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## Legislation

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<sup>(1)</sup> Text with EEA relevance

## I

(Legislative acts)

## DIRECTIVES

**DIRECTIVE (EU) 2016/343 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 9 March 2016****on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings**

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 point (b) of Article 82(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 <sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) The presumption of innocence and the right to a fair trial are enshrined in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union (the Charter), Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR), Article 14 of the International Covenant on Civil and Political Rights (the ICCPR) and Article 11 of the Universal Declaration of Human Rights.
- (2) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the Presidency conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point (33) thereof, enhanced mutual recognition of judgments and other judicial decisions and the necessary approximation of legislation would facilitate cooperation between competent authorities and the judicial protection of individual rights. The principle of mutual recognition should therefore become the cornerstone of judicial cooperation in civil and criminal matters within the Union.
- (3) According to the Treaty on the Functioning of the European Union (TFEU), judicial cooperation in criminal matters in the Union is to be based on the principle of mutual recognition of judgments and other judicial decisions.

<sup>(1)</sup> OJ C 226, 16.7.2014, p. 63.

<sup>(2)</sup> Position of the European Parliament of 20 January 2016 (not yet published in the Official Journal) and decision of the Council of 12 February 2016.

- (4) The implementation of that principle relies on the premise that Member States trust in each other's criminal justice systems. The extent of the principle of mutual recognition is dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspects and accused persons and common minimum standards necessary to facilitate the application of that principle.
- (5) Although the Member States are party to the ECHR and to the ICCPR, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.
- (6) On 30 November 2009, the Council adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings <sup>(1)</sup> ('the Roadmap'). Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E).
- (7) On 11 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme — An open and secure Europe serving and protecting citizens <sup>(2)</sup> (point 2.4). The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further elements of minimum procedural rights for suspects and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area.
- (8) Three measures on procedural rights in criminal proceedings have been adopted pursuant to the Roadmap to date, namely Directives 2010/64/EU <sup>(3)</sup>, 2012/13/EU <sup>(4)</sup> and 2013/48/EU <sup>(5)</sup> of the European Parliament and of the Council.
- (9) The purpose of this Directive is to enhance the right to a fair trial in criminal proceedings by laying down common minimum rules concerning certain aspects of the presumption of innocence and the right to be present at the trial.
- (10) By establishing common minimum rules on the protection of procedural rights of suspects and accused persons, this Directive aims to strengthen the trust of Member States in each other's criminal justice systems and thus to facilitate mutual recognition of decisions in criminal matters. Such common minimum rules may also remove obstacles to the free movement of citizens throughout the territory of the Member States.
- (11) This Directive should apply only to criminal proceedings as interpreted by the Court of Justice of the European Union (Court of Justice), without prejudice to the case-law of the European Court of Human Rights. This Directive should not apply to civil proceedings or to administrative proceedings, including where the latter can lead to sanctions, such as proceedings relating to competition, trade, financial services, road traffic, tax or tax surcharges, and investigations by administrative authorities in relation to such proceedings.
- (12) This Directive should apply to natural persons who are suspects or accused persons in criminal proceedings. It should apply from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, and, therefore, even before that person is made aware by the competent authorities of a Member State, by official notification or otherwise, that he or she is a suspect or accused person. This Directive should apply at all stages of the criminal proceedings until the decision on the final determination of whether the suspect or accused person has committed the criminal offence has become definitive. Legal actions and remedies which are available only once that decision has become definitive, including actions before the European Court of Human Rights, should not fall within the scope of this Directive.

<sup>(1)</sup> OJ C 295, 4.12.2009, p. 1.

<sup>(2)</sup> OJ C 115, 4.5.2010, p. 1.

<sup>(3)</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

<sup>(4)</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

<sup>(5)</sup> Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

- (13) This Directive acknowledges the different needs and levels of protection of certain aspects of the presumption of innocence as regards natural and legal persons. As regards natural persons, such protection is reflected in well-established case-law of the European Court of Human Rights. The Court of Justice has, however, recognised that the rights flowing from the presumption of innocence do not accrue to legal persons in the same way as they do to natural persons.
- (14) At the current stage of development of national law and of case-law at national and Union level, it is premature to legislate at Union level on the presumption of innocence with regard to legal persons. This Directive should not, therefore, apply to legal persons. This should be without prejudice to the application of the presumption of innocence as laid down, in particular, in the ECHR and as interpreted by the European Court of Human Rights and by the Court of Justice, to legal persons.
- (15) The presumption of innocence with regard to legal persons should be ensured by the existing legislative safeguards and case-law, the evolution of which is to determine whether there is a need for Union action.
- (16) The presumption of innocence would be violated if public statements made by public authorities, or judicial decisions other than those on guilt, referred to a suspect or an accused person as being guilty, for as long as that person has not been proved guilty according to law. Such statements and judicial decisions should not reflect an opinion that that person is guilty. This should be without prejudice to acts of the prosecution which aim to prove the guilt of the suspect or accused person, such as the indictment, and without prejudice to judicial decisions as a result of which a suspended sentence takes effect, provided that the rights of the defence are respected. This should also be without prejudice to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and are based on suspicion or on elements of incriminating evidence, such as decisions on pre-trial detention, provided that such decisions do not refer to the suspect or accused person as being guilty. Before taking a preliminary decision of a procedural nature the competent authority might first have to verify that there are sufficient elements of incriminating evidence against the suspect or accused person to justify the decision concerned, and the decision could contain reference to those elements.
- (17) The term 'public statements made by public authorities' should be understood to be any statement which refers to a criminal offence and which emanates from an authority involved in the criminal proceedings concerning that criminal offence, such as judicial authorities, police and other law enforcement authorities, or from another public authority, such as ministers and other public officials, it being understood that this is without prejudice to national law regarding immunity.
- (18) The obligation not to refer to suspects or accused persons as being guilty should not prevent public authorities from publicly disseminating information on the criminal proceedings where this is strictly necessary for reasons relating to the criminal investigation, such as when video material is released and the public is asked to help in identifying the alleged perpetrator of the criminal offence, or to the public interest, such as when, for safety reasons, information is provided to the inhabitants of an area affected by an alleged environmental crime or when the prosecution or another competent authority provides objective information on the state of criminal proceedings in order to prevent a public order disturbance. The use of such reasons should be confined to situations in which this would be reasonable and proportionate, taking all interests into account. In any event, the manner and context in which the information is disseminated should not create the impression that the person is guilty before he or she has been proved guilty according to law.
- (19) Member States should take appropriate measures to ensure that, when they provide information to the media, public authorities do not refer to suspects or accused persons as being guilty for as long as such persons have not been proved guilty according to law. To that end, Member States should inform public authorities of the importance of having due regard to the presumption of innocence when providing or divulging information to the media. This should be without prejudice to national law protecting the freedom of press and other media.
- (20) The competent authorities should abstain from presenting suspects or accused persons as being guilty, in court or in public, through the use of measures of physical restraint, such as handcuffs, glass boxes, cages and leg irons, unless the use of such measures is required for case-specific reasons, either relating to security, including to prevent suspects or accused persons from harming themselves or others or from damaging any property, or relating to the prevention of suspects or accused persons from absconding or from having contact with third persons, such as witnesses or victims. The possibility of applying measures of physical restraint does not imply that the competent authorities are to take any formal decision on the use of such measures.

- (21) Where feasible, the competent authorities should also abstain from presenting suspects or accused persons in court or in public while wearing prison clothes, so as to avoid giving the impression that those persons are guilty.
- (22) The burden of proof for establishing the guilt of suspects and accused persons is on the prosecution, and any doubt should benefit the suspect or accused person. The presumption of innocence would be infringed if the burden of proof were shifted from the prosecution to the defence, without prejudice to any *ex officio* fact-finding powers of the court, to the independence of the judiciary when assessing the guilt of the suspect or accused person, and to the use of presumptions of fact or law concerning the criminal liability of a suspect or accused person. Such presumptions should be confined within reasonable limits, taking into account the importance of what is at stake and maintaining the rights of the defence, and the means employed should be reasonably proportionate to the legitimate aim pursued. Such presumptions should be rebuttable and in any event, should be used only where the rights of the defence are respected.
- (23) In various Member States not only the prosecution, but also judges and competent courts are charged with seeking both inculpatory and exculpatory evidence. Member States which do not have an adversarial system should be able to maintain their current system provided that it complies with this Directive and with other relevant provisions of Union and international law.
- (24) The right to remain silent is an important aspect of the presumption of innocence and should serve as protection from self-incrimination.
- (25) The right not to incriminate oneself is also an important aspect of the presumption of innocence. Suspects and accused persons should not be forced, when asked to make statements or answer questions, to produce evidence or documents or to provide information which may lead to self-incrimination.
- (26) The right to remain silent and the right not to incriminate oneself should apply to questions relating to the criminal offence that a person is suspected or accused of having committed and not, for example, to questions relating to the identification of a suspect or accused person.
- (27) The right to remain silent and the right not to incriminate oneself imply that competent authorities should not compel suspects or accused persons to provide information if those persons do not wish to do so. In order to determine whether the right to remain silent or the right not to incriminate oneself has been violated, the interpretation by the European Court of Human Rights of the right to a fair trial under the ECHR should be taken into account.
- (28) The exercise of the right to remain silent or the right not to incriminate oneself should not be used against a suspect or accused person and should not, in itself, be considered to be evidence that the person concerned has committed the criminal offence concerned. This should be without prejudice to national rules concerning the assessment of evidence by courts or judges, provided that the rights of the defence are respected.
- (29) The exercise of the right not to incriminate oneself should not prevent the competent authorities from gathering evidence which may be lawfully obtained from the suspect or accused person through the use of legal powers of compulsion and which has an existence independent of the will of the suspect or accused person, such as material acquired pursuant to a warrant, material in respect of which there is a legal obligation of retention and production upon request, breath, blood or urine samples and bodily tissue for the purpose of DNA testing.
- (30) The right to remain silent and the right not to incriminate oneself should not preclude Member States from deciding that, with regard to minor offences, such as minor road traffic offences, the conduct of the proceedings, or certain stages thereof, may take place in writing or without questioning of the suspect or accused person by the competent authorities in relation to the offence concerned, provided that this complies with the right to a fair trial.
- (31) Member States should consider ensuring that, where suspects or accused persons are provided with information about rights pursuant to Article 3 of Directive 2012/13/EU, they are also provided with information concerning the right not to incriminate oneself, as it applies under national law in accordance with this Directive.

- (32) Member States should consider ensuring that, where suspects or accused persons are provided with a Letter of Rights pursuant to Article 4 of Directive 2012/13/EU, such a Letter also contains information concerning the right not to incriminate oneself as it applies under national law in accordance with this Directive.
- (33) The right to a fair trial is one of the basic principles in a democratic society. The right of suspects and accused persons to be present at the trial is based on that right and should be ensured throughout the Union.
- (34) If, for reasons beyond their control, suspects or accused persons are unable to be present at the trial, they should have the possibility to request a new date for the trial within the time frame provided for in national law.
- (35) The right of suspects and accused persons to be present at the trial is not absolute. Under certain conditions, suspects and accused persons should be able, expressly or tacitly, but unequivocally, to waive that right.
- (36) Under certain circumstances it should be possible for a decision on the guilt or innocence of a suspect or accused person to be handed down even if the person concerned is not present at the trial. This might be the case where the suspect or accused person has been informed, in due time, of the trial and of the consequences of non-appearance and does not, nevertheless, appear. Informing a suspect or accused person of the trial should be understood to mean summoning him or her in person or, by other means, providing that person with official information about the date and place of the trial in a manner that enables him or her to become aware of the trial. Informing the suspect or accused person of the consequences of non-appearance should, in particular, be understood to mean informing that person that a decision might be handed down if he or she does not appear at the trial.
- (37) It should also be possible to hold a trial which may result in a decision on guilt or innocence in the absence of a suspect or accused person where that person has been informed of the trial and has given a mandate to a lawyer who was appointed by that person or by the State to represent him or her at the trial and who represented the suspect or accused person.
- (38) When considering whether the way in which the information is provided is sufficient to ensure the person's awareness of the trial, particular attention should, where appropriate, also be paid to the diligence exercised by public authorities in order to inform the person concerned and to the diligence exercised by the person concerned in order to receive information addressed to him or her.
- (39) Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but the conditions for taking a decision in the absence of a particular suspect or accused person are not met because the suspect or accused person could not be located despite reasonable efforts having been made, for example because the person has fled or absconded, it should nevertheless be possible to take a decision in the absence of the suspect or accused person and to enforce that decision. In that case, Member States should ensure that when suspects or accused persons are informed of the decision, in particular when they are apprehended, they should also be informed of the possibility to challenge the decision and of the right to a new trial or to another legal remedy. Such information should be provided in writing. The information may also be provided orally on condition that the fact that the information has been provided is noted in accordance with the recording procedure under national law.
- (40) Competent authorities in the Member States should be allowed to exclude a suspect or accused person temporarily from the trial where this is in the interests of securing the proper conduct of the criminal proceedings. This could, for example, be the case where a suspect or accused person disturbs the hearing and must be escorted out of the court room on order of the judge, or where it appears that the presence of a suspect or accused person prevents the proper hearing of a witness.
- (41) The right to be present at the trial can be exercised only if one or more hearings are held. This means that the right to be present at the trial cannot apply if the relevant national rules of procedure do not provide for a hearing. Such national rules should comply with the Charter and with the ECHR, as interpreted by the Court of Justice and by the European Court of Human Rights, in particular with regard to the right to a fair trial. This is the case, for example, if the proceedings are conducted in a simplified manner following, solely or in part, a written procedure or a procedure in which no hearing is provided for.

