union market during the IP cannot outweigh the significant negative impact of the dumped imports described in details in recitals (51) to (57).

(68) Based on the above findings, it is considered that the presence of non-dumped imports from Ecogreen in the Union market during the IP is not such as to break the causal link between the dumped imports and the injury suffered by the Union industry during the IP.

5.2.2. Other factors examined in the original investigation

(69) In the original investigation, the other factors examined in the context of the potential causes of the material injury suffered by the Union industry were: the imports into the Union from the rest of the world, the export performance of the Union industry, the impact of the economic crisis and the sales of the branched isomers which are not covered by the product scope.

(70) Given that these factors are not affected by the revised dumping margins established for the Indonesian exporting producers, the findings and conclusion reached in recitals (95) to (100) of the definitive Regulation with regard to these factors are confirmed. The impact of these factors is not such as to break the causal link established between the dumped imports and the injury suffered by the Union industry.

5.3. *Conclusion on causation*

(71) The current re-investigation shows that there is still a clear and direct link between the increase in volume and the negative price effect of dumped imports and the material injury suffered by the Union industry during the IP.

(72) The above analysis shows that the volume of non-dumped imports was limited compared to the bulk of dumped products imported from the countries concerned. In a context of fairly stable consumption, these dumped imports increased significantly both in absolute and in relative terms during the period considered and their presence had a considerable negative impact on the Union market. Indeed, it was observed that, because of the distortion created in the market, the Union industry had to significantly reduce its prices by 22,2 % as from 2008, and could not cover its costs and achieve a reasonable amount of profit in particular during the IP.

(73) The re-investigation also confirmed that the effects of other factors than dumped imports could not break the causal link between the dumped imports and the injury suffered by the Union industry.

(74) Consequently, the re-investigation shows that there is a causal link between the dumped imports from India, Indonesia and Malaysia and the material injury suffered by the Union industry during the IP. The conclusions reached in recitals (101) and (102) of the definitive Regulation are hereby confirmed.

6. **Union interest**

(75) The conclusion reached in recital (118) of the definitive Regulation with regard to the Union interest have not been shown to be affected by the amending Regulation and are hereby confirmed.

C. **REASSESSMENT OF THE DEFINITIVE MEASURES**

(76) As shown above, the re-investigation of the relevant facts and findings established in the original investigation taking account of the new dumping margins as established in the amending Regulation showed that the remaining dumped imports from India, Indonesia and Malaysia into the Union market are causing material injury to the Union industry during the IP.

(77) In view of the conclusions reached in the original investigation with regard to dumping, injury, causation and Union interest and given that the current re-investigation confirmed the existence of a causal link between the material injury suffered by the Union industry and the remaining dumped imports from the countries concerned, the definitive measures imposed by the amending Regulation should be confirmed at the same level. As a consequence, it is concluded that this re-investigation should be terminated without amending the definitive measures as imposed by the definitive Regulation.

(78) The anti-dumping measures in force, as established in Council Implementing Regulation (EU) No 1138/2011 and amended by Council Implementing Regulation (EU) No 1241/2012 remain valid and should therefore stay in force. It is recalled that the measures imposed were specific duties and were established for each exporting producer concerned as follows:

Country	Company	Definitive specific AD duty (EUR per tonne net)
India	VVF (India) Ltd	46,98
	All other companies	86,99
Indonesia	P.T.Ecogreen Oleochemicals	0,00
	P.T. Musim Mas	45,63
	All other companies	45,63
Malaysia	KL-Kepong Oleomas Sdn.Bhd.	35,19
	Emery Oleochemicals (M) Sdn. Bhd.	61,01
	Fatty Chemical Malaysia Sdn. Bhd	51,07
	All other companies	61,01

(79) The authorities of the countries concerned, the exporters and their associations, all interested parties in the Union, in particular the Union industry, importers, users' and traders' associations, were informed of the essential facts and considerations on the basis of which it was intended to terminate the partial reopening of the anti-dumping re-investigation concerning imports of fatty alcohol from countries concerned and were given an opportunity to comment and to be heard. The oral and written comments submitted by these parties were considered but have not altered the conclusions reached in this Regulation.

(80) One exporting producer offered a price undertaking in accordance with Article 8(1) of the basic Regulation.

