

Official Journal of the European Union

L 244



English edition

Legislation

Volume 57

19 August 2014

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⁽¹⁾ Text with EEA relevance

EN

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

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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 893/2014

of 14 August 2014

prohibiting fishing activities for traps registered in Italy, Portugal and Spain fishing for Bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and in the Mediterranean Sea

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules on the Common Fisheries Policy, ⁽¹⁾ and in particular Article 36, paragraph 2 thereof,

Whereas:

- (1) Council Regulation (EU) No 43/2014 of 20 January 2014 fixing for 2014 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, to Union vessels, in certain non-Union waters ⁽²⁾ fixes the amount of Bluefin tuna which may be fished in 2014 in the Atlantic Ocean, east of longitude 45° W, and the Mediterranean Sea by European Union fishing vessels and traps.
- (2) Council Regulation (EC) No 302/2009 of 6 April 2009 concerning a multiannual recovery plan for Bluefin tuna in the Eastern Atlantic and Mediterranean, amending Regulation (EC) No 43/2009 and repealing Regulation (EC) No 1559/2007 ⁽³⁾, requires Member States to inform the Commission of the individual quota allocated to their vessels over 24 metres. For catching vessels less than 24 metres and for traps, Member States need to inform the Commission at least of the quota allocated to producer organisations or groups of vessels fishing with similar gear.
- (3) The Common Fisheries Policy is designed to ensure the long-term viability of the fisheries sector through sustainable exploitation of living aquatic resources based on the precautionary approach.
- (4) In accordance with Article 36, paragraph 2 of Regulation (EC) No 1224/2009, where the Commission finds that, on the basis of information provided by Member States and of other information in its possession, fishing opportunities available to the European Union, a Member State or group of Member States are deemed to have been exhausted for one or more gears or fleets, the Commission shall inform the Member State(s) concerned thereof and shall prohibit fishing activities for the respective area, gear, stock, group of stocks or fleet involved in those specific fishing activities.
- (5) The information in the Commission's possession indicates that the fishing opportunities for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and the Mediterranean Sea allocated to traps registered in Italy, Portugal and Spain have been exhausted.
- (6) On the 7 July, Italy informed the Commission that it had imposed a stop on the fishing activities of its three traps active in the 2014 bluefin tuna fishery as of 29 June 2014 at 15:00.

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.⁽²⁾ OJ L 24, 28.1.2014, p. 1.⁽³⁾ OJ L 96, 15.4.2009, p. 1.

- (7) On the 16 July, Portugal informed the Commission that it had imposed a stop on the fishing activities of its three traps active in the 2014 bluefin tuna fishery as of 15 July 2014 at 00:00.
- (8) On the 10, 18 and 20 June, Spain informed the Commission that it had imposed a stop on the fishing activities of its four traps active in the 2014 bluefin tuna fishery as of 10 June for two traps, as of 19 June for one trap and as of 20 June for the remaining trap resulting in the prohibition of all the activities as of 20 June 2014 at 00:00.
- (9) Without prejudice to the actions by Italy, Portugal and Spain mentioned above, it is necessary that the Commission confirms the prohibition of fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W and the Mediterranean Sea by traps registered in Italy as of 29 June at 15:00, for traps registered in Portugal as of 15 July at 00:00 and for traps registered in Spain as of 20 June 2014 at 00:00 at the latest.

HAS ADOPTED THIS REGULATION:

Article 1

Fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and the Mediterranean Sea by traps registered in Italy shall be prohibited as of 29 June 2014 at 15:00.

Bluefin tuna caught by those traps as of that date shall not be retained on board, placed in cages for fattening or farming, transhipped, transferred, harvested or landed.

Article 2

Fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and the Mediterranean Sea by traps registered in Portugal shall be prohibited as of 15 July 2014 at 00:00.

Bluefin tuna caught by those traps as of that date shall not be retained on board, placed in cages for fattening or farming, transhipped, transferred, harvested or landed.

Article 3

Fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and the Mediterranean Sea by traps registered in Spain shall be prohibited as of 20 June 2014 at 00:00 at the latest.

Bluefin tuna caught by those traps as of that date shall not be retained on board, placed in cages for fattening or farming, transhipped, transferred, harvested or landed.

Article 4

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

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

Done at Brussels, 14 August 2014.

For the Commission,
On behalf of the President,
Michel BARNIER
Vice-President

COMMISSION IMPLEMENTING REGULATION (EU) No 894/2014**of 14 August 2014****prohibiting fishing activities for purse seiners flying the flag of or registered in Croatia, France, Italy, Malta and Spain fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and in the Mediterranean Sea**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules on the common fisheries policy ⁽¹⁾, and in particular Article 36, paragraph 2 thereof,

Whereas:

- (1) Council Regulation (EU) No 43/2014 of 20 January 2014 fixing for 2014 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, to Union vessels, in certain non-Union waters ⁽²⁾ fixes the amount of Bluefin tuna which may be fished in 2014 in the Atlantic Ocean, east of longitude 45° W, and the Mediterranean Sea by European Union fishing vessels and traps.
- (2) Council Regulation (EC) No 302/2009 of 6 April 2009 concerning a multiannual recovery plan for Bluefin tuna in the Eastern Atlantic and Mediterranean, amending Regulation (EC) No 43/2009 and repealing Regulation (EC) No 1559/2007 ⁽³⁾, requires Member States to inform the Commission of the individual quota allocated to their vessels over 24 metres. For catching vessels less than 24 metres and for traps, Member States need to inform the Commission at least of the quota allocated to producer organisations or groups of vessels fishing with similar gear.
- (3) The common fisheries policy is designed to ensure the long-term viability of the fisheries sector through sustainable exploitation of living aquatic resources based on the precautionary approach.
- (4) In accordance with Article 36, paragraph 2 of Regulation (EC) No 1224/2009, where the Commission finds that, on the basis of information provided by Member States and of other information in its possession, fishing opportunities available to the European Union, a Member State or group of Member States are deemed to have been exhausted for one or more gears or fleets, the Commission shall inform the Member State(s) concerned thereof and shall prohibit fishing activities for the respective area, gear, stock, group of stocks or fleet involved in those specific fishing activities.
- (5) The information in the Commission's possession indicates that the fishing opportunities for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and the Mediterranean Sea allocated to purse seiners flying the flag of or registered in Croatia, France, Italy, Malta and Spain have been exhausted.
- (6) On the 24 June, Croatia informed the Commission that it had imposed a stop on the fishing activities of its eight purse seine vessels active in the 2014 bluefin tuna fishery as of 24 June 2014 at 24.00.
- (7) On the 28 May and the 9 and 12 June, France informed the Commission that it had imposed a stop on the fishing activities of its 17 purse seine vessels active in the 2014 bluefin tuna fishery as of 28 May for 11 vessels, as of 9 June for two vessels and as of 12 June for four vessels resulting in the prohibition of all the activities as of 12 June 2014 at 09.04.
- (8) On the 1, 2, 9 and 13 June, Italy informed the Commission that it had imposed a stop on the fishing activities of its 12 purse seine vessels active in the 2014 bluefin tuna fishery as of 1 June for three vessels, as of 2 June for four vessels, as of 8 June for four vessels and as of 13 June for the remaining vessel resulting in the prohibition of all the activities as of 13 June 2014 at 23.02.

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ OJ L 24, 28.1.2014, p. 1.

⁽³⁾ OJ L 96, 15.4.2009, p. 1.

- (9) On the 12 June, Malta informed the Commission that it had imposed a stop on the fishing activities of its purse seine vessel active in the 2014 bluefin tuna fishery as of 10 June 2014 at 14.39.
- (10) On the 28 May, Spain informed the Commission that it had imposed a stop on the fishing activities of its six purse seine vessels active in the 2014 bluefin tuna fishery as of 28 May 2014 at 00.00.
- (11) Without prejudice to the actions by Croatia, France, Italy, Malta and Spain mentioned above, it is necessary that the Commission confirms the prohibition of fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W and the Mediterranean Sea by purse seiners flying the flag of or registered in the EU Member States concerned as of 24 June 2014 at 24.00 for Croatia as of 12 June 2014 at 09.04 at the latest for France, as of 13 June 2014 at 23.02 at the latest for Italy, as of 10 June 2014 at 14.39 for Malta and as of 28 May 2014 at 00.00 for Spain,

HAS ADOPTED THIS REGULATION:

Article 1

Fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and the Mediterranean Sea by purse seiners flying the flag of or registered in Croatia shall be prohibited as of 24 June 2014 at 24.00.

Bluefin tuna caught by those vessels as of that date shall not be retained on board, placed in cages for fattening or farming, transhipped, transferred or landed.

Article 2

Fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and the Mediterranean Sea by purse seiners flying the flag of or registered in France shall be prohibited as of 12 June 2014 at 09.04 at the latest.

Bluefin tuna caught by those vessels as of that date shall not be retained on board, placed in cages for fattening or farming, transhipped, transferred or landed.

Article 3

Fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and the Mediterranean Sea by purse seiners flying the flag of or registered in Italy shall be prohibited as of 13 June 2014 at 23.02 at the latest.

Bluefin tuna caught by those vessels as of that date shall not be retained on board, placed in cages for fattening or farming, transhipped, transferred or landed.

Article 4

Fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and the Mediterranean Sea by purse seiners flying the flag of or registered in Malta shall be prohibited as of 10 June 2014 at 14.39.

Bluefin tuna caught by those vessels as of that date shall not be retained on board, placed in cages for fattening or farming, transhipped, transferred or landed.

Article 5

Fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and the Mediterranean Sea by purse seiners flying the flag of or registered in Spain shall be prohibited as of 28 May 2014 at 00.00.

Bluefin tuna caught by those vessels as of that date shall not be retained on board, placed in cages for fattening or farming, transhipped, transferred or landed.

Article 6

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, 14 August 2014.

*For the Commission,
On behalf of the President,
Michel BARNIER
Vice-President*

COMMISSION REGULATION (EU) No 895/2014**of 14 August 2014****amending Annex XIV to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)****(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 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC ⁽¹⁾, and in particular Articles 58 and 131 thereof,

Whereas:

- (1) Formaldehyde, oligomeric reaction products with aniline (technical MDA) meets the criteria for classification as carcinogenic (category 1B) in accordance with Regulation (EC) No 1272/2008 of the European Parliament and the Council ⁽²⁾ and therefore meets the criteria for inclusion in Annex XIV to Regulation (EC) No 1907/2006 set out in Article 57(a) of that Regulation.
- (2) Arsenic acid meets the criteria for classification as carcinogenic (category 1A) in accordance with Regulation (EC) No 1272/2008 and therefore meets the criteria for inclusion in Annex XIV to Regulation (EC) No 1907/2006 set out in Article 57(a) of that Regulation.
- (3) Bis(2-methoxyethyl) ether (diglyme) meets the criteria for classification as toxic for reproduction (category 1B) in accordance with Regulation (EC) No 1272/2008 and therefore meets the criteria for inclusion in Annex XIV to Regulation (EC) No 1907/2006 set out in Article 57(c) of that Regulation.
- (4) 1,2-dichloroethane (EDC) meets the criteria for classification as carcinogenic (category 1B) in accordance with Regulation (EC) No 1272/2008 and therefore meets the criteria for inclusion in Annex XIV to Regulation (EC) No 1907/2006 set out in Article 57(a) of that Regulation.
- (5) 2,2'-dichloro-4,4'-methylenedianiline (MOCA) meets the criteria for classification as carcinogenic (category 1B) in accordance with Regulation (EC) No 1272/2008 and therefore meets the criteria for inclusion in Annex XIV to Regulation (EC) No 1907/2006 set out in Article 57(a) of that Regulation.
- (6) Dichromium tris(chromate) meets the criteria for classification as carcinogenic (category 1B) in accordance with Regulation (EC) No 1272/2008 and therefore meets the criteria for inclusion in Annex XIV to Regulation (EC) No 1907/2006 set out in Article 57(a) of that Regulation.
- (7) Strontium chromate meets the criteria for classification as carcinogenic (category 1B) in accordance with Regulation (EC) No 1272/2008 and therefore meets the criteria for inclusion in Annex XIV to Regulation (EC) No 1907/2006 set out in Article 57(a) of that Regulation.
- (8) Potassium hydroxyoctaoxodizincatedichromate meets the criteria for classification as carcinogenic (category 1A) in accordance with Regulation (EC) No 1272/2008 and therefore meets the criteria for inclusion in Annex XIV to Regulation (EC) No 1907/2006 set out in Article 57(a) of that Regulation.
- (9) Pentazinc chromate octahydroxide meets the criteria for classification as carcinogenic (category 1A) in accordance with Regulation (EC) No 1272/2008 and therefore meets the criteria for inclusion in Annex XIV to Regulation (EC) No 1907/2006 set out in Article 57(a) of that Regulation.

⁽¹⁾ OJ L 396, 30.12.2006, p. 1.

⁽²⁾ Regulation (EC) No 1272/2008 of the European Parliament and the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures (OJ L 353, 31.12.2008, p. 1).

- (10) Those substances have been identified and included in the candidate list in accordance with Article 59 of Regulation (EC) No 1907/2006. They have furthermore been prioritised for inclusion in Annex XIV to Regulation (EC) No 1907/2006 by the European Chemicals Agency (hereinafter 'the Agency') in its recommendation of 17 January 2013 ⁽¹⁾ in accordance with Article 58 of that Regulation. It is therefore appropriate to include those substances in that Annex.
- (11) N,N-Dimethylacetamide (DMAC) meets the criteria for classification as toxic for reproduction (category 1B) in accordance with Regulation (EC) No 1272/2008 and therefore meets the criteria for inclusion in Annex XIV to Regulation (EC) No 1907/2006 set out in Article 57(c) of that Regulation. It has also been identified and included in the candidate list in accordance with Article 59 of Regulation (EC) No 1907/2006 and prioritised for inclusion in Annex XIV to that Regulation by the Agency's recommendation of 17 January 2013 in accordance with Article 58 of that Regulation. DMAC has similar intrinsic properties to those of N-Methyl-2-pyrrolidone (NMP) and both substances may be considered as potential alternatives for some of their major uses. Currently the chemical substance NMP is the subject of a restriction procedure in accordance with Article 69 of Regulation (EC) No 1907/2006. In view of the similarities of the two substances, both regarding their intrinsic properties and their industrial applications, and in order to ensure that a consistent regulatory approach is warranted, the Commission considers it appropriate to postpone the decision on the inclusion of DMAC in Annex XIV.
- (12) It is appropriate to specify the latest application dates and the sunset dates referred to in points (i) and (ii) of Article 58(1)(c) of Regulation (EC) No 1907/2006 in Annex XIV to that Regulation.
- (13) The Agency's recommendation of 17 January 2013 has identified the dates referred to in Article 58(1)(c)(ii) of Regulation (EC) No 1907/2006, by which applications must be received if the applicant wishes to continue to use a substance or place it on the market for certain uses, for each of the substances listed in the Annex to this Regulation. Those dates have been identified on the basis of the estimated time that would be required to prepare an application for the authorisation, taking into account the information available on the different substances and the information received during the public consultation carried out in accordance with Article 58(4) of Regulation (EC) No 1907/2006. The Agency's capacity to handle applications in the time provided for in Regulation (EC) No 1907/2006 has also been taken into account, as provided in Article 58(3) of that Regulation.
- (14) Concerning dichromium tris(chromate), strontium chromate, potassium hydroxyoctaoxodizincatedichromate and pentazinc chromate octahydroxide, which are all chromium (VI) compounds, the Agency proposed the latest application date to be set at 24 months after entry into force of this Regulation. However, the Commission considers that the latest application date should be set at 35 months after entry into force of this Regulation in order to follow the approach used for the seven chromium VI compounds already listed in entries 16 to 22 of Annex XIV to Regulation (EC) No 1907/2006.
- (15) For each of the substances listed in the Annex to this Regulation the date referred to in Article 58(1)(c)(i) of Regulation (EC) No 1907/2006 should be set at 18 months after the date referred to in Article 58(1)(c)(ii) of that Regulation.
- (16) Article 58(1)(e) in conjunction with Article 58(2) of Regulation (EC) No 1907/2006 provides for the possibility of exemptions of uses or categories of uses in cases where specific Union legislation imposes minimum requirements relating to the protection of human health or the environment ensuring proper control of the risks. In accordance with the information currently available it is not appropriate to set exemptions based on those provisions.
- (17) On the basis of the information currently available it is not appropriate to set exemptions for product and process orientated research and development.
- (18) On the basis of the information currently available it is not appropriate to set review periods for certain uses.
- (19) Regulation (EC) No 1907/2006 should therefore be amended accordingly.
- (20) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 133 of Regulation (EC) No 1907/2006,

⁽¹⁾ http://echa.europa.eu/documents/10162/13640/4th_a_xiv_recommendation_17jan2013_en.pdf

HAS ADOPTED THIS REGULATION:

Article 1

Annex XIV to Regulation (EC) No 1907/2006 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 14 August 2014.

For the Commission

The President

José Manuel BARROSO

ANNEX

In the table in Annex XIV to Regulation (EC) No 1907/2006 the following entries are added:

Entry Nr	Substance	Intrinsic property(ies) referred to in Article 57	Transitional arrangements		Exempted (categories of) uses	Review periods
			Latest application date (*)	Sunset date (**)		
‘23.	Formaldehyde, oligomeric reaction products with aniline (technical MDA) EC No: 500-036-1 CAS No: 25214-70-4	Carcinogenic (category 1B)	22 February 2016	22 August 2017	—	—
24.	Arsenic acid EC No: 231-901-9 CAS No: 7778-39-4	Carcinogenic (category 1A)	22 February 2016	22 August 2017	—	—
25.	Bis(2-methoxyethyl) ether (diglyme) EC No: 203-924-4 CAS No: 111-96-6	Toxic for reproduction (category 1B)	22 February 2016	22 August 2017	—	—
26.	1,2-dichloroethane (EDC) EC No: 203-458-1 CAS No: 107-06-2	Carcinogenic (category 1B)	22 May 2016	22 November 2017	—	—
27.	2,2’-dichloro-4,4’-methylenedianiline (MOCA) EC No: 202-918-9 CAS No: 101-14-4	Carcinogenic (category 1B)	22 May 2016	22 November 2017	—	—
28.	Dichromium tris(chromate) EC No: 246-356-2 CAS No: 24613-89-6	Carcinogenic (category 1B)	22 July 2017	22 January 2019	—	—
29.	Strontium chromate EC No: 232-142-6 CAS No: 7789-06-2	Carcinogenic (category 1B)	22 July 2017	22 January 2019	—	—
30.	Potassium hydroxyoctaoxodizincatedichromate EC No: 234-329-8 CAS No: 11103-86-9	Carcinogenic (category 1A)	22 July 2017	22 January 2019	—	—
31.	Pentazinc chromate octahydroxide EC No: 256-418-0 CAS No: 49663-84-5	Carcinogenic (category 1A)	22 July 2017	22 January 2019	—	—

(*) Date referred to in Article 58(1)(c)(ii) of Regulation (EC) No 1907/2006.

(**) Date referred to in Article 58(1)(c)(i) of Regulation (EC) No 1907/2006.

COMMISSION IMPLEMENTING REGULATION (EU) No 896/2014**of 18 August 2014****repealing Implementing Regulation (EU) No 793/2013 establishing measures in respect of the Faroe islands to ensure the conservation of the Atlanto-Scandian herring stock**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1026/2012 of the European Parliament and of the Council of 25 October 2012 on certain measures for the purpose of the conservation of fish stocks in relation to countries allowing non-sustainable fishing ⁽¹⁾, and in particular Article 7 thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) No 793/2013 of 20 August 2013 establishing measures in respect of the Faeroe Islands to ensure the conservation of the Atlanto-Scandian herring stock ⁽²⁾ identifies the Faroe Islands as a country allowing non-sustainable fishing and adopts certain measures regarding the fishery for Atlanto-Scandian herring and its associated species, pursuant to Regulation (EU) No 1026/2012.
- (2) Article 7 of Regulation (EU) No 1026/2012 provides that such measures shall cease to apply when the country allowing non-sustainable fishing adopts, autonomously or within consultations, appropriate corrective measures for the conservation and management of the stock of common interest which do not undermine the effect of measures taken by the Union.
- (3) By announcement of the Faroese Minister for Fisheries of 12 June 2014, the Faroe Islands have adopted a catch limit of 40 000 t of herring for 2014, a figure which, in absolute and relative terms, is well below the catch limit of 105 230 t adopted for 2013. This would increase by 4,4 % the overall TAC for 2014 proposed by the other coastal States under the existing long-term management plan.
- (4) According to the most recent scientific advice, the estimated effect of this increase in catch in 2014 on the biomass of herring by the beginning of 2015 would only be 0,4 %, a figure that can be considered non-significant in terms of conservation of the stock.
- (5) The corrective measure adopted by the Faroe Islands, when taken together with the shares adopted jointly by the other coastal States, i.e. Russian Federation, Norway, Iceland and the Union, will not therefore undermine the conservation efforts agreed between the EU and the other coastal States.
- (6) As a consequence, the measures adopted by the Commission under Implementing Regulation (EU) No 793/2013 should cease to apply in accordance with Article 7(1) of Regulation (EC) No 1026/2012. Implementing Regulation (EU) No 793/2013 should thus be repealed.
- (7) As continuing the application of those measures is not required, this Regulation should enter into force on the day following that of its publication.
- (8) This is without prejudice to the future quotas to be set by the Faroe Islands or to the forthcoming coastal state consultations on the joint management of Atlanto-Scandian herring.
- (9) The Committee for Fisheries and Aquaculture did not deliver an opinion,

⁽¹⁾ OJ L 316, 14.11.2012, p. 34.

⁽²⁾ OJ L 223, 21.8.2013, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 793/2013 is hereby repealed.