- (42) Member States should ensure that in the implementation of this Directive, in particular with regard to the right to be present at the trial and the right to a new trial, the particular needs of vulnerable persons are taken into account. According to the Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings<sup>(1)</sup>, vulnerable suspects or accused persons should be understood to mean all suspects or accused persons who are not able to understand or effectively participate in criminal proceedings due to their age, their mental or physical condition or any disabilities they may have.
- (43) Children are vulnerable and should be given a specific degree of protection. Therefore, in respect of some of the rights provided for in this Directive, specific procedural safeguards should be established.
- (44) The principle of effectiveness of Union law requires that Member States put in place adequate and effective remedies in the event of a breach of a right conferred upon individuals by Union law. An effective remedy, which is available in the event of a breach of any of the rights laid down in this Directive, should, as far as possible, have the effect of placing the suspects or accused persons in the same position in which they would have found themselves had the breach not occurred, with a view to protecting the right to a fair trial and the rights of the defence.
- (45) When assessing statements made by suspects or accused persons or evidence obtained in breach of the right to remain silent or the right not to incriminate oneself, courts and judges should respect the rights of the defence and the fairness of the proceedings. In that context, regard should be had to the case-law of the European Court of Human Rights, according to which the admission of statements obtained as a result of torture or of other ill-treatment in breach of Article 3 ECHR as evidence to establish the relevant facts in criminal proceedings would render the proceedings as a whole unfair. According to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, any statement which is established to have been made as a result of torture should not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.
- (46) In order to monitor and evaluate the effectiveness of this Directive, Member States should send available data with regard to the implementation of the rights laid down in this Directive to the Commission. Such data could include records made by law enforcement and judicial authorities as regards remedies applied in the case of a breach of any of the aspects of the presumption of innocence covered by this Directive or of the right to be present at the trial.
- (47) This Directive upholds the fundamental rights and principles recognised by the Charter and by the ECHR, including the prohibition of torture and inhuman or degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, the integration of persons with disabilities, the right to an effective remedy and the right to a fair trial, the presumption of innocence and the rights of the defence. Regard should be had, in particular, to Article 6 of the Treaty on European Union (TEU), according to which the Union recognises the rights, freedoms and principles set out in the Charter, and according to which fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, are to constitute general principles of Union law.
- (48) As this Directive establishes minimum rules, Member States should be able to extend the rights laid down in this Directive in order to provide a higher level of protection. The level of protection provided for by Member States should never fall below the standards provided for by the Charter or by the ECHR, as interpreted by the Court of Justice and by the European Court of Human Rights.
- (49) Since the objectives of this Directive, namely setting common minimum rules for certain aspects of the presumption of innocence and for the right to be present at the trial in criminal proceedings, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 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.

<sup>(1)</sup> OJ C 378, 24.12.2013, p. 8.



- (50) 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 it or subject to its application.
- (51) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to 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 1

### SUBJECT MATTER AND SCOPE

#### *Article 1*

#### **Subject matter**

This Directive lays down common minimum rules concerning:

- (a) certain aspects of the presumption of innocence in criminal proceedings;
- (b) the right to be present at the trial in criminal proceedings.

#### *Article 2*

#### **Scope**

This Directive applies to natural persons who are suspects or accused persons in criminal proceedings. It applies at all stages of the criminal proceedings, from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, until the decision on the final determination of whether that person has committed the criminal offence concerned has become definitive.

#### CHAPTER 2

### PRESUMPTION OF INNOCENCE

#### *Article 3*

#### **Presumption of innocence**

Member States shall ensure that suspects and accused persons are presumed innocent until proved guilty according to law.

#### *Article 4*

#### **Public references to guilt**

1. Member States shall take the necessary measures to ensure that, for as long as a suspect or an accused person has not been proved guilty according to law, public statements made by public authorities, and judicial decisions, other than those on guilt, do not refer to that person as being guilty. This shall be without prejudice to acts of the prosecution which aim to prove the guilt of the suspect or accused person, and to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and which are based on suspicion or incriminating evidence.

2. Member States shall ensure that appropriate measures are available in the event of a breach of the obligation laid down in paragraph 1 of this Article not to refer to suspects or accused persons as being guilty, in accordance with this Directive and, in particular, with Article 10.
3. The obligation laid down in paragraph 1 not to refer to suspects or accused persons as being guilty shall not prevent public authorities from publicly disseminating information on the criminal proceedings where strictly necessary for reasons relating to the criminal investigation or to the public interest.

#### *Article 5*

### **Presentation of suspects and accused persons**

1. Member States shall take appropriate measures to ensure that suspects and accused persons are not presented as being guilty, in court or in public, through the use of measures of physical restraint.
2. Paragraph 1 shall not prevent Member States from applying measures of physical restraint that are required for case-specific reasons, relating to security or to the prevention of suspects or accused persons from absconding or from having contact with third persons.

#### *Article 6*

### **Burden of proof**

1. Member States shall ensure that the burden of proof for establishing the guilt of suspects and accused persons is on the prosecution. This shall be without prejudice to any obligation on the judge or the competent court to seek both inculpatory and exculpatory evidence, and to the right of the defence to submit evidence in accordance with the applicable national law.
2. Member States shall ensure that any doubt as to the question of guilt is to benefit the suspect or accused person, including where the court assesses whether the person concerned should be acquitted.

#### *Article 7*

### **Right to remain silent and right not to incriminate oneself**

1. Member States shall ensure that suspects and accused persons have the right to remain silent in relation to the criminal offence that they are suspected or accused of having committed.
2. Member States shall ensure that suspects and accused persons have the right not to incriminate themselves.
3. The exercise of the right not to incriminate oneself shall not prevent the competent authorities from gathering evidence which may be lawfully obtained through the use of legal powers of compulsion and which has an existence independent of the will of the suspects or accused persons.
4. Member States may allow their judicial authorities to take into account, when sentencing, cooperative behaviour of suspects and accused persons.
5. The exercise by suspects and accused persons of the right to remain silent or of the right not to incriminate oneself shall not be used against them and shall not be considered to be evidence that they have committed the criminal offence concerned.

6. This Article shall not preclude Member States from deciding that, with regard to minor offences, the conduct of the proceedings, or certain stages thereof, may take place in writing or without questioning of the suspect or accused person by the competent authorities in relation to the offence concerned, provided that this complies with the right to a fair trial.

### CHAPTER 3

#### RIGHT TO BE PRESENT AT THE TRIAL

##### *Article 8*

#### **Right to be present at the trial**

1. Member States shall ensure that suspects and accused persons have the right to be present at their trial.
2. Member States may provide that a trial which can result in a decision on the guilt or innocence of a suspect or accused person can be held in his or her absence, provided that:
  - (a) the suspect or accused person has been informed, in due time, of the trial and of the consequences of non-appearance; or
  - (b) the suspect or accused person, having been informed of the trial, is represented by a mandated lawyer, who was appointed either by the suspect or accused person or by the State.
3. A decision which has been taken in accordance with paragraph 2 may be enforced against the person concerned.
4. Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but it is not possible to comply with the conditions laid down in paragraph 2 of this Article because a suspect or accused person cannot be located despite reasonable efforts having been made, Member States may provide that a decision can nevertheless be taken and enforced. In that case, Member States shall ensure that when suspects or accused persons are informed of the decision, in particular when they are apprehended, they are also informed of the possibility to challenge the decision and of the right to a new trial or to another legal remedy, in accordance with Article 9.
5. This Article shall be without prejudice to national rules that provide that the judge or the competent court can exclude a suspect or accused person temporarily from the trial where necessary in the interests of securing the proper conduct of the criminal proceedings, provided that the rights of the defence are complied with.
6. This Article shall be without prejudice to national rules that provide for proceedings or certain stages thereof to be conducted in writing, provided that this complies with the right to a fair trial.

##### *Article 9*

#### **Right to a new trial**

Member States shall ensure that, where suspects or accused persons were not present at their trial and the conditions laid down in Article 8(2) were not met, they have the right to a new trial, or to another legal remedy, which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision being reversed. In that regard, Member States shall ensure that those suspects and accused persons have the right to be present, to participate effectively, in accordance with procedures under national law, and to exercise the rights of the defence.

## CHAPTER 4

**GENERAL AND FINAL PROVISIONS***Article 10***Remedies**

1. Member States shall ensure that suspects and accused persons have an effective remedy if their rights under this Directive are breached.
2. Without prejudice to national rules and systems on the admissibility of evidence, Member States shall ensure that, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of the right to remain silent or the right not to incriminate oneself, the rights of the defence and the fairness of the proceedings are respected.

*Article 11***Data collection**

Member States shall, by 1 April 2020 and every three years thereafter, send to the Commission available data showing how the rights laid down in this Directive have been implemented.

*Article 12***Report**

The Commission shall, by 1 April 2021, submit a report to the European Parliament and to the Council on the implementation of this Directive.

*Article 13***Non-regression**

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection.

*Article 14***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 April 2018. They shall immediately inform the Commission thereof.

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

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

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*Article 15***Entry into force**

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

*Article 16***Addressees**

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

Done at Strasbourg, 9 March 2016.

*For the European Parliament*

*The President*

M. SCHULZ

*For the Council*

*The President*

J.A. HENNIS-PLASSCHAERT

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# DECISIONS

**DECISION (EU) 2016/344 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 9 March 2016**  
**on establishing a European Platform to enhance cooperation in tackling undeclared work**  
**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153(2)(a) 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 <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) In its Communication of 18 April 2012 entitled 'Towards a job rich recovery', the Commission highlighted the need for improved cooperation among Member States and announced the launch of consultations on setting up a platform at Union level between labour inspectorates and other enforcement authorities to combat undeclared work, aimed at improving cooperation, sharing best practices and identifying common principles for inspections.
- (2) In accordance with Article 148 of the Treaty on the Functioning of the European Union (TFEU), by Decision (EU) 2015/1848 <sup>(4)</sup> the Council adopted guidelines for the employment policies of the Member States. Those guidelines give orientations to the Member States on defining their national reform programmes and on implementing reforms. The employment guidelines form the basis for country-specific recommendations that the Council addresses to Member States under that Article. In recent years, those country-specific recommendations have included recommendations on the fight against undeclared work.
- (3) Article 151 TFEU sets out as the objectives in the field of social policy the promotion of employment and improved living and working conditions. With a view to achieving those objectives, the Union can support and complement the activities of Member States in the fields of health and safety at work, working conditions, the integration of persons excluded from the labour market, and combating social exclusion. In accordance with Article 153(2)(a) TFEU, the Union may adopt measures to encourage cooperation between Member States, excluding any harmonisation of the laws and regulations of the Member States.

<sup>(1)</sup> OJ C 458, 19.12.2014, p. 43.

<sup>(2)</sup> OJ C 415, 20.11.2014, p. 37.

<sup>(3)</sup> Position of the European Parliament of 2 February 2016 (not yet published in the Official Journal) and decision of the Council of 24 February 2016.

<sup>(4)</sup> Council Decision (EU) 2015/1848 of 5 October 2015 on guidelines for the employment policies of the Member States for 2015 (OJ L 268, 15.10.2015, p. 28).

- (4) The European Parliament in its resolution of 14 January 2014 on Effective labour inspections as a strategy to improve working conditions in Europe welcomed the Commission's initiative to create a European platform and called for enhanced cooperation at Union level to tackle undeclared work, which, according to the resolution, is damaging the Union's economy, leading to unfair competition, endangering the financial sustainability of the Union social models and resulting in an increasing lack of social and employment protection for workers.
- (5) Undeclared work was defined in the Commission Communication of 24 October 2007 entitled 'Stepping up the fight against undeclared work' as 'any paid activities that are lawful as regards their nature but not declared to public authorities, taking into account differences in the regulatory systems of the Member States'. That definition excluded all illegal activities.
- (6) Undeclared work often has a cross-border dimension. The nature of undeclared work may vary from one country to the other, depending on the economic, administrative and social context. National legislation as regards undeclared work and the definitions used at national level are diverse. Therefore, measures to tackle undeclared work should be tailored to take account of those differences.
- (7) Estimates indicate that undeclared work constitutes a significant part of the Union's economy. As undeclared work is defined differently in national legislation across Member States, it is difficult to obtain precise data of how widespread it is.
- (8) The abuse of the status of self-employed persons, as defined in national law, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. Bogus self-employment occurs when a person is declared as self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations. The Platform established by this Decision ('the Platform') should tackle undeclared work in its various forms and falsely declared work that is associated with undeclared work, including bogus self-employment.
- (9) Undeclared work has serious implications for the workers concerned, who find themselves having to accept precarious and sometimes hazardous working conditions, much lower wages, severe infringements of labour rights and significantly reduced protection under labour and social protection law, thus depriving them of adequate social benefits, pension rights and access to healthcare, as well as skills development and lifelong learning opportunities.
- (10) While the negative effects of undeclared work on society and the economy take various forms, the Platform aims to improve working conditions and to promote integration in the labour market and social inclusion. Undeclared work has serious budgetary implications through decreased tax and social security revenues, thus undermining the financial sustainability of social protection systems. It has negative impacts on employment and productivity and distorts the level playing field.
- (11) Undeclared work has different effects on different social groups, inter alia, women, migrants and domestic workers, some undeclared workers being in a particularly vulnerable position.
- (12) A wide range of policy approaches and measures to tackle undeclared work have been introduced across the Member States. Member States have also concluded bilateral agreements and carried out multilateral projects on certain aspects of undeclared work. Tackling the complex problem of undeclared work still needs to be developed and requires a holistic approach. The Platform should not prevent the application of bilateral or multilateral agreements or arrangements concerning administrative cooperation.
- (13) Taking part in the Platform's activities is without prejudice to the Member States' competences and/or obligations to tackle undeclared work, including their national or international responsibilities under, inter alia, relevant and applicable International Labour Organization (ILO) conventions, such as Convention No 81 concerning Labour Inspection in Industry and Commerce.
- (14) Cooperation between Member States at Union level remains far from comprehensive, both in terms of the Member States involved and the issues covered. There is no formal mechanism in place for cross-border cooperation between Member States' relevant authorities to address in a comprehensive way issues related to undeclared work.