(81) It was found in particular that the exporting producer in question produces a range of products apart from the product concerned and sells these other products to the same clients. This would create a serious risk of cross-compensation and would render the effective monitoring of the undertaking extremely difficult, undermining the effectiveness of a price undertaking in the current case. On that basis, the Commission concluded that the undertaking offer cannot be accepted.

(82) The measures provided in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The partial reopening of the anti-dumping investigation concerning imports of saturated fatty alcohols with a carbon chain length of C8, C10, C12, C14, C16 or C18 (not including branched isomers) including single saturated fatty alcohols (also referred to as 'single cuts') and blends predominantly containing a combination of carbon chain lengths C6-C8, C6-C10, C8- C10, C10-C12 (commonly categorised as C8-C10), blends predominantly containing a combination of carbon chain lengths C12-C14, C12-C16, C12-C18, C14-C16 (commonly categorised as C12-C14) and blends predominantly containing a combination of carbon chain lengths C16-C18, currently falling within CN codes ex 2905 16 85, 2905 17 00, ex 2905 19 00 and ex 3823 70 00 (TARIC codes 2905 16 85 10, 2905 19 00 60, 3823 70 00 11 and 3823 70 00 91) and originating in India, Indonesia, and Malaysia is hereby terminated without amending the duties in force.

Article 2

This regulation shall enter into force on the day following 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, 26 May 2014.

For the Commission
The President
José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 571/2014

of 26 May 2014

approving the active substance ipconazole, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ([1]), and in particular Article 13(2) and Article 78(2) thereof,

Whereas:

(1) In accordance with Article 80(1)(a) of Regulation (EC) No 1107/2009, Council Directive 91/414/EEC ([2]) is to apply, with respect to the procedure and the conditions for approval, to active substances for which a decision has been adopted in accordance with Article 6(3) of that Directive before 14 June 2011. For ipconazole the conditions of Article 80(1)(a) of Regulation (EC) No 1107/2009 are fulfilled by Commission Decision 2008/20/EC ([3]).

(2) In accordance with Article 6(2) of Directive 91/414/EEC the United Kingdom received on 30 March 2007 an application from Kureha GmbH for the inclusion of the active substance ipconazole in Annex I to Directive 91/414/EEC. Decision 2008/20/EC confirmed that the dossier was 'complete' in the sense that it could be considered as satisfying, in principle, the data and information requirements of Annexes II and III to Directive 91/414/EEC.

(3) For that active substance, the effects on human and animal health and the environment have been assessed, in accordance with the provisions of Article 6(2) and (4) of Directive 91/414/EEC, for the uses proposed by the applicant. The designated rapporteur Member State, the United Kingdom, submitted a draft assessment report on 22 May 2008. In accordance with Article 11(6) of Commission Regulation (EU) No 188/2011 ([4]) additional information was requested from the applicant on 20 May 2011. The evaluation of the additional data by the United Kingdom was submitted in the format of an updated draft assessment report in November 2011.

(4) The draft assessment report was reviewed by the Member States and the European Food Safety Authority (hereinafter 'the Authority'). The Authority presented to the Commission its conclusion ([5]) on the peer review of the pesticide risk assessment of the active substance ipconazole on 2 April 2013. The draft assessment report and the conclusion of the Authority were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 20 March 2014 in the format of the Commission review report for ipconazole.

(5) It has appeared from the various examinations made that plant protection products containing ipconazole may be expected to satisfy, in general, the requirements laid down in Article 5(1)(a) and (b) and Article 5(3) of Directive 91/414/EEC, in particular with regard to the uses which were examined and detailed in the Commission review report. It is therefore appropriate to approve ipconazole.

(6) In accordance with Article 13(2) of Regulation (EC) No 1107/2009 in conjunction with Article 6 thereof and in the light of current scientific and technical knowledge, it is, however, necessary to include certain conditions and restrictions. It is, in particular, appropriate to require further confirmatory information.

([1]) OJ L 309, 24.11.2009, p. 1.

([2]) Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1).

([3]) Commission Decision 2008/20/EC of 20 December 2007 recognising in principle the completeness of the dossiers submitted for detailed examination in view of the possible inclusion of ipconazole and maltodextrin in Annex I to Council Directive 91/414/EEC (OJ L 1, 4.1.2008, p. 5).

([4]) Commission Regulation (EU) No 188/2011 of 25 February 2011 laying down detailed rules for the implementation of Council Directive 91/414/EEC as regards the procedure for the assessment of active substances which were not on the market 2 years after the date of notification of that Directive (OJ L 53, 26.2.2011, p. 51).