Article 2

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

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

Done at Brussels, 18 August 2014.

For the Commission

The President

José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 897/2014**of 18 August 2014****laying down specific provisions for the implementation of cross-border cooperation programmes financed under Regulation (EU) No 232/2014 of the European Parliament and the Council establishing a European Neighbourhood Instrument**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 291 thereof,

Having regard to Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument ⁽¹⁾, and in particular Article 12 thereof,

Having regard to the Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action ⁽²⁾, and in particular Article 6(2) thereof,

Whereas:

- (1) One of the strands of Regulation (EU) No 232/2014 involves cooperation between on the one hand one or more Member States of the European Union and, on the other hand, one or more partner countries as defined in its Annex I and/or the Russian Federation taking place along their shared part of the external border of the Union with a view to enhance cross-border cooperation ('CBC').
- (2) Regulation (EU) No 236/2014 lays down rules for implementation of assistance which are common to all instruments for external action.
- (3) Regulation (EU) No 232/2014 stipulates that implementing rules laying down specific provisions for the implementation of cross-border cooperation programmes shall be adopted. Those rules shall include provisions on, inter alia, the rate and methods of co-financing; the content, preparation, modification and closure of joint operational programmes; the role and function of the programme structures, including their standing, effective identification, accountability and responsibility, description of management and control systems, and conditions on the technical and financial management of Union support; recovery procedures in all participating countries; monitoring and evaluation; visibility and information activities; shared and indirect management.
- (4) The programming document provided for in Article 9(1) of Regulation (EU) No 232/2014 establishes the strategic objectives to be pursued by cross-border cooperation and the thematic objectives and expected indicative results of that cooperation and contains the list of joint operational programmes to be established.
- (5) Cross-border cooperation should be implemented through multi-annual joint operational programmes covering cooperation for a border or a group of borders and comprising multi-annual priorities that pursue a consistent set of thematic objectives and that may be implemented with the Union support.
- (6) It is necessary to draw up implementing rules which lay down detailed provisions for the implementation of cross-border cooperation programmes financed under Regulation (EU) No 232/2014, while allowing participating countries a certain amount of flexibility as to the detailed arrangements regarding organisation and implementation of specific programmes taking account of the particular features of each programme. On the basis of this principle and in accordance with this Regulation, the participating countries should jointly submit proposals for joint operational programmes to the Commission for adoption in accordance with Article 10(4) of Regulation (EU) No 232/2014.
- (7) Taking into account that all participating countries are to be involved in the decision-making structures of the programme while implementation tasks are usually entrusted to a managing authority based in a Member State, there is a need for rules governing the organisational structure covering the functions of managing authority and the division of functions between and within each body being part of the programme structures.

⁽¹⁾ OJ L 77, 15.3.2014, p. 27.

⁽²⁾ OJ L 77, 15.3.2014, p. 95.

- (8) Based on lessons learnt from the 2007-2013 programming period, the Commission will not automatically bear the final responsibility for recoveries in partner countries. Therefore new provisions have been set out in the implementing rules giving more responsibilities to the participating countries in terms of management, control and audit. The programmes will have to define their own management and control systems based on these rules. The partner countries will have to assist the managing authorities in the implementation of the programmes by setting up national authorities, control contact points and group of auditors.
- (9) In accordance with Article 10(8) of Regulation (EU) No 232/2014 where necessary, agreements shall be signed between the participating countries and the managing authority to set out provisions not included in the financing agreements signed with partner countries or the Russian Federation.
- (10) Based on lessons learnt from the 2007-2013 programming period, grant award procedures and rules developed by the Commission for external actions will not anymore be compulsory. The programmes should be allowed to apply procedures developed by the participating countries provided certain standards set out in this Regulation are met.
- (11) In accordance with Article 7(7) of Regulation (EU) No 232/2014 funding under this Regulation can be pooled with funding under other relevant Union Regulations. This will allow a transfer of funding from Regulation (EU) No 232/2014 to programmes financed under Regulation (EU) No 1299/2013 of the European Parliament and of the Council ⁽¹⁾. The equivalent rule exists in Regulation (EU) No 231/2014 of the European Parliament and of the Council ⁽²⁾ for funding to be transferred to Regulation (EU) No 232/2014 to cover the participation of the latter's beneficiaries in the cross-border cooperation programmes subject to this Regulation. These new rules will simplify the management procedures for these countries' participation in the programmes.
- (12) Since programmes are usually to be implemented through shared management, management and control systems should be in line with Union rules, in particular Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽³⁾ and Commission Delegated Regulation (EU) No 1268/2012 ⁽⁴⁾, as well as with Council Regulation (EC, Euratom) No 2988/95 ⁽⁵⁾. The Commission should ensure that Union funds are used in accordance with the applicable rules during the implementation of the programmes.
- (13) These measures are in line with the opinion of the Committee established by Regulation (EU) No 232/2014.
- (14) In order to allow for timely programming and implementation of programmes, this Regulation should enter into force on the third day following its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

PART ONE

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Regulation lays down detailed provisions for the implementation of cross-border cooperation programmes as set out in Article 12 of Regulation (EU) No 232/2014 and Article 6(2) of Regulation (EU) No 236/2014.

⁽¹⁾ Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal (OJ L 347, 20.12.2013, p. 259).

⁽²⁾ Regulation (EU) of the European Parliament and of the Council No 231/2014 of 11 March 2014, establishing an Instrument for Pre-Accession Assistance (IPA II) (OJ L 77, 15.3.2014, p. 11).

⁽³⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

⁽⁴⁾ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

⁽⁵⁾ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

*Article 2***Definitions**

For the purposes of this Regulation the following definitions shall apply:

- (a) 'programme' means a joint operational programme within the meaning of Article 10 of Regulation (EU) No 232/2014;
- (b) 'participating countries' means all Member States, CBC partner countries and any European Economic Area country taking part in a programme;
- (c) 'programming document' means the document which is referred to Article 9(1) of Regulation (EU) No 232/2014 and which establishes the strategic objectives, the list of programmes, their indicative multiannual allocation and geographical eligibility;
- (d) 'programme area' means core regions, adjoining regions, the major social, economic or cultural centres and territorial units referred to in Article 8(3) and (4) of Regulation (EU) No 232/2014 respectively
- (e) 'core regions' means the territorial units referred to in Article 8(1) of Regulation (EU) No 232/2014 and border areas in Instrument for Pre-Accession Assistance geographic entities and in European Economic Area countries as set out in the programming document;
- (f) 'adjoining regions' means the territorial units referred to in Article 8(2) of Regulation (EU) No 232/2014 and those adjoining to core regions in Instrument for Pre-Accession Assistance geographic entities and in European Economic Area countries;
- (g) 'Joint Monitoring Committee' means the joint committee responsible for monitoring the implementation of the programme;
- (h) 'Managing Authority' means the authority or body appointed by the participating countries as responsible for managing the programme;
- (i) 'national authority' means the entity appointed by each participating country bearing the ultimate responsibility for supporting the Managing Authority in the implementation of the programme on its own territory;
- (j) 'Joint Technical Secretariat' means the body set up by the participating countries to assist the programme bodies;
- (k) 'financial instruments' means Union measures of financial support provided on a complementary basis in order to address one or more specific policy objectives of the Union. Such instruments may take the form of equity or quasi-equity investments, loans or guarantees, or other risk-sharing instruments, and may, where appropriate, be combined with grants;
- (l) 'CBC partner countries' means countries and territories listed in Annex I to Regulation (EU) No 232/2014, the Russian Federation and beneficiaries listed in Annex I to Regulation (EU) No 231/2014 when there is co-financing under the latter;
- (m) 'irregularities' means any infringement of a financing agreement, a contract or of applicable law resulting from an act or omission by an economic operator involved in the implementation of the programme, which has, or would have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union;
- (n) 'Union contribution' means the part of the eligible expenditure of the programme or project which is financed by the Union;
- (o) 'contract' means any procurement or grant contract concluded in the framework of a programme;
- (p) 'large infrastructure projects' means projects comprising a set of works, activities or services intended to fulfil an indivisible function of a precise nature pursuing clearly identified objectives of common interest for the purposes of implementing investments delivering a cross-border impact and benefits and where a budget share of at least EUR 2,5 million is allocated to acquisition of infrastructure;

- (q) 'intermediate body' means any public or private body which acts under the responsibility of a Managing Authority, or which carries out duties on behalf of such an in relation to beneficiaries implementing projects;
- (r) 'contractor' means a natural or legal person with whom a procurement contract has been concluded;
- (s) 'beneficiary' means a natural or legal person with whom a grant contract has been signed;
- (t) 'accounting year' means the period from 1 July to 30 June, except for the first accounting year, in respect of which it means the period from the start date for eligibility of expenditure until 30 June 2015. The final accounting year shall be from 1 July 2023 to 30 September 2024. In case of indirect management with an international organisation in the sense of Article 80, the accounting year shall be the financial year;
- (u) 'financial year' means the period from 1 January to 31 December.

PART TWO

COMMON PROVISIONS

TITLE I

GENERAL FRAMEWORK FOR IMPLEMENTATION

CHAPTER 1

Programmes

Article 3

Preparation

Each programme shall be prepared by a common agreement of all the participating countries, in accordance with Regulation (EU) No 232/2014, the programming document and this Regulation.

Article 4

Content

Each programme shall contain in particular the following information:

1. Introduction: a short description of the programme preparation steps including information on consultations and actions taken to involve the participating countries and other stakeholders in the preparation of the programme.
2. Description of the programme area:
 - (a) core regions: a list of eligible territorial units as set out in the programming document and, where relevant, any extension in accordance with Article 8(4) of Regulation (EU) No 232/2014 and in line with the requirements set out in the programming document;
 - (b) adjoining regions, where relevant: a list of adjoining regions, the justification for their inclusion in line with the requirements set out in the programming document and the conditions for their participation in the programme, as decided by the participating countries;
 - (c) major social, economic or cultural centres referred to in Article 8(3) of Regulation (EU) No 232/2014, where relevant: a list of centres identified per priority, the justification for their inclusion in line with the requirements set out in the programming document and the conditions for their participation in the programme, as decided by the participating countries;
 - (d) a map of the programme area, mentioning the name of each territorial unit and, where relevant, distinguishing between the territorial units referred to in (a), (b) and (c);
 - (e) in addition to the description of the programme area, where relevant, the intention to make use of Article 10(5) of Regulation (EU) No 232/2014 under the conditions set out in the programming document shall be indicated in the programme.

3. Programme's strategy:

- (a) a description of the programme strategy including the choice of thematic objectives and corresponding priorities in line with the provisions of the programming document;
- (b) a justification for the chosen strategy based on:
 - an analysis of the socioeconomic and environmental situation of the programme area in terms of strengths and weaknesses and the medium-term needs deriving from that analysis,
 - a description of lessons learnt from previous experiences in cross-border programmes,
 - based on a wider stakeholders consultation, information on the coherence with other Union-financed programmes in the countries and regions concerned together with an analysis of coherence with national and regional strategies and policies,
 - a risk analysis and mitigating measures;
- (c) a description of objectively verifiable indicators, in particular:
 - the expected results for each priority, and the corresponding result indicators, with a baseline value and a target value,
 - the output indicators for each priority, including the quantified target value, which are expected to contribute to the results;
- (d) a description of ways to mainstream the following cross-cutting issues, where relevant: democracy and human rights, environmental sustainability, gender equality and HIV/AIDS.

4. Structures and appointment of the competent authorities and management bodies:

- (a) the composition of the Joint Monitoring Committee and tasks;
- (b) the Managing Authority and its designation process;
- (c) national authorities of all participating countries, in particular, the authority in each participating country referred to in Articles 20 and 31 and where relevant support structures, other than those referred to in points (e) and (f);
- (d) the procedure for setting up the Joint Technical Secretariat, and branch offices and tasks, where relevant;
- (e) the audit authority and the members of the group of auditors;
- (f) the body or bodies appointed as control contact points in all participating countries and its/their tasks pursuant to Article 32;

5. Programme implementation:

- (a) a summary description of the management and control systems in accordance with Article 30;
- (b) a time-frame for programme implementation;
- (c) a description of project selection procedures in accordance with Article 30;
- (d) a description per priority of nature of support in accordance with Article 38, including a list of projects to be selected through direct award procedure or contributions to financial instruments. It shall also include an indicative timetable for the selection of projects to be financed in accordance with Article 41;
- (e) a description of planned use of technical assistance and applicable contract award procedures;
- (f) a description of the monitoring and evaluation systems, together with an indicative monitoring and evaluation plan for the whole duration of the programme;

- (g) the communication strategy for the whole programme period and an indicative information and communication plan for the first year;
- (h) information on fulfilment of regulatory requirements laid down in Directive 2001/42/EC of the European Parliament and of the Council ⁽¹⁾;
- (i) an indicative financial plan containing two tables (without any division per participating country):
 - a table specifying the yearly provisional financial appropriations for commitments and payments envisaged for the support from the Union for each thematic objective and technical assistance. The first year's appropriations shall include the costs for preparatory actions pursuant to Article 16,
 - a table specifying the provisional amounts of the financial appropriations of the support from the Union and co-financing for the whole programming period for each thematic objective and technical assistance;
- (j) rules on eligibility of expenditure referred to in Articles 48 and 49;
- (k) the apportionment of liabilities among the participating countries in accordance with Article 74;
- (l) the rules of transfer, use and monitoring of co-financing;
- (m) a description of IT systems for the reporting and exchange of computerised data between the Managing Authority and the Commission;
- (n) language(s) adopted by the programme in conformity with Article 7.

Article 5

Adoption

1. Within one year of approval of the programming document, the participating countries shall jointly submit a proposal for a programme to the Commission containing all the elements referred to in Article 4. The participating countries shall confirm in writing their agreement with the content of the programme prior to its submission to the Commission.
2. The Commission shall verify that the programme contains all the elements referred to in Article 4. The Commission shall assess the consistency of the programme with Regulation (EU) No 232/2014, the programming document, this Regulation and any other relevant Union law. The assessment shall in particular address:
 - (a) the quality of the analysis, its consistency with the proposed priorities and with other Union-financed programmes;
 - (b) the accuracy of the financial plan;
 - (c) the compliance with Directive 2001/42/EC.
3. Within three months of the programme submission date the Commission shall make observations and request necessary revisions. Within two months of the Commission's request the participating countries shall provide all necessary information. Within six months of the programme submission date the Commission shall approve the programme provided that all Commission observations have been duly taken into account. The Commission may extend these deadlines depending on the nature of the required revisions.
4. Each programme shall be adopted by a Commission decision for the whole programme duration in accordance with Article 10(4) of Regulation (EU) No 232/2014.

Article 6

Adjustments and revision

1. Adjustments of the programme that do not significantly affect the nature and objectives of the programme shall be considered non substantial. In particular:
 - (a) cumulative changes up to 20 % of the originally allocated Union contribution to each thematic objective or technical assistance or as amended pursuant to paragraph 2 involving transfer between thematic objectives or from technical assistance to thematic objectives;
 - (b) cumulative changes up to 20 % of the originally allocated Union contribution to each thematic objective or as amended pursuant to paragraph 2 involving transfer from thematic objectives to technical assistance.

⁽¹⁾ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30).

Changes of the programme financial plan referred to in point (a) may be directly made by the Managing Authority, with the prior approval of the Joint Monitoring Committee. The Managing Authority shall inform the Commission of any of these changes, at the latest in the next annual report, and provide the Commission with all necessary additional information.

In case of changes of the programme financial plan referred to in point (b), the Managing Authority shall seek the prior approval of both the Joint Monitoring Committee and the Commission.

2. Following a reasoned request from the Joint Monitoring Committee or at the initiative of the Commission after having consulted the Joint Monitoring Committee, programmes may be revised as a result of any of the following:

- (a) review of the programming document;
- (b) major socioeconomic changes or substantial changes in the programme's area;
- (c) implementation difficulties;
- (d) changes in the financial plan beyond the margin of flexibility referred to in paragraph 1 or any change significantly affecting the nature and objectives of the programme;
- (e) audits, monitoring and evaluations.

3. Requests for revision of programmes shall be duly substantiated and shall reflect the expected impact of the changes to the programme.

4. The Commission shall assess the information provided in accordance with paragraphs 2 and 3. If The Commission has observations the Managing Authority shall submit all necessary additional information to the Commission. Within five months of the submission of the request for revision, the Commission shall approve it provided that all Commission observations have been duly taken into account.

5. Any revision of a programme in the cases referred to in paragraph 2 or Article 66(5) shall be adopted by a decision of the Commission and may require the modification of the financing agreements referred to in Articles 8 and 9.

Article 7

Use of Languages

1. As working language each programme shall use one or more of the Union's official language(s). In addition, the participating countries may also decide to use other non-Union official languages as working language. The choice of working language(s) shall be described in the programme pursuant to Article 4.

2. In order to take account of the partnership nature of the programmes, the beneficiaries may submit documents to the Managing Authority concerning their project in their national language, provided that this possibility is specifically mentioned in the programme and that the Joint Monitoring Committee makes provision, through the Managing Authority, for any interpretation and translation that may be necessary.

3. Interpretation and translation costs for all languages selected by the programme shall be covered by either the technical assistance budget at programme level or the budget of each individual project at project level.

CHAPTER 2

Financing Agreements

Article 8

Financing agreements with CBC partner countries

1. The Commission shall conclude financing agreements with each of the CBC partner countries. Financing agreements may also be signed by the other participating countries and by the Managing Authority or by the country hosting the Managing Authority.

2. Financing agreements shall be signed not later than the end of the year which follows the year of the Commission decision adopting the programme. Nevertheless, where a programme involves more than one CBC partner country, at least one financing agreement shall be signed by all parties before that date. The other CBC partner countries may sign their respective financing agreements afterwards. Pending the entry into force of its financing agreement, the external component of the programme with that CBC partner country may not be launched. Where a programme is co-financed under Regulation (EU) No 231/2014, and there is more than one CBC partner country, at least one financing agreement with one participating partner country listed in Annex I to Regulation (EU) No 232/2014 or the Russian Federation shall be signed by all parties not later than the end of the year which follows the year of the Commission decision adopting the programme.

Article 9

Financing agreements with CBC partner countries providing co-financing

1. Where a CBC partner country's co-financing is transferred to the Managing Authority, the financing agreement referred to in Article 8 shall also be signed by the other participating Member States and CBC partner countries and by the Managing Authority or by the country hosting the Managing Authority.

2. That financing agreement shall contain provisions concerning the CBC partner country's co-financing, such as:

- (a) amount;
- (b) intended use and conditions for use, including conditions for applying;
- (c) modalities of payments;
- (d) financial management;
- (e) record keeping;
- (f) reporting obligations;
- (g) verifications and controls;
- (h) irregularities and recoveries.

CHAPTER 3

Other agreements or Memoranda of Understanding

Article 10

Content

The Managing Authority may conclude Memoranda of Understanding or any other agreement with participating countries outlining programme provisions, in particular national co-financing, specific financial responsibilities, audits and recoveries.

The content of those Memoranda of Understanding or any other agreement shall be in line with the provisions laid down in this Regulation and in the financing agreement(s).

CHAPTER 4

Implementation

Article 11

Methods of implementation

Programmes shall be usually implemented in shared management with Member States in accordance with Article 59 of Regulation (EU, Euratom) No 966/2012. Participating countries may propose implementation in indirect management by a CBC partner country or an international organisation in accordance with Article 60 of Regulation (EU, Euratom) No 966/2012.

Programmes implemented in indirect management shall be governed by Part Three of this Regulation.

TITLE II

CO-FINANCING*Article 12***Co-financing rate**

1. Co-financing shall amount to at least 10 % of the Union contribution.
2. Where possible, co-financing shall be distributed in a balanced way throughout the duration of the programme to ensure that the minimum objective of 10 % is achieved by the end of the programme.
3. Aid granted under the programme shall comply with the applicable Union rules on State aid within the meaning of Article 107 of the Treaty on the Functioning of the European Union.

*Article 13***Co-financing sources**

1. Co-financing shall come from sources other than the Union.
2. Within each programme the participating countries shall be free to determine the source, amount and distribution of co-financing.
3. If a CBC partner country undertakes to transfer its co-financing to the Managing Authority, the arrangements for providing, using and monitoring the co-financing shall be set out in the financing agreement referred to in Article 9 and if relevant in the agreements referred to in Article 10.
4. In all other cases, the arrangements applicable to the co-financing may be set out in the agreements referred to in Article 10.

*Article 14***Contributions in kind**

1. Any provision of non-financial resources free of charge by a third party shall be considered as contributions in kind at programme or project level. The cost of staff assigned to a project or programme shall not be considered a contribution in kind but may be considered part of the minimum 10 % co-financing referred to in Article 12 when paid by beneficiaries or participating countries.
2. Contributions in kind are not eligible costs and may not be considered part of the minimum 10 % co-financing referred to in Article 12.

TITLE III

PERIOD OF EXECUTION*Article 15***Period of execution**

The period of execution of each programme shall start at the earliest on the date of the adoption of the programme by the Commission and end on 31 December 2024 at the latest.

*Article 16***Starting phase of the programme**

1. Under shared management, the programme shall start in the participating Member States upon receipt of the notification referred to in Article 25(4) by which the Commission informs that it does not intend to request the documents referred to in that Article or that it does not have any observation. The participating countries may launch the preparatory actions required to set up the management and control systems earlier. The related costs shall be eligible in accordance with Article 36.