- (15) Encouraging cooperation between Member States at Union level is necessary to help Member States to tackle undeclared work more efficiently and effectively. In that context, the Platform should aim to facilitate and support the exchange of best practices and information and to provide a framework at Union level for the purpose of developing common understanding, expertise and analysis on undeclared work. Shared definitions and common concepts of undeclared work should reflect labour market developments. The Platform should also encourage cooperation between the different enforcement authorities of Member States participating in such cross-border actions on a voluntary basis.
- (16) This Decision aims to encourage cooperation at Union level between Member States. The situation with regard to undeclared work is very different between the Member States and the needs of the relevant authorities and other actors in the different Member States with regard to areas of cooperation therefore also differ. Member States remain competent to decide on their level of involvement in the activities approved at plenary level by the Platform.
- (17) Close and effective cooperation between the Member States to support and complement their activities in tackling undeclared work should be encouraged at Union level. Action at national level depends on the particular context in the individual Member States and activities within the Platform cannot replace an assessment at national level of the appropriate actions to be taken.
- (18) Member States and their relevant authorities remain competent with regard to the identification, analysis and solving of practical problems relating to the enforcement of relevant Union law on working conditions and social protection at work, and for deciding what measures to take at national level to give effect to the outcomes of the activities of the Platform.
- (19) The Platform should make use of all relevant sources of information, in particular studies, bilateral agreements concluded between Member States and multilateral cooperation projects, and create synergies between existing instruments and structures at Union level to maximise the deterrent or preventive effect of those measures. The actions of the Platform could take the form of a framework for joint training, peer reviews, the establishment of tools such as an interactive knowledge bank, taking into account existing feasibility studies, inter alia, the work done by the European Foundation for the Improvement of Living and Working Conditions (Eurofound), and, while recognising the importance of data protection, solutions for data sharing. European campaigns or common strategies could increase the awareness of undeclared work, building on policies and strategies to raise awareness of undeclared work which already exist to varying degrees in the Member States. The Platform should also involve non-governmental actors as important sources of information.
- (20) The Platform should contribute to the strengthening of cooperation between Member States, including by facilitating innovative approaches to cross-border cooperation and enforcement as well as by evaluating Member States' experiences of such cooperation. Timely exchanges of information are essential to curb undeclared work.
- (21) Where a member of the Platform considers it to be beneficial for the exchange of information and best practices within the Platform to raise specific cases, those cases should be anonymised as appropriate. The Platform can be effective only in an environment where persons raising cases of undeclared work are protected against unfavourable treatment. The Platform should therefore be a forum for the exchange of best practices in that respect.
- (22) The exchange of information and best practices should allow the Platform to provide useful input for possible action at Union level to tackle undeclared work, including by the Commission. In the context of the European Semester, the activities of the Platform might provide a useful input where measures related to undeclared work are considered.
- (23) Different national enforcement authorities are involved with undeclared work, such as labour inspectorates, other authorities dealing with health and safety at work, social security inspectorates and tax authorities. In some cases, migration authorities and employment services as well as customs authorities and authorities in charge of implementation of the common transport policy, the police, the public prosecutor's office and the social partners may also be involved.
- (24) In order to tackle undeclared work comprehensively and successfully, a policy mix needs to be implemented in the Member States. This should be facilitated by encouraging structured cooperation between relevant authorities and other actors. The Platform should include all relevant national authorities, in particular enforcement authorities, which lead and/or are active in tackling undeclared work. Member States remain competent to decide



which authorities represent them in the different activities of the Platform. Cooperation between national authorities of the Member States should comply with applicable Union and national law.

- (25) To achieve its objectives, the Platform should be supported by a senior representative in each Member State, who should coordinate and liaise with Member States' authorities and, where applicable, with other actors, including the social partners, dealing with the multifaceted aspects of undeclared work.
- (26) The Platform should involve the social partners at Union level, both cross-industry and in those sectors that are most severely affected by, or have a particular role in the tackling of, undeclared work, and should cooperate with relevant international organisations, such as the ILO, the Organisation for Economic Cooperation and Development and Union agencies, in particular Eurofound and the European Agency for Safety and Health at Work (EU-OSHA). The involvement of Eurofound and EU-OSHA in the work of the Platform as observers should not extend their existing mandates.
- (27) The Platform should adopt its rules of procedure, work programmes and regular reports.
- (28) The Platform should be able to establish working groups to examine specific issues and should be able to rely on the expertise of professionals with specific competence.
- (29) The Platform should cooperate with the relevant expert groups and committees at Union level whose work has links with undeclared work.
- (30) The Platform and its activities should be funded through the PROGRESS axis of the European Union Programme for Employment and Social Innovation (EaSI) within the appropriations set by the European Parliament and the Council. The Commission should ensure that the Platform uses the financial resources dedicated to the Platform in a transparent and efficient way.
- (31) Given the importance of openness and access to documents reflected in the principles provided for in Article 15 TFEU, the Platform should conduct its work in a transparent manner and in accordance with those principles.
- (32) The Commission should take the necessary administrative steps to set up the Platform.
- (33) The Platform should fully respect the fundamental rights and observe the principles recognised in the Charter of Fundamental Rights of the European Union.
- (34) Regulation (EC) No 45/2001 of the European Parliament and of the Council <sup>(1)</sup> and Directive 95/46/EC of the European Parliament and of the Council <sup>(2)</sup> as well as the relevant national implementing measures apply to the processing of personal data carried out within the framework of this Decision.
- (35) The European Data Protection Supervisor has been consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001,

HAVE ADOPTED THIS DECISION:

#### CHAPTER I

#### GENERAL PROVISIONS

##### *Article 1*

#### **Establishment of the Platform**

A Platform, at Union level, to enhance cooperation between Member States in tackling undeclared work ('the Platform') is hereby established.

For the purpose of this Decision, 'tackling', in relation to undeclared work, means preventing, deterring and combating undeclared work as well as promoting the declaration of undeclared work.

<sup>(1)</sup> 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).

<sup>(2)</sup> 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).

*Article 2***Composition of the Platform**

1. The Platform shall be composed of:
  - (a) a senior representative appointed by each Member State to represent that Member State;
  - (b) a representative of the Commission;
  - (c) a maximum of four representatives of cross-industry social partners at Union level, appointed by those social partners, equally representing both sides of industry.
2. The following may attend the meetings of the Platform as observers and their contributions shall be taken into due consideration in accordance with its rules of procedure:
  - (a) a maximum of 14 representatives of the social partners in sectors with a high incidence of undeclared work, appointed by those social partners, equally representing both sides of industry;
  - (b) a representative of Eurofound;
  - (c) a representative of EU-OSHA;
  - (d) a representative of the ILO;
  - (e) a representative of each third country in the European Economic Area.

Observers other than those referred to in the first subparagraph may be invited to attend the meetings of the Platform and their contributions shall be taken into due consideration in accordance with its rules of procedure, depending on the subject that is to be discussed.

*Article 3***National measures**

This Decision is without prejudice to the competence of Member States to decide on the measures to take at national level to tackle undeclared work.

*Article 4***Objectives**

The defining purpose of the Platform shall be to provide input with added value at Union level in order to contribute to tackling the complex problem of undeclared work, while fully respecting national competences and procedures.

The Platform shall contribute to more effective Union and national actions aiming to improve working conditions, promote integration in the labour market and social inclusion, including better enforcement of law within those fields, and to the reduction of undeclared work and the emergence of formal jobs, thus avoiding the deterioration of the quality of work and of health and safety at work, by:

- (a) enhancing cooperation between Member States' relevant authorities and other actors involved in order to tackle more efficiently and effectively undeclared work in its various forms and falsely declared work associated with it, including bogus self-employment;
- (b) improving the capacity of Member States' different relevant authorities and actors to tackle undeclared work with regard to its cross-border aspects, and in this way contributing to a level playing field;
- (c) increasing public awareness of issues relating to undeclared work and of the urgent need for appropriate action as well as encouraging Member States to step up their efforts to tackle undeclared work.

## CHAPTER II

**MISSION AND ACTIVITIES***Article 5***Mission**

To achieve the objectives listed in Article 4, the Platform at Union level shall encourage cooperation between Member States through:

- (a) exchanging best practices and information;
- (b) developing expertise and analysis;
- (c) encouraging and facilitating innovative approaches to effective and efficient cross-border cooperation and evaluating experiences;
- (d) contributing to a horizontal understanding of matters relating to undeclared work.

*Article 6***Activities**

1. In executing its mission, the Platform shall, in particular, carry out the following activities:
  - (a) improving the knowledge of undeclared work, also with regard to causes and regional differences, by means of shared definitions and common concepts, evidence-based measurement tools and promotion of comparative analysis and relevant methodological instruments for data collection, building on the work of other actors, including the Employment Committee (EMCO) and the Social Protection Committee (SPC);
  - (b) improving the knowledge and mutual understanding of different systems and practices to tackle undeclared work, including the cross-border aspects thereof;
  - (c) developing analyses of the effectiveness of different policy measures to tackle undeclared work, including preventive measures and penalties;
  - (d) establishing tools for efficient sharing of information and experiences, for instance a knowledge bank of different practices and measures taken, including bilateral or multilateral agreements applied in the Member States to tackle undeclared work;
  - (e) developing tools, such as guidelines for enforcement, handbooks of good practices and shared principles of inspections to tackle undeclared work and evaluating experiences of such tools;
  - (f) facilitating and supporting different forms of cooperation between Member States by increasing their capacity to tackle cross-border aspects of undeclared work by promoting and facilitating innovative approaches, such as the exchange of staff, use of databases in accordance with applicable national data protection law, and joint activities, and evaluating experiences of such cooperation undertaken by participating Member States;
  - (g) examining the feasibility of a system of rapid information exchange and improving data sharing in compliance with the Union data protection rules, including exploring possibilities to use the Internal Market Information System (IMI) established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council <sup>(1)</sup> and the Electronic Exchange of Social Security Information (EESSI);
  - (h) exchanging national authorities' experiences in applying Union law that is relevant to tackling undeclared work;
  - (i) developing and, where appropriate, improving training capacity for relevant authorities and developing a framework for carrying out joint training;

<sup>(1)</sup> Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).

- (j) organising peer reviews to follow progress in tackling undeclared work in Member States choosing to participate in such reviews;
  - (k) exchanging experiences and developing best practices with regard to cooperation between the relevant authorities of Member States and, where relevant, third countries, in order to increase the efficiency of such cooperation in tackling problems relating to undeclared work involving those countries;
  - (l) increasing awareness of the problem of undeclared work by carrying out common activities such as European campaigns and coordinating regional or Union-wide strategies, including sectoral approaches;
  - (m) exchanging experiences with regard to counselling and information provided to workers affected by practices of undeclared work.
2. In carrying out the activities referred to in paragraph 1, the Platform shall make use of all relevant sources of information, including studies and multilateral cooperation projects, and take into account relevant Union instruments and structures, as well as experience of relevant bilateral agreements.

### CHAPTER III

#### FUNCTIONING OF THE PLATFORM

##### *Article 7*

#### **Senior representatives**

1. Each Member State shall appoint a senior representative as a voting member of the Platform.

Each Member State shall ensure that its senior representative has an appropriate mandate to carry out activities of the Platform. Each Member State shall also appoint one alternate, who shall replace their senior representative where necessary, with a right to vote in such cases.

2. In appointing its senior representative and an alternate, each Member State should consider all relevant public authorities, in particular enforcement authorities and other actors involved in accordance with national law and/or practice. They may also, in accordance with national law and/or practice, involve the social partners or other relevant actors.

3. Each senior representative appointed pursuant to this Article shall participate in the plenary meetings of the Platform and, where appropriate, in other activities and working groups of the Platform.

Each senior representative shall provide the Commission with the list and contact details of the relevant authorities and, where applicable, the social partners and other relevant actors, which are involved in the tackling of undeclared work.

Each senior representative shall liaise with all relevant authorities and, where applicable, the social partners and other relevant actors, regarding the activities of the Platform and shall coordinate their participation at the meetings of the Platform and/or their contribution to the activities of the Platform or of its working groups.

##### *Article 8*

#### **Operation**

1. The Platform shall be chaired by the representative of the Commission. The Chair shall be assisted by two Co-Chairs chosen from among the senior representatives.

The Chair and the Co-Chairs shall constitute the Bureau.

The Bureau shall prepare and organise the work of the Platform in conjunction with a Secretariat, which shall function as secretariat to the Platform, including the Bureau and working groups. The Secretariat shall be provided by the Commission.

2. The Platform shall meet at least twice a year.

3. In executing its mission, the Platform shall adopt decisions on:
  - (a) its rules of procedure;
  - (b) 2-year work programmes setting out, inter alia, its priorities and a concrete description of the activities referred to in Article 6;
  - (c) reports of the Platform every 2 years;
  - (d) the establishment of working groups to examine issues specified in its work programmes including the practical arrangements for those working groups, which are to be dissolved once their mandates are fulfilled.

The Platform shall adopt the decisions referred to in this paragraph by simple majority. The representative of the Commission and the senior representatives shall each have one vote.

4. The Bureau may, where appropriate, invite experts with a specific competence in the subject under discussion on a case-by-case basis to participate in the Platform's or in a working group's deliberations.
5. The Platform shall be assisted by the Secretariat referred to in paragraph 1. The Secretariat shall prepare the meetings of the Platform, the Platform's draft work programmes and draft reports, and shall follow up on the Platform's meetings and the conclusions thereof.
6. The Commission shall regularly inform the European Parliament and the Council about the activities of the Platform, including with regard to joint meetings with expert groups and committees. It shall submit the Platform's work programmes and reports to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.

#### *Article 9*

### **Cooperation**

1. The Platform shall cooperate effectively and shall avoid duplication of work with other relevant expert groups and committees at Union level whose work has a link with undeclared work, in particular, the Senior Labour Inspectors Committee, the Expert Committee on Posting of Workers, the Administrative Commission for Social Security Coordination, the Public Employment Services Network, EMCO, SPC and the Working Group on Administrative Cooperation in the field of Direct Taxation. The Platform shall invite the representatives of those groups and committees to attend its meetings as observers where appropriate. In the interest of more efficient working and enhanced impact, joint meetings may also be organised.
2. The Platform shall establish appropriate cooperation with Eurofound and EU-OSHA.

#### *Article 10*

### **Reimbursement of expenses**

The Commission shall reimburse travel and, where appropriate, subsistence expenses for members, alternates, observers and invited experts in connection with the Platform's activities.

The members, alternates, observers and invited experts shall not be remunerated for the services they render.

#### *Article 11*

### **Financial support**

The global resources for the implementation of this Decision shall be established within the framework of EaSI. The Commission shall manage the financial resources of EaSI that are dedicated to the Platform in a transparent and efficient way.

## CHAPTER IV

**FINAL PROVISIONS***Article 12***Review**

By 13 March 2020, the Commission shall, after consulting the Platform, submit a report on the application and the added value of this Decision to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, and shall propose, where appropriate, necessary amendments. The report shall, in particular, assess to what extent the Platform has contributed to the achievement of the objectives set out in Article 4, fulfilled its mission as set out in Article 5, carried out the activities set out in Article 6 and addressed the priorities set out in its work programmes. The Commission shall submit proposals relating to the functioning of the Platform if appropriate.

*Article 13***Addressees**

This Decision is addressed to the Member States.

*Article 14***Entry into force**

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

Done at Strasbourg, 9 March 2016.

*For the European Parliament*

*The President*

M. SCHULZ

*For the Council*

*The President*

J.A. HENNIS-PLASSCHAERT

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## II

*(Non-legislative acts)*

## INTERNATIONAL AGREEMENTS

### **Information relating to the entry into force of the Arrangement between the European Union and the Swiss Confederation on the modalities of its participation in the European Asylum Support Office**

The Arrangement between the European Union and the Swiss Confederation on the modalities of its participation in the European Asylum Support Office entered into force on 1 March 2016, the procedure provided for in Article 13(2) of the Arrangement having been completed on 26 February 2016.

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**ARRANGEMENT****between the European Union and the Swiss Confederation on the modalities of its participation in the European Asylum Support Office**

THE EUROPEAN UNION, hereinafter referred to as the 'EU',

of the one part, and

THE SWISS CONFEDERATION, hereinafter referred to as 'Switzerland',

of the other part,

Having regard to Article 49(1) of Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office <sup>(1)</sup>, hereinafter referred to as the 'Regulation',

Whereas

- (1) The Regulation states that, to fulfil its purpose, the European Asylum Support Office, hereinafter referred to as the 'Support Office', should be open to participation by countries which have concluded agreements with the EU by virtue of which they have adopted and apply EU law in the field covered by the Regulation, in particular, Iceland, Liechtenstein, Norway and Switzerland, hereinafter referred to as the 'associate countries',
- (2) Switzerland has concluded agreements with the EU, by virtue of which it has adopted and applies EU law in the field covered by the Regulation, in particular the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland <sup>(2)</sup>,

HAVE AGREED AS FOLLOWS:

*Article 1***Extent of participation**

Switzerland shall participate fully in the work of the Support Office and be entitled to receive support actions from the Support Office as described in the Regulation and in accordance with the terms set out by this Arrangement.

*Article 2***Management Board**

Switzerland shall be represented in the Management Board of the Support Office as an observer without the right to vote.

*Article 3***Financial contribution**

1. Switzerland shall contribute to the revenue of the Support Office an annual sum calculated in accordance with its Gross Domestic Product (GDP) as a percentage of the GDP of all participating States in accordance with the formula laid down in Annex I.

<sup>(1)</sup> OJ EU L 132, 29.5.2010, p. 11.

<sup>(2)</sup> OJ EU L 53, 27.2.2008, p. 5.



2. The financial contribution referred to in paragraph 1 shall be incurred as from the day following the entry into force of this Arrangement. The first financial contribution shall be reduced proportionally to the remaining time in the year after the entry into force of this Arrangement.

#### *Article 4*

### **Data Protection**

1. Switzerland shall apply its national rules concerning the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(1)</sup>.

2. For the purpose of this Arrangement, 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 <sup>(2)</sup> shall apply to the processing of personal data carried out by the Support Office.

3. Switzerland shall respect the rules on confidentiality of documents held by the Support Office, as set out in the Rules of Procedure of the Management Board.

#### *Article 5*

### **Legal status**

The Support Office shall have legal personality under the law of Switzerland and shall enjoy in Switzerland the most extensive legal capacity accorded to legal persons under the law of Switzerland. It may, in particular, acquire or dispose of movable and immovable property and may be party to legal proceedings.

#### *Article 6*

### **Liability**

The liability of the Support Office shall be governed by Article 45(1), (3) and (5) of the Regulation.

#### *Article 7*

### **Court of Justice of the European Union**

Switzerland shall recognise the jurisdiction of the Court of Justice of the European Union over the Support Office, as provided for in Article 45(2) and (4) of the Regulation.

#### *Article 8*

### **Staff of the Support Office**

1. In accordance with Article 38(1) and Article 49(1) of the Regulation, the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union, the rules adopted jointly by the EU institutions for the purpose of applying those Staff Regulations and Conditions of Employment and the implementing measures adopted by the Support Office according to Article 38(2) of the Regulation apply to nationals of Switzerland recruited as staff members by the Support Office.

<sup>(1)</sup> Commission Decision of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided in Switzerland (OJ EC L 215, 25.8.2000, p. 1).

<sup>(2)</sup> OJ EC L 8, 12.1.2001, p. 1.

2. By way of derogation from Article 12(2)(a) and Article 82(3)(a) of the Conditions of Employment of Other Servants of the European Union, nationals of Switzerland enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Support Office according to the existing rules for selection and engagement of staff adopted by the Support Office.
3. Article 38(4) of the Regulation shall apply *mutatis mutandis* to the nationals of Switzerland.
4. Nationals of Switzerland may not, however, be appointed to the post of Executive Director of the Support Office.

#### *Article 9*

### **Privileges and immunities**

1. Switzerland shall apply to the Support Office and to its staff the Protocol on the Privileges and Immunities of the European Union which is set out in Annex II to this Arrangement, as well as any rules adopted pursuant to that Protocol relating to staff matters of the Support Office.
2. The procedure for the application of the Protocol on the Privileges and Immunities of the European Union is laid down in the Appendix to Annex II.

#### *Article 10*

### **Combating fraud**

The provisions concerning Article 44 of the Regulation relating to financial control by the EU in Switzerland concerning the participants in the activities of the Support Office are set out in Annex III.

#### *Article 11*

### **Committee**

1. A Committee, composed of representatives of the European Commission and Switzerland, shall monitor the proper implementation of this Arrangement and ensure a continuous process of information provision and exchange of views in this respect. For practical reasons, the Committee shall meet jointly with the corresponding Committees set up with other associate countries participating on the basis of Article 49(1) of the Regulation. It shall meet upon request by either Switzerland or the European Commission. The Management Board of the Support Office shall be informed about the work of the Committee.
2. Information about foreseen EU legislation, which either directly affects or amends the Regulation or is expected to have implications relating to the financial contribution laid down in Article 3 of this Arrangement, shall be shared and an exchange of views thereon shall take place in the Committee.

#### *Article 12*

### **Annexes**

The Annexes to this Arrangement shall constitute an integral part of this Arrangement.

#### *Article 13*

### **Entry into force**

1. The Contracting Parties shall approve this Arrangement in accordance with their own internal procedures. They shall notify each other of the completion of those procedures.

2. This Arrangement shall enter into force on the first day of the first month following the day of the last notification referred to in paragraph 1.

#### Article 14

#### Termination and validity

1. This Arrangement shall be concluded for an unlimited period.
2. Each Contracting Party may, after consultations within the Committee, denounce this Arrangement by notifying the other Contracting Party. This Arrangement shall cease to apply six months after the date of such notification.
3. This Arrangement shall be terminated in case of termination of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland <sup>(1)</sup>.
4. This Arrangement shall be drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of those texts being equally authentic.

Съставено в Брюксел на десети юни две хиляди и четиринадесета година.

Hecho en Bruselas, el diez de junio de dos mil catorce.

V Bruselu dne desátého června dva tisíce čtrnáct.

Udfærdiget i Bruxelles den tiende juni to tusind og fjorten.

Geschehen zu Brüssel am zehnten Juni zweitausendvierzehn.

Kahe tuhande neljateistkümnenda aasta juunikuu kümnendal päeval Brüsselis.

Έγινε στις Βρυξέλλες, στις δέκα Ιουνίου δύο χιλιάδες δεκατέσσερα.

Done at Brussels on the tenth day of June in the year two thousand and fourteen.

Fait à Bruxelles, le dix juin deux mille quatorze.

Sastavljeno u Bruxellesu desetog lipnja dvije tisuće četrnaeste.

Fatto a Bruxelles, addì dieci giugno duemilaquattordici.

Briselē, divi tūkstoši četrpadsmitā gada desmitajā jūnijā.

Priimta du tūkstančiai keturioliktų metų birželio dešimtą dieną Briuselyje.

Kelt Brüsszelben, a kétézer-tizenegyedik év június havának tizedik napján.

Magħmul fi Brussell, fl-għaxar jum ta' Ġunju tas-sena elfejn u erbatax.

Gedaan te Brussel, de tiende juni tweeduizend veertien.

Sporządzono w Brukseli dnia dziesiątego czerwca roku dwa tysiące czternastego.

Feito em Bruxelas, em dez de junho de dois mil e catorze.

Íntocmit la Bruxelles la zece iunie două mii paisprezece.

V Bruseli desiateho júna dvetisícštrnásť.

V Bruslju, dne desetega junija leta dva tisoč štirinajst.

Tehty Brysselissä kymmenentenä päivänä kesäkuuta vuonna kaksituhattaneljätoista.

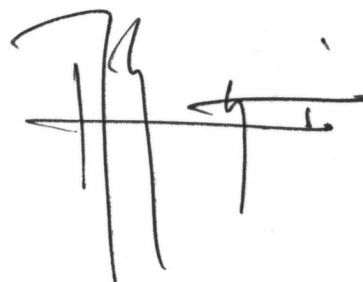
Som skedde i Bryssel den tionde juni tjugohundrafjorton.

<sup>(1)</sup> OJ EUL 53, 27.2.2008, p. 5.

За Европейския съюз  
 Por la Unión Europea  
 Za Evropskou unii  
 For Den Europæiske Union  
 Für die Europäische Union  
 Euroopa Liidu nimel  
 Για την Ευρωπαϊκή Ένωση  
 For the European Union  
 Pour l'Union européenne  
 Za Europejską uniję  
 Per l'Unione europea  
 Eiropas Savienības vārdā –  
 Europos Sąjungos vardu  
 Az Európai Unió részéről  
 Ghall-Unjoni Ewropea  
 Voor de Europese Unie  
 W imieniu Unii Europejskiej  
 Pela União Europeia  
 Pentru Uniunea Europeană  
 Za Európsku úniu  
 Za Evropsko unijo  
 Euroopan unionin puolesta  
 För Europeiska unionen



За Конфедерация Швейцария  
 Por la Confederación Suiza  
 Za Švýcarskou konfederaci  
 For Det Schweiziske Forbund  
 Für die Schweizerische Eidgenossenschaft  
 Šveitsi Konföderatsiooni nimel  
 Για την Ελβετική Συνομοσπονδία  
 For the Swiss Confederation  
 Pour la Confédération suisse  
 Za Švicarsku Konfederaciju  
 Per la Confederazione Svizzera  
 Šveices Konfederācijas vārdā –  
 Šveicarijos Konfederācijas vardu  
 A Svájci Államszövetség részéről  
 Ghall-Konfederazzjoni Svizzera  
 Voor de Zwitserse Bondsstaat  
 W imieniu Konfederacji Szwajcarskiej  
 Pela Confederação Suíça  
 Pentru Confederația Elvețiană  
 Za Švajčiarsku konfederáciu  
 Za Švicarsko konfederaciju  
 Sveitsin valaliiton puolesta  
 För Schweiziska edsförbundet



## ANNEX I

## FORMULA TO CALCULATE THE CONTRIBUTION

1. The financial contribution of Switzerland to the revenue of the Support Office defined in Article 33(3)(d) of the Regulation shall be calculated in the following way:

The most updated final figures of the Gross Domestic Product (GDP) of Switzerland available on 31 March of each year shall be divided by the sum of the GDP figures of all the States participating in the Support Office available for the same year. The obtained percentage will be applied to the part of the authorised Support Office's revenue as defined in Article 33(3)(a) of the Regulation in the year under consideration to obtain the amount of the financial contribution of Switzerland.

2. The financial contribution shall be paid in euro.
3. Switzerland shall pay its financial contribution no later than 45 days after receiving the debit note. Any delay in payment shall give rise to the payment of default interest by Switzerland on the outstanding amount from the due date. 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 day of the month in which the deadline falls, increased by 3,5 percentage points.
4. Switzerland's financial contribution shall be adapted in accordance with this Annex when the financial contribution from the EU entered in the general budget of the European Union as defined in Article 33(3)(a) of the Regulation is increased pursuant to Articles 26, 27 or 41 of 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 <sup>(1)</sup>. In such a case, the difference shall be due 45 days after receiving the debit note.
5. In the event that payment credits of the Support Office received from the EU according to Article 33(3)(a) of the Regulation related to a year N are not spent by 31 December of year N, or that the Support Office budget of the year N has been lowered according to Articles 26, 27 or 41 of the Regulation (EU, Euratom) No 966/2012, the part of these unspent or lowered payment credits corresponding to the percentage of the contribution made by Switzerland shall be transferred to the budget of year N+1 of the Support Office. Switzerland's contribution to the Support Office's budget of year N+1 will be reduced accordingly.

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<sup>(1)</sup> OJ EUL 298, 26.10.2012, p. 1.

## ANNEX II

## PROTOCOL (No 7)

## ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

CONSIDERING that, in accordance with Article 343 of the Treaty on the Functioning of the European Union and Article 191 of the Treaty establishing the European Atomic Energy Community ('EAEC'), the European Union and the EAEC shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community:

## CHAPTER I

***Property, funds, assets and operations of the European Union****Article 1*

The premises and buildings of the Union shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Union shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice.

*Article 2*

The archives of the Union shall be inviolable.

*Article 3*

The Union, its assets, revenues and other property shall be exempt from all direct taxes.

The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Union makes, for its official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied, however, so as to have the effect of distorting competition within the Union.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

*Article 4*

The Union shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for its official use: articles so imported shall not be disposed of, whether or not in return for payment, in the territory of the country into which they have been imported, except under conditions approved by the government of that country.

The Union shall also be exempt from any customs duties and any prohibitions and restrictions on import and exports in respect of its publications.

## CHAPTER II

**Communications and laissez-passer**

## Article 5

**(ex Article 6)**

For their official communications and the transmission of all their documents, the institutions of the Union shall enjoy in the territory of each Member State the treatment accorded by that State to diplomatic missions.

Official correspondence and other official communications of the institutions of the Union shall not be subject to censorship.

## Article 6

**(ex Article 7)**

Laissez-passer in a form to be prescribed by the Council, acting by a simple majority, which shall be recognised as valid travel documents by the authorities of the Member States, may be issued to members and servants of the institutions of the Union by the Presidents of these institutions. These laissez-passer shall be issued to officials and other servants under conditions laid down in the Staff Regulations of Officials and the Conditions of Employment of other servants of the Union.

The Commission may conclude agreements for these laissez-passer to be recognised as valid travel documents within the territory of third countries.

## CHAPTER III

**Members of the European Parliament**

## Article 7

**(ex Article 8)**

No administrative or other restriction shall be imposed on the free movement of Members of the European Parliament travelling to or from the place of meeting of the European Parliament.

Members of the European Parliament shall, in respect of customs and exchange control, be accorded:

- (a) by their own government, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;
- (b) by the government of other Member States, the same facilities as those accorded to representatives of foreign governments on temporary official missions.

## Article 8

**(ex Article 9)**

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

*Article 9***(ex Article 10)**

During the sessions of the European Parliament, its Members shall enjoy:

- (a) in the territory of their own State, the immunities accorded to members of their parliament;
- (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

## CHAPTER IV

***Representatives of Member States taking part in the work of the institutions of the European Union****Article 10***(ex Article 11)**

Representatives of Member States taking part in the work of the institutions of the Union, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting, enjoy the customary privileges, immunities and facilities.

This Article shall also apply to members of the advisory bodies of the Union.

## CHAPTER V

***Officials and other servants of the European Union****Article 11***(ex Article 12)**

In the territory of each Member State and whatever their nationality, officials and other servants of the Union shall:

- (a) subject to the provisions of the Treaties relating, on the one hand, to the rules on the liability of officials and other servants towards the Union and, on the other hand, to the jurisdiction of the Court of Justice of the European Union in disputes between the Union and its officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office;
- (b) together with their spouses and dependent members of their families, not be subject to immigration restrictions or to formalities for the registration of aliens;
- (c) in respect of currency or exchange regulations, be accorded the same facilities as are customarily accorded to officials of international organisations;
- (d) enjoy the right to import free of duty their furniture and effects at the time of first taking up their post in the country concerned, and the right to re-export free of duty their furniture and effects, on termination of their duties in that country, subject in either case to the conditions considered to be necessary by the government of the country in which this right is exercised;
- (e) have the right to import free of duty a motor car for their personal use, acquired either in the country of their last residence or in the country of which they are nationals on the terms ruling in the home market in that country, and to re-export it free of duty, subject in either case to the conditions considered to be necessary by the government of the country concerned.



*Article 12***(ex Article 13)**

Officials and other servants of the Union shall be liable to a tax for the benefit of the Union on salaries, wages and emoluments paid to them by the Union, in accordance with the conditions and procedure laid down by the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned.

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Union.

*Article 13***(ex Article 14)**

In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Member States of the Union, officials and other servants of the Union who, solely by reason of the performance of their duties in the service of the Union, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Union, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a member of the Union. This provision shall also apply to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

Movable property belonging to persons referred to in the preceding paragraph and situated in the territory of the country where they are staying shall be exempt from death duties in that country; such property shall, for the assessment of such duty, be considered as being in the country of domicile for tax purposes, subject to the rights of third countries and to the possible application of provisions of international conventions on double taxation.

Any domicile acquired solely by reason of the performance of duties in the service of other international organisations shall not be taken into consideration in applying the provisions of this Article.

*Article 14***(ex Article 15)**

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned, shall lay down the scheme of social security benefits for officials and other servants of the Union.

*Article 15***(ex Article 16)**

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, and after consulting the other institutions concerned, shall determine the categories of officials and other servants of the Union to whom the provisions of Article 11, the second paragraph of Article 12, and Article 13 shall apply, in whole or in part.

The names, grades and addresses of officials and other servants included in such categories shall be communicated periodically to the governments of the Member States.

## CHAPTER VI

***Privileges and immunities of missions of third countries accredited to the European Union****Article 16***(ex Article 17)**

The Member State in whose territory the Union has its seat shall accord the customary diplomatic immunities and privileges to missions of third countries accredited to the Union.

## CHAPTER VII

**General provisions***Article 17***(ex Article 18)**

Privileges, immunities and facilities shall be accorded to officials and other servants of the Union solely in the interests of the Union.

Each institution of the Union shall be required to waive the immunity accorded to an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the Union.

*Article 18***(ex Article 19)**

The institutions of the Union shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned.

*Article 19***(ex Article 20)**

Articles 11 to 14 and Article 17 shall apply to the President of the European Council.

They shall also apply to Members of the Commission.

*Article 20***(ex Article 21)**

Articles 11 to 14 and Article 17 shall apply to the Judges, the Advocates-General, the Registrars and the Assistant Rapporteurs of the Court of Justice of the European Union, without prejudice to the provisions of Article 3 of the Protocol on the Statute of the Court of Justice of the European Union relating to immunity from legal proceedings of Judges and Advocates-General.

*Article 21***(ex Article 22)**

This Protocol shall also apply to the European Investment Bank, to the members of its organs, to its staff and to the representatives of the Member States taking part in its activities, without prejudice to the provisions of the Protocol on the Statute of the Bank.

The European Investment Bank shall in addition be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the Bank has its seat. Similarly, its dissolution or liquidation shall not give rise to any imposition. Finally, the activities of the Bank and of its organs carried on in accordance with its Statute shall not be subject to any turnover tax.

*Article 22*

**(ex Article 23)**

This Protocol shall also apply to the European Central Bank, to the members of its organs and to its staff, without prejudice to the provisions of the Protocol on the Statute of the European System of Central Banks and the European Central Bank.

The European Central Bank shall, in addition, be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the bank has its seat. The activities of the Bank and of its organs carried on in accordance with the Statute of the European System of Central Banks and of the European Central Bank shall not be subject to any turnover tax.

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*Appendix to ANNEX II***PROCEDURE FOR THE APPLICATION IN SWITZERLAND OF THE PROTOCOL ON PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION**

## 1. Extension of application to Switzerland

Wherever the Protocol on the privileges and immunities of the European Union (hereinafter 'the Protocol') contains references to Member States, the references shall be understood to apply equally to Switzerland, unless the following provisions determine otherwise.

## 2. Exemption of the Support Office from indirect taxation (including VAT)

Goods and services exported from Switzerland shall not be subject to Swiss value added tax (VAT). In the case of goods and services provided to the Support Office in Switzerland for its official use, in accordance with the second paragraph of Article 3 of the Protocol, exemption from VAT shall be granted by way of refund. Exemption from VAT shall be granted if the actual purchase price of the goods and services mentioned in the invoice or equivalent document totals at least 100 Swiss francs (inclusive of tax).

The VAT refund shall be granted on presentation to the Swiss Federal Tax Administration's VAT Main Division of the Swiss forms provided for the purpose. As a rule, refund applications shall be processed within the three months following the date on which they were lodged together with the necessary supporting documents.

## 3. Procedure for the application of the rules relating to the Support Office's staff

As regards the second paragraph of Article 12 of the Protocol, Switzerland shall exempt, according to the principles of its national law, officials and other servants of the Support Office within the meaning of Article 2 of Regulation (Euratom, ECSC, EEC) No 549/69 of the Council of 25 March 1969 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply <sup>(1)</sup>, from federal, cantonal and communal taxes on salaries, wages and emoluments paid to them by the EU and subject to an internal tax for its own benefit.

Switzerland shall not be considered as a Member State within the meaning of point 1 above for the application of Article 13 of the Protocol.

Officials and other servants of the Support Office and members of their families who are members of the social insurance system applicable to officials and other servants of the EU shall not be obliged to be members of the Swiss social security system.

The Court of Justice of the European Union shall have exclusive jurisdiction in any matters concerning relations between the Support Office or the European Commission and its staff with regard to the application of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union and the other provisions of EU law laying down working conditions.

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<sup>(1)</sup> OJ ECL 74, 27.3.1969, p. 1, as last amended by Council Regulation (EC) No 371/2009, OJ EUL 121, 15.5.2009, p. 1).

## ANNEX III

**FINANCIAL CONTROL AS REGARDS SWISS PARTICIPANTS IN ACTIVITIES OF THE SUPPORT OFFICE***Article 1***Direct communication**

The Support Office and the European Commission shall communicate directly with all persons or entities established in Switzerland and participating in activities of the Support Office, as contractors, participants in Support Office programmes, recipients of payments from the Support Office or the EU budget, or subcontractors. Such persons may send directly to the European Commission and to the Support Office all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Arrangement and of contracts or agreements concluded and any decisions taken pursuant to them.

*Article 2***Audits**

1. In accordance with 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 <sup>(1)</sup>, with Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(2)</sup> and with the other instruments referred to in this Arrangement, contracts or agreements concluded and decisions taken with beneficiaries established in Switzerland may provide for scientific, financial, technological or other audits to be conducted at any time on the premises of the beneficiaries and of their subcontractors by Support Office and European Commission officials or by other persons mandated by the Support Office and the European Commission.
2. Support Office and European Commission officials and other persons mandated by the Support Office and the European Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the contracts or agreements concluded to implement the instruments referred to in this Arrangement.
3. The European Court of Auditors is to have the same rights as the European Commission.
4. The audits may take place until five years after the expiry of this Arrangement or under the terms of the contracts or agreements concluded and the decisions taken.
5. The Swiss Federal Audit Office shall be informed in advance of audits conducted on the Swiss territory. This information shall not be a legal condition for carrying out such audits.

*Article 3***On-the-spot checks**

1. Under this Arrangement, the European Commission (OLAF) shall be authorised to carry out on-the-spot checks and inspections on Swiss territory, under the terms and conditions set out in 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 <sup>(3)</sup>.

<sup>(1)</sup> OJ EUL 298, 26.10.2012, p. 1.

<sup>(2)</sup> OJ EC L 357, 31.12.2002, p. 72, as last amended by Commission Regulation (EC, Euratom) No 652/2008 (OJ EU L 181, 10.7.2008, p. 23).

<sup>(3)</sup> OJ ECL 292, 15.11.1996, p. 2.

2. On-the-spot checks and inspections shall be prepared and conducted by the European Commission in close cooperation with the Swiss Federal Audit Office or with other competent Swiss authorities appointed by the Swiss Federal Audit Office, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, the officials of the competent Swiss authorities may participate in the on-the-spot checks and inspections.
3. If the Swiss authorities concerned so wish, the on-the-spot checks and inspections may be carried out jointly by the European Commission and by them.
4. Where the participants in the programme resist an on-the-spot check or inspection, the Swiss authorities, acting in accordance with national rules, shall give the European Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.
5. The European Commission shall report as soon as possible to the Swiss Federal Audit Office any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event, the European Commission is required to inform the aforementioned authority of the result of such checks and inspections.

#### Article 4

##### **Information and consultation**

1. For the purposes of proper implementation of this Annex, the competent Swiss and EU authorities shall exchange information regularly and, at the request of one of the Contracting Parties, shall conduct consultations.
2. The competent Swiss authorities shall inform the Support Office and the European Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the contracts or agreements concluded in application of the instruments referred to in this Arrangement.

#### Article 5

##### **Confidentiality**

Information communicated or acquired in any form whatever pursuant to this Annex shall be covered by professional secrecy and protected in the same way as similar information is protected by Swiss law and by the corresponding provisions applicable to the EU institutions. Such information shall not be communicated to persons other than those within the EU institutions, in the Member States, or in Switzerland whose functions require them to know it, nor may it be used for purposes other than to ensure effective protection of the financial interests of the Contracting Parties.

#### Article 6

##### **Administrative measures and penalties**

Without prejudice to application of Swiss criminal law, administrative measures and penalties may be imposed by the Support Office or the European Commission in accordance with 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 <sup>(1)</sup> and 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 <sup>(2)</sup> and with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests <sup>(3)</sup>.

<sup>(1)</sup> OJ EUL 298, 26.10.2012, p. 1.

<sup>(2)</sup> OJ EUL 362, 31.12.2012, p. 1.

<sup>(3)</sup> OJ ECL 312, 23.12.1995, p. 1.

*Article 7***Recovery and enforcement**

Decisions taken by the Support Office or the European Commission within the scope of this Arrangement which impose a pecuniary obligation on persons other than States shall be enforceable in Switzerland. The enforcement order shall be issued, without any further control than verification of the authenticity of the act, by the authority designated by the Swiss government, which shall inform the Support Office or the European Commission thereof. Enforcement shall take place in accordance with the Swiss rules of procedure. The legality of the enforcement decision shall be subject to control by the Court of Justice of the European Union.

Judgments given by the Court of Justice of the European Union pursuant to an arbitration clause shall be enforceable on the same terms.

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# REGULATIONS

## COMMISSION IMPLEMENTING REGULATION (EU) 2016/345

of 10 March 2016

### setting out the frequency of reporting of container status messages, the format of the data and the method of transmission

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters <sup>(1)</sup>, and in particular Article 18c thereof,

Whereas:

- (1) Regulation (EC) No 515/97 provides that carriers are to submit data concerning container movements for the events listed in Article 18a paragraph 6 of the Regulation to the CSM directory managed by the Commission, but only in so far as these are known to the reporting carrier and the data for such events have been generated, collected or maintained in their electronic records.
- (2) To ensure the timely analysis of the data relating to container movements, to secure unimpeded transfer of such data from the maritime carriers to the CSMs directory and to guarantee a manageable level of diversity regarding possible ways of encoding data the frequency of reporting of CSMs, the format of the CSMs and the method of transmission should be specified.
- (3) Due to the volume and regular changes to the container traffic, the effective detection of fraud depends to a large extent on the timely identification of suspicious movements of containers. To guarantee the data received are used effectively, by limiting the risk that suspicious shipments will be moved to an undetermined location before the detection of suspicious consignments can be carried out effectively, carriers should be required to transmit CSMs to the CSM directory no later than 24 hours after the CSM is generated, collected or maintained in the carrier's electronic records.
- (4) To reduce the financial burden for the industry and facilitate the transmission of CSMs, the carriers should be required to use one of the main standards of ANSI ASC X12 or UN/Edifact. ANSI ASC X12 is a protocol for electronic data interchange (EDI) from the American National Standards Institute (ANSI), whereas UN/Edifact is the EDI standard developed under the United Nations (UN). The use of such standards should reduce the implementation costs for the carriers as these standards are considered universally utilised by the maritime industry for the purposes of electronic data interchange.
- (5) To ensure secure transmission of data and to guarantee the adequate level of confidentiality and integrity of data transmitted, CSMs should be transmitted using the secure shell file transfer protocol (SFTP) designed by the Internet Engineering Task Force (IETF). This transmission method guarantees the level of required security and is considered acceptable by the industry in terms of feasibility of implementation. In order to reduce the implementation cost, the carriers should be allowed to use also other transmission methods subject to the condition that they guarantee the same level of data security compared to SFTP.
- (6) To reduce the financial burden relating to the transfer of CSMs, the carriers should be allowed to transfer all CSMs generated, collected or maintained in their electronic records without selecting individual CSMs. In those cases, the Commission and the competent authorities of the Member States should be allowed to access and use those data in accordance with the provisions of Regulation (EC) No 515/97.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Regulation (EC) No 515/97,

<sup>(1)</sup> OJ L 82, 22.3.1997, p. 1.



HAS ADOPTED THIS REGULATION:

*Article 1*

**Frequency of reporting of CSMs**

Carriers shall transmit complete CSMs generated, collected or maintained in the carrier's electronic records to the CSM directory no later than 24 hours after the CSM is entered into the carrier's electronic records.

Transmission of historic CSMs pursuant to Article 18a(5) of Regulation (EC) No 515/97 shall be done within 24 hours after the generation or collection of the first CSM in the carrier's electronic records establishing that the container is destined to be brought into the customs territory of the Union.

*Article 2*

**Format of the data in the CSMs**

Carriers shall report CSMs in accordance with the ANSI ASC X12 or UN/Edifact standards.

*Article 3*

**Method of transmission of CSMs**

1. Carriers shall transmit CSMs using secure shell file transfer protocol (SFTP).

Carriers shall be allowed to transmit CSMs using other methods provided that these guarantee the level of security comparable to the SFTP.

2. CSMs may be transmitted either by:

- (a) selective reporting of individual CSMs as specified in Article 18a(6) of Regulation (EC) No 515/97; or
- (b) transfer of all CSMs generated, collected or maintained in the carrier's electronic records without selecting individual CSMs.

Where a carrier transmits CSMs in accordance with point (b), the carrier accepts that the Commission and the Member States have access to and use those data in accordance with the conditions set out in Regulation (EC) No 515/97.

*Article 4*

**Entry into force**

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

It shall apply as of 1 September 2016.

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

Done at Brussels, 10 March 2016.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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**COMMISSION IMPLEMENTING REGULATION (EU) 2016/346**  
**of 10 March 2016**  
**determining the items to be included in the Customs Information System**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters <sup>(1)</sup> and in particular Article 25(1) thereof,

Whereas:

- (1) The aim of the Customs Information System (CIS) is to assist the competent authorities in the prevention, investigation and prosecution of operations in breach of customs and agricultural legislation. In order to achieve this aim the competent authorities of the Member States enter information on relevant events, such as seizure or detention of goods in the CIS. In order for the CIS to continue to address the needs of the competent authorities it is necessary to update the list of items to be included in the CIS.
- (2) Each event reported in the CIS includes a number of core elements which are required for meaningful interpretation of the case. In order to make it possible for the competent authorities to easily identify specific cases or events in the CIS it should be possible to search for case references in the CIS and it is thus necessary to include case reference as an item in the CIS.
- (3) Fraudulent activity normally implies active participation of one or more persons. The correct and unambiguous identification of persons involved in activities which are potentially fraudulent is of the utmost importance for the successful investigation of the events. Data relating to the businesses and persons involved in fraudulent or potentially fraudulent activity should therefore be reported in the CIS.
- (4) Due to the fact that modus operandi of commercial fraud as well as method of concealment depend on the means of transport it is important to include as one of the required items in the CIS, specific details on the means of transport.
- (5) Transport patterns, which are not economically justified, are considered relevant indicators of certain types of fraud such as for example mis-declaration of origin. It is therefore important to know the details of the routes which are used to transport goods as these may be important in identifying fraudulent activity. Therefore, routing steps information is considered essential for the proper investigation of customs-related fraud and should be included as one of the CIS items.
- (6) Customs duties and other charges vary according to the specific characteristics of the commodity. In order to ensure the proper follow up of cases or events reported in the CIS specifications relating to the goods involved in the case should therefore be entered in the CIS.
- (7) Analysis of the concrete seizure, confiscation or retention of goods assist in developing preventive measures against future occurrence of the same type of customs related fraud. It is therefore considered important to include relevant information relating to seizure, detention or confiscation in the CIS.
- (8) Any action taken by the relevant authorities should be justifiable and thus should be premised on appropriate risk indicators. It is therefore necessary to include risk assessment information as one of the CIS items.
- (9) Depending on the case in question the relevant documentation to be attached in the case entry in the CIS may vary significantly. It may include, but is not limited to, commercial documents obtained by the competent authorities.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Regulation (EC) No 515/97,

<sup>(1)</sup> OJ L 82, 22.3.1997, p. 1.

HAS ADOPTED THIS REGULATION:

*Article 1*

**Items**

The items to be included in the CIS database under the categories referred to in Article 24 of Regulation (EC) No 515/97 are the following.

- (a) The items common to all the categories of Article 24 of Regulation (EC) No 515/97:
  - Case reference
  - Basic information relating to the case
  - Attachment of relevant documents.
- (b) Additional items for category under point (a) of Article 24 of Regulation (EC) No 515/97:
  - Specifics on the commodities
  - Documents
  - Information relating to seizure, detention or confiscation
  - Actions
  - Risk indicators
  - Comment section.
- (c) Additional items for category under point (b) of Article 24 of Regulation (EC) No 515/97:
  - Specifics on the means of transport
  - Documents
  - Routing steps
  - Actions
  - Risk indicators
  - Comment section.
- (d) Additional items for category under point (c) of Article 24 of Regulation (EC) No 515/97:
  - Data relating to the businesses involved
  - Documents
  - Actions
  - Risk indicators
  - Comment section.
- (e) Additional items for category under point (d) of Article 24 of Regulation (EC) No 515/97:
  - Data relating to persons involved
  - Documents
  - Actions
  - Risk indicators
  - Comment section.
- (f) Additional items for category under point (e) of Article 24 of Regulation (EC) No 515/97:
  - Specifics on fraud trends
  - Risk indicators.

- (g) Additional items for category under point (f) of Article 24 of Regulation (EC) No 515/97:
- Specifics on the availability of expertise.
- (h) Additional items for category under point (g) of Article 24 of Regulation (EC) No 515/97:
- Information relating to seizure, detention or confiscation
  - Actions
  - Risk indicators.
- (i) Additional items for category under point (h) of Article 24 of Regulation (EC) No 515/97:
- Information relating to seizure, detention or confiscation
  - Actions
  - Risk indicators.

Further details in relation to the above items are provided in the Annex hereto.

*Article 2*

**Repeal**

Article 2 of Commission Regulation (EC) No 696/98 <sup>(1)</sup> is deleted.

*Article 3*

**Entry into force**

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

It shall apply as of 1 September 2016.

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

Done at Brussels, 10 March 2016.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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<sup>(1)</sup> Commission Regulation (EC) No 696/98 of 27 March 1998 implementing Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 96, 28.3.1998, p. 22).

## ANNEX

- (a) CASE REFERENCE
  - Case Identification Number
  - Document Reference
  - National Reference Number
  - Summary
  - Service
  - Contact Person
  - Date
- (b) BASIC INFORMATION RELATING TO THE CASE
  - Type of fraud
  - Report type
  - Means of transport
  - Information quality
- (c) DOCUMENTS
  - Type
  - Number
  - Freight payment
  - Date of issue
  - Place of issue
- (d) — DATA RELATING TO PERSONS INVOLVED
  - Involvement
  - First Name
  - Surname
  - Maiden Name
  - Alias
  - Sex
  - Any particular and permanent physical characteristics
  - Place of Birth
  - Date of Birth
  - Nationality
  - Address
    - Street
    - Number
    - PO Box
    - Postal Code
    - City
    - Country
    - Phone/Mobile
    - Fax/Email

- Identity papers
    - Document type
    - Document number
    - Date of issue
    - Place of issue
    - Country
  - Luggage
    - Category
    - Type
    - Brand
    - Tag number
    - Handling
  - Tickets
    - Date of purchase
    - Mode of payment
    - Issued in (Country)
    - Issued by
    - Start travel
    - Duration of stay (days)
  - Cash
    - Declared
    - Intended use
    - Provenance
    - Currency
    - Type of cash
    - Amount
    - Converted amount (EUR)
  - Warning
- (e) DATA RELATING TO THE BUSINESSES INVOLVED
- Involvement
  - Name
  - Trading Name
  - Registration type
  - Registration number <sup>(1)</sup>
  - Address\*
    - Street
    - Number
    - PO Box
    - Postal Code

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<sup>(1)</sup> This item cannot be completed if it is thereby possible to identify a natural person.

- City
  - Country
  - Phone/Mobile
  - Fax/Email
- (f) SPECIFICS ON THE MEANS OF TRANSPORT
- 6.1 CONTAINER
- Type
  - Number
  - Status
  - Seals Number
  - Size
- (g) 6.2 ROAD
- Type
  - Registration type
  - Nationality
  - Brand
  - License Plate
  - Colour
  - Printed Names or Logos
  - Seals number
- (h) 6.3 SMALL VESSEL
- Type
  - Name
  - Flag
  - Port of registry
  - Length
  - Unit of length
  - Tonnage ICT GT
  - Colour
  - Vessel Registration type
  - Vessel Registration Number
- (i) 6.4 COMMERCIAL VESSEL
- Type
  - Name
  - Flag
  - Vessel Registration Type
  - Vessel Registration Number
- (j) 6.5 RAIL
- Type
  - Train Number
  - Company

- Nationality
  - Wagon Number
  - Seals number
- (k) 6.6 AIR
- Type
  - Flight Nr
  - Transport type
  - Airline
  - Registration number
  - Carrier
  - License plate
  - MRN
  - Handling
  - Seals number
- 6.7 COURIER — POST
- Type
  - Flight Nr
  - Carrier
  - License plate
  - MRN
- (l) ROUTING
- Step
  - Date
  - Country
  - Place
  - Location Type
  - Latitude
  - Longitude
  - Means of Transport
- (m) SPECIFICS ON THE COMMODITIES
- Commodity Status
  - Commodity Type
  - Description
  - Category
  - HS/CN/Taric Code (6, 8, 10 Digits)
  - Customs Procedure
  - Total Amount Invoiced
  - Currency
  - Converted amount (EUR)
  - Brand
  - Manufacturer



- Quantity
- Unit
- Gross weight
- Volume
- Net weight
- Labels/Warnings (Affixed)
- Warning

#### 8.1 ADDITIONAL FIELDS FOR TOBACCO

- Product Type

#### 8.2 ADDITIONAL FIELDS FOR DRUG PRECURSORS

- Drug Type
- Quantity
- Unit
- Logos

#### 8.3 ADDITIONAL FIELDS FOR CASH

- Intended Use
- Provenance
- Amount
- Types of Cash
- Quantity

#### (n) INFORMATION RELATING TO SEIZURE, DETENTION OR CONFISCATION

- Status
- Date
- Country
- Location Type
- Place of Seizure
- Latitude
- Longitude
- Modus Operandi
- Concealment Type
- Concealment Details
- Service

#### (o) ACTION

- Requested action
- Reason for action
- Suspected Modus Operandi
- Suspected Concealment Type
- Taken Action
- Date

- (p) RISK INDICATORS
  - (q) COMMENT SECTION
    - Comment
  - (r) ATTACHMENT OF RELEVANT DOCUMENTS
    - Reference
  - (s) SPECIFICS ON FRAUD TRENDS
  - (t) SPECIFICS ON AVAILABILITY OF EXPERTISE
-

**COMMISSION IMPLEMENTING REGULATION (EU) 2016/347****of 10 March 2016****laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC<sup>(1)</sup>, and in particular Article 18(9) thereof,

Whereas:

- (1) Pursuant to Article 18 of Regulation (EU) No 596/2014, issuers, emission allowance market participants, auction platforms, auctioneers and auction monitor, or any other persons acting on their behalf or on their account are required to draw up insider lists and keep them up to date in accordance with a precise format.
- (2) The establishment of a precise format, including the use of standard templates, should facilitate the uniform application of the requirement to draw up and update insider lists laid down in Regulation (EU) No 596/2014. It should also ensure that competent authorities are provided with the information necessary to fulfil the task of protecting the integrity of the financial markets and investigate possible market abuse.
- (3) Since multiple pieces of inside information can exist within an entity at the same time, insider lists should precisely identify the specific pieces of inside information to which persons working for issuers, emission allowance market participants, auction platforms, auctioneers and auction monitor have had access to (whether it is, inter alia, a deal, a project, a corporate or a financial event, publication of financial statements or profit warnings). To that end, the insider list should be divided into sections with a separate section for each piece of inside information. Each section should list all persons having access to the same specific piece of inside information.
- (4) To avoid multiple entries in respect of the same individuals in different sections of the insider lists, the issuers, emission allowance market participants, auction platforms, auctioneers and auction monitor, or the persons acting on their behalf or on their account, may decide to draw up and keep up to date a supplementary section of the insider list, referred to as the permanent insiders section, which is of a different nature to the rest of sections of the insider list, as it is not created upon the existence of a specific piece of inside information. In such a case, the permanent insiders section should only include those persons who, due to the nature of their function or position, have access at all times to all inside information within the issuer, the emission allowance market participant, the auction platform, the auctioneer or the auction monitor.
- (5) The insider list should in principle contain personal data that facilitates the identification of the insiders. Such information should include the date of birth, the personal address and, where applicable, the national identification number of the individuals concerned.
- (6) The insider list should also contain data that may assist the competent authorities in the conduct of investigations, to rapidly analyse the trading behaviour of insiders, to establish connections between insiders and persons involved in suspicious trading, and to identify contacts between them at critical times. In this respect, telephone numbers are essential as they permit the competent authority to act swiftly and to request data traffic

<sup>(1)</sup> OJ L 173, 12.6.2014, p. 1.

records, if necessary. Moreover, such data should be provided at the outset, so that the integrity of the investigation is not compromised by the competent authority having to revert in the course of an investigation to the issuer, the emission allowance market participant, the auction platform, the auctioneer, the auction monitor or the insider with further requests for information.

- (7) To ensure that the insider list can be made available to the competent authority as soon as possible upon request and in order not to endanger an investigation by having to seek information from the persons in the insider list, the insider list should be drawn up in electronic format and updated at all times without delay when any of the circumstances specified in Regulation (EU) No 596/2014 for the updating of the insider list occurs.
- (8) The use of specific electronic formats for the submission of insider lists as determined by competent authorities should also decrease the administrative burden for competent authorities, issuers, emission allowance market participants, auction platforms, auctioneers or auction monitor and those acting on their behalf or on their account. The electronic formats should allow for the information included in the insider list to be kept confidential and for the rules laid down in Union legislation on the processing of personal data and the transfer of such data to be complied with.
- (9) Since issuers on an SME growth market are exempted however from drawing up and keeping insider lists up to date and, therefore, may produce and keep that information on a format other than an electronic format as required by this Regulation to the rest of issuers, it is necessary not to impose on issuers on an SME growth market the requirement of using an electronic format for submitting the insiders lists to competent authorities. Likewise, it is also appropriate not to require the submission of certain personal data where such data is not available to those issuers at the moment the insider list is requested. Insider lists should be in any case submitted in a way that ensures the completeness, confidentiality and integrity of the information.
- (10) This Regulation is based on the draft implementing technical standards submitted by the European Securities and Markets Authority to the Commission.
- (11) The European Securities and Markets Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council <sup>(1)</sup>.
- (12) In order to ensure the smooth functioning of the financial markets, it is necessary that this Regulation enters into force as a matter of urgency and that the provisions laid down in this Regulation apply from the same date as those laid down in Regulation (EU) No 596/2014,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

#### **Definitions**

For the purposes of this Regulation, the following definition shall apply:

‘electronic means’ are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means.

<sup>(1)</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

*Article 2***Format for drawing up and updating the insider list**

1. Issuers, emission allowance market participants, auction platforms, auctioneers and auction monitor, or any person acting on their behalf or on their account, shall ensure that their insider list is divided into separate sections relating to different inside information. New sections shall be added to the insider list upon the identification of new inside information, as defined in Article 7 of Regulation (EU) No 596/2014.

Each section of the insider list shall only include details of individuals having access to the inside information relevant to that section.

2. The persons referred to in paragraph 1 may insert a supplementary section into their insider list with the details of individuals who have access at all times to all inside information ('permanent insiders').

The details of permanent insiders included in the supplementary section referred to in the first subparagraph shall not be included in the other sections of the insider list referred to in paragraph 1.

3. The persons referred to in paragraph 1 shall draw up and keep the insider list up to date in an electronic format in accordance with Template 1 of Annex I.

Where the insider list contains the supplementary section referred to in paragraph 2, the persons referred to in paragraph 1 shall draw up and keep that section updated in an electronic format in accordance with Template 2 of Annex I.

4. The electronic formats referred to in paragraph 3 shall at all times ensure:

(a) the confidentiality of the information included by ensuring that access to the insider list is restricted to clearly identified persons from within the issuer, emission allowance market participant, auction platform, auctioneer and auction monitor, or any person acting on their behalf or on their account that need that access due to the nature of their function or position;

(b) the accuracy of the information contained in the insider list;

(c) the access to and the retrieval of previous versions of the insider list.

5. The insider list referred to in paragraph 3 shall be submitted using the electronic means specified by the competent authority. Competent authorities shall publish on their website the electronic means to be used. Those electronic means shall ensure that completeness, integrity and confidentiality of the information are maintained during the transmission.

*Article 3***SME growth market issuers**

For the purposes of Article 18(6)(b) of Regulation (EU) No 596/2014, an issuer whose financial instruments are admitted to trading on an SME growth market shall provide the competent authority, upon its request, with an insider list in accordance with the template in Annex II and in a format that ensures that the completeness, integrity and confidentiality of the information are maintained during the transmission.

*Article 4***Entry into force**

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

It shall apply from 3 July 2016.

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

Done at Brussels, 10 March 2016.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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**Insider list: section related to [Name of the deal-specific or event-based inside information]****Date and time (of creation of this section of the insider list, i.e. when this inside information was identified):** [yyyy-mm-dd; hh:mm UTC (Coordinated Universal Time)]**Date and time (last update):** [yyyy-mm-dd, hh:mm UTC (Coordinated Universal Time)]**Date of transmission to the competent authority:** [yyyy-mm-dd]

<b>First name(s) of the insider</b>	<b>Sur-name(s) of the insider</b>	<b>Birth sur-name(s) of the insider (if different)</b>	<b>Professional telephone number(s) (work direct telephone line and work mobile numbers)</b>	<b>Company name and address</b>	<b>Function and reason for being insider</b>	<b>Obtained</b> (the date and time at which a person obtained access to inside information)	<b>Ceased</b> (the date and time at which a person ceased to have access to inside information)	<b>Date of birth</b>	<b>National Identification-Number</b> (if applicable)	<b>Personal telephone numbers</b> (home and personal mobile telephone numbers)	<b>Personal full home address:</b> street name; street number; city; post/zip code; country)
[Text]	[Text]	[Text]	[Numbers (no space)]	[Address of issuer/emission allowance market participant/auction platform/auctioneer/auction monitor or third party of insider]	[Text describing role, function and reason for being on this list]	[yyyy-mm-dd, hh:mm UTC]	[yyyy-mm-dd, hh:mm UTC]	[yyyy-mm-dd]	[Number and/or text]	[Numbers (no space)]	[Text: detailed personal address of the insider — Street name and street number — City — Post/zip code — Country]

**Permanent insiders section of the insider list**

**Date and time (of creation of the permanent insiders section)** [yyyy-mm-dd, hh:mm UTC (Coordinated Universal Time)]

**Date and time (last update):** [yyyy-mm-dd, hh:mm UTC (Coordinated Universal Time)]

**Date of transmission to the competent authority:** [yyyy-mm-dd]

<b>First name(s) of the insider</b>	<b>Surname(s) of the insider</b>	<b>Birth surname(s) of the insider (if different)</b>	<b>Professional telephone number(s)</b> (work direct telephone line and work mobile numbers)	<b>Company name and address</b>	<b>Function and reason for being insider</b>	<b>Included</b> (the date and time at which a person was included in the permanent insider section)	<b>Date of birth</b>	<b>National Identification Number</b> (if applicable)	<b>Personal telephone numbers</b> (home and personal mobile telephone numbers)	<b>Personal full home address</b> (street name; street number; city; post/zip code; country)
[Text]	[Text]	[Text]	[Numbers (no space)]	[Address of issuer/emission allowance market participant/auction platform/auctioneer/auction monitor or third party of insider]	[Text describing role, function and reason for being on this list]	[yyyy-mm-dd, hh:mm UTC]	[yyyy-mm-dd]	[Number and/or text]	[Numbers (no space)]	[Text: detailed personal address of the insider — Street name and number — City — Post/zip code — Country]



**Template for the insider list to be submitted by issuers of financial instruments admitted to trading on SME growth markets**

**Date and time (creation):** [yyyy-mm-dd, hh:mm UTC (Coordinated Universal Time)]

**Date of transmission to the competent authority:** [yyyy-mm-dd]

<b>First name(s)</b> of the insider	<b>Sur-name(s)</b> of the insider	<b>Birth sur-name(s)</b> of the insider (if different)	<b>Professional telephone number(s)</b> (work direct telephone line and work mobile numbers)	<b>Company name and address</b>	<b>Function and reason for being insider</b>	<b>Obtained</b> (the date and time at which a person obtained access to inside information)	<b>Ceased</b> (the date and time at which a person ceased to have access to inside information)	<b>National Identification Number</b> (if applicable) Or otherwise date of birth	<b>Personal full home address</b> (street name; street number; city; post/zip code; country) (If available at the time of the request by the competent authority)	<b>Personal telephone numbers</b> (home and personal mobile telephone numbers) (If available at the time of the request by the competent authority)
[Text]	[Text]	[Text]	[Numbers (no space)]	[Address of issuer or third party of insider]	[Text describing role, function and reason for being on this list]	[yyyy-mm-dd, hh:mm UTC]	[yyyy-mm-dd, hh:mm UTC]	[Number and/or text or yyyy-mm-dd for the date of birth]	[Text: detailed personal address of the insider — Street name and number — City — Post/zip code — Country]	[Numbers (no space)]

**COMMISSION IMPLEMENTING REGULATION (EU) 2016/348****of 10 March 2016****amending Implementing Regulation (EU) No 98/2012 as regards the minimum content of the preparation of 6-phytase (EC 3.1.3.26) produced by *Komagataella pastoris* (DSM 23036) as a feed additive for pigs for fattening (holder of authorisation Huvepharma EOOD)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition <sup>(1)</sup>, and in particular Article 13(2) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting and modifying such authorisation.
- (2) The use of the preparation of 6-phytase (EC 3.1.3.26) produced by *Komagataella pastoris* (DSM 23036), formerly known as *Pichia pastoris*, was authorised until 28 February 2022 for chickens and turkeys for fattening, chickens reared for laying, turkeys reared for breeding, laying hens, other avian species for fattening and laying, weaned piglets, pigs for fattening and sows by Commission Implementing Regulation (EU) No 98/2012 <sup>(2)</sup>, following an application to that effect in accordance with Article 7 of Regulation (EC) No 1831/2003.
- (3) In accordance with Article 13(3) of Regulation (EC) No 1831/2003, the holder of the authorisation has proposed changing the terms of the authorisation of that preparation as a feed additive for pigs for fattening by reducing its minimum recommended content from 250 OTU/kg to 125 OTU/kg. The application was accompanied by the relevant supporting data. The Commission forwarded that application to the European Food Safety Authority (hereinafter 'The Authority').
- (4) The Authority concluded in its opinion of 9 July 2015 <sup>(3)</sup> that, under the new proposed conditions of use, the preparation 6-phytase (EC 3.1.3.26) produced by *Komagataella pastoris* (DSM 23036) has the potential to be efficacious at the requested minimum recommended dose of 125 OTU/kg of complete feedingstuff as regards pigs for fattening. The Authority does not consider that there is a need for specific requirements for a post-market monitoring plan. It also verified the report on the methods of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (5) The assessment of the preparation of 6-phytase (EC 3.1.3.26) produced by *Komagataella pastoris* (DSM 23036) shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied.
- (6) Implementing Regulation (EU) No 98/2012 should therefore be amended accordingly.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

<sup>(1)</sup> OJ L 268, 18.10.2003, p. 29.

<sup>(2)</sup> Commission Implementing Regulation (EU) No 98/2012 of 7 February 2012 concerning the authorisation of 6-phytase (EC 3.1.3.26) produced by *Pichia pastoris* (DSM 23036) as a feed additive for chickens and turkeys for fattening, chickens reared for laying, turkeys reared for breeding, laying hens, other avian species for fattening and laying, weaned piglets, pigs for fattening and sows (holder of authorisation Huvepharma AD) (OJ L 35, 8.2.2012, p. 6).

<sup>(3)</sup> EFSA Journal 2015; 13(7):4200.

HAS ADOPTED THIS REGULATION:

*Article 1*

The Annex to Implementing Regulation (EU) No 98/2012 is replaced by the text set out in the Annex to this Regulation.

*Article 2*

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

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

Done at Brussels, 10 March 2016.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						Units of activity/kg of complete feedingstuff with a moisture content of 12 %			

**Category of zootechnical additives. Functional group: digestibility enhancers.**

4a16	Huvepharma EOOD	6-phytase (EC 3.1.3.26)	<p><i>Additive composition</i></p> <p>Preparation 6-phytase (EC 3.1.3.26) produced by <i>Komagataella pastoris</i> (DSM 23036) with a minimum activity of:</p> <p>4 000 OTU <sup>(1)</sup>/g in solid form</p> <p>8 000 OTU/g in liquid form</p>	Chickens for fattening, chickens reared for laying, laying hens, other avian species other than turkeys for fattening and turkeys reared for breeding, pigs for fattening, sows.	—	125 OTU	—	<ol style="list-style-type: none"> <li>In the directions for use of the additive and pre-mixture, indicate the storage temperature, storage life, and stability to pelleting.</li> <li>Recommended maximum dose for all authorised species: 500 OTU/Kg of complete feedingstuff.</li> <li>For use in feed containing more than 0,23 % phytin-bound phosphorus.</li> <li>For safety: breathing protection, glasses and gloves shall be used during handling.</li> </ol>	28 February 2022
			<p><i>Characterisation of the active substance</i></p> <p>6-phytase (EC 3.1.3.26) produced by <i>Komagataella pastoris</i> (DSM 23036)</p> <p><i>Analytical method</i> <sup>(2)</sup></p> <p>Colorimetric method based on the quantification of the inorganic phosphate released by the enzyme from the sodium phytate</p>	Turkeys for fattening, turkeys reared for breeding, piglets (weaned)		250 OUT			

<sup>(1)</sup> 1 OTU is the amount of enzyme that catalyzes the release of 1 micromole of inorganic phosphate per minute from 5,1 mM sodium phytate in pH 5,5 citrate buffer at 37 °C, measured as the blue P-molybdate complex color at 820 nm.

<sup>(2)</sup> Details of the analytical methods are available at the following address of the Community Reference Laboratory: [http://irmm.jrc.ec.europa.eu/EURLs/EURL\\_feed\\_additives/Pages/index.aspx](http://irmm.jrc.ec.europa.eu/EURLs/EURL_feed_additives/Pages/index.aspx)

**COMMISSION IMPLEMENTING REGULATION (EU) 2016/349****of 10 March 2016****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

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

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 <sup>(2)</sup>, 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, 10 March 2016.

*For the Commission,  
On behalf of the President,  
Jerzy PLEWA*

*Director-General for Agriculture and Rural Development*

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<sup>(1)</sup> OJ L 347, 20.12.2013, p. 671.

<sup>(2)</sup> 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 <sup>(1)</sup>	Standard import value
0702 00 00	IL	236,2
	MA	99,3
	SN	176,8
	TN	112,1
	TR	100,4
	ZZ	145,0
0707 00 05	MA	84,5
	TR	153,1
	ZZ	118,8
0709 93 10	MA	66,0
	TR	158,8
	ZZ	112,4
0805 10 20	EG	45,8
	IL	68,5
	MA	56,0
	TN	64,1
	TR	64,4
	ZZ	59,8
0805 50 10	MA	119,5
	TR	90,9
	ZZ	105,2
0808 10 80	CL	93,0
	CN	66,5
	US	185,1
	ZZ	114,9
0808 30 90	AR	110,9
	CL	129,6
	CN	103,0
	TR	153,6
	ZA	110,7
	ZZ	121,6

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

# DECISIONS

## COUNCIL DECISION (EU) 2016/350

of 25 February 2016

### on the conclusion of the Arrangement between the European Union and the Swiss Confederation on the modalities of its participation in the European Asylum Support Office

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 185/2014/EU <sup>(1)</sup>, the Arrangement between the European Union and the Swiss Confederation on the modalities of its participation in the European Asylum Support Office (the 'Arrangement') was signed on 11 February 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 <sup>(2)</sup>, 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 Swiss Confederation on the modalities of its participation in the European Asylum Support Office is hereby approved on behalf of the Union.

The text of the Arrangement is attached to this Decision.

#### *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 <sup>(3)</sup>.

<sup>(1)</sup> Council Decision 185/2014/EU of 11 February 2014 on the signing, on behalf of the Union, of the Arrangement between the European Union and the Swiss Confederation on the modalities of its participation in the European Asylum Support Office (OJ L 102, 5.4.2014, p. 1).

<sup>(2)</sup> 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).

<sup>(3)</sup> 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, 25 February 2016.

*For the Council*  
*The President*  
K.H.D.M. DIJKHOFF

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**COUNCIL DECISION (EU) 2016/351****of 4 March 2016****establishing the position to be taken on behalf of the European Union within the General Council of the World Trade Organization on Jordan's request for a WTO waiver relating to the transitional period for the elimination of its export subsidy program**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Paragraphs 3 and 4 of Article IX of the Marrakesh Agreement establishing the World Trade Organization ('WTO Agreement') set out the procedures for the granting of waivers concerning the Multilateral Trade Agreements in Annex 1A or 1B or 1C to the WTO Agreement and their annexes.
- (2) On 27 July 2007, Jordan was granted an extension of the transitional period provided for by the Agreement on Subsidies and Countervailing Measures ('SCM Agreement') for the elimination of its export subsidy program which takes the form of partial or total exemption from income tax of profits generated from certain exports. That extension was continued until 31 December 2013 with a phase-out period ending on 31 December 2015, in accordance with the procedures for continuation of extensions pursuant to Article 27.4 of the SCM Agreement of the transitional period under Article 27.2(b) of that Agreement for certain developing countries.
- (3) Pursuant to paragraph 3 of Article IX of the WTO Agreement, Jordan submitted a request for a waiver from its phase-out obligation set out in Article 27.4 of the SCM Agreement until 31 December 2018 in respect of its export subsidy program.
- (4) The granting of the waiver would not negatively affect the economy or trade interests of the Union and would support Jordan in its efforts to address the economic challenges it faces as a result of the difficult and unstable political situation in the region.
- (5) It is appropriate, therefore, to establish the position to be taken on behalf of the Union within the WTO General Council to support the waiver request by Jordan,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on behalf of the European Union within the General Council of the World Trade Organization shall be to support Jordan's waiver request relating to the extension of the transitional period for the elimination of its export subsidy program until 31 December 2018 in accordance with the terms of the waiver request.

This position shall be expressed by the Commission.

*Article 2*

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

Done at Brussels, 4 March 2016.

*For the Council*  
*The President*  
S.A.M. DIJKSMA

**COUNCIL DECISION (EU) 2016/352****of 4 March 2016**

**establishing the position to be adopted on behalf of the European Union in the relevant Committees of the United Nations Economic Commission for Europe as regards the proposals for amendments to UN Regulations Nos 10, 34, 41, 46, 48, 50, 51, 53, 55, 60, 73, 83, 94, 107, 110, 113, 118, 125, 128, 130 and 131 and the proposal for a new Regulation concerning the approval of quiet road transport vehicles (QRTVs)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) In accordance with Council Decision 97/836/EC <sup>(1)</sup>, the Union acceded to the Agreement of the United Nations Economic Commission for Europe (UNECE) concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted to and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these prescriptions ('Revised 1958 Agreement').
- (2) In accordance with Council Decision 2000/125/EC <sup>(2)</sup>, the Union acceded to the Agreement concerning the establishing of global technical regulations for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles ('Parallel Agreement').
- (3) Directive 2007/46/EC of the European Parliament and of the Council <sup>(3)</sup> replaced the approval systems of the Member States with a Union approval procedure and established a harmonised framework containing administrative provisions and general technical requirements for all new vehicles, systems, components and separate technical units. That Directive incorporated UN regulations in the EU type-approval system, either as requirements for type-approval or as alternatives to Union legislation. Since the adoption of that Directive, UN regulations have increasingly been incorporated into Union legislation in the framework of the EU type-approval.
- (4) In the light of experience and technical developments, the requirements relating to certain elements or features covered by UN Regulations Nos 10, 34, 41, 46, 48, 50, 51, 53, 55, 60, 73, 83, 94, 107, 110, 113, 118, 125, 128, 130 and 131 need to be adapted to technical progress.
- (5) In order to lay down uniform provisions concerning the approval of quiet road transport vehicles (QRTVs) with regard to their reduced audibility, a new UN Regulation on QRTVs should be adopted.
- (6) It is therefore necessary to establish the position to be adopted on behalf of the Union in the Administrative Committee of the Revised 1958 Agreement and in the Executive Committee of the Parallel Agreement, as regards the adoption of those UN acts,

<sup>(1)</sup> Council Decision 97/836/EC of 27 November 1997 with a view to accession by the European Community to the Agreement of the United Nations Economic Commission for Europe concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted to and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these prescriptions ('Revised 1958 Agreement') (OJ L 346, 17.12.1997, p. 78).

<sup>(2)</sup> Council Decision 2000/125/EC of 31 January 2000 concerning the conclusion of the Agreement concerning the establishing of global technical regulations for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles ('Parallel Agreement') (OJ L 35, 10.2.2000, p. 12).

<sup>(3)</sup> Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ L 263, 9.10.2007, p. 1).

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be adopted on behalf of the Union in the Administrative Committee of the Revised 1958 Agreement and in the Executive Committee of the Parallel Agreement during the period from 7 to 11 March 2016 shall be to vote in favour of the proposals listed in the Annex to this Decision.

*Article 2*

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

Done at Brussels, 4 March 2016.

*For the Council*  
*The President*  
S.A.M. DIJKSMA

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## ANNEX

Regulation #	Agenda item	Agenda item title	Doc reference
10	4.9.1.	Proposal for Supplement 1 to the 05 series of amendments to Regulation No 10 (Electromagnetic compatibility (EMC))	ECE/TRANS/WP.29/2016/16
10	4.9.2.	Proposal for Supplement 3 to the 04 series of amendments to Regulation No 10 (Electromagnetic compatibility (EMC))	ECE/TRANS/WP.29/2016/17
34	4.8.1.	Proposal for Supplement 1 to the 03 series of amendments to Regulation No 34 (Prevention of fire risks)	ECE/TRANS/WP.29/2016/8
41	4.6.1.	Proposal for Supplement 4 to the 04 series of amendments to Regulation No 41 (Noise emissions of motorcycles)	ECE/TRANS/WP.29/2016/3
46	4.8.2.	Proposal for Supplement 3 to the 04 series of amendments to Regulation No 46 (Devices for indirect vision)	ECE/TRANS/WP.29/2016/9
48	4.9.3.	Proposal for Supplement 7 to the 06 series of amendments to Regulation No 48 (Installation of lighting and light-signalling devices)	ECE/TRANS/WP.29/2016/18
48	4.9.4.	Proposal for Supplement 9 to the 05 series of amendments to Regulation No 48 (Installation of lighting and light-signalling devices)	ECE/TRANS/WP.29/2016/19
48	4.9.5.	Proposal for Supplement 16 to the 04 series of amendments to Regulation No 48 (Installation of lighting and light-signalling devices)	ECE/TRANS/WP.29/2016/20
50	4.9.6.	Proposal for Supplement 18 to the original series of amendments to Regulation No 50 (Position, stop, direction indicator lamps for mopeds and motorcycles)	ECE/TRANS/WP.29/2016/21
51	4.6.2.	Proposal for Supplement 1 to the 03 series of amendments to Regulation No 51 (Noise of M and N categories of vehicles)	ECE/TRANS/WP.29/2016/4
53	4.9.7.	Proposal for Supplement 18 to the 01 series of amendments to Regulation No 53 (Installation of lighting and light-signalling devices for L3 vehicles)	ECE/TRANS/WP.29/2016/22
53	4.9.8.	Proposal for a new 02 series of amendments to Regulation No 53 (Installation of lighting and light-signalling devices for L3 vehicles)	ECE/TRANS/WP.29/2016/23

Regulation #	Agenda item	Agenda item title	Doc reference
55	4.7.1.	Proposal for Supplement 5 to the 01 series of amendments to Regulation No 55 (Mechanical couplings)	ECE/TRANS/WP.29/2016/5
60	4.15.1.	Proposal for Supplement 5 to Regulation No 60 (Driver-operated controls (mopeds/motorcycles))	ECE/TRANS/WP.29/2016/27
73	4.12.1.	Proposal for corrigendum 1 (French only) to 01 series of amendments to Regulation No 73 (Lateral protection devices)	ECE/TRANS/WP.29/2016/31
83	4.15.2.	Proposal for Supplement 2 to the 07 series of amendments to Regulation No 83 (Emissions of M1 and N1 vehicles)	ECE/TRANS/WP.29/2016/28
94	4.11.1	Proposal for corrigendum 3 (Russian only) to the 01 series of amendments to Regulation No 94 (Frontal collision protection)	ECE/TRANS/WP.29/2016/32
107	4.8.3.	Proposal for Supplement 5 to the 05 series of amendments to Regulation No 107 (General construction of buses and coaches)	ECE/TRANS/WP.29/2016/10
107	4.8.4.	Proposal for Supplement 5 to the 06 series of amendments to Regulation No 107 (General construction of buses and coaches)	ECE/TRANS/WP.29/2016/11
107	4.8.5.	Proposal for the 07 series of amendments to Regulation No 107 (General construction of buses and coaches)	ECE/TRANS/WP.29/2016/12
110	4.8.6.	Proposal for 02 series of amendments to Regulation No 110 (CNG and LNG vehicles)	ECE/TRANS/WP.29/2016/13
113	4.9.9.	Proposal for Supplement 6 to the 01 series of amendments to Regulation No 113 (Headlamps emitting a symmetrical passing-beam)	ECE/TRANS/WP.29/2016/24
118	4.8.7.	Proposal for Supplement 2 to the 02 series of amendments to Regulation No 118 (Burning behaviour of materials)	ECE/TRANS/WP.29/2016/14
125	4.8.8.	Proposal for Supplement 1 to the 01 series of amendments to Regulation No 125 (Forward field of vision of drivers)	ECE/TRANS/WP.29/2016/15
128	4.9.10.	Proposal for Supplement 5 to the original series of amendments to Regulation No 128 (Light emitting diode (LED) light sources)	ECE/TRANS/WP.29/2016/25
130	4.7.2.	Proposal for Supplement 1 to Regulation No 130 (Lane departure warning system (LDWS))	ECE/TRANS/WP.29/2016/6

Regulation #	Agenda item	Agenda item title	Doc reference
131	4.7.3.	Proposal for Supplement 2 to the 01 series of amendments to Regulation No 131 (Advanced emergency braking systems (AEBS))	ECE/TRANS/WP.29/2016/7
	4.13.1.	Proposal for a new Regulation concerning the approval of quiet road transport vehicles (QRTVs)	ECE/TRANS/WP.29/2016/26



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