([5]) European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance ipconazole. EFSA Journal 2013;11(4):3181. [76 pp.] doi:10.2903/j.efsa.2013.3181. Available online: www.efsa.europa.eu/efsajournal

(7) A reasonable period should be allowed to elapse before approval in order to permit Member States and the interested parties to prepare themselves to meet the new requirements resulting from the approval.

(8) Without prejudice to the obligations provided for in Regulation (EC) No 1107/2009 as a consequence of approval, taking into account the specific situation created by the transition from Directive 91/414/EEC to Regulation (EC) No 1107/2009, the following should, however, apply. Member States should be allowed a period of six months after approval to review authorisations of plant protection products containing ipconazole. Member States should, as appropriate, vary, replace or withdraw authorisations. By way of derogation from that deadline, a longer period should be provided for the submission and assessment of the complete Annex III dossier, as set out in Directive 91/414/EEC, of each plant protection product for each intended use in accordance with the uniform principles.

(9) The experience gained from inclusions in Annex I to Directive 91/414/EEC of active substances assessed in the framework of Commission Regulation (EEC) No 3600/92 [1] has shown that difficulties can arise in interpreting the duties of holders of existing authorisations in relation to access to data. In order to avoid further difficulties it therefore appears necessary to clarify the duties of the Member States, especially the duty to verify that the holder of an authorisation demonstrates access to a dossier satisfying the requirements of Annex II to that Directive. However, this clarification does not impose any new obligations on Member States or holders of authorisations compared to the Directives which have been adopted until now amending Annex I to that Directive or the Regulations approving active substances.

(10) In accordance with Article 13(4) of Regulation (EC) No 1107/2009, the Annex to Commission Implementing Regulation (EU) No 540/2011 [2] should be amended accordingly.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

Approval of active substance

The active substance ipconazole, as specified in Annex I, is approved subject to the conditions laid down in that Annex.

Article 2

Re-evaluation of plant protection products

1. Member States shall in accordance with Regulation (EC) No 1107/2009, where necessary, amend or withdraw existing authorisations for plant protection products containing ipconazole as an active substance by 28 February 2015.

By that date they shall in particular verify that the conditions in Annex I to this Regulation are met, with the exception of those identified in the column on specific provisions of that Annex, and that the holder of the authorisation has, or has access to, a dossier satisfying the requirements of Annex II to Directive 91/414/EEC in accordance with the conditions of Article 13(1) to (4) of that Directive and Article 62 of Regulation (EC) No 1107/2009.

2. By way of derogation from paragraph 1, for each authorised plant protection product containing ipconazole as either the only active substance or as one of several active substances, all of which were listed in the Annex to Implementing Regulation (EU) No 540/2011 by 31 August 2014 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles, as referred to in Article 29(6) of Regulation (EC) No 1107/2009, on the basis of a dossier satisfying the requirements of Annex III to Directive 91/414/EEC and taking into account the column on specific provisions of Annex I to this Regulation. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 29(1) of Regulation (EC) No 1107/2009.

---

[1] Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market (OJ L 366, 15.12.1992, p. 10).

[2] Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ L 153, 11.6.2011, p. 1).

Following that determination Member States shall:

(a) in the case of a product containing ipconazole as the only active substance, where necessary, amend or withdraw the authorisation by 29 February 2016 at the latest; or

(b) in the case of a product containing ipconazole as one of several active substances, where necessary, amend or withdraw the authorisation by 29 February 2016 or by the date fixed for such an amendment or withdrawal in the respective act or acts which added the relevant substance or substances to Annex I to Directive 91/414/EEC or approved that substance or those substances, whichever is the latest.

Article 3

Amendments to Implementing Regulation (EU) No 540/2011

The Annex to Implementing Regulation (EU) No 540/2011 is amended in accordance with Annex II to this Regulation.

Article 4

Entry into force and date of application

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

It shall apply from 1 September 2014.

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

Done at Brussels, 26 May 2014.