2. Under indirect management referred to in Articles 80 and 82, the programme shall start in the participating Member States after the entry into force of the agreement entrusting budget implementation tasks to an international organisation or to a CBC partner country.
3. In addition, the following further preparatory actions required to start the programme may be undertaken:
 - (a) the establishment of the Managing Authority and, where relevant, of the Joint Technical Secretariat;
 - (b) the first meetings of the Joint Monitoring Committee, including also representatives of CBC partner countries that have not yet signed a financing agreement or where the financing agreement has not yet entered into force;
 - (c) the preparation and launching of project selection or contract award procedures with a suspension clause linked to the entry into force of the financing agreements.
4. Pending the entry into force of the respective financing agreements, only preparatory actions referred to in paragraphs 1 and 3 may be launched with the relevant CBC partner country.

Article 17

Discontinuation of the programme

1. Where none of the CBC partner countries has signed the relevant financing agreement before the date referred to in Article 8(2), the programme shall be discontinued.

European Regional Development Fund annual instalments already committed shall remain available for their normal lifetime, but they may be used only for activities that take place exclusively in the Member States concerned and contracted before the Commission discontinuation decision. The Managing Authority shall transmit to the Commission the final report within three months from the closure of the contracts and the latter shall proceed in conformity with paragraphs 2 and 3.

2. Where the programme cannot be implemented due to problems arising in relations between participating countries and in other duly justified cases, the Commission may decide to discontinue the programme before the expiry date of the period of execution at the request of the Joint Monitoring Committee or on its own initiative after having consulted the Joint Monitoring Committee.

3. Where the programme is discontinued, the Managing Authority shall transmit the final report within six months following the Commission's decision. After clearing the previous prefinancing payments, the Commission shall pay the final balance or, where appropriate, issue a recovery order. The Commission shall also de-commit the balance of commitments.

As an alternative, it may be decided to reduce the programme budget allocation in accordance with point (c) of Article 6(2).

4. In the cases referred to in paragraphs 1 and 2, support from the European Regional Development Fund corresponding to annual instalments not yet committed or annual instalments committed and de-committed totally or partially during the same budgetary year, which have not been reallocated to another programme of the same category of external cooperation programmes shall be allocated to the internal cross-border cooperation programmes in accordance with Article 4 of Regulation (EU) No 1299/2013.

Support from Regulation (EU) No 232/2014 corresponding to annual instalments not yet committed or annual instalments committed and de-committed totally or partially during the same budgetary year shall be used to finance other programmes or projects eligible under Regulation (EU) No 232/2014.

Article 18

Projects

1. Contract for large infrastructure projects selected through direct award shall be signed and contribution to financial instruments shall be provided before 30 June 2019.
2. All other contracts shall be signed before 31 December 2021.
3. All project activities financed by the programme shall end on 31 December 2022 at the latest.

*Article 19***Closure of the programme**

1. Only activities linked to the closure of the programme may be carried out between 1 January 2023 and 30 September 2024.
2. A programme shall be considered closed when:
 - (a) all contracts concluded under the programme have been closed;
 - (b) the final balance has been paid or reimbursed;
 - (c) remaining appropriations have been de-committed by the Commission.
3. The closure of the programme shall not prejudice the Commission's right to undertake, at a later stage, financial corrections vis-à-vis the Managing Authority or the beneficiaries if the final amount of the programme or the projects has to be readjusted as a result of controls or audits carried out after the closure date.

TITLE IV

PROGRAMME STRUCTURES*Article 20***Appointment of authorities and management bodies**

1. A national, regional or local public authority or body, or a private law body with a public service mission shall be selected as Managing Authority by the participating countries. The same Managing Authority may be selected for more than one programme.
2. The participating countries shall appoint a national, regional or local public authority or body, functionally independent from the Managing Authority, as the single Audit Authority. The Audit Authority shall be situated in the Member State hosting the Managing Authority. The same Audit Authority may be appointed for more than one programme.
3. One or more intermediate bodies may be appointed to carry out certain tasks of the Managing Authority under the responsibility of the latter. The relevant arrangements between the Managing Authority and the intermediate bodies shall be formally recorded in writing. The intermediate body shall guarantee its solvency and competence in the domain concerned, as well as its administrative and financial management capacity.
4. The participating countries shall lay down in the management and control systems and where relevant in the financing agreements referred to in Articles 8 and 9 and/or the agreements referred to in Article 10, the rules governing their relations with the Managing Authority and Audit Authority, the relations between these authorities and the relations between these authorities and the Commission.
5. The Member State in which the Managing Authority is located may, at its own initiative, designate a coordinating body whose responsibility is to liaise with and inform the Commission, coordinate activities of the other relevant designated bodies and promote the harmonised application of applicable law.
6. Each participating country shall appoint:
 - (a) a national authority to support the Managing Authority in the management of the programme in accordance with the principle of sound financial management;
 - (b) a control contact point to support the Managing Authority in its control of the programme obligations;
 - (c) a representative to the group of auditors referred to in Article 28(2);
 - (d) representatives to the Joint Monitoring Committee referred to in Article 21.

CHAPTER 1

Joint Monitoring Committee

Article 21

Joint Monitoring Committee

Within three months of the date of the adoption of the programme by the Commission, the participating countries shall set up the Joint Monitoring Committee.

Article 22

Composition of the Joint Monitoring Committee

1. The Joint Monitoring Committee shall be composed of one or more representatives appointed by each participating country. Representatives shall be appointed on a functional basis and not on a personal basis. Other persons may be appointed as observers by the Joint Monitoring Committee.
2. Whenever possible and appropriate, participating countries shall ensure suitable participation of all actors concerned and in particular local stakeholders, including civil society organisations and local authorities, in order to ensure their participation in the implementation of the programme.
3. The Commission shall be involved in the work of the Joint Monitoring Committee as an observer. It shall be invited to each meeting of the Joint Monitoring Committee at the same time as the representatives of the participating countries. The Commission may decide whether it will participate or not in all or part of each Joint Monitoring Committee meeting.
4. The Joint Monitoring Committee shall be chaired by one of its members, representative of the Managing Authority or any other person, as set out in the rules of procedure.
5. A representative of the Managing Authority, of the Joint Technical Secretariat or of the intermediate body referred to in Article 20(3) shall be appointed as secretary of the Joint Monitoring Committee.

Article 23

Functioning

1. The Joint Monitoring Committee shall draw up and adopt its rules of procedure by unanimity.
2. The Joint Monitoring Committee shall seek to take decisions by consensus. It may put certain decisions to a vote, particularly those relating to the final selection of projects and the grant amounts allocated to them in accordance with its rules of procedure.
3. Each participating country has equal voting rights regardless of the number of representatives it has appointed.
4. The secretary, the Commission or any other observer have no voting rights.
5. The chairperson of the Joint Monitoring Committee shall act as moderator and lead the discussions. The chairperson shall have voting rights when he or she is a representative of a participating country.
6. The Joint Monitoring Committee shall meet at least once per year. It shall be convened by its chairperson at the request of the Managing Authority or upon duly justified request of any participating country or of the Commission. It may also take decisions through written procedure at the initiative of its chairperson, the Managing Authority or any participating country in conformity with its rules of procedure.
7. Minutes shall be drawn up after each meeting of the Joint Monitoring Committee for signature by the chairperson and the secretary. A copy of these minutes shall be shared with the participating countries representatives, the Commission and any other observer.

*Article 24***Functions of the Joint Monitoring Committee**

1. The Joint Monitoring Committee shall follow the programme implementation and progress towards its priorities using the objectively verifiable indicators and related target values defined in the programme. The Joint Monitoring Committee shall examine all issues affecting the programme performance.
2. The Joint Monitoring Committee may issue recommendations to the Managing Authority regarding the programme implementation and evaluation. It shall monitor actions undertaken as a result of its recommendations.
3. The Joint Monitoring Committee shall in particular:
 - (a) approve the Managing Authority's work programme and financial plan, including planned use of technical assistance;
 - (b) monitor the implementation by the Managing Authority of the work programme and financial plan;
 - (c) approve the criteria for selecting projects to be financed by the programme;
 - (d) be responsible for the evaluation and selection procedure applicable to projects to be financed by the programme;
 - (e) approve any proposal to revise the programme;
 - (f) examine all reports submitted by the Managing Authority and, if necessary, take appropriate measures;
 - (g) examine any contentious cases brought to its attention by the Managing Authority.
 - (h) examine and approve the annual report referred to in Article 77;
 - (i) examine and approve the annual monitoring and evaluation plan referred to in Article 78;
 - (j) examine and approve the annual information and communication plans referred to in Article 79.
4. Notwithstanding point (d) of paragraph 3, the Joint Monitoring Committee may set up a project selection committee acting under its responsibility.

*CHAPTER 2***Managing Authority***Article 25***Designation**

1. The Managing Authority that has been selected by the participating countries of the programme shall undergo a designation procedure in the Member State in which it is located by decision at the appropriate level.
2. The designation procedure shall be based on a report and an opinion of an independent audit body that assesses the compliance of the management and control systems, including the role of intermediate bodies therein, with the designation criteria laid down in Annex I to this Regulation. The audit body shall take into account, where relevant, whether the management and control systems for the programme are similar to those in place for the previous programming period, as well as any evidence of their effective functioning.

The independent audit body shall be the Audit Authority, or another public or private law body with the necessary audit capacity, which is functionally independent of the Managing Authority. It shall carry out its work in accordance with internationally accepted audit standards.

3. The Member State shall submit the formal decision referred to in paragraph 1 to the Commission as soon as possible after the programme adoption by the Commission.

4. Within two months of receipt of the formal decision referred to in paragraph 1, the Commission may request the report and the opinion of the independent audit body and the description of the management and control system as regards, in particular, those parts concerning project selection. If the Commission does not intend to request these documents, it shall notify the Member State as soon as possible. If the Commission requests these documents, it may make observations within two months of receipt of these documents which shall be reviewed taking into account the observations. When the Commission does not have any initial or further observations it shall notify the Member State as soon as possible.

5. Where existing audit and control results show that the designated authority no longer complies with the criteria referred to in paragraph 2, the Member State shall, at an appropriate level, set the necessary remedial action and fix a period of probation according to the severity of the problem, during which such remedial action shall be taken.

Where the designated authority fails to implement the required remedial action within the period of probation determined by the Member State, the Member State, at an appropriate level, shall end its designation.

The Member State shall notify the Commission without delay when:

- a designated authority is put under probation, and provide information on the remedial actions and the respective probation period, or
- following implementation of remedial actions the probation is ended, or
- the designation of an authority is ended.

The notification that a designated body is put under probation by the Member State shall not, without prejudice to the application of Article 61, interrupt the handling of payment requests.

Where the designation of a Managing Authority is ended, the participating countries shall appoint a new authority or body, as referred to in Article 20(1), to take over the functions of the Managing Authority. That body or authority shall undergo the designation procedure foreseen in paragraph 2 and the Commission shall be notified thereof in conformity with paragraph 4. This change shall require a revision of the programme pursuant to Article 6.

Article 26

Functions of the Managing Authority

1. The Managing Authority shall be responsible for managing the programme in accordance with the principle of sound financial management and for ensuring that decisions of the Joint Monitoring Committee comply with the applicable law and provisions.

2. As regards the programme management, the Managing Authority shall:

- (a) support the work of the Joint Monitoring Committee and provide it with the information it requires to carry out its tasks, in particular data relating to the progress of the programme in achieving its expected results and targets;
- (b) draw up and, after approval by the Joint Monitoring Committee, submit the annual report and the final report to the Commission;
- (c) share information with intermediate bodies, the Joint Technical Secretariat, the Audit Authority and beneficiaries that is relevant to the execution of their tasks or project implementation;
- (d) establish and maintain a computerised system to record and store data on each project necessary for monitoring, evaluation, financial management, control and audit, including data on individual participants in projects, where applicable. In particular, it shall record and store technical and financial reports for each project. The system shall provide all data required for drawing up payment requests and annual accounts, including records of amounts recoverable, amounts recovered and amounts reduced following cancellation of all or part of the contribution for a project or programme;
- (e) carry out where relevant environmental impact assessment studies at programme level;
- (f) implement the information and communication plans in accordance with Article 79;

- (g) implement the monitoring and evaluation plans in accordance with Article 78.
- 3. As regards the selection and management of projects, the Managing Authority shall:
 - (a) draw up and launch the selection procedures;
 - (b) manage the project selection procedures;
 - (c) provide the lead beneficiary with a document setting out the conditions for support for each project including the financing plan and execution deadlines;
 - (d) sign contracts with beneficiaries;
 - (e) manage projects.
- 4. As regards the technical assistance, the Managing Authority shall:
 - (a) manage the contract award procedures;
 - (b) sign contracts with contractors;
 - (c) manage contracts.
- 5. As regards the financial management and control of the programme, the Managing Authority shall:
 - (a) verify that services, supplies or works have been performed, delivered and/or installed and whether expenditure declared by the beneficiaries has been paid by them and that this complies with applicable law, programme rules and conditions for support of the projects;
 - (b) ensure that beneficiaries involved in project implementation maintain either a separate accounting system or a suitable accounting code for all transactions relating to a project;
 - (c) put in place effective and proportionate anti-fraud measures taking into account the risks identified;
 - (d) set up procedures to ensure that all documents regarding expenditure and audits required to ensure a suitable audit trail are held in accordance with the requirements of Article 30;
 - (e) draw up the management declaration and annual summary referred to in Article 68;
 - (f) draw up and submit payment requests to the Commission in accordance with Article 60;
 - (g) draw up the annual accounts;
 - (h) take account of the results of all audits carried out by or under the responsibility of the Audit Authority when drawing up and submitting payment requests;
 - (i) maintain computerised accounting records for expenditure declared to the Commission and for payments made to beneficiaries;
 - (j) keep an account of amounts recoverable and of amounts reduced following cancellation of all or part of the grant.
- 6. Verifications pursuant to point (a) of paragraph 5 shall include the following procedures:
 - (a) administrative verifications for each payment request by beneficiaries;
 - (b) on-the-spot project verifications.

The frequency and coverage of the on-the-spot verifications shall be proportionate to the amount of the grant to a project and the level of risk identified by these verifications and audits by the Audit Authority for the management and control systems as a whole.

- 7. On-the-spot project verifications pursuant to paragraph point (b) of paragraph 6 may be carried out on a sample basis
- 8. Where the institution hosting the Managing Authority is also a beneficiary under the programme, arrangements for the verifications referred to in point (a) of paragraph 5 shall ensure suitable segregation of functions.

*Article 27***Joint Technical Secretariat and branch offices**

1. The participating countries may decide to set up a Joint Technical Secretariat to be described in the programme in accordance with Article 4.
2. The Joint Technical Secretariat shall assist the Managing Authority, the Joint Monitoring Committee and, where relevant, the Audit Authority, in carrying out their respective functions. In particular, it shall inform potential beneficiaries about funding opportunities under programmes and shall assist beneficiaries in the project implementation. It may also be appointed as intermediate body referred to in Article 20(3).
3. Following a decision of the participating countries, branch offices may be set up in the participating countries. Their role shall be described in the programme and may include communication, information, assistance to the Managing Authority in the project evaluation and implementation follow-up. In no event, may the branch office be entrusted with a task involving exercise of public authority or the use of discretionary powers of judgment regarding projects.
4. The technical assistance budget shall finance the operation of the Joint Technical Secretariat and branch offices.

*CHAPTER 3***Audit Authority***Article 28***Functions of the Audit Authority**

1. The Audit Authority of the programme shall ensure that audits are carried out on the management and control systems, on an appropriate sample of projects and on the annual accounts of the programme.
2. The Audit Authority shall be assisted by a group of auditors comprising a representative of each participating country in the programme.
3. Where audits are carried out by a body other than the Audit Authority, the Audit Authority shall ensure that this body has the necessary functional independence.
4. The Audit Authority shall ensure that the audit work complies with internationally accepted auditing standards.
5. Within 9 months of the signature of the first financing agreement in accordance with Article 8(2), the Audit Authority shall submit an audit strategy for performance of audits to the Commission. The audit strategy shall set out the audit methodology on the annual accounts and on projects, the sampling method for audits on projects and the planning of audits for the current accounting year and the two subsequent accounting years. The audit strategy shall be updated annually from 2017 until end 2024. Where a common management and control system applies to more than one programme, a single audit strategy may be prepared for the programmes concerned. The updated audit strategy shall be submitted to the Commission together with the programme annual report.
6. The Audit Authority shall draw up in conformity with Article 68:
 - (a) an audit opinion on the annual accounts for the preceding accounting year;
 - (b) an annual audit report.

Where a common management and control system applies to more than one programme, the information required under point (b) may be covered by a single report.

*Article 29***Cooperation with the Audit Authority**

The Commission shall cooperate with the Audit Authority to coordinate its audit plans and methods and shall share the results of audits carried out on management and control systems of the concerned programme.

TITLE V

MANAGEMENT AND CONTROL SYSTEMS*Article 30***General principles of management and control systems**

1. Management and control systems shall include:
 - (a) the functions of each body involved in management and control, including division of functions within each body, their internal organisation in compliance with the principle of separation of functions between and within such bodies;
 - (b) procedures for ensuring the correctness and regularity of expenditure declared;
 - (c) electronic data systems for accounting, storage, monitoring and reporting;
 - (d) systems for monitoring and reporting where the responsible body entrusts execution of tasks to another body;
 - (e) arrangements for auditing the functioning of the management and control systems;
 - (f) systems and procedures to ensure an adequate audit trail;
 - (g) procedures for prevention, detection and correction of irregularities, including fraud and the recovery of amounts unduly paid, together with any interest;
 - (h) contract award procedures for technical assistance and projects selection procedures
 - (i) the role of national authorities and the responsibilities of the participating countries in accordance with Article 31.
2. The Managing Authority shall ensure that the management and control systems for the programme are set up in accordance with the provisions of this Regulation and that these systems function effectively.

*Article 31***National authorities and responsibilities of participating countries**

1. The national authority which has been appointed pursuant to point (a) of Article 20(6) shall inter alia:
 - (a) be responsible for the set up and effective functioning of management and control systems at national level;
 - (b) ensure the overall coordination of the institutions involved at national level in the programme implementation, including, inter alia, the institutions acting as control contact points and as member of the group of auditors;
 - (c) represent its country in the Joint Monitoring Committee.

For CBC partner countries, the national authority is the ultimate responsible body for implementing the provisions set out in the financing agreement referred to in Articles 8 and 9.

2. Participating countries shall support the Managing Authority in its obligation referred to in Article 30(2).
3. Participating countries shall prevent, detect and correct irregularities, including fraud and the recovery of amounts unduly paid, together with any interest pursuant Article 74 on their territories. They shall notify these irregularities without delay to the Managing Authority and the Commission and keep them informed of the progress of related administrative and legal proceedings.
4. Responsibilities of participating countries for amounts unduly paid to a beneficiary are laid down in Article 74.

5. A financial correction by the Commission shall not prejudice the Managing Authority's obligation to pursue recoveries under Articles 74 and 75 nor the obligation by Member States to recover State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union and under Article 14 of Council Regulation (EC) No 659/1999 ⁽¹⁾.

Article 32

Audit and control Structures

1. Expenditure declared by the beneficiary in support of a payment request shall be examined by an auditor or by a competent public officer being independent from the beneficiary. The auditor or the competent public officer shall examine whether the costs declared by the beneficiary and the revenue of the project are real, accurately recorded and eligible in accordance with the contract.

This examination shall be performed on the basis of an agreed-upon procedure which will be undertaken in accordance with:

- (a) the International Standard on Related Services 4400 Engagements to perform Agreed-upon Procedures regarding Financial Information as promulgated by International Federation of Accountants (IFAC);
- (b) IFAC Code of Ethics for Professional Accountants, developed and issued by IFAC's International Ethics Standards Board for Accountants.

For public officers, those procedures and standards shall be laid down at national level taking account of international standards.

The auditor shall meet at least one of the following requirements:

- (a) be a member of a national accounting or auditing body or institution which in turn is member of IFAC;
- (b) be a member of a national accounting or auditing body or institution. Where this organisation is not a member of IFAC, the auditor shall commit to undertake the work in accordance with IFAC standards and ethics;
- (c) be registered as a statutory auditor in the public register of a public oversight body in a Member State in accordance with the principles of public oversight set out in Directive 2006/43/EC of the European Parliament and of the Council ⁽²⁾;
- (d) be registered as a statutory auditor in the public register of a public oversight body in a CBC partner country, provided this register is subject to principles of public oversight as set out in the legislation of the country concerned.

The public officer shall have the necessary technical expertise in carrying out its examination work

2. In addition the Managing Authority shall perform its own verifications pursuant to point (a) of Article 26(5) and Article 26(6). For the purpose of carrying out verifications throughout the whole programme area, the Managing Authority may be assisted by the control contact points.

The participating countries shall take all possible measures to support the Managing Authority in its control tasks.

3. The Audit Authority shall ensure that audits are carried out on the management and control systems, on an appropriate sample of projects and on the annual accounts of the programme as referred to in Article 28. The group of auditors mentioned in Article 28(2) shall be set up within three months of the designation of the Managing Authority. It shall draw up its own rules of procedures. It shall be chaired by the Audit Authority appointed for the programme.

Each participating country may authorise the Audit Authority to carry out directly its duties on its territory.

4. The independence of the body(ies) mentioned in paragraphs 1, 2 and 3 shall be guaranteed.

⁽¹⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

⁽²⁾ Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).

*Article 33***Controls by the Union**

1. The Commission, the European Anti-Fraud Office, the European Court of Auditors and any external auditor authorised by these institutions and bodies may verify the use of Union funds by the Managing Authority, beneficiaries, contractors, subcontractors and third parties in receipt of financial support by examining documents and/or conducting on-the-spot checks. Each contract shall expressly stipulate that these institutions and bodies can exercise their power of control, concerning premises, documents and information, irrespective of the medium in which they are stored.
2. The Commission shall satisfy itself that, on the basis of available information, including the designation decision, annual management declaration, annual control reports, annual audit opinion, annual report and audits carried out by national and Union bodies, the management and control systems comply with this Regulation and that these function effectively.
3. The Commission may ask the Managing Authority to take the necessary actions to ensure the effectiveness of the management and control systems and the correctness of expenditure.

TITLE VI

TECHNICAL ASSISTANCE*Article 34***Technical Assistance budget**

1. A maximum of 10 % of the Union's total contribution may be allocated to technical assistance. In duly justified cases in agreement with the Commission a higher amount may be allocated.
2. The technical assistance level should reflect the real needs of the programme, in particular taking into account factors such as the total budget of the programme, the size of the geographical area covered by a programme and the number of participating countries.

*Article 35***Purpose**

1. Technical assistance activities include preparation, management, monitoring, evaluation, information, communication, networking, complaint resolution, control and audit activities related to the implementation of the programme and activities to reinforce the administrative capacity for implementing the programme.
2. Technical assistance for activities referred to in paragraph 1 should be used for the needs, of both programme structures and beneficiaries.
3. Expenditure for activities concerning promotion and capacity building incurred outside the programme area may be covered within the limit indicated in Article 39(2) and provided the conditions set out therein are fulfilled.

*Article 36***Eligibility**

1. Eligibility requirements set out in Article 48 apply *mutatis mutandis* to technical assistance costs. Costs concerning officials of the participating countries assigned to the programme may be considered eligible as technical assistance costs. Parallel remuneration systems and topping ups shall be avoided. Costs referred to in Article 49 shall not be considered eligible as technical assistance costs.
2. Costs for preparatory actions referred to in Article 16 shall be eligible upon submission of the programme to the Commission pursuant to Article 4, but not earlier than 1 January 2014 provided the programme is approved by the Commission pursuant to Article 5.

*Article 37***Procurement rules**

1. If the implementation of the annual plan for the use of the technical assistance budget requires procurement, the contract must be awarded according to the following rules:
 - (a) where it is an entity established in a Member State it shall either apply national laws, regulations and administrative provisions adopted in connection with Union legislation applicable to public procurement or procurement rules set out in Title IV of Part Two of Regulation (EU, Euratom) No 966/2012 and Title II of Part Two of Delegated Regulation (EU) No 1268/2012;
 - (b) in all other cases, the relevant procurement rules shall be described in the financing agreement referred to in Articles 8 and 9 or in the agreements referred to in Articles 81 and 82.
2. In all cases, the rules on nationality and origin set out in Articles 8 and 9 of Regulation (EU) No 236/2014 shall apply.
3. Procurement by branch offices shall be limited to ordinary running costs and costs for communication and visibility activities.

TITLE VII

PROJECTS

CHAPTER 1

General Provisions*Article 38***Nature of support**

1. A project is a series of activities defined and managed in relation to the objectives, outputs, results and impacts which it aims at achieving within a defined time-period and budget. The objectives, outputs, results and impacts shall contribute to the priorities identified in the programme.
2. Financial contributions by a programme to projects shall be provided through grants and exceptionally through transfers to financial instruments. Projects financed through grants shall be subject to Chapters 2 to 4.
3. Grants shall be awarded to projects selected through calls for proposals in conformity with the rules set out in the programme, except in the duly substantiated exceptional cases of Article 41.
4. The share of the Union contribution allocated to large infrastructure projects and contributions to financial instruments referred to in Article 42 may not exceed 30 %.

*Article 39***Conditions for financing**

1. Projects may receive financial contribution from a programme provided they meet all the following conditions:
 - (a) they deliver a clear cross-border cooperation impact and benefits as described in the programming document and demonstrate added value to Union strategies and programmes;
 - (b) they are implemented in the programme area;
 - (c) they fall within one of the following categories:
 - (i) integrated projects where each beneficiary implements a part of the activities of the project on its own territory;
 - (ii) symmetrical projects where similar activities are implemented in parallel in the participating countries;
 - (iii) single-country projects where projects are implemented mainly or entirely in one of the participating countries but for the benefit of all or some of the participating countries and where cross-border impacts and benefits are identified.

2. Projects meeting the criteria of paragraph 1 may be partially implemented outside the programme area, provided that all the following conditions are met:

- (a) the projects are necessary for achieving the programme's objectives and they benefit the programme area;
- (b) the total amount allocated under the programme to activities outside the programme area does not exceed 20 % of the Union contribution at programme level;
- (c) the obligations of the Managing and Audit authorities in relation to management, control and audit concerning the project are fulfilled either by the programme authorities or through agreements concluded with authorities in the countries where the activity is implemented.

3. Any project including an infrastructure component shall repay the Union contribution if, within five years of the project closure or within the period of time set out in state aid rules, where applicable, it is subject to a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives. Sums unduly paid in respect of the project shall be recovered by the Managing Authority in proportion to the period for which the requirement has not been fulfilled.

4. The Managing Authority shall seek to prevent duplication of activities among projects funded by the Union. For this purpose, the Managing Authority may conduct any consultation it deems appropriate and the consulted entities, including the Commission, shall provide the necessary support.

5. The Managing Authority shall provide the lead beneficiary for each selected project with a document setting out the conditions to support the project, including the specific requirements concerning the products or services to be delivered by the project, the financial plan and the time-frame for execution.

Article 40

Calls for proposals

For each call for proposals the Managing Authority shall provide applicants with a document setting out the conditions for the participation in the call, selection and implementation of the project. This document shall also include the specific requirements concerning the deliverables under the project, the financial plan, and the time-limit for execution.

Article 41

Direct award

1. Projects may be awarded without a call for proposals only in the following cases and provided this is duly substantiated in the award decision:

- (a) the body to which a project is awarded enjoys a *de jure* or *de facto* monopoly;
- (b) the project relates to actions with specific characteristics that require a particular type of body based on its technical competence, high degree of specialisation or administrative power.

2. A final list of large infrastructure projects proposed for selection without a call for proposals shall be included in the programme. After adoption of the programme, but not later than 31 December 2017, the Managing Authority shall provide the Commission with the full project applications including the information referred to in Article 43 together with the justification for a direct award.

3. An indicative list of projects other than large infrastructure projects proposed for selection without a call for proposals shall be included in the programme. The Joint Monitoring Committee may decide to select additional projects without a call for proposal any time after the adoption of the programme. In both cases, the Commission's prior approval shall be sought. For this purpose, the Managing Authority shall provide the Commission with the information referred to in Article 43 together with the justification for a direct award.

4. The projects proposed for selection without a call for proposals shall be approved by the Commission based on a two-step procedure, consisting in the submission of a project summary followed by a full project application. For each step, the Commission shall notify its decision to the Managing Authority within two months of the document submission date. This deadline may be extended where necessary. Where the Commission rejects a proposed project, it shall notify the Managing Authority of its reasons.

*Article 42***Contributions to financial instruments**

1. The programme may contribute to a financial instrument provided the latter complies with the programme's priorities.
2. A final list of contributions to financial instruments shall be described in the programme. After adoption of the programme, but not later than 31 December 2017, the Managing Authority shall provide the Commission with the information referred to in Article 43.
3. The Commission shall examine the proposed contribution in order to determine its added value and its consistency with the programme.
4. The approval process shall follow the rules of these financial instruments. Where the Commission rejects a proposed contribution, it shall notify the Managing Authority of its reasons.
5. Contributions to these financial instruments shall be subject to the rules applicable to these financial instruments.

*Article 43***Content of projects**

1. Project application documents shall contain at least:
 - (a) an analysis of the problems and needs justifying the project, taking into account the programme strategy and its expected contribution to address the corresponding priority;
 - (b) an assessment of its cross-border impact;
 - (c) the logical framework;
 - (d) an assessment of the sustainability of the project's expected results after project's completion;
 - (e) objectively verifiable indicators;
 - (f) information on the geographic coverage and target groups of the project;
 - (g) the expected project implementation period and detailed work plan;
 - (h) an analysis of the effects of the project on the cross-cutting issues referred to in point 3(d) of Article 4 where relevant;
 - (i) the project implementation requirements, including the following:
 - (i) identification of the beneficiaries and designation of the lead beneficiary, providing guarantees of its competence in the domain concerned as well as its administrative and financial management capacity;
 - (ii) description of the project management and implementation structure;
 - (iii) arrangements among beneficiaries in line with Article 46;
 - (iv) monitoring and evaluation arrangements;
 - (v) information and communication plans, in particular, measures to acknowledge the Union support to the project;
 - (j) detailed financial plan and budget.
2. Project applications for projects including an infrastructure component of at least EUR 1 million shall in addition contain:
 - (a) a detailed description of the infrastructure investment and its location;
 - (b) a detailed description of the capacity building component of the project, except in duly justified cases;

- (c) a full feasibility study or equivalent carried out, including the options analysis, the results, and independent quality review;
 - (d) an assessment of its environmental impact in compliance with the Directive 2011/92/EU of the European Parliament and of the Council ⁽¹⁾ and, for the participating countries which are parties to it, UN/ECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991;
 - (e) evidence of ownership by the beneficiaries or access to the land;
 - (f) building permit.
3. Exceptionally and in duly justified cases, the Managing Authority may accept a later submission of the documents referred to in point (f).

Article 44

Publication of list of projects

1. In order to ensure transparency concerning the projects supported by the programme, the Managing Authority shall maintain a list of awarded projects in a spread-sheet data format, allowing the data to be sorted, searched, extracted, compared and easily published on internet. The list of projects shall be accessible on the website of the programme and updated at least every six months. In order to encourage the re-use of the list of projects by the private sector, the civil society or national public administration, the website may include a clear reference to the applicable licensing rules under which the data are published.
2. The list shall contain the following information at least:
 - beneficiary name (only legal entities; no natural persons shall be named),
 - project name,
 - project summary,
 - project implementation period,
 - total eligible expenditure,
 - Union co-financing rate,
 - project postcode; or other appropriate location indicator,
 - geographical coverage,
 - date of last update of the list of projects.
3. The list of projects shall be provided to the Commission not later than 30 June of the year following the financial year in which the projects were selected. This information shall be published on an internet site of the Union institutions.

CHAPTER 2

Beneficiaries

Article 45

Participation in projects

1. Projects shall involve beneficiaries from at least one of the participating Member States and one of the participating partner countries listed in Annex I to Regulation (EU) No 232/2014 or the Russian Federation.

⁽¹⁾ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p. 1).

2. Beneficiaries are natural or legal persons to whom a grant has been awarded for a project. Natural persons may be beneficiaries, if required by the nature or characteristics of the action or the objective pursued by the applicant. Participation of natural persons shall be decided at programme level.

3. Beneficiaries referred to in paragraph 1 must meet all the following conditions:

- (a) nationals of any of the participating countries, or legal persons who are effectively established in the programme area or international organisations with a base of operations in the programme area. A European grouping of territorial cooperation may be a beneficiary, regardless of its place of establishment, provided its geographic coverage is within the programme area;
- (b) comply with the eligibility criteria defined for each selection procedure;
- (c) not fall under any of the exclusion situations set out in Article 106(1) and Article 107 of Regulation (EU, Euratom) No 966/2012.

4. Beneficiaries that do not meet the criteria referred to in point (a) of paragraph 3 may participate in addition to beneficiaries referred to in paragraph 1, provided that all the following conditions are met:

- (a) they may participate in accordance with Articles 8 and 9 of Regulation (EU) No 236/2014;
- (b) their participation is required by the nature and by the objectives of the project and as necessary for its effective implementation;
- (c) the total amount allocated under the programme to beneficiaries that do not meet the criteria referred to in point (a) of paragraph 3 is within the limit indicated in point (b) of Article 39(2).

Article 46

Beneficiaries' obligations

1. Each project shall designate one lead beneficiary for representing the partnership.

2. All beneficiaries shall actively cooperate in the development and implementation of projects. In addition, they shall cooperate in the staffing and/or financing of projects. Each beneficiary shall be legally and financially responsible for the activities that it is implementing and for the share of the Union funds that it receives. The specific obligations as well as the financial responsibilities of the beneficiaries shall be laid down in the agreement referred to in point (c) of paragraph 3

3. The lead beneficiary shall:

- (a) receive the financial contribution from the Managing Authority for the implementation of project activities;
- (b) ensure that the beneficiaries receive the total amount of the grant as quickly as possible and in full in accordance with the arrangements referred to in (c). No amount shall be deducted or withheld and no specific charge with equivalent effect shall be levied that would reduce these amounts for the beneficiaries;
- (c) lay down the partnership arrangements with the beneficiaries in an agreement comprising, provisions that, inter alia, guarantee the sound financial management of the funds allocated to the project including the arrangements for recovery of funds unduly paid;
- (d) assume responsibility for ensuring implementation of the entire project;
- (e) ensure that the expenditure presented by the beneficiaries has been incurred for the purpose of implementing the project and corresponds to activities set in the contract and agreed between all beneficiaries;
- (f) verify that the expenditure presented by the beneficiaries has been examined pursuant Article 32(1).

CHAPTER 3

Eligibility of expenditure

Article 47

Forms of grants

1. Grants may take any of the following forms:
 - (a) reimbursement of a specified proportion of the eligible costs referred to in Article 48 actually incurred;
 - (b) flat-rate financing, determined by the application of a percentage to one or several defined categories of costs;
 - (c) lump sums;
 - (d) reimbursement on the basis of unit costs;
 - (e) a combination of the forms referred to in points (a) to (d), only where each covers different categories of costs.
2. Grants in the form referred to in point (a) of paragraph 1 shall be calculated on the basis of the eligible costs actually incurred by the beneficiary, subject to a preliminary budget estimate as submitted with the proposal and included in the contract. Flat-rate financing as referred to in point (b) of paragraph 1 shall cover specific categories of eligible costs which are clearly identified in advance by applying a percentage. Lump sums as referred to in point (c) of paragraph 1 shall in global terms cover all or certain specific categories of eligible costs which are clearly identified in advance. Unit costs as referred to in point (d) of paragraph 1 shall cover all or certain specific categories of eligible costs which are clearly identified in advance by reference to an amount per unit.
3. Grants shall not have the purpose or effect of producing a profit within the framework of the project. The exceptions set out in Article 125(4) of Regulation (EU, Euratom) No 966/2012 shall apply.

Article 48

Eligibility of costs

1. Grants shall not exceed an overall ceiling expressed as a percentage and an absolute value which is to be established on the basis of estimated eligible costs. Grants shall not exceed the eligible costs.
2. Eligible costs are costs actually incurred by the beneficiary which meet all of the following criteria:
 - (a) they are incurred during the implementation period of the project. In particular:
 - (i) costs relating to services and works shall relate to activities performed during the implementation period. Costs relating to supplies shall relate to delivery and installation of items during the implementation period. Signature of a contract, placing of an order, or entering into any commitment for expenditure within the implementation period for future delivery of services, works or supplies after expiry of the implementation period do not meet this requirement; cash transfers between the lead beneficiary and the other beneficiaries may not be considered as costs incurred;
 - (ii) costs incurred should be paid before the submission of the final reports. They may be paid afterwards, provided they are listed in the final report together with the estimated date of payment;
 - (iii) an exception is made for costs relating to final reports, including expenditure verification, audit and final evaluation of the project, which may be incurred after the implementation period of the project;
 - (iv) procedures to award contracts, as referred to in Article 52 and following, may have been initiated and contracts may be concluded by the beneficiary(ies) before the start of the implementation period of the project, provided the provisions of Article 52 and following have been respected;

- (b) they are indicated in the project's estimated overall budget;
- (c) they are necessary for the project implementation;
- (d) they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the accounting standards and the usual cost accounting practices applicable to the beneficiary;
- (e) they comply with the requirements of applicable tax and social legislation;
- (f) they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency;
- (g) they are supported by invoices or documents of equivalent probative value;

3. A grant may be awarded retroactively in the following cases:

- (a) where the applicant can demonstrate the need to start the project before the contract is signed. Costs eligible for financing shall however not have been incurred prior to the date of the submission of the grant application; or
- (b) for costs related to studies and documentation for projects including an infrastructure component.

No grant may be awarded retroactively for projects already completed.

4. To allow the preparation of strong partnerships, costs incurred before submission of the grant application by projects to which a grant has been awarded are eligible provided that the following conditions are also met:

- (a) they are incurred after the publication of the call for proposals;
- (b) they are limited to travel and subsistence costs of staff employed by the beneficiaries, provided they meet the conditions of point (b) of paragraph 5;
- (c) they do not exceed the maximum amount fixed at programme level.

5. Subject to paragraphs 1 and 2, the following direct costs of the beneficiary shall be eligible:

- (a) the costs of staff assigned to the project under the following cumulative conditions:
 - they relate to the costs of activities which the beneficiary would not carry out if the project was not undertaken,
 - they must not exceed those normally borne by the beneficiary unless it is demonstrated that this is essential to carry out the project,
 - they relate to actual gross salaries including social security charges and other remuneration-related costs;
- (b) travel and subsistence costs of staff and other persons taking part in the project, provided they exceed neither the costs normally paid by the beneficiary according to its rules and regulations nor the rates published by the Commission at the time of the mission if reimbursed on the basis of lump sums, unit costs or flat rate financing;
- (c) purchase or rental costs for equipment (new or used) and supplies specifically for the purpose of the project, provided they correspond to market prices;
- (d) the cost of consumables specifically purchased for the project;

- (e) costs entailed by contracts awarded by the beneficiaries for the purposes of the project;
 - (f) costs deriving directly from requirements imposed by this Regulation and the project (such as information and visibility operations, evaluations, external audits, translations) including financial service costs (such as costs of bank transfers and financial guarantees).
6. Pursuant to Article 4 a programme may establish additional eligibility rules for the programme as a whole.

Article 49

Non-eligible costs

1. The following costs relating to the implementation of the project shall not be considered eligible:
- (a) debts and debt service charges (interest);
 - (b) provisions for losses or liabilities;
 - (c) costs declared by the beneficiary and already financed by the Union budget;
 - (d) purchases of land or buildings for an amount exceeding 10 % of the eligible expenditure of the project concerned;
 - (e) exchange-rate losses;
 - (f) duties, taxes and charges, including VAT, except where non-recoverable under the relevant national tax legislation, unless otherwise provided in appropriate provisions negotiated with CBC partner countries;
 - (g) loans to third parties;
 - (h) fines, financial penalties and expenses of litigation;
 - (i) contributions in kind as defined in Article 14(1).
2. Pursuant to Article 4 a programme may declare other categories of costs as ineligible.

Article 50

Lump sums, unit costs and flat-rate financing

1. The total amount of financing on the basis of lump sums, unit costs and flat rate financing may not exceed EUR 60 000 per beneficiary and per project, unless the programme establishes otherwise according to Article 4, but not exceeding EUR 100 000.
2. The use of lump sums, unit-costs and flat-rate financing shall at least be supported by the following:
- (a) justification concerning the appropriateness of such forms of financing with regard to the nature of the projects as well as to the risks of irregularities and fraud and costs of control;
 - (b) identification of the costs or categories of costs covered by lump sums, unit costs or flat-rate financing, which shall exclude ineligible costs as referred to in Article 49.

- (c) description of the methods for determining lump sums, unit costs or flat-rate financing, and of the conditions for reasonably ensuring that the no-profit rule and co-financing principles are complied with and that double financing is avoided. These methods shall be based on:
 - (i) statistical data or similar objective means; or
 - (ii) a beneficiary-by-beneficiary approach, by reference to certified or auditable historical data of the beneficiary or to its usual cost accounting practices.
- 3. Once the amounts have been assessed and approved by the Managing Authority, they will not be challenged by *ex post* controls.

Article 51

Indirect costs

1. Indirect costs may be calculated on a flat-rate of up to 7 % of eligible direct costs, excluding costs incurred in relation to the provision of infrastructure, provided that the rate is calculated on the basis of a fair, equitable and verifiable calculation method.
2. As indirect costs for a project shall be considered those eligible costs which may not be identified as specific costs directly linked to the implementation of the project and may not be booked to it directly according to the conditions of eligibility as defined in Article 48. They may not include ineligible costs as referred to in Article 49 or costs already declared under another cost item or heading of the budget of the project.

CHAPTER 4

Section 1

Procurement

Article 52

Applicable rules

1. If the implementation of a project requires procurement of goods, works or services by a beneficiary, the following rules shall apply:
 - (a) where the beneficiary is a contracting authority or a contracting entity within the meaning of the Union legislation applicable to procurement procedures, it may apply national laws, regulations and administrative provisions adopted in connection with Union legislation or rules of paragraph 2;
 - (b) where the beneficiary is an international organisation, it may apply its own procurement rules if they offer guarantees equivalent to internationally accepted standards;
 - (c) where the beneficiary is a public authority of a CBC partner country whose co-financing is transferred to the Managing Authority, it may apply national laws, regulations and administrative provisions, provided that the financing agreement allows it and the general principles set out in point (a) of paragraph 2 are respected.
2. In all other cases the following obligations shall be complied with:
 - (a) the contract is awarded to the tender offering best value for money, or as appropriate, to the tender offering the lowest price, while avoiding any conflict of interests;
 - (b) for contracts with a value of more than EUR 60 000, the following rules shall also apply:
 - (i) an evaluation committee shall be set up to evaluate applications and/or tenders on the basis of the exclusion, selection and award criteria published by the beneficiary in advance in the tender documents. The committee must have an odd number of members with all the technical and administrative capacities necessary to give an informed opinion on the tenders/applications;
 - (ii) sufficient transparency, fair competition and adequate *ex-ante* publicity must be ensured;

- (iii) equal treatment, proportionality and non-discrimination shall be ensured;
 - (iv) tender documents must be drafted according to best international practice;
 - (v) deadlines for submitting applications or tenders must be long enough to give interested parties a reasonable period to prepare their tenders;
 - (vi) candidates or tenderers shall be excluded from participating in a procurement procedure if they fall within one of the situations described in Article 106(1) of Regulation (EU, Euratom) No 966/2012. Candidates or tenderers must certify that they are not in one of these situations. In addition, contracts may not be awarded to candidates or tenderers which, during the procurement procedure fall within one of the situations referred to in Article 107 of Regulation (EU, Euratom) No 966/2012;
 - (vii) procurement procedures set out in Articles 53 to 56 shall be followed.
3. In all cases, the rules of nationality and origin set forth in Articles 8 and 9 of Regulation (EU) No 236/2014 shall apply.

Article 53

Procurement procedures for service contracts

1. Service contracts with a value of EUR 300 000 or more shall be awarded by means of an international restricted tender procedure following publication of a procurement notice. The procurement notice shall be published in all appropriate media beyond the programme area, stating the number of candidates which will be invited to submit tenders within a range of four to eight candidates and ensuring genuine competition.
2. Service contracts with a value of more than EUR 60 000 but less than EUR 300 000 shall be awarded by means of a competitive negotiated procedure without publication. The beneficiary shall consult at least three service providers of its choice and negotiate the terms of the contract with one or more of them.

Article 54

Procurement procedures for supply contracts

1. Supply contracts with a value of EUR 300 000 or more shall be awarded by means of an international open tender procedure following publication of a procurement notice, which shall be published in all appropriate media beyond the programme area.
2. Supply contracts with a value of EUR 100 000 or more but less than EUR 300 000 shall be awarded by means of an open tender procedure published in the programme area. Any eligible tenderer must be provided with the same opportunities as local firms.
3. Supply contracts with a value of more than EUR 60 000 but less than EUR 100 000 shall be awarded by means of a competitive negotiated procedure without publication. The beneficiary shall consult at least three suppliers of its choice and negotiate the terms of the contract with one or more of them.

Article 55

Procurement procedures for works contracts

1. Works contracts with a value of EUR 5 000 000 or more shall be awarded by means of an international open tender procedure, or in view of the specific characteristics of certain works by means of a restricted tender procedure, following publication of a procurement notice which shall be published in all appropriate media beyond the programme area.
2. Work contracts with a value of EUR 300 000 or more but less than EUR 5 000 000 shall be awarded by means of an open tender procedure published in the programme area. Any eligible tenderer must be provided with the same opportunities as local firms.

3. Work contracts with a value of more than EUR 60 000 but less than EUR 300 000 shall be awarded by means of a competitive negotiated procedure without publication. The beneficiary shall consult at least three contractors of its choice and shall negotiate the terms of the contract with one or more of them.

Article 56

Use of Negotiated Procedure

The beneficiary may decide to use negotiated procedure on the basis of a single tender in the cases referred to in Articles 266, 268, 270 of Delegated Regulation (EU) No 1268/2012.

Section 2

Financial support to third parties

Article 57

Financial support to third parties

1. If the project requires the award of financial support to third parties, it may be given on condition that:
 - (a) each third party offers adequate guarantees as regards the recovery of amounts;
 - (b) principles of proportionality, transparency, sound financial management, equal treatment and non-discrimination are complied with;
 - (c) conflicts of interests are prevented;
 - (d) financial support may not be cumulative or awarded retrospectively, it shall, in principle, involve co-financing and it may not have the purpose or the effect of producing a profit for each third party;
 - (e) conditions for giving financial support are strictly defined in the contract to avoid the exercise of discretion by the beneficiary. In particular, the contract shall specify the categories of persons which are eligible for the support, the award criteria (including the criteria for determining the exact amount) and a fixed list of the different types of activity that may receive such financial support;
 - (f) the maximum amount of financial support that can be paid does not exceed EUR 60 000 per third party, except where the financial support is the primary aim of the project.
2. Rules on nationality and origin set out in Articles 8 and 9 Regulation (EU) No 236/2014 shall apply. Where a sub-grant exceeds EUR 60 000 the rules of participation laid down in point (b)(vi) of Article 52 shall apply *mutatis mutandis*.

TITLE VIII

PAYMENTS, PRESENTATION AND ACCEPTANCE OF ACCOUNTS, FINANCIAL CORRECTIONS AND RECOVERIES

CHAPTER 1

Payments

Article 58

Annual commitments

1. Under shared management, the Commission shall make the initial commitments after adoption of the programme by the Commission pursuant to Article 5.
2. Under indirect management, the Commission shall make the initial commitments after the adoption of the programme, after the entry into force of the agreement delegating budget execution tasks to an international organisation or to a CBC partner country referred to in Articles 81 and 82.

3. Subsequently the Commission shall make the corresponding commitment each financial year no later than 1 May. The amount of the annual commitments shall be determined in accordance with the financial plan taking into account the programme's progress and the availability of funds. The Commission shall inform the Managing Authority when the annual commitment is made.

Article 59

Common rules for payments

1. Payments to managing authorities may take the form of prefinancing or payment of the final balance.
2. A bank account in euro, specifically dedicated to the programme shall be opened. When payments by the Commission are channelled through another bank account than the programme's, the related amounts and any accrued interest shall be transferred to the programme bank account without delay and in full.
3. No amount shall be deducted or withheld and no specific charge or other charge with equivalent effect shall be levied on these amounts or on any accrued interest.

Article 60

Common rules for calculating prefinancing

1. Each financial year, once the Managing Authority has been notified of the annual commitment, it may request as prefinancing the transfer of up to 80 % of the Union contribution for the financial year in question. From the second financial year, requests for prefinancing shall be accompanied by the provisional budget detailing the Managing Authority's commitments and payments for the two accounting years following the latest audit opinion referred to in Article 68. After reviewing that provisional budget, assessing actual financing needs of the programme and verifying the availability of funds, the Commission shall proceed with the payment of all or part of the requested prefinancing no later than 60 days after the date on which the payment request is registered with the Commission.
2. In the course of the financial year, the Managing Authority may ask for the transfer of all or part of the funds already committed, as additional prefinancing. In support of its request, the Managing Authority shall submit an interim financial report showing that the expenditure actually incurred or likely to be incurred before the end of the financial year exceeds the amount of prefinancing already paid. Such subsequent transfers shall constitute additional prefinancing provided they are not supported by an audit opinion referred to in Article 68.
3. Each financial year of the programme's implementation, the Commission shall clear previous prefinancing payments on the basis of eligible expenditure actually incurred, supported by the audit opinion referred to in Article 68 following the acceptance of accounts as described in Article 69(2). On the basis of the results of this clearance, the Commission may proceed with the necessary financial adjustments.

Article 61

Interruption of the payment deadline

1. The authorising officer by delegation within the meaning of Regulation (EU, Euratom) No 966/2012 may interrupt payment deadline for a payment request for a maximum period of six months in any of the following circumstances:
 - (a) following information provided by a national or Union audit body, there is a clear evidence to suggest a significant deficiency in the functioning of the management and control system;
 - (b) the authorising officer by delegation has to carry out additional verifications following information coming to his attention alerting him that expenditure is linked to an irregularity having serious financial consequences;
 - (c) there is a failure to submit one of the documents required under Article 77;
 - (d) there is a failure to submit one of the documents required under Articles 60 and 64.

The Managing Authority may agree to an extension of the interruption period for another three months.

2. The authorising officer by delegation shall limit the interruption to the part of the expenditure covered by the payment request affected by the elements referred to in the first subparagraph of paragraph 1, unless it is not possible to identify the part of the expenditure affected. The authorising officer by delegation shall inform the Member State hosting the Managing Authority and the Managing Authority immediately of the reasons for interruption and shall ask them to remedy the situation. The interruption shall be ended by the authorising officer by delegation as soon as the necessary measures have been taken. This interruption may be extended beyond six months if the necessary measures have not been taken.

Article 62

Suspension of payments

1. The Commission may suspend all or part of the payments in any of the following circumstances:
 - (a) there is a serious deficiency in the effective functioning of the management and control systems of the programme which has put the Union contribution at risk and for which corrective measures have not been taken;
 - (b) there is a serious breach by participating countries of their obligations under Article 31;
 - (c) expenditure is linked to an irregularity which has not been corrected having serious financial consequences;
 - (d) there is a serious deficiency in the quality and reliability of the evaluation and monitoring system;
 - (e) there is evidence resulting from monitoring, evaluation or audit that the programme does not deliver in accordance with the time-frames indicated in Article 4 and as reported in accordance with Article 77.
2. The Commission may decide to suspend all or part of prefinancing payments after having given the Managing Authority the opportunity to present its observations.
3. The Commission shall end suspension of all or part of payments where the Managing Authority has taken the necessary measures to enable the suspension to be lifted.

Article 63

Payment to lead beneficiaries

1. Payments to lead beneficiaries can take one of the following forms:
 - (a) prefinancing;
 - (b) interim payment;
 - (c) payment of the final balance.
2. The Managing Authority shall ensure that payments to lead beneficiaries are processed as quickly as possible according to the signed contract. No amount shall be deducted or withheld, unless supported by the signed contract and no specific charge or other charge with equivalent effect shall be levied reducing these payments.

Article 64

Payment of the final balance

1. By 30 September 2024 the Managing Authority shall submit the payment request of the final balance accompanied by the documents referred to in Article 77(5).
2. The final balance shall be paid no later than three months after the date of clearance of accounts of the final accounting year or one month after the date of acceptance of the final implementation report, whichever date is later.

Article 65

Exception to the de-commitment

1. The amount concerned by de-commitment shall be reduced by the amounts that the Managing Authority has not been able to declare to the Commission because of:

- (a) projects suspended by a legal proceeding or by an administrative appeal having suspensory effect; or
- (b) reasons of *force majeure* seriously affecting the implementation of all or part of the programme;
- (c) application of Articles 61 or 62;

2. The Managing Authority claiming *force majeure* under point (b) of paragraph 1 shall demonstrate the direct consequences of the *force majeure* on the implementation of all or part of the programme. For the purpose of points (a) and (b) of paragraph 1 the reduction may be requested once, if the suspension or *force majeure* has lasted no longer than one year, or a number of times that corresponds to the duration of the *force majeure* or the number of years between the date of the legal or administrative decision suspending the implementation of the project and the date of the final legal or administrative decision.

3. By 15 February, the Managing Authority shall send to the Commission information on the exceptions referred to in paragraph 1 for the amount to be declared by 31 December of preceding financial year.

Article 66

De-commitment procedure

1. The Commission shall timely inform the Managing Authority whenever there is a risk of de-commitment pursuant to Article 6 of Regulation (EU) No 236/2014.

2. On the basis of information received as of 15 February, the Commission shall inform the Managing Authority of the amount of the de-commitment resulting from that information.

3. The Managing Authority shall have two months to agree to the amount to be de-committed or to submit its observations.

4. By 30 June, the Managing Authority shall submit a revised financial plan to the Commission reflecting the impact of the reduced amount of support on the thematic objectives or technical assistance of the programme for the financial year concerned. Failing such a submission, the Commission shall revise the financial plan by reducing the Union contribution for the financial year concerned. The reduction shall affect the thematic objectives and technical assistance proportionately.

5. The Commission shall amend the decision adopting the programme.

Article 67

Use of the euro

1. Expenditure incurred in a currency other than the euro shall be converted into euro by the Managing Authority and by the beneficiary using the monthly accounting exchange rate of the Commission of one of the following:

- (a) the month during which the expenditure was incurred;
- (b) the month during which the expenditure was submitted for examination in accordance with Article 32(1);
- (c) the month during which the expenditure was reported to the lead beneficiary.

2. The method chosen shall be set out in the programme and shall apply throughout the programme duration. Different methods may be applied to technical assistance and to projects.

CHAPTER 2

Presentation and acceptance of accounts

Article 68

Presentation of accounts

1. The accounts of the programme shall be drawn up by the Managing Authority. These accounts shall be independent and separate and shall include only transactions relating to the programme. They shall be kept in such a way as to enable analytical monitoring of the programme by priority and technical assistance.
2. In its annual report, the Managing Authority shall, by 15 February, provide the Commission with the following financial information:
 - (a) the accounts for the preceding accounting year;
 - (b) a management declaration signed by the representative of the Managing Authority confirming that:
 - (i) the information is properly presented, complete and accurate;
 - (ii) the expenditure was used for its intended purpose;
 - (iii) the control systems put in place give the necessary guarantees concerning the legality of the underlying transactions.
 - (c) an annual summary of the controls carried out by the Managing Authority, including an analysis of the nature and extent of errors and weaknesses identified in systems, as well as corrective action taken or planned;
 - (d) an audit opinion on the annual accounts;
 - (e) an annual audit report drawn up by the Audit Authority providing a summary of audits carried out, including an analysis of the nature and extent of errors and weaknesses identified, both at system level and for projects, as well as the corrective actions taken or planned;
 - (f) an estimate of costs incurred from 1 July to 31 December of the preceding year;
 - (g) the list of projects closed during the accounting year.
3. The accounts referred to in point (a) of paragraph 2 shall be submitted for each programme and shall include at the level of each priority and technical assistance:
 - (a) the expenditure incurred and paid and the revenue earned and received by the Managing Authority;
 - (b) the amounts waived and recovered during the accounting year, the amounts to be recovered by the end of the accounting year and the unrecoverable amounts.
4. The audit opinion referred to in point (d) of paragraph 2 shall establish whether the accounts give a true and fair view, the related transactions are legal and regular and the control systems properly put in place function. The opinion shall also state whether the audit work puts in doubt the assertions made in the management declaration referred to in point (b) of paragraph 2.

Article 69

Acceptance of accounts

1. The Commission shall examine the accounts and inform the Managing Authority by 31 May of the year following the end of the accounting year whether it accepts that the accounts are complete, accurate and true.
2. On the basis of eligible expenditure incurred, as certified by the audit opinion referred to in point (d) of Article 68(2), the Commission shall clear the prefinancing.
3. Acceptance of the accounts shall be without prejudice to any subsequent financial corrections in accordance with Article 72.

*Article 70***Period for record-keeping**

1. The Managing Authority and the beneficiaries shall keep all documents related to the programme or a project for five years from the date of payment of the balance for the programme. In particular they shall keep reports, supporting documents, as well as accounts, accounting documents and any other document relating to the financing of the programme (including all documents relating to the contract award) and projects.
2. Notwithstanding paragraph 1, records pertaining to audits, appeals, litigation or pursuit of claims arising from the programme or project performance shall be retained until such audits, appeals, litigation or claims have been completed.

*CHAPTER 3***Financial corrections and Recoveries****Section 1****Financial Corrections***Article 71***Financial corrections by the Managing Authority**

1. The Managing Authority shall in the first instance be responsible for preventing and investigating irregularities and for making the financial corrections required and pursuing recoveries. In the case of a systemic irregularity, the Managing Authority shall extend its investigation to cover all operations potentially affected.

The Managing Authority shall make the financial corrections required in connection with individual or systemic irregularities detected in projects, technical assistance or in the programme. Financial corrections shall consist of cancelling all or part of the Union contribution to a project or to technical assistance. The Managing Authority shall take into account the nature and gravity of the irregularities and the financial loss and shall apply a proportionate financial correction. Financial corrections shall be recorded in the annual accounts by the Managing Authority for the accounting year in which the cancellation is decided.

2. The Union contribution cancelled in accordance with paragraph 1 may be reused within the concerned programme, subject to paragraph 3.
3. The contribution cancelled in accordance with paragraph 1 may not be reused for the project that was the subject of a financial correction or, where a financial correction is made for a systemic irregularity and for any project affected by the systemic irregularity.

*Article 72***Financial corrections by the Commission**

1. The Commission shall make financial corrections by cancelling all or part of the Union contribution to a programme and effecting recovery from the Managing Authority in order to exclude from Union financing expenditure which is in breach of applicable law or related to deficiencies in the programme management and control systems which have been detected by the Commission or the European Court of Auditors.
2. A breach of applicable law shall lead to a financial correction only in relation to expenditure which has been declared to the Commission and where one of the following conditions is met:
 - (a) the breach has affected the selection of a project or a technical assistance contract or in cases where, due to the nature of the breach, it is not possible to establish that impact but there is a substantiated risk that the breach has had such an effect;
 - (b) the breach has affected the amount of expenditure declared by the programme or in cases where, due to the nature of the breach, it is not possible to quantify its financial impact but there is a substantiated risk that the breach has had such an effect.

3. In particular the Commission shall make financial corrections where, after carrying out the necessary examination, it draws any of the following conclusions:

- (a) there is a serious deficiency in the programme management and control systems of the programme which has put at risk the Union contribution already paid;
- (b) the Managing Authority has not complied with its obligations under Article 71 prior to the opening of the financial correction procedure under this paragraph;
- (c) the expenditure declared in the annual or final report is irregular and has not been corrected by the Managing Authority prior to the opening of the financial correction procedure under this paragraph.

The Commission shall base its financial corrections on individual cases of irregularity identified and shall take account of whether an irregularity is systemic. When it is not possible to quantify precisely the amount of irregular expenditure, the Commission shall apply a flat rate or extrapolated financial correction.

4. The Commission shall, when deciding the amount of a financial correction under paragraph 3, respect the principle of proportionality taking into account the nature and gravity of the irregularity and the extent and financial implications of the deficiencies in management and control systems found in the programme.

5. Where the Commission bases its position on reports of auditors other than those of its own services, it shall draw its own conclusions regarding the financial consequences after having heard the Managing Authority and the auditors.

6. The closure of the programme shall not prejudice the Commission's right to undertake, at a later stage, financial corrections vis-à-vis the Managing Authority.

7. The criteria for establishing the level of financial correction to be applied and the criteria for applying flat rates or extrapolated financial correction are those adopted in accordance with Regulation (EU) No 1303/2013 ⁽¹⁾, in particular Article 144, as well as those contained in the Commission Decision of 19 December 2013 ⁽²⁾.

Article 73

Procedure

1. Before taking a decision on a financial correction, the Commission shall inform the Managing Authority of the provisional conclusions of its examination and request the Managing Authority to submit its comments within two months.

2. Where the Commission proposes a financial correction on the basis of extrapolation or a flat rate, the Managing Authority shall be given the opportunity to demonstrate through an examination of the documentation concerned that the actual extent of irregularity is less than the Commission's assessment. In agreement with the Commission, the Managing Authority may limit the scope of that examination to an appropriate proportion or sample of the documentation concerned. Except in duly justified cases, the time allowed for that examination shall not exceed a further period of two months after the two-month period referred to in paragraph 1.

⁽¹⁾ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

⁽²⁾ Commission Decision of 19 December 2013 on the setting out and approval of the guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management for non-compliance with the rules on public procurement (C(2013)9527).

3. The Commission shall take account of any evidence supplied by the Managing Authority within the time limits set out in paragraphs 1 and 2.
4. Where the Managing Authority does not accept the provisional conclusions of the Commission, the Managing Authority shall be invited to a hearing by the Commission, to ensure that all relevant information and observations are available for the conclusions of the Commission on the application of the financial correction.
5. In case of an agreement and without prejudice to paragraph 6, the Managing Authority may reuse the cancelled contribution for the concerned programme in accordance with Article 71(2).
6. In order to apply financial corrections, the Commission shall take a decision within six months of the date of the hearing or of the date of receipt of additional information where the Managing Authority agrees to submit such additional information following the hearing. The Commission shall take account of all information and observations submitted during the course of the procedure. If no hearing takes place, the six-month period shall begin to run two months after the date of the invitation letter to the hearing sent by the Commission.
7. Where the Commission or the European Court of Auditors detect irregularities demonstrating a serious deficiency in the effective functioning of the management and control systems, the resulting financial correction shall reduce the Union contribution.

The first subparagraph shall not apply in the case of a serious deficiency in the effective functioning of management and control systems which, prior to the date of detection by the Commission or the European Court of Auditors:

- (a) had been identified in the management declaration, annual control report or the audit opinion submitted to the Commission in accordance with Article 68, or in other audit reports of the Audit Authority submitted to the Commission and appropriate measures taken; or
- (b) had been the subject of appropriate remedial measures by the Managing Authority.

The assessment of serious deficiencies in the effective functioning of management and control systems shall be based on the applicable law when the relevant management declarations, annual control reports and audit opinions were submitted.

When deciding on a financial correction the Commission shall:

- (a) respect the principle of proportionality by taking account of the nature and gravity of the serious deficiency in the effective functioning of a management and control system and its financial implications for the budget of the Union;
- (b) for the purpose of applying a flat rate or extrapolated correction, exclude irregular expenditure previously detected by the Managing Authority which has been the subject of an adjustment in the accounts and expenditure subject to an ongoing assessment of its legality and regularity;
- (c) take into account flat rate or extrapolated corrections applied to the expenditure by the Managing Authority for other serious deficiencies detected by the Managing Authority when determining the residual risk for the budget of the Union.

Section 2

Recoveries

Article 74

Financial responsibilities and Recoveries

1. The Managing Authority shall be responsible for pursuing the recovery of amounts unduly paid.
2. Where the recovery relates to a breach of legal obligations on the part of the Managing Authority stemming from this Regulation and Regulation (EU, Euratom) No 966/2012 the Managing Authority shall be responsible for reimbursing the amounts concerned to the Commission.

3. Where the recovery relates to systemic deficiencies in the programme management and control systems, the Managing Authority shall be responsible for reimbursing the amounts concerned to the Commission in accordance with the apportionment of liabilities among the participating countries as laid down in the programme.
4. Where the recovery relates to a claim against a beneficiary established in a Member State and the Managing Authority is unable to recover the debt, the Member State in which the beneficiary is established shall pay the due amount to the Managing Authority and claim it back from the beneficiary.
5. Where the recovery relates to a claim against a beneficiary established in a CBC partner country and the Managing Authority is unable to recover the debt, the level of responsibility of the CBC partner country in which the beneficiary is established shall be such as it is laid down in the relevant financing agreements referred to in Articles 8 and 9.

Article 75

Repayment to the Managing Authority

1. The Managing Authority shall recover the amounts unduly paid together with any interest on late payments from the lead beneficiary. The concerned beneficiaries shall repay the lead beneficiary the amounts unduly paid in accordance with the partnership agreement signed between them. If the lead beneficiary does not succeed in securing repayment from the concerned beneficiary, the Managing Authority shall formally notify the latter to repay to the lead beneficiary. If the concerned beneficiary does not repay, the Managing Authority shall request the participating country in which the concerned beneficiary is established to reimburse the amounts unduly paid in accordance with Article 74(2) to (5).
2. The Managing Authority shall exercise due diligence to ensure reimbursement of the recovery orders with support from the participating countries. The Managing Authority shall in particular ensure that the claim is certain, of a fixed amount and due. Where the Managing Authority is planning to waive recovery of an established debt, it shall ensure that the waiver is in order and complies with the principles of sound financial management and proportionality. The waiver decision must be submitted to the Joint Monitoring Committee for prior approval.
3. The Managing Authority shall keep the Commission informed of all steps taken to recover the due amounts. The Commission may at any time take over the task of recovering the amounts directly either from the beneficiary or from the concerned participating country.
4. Files transferred to a participating country or to the Commission shall contain all the documents needed for recovery as well as proof of steps taken by the Managing Authority to recover the due amounts.
5. Contracts concluded by the Managing Authority shall contain a clause allowing the Commission or the participating country in which the beneficiary is established to recover any amounts due to the Managing Authority which the latter was not able to recover.

Article 76

Repayment to the Commission

1. Any repayment due to the Commission shall be effected before the due date indicated in the recovery order. The due date shall be 45 days from the date of the issuing of the debit note.
2. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be three and a half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls. Amounts to be repaid may be offset against amounts of any kind due to the beneficiary or participating country. This shall not affect the parties' right to agree on payment in instalments.

TITLE IX

REPORTING, MONITORING AND EVALUATION*Article 77***Annual reports of the Managing Authority**

1. By 15 February the Managing Authority shall submit an annual report approved by the Joint Monitoring Committee to the Commission. That annual report shall include one technical and one financial part covering the preceding accounting year.
2. The technical part shall describe:
 - (a) the progress achieved in implementing the programme and its priorities;
 - (b) the detailed list of signed contracts as well as the list of selected projects not yet contracted, including reserve lists;
 - (c) the technical assistance activities carried out;
 - (d) the measures undertaken to monitor and evaluate projects, their results and actions undertaken to remedy the problems identified;
 - (e) the implemented information and communication activities.
3. The financial part shall be prepared in accordance with Article 68(2).
4. In addition, the annual report shall contain the forecast of activities to be implemented in the following accounting year. It shall include:
 - (a) an updated audit strategy;
 - (b) the work programme, financial plan and planned use of technical assistance;
 - (c) the annual monitoring and evaluation plan in accordance with Article 78(2);
 - (d) the annual information and communication plan in accordance with Article 79(4).
5. By 30 September 2024 the Managing Authority shall submit a final report approved by the Joint Monitoring Committee to the Commission. This final report shall contain *mutatis mutandis* the information requested under paragraphs 2 and 3 above for the last accounting year and for the entire duration of the programme.

*Article 78***Monitoring and Evaluation**

1. Programme monitoring and evaluation shall aim at improving the quality of the design and implementation, as well as at assessing and improving its consistency, effectiveness, efficiency and impact. The findings of monitoring and evaluations shall be taken into account in the programming and implementation cycle.
2. An indicative monitoring and evaluation plan shall be included in the programme for its whole duration. Each programme shall subsequently draw up an annual monitoring and evaluation plan to be carried out by the Managing Authority in accordance with the Commission's guidance and evaluation methodology. The annual plan shall be submitted to the Commission not later than 15 February.
3. The Managing Authority shall carry out result-oriented programme and project monitoring in addition to the day-to-day monitoring.
4. The Commission shall have access to all monitoring and evaluation reports.

5. The Commission can at any moment, launch evaluation or monitoring of the programme or of a part thereof. The results of these exercises, which shall be communicated to the Joint Monitoring Committee and the Managing Authority of the programme, may lead to adjustments in the programme.

TITLE X

VISIBILITY

Article 79

Visibility

1. The responsibility to ensure that appropriate information is communicated to the public shall lie with both the Managing Authority and the beneficiaries.
2. The Managing Authority and the beneficiaries shall ensure adequate visibility of the Union contribution to programmes and projects in order to strengthen public awareness of the Union action and create a consistent image of the Union support in all participating countries.
3. The Managing Authority shall ensure that its visibility strategy and visibility measures undertaken by the beneficiaries comply with the Commission's guidance.
4. The communication strategy for its whole duration and an indicative information and communication plan for the first year, including visibility measures, shall be included in the programme. Each programme shall subsequently draw up an annual information and communication plan to be carried out by the Managing Authority. That plan shall be submitted to the Commission not later than 15 February.

PART THREE

SPECIAL PROVISIONS

TITLE I

INDIRECT MANAGEMENT WITH INTERNATIONAL ORGANISATIONS

Article 80

International organisations as Managing Authority

1. Participating countries may propose that the programme be managed by an international organisation.
2. Only international organisations in the sense of Article 43 of Delegated Regulation (EU) No 1268/2012 may be proposed as Managing Authority.
3. An international organisation shall meet the requirements set out in Article 60 of Regulation (EU) No 966/2012.
4. Before the Commission adopts a programme it shall obtain evidence that the requirements set out in paragraph 3 are fulfilled.

Article 81

Rules applicable to programmes managed by an international organisation

1. The Commission and the international organisation shall conclude an agreement detailing the arrangements applicable to the programme. In case the programme makes a contribution to a financial instrument pursuant to Article 42, conditions and reporting requirements set out in Article 140 of Regulation (EU, Euratom) No 966/2012 shall be respected.
2. The provisions contained in Part Two shall apply to programmes managed by an international organisation unless the agreement referred to in paragraph 1 provides otherwise.

TITLE II

INDIRECT MANAGEMENT WITH A CBC PARTNER COUNTRY

Article 82

CBC partner countries as Managing Authority

1. Participating countries may propose that the programme is managed by a CBC partner country.
2. The nature of the tasks entrusted to the appointed CBC partner country shall be set out in the agreement signed by the Commission and the CBC partner country pursuant to the provisions on indirect management contained in the Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012.
3. The agreement referred to in paragraph 2 shall detail the arrangements applicable to the programme. In particular, it shall lay down which provisions of Part Two apply in view of the nature of the tasks entrusted to the Managing Authority and the amounts involved.

PART FOUR

FINAL PROVISIONS

Article 83

Transitional provisions

Commission Regulation (EC) No 951/2007 ⁽¹⁾ shall continue to apply for legal acts and commitments implementing the budget years preceding 2014.

Article 84

Entry into force

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

It shall apply from 1 January 2014.

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

Done at Brussels, 18 August 2014.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ Commission Regulation (EC) No 951/2007 of 9 August 2007 laying down implementing rules for cross-border cooperation programmes financed under Regulation (EC) No 1638/2006 of the European Parliament and of the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument (OJ L 210, 10.8.2007, p. 10).

ANNEX

Designation Criteria for the Managing Authority

The designation procedure shall be based on the following components of internal control:

1. Internal control environment

- (i) An organisational structure covering the functions of managing authority and the allocation of functions between and within each body as described in Chapter 2 of Title IV of Part Two, ensuring that the principle of segregation of functions, where appropriate, is respected.
- (ii) If delegation of tasks to intermediate bodies, a framework for ensuring the definition of their respective responsibilities and obligations, verification of their capacities to carry out delegated tasks and the existence of reporting procedures.
- (iii) Reporting and monitoring procedures for preventing, detecting and correcting irregularities and for recovering amounts unduly paid.
- (iv) Plan for allocation of appropriate human resources with necessary skills, at different levels and for different functions in the organisation.

2. Risk management

Taking into account the principle of proportionality, a system for ensuring that an appropriate risk management exercise is conducted at least once per year, and in particular, in the event of major modifications of the activities.

3. Management and control activities

- (i) Project selection procedures, ensuring the principles of transparency, equal treatment, non-discrimination, objectivity and fair competition. With a view to respect these principles:
 - (a) the projects shall be selected and awarded on the basis of pre-announced selection and award criteria which are defined in the evaluation grid. The selection criteria serve to assess the applicant's ability to complete the proposed action or work programme. The award criteria are used to assess the quality of the project's proposal against the set objectives and priorities;
 - (b) the grants shall be subject to *ex ante* and *ex post* publicity rules;
 - (c) the applicants shall be informed in writing about the evaluation results. If the grant requested is not awarded, the Managing Authority shall provide the reasons for the rejection of the application with reference to the selection and award criteria that are not met by the application;
 - (d) any conflict of interest shall be avoided;
 - (e) the same rules and conditions shall be applied to all applicants.
- (ii) Contract management procedures.
- (iii) Verification procedures including administrative verifications in respect of each payment request by beneficiaries and the on-the-spot verifications of projects.
- (iv) Procedures for processing and authorising payments.
- (v) Procedures for establishing a system to collect, record and store electronically data on each project and for ensuring that the IT systems are secured in line with internationally accepted standards.
- (vi) Procedures established by the managing authority to ensure that beneficiaries maintain either a separate accounting system or an adequate accounting code for all transactions relating to a project.

- (vii) Procedures for putting in place effective and proportionate anti-fraud measures.
- (viii) Procedures for drawing up the accounts and ensure that they are true, complete and accurate and that the expenditure complies with applicable rules.
- (ix) Procedures to ensure an adequate audit trail and archiving system.
- (x) Procedures to draw up the management declaration of assurance, report on the controls carried out and weaknesses identified, and the annual summary of final audits and controls.
- (xi) Where tasks are delegated to intermediate bodies, the designation criteria should include an assessment of the procedures in place to ensure that the Managing Authority verifies the capacity of the intermediate bodies to carry out tasks and to monitor that these tasks are being properly implemented.

4. Information and communication

- (i) The Managing Authority obtains or generates and uses relevant information to support the functioning of other components of the internal control.
- (ii) The Managing Authority internally disseminates information, including objectives and responsibilities for internal control, necessary to support the functioning of other components of the internal control.
- (iii) The Managing Authority communicates with external parties regarding matters affecting the functioning of other components of internal control..

5. Monitoring

Documented procedures, verifications and evaluations performed to ascertain that the components of internal control exist and function.

COMMISSION IMPLEMENTING REGULATION (EU) No 898/2014**of 18 August 2014****repealing the definitive anti-dumping duty on imports of powdered activated carbon originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation') and in particular Articles 9 and 11(2) thereof,

Whereas:

A. PROCEDURE**1. Measures in force**

- (1) Following an anti-dumping investigation ('the original investigation'), the Council imposed a definitive anti-dumping duty on imports of powdered activated carbon ('PAC') currently falling within CN code ex 3802 10 00 originating in the People's Republic of China ('PRC') ('the definitive anti-dumping measures') by Regulation (EC) No 1006/96 ⁽²⁾. The measures took the form of a fixed duty of EUR 323 per tonne (net weight).
- (2) Following two expiry reviews, the Council has maintained the measures in force by Regulation (EC) No 1011/2002 ⁽³⁾ ('the first expiry review') and Regulation (EC) No 649/2008 ⁽⁴⁾ ('the second expiry review') respectively.

2. Request for an expiry review

- (3) Following the publication of a notice of impending expiry ⁽⁵⁾ of the definitive anti-dumping measures in force, the Commission received on 9 April 2013 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by Cabot Norit Nederland BV and Cabot Norit (UK) Ltd ('the applicants') on behalf of producers representing a major proportion of the total Union production of PAC, in this case more than 25 %.
- (4) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation of dumping and recurrence of injury to the Union industry.

3. Initiation of an expiry review

- (5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 6 July 2013, by a notice published in the *Official Journal of the European Union* ⁽⁶⁾ ('the Notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

B. WITHDRAWAL OF THE EXPIRY REVIEW REQUEST AND TERMINATION OF THE PROCEEDING

- (6) By a letter addressed to the Commission, dated 7 May 2014, the applicants formally withdrew their request for an expiry review.
- (7) In accordance with Article 9(1) of the basic Regulation, a proceeding may be terminated where the request for review is withdrawn unless such a termination would not be in the Union interest.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 134, 5.6.1996, p. 20.

⁽³⁾ OJ L 155, 14.6.2002, p. 1, as amended by Regulation (EC) No 931/2003 (OJ L 133, 29.5.2003, p. 36).

⁽⁴⁾ OJ L 181, 10.7.2008, p. 1.

⁽⁵⁾ OJ C 349, 15.11.2012, p. 19.

⁽⁶⁾ OJ C 195, 6.7.2013, p. 4.

- (8) The investigation has not brought to light any considerations showing that such termination would be against the Union interest. Therefore, the Commission considered that the present proceeding should be terminated and the anti-dumping duty in force repealed.
- (9) Interested parties were informed accordingly and were given the opportunity to submit comments. No comments were received.
- (10) The Commission therefore concludes that the anti-dumping proceeding concerning imports into the Union of PAC, originating in the PRC, should be terminated and the anti-dumping duty repealed.
- (11) The repeal of the measures provided for in this Regulation is in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The anti-dumping duty on imports of powdered activated carbon currently falling within CN code ex 3802 10 00 (TARIC code 3802 10 00 20) originating in the People's Republic of China is repealed and the relevant proceeding is terminated.

Article 2

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

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

Done at Brussels, 18 August 2014.

For the Commission

The President

José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 899/2014**of 18 August 2014****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

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

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 18 August 2014.

For the Commission,

On behalf of the President,

Jerzy PLEWA

Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0707 00 05	TR	81,4
	ZZ	81,4
0709 93 10	TR	100,6
	ZZ	100,6
0805 50 10	AR	141,5
	CL	209,1
	TR	164,2
	UY	166,5
	ZA	124,1
	ZZ	161,1
	ZZ	161,1
0806 10 10	BR	182,9
	EG	208,5
	MA	170,5
	MX	246,5
	TR	144,4
	ZZ	190,6
	ZZ	190,6
0808 10 80	AR	93,4
	BR	91,6
	CL	100,6
	CN	120,3
	NZ	120,6
	US	131,1
	ZA	112,2
	ZZ	110,0
	ZZ	110,0
0808 30 90	AR	78,8
	CL	72,3
	TR	141,6
	ZA	101,6
	ZZ	98,6
0809 30	MK	69,0
	TR	133,7
	ZZ	101,4
0809 40 05	BA	44,3
	MK	49,3
	ZA	207,0
	ZZ	100,2

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COMMISSION DECISION

of 23 November 2011

on State aid No C 28/10 implemented by Portugal for the short-term export credit insurance scheme

(notified under document C(2011) 7756)

(Only the Portuguese text is authentic)

(Text with EEA relevance)

(2014/532/EU)

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

- (1) This decision concerns State aid put into effect by Portugal in the form of a short-term export credit insurance scheme (hereinafter 'the scheme').

1. PROCEDURAL ASPECTS

- (2) On 12 January 2009 Portugal notified a short-term export-credit insurance scheme under section 5.1 of the Commission Communication 'Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis' ⁽²⁾ (hereinafter referred to as 'the Temporary Framework').
- (3) Although the scheme was originally notified as short-term export-credit insurance for OECD countries, the scheme also covers domestic trade transactions.
- (4) Insofar as the Portuguese authorities confirmed that the scheme was implemented as of January 2009, the Commission informed Portugal by letter dated 19 April 2010 that the scheme had been transferred to the Non-Notified aid registry.
- (5) By letter of 27 October 2010, the Commission informed Portugal of the opening of an investigation under Article 108(2) of the TFEU in relation to the scheme.
- (6) By letter of 29 November 2010, the Portuguese authorities sent their observations on the Commission's letter of 27 October 2010. They attached two letters from credit insurers (CESCE and COSEC) dated 22 November 2010 and 23 November 2010 respectively.
- (7) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* of 9 April 2011 ⁽³⁾. The Commission invited interested parties to submit comments on the scheme. No comments were received.

⁽¹⁾ OJ C 111, 9.4.2011, p. 46.

⁽²⁾ OJ C 16, 22.1.2009, p. 1. The Commission has applied the Temporary Framework since 17 December 2008 and authorised the Portuguese 'Limited amounts of aid' scheme (case N 13/09) on 19 January 2009 on the basis of the Temporary Framework.

⁽³⁾ See footnote 1.

2. DESCRIPTION OF THE MEASURE

2.1. OBJECTIVE

- (8) The Portuguese authorities have alleged that the current financial crisis has resulted in an increased risk for commercial operations. This in turn has led to an increasingly conservative attitude on the part of credit insurers, reflected in the level of insurance cover for risks inherent in commercial operations.
- (9) The objective of the scheme is to address a market failure due to the unavailability of credit insurance and to help restore confidence in the credit insurance market.
- (10) Those aims are pursued through the provision of credit insurance coverage to exporters and to companies that are temporarily confronted with the unavailability of export insurance cover in the private market for transactions with buyers in OECD countries or for domestic transaction.
- (11) According to the Portuguese authorities, the insurance sector has shrunk considerably since 2008, which resulted in the unavailability of cover. On 30 September 2010 the total value of the insured portfolio decreased by 32,84 % between 31 December 2009 and 31 December 2009 and by a further 22,4 % from 31 December 2009 to 30 September 2010. The total value of the insurance portfolio was down to EUR 15,9 billion in 2010 from EUR 30,6 billion at the end of 2008. The number of insured firms decreased from 3 709 at the end of 2008 to 2 290 in September 2010. Letters from insurers were also provided to justify the need for continuation of the scheme until the end of 2010, despite allegations in the letters that the maximum cover amount granted by the scheme would not be reached. Those letters explained the need for the scheme by referring to the increased risk of export credit insurance due to the general economic situation in times of recovery from the crisis, with a subsequent increase in prices and reduction of coverage from private insurers in certain sectors.

2.2. LEGAL BASIS

- (12) The national legal basis for the scheme is Decree-Law No 175/2008 establishing the Finova of 26 August 2008 and Decree-Law No 211/1998 of 16 July 1998 laying down the rules applicable to mutual guarantee societies (as amended by Decree-Laws No 19/2001 of 30 January 2001 and No 309-A/2007 of 7 September 2007).

2.3. IMPLEMENTING BODY

- (13) The scheme is implemented through the following private credit insurers active on the Portuguese market: COSEC, CESCE, Coface and Credito y Caución.

2.4. BENEFICIARIES

- (14) According to information submitted on 26 November 2010 by the Portuguese authorities, 399 beneficiaries were subscribed to the scheme at October 2010.
- (15) The segmentation of the credit limits granted at October 2010 is reproduced in the following tables:
- (16) Utilization by intermediary insurer:

Insurance company	Beneficiaries		Credit limit in euro	
	Number	(%)	Value	(%)
COSEC	273	68,42	151 693 571	71,68
Credito y Caución	43	10,78	28 259 171	13,35
CESCE	55	13,78	24 747 850	11,69
Coface	28	7,02	6 929 700	3,27
Total	399	100	211 630 292	100

- (17) Breakdown by market size in euros into domestic and export transactions in October 2010:

	Credit limit effectively used ⁽¹⁾	
	Value (EUR)	(%)
Domestic trade transactions	137 175 542	73,20
Export transactions	50 221 841	26,80
Total	187 397 383	100

⁽¹⁾ The total amount of credit limit granted is EUR 211,6 million, while the credit limit effectively used to cover trade operations was EUR 187,3 million.

- (18) Breakdown by size of beneficiary:

Size of beneficiary	Beneficiaries		Credit limit in euro	
	Number	(%)	Value (EUR)	(%)
Big firms	126	31,58	101 135 009	47,79
Medium firms	158	39,60	71 507 618	33,79
Micro-/Small firms	115	28,82	38 987 665	18,42
Total	399	100	211 630 292	100

2.5. TERMS AND CONDITIONS OF APPLICATION OF THE SCHEME

- (19) The scheme covers commercial risks (such as insolvency and protracted default) linked to export transactions for periods of less than two years with OECD countries, and risks linked to domestic trade transactions.
- (20) The public insurance operates as a risk-sharing facility ('a top-up') with private insurers. It is granted only as a supplement to the cover provided by a private insurer.
- (21) The public insurance is granted, according to the Portuguese authorities, under exactly the same terms and conditions as the private insurance. Thus, the amount covered by the public insurance may never exceed the amount covered by the private insurer. However, the applicable insurance premium is equal to 60 % of the premium charged by the private insurer. The average rate applicable under the scheme represented 0,21 % of turnover, while the market rate charged by private insurers represented on average 0,36 % of turnover in 2009. Even the average market rates — of 0,23 % and 0,24 % in 2007 and 2008 respectively — were higher than the average rate applicable under the scheme from 2009 onwards.
- (22) In the event of occurrence of the insured event, any recovered amounts are divided between the State and the private insurer providing the basic cover, in proportion to the share of the total cover guaranteed, i.e. quota share. The recovery procedure is administered by the private insurer.

2.6. DURATION

- (23) The scheme was notified on 12 January 2009 for a duration from 1 January 2009 to 31 December 2010. No prolongation has been notified to the Commission.

2.7. BUDGET

- (24) According to the information submitted to the Commission by the Portuguese authorities, the maximum guarantee per single beneficiary is EUR 1,5 million.
- (25) According to the information submitted to the Commission by the Portuguese authorities, the overall budget of the scheme for both domestic and export transactions is EUR 2 billion ⁽⁴⁾.

3. COMMISSION DECISION ON THE FORMAL INVESTIGATION PROCEDURE

- (26) In its decision of 27 October 2010 initiating the formal investigation procedure, the Commission set out its preliminary assessment and expressed doubts as to the compatibility of the scheme with the internal market. The doubts expressed in that decision concerned:
- The application of the scheme to short-term export credit insurance, in which the pricing of the guarantee was below the level normally required pursuant to the Commission Communication on short-term export credit insurance ⁽⁵⁾ (hereinafter 'the Communication'). The Commission expressed doubts that the remuneration was necessary and proportionate to attain the objective, considering the potential distortions of competition that it implies.
 - The application of the scheme to domestic transactions. The Commission expressed doubts as to the compatibility of the measure and again questioned the pricing of the guarantee provided.

4. COMMENTS BY PORTUGAL

- (27) In their comments on the initiation of the formal investigation procedure, the Portuguese authorities argue that the Commission's claim that companies under the scheme benefit from an advantage that would otherwise not be available is not consistent with the objectives expressed in the Temporary Framework. To prove the market failure, the Portuguese authorities refer to the loss ratio, which had attained a record of 102 % in 2008, despite the fact that the number of firms covered by insurance had decreased by 29,41 % at the end of 2009 compared with the end of 2008 and by another 12,53 % by the end of September 2010. The value of the insured portfolio had decreased by 32,84 % at the end of 2009 compared to end 2008 and by another 22,36 % at September 2010. Portugal also argues that other Member States have also adopted such schemes.
- (28) As regards the selective nature of the advantage, Portugal argues that the scheme **is not selective**, but instead constitutes a measure of general character which does not entail any intra-sectoral or cross-sectoral discrimination. Portugal also deplores the absence of a definition by the Commission of what constitutes a general measure. According to Portugal, the absence of discrimination is proven by: (i) the application of the scheme also to companies from other Member States which are active in Portugal; (ii) the acceptance of applications to the scheme from all four insurers active in Portugal, all of which are held at least in part by foreign entities; (iii) the absence of a change of the financing needs during the crisis; (iv) the major beneficiary of the scheme, which in October 2010 was the segment of operations relating to the national market (73,2 %); (v) the possibility of all firms operating in Portugal to use the scheme, independently of whether the nature of their activities is linked to trade in goods (the sectors 'construction', 'transport' and 'other services — excluding commerce' have benefitted from the scheme for the amounts of EUR 2 155 000, EUR 471 500 and EUR 4 580 000 respectively), although by their nature, export credits are mainly related to transactions in goods. Moreover, the **top-up model** would not be a source of discrimination, according to Portugal, as it does not prevent any firm from negotiating such a policy with a private insurer. The public authorities rely entirely on the risk assessment of the private insurers. Also, according to the Portuguese authorities, the **maximum limit** set per insurance does not prevent access to it by big firms, which have benefitted from the scheme (up to 47,79 % in terms of value of operations, as opposed to 33,79 % for medium-sized and 18,42 % for small-sized firms, but only up to 31,58 % in terms of number of beneficiaries, as opposed to 39,60 % for medium-sized firms and 28,82 % for small-sized firms). That maximum limit is designed to ensure that the State resources involved are proportional to the objectives pursued, and that risk is well diversified, while at the same time ensuring access to the scheme for a greater number of firms. The

⁽⁴⁾ According to the notification of 12 January 2009.

⁽⁵⁾ OJ C 281, 17.9.1997, p. 4.

fact that the maximum amount of the scheme has not been used stands as a proof of the absence of discrimination for big firms, according to the Portuguese authorities. Finally, Portugal questions the link between the case law indicated by the Commission in point 36 of the decision to open the formal investigation procedure and the discrimination. It regrets that the Commission has not set out criteria that a measure must fulfil in order to be of a general nature.

- (29) Portugal justified the **lower pricing** of the scheme compared to that of private insurance, arguing that an adverse selection can be observed as firms chose to ensure the less risky operations under the scheme, leaving the riskier operations for coverage by the private insurance. In that respect, the reasoning of the Commission would not be relevant, according to the Portuguese authorities, in the sector of export credit, where risk does not increase with the amount of the credit as it does for bank credits. The low risk is also shown, according to the Portuguese authorities, by the fact that at October 2010 the volume of claims accumulated in the scheme increased by only 0,26 % of the total value of insurance contracted. Moreover, the pricing applied to the State guarantee corresponds, according to the Portuguese authorities, to the market pricing before the crisis and does therefore not entail an advantage for its beneficiaries.
- (30) Further, according to the Portuguese authorities the scheme does not give rise to a distortion of competition between Member States, because: (i) it also covers national operations; (ii) the costs of insurance differ in the Member States, as shown by the different pricing of the insurance; and (iii) that type of service is unavailable on the market.

5. COMMENTS BY OTHER INTERESTED PARTIES

- (31) Following the publication of the Commission Decision to open the formal investigation procedure in the Official Journal on 9 April 2011, the Commission received no comments from third parties.

6. ASSESSMENT

6.1. QUALIFICATION OF THE MEASURES AS STATE AID

- (32) Article 107(1) TFEU states:

‘Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.’

- (33) In order for Article 107(1) TFEU to be applicable, there needs to be an aid measure imputable to the State which is granted by State resources, affects trade between Member States and distorts competition in the internal market by conferring a selective advantage on certain undertakings.

State resources

- (34) As explained in the Commission decision of 27 October 2010 initiating the formal investigation procedure, the insurance is directly provided by the State and any losses stemming from the scheme affect the national budget. The scheme therefore involves State resources. The involvement of State resources is not contested by Portugal.

Selective advantage for insurers

- (35) The Commission has analysed export credit insurance markets in its decisions on short-term export credit insurance schemes ⁽⁶⁾. Premium rates in the short-term export credit insurance market are typically fixed in contracts for periods of at least one year. Therefore, any change in the pricing of the cover offered is effective only with a

⁽⁶⁾ See, in particular, Commission decision *Austrian short term export credit insurance* in case N 434/09, (OJ C 25, 2.2.2010, p. 4), Commission decision *Export credits Denmark* in case N 198/09 (OJ C 179, 1.8.2009, p. 2), Commission decision *Belgian short term export credit insurance* in case N 532/09 (OJ C 19, 26.1.2010, p. 7), in Commission decision *Finnish short term export credit insurance* in case N 258/09 (OJ C 227, 22.9.2009, p. 1), Commission decision *German short term export credit insurance* in case N384/09 (OJ C 212, 5.9.2009), Commission decision *Hungarian short term export credit insurance* in case N187/10 (OJ C 259, 15.9.2010), Commission decision *Luxembourg short term export credit insurance* in case N50/09 (OJ C 143, 24.6.2009), Commission decision *Lithuanian short term export credit insurance* in case N659/09 (OJ C 33, 10.2.2010), Commission decision *Latvian short term export credit insurance* in case N84/10 (OJ C 213, 6.8.2010), Commission decision *Dutch export credit insurance — reinsurance scheme* in case N 409/09 (OJ C 270, 11.11.2009), Commission decision *Slovenian short term export credit insurance* in case N 713/09 (OJ C 108, 28.4.2010).

time lag. Further, the market practice is to adjust the supply of credit insurance by increasing or decreasing the amounts of credit offered and not by changing the rate charged on the cover. This practice has also been observed since the beginning of the financial crisis, as evidenced by the letters of refusal of cover sent by Portugal and the letters of refusal sent in other cases of short-term export credit insurance schemes ⁽⁷⁾. In general, the letters of refusal from insurers do not offer exporters, as an alternative, a higher price for the cover of certain buyers. Evidence shows that as a consequence of the financial crisis, private insurers significantly reduced the cover offered, often withdrawing it altogether. Other data supplied by market operators confirm the above ⁽⁸⁾. Thus, competition between insurers is based chiefly on quantities rather than prices. Through the measure, the State responded to demand not covered by the existing private operators. However, in a competitive market with no state intervention, a new operator would have responded to the demand by granting additional insurance cover. Consequently, the effect of the State's intervention was to protect the market positions of the private operators already active on the Portuguese market.

- (36) Short-term export credit insurance is a product in which the insurer takes over the commercial and political risk of default by the buyer in a trade transaction. Banks also offer to take over the commercial risks of trade transactions through documentary credit and non-recourse factoring. Short-term export credit insurance offered by export credit insurance companies and documentary credit offered by banks are demand-side substitutes in the market for protection against the commercial risk of trade transactions. In the absence of State intervention, exporters might have resorted at least to some extent to documentary credit (letter of credit) offered by banks ⁽⁹⁾. Owing to the possible substitutability between short-term export credit insurance offered by insurers and the documentary credit offered by banks, the measure entails an advantage in favour of the sector of short-term export credit insurance, because it contributes to maintaining the market share of export credit insurers in the market for protection against the commercial and political risks of trade transactions. As banks are not eligible to apply for the scheme, under which public insurance is offered only as a supplement to the cover granted by private insurers, the advantage is selective.
- (37) In the light of the foregoing, the Commission concludes that the measure confers a selective advantage on insurers.

Selective advantage for exporters and domestic trading companies

- (38) Exporters and trading companies subscribing to the scheme pay a premium which is lower than the market premium. This leads to a strengthening of the position of the companies that benefit from the scheme compared to those who would potentially receive their coverage only from private insurers at a market price. The mere strengthening, through measures of a scheme, of the position of some market players compared to their competitors in a comparable situation, has been considered to constitute an advantage ⁽¹⁰⁾. In the present case, strengthening of the position of those beneficiaries would not have been possible to the same extent without the intervention of the State.
- (39) Furthermore, as affirmed by Portugal, cover is unavailable on the market, at least to the same extent, for the risks covered under the scheme. Thus companies benefiting from the scheme receive a double advantage in the form of access to insurance cover that would otherwise be unavailable: not only do they benefit from a lower premium than the market price, but they also benefit from the existence of the additional cover.
- (40) The Portuguese scheme is de facto selective.
- (41) An initial indication that the scheme is selective is that the companies that benefit from the measure are almost exclusively companies that trade in goods, while companies that provide services benefit much less from it. In the context of the formal investigation proceedings, the Portuguese authorities state that there are no legal obstacles preventing companies not involved in commercial activities to benefit from the scheme and that the sectors 'construction', 'transport' and 'other services — excluding commerce' have benefitted from the scheme. However,

⁽⁷⁾ See in particular Commission decision *Belgian short term export credit insurance* in case N 532/09, Commission decision *Finnish short term export credit insurance* in case N 258/09, Commission decision *German short term export credit insurance* in case N 384/09, Commission decision *Luxembourg short term export credit insurance* in case N 50/09, Commission decision *Latvian short term export credit insurance* in case N 84/10, Commission decision *Danish export credit insurance — reinsurance scheme* in case N 409/09, Commission decision *Slovenian short term export credit insurance* in case N 713/09.

⁽⁸⁾ See *Credit insurance in support of international trade*, Fabrice Morel, Berne Union, 2010, <http://www.berneunion.org.uk/pdf/Credit%20insurance%20in%20support%20of%20international%20trade.pdf>.

⁽⁹⁾ See *The Report on Market Trends of Private Reinsurance in the Field of Export Credit Insurance*, European Commission, http://ec.europa.eu/competition/state_aid/studies_reports/export_credit_insurance_report.pdf.

⁽¹⁰⁾ See judgment of the Court (Third Chamber) of 8 September 2011 in Case C-279/08 P, *Commission v. Netherlands*, not yet published.

Portugal also admits that by their nature, export credit insurance mainly concerns transactions in goods. Companies that supply transport and other services accounted for only 2,4 % of the insurance provided under the scheme at October 2010. Given that undertakings that supply services accounted for only 8 of a total of 361 undertakings that benefitted from the scheme and about 1,25 % of the share of credit limits, it is clear that the measure in question essentially aided companies that trade in goods.

- (42) There are other elements that show that the scheme is de facto selective.
- (43) First, despite the claim of the Portuguese authorities that the scheme has a general character because the beneficiaries are defined by objective criteria which do not entail a discrimination against entities from other Member States, the conditions set under the scheme grant a certain margin of discretion in the choice of beneficiaries. The scheme follows a 'top-up' model, according to which only companies that have a credit limit with a private insurer are eligible for the scheme, while companies to which private credit insurers refuse cover completely are not eligible for the 'top-up'. The scheme leaves it entirely to the private companies to judge the eligibility for cover. In the absence of uniform and objective criteria for determining the risk entailed in the transactions which each exporter or trader carries out, the scheme grants private operators a degree of latitude in judging the credit-worthiness of the companies that are eligible to apply for cover. The Court of Justice has considered that to be considered as non-selective, a measure should be based on a criterion of application which is objective, has no geographic or sectoral connotation, and is in keeping with the objective of the measure ⁽¹¹⁾. In the present case, the absence of objective criteria for the decision to grant private cover leads to potential discrimination between beneficiaries that are in a comparable factual situation ⁽¹²⁾.
- (44) Second, even if the criteria for access to the scheme were to be considered objective, the Court has held that the mere existence of objective criteria does not prejudice the selective nature of the measure where the measure has the effect of advantaging certain undertakings to the detriment of others. Thus, the Court has stated that '[t]he fact that the aid is not aimed at one or more specific recipients defined in advance, but that it is subject to a series of objective criteria pursuant to which it may be granted, within the framework of a predetermined overall budget allocation, to an indefinite number of beneficiaries who are not initially individually identified, cannot suffice to call in question the selective nature of the measure and, accordingly, its classification as State aid within the meaning of Article 92 of the Treaty [107(1) TFEU]. At the very most, that circumstance means that the measure in question is not an individual aid. It does not, however, preclude that public measure from having to be regarded as a system of aid constituting a selective, and therefore specific, measure if, owing to the criteria governing its application, it procures an advantage for certain undertakings or the production of certain goods, to the exclusion of others ⁽¹³⁾'. Thus, according to the Court of Justice, State interventions should not be judged on their causes or aims, but on their effects ⁽¹⁴⁾. In the case at hand, the scheme is de facto selective.
- (45) Third, in order to be of a general nature, a measure must not only be based on objective and horizontal criteria, but must also not be limited either in time or in its field of application. The scheme, despite Portugal's insistence on its general character, is limited both in time and in its field of application, including by the very nature of the top-up model, as has been explained above in recital 43.
- (46) Finally, the criteria under the scheme are not in conformity with the aim and logic of the measure ⁽¹⁵⁾. Even if the scheme were to be applied in an objective manner by the private insurers, only companies which saw their cover reduced during the crisis would be eligible under the scheme. Companies for which private insurers have cancelled credit limits completely are excluded from the scheme. Therefore, despite the aim of the scheme to address an alleged unavailability of cover on the private market, it does not cover the companies which are most severely affected by the reduction of the private insurance capacity in the market. In that respect, the design of the measure is not appropriate to address the identified market failure
- (47) On the basis of the foregoing considerations, the advantages conferred on the exporters and trading companies subscribing to the scheme are of a selective nature.

⁽¹¹⁾ Judgment of the Court of First Instance of 10 April 2008 in case T-233/04 Kingdom of the Netherlands v Commission of the European Communities [2008] ECR II-00591, point 88.

⁽¹²⁾ Judgment in case C-143/99 Adria-Wien Pipeline GmbH and Wietersdorfer & Peggauer Zementwerke GmbH v Finanzlandesdirektion für Kärnten [2001] ECR I-08365, point 41.

⁽¹³⁾ Judgment of the Court of First Instance (Third Chamber, Extended Composition) of 29 September 2000 in case T55/99, Confederación Española de Transporte de Mercancías v. Commission, ECR II-3207, point 40.

⁽¹⁴⁾ Judgment in case C-173/73 Italian Republic v Commission of the European Communities [1974] ECR 00709, point 13.

⁽¹⁵⁾ Judgment of the Court of First Instance (Fifth Section, Extended Composition) of 10 April 2008 in case T233/04 Kingdom of the Netherlands v Commission of the European Communities [2008] ECR II-00591, point 88.

Effect on trade and distortion of competition

- (48) Concerning the effect on trade, the scheme covers export transactions and domestic transactions in tradable goods.
- (49) By covering domestic transactions, the scheme may potentially affect trade between Member States to the extent that it could appreciably distort trade flows, for instance by diverting economic activities from exports into domestic transactions.
- (50) As regards the distortion of competition, according to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition ⁽¹⁶⁾.
- (51) As the scheme applies to exports, including for other Member States, the measure clearly affects trade flows between Member States, as it facilitates the exercise of an export activity by beneficiaries.
- (52) The scheme also affects trade insofar as it covers domestic transactions. It is well-established case-law that where aid granted by a Member State strengthens the position of a company compared with other competing companies in intra-Union trade, the latter should be considered affected by that aid. In this regard, the fact that an economic sector has been liberalised at the level of the Union could serve to determine that the aid has a real or potential effect on the competition and affects trade between the Member States. Additionally, it is not necessary that the beneficiary company itself be involved in the trade within the Union. Aid granted by a Member State to a company may contribute to maintaining or increasing the activity in the domestic market, with the result that companies established in another Member State have fewer opportunities to penetrate the market of the Member State in question. Furthermore, the strengthening of an undertaking which, until then, was not involved in intra-Union trade may place that undertaking in a position that enables it to penetrate the market of another Member State ⁽¹⁷⁾.
- (53) In the present case, the measure benefits companies active in various sectors open to trade within the European Union. Thus even advantages conferred on domestic transactions of companies active only in the Portuguese market affect trade between Member States.
- (54) Moreover, the purpose of the measure is to support the commercial trading activities of companies established in Portugal as opposed to undertakings established in other Member States. The measure may, therefore, distort competition in the internal market.

Conclusion

- (55) Consequently, this project constitutes state aid within the meaning of Article 107(1) of the TFUE. The aid may be considered compatible with the common market if it can qualify for one of the exceptions provided for in the Treaty.

6.2. COMPATIBILITY OF THE AID TO INSURERS

- (56) The Commission has laid down in its Communication conditions under which aid to insurers in the form of State-supported short-term export credit schemes is considered to be compatible. In the context of the financial crisis, the Temporary Framework sets out the conditions of application of the Communication.

⁽¹⁶⁾ See judgment in Case 730/79 Philip Morris Holland BV v Commission [1980] ECR 2671, point 11.

⁽¹⁷⁾ See, in particular, Case C-222/04 Cassa di Risparmio di Firenze, ECR2006, p. I-289, paragraphs 141-143, and the case-law cited therein.

- (57) Point 2.5 of the Communication as amended ⁽¹⁸⁾ defines 'marketable risks' as the commercial and political risks relating to public and non-public debtors established in the countries listed in the Annex ⁽¹⁹⁾ to the Communication. Financial advantages in favour of export credit insurers that enter or cover a transaction qualified as a marketable risk are normally prohibited.
- (58) Point 3.1 of the Communication states that factors that may distort competition between private and public or publicly supported export-credit insurers insuring marketable risks include de jure and de facto State guarantees of borrowing and losses. Such guarantees enable insurers to borrow at rates lower than the normal market rates or make it possible for them to borrow money at all. Furthermore, they obviate the need for insurers to reinsure themselves on the private market,
- (59) As far as countries not listed in the Annex to the Communication are concerned, such risks are 'non-marketable' within the meaning of the Communication and public support for insuring them is not covered by the Communication.
- (60) Point 4.2 of the Communication provides that 'marketable risks' cannot be covered by export credit insurance with aid from the Member States. However, point 4.4 of the Communication provides that under certain conditions, these risks can be temporarily covered by public or publicly-supported export credit insurers. In particular it states that risks incurred in respect of debtors established in countries listed in the Annex to the Communication are considered temporarily non-marketable only if it can be demonstrated that private insurance cover for the risks generally viewed as marketable is unavailable. Member States which wish to invoke that escape clause must provide a market report and produce evidence from two major, internationally recognised export credit insurers as well as a national credit insurer, both demonstrating the unavailability of cover for the risks in the private insurance market. Moreover, the publicly-supported export credit insurer must, as far as possible, align its premium rates for such non-marketable risks with the rates charged elsewhere by private export credit insurers for the type of risk in question and provide a description of the conditions which the public export credit insurer intends to apply in respect of such risks.
- (61) In order to speed up the procedure, the Temporary Framework simplified, until 31 December 2010, the proof that Member States need to produce to demonstrate the unavailability of cover. To that end, Member States had to submit evidence supplied by a large internationally recognised private export credit insurer and a national credit insurer or by at least four well-established exporters in the domestic market. The Temporary Framework was prolonged until 31 December 2011 ⁽²⁰⁾.

Unavailability of cover

- (62) Portugal submitted a number of letters from exporters which show that they have been refused cover for a number of transactions. Nevertheless, the Commission has not found sufficient proof of the unavailability of cover in the letters provided by the Portuguese authorities. The reasons provided in those letters for refusal are either confidential or explicitly state that refusal is due to the customer's poor liquidity and financial position, which is a normal business practice in a properly functioning insurance market. Portugal provided data, in its reply to the Commission decision of 27 October 2010 initiating the formal investigation procedure, that shows a decline in the number of firms taking up insurance (there is a 29,41 % decline up to the end of 2009 compared with the previous year, and of another 12,53 % up to September 2010), as well as a decline in the value of the insured portfolio (32,84 % decline at the end of 2009 compared with the previous year, and of another 22,36 % until September 2010). However, of the two letters from private insurers provided by Portugal pointing to the unavailability of cover in the private market, one of them (from CESCE, dated 22 November 2010) states that the financing needs of firms have also diminished due to the decrease of the buying markets. Therefore, the alleged reduction of insured volumes is not sufficient proof of the unavailability of cover on the market.
- (63) Moreover, if indeed cover is unavailable in the private market and it then becomes available when the State grants a partial coverage, it could constitute a sign that the insurers have received State aid. As that market adjusts mainly by quantity not by prices, as explained in recital 35, the availability of credit deriving from the state aid allows the operators already present on the market to maintain their position.

⁽¹⁸⁾ See corrigendum published in OJ C 217, 2.8.2001, p. 2.

⁽¹⁹⁾ The list includes EU and OECD countries.

⁽²⁰⁾ OJ C 6, 11.1.2011, p. 5.

Alignment of premium rates with rates charged by private credit insurers

- (64) The rates charged under the scheme represent 60 % of the rate charged by a private insurer to cover the same client. Further, contrary to the allegations of Portugal, the risk transferred to the State under the scheme can be considered higher than the risk covered by the private insurer on a stand-alone basis. It should be recalled that the risk of default increases when the insured amount increases. Thus, with a larger amount of insurance cover the exporter would accept to conclude more commercial transactions with a given buyer. The total volume of transactions could exceed the capacity to repay of the buyer.
- (65) The Portuguese authorities consider that the risk of additional transactions is lower, considering that an exporter which obtained limited cover would first insure the riskiest buyers; with increased cover, the exporter would progressively insure buyers that are less risky. However, that argument overlooks the fact that credit limits are granted per buyer, and therefore the exporter does not have the choice to exclusively use the entirety of the limit granted for the least credit-worthy buyers.
- (66) Moreover, the argument of the Portuguese authorities that the additional transactions insured are of lower risk than the transactions insured by the private insurer would lead to the conclusion that the private insurers accept, for a given level of premium, a higher risk, while they refuse to cover transactions with lower risk for the same level of premium. If that argument was correct, a rational private insurer would insure more transactions, which would increase their premium income while decreasing the risk. In other words, the argument of the Portuguese authorities would point to an irrational behaviour of private insurers, who would agree to insure a riskier part of the portfolio instead of the less risky part. Therefore that argument cannot be accepted.
- (67) As a result of the increased risk covered by the measure, the State assumes exposure to a higher expected ultimate loss than the private insurer, when granting and pricing the initial cover on a stand-alone basis. Therefore, in the case of a top-up scheme where the decision to extend the cover is taken only after the premium for the initial credit insurance limit has been set, the price of the top-up must reflect a higher risk of possible excess cover. The argument of the Portuguese authorities, according to which firms would operate an adverse selection which would ensure that the riskier operations would be covered by private insurance, is not supported by any concrete data nor by the known market practice. The most common form of private short-term credit insurance (whole turnover policy) requires that whole portfolio of credited sales is covered under the policy. Thus, the insured company is prevented from insuring their risks selectively. The Commission considers that the price of supplementary insurance should have taken into account the higher level of risk assumed. The pricing should therefore have been higher than the price charged for the base cover by the private insurers.
- (68) In the present case, the rates charged under the scheme are lower than the current rates in the export credit insurance market, which is confirmed by Portugal in its reply to the Commission decision of 27 October 2010 initiating the formal investigation procedure. That pricing is also lower than the 2007 and 2008 market rates. For that reason, the argument brought forward by the Portuguese authorities, according to which the pricing corresponds to the market rates before the crisis, is also not confirmed. Moreover, the price should also take into account the level of risk assumed. Therefore, the pricing should in fact be higher than the market price.
- (69) In the light of the foregoing, the scheme as applied to insurers is incompatible with the Communication and the Temporary Framework.

6.3. COMPATIBILITY OF THE AID TO EXPORTERS AND DOMESTIC TRADING COMPANIES**6.3.1. Compatibility of the measure aimed at short-term export credit insurance**

- (70) Article 107(3)(c), applicable under normal market circumstances, and Article 107(3)(b) of the TFEU, applicable in periods of serious disturbance in the economy, allow aid to be considered compatible with the internal market under certain conditions.

- (71) The Commission recalls that according to case law, Article 107(3)(b) of the TFEU must be applied restrictively and must tackle a disturbance in the entire economy of a Member State. ⁽²¹⁾
- (72) In line with the principles set out in the Temporary Framework (paragraph 5.1), as prolonged until 31 December 2012, in order to be deemed compatible, aid measures must fulfil the following criteria:
- a. *Appropriateness* The aid must be well-targeted in order to be able to effectively achieve the objective of remedying a serious disturbance in the economy. It would not be the case if the measure were not appropriate to remedy the disturbance.
 - b. *Necessity* The aid measure must, in its amount and form, be necessary to achieve the objective. Thus, it must be of the minimum amount necessary to reach the objective, and take the form most appropriate to remedy the disturbance. In other words, if a lesser amount of aid or a measure in a less distortive form were sufficient to remedy a serious disturbance in the entire economy, the measure in question would not be necessary. That analysis is confirmed by settled case law of the Court of Justice ⁽²²⁾.
 - c. *Proportionality* The positive effects of the measures must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measures' objectives. Article 107(1) of the TFEU prohibits all selective public measures that are capable of distorting trade between Member States. Any derogation under Article 107(3)(b) of the TFEU which authorises State aid must ensure that such aid is limited to what is necessary to achieve its stated objective.

Appropriateness

- (73) As explained in recital 46, the design of the scheme excludes companies which are hardest hit by the crisis and therefore it is not appropriate to address the alleged market failure of unavailability of private cover.

Necessity and proportionality: alignment of premium rates with rates charged by private credit insurers

- (74) As stated above in recital 62, although the information provided by Portugal indicates strains in the private credit insurance market, it fails to prove an unavailability of cover. Therefore the necessity of the State intervention cannot be established.
- (75) As explained in recitals 21 and 64, the rates charged under the scheme represent 60 % of the rates charged by private insurers to cover the same client.
- (76) As explained above in recitals 65 to 67, in the case of a top-up scheme where the decision to extend the cover is taken only after the premium for the initial credit insurance limit has been set, the price of the top-up must reflect a higher risk of possible excess cover.
- (77) The objective to provide the allegedly unavailable insurance cover could also be achieved through a scheme priced in such a way as to reflect the underlying risk assumed by the State. Therefore, the pricing of the scheme based on a premium lower than the premium which would be charged by the market for similar risks is not proportionate to the objective of the scheme.
- (78) In view of the above, the export credit insurance part of the scheme cannot be considered to be compatible aid to exporters under Article 107(3)(b) of the TFEU and the Temporary Framework.
- (79) Regarding Article 107(3)(c), all the arguments in respect of appropriateness, necessity and proportionality are equally pertinent in the compatibility analysis under Article 107(3)(b). Therefore the aid to export credit insurers under the scheme affects trade conditions to an extent contrary to the common interest.

⁽²¹⁾ See for instance judgment of the Court of First Instance in joined cases T-132/96 and T-143/96 Freistaat Sachsen, Volkswagen AG and Volkswagen Sachsen GmbH v Commission of the European Communities [1999] ECR II-3663, paragraph 167.

⁽²²⁾ See judgment in Case 730/79 Philip Morris Holland BV v Commission [1980] ECR 2671, point 17. This principle was recently reaffirmed by the judgment in case C-390/06 Nuova Agricast Srl v Ministero delle Attività Produttive [2008] ECR I-02577, point 68.

6.3.2. Compatibility of the scheme in relation to domestic trade insurance operations

- (80) As regards the application of the scheme to domestic transactions, domestic trade insurance below market price could divert trade transactions away from exports in favour of domestic transactions and have a major impact on imports. Therefore, under normal market conditions State support in favour of domestic trade operations is strictly forbidden. However, subparagraphs (c) and (b) of Articles 107(3) of the TFEU allow aid to be considered compatible with the internal market under certain circumstances. In that context, the Communication and the Temporary Framework set criteria for the compatibility of aid measures for short-term export credit insurance. However, those texts do not cover domestic trade transactions.
- (81) Nevertheless, Portugal notified the scheme in the context of the current financial crisis under the Temporary Framework. Therefore it must be established whether, in view of the far-reaching consequences of the current economic crisis, the scheme could be regarded as compatible directly under Article 107(3)(b) of the TFEU. If not, then it must be analysed whether the measure can be deemed compatible under Article 107(3)(c).
- (82) Concerning compatibility under Article 107(3)(b) of the TFEU, that provision enables the Commission to declare aid compatible with the internal market if it aims 'to remedy a serious disturbance in the economy of a Member State'.
- (83) The Commission reiterates that Article 107(3)(b) of the TFEU needs to be applied restrictively and must tackle a disturbance that affects the entire economy of a Member State ⁽²³⁾. It also recalls that, as stated above in recital 73, the measure must fulfil the principles of appropriateness, necessity and proportionality.
- (84) The measure was put in place in the context of the current financial crisis and is limited in time.
- (85) The Commission has received letters from exporters and private insurers indicating a reduction in insurance cover for domestic transactions. The Portuguese authorities argue that the loss ratio has increased to 102 %. However, that observation is not conclusive since the increase follows a constant trend since 2004, as shown in the observations provided by the Portuguese authorities. That constant increase in the loss ratio even before the outbreak of the financial crisis may point, not to a market failure in domestic trade financing, but rather to a structural problem in the market. Therefore, the Commission has not found evidence that the scheme is appropriate to address a serious disturbance in the economy and considers the scheme cannot be declared compatible under the Temporary Framework or Article 107(3)(b).
- (86) Concerning the compatibility of the measure under the Communication and Article 107(3)(c), the aim of the scheme is to address the unavailability of cover in the insurance market. However, being a top-up scheme which leaves some degree of latitude in the choice of the beneficiary to private insurers, the scheme potentially excludes companies from cover which are in a comparable factual situation to the companies covered, but were more affected by the crisis. Such excluded companies would have had insurance cover completely withdrawn as opposed to only partially cancelled. Moreover, the measure not only provides additional cover to beneficiaries, it also provides an advantage in terms of pricing, given that the premiums are below market rates. As already noted, the rates charged under the scheme represent 60 % of the rates charged by a private insurer to cover the same client, while the fact that the cover limit is extended to double the initial limit implies a higher risk not reflected by the premium. The level of the pricing under the scheme is not justified in view of the need to address the unavailability of insurance cover. The scheme is not proportionate to achieving its stated objective given the potential distortions of competition.
- (87) The Commission therefore concludes that the State aid granted to domestic trade insurance operations does not fulfil the conditions under subparagraphs (b) or (c) of Articles 107(3) of the TFEU and is incompatible with the internal market.

⁽²³⁾ See for instance judgment of the Court of First Instance (Second Chamber, extended composition) in joined cases T-132/96 and T-143/96 *Freistaat Sachsen, Volkswagen AG and Volkswagen Sachsen GmbH v Commission of the European Communities* [1999] ECR II-3663, point 167.

7. CONCLUSION

- (88) In the light of the foregoing, the Commission concludes that the scheme grants State aid within the meaning of Article 107(1) TFEU which cannot be declared compatible with the internal market.

8. RECOVERY

- (89) According to Article 14(1) of Council Regulation (EC) No 659/1999 ⁽²⁴⁾, where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiaries. Only aid which is incompatible with the internal market shall be recovered.
- (90) The purpose of recovery is to restore the situation that existed prior to the granting of the aid. It is achieved once the incompatible aids are repaid by the beneficiaries, which therefore forfeit the advantages which they enjoyed over their competitors. The amount to be recovered should be such as to eliminate the economic advantage given to the beneficiaries.
- (91) For the exact quantification of the amount of aid, as no appropriate market price is available for remuneration of the State cover, a proper benchmark has to be defined. As set out in the first indent of point 4.2 of the Commission Notice on guarantees, ⁽²⁵⁾ the 'cash grant equivalent' of a loan guarantee in a given year can be calculated in the same way as the grant equivalent of a soft loan. Hence the aid amount can be calculated as the difference between a theoretical market rate and the rate obtained thanks to the State guarantee after any premiums paid have been deducted.
- (92) In respect of the aid to insurers, the advantage takes the form of the preservation of the market share of the insurers. In the absence of aid, cover could have been provided by another market player. In particular, as explained above in recital 35, competition in the market is based mainly on quantities and not on prices. Furthermore, market practice is to fix an average price for the entire portfolio which is then to be insured with the same insurer ⁽²⁶⁾ to avoid cherry picking by the insured company. Cherry picking could occur if the insured company paid an average price only for clients with high risk and did not insure the lower risk clients or insure low risk clients with another insurer. Therefore, if another market player had provided cover to the exporters for the entire requested credit limits even at a higher price, exporters would probably have moved their entire insurance policies to the alternative cover provider. The advantage in monetary terms is the profit margin realised on the volume insured by each private insurer decreased by the costs associated to this volume. These elements, translated into the profits realised by the private insurers participating in the scheme over the period over which top-up cover was provided by the State, would have been recorded by another market player in the absence of the scheme. The aid in favour of the insurers is therefore quantified as the profits realised by the insurers participating in the scheme over the period it was in place as a result of their cover of individual exporters and domestic trading companies subscribing to the scheme. The advantage for the clients subscribing to the scheme should be calculated at the level of each individual insurer participating in the scheme and in case of profit exceeding the de minimis amount it should be recovered.
- (93) In respect of the exporters, the beneficiaries should have paid remuneration for the State cover under market conditions. The aid amount should therefore be calculated as the difference between that actual market rate, adapted for the change in the level of risk. The Commission has developed a method for the calculation of the amount to be recovered (explained in the Annex to this Decision) based on reasonable assumptions and on common market practice. Under that method, a theoretical market price for the cover granted by the State is equal to 110 % of the price (in terms of premium rate) charged by the private insurer in the case of each individual exporter. As the price charged under the scheme is 60 % of the premiums charged by the private insurer, the amount to be recovered in each transaction is equal to the amount charged by the State under the scheme multiplied by 5/6.

⁽²⁴⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

⁽²⁵⁾ Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, OJ C 155, 20.6.2008, p. 10.

⁽²⁶⁾ This market practice is based on the predominant use of whole turnover products instead of single risk products.

- (94) The amount referred to in recital 93 constitutes the amount to be recovered, plus the recovery interest effectively accrued on that amount from the date on which the aid was made available to the beneficiaries (date of the individual guarantees) until its actual recovery. The recovery interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ⁽²⁷⁾ as amended by Regulation (EC) No 271/2008 ⁽²⁸⁾.
- (95) The present decision shall be implemented immediately, in particular in respect of the recovery of all the individual aids granted under the scheme with the exception of the aids that fulfil the conditions laid down by Regulations adopted pursuant to Articles 1 and 2 of Council Regulation (EC) No 994/98 ⁽²⁹⁾ or by any other approved aid scheme up to the maximum aid intensity or de minimis limits applicable to this type of aid.

HAS ADOPTED THIS DECISION:

Article 1

The State aid involved in the short-term export-credit insurance scheme in application of Decree-Law No 175/2008 establishing the Finova of 26 August 2008 and Decree-Law No 211/1998 laying down the rules applicable to mutual guarantee societies of 16 July 1998 (as amended by Decree-Law No 19/2001 of 30 January 2001 and Decree-Law No 309-A/2007 of 7 September 2007), unlawfully granted by Portugal, in breach of Article 108(3) of the Treaty on the Functioning of the European Union, is incompatible with the internal market.

Article 2

Individual aid granted under the scheme referred to in Article 1 which, at the time the aid is granted, fulfils the conditions laid down by a Regulation adopted pursuant to Article 1 of Regulation (EC) No 994/98 or by any other approved aid scheme is compatible with the internal market, up to the maximum aid intensities or de minimis limits applicable to this type of aid.

Article 3

1. Portugal shall recover the incompatible aid referred to in Article 1 from the beneficiaries.
2. The sums to be recovered shall bear interest from the date on which they were made available to the beneficiary until their actual recovery.
3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004, as amended by Regulation (EC) No 271/2008.
4. Portugal shall immediately abolish the scheme referred to in Article 1 and cancel all outstanding payments of aid under the scheme referred to in Article 1 with effect from the date of notification of this Decision.

Article 4

1. Recovery of the aid granted under the scheme referred to in Article 1 shall be immediate and effective.
2. Portugal shall ensure that this decision is implemented within four months following the date of notification of this Decision.

⁽²⁷⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

⁽²⁸⁾ Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 82, 25.3.2008, p. 1).

⁽²⁹⁾ Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid (OJ L 142, 14.5.1998, p. 1).

Article 5

1. Within two months following notification of this Decision, Portugal shall submit the following information to the Commission:

- (a) The list of beneficiaries that have received aid under the scheme referred to in Article 1 and the total amount of aid received by each of them;
- (b) The total amount (principal and recovery interest) to be recovered from each beneficiary;
- (c) A detailed description of the measures already taken and planned to comply with this Decision;
- (d) Documents demonstrating that the beneficiaries have been ordered to repay the aid.

2. Portugal shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiaries.

Article 6

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 23 November 2011.

For the Commission,
Joaquín ALMUNIA
Vice-President

ANNEX

PRICING OF TOP-UP TRADE INSURANCE COVER

Premiums for insurance cover are set in such a way as to cover at least the expected loss and the administrative costs. Therefore the minimum premium acceptable for a sound economic operator can be expressed as follows:

$$PR = Prob \times ExpectedLoss + adm = Prob \times (ExposureAtDefault - RecoveryAmount) + adm, \text{ where:}$$

PR – premium charged by the private insurers on the stand-alone basis;

Prob – probability of the insured event;

Recovery Amount – expected amount of recovery, based on historical market data;

adm – administrative costs. For the sake of simplicity, in this analysis administrative costs are assumed to be equal to zero (). This assumption does not affect the outcome of the analysis because administrative costs are not a decisive component for setting the premium level. If reliable data on administrative costs are available, the variable can easily be included in the analysis.

(*ExposureAtDefault* — the maximum loss amount to which an institution would be exposed in case of the default of its counterpart.)

In the following, the subscript '0' designates a variable in the absence of (or prior to) the State intervention, and the subscript 'S' designates a variable with the State intervention.

From the formula above, it can be seen that:

$$\frac{PR_S}{PR_0} = \frac{Prob_S(Exposure_S - RecoveryAmount_S)}{Prob_0(Exposure_0 - RecoveryAmount_0)}$$

By definition:

$$RecoveryRate = \frac{RecoveryAmount}{Exposure}$$

$$\text{or } RecoveryRate \times Exposure = RecoveryAmount$$

The expression is transformed as follows:

$$\frac{PR_S}{PR_0} = \frac{Prob_S \times Exposure_S(1 - RecoveryRate_S)}{Prob_0 \times Exposure_0(1 - RecoveryRate_0)}$$

A feature of the measure under scrutiny is that the cover under the scheme is at most equal to or lower than the cover provided by the private (base) insurer in the absence of State aid (that is, that the State supported cover is at most equal to the cover provided by the private insurer). Assuming for the moment that the State supported cover is exactly equal to the cover provided by the private insurer, the following relation results: $Exposição_S = 2 \times Exposição_0$.

In that case the expression is transformed as follows:

$$\frac{PR_S}{2PR_0} = \frac{Prob_S(1 - RecoveryRate_S)}{Prob_0(1 - RecoveryRate_0)}$$

The consequences of what is known in the industry as 'over-crediting' on the correct pricing of a trade insurance cover are explained below. Over-crediting is observed both at the level of the probability of default and at the level of the recovery rate.

— Probability of default

The probability of default increases with the trading activity of the buyer. Trade credit and bank loans are imperfect substitutes: in particular, both can be used to expand the activity of the buyer/borrower. Therefore, as in the case of bank loans, increased trade credit creates a risk of over-crediting, i.e. the buyer expands his activity beyond what is economically efficient. In the terms of the formulas presented, over-crediting can be expressed as:

$$Prob_s \succ Prob_0$$

That situation would in particular arise in cases where the exporter is the main supplier of the buyer. In that case the economic activity of the buyer increases proportionately to the trade transaction concluded with the insurer exporter and thereby increases proportionately to the amount of credit cover granted.

— Recovery ratio

Owing to the increase in credit exposure, the amount to be recovered also increases. However, given that the recoverable amount depends on the hypothetical liquidation proceeds, this theoretical recoverable amount is capped by the amount of the assets that the buyer (or the liquidation administrator) can sell to cover the trade credit liability and, as the amount of assets is finite, the recovery rate would increase less than proportionately to the increase of credit cover.

$RecoveryRate_s = RecoveryRate_0 \times \alpha$, where:

$0,5 \leq \alpha \leq 1$ ($\alpha = 0,5$, if the recovery amount does not increase at all where the exporter is granted the State's top-up for a transaction with a certain buyer; $\alpha = 1$ in the theoretical case where the recovery amount increases at the same pace as the total credit limit received by the exporter for the transaction with a certain buyer.)

Given the above, it can be concluded that $PR_s \succ 2PR_0$

Therefore, the premium to be paid on the State cover is higher than the premium paid to the private insurer for the initial cover.

A premium of 110 % of the premium paid for the initial cover can be considered to factor in to an adequate extent the increase in the probability of default and the decrease in the recovery rate. Such level of premium would be consistent with the pricing in the market. Under approved export credit schemes, the increases in premia from one category of risk to another were in the range of 25-50 % ⁽¹⁾.

If, $Exposure_s \prec 2 \times Exposure_0$, PR_s decreases proportionally (but is always higher than PR_0). In order to take that factor into account, recital 93 of the Decision envisages quantification of the amount to be recovered in each transaction as the amount charged by the State multiplied by $5/6$, based on the following reasoning. In each transaction the State charges 60 % of the rate charged by the private insurer, whereas the market price would have been 110 % of the rate charged by the private insurer. Therefore, the market premium is calculated by dividing the premium effectively paid to the State by 60 % and multiplying it by 110 %. From that premium the amount already paid to the State should be subtracted in order to arrive at the amount to be recovered.

$$PremiumPaid \times \frac{110\%}{60\%} - PremiumPaid = PremiumPaid \left(\frac{110\%}{60\%} - 1 \right) = PremiumPaid \times \frac{5}{6}$$

⁽¹⁾ See for instance the Commission decision concerning Finnish short term export credit insurance in case N 258/09.