For the Commission
The President
José Manuel BARROSO

ANNEX I

Common Name, Identification Numbers	IUPAC Name	Purity (1)	Date of approval	Expiration of approval	Specific provisions
Ipconazole CAS No 125225-28-7 (mixture of diastereoisomers) 115850-69-6 (ipconazole cc, cis isomer) 115937-89-8 (ipconazole ct, trans isomer) CIPAC No 798	(1*RS*,2*SR*,5*RS*;1*RS*,2-*SR*,5*SR*)-2-(4-chlorobenzyl)-5-isopropyl-1-(1*H*-1,2,4-triazol-1-ylmethyl) cyclopentanol	≥ 955 g/kg Ipconazole cc: 875 – 930 g/kg Ipconazole ct: 65 – 95 g/kg	1 September 2014	31 August 2024	For the implementation of the uniform principles as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on ipconazole, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 20 March 2014 shall be taken into account. In this overall assessment Member States shall pay particular attention to: 1. the risk to granivorous birds; 2. the protection of workers and operators; 3. the risk to fish.Conditions of use shall include risk mitigation measures, where appropriate. The applicant shall submit confirmatory information as regards: (a) the acceptability of the long-term risk to granivorous birds; (b) the acceptability of the risk to soil macro-organisms; (c) the risk of enantio-selective metabolisation or degradation; (d) the potential endocrine disrupting properties of ipconazole for birds and fish.The applicant shall submit to the Commission, the Member States and the Authority the information under (a) and (b) by 31 August 2016, the information under (c) within two years after adoption of the pertinent guidance document on evaluation of isomer mixtures and the information under (d) within two years after the adoption of the OECD test guidelines on endocrine disruption or, alternatively, of test guidelines agreed at EU level.

(1) Further details on identity and specification of active substance are provided in the review report.

ANNEX II

In Part B of the Annex to Implementing Regulation (EU) No 540/2011, the following entry is added:

Number	Common Name, Identification Numbers	IUPAC Name	Purity (*)	Date of approval	Expiration of approval	Specific provisions
'73	Ipconazole CAS No 125225-28-7 (mixture of diastereoisomers) 115850-69-6 (ipconazole cc, cis isomer) 115937-89-8 (ipconazole ct, trans isomer) CIPAC No 798	(1*RS*,2*SR*,5*RS*;1*RS*,2*SR*,5*SR*)-2-(4-chlorobenzyl)-5-isopropyl-1-(1*H*-1,2,4-triazol-1-ylmethyl) cyclopentanol	≥ 955 g/kg Ipconazole cc: 875 – 930 g/kg Ipconazole ct: 65 – 95 g/kg	1 September 2014	31 August 2024	For the implementation of the uniform principles as referred to in Article 29(6) of Regulation (EC) No 1107/2009, the conclusions of the review report on ipconazole, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 20 March 2014 shall be taken into account. In this overall assessment Member States shall pay particular attention to: 1. the risk to granivorous birds; 2. the protection of workers and operators; 3. the risk to fish.Conditions of use shall include risk mitigation measures, where appropriate. The applicant shall submit confirmatory information as regards: (a) the acceptability of the long-term risk to granivorous birds; (b) the acceptability of the risk to soil macro-organisms; (c) the risk of enantio-selective metabolisation or degradation; (d) the potential endocrine disrupting properties of ipconazole for birds and fish.The applicant shall submit to the Commission, the Member States and the Authority the information under (a) and (b) by 31 August 2016, the information under (c) within two years after adoption of the pertinent guidance document on evaluation of isomer mixtures and the information under (d) within two years after the adoption of the OECD test guidelines on endocrine disruption or, alternatively, of test guidelines agreed at EU level.'

(*) Further details on identity and specification of active substance are provided in the review report.

COMMISSION IMPLEMENTING REGULATION (EU) No 572/2014

of 26 May 2014

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 Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ([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, 26 May 2014.

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

([1]) OJ L 299, 16.11.2007, p. 1.
([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	AL	45,8
	MA	33,4
	MK	77,8
	TR	65,0
	ZZ	55,5
0707 00 05	AL	36,9
	MK	43,4
	TR	122,8
	ZZ	67,7
0709 93 10	MA	29,9
	TR	114,9
	ZZ	72,4
0805 10 20	EG	50,8
	MA	43,2
	TR	49,7
	ZZ	47,9
0805 50 10	TR	100,4
	ZA	139,4
	ZZ	119,9
0808 10 80	AR	103,2
	BR	90,7
	CL	107,3
	CN	98,7
	MK	26,7
	NZ	131,4
	US	185,3
	ZA	110,0
	ZZ	106,7

(1) Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

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

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN