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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1864

of 6 October 2015

entering a name in the register of protected designations of origin and protected geographical indications (Παφίτικο Λουκάνικο (Pafitiko Loukaniko) (PGI))

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Cyprus's application to register the name 'Παφίτικο Λουκάνικο' (Pafitiko Loukaniko) was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Παφίτικο Λουκάνικο' (Pafitiko Loukaniko) should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Παφίτικο Λουκάνικο' (Pafitiko Loukaniko) (PGI) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 1.2. — Meat products (cooked, salted, smoked, etc.), as listed in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ⁽³⁾.

Article 2

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

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ C 189, 6.6.2015, p. 14.

⁽³⁾ Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

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

Done at Brussels, 6 October 2015.

*For the Commission,
On behalf of the President,
Phil HOGAN
Member of the Commission*

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1865**of 7 October 2015****entering a name in the register of protected designations of origin and protected geographical indications (Cipolla bianca di Margherita (PGI))**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Italy's application to register the name 'Cipolla bianca di Margherita' was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Cipolla bianca di Margherita' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Cipolla bianca di Margherita' (PGI) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 1.6. — Fruit, vegetables and cereals, fresh or processed, as listed in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ⁽³⁾.*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 7 October 2015.

For the Commission,
On behalf of the President,
Phil HOGAN
Member of the Commission

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ C 189, 6.6.2015, p. 17.

⁽³⁾ Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1866**of 13 October 2015****laying down detailed rules for the implementation of Regulation (EU) No 511/2014 of the European Parliament and of the Council as regards the register of collections, monitoring user compliance and best practices**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 511/2014 of the European Parliament and of the Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union ⁽¹⁾, and in particular Article 5(5), Article 7(6) and Article 8(7) thereof,

Whereas:

- (1) Regulation (EU) No 511/2014 establishes rules governing compliance with access and benefit-sharing for genetic resources and traditional knowledge associated with genetic resources in accordance with the provisions of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (the 'Nagoya Protocol'). The effective implementation of that Regulation will also contribute to the conservation of biological diversity and the sustainable use of its components, in accordance with the provisions of the Convention on Biological Diversity.
- (2) Articles 5 and 8 of Regulation (EU) No 511/2014 provide for voluntary tools, namely registered collections and best practices, to assist users in complying with their due diligence obligation. Identifying and registering collections which effectively apply measures that result in supplying genetic resources and related information only with documentation providing evidence of legal access and ensuring the establishment of mutually agreed terms, where required, is expected to assist users in complying with that obligation. Users which obtain genetic resources from a collection included in the register should be considered to have exercised due diligence as regards the seeking of information. Identifying and recognising as best practices measures that are particularly suitable for achieving compliance with the system of implementation of the Nagoya Protocol, at an affordable cost and with legal certainty, is also expected to assist users in fulfilling the due diligence obligation. The effective implementation of a recognized best practice by users should be considered by the competent authorities in their checks on user compliance. In order to ensure uniform conditions for the implementation of those provisions, detailed rules are required regarding the procedures to be followed in the case of a request for registration of a collection or part thereof and regarding recognition of best practices.
- (3) Where an applicant wishing to be included in the register is a member of a network of collections, it is useful that such applicant provides information on any other collections or parts thereof from the same network that were or are the subject of an application in other Member States. In order to facilitate the fair and consistent treatment of applicants in different Member States, when verifying the collections or parts thereof, the competent authorities of the Member States that have been made aware of such applications in relation to different collections or parts thereof within a network should consider exchanging information with the authorities of those Member States in which applications have been made by other members of the network.
- (4) Regulation (EU) No 511/2014 applies to genetic resources and to traditional knowledge associated with genetic resources. The material for the utilisation of which a due diligence declaration is required includes: genetic resources, traditional knowledge associated with genetic resources and a combination of both.
- (5) In order to ensure uniform conditions for the implementation of provisions on monitoring user compliance, detailed rules are required regarding the declarations to be made by recipients of funding for research involving the utilisation of genetic resources and traditional knowledge associated with genetic resources, as well as

⁽¹⁾ OJ L 150, 20.5.2014, p. 59.

regarding the declarations to be made by users at the stage of final development of a product developed via the utilisation of genetic resources and traditional knowledge associated with genetic resources.

- (6) When monitoring user compliance at the stage of research funding, it is important to ensure that recipients of funding understand their obligations under Regulation (EU) No 511/2014 and that they exercise due diligence. It is equally important to provide information to the Access and Benefit-Sharing Clearing House ('ABS Clearing House'), and to ensure that such information is useful for the functioning and implementation of the Nagoya Protocol. Where an internationally recognised certificate of compliance is not available, other relevant information should be submitted. In order to balance the objectives of submitting useful information to the ABS Clearing House and of not overburdening the recipients of funding for research, only information which is essential for the identification of genetic resources should be exchanged at this check-point.
- (7) The monitoring of user compliance is effective when carried out in the Member State where the utilisation takes place. It is therefore appropriate that the declaration of due diligence is submitted to the competent authority of the Member State where the recipient of funding is established, as this is where the research involving utilisation of genetic resources and traditional knowledge associated with genetic resources typically takes place.
- (8) The unnecessary multiplication of due diligence declarations should be avoided. Therefore, a declaration made by recipients of research funding may cover more than one genetic resource or any traditional knowledge associated with genetic resources. A single declaration may also be made by several users jointly conducting research involving the utilisation of genetic resources and traditional knowledge associated with genetic resources funded by one grant. In this context, a special role should be given to the project co-ordinator, who should be responsible for submitting the declarations on behalf of the users concerned. In the light of Article 12 of Regulation (EU) No 511/2014, the competent authority receiving the declarations submitted by the project co-ordinator should exchange the information with its counterparts in the other Member States concerned.
- (9) In order to monitor user compliance under Article 7(2) of Regulation (EU) No 511/2014, the final stage of utilisation, meaning the stage of final development of a product should be determined. The stage of final development of a product can be identified with legal certainty as having been completed at the time when either market approval or authorisation is sought or a notification required prior to placing for the first time on the Union market is made or, where neither market approval or authorisation nor a notification is required, at the time of placing for the first time on the Union market a product developed via the utilisation of genetic resources and traditional knowledge associated with genetic resources. In some cases, it may not be the user that is requesting market approval or authorisation, making a notification or placing a product for the first time on the Union market. In order to effectively address all activities that utilise genetic resources and traditional knowledge associated with genetic resources within the Union, the due diligence declaration should, in those cases, be made by the user selling or transferring in any other way the result of the utilisation. Effective monitoring of user compliance within the Union should also address cases where the utilisation has ended in the Union and its outcome is sold or transferred in any other way outside the Union without placing a product on the Union market.
- (10) Those different events that give rise to the due diligence declaration by the user at the stage of final development of a product are exclusive of each other, and therefore the declaration should only be made once. As the stage of final development of a product is reached before any of those events occur, the due diligence declaration should be made prior to the first event occurring.
- (11) The information provided in the due diligence declarations is to be submitted by the competent authorities to the ABS Clearing House pursuant to Article 7(3) of Regulation (EU) No 511/2014. Where an internationally recognised certificate of compliance is not available, other relevant information provided in accordance with Article 17(4) of the Nagoya Protocol, as specified in Article 4(3)(b) of Regulation (EU) No 511/2014, should be submitted. In order to ensure efficient operation of the Nagoya Protocol and the ABS Clearing House in particular, only information which will facilitate the monitoring by the competent national authorities referred to in Article 13(2) of the Nagoya Protocol should be exchanged.

- (12) A due diligence declaration is required only for genetic resources or traditional knowledge associated with genetic resources obtained from a Party to the Nagoya Protocol that has established relevant access and benefit-sharing legislation or regulatory requirements pursuant to Article 6(1) and Article 7 of the Nagoya Protocol.
- (13) In the light of the novelty of measures introduced, it is appropriate to review this Regulation. In this context, the reports referred to in Article 16(1) of Regulation (EU) No 511/2014 may prove useful and therefore should be taken into account, where available.
- (14) The measures provided for in this Regulation are in accordance with the opinion of the ABS Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down detailed rules concerning the implementation of Articles 5, 7 and 8 of Regulation (EU) No 511/2014 which refer to the register of collections, the monitoring of user compliance, and to best practices.

Article 2

Register of collections

The register established by the Commission in accordance with Article 5 of Regulation (EU) No 511/2014 shall include the following information for each collection or part thereof:

- (a) a registration code assigned by the Commission;
- (b) name given to the collection or part thereof and its contact details;
- (c) name and contact details of the holder;
- (d) category of the collection or part thereof;
- (e) short description of the collection or part thereof;
- (f) link to database, where available;
- (g) institution within competent authority of the Member State that verified the capacity of the collection to comply with Article 5(3) of Regulation (EU) No 511/2014;
- (h) date of inclusion in the register;
- (i) other existing identifier, where available;
- (j) where applicable, date of removal from the register.

Article 3

Request for inclusion in the register and notification to the Commission

1. A request for inclusion of a collection or a part thereof in the register, referred to in Article 5(2) of Regulation (EU) No 511/2014, shall contain the information specified in Annex I to this Regulation.

Following the inclusion in the register of a collection or a part thereof, the collection holder shall notify the competent authority of any significant changes that influence the collection's capacity to comply with the criteria set out in Article 5(3) of Regulation (EU) No 511/2014 and of any changes to the information previously submitted on the basis of Part A of Annex I to this Regulation.

2. Where an applicant is a member of a network of collections, when applying for inclusion of a collection or a part thereof in the register, the applicant may inform the competent authorities about any other collections or parts thereof from the same network that were or are the subject of an application in other Member States for inclusion in the register.

When verifying the collections or parts thereof, the competent authorities of Member States that have been made aware of such applications, shall consider exchanging information with the competent authorities of those Member States where the other applications from the network have been made.

3. The verification referred to in Article 5(2) of Regulation (EU) No 511/2014 may include the following:

- (a) on-the-spot checks;
- (b) examination of selected documentation and records of a collection or part thereof, which are relevant for demonstrating compliance with Article 5(3) of Regulation (EU) No 511/2014;
- (c) examination of whether selected samples of genetic resources and related information of the collection concerned have been documented in accordance with Article 5(3) of Regulation (EU) 511/2014;
- (d) examination of whether the collection holder has the capacity to consistently supply genetic resources to third persons for their utilisation in accordance with Article 5(3) of Regulation (EU) No 511/2014;
- (e) interviews with relevant persons, such as the collection holder, staff, external verifiers, and users obtaining samples from that collection.

4. For the purposes of the notification referred to in Article 5(2) of Regulation (EU) No 511/2014, the competent authority shall provide the Commission with the information submitted by the collection holder on the basis of Part A of Annex I to this Regulation. The competent authority shall notify the Commission of any subsequent changes to that information.

Article 4

Checks on registered collections and remedial actions

1. The verification referred to Article 5(4) of Regulation (EU) No 511/2014 by the competent authorities shall be effective, proportionate and capable of detecting cases of non-compliance with Article 5(3) of that Regulation. It shall be conducted on the basis of a periodically reviewed plan developed using a risk-based approach. The plan should provide for a minimum level of checks and allow for differentiation in the frequency of checks.

2. Where there are substantiated concerns that a collection or part thereof included in the register no longer meets the criteria set out in Article 5(3) of Regulation (EU) No 511/2014, the competent authority shall carry out additional verification.

3. The verification referred to in paragraph 1 and 2 may include the following:

- (a) on-the-spot checks;
- (b) examination of selected documentation and records of a collection or part thereof, which are relevant for demonstrating compliance with Article 5(3) of Regulation (EU) No 511/2014;
- (c) examination of whether selected samples of genetic resources and related information have been documented and supplied to third persons for their utilisation in accordance with Article 5(3) of Regulation (EU) No 511/2014;
- (d) interviews with relevant persons, such as the collection holder, staff, external verifiers, and users obtaining samples from that collection.

4. The collection holder and its staff shall provide all assistance necessary to facilitate the verification referred to in paragraphs 1, 2 and 3.

5. Remedial actions or measures referred to in Article 5(4) of Regulation (EU) No 511/2014 shall be effective and proportionate and address shortcomings which, if left unaddressed, would permanently compromise the capacity of a registered collection to comply with Article 5(3) of that Regulation. They may require the collection holder concerned to put in place additional tools or to improve its capacity to apply existing tools. The collection holder shall report to the competent authority on the implementation of the identified remedial actions or measures.

*Article 5***Due diligence declaration at the stage of research funding**

1. A recipient of funding for research involving the utilisation of genetic resources and traditional knowledge associated with genetic resources shall make the due diligence declaration requested pursuant to Article 7(1) of Regulation (EU) No 511/2014 to the competent authority of the Member State in which the recipient is established. If the recipient is not established in the Union and the research is carried out in the Union, the due diligence declaration shall be made to the competent authority of the Member State in which the research is carried out.
2. The due diligence declaration shall be made by submitting the completed template set out in Annex II. It shall be made after the first instalment of funding has been received and all the genetic resources and traditional knowledge associated with genetic resources that are utilised in the funded research have been obtained, but no later than at the time of the final report, or in absence of such report, at the project end. The time of submission of such declaration may be further specified by the national authorities.
3. Where the same research project is funded from more than one source or involves more than one recipient, the recipient(s) may decide to make only one declaration. That declaration shall be submitted by the project co-ordinator to the competent authority of the Member State in which the project co-ordinator is established. If the project co-ordinator is not established in the Union and the research is carried out in the Union, the due diligence declaration shall be made to the competent authority of one of the Member States in which the research is carried out.
4. Where the competent authority that receives the declaration referred to in paragraphs 2 and 3 is not responsible for its transmission pursuant to Article 7(3) of Regulation (EU) No 511/2014, it shall forward that declaration to the competent authority responsible for such transmission without undue delay.
5. For the purposes of this Article and Annex II, 'funding for research' means any financial contribution by means of a grant to carry out research, whether from commercial or non-commercial sources. It does not cover internal budgetary resources of private or public entities

*Article 6***Due diligence declaration at the stage of final development of a product**

1. For the utilisation of genetic resources and traditional knowledge associated with genetic resources users shall make the due diligence declaration pursuant to Article 7(2) of Regulation (EU) No 511/2014 to the competent authority of the Member State in which the user is established. That declaration shall be made by submitting the completed template set out in Annex III to this Regulation.
2. The due diligence declaration referred to in paragraph 1 shall only be made once, prior to the first of the following events occurring:
 - (a) market approval or authorisation is sought for a product developed via the utilisation of genetic resources and traditional knowledge associated with genetic resources;
 - (b) a notification required prior to placing for the first time on the Union market is made for a product developed via the utilisation of genetic resources and traditional knowledge associated with genetic resources;
 - (c) placing on the Union market for the first time a product developed via the utilisation of genetic resources and traditional knowledge associated with genetic resources for which no market approval, authorisation or notification is required;
 - (d) the result of the utilisation is sold or transferred in any other way to a natural or legal person within the Union in order for that person to carry out one of the activities referred to in points (a), (b) and (c);
 - (e) the utilisation in the Union has ended and its outcome is sold or transferred in any other way to a natural or legal person outside the Union.

3. For the purposes of this Article and Annex III, 'result of the utilisation' means products, precursors or predecessors to a product, as well as parts of products to be incorporated into a final product, blueprints or designs, based on which manufacturing and production could be carried out without further utilisation of the genetic resource and traditional knowledge associated with genetic resources.

4. For the purposes of this Article and Annex III, 'placing on the Union market' means the first making available of a product developed via utilisation of genetic resources and traditional knowledge associated with genetic resources on the Union market, where making available means the supply by any means, for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge. Placing on the market does not include pre-commercial trials, including clinical, field or pest resistance trials, nor the making available of unauthorised medicinal products in order to provide treatment options for individual patients or groups of patients.

Article 7

Transmission of information

1. In accordance with Article 7(3) of Regulation (EU) No 511/2014, and unless the information is confidential within the meaning of Article 7(5) of Regulation (EU) No 511/2014, the competent authorities shall transmit to the ABS Clearing House the information received on the basis of Part A of Annexes II and III to this Regulation without undue delay and at the latest one month after the information has been received.

2. Where essential information, such as on the user and utilisation, on the place of access, or on the genetic resource, without which the record could not be published on the ABS Clearing House, is considered confidential, the competent authorities shall consider instead transmitting that essential information directly to the competent national authorities referred to in Article 13(2) of the Nagoya Protocol.

3. In accordance with Article 7(3) of Regulation (EU) No 511/2014, the competent authorities shall transmit to the Commission the information received on the basis of Annexes II and III to this Regulation, unless such information is confidential within the meaning of Article 7(5) of Regulation (EU) No 511/2014.

4. Where the Commission is not provided access to this information on a permanent basis through electronic means, such transmission shall be made once every six months, starting from 9 November 2016.

Article 8

Application for recognition of a best practice

1. An application submitted in accordance with Article 8(1) of Regulation (EU) No 511/2014 shall be made to the Commission by providing the information and supporting documentation specified in Annex IV to this Regulation.

2. An interested party that does not represent users but is involved in the access, collection, transfer or commercialisation of genetic resources or in developing measures and policy related to genetic resources shall provide with its application information, as specified in Annex IV to this Regulation, on its legitimate interest in developing and overseeing a combination of procedures, tools or mechanisms, which, when effectively implemented by a user, enables that user to comply with the obligations provided for in Articles 4 and 7 of Regulation (EU) No 511/2014.

3. The Commission shall send a copy of the application and supporting documentation to the competent authorities of all the Member States.

4. The competent authorities may submit comments to the Commission regarding the application within two months of receiving the documents referred to in paragraph 3.

5. The Commission shall acknowledge receipt of an application and provide the applicant with a reference number within 20 working days from the date of receipt of the application.

The Commission shall provide the applicant with an indicative time limit within which a decision on the application will be taken.

The Commission shall inform the applicant if additional information or documentation is required in order for it to carry out the assessment of the application.

6. The applicant shall submit to the Commission any additional information and documentation requested without undue delay.
7. The Commission shall send a copy of the documents referred to in paragraph 6 to the competent authorities of all the Member States.
8. The competent authorities may submit comments to the Commission regarding the information or documentation referred to in paragraph 6 within two months of receiving the copy of those documents.
9. The Commission shall inform the applicant each time it revises the indicative time limit within which a decision on the application will be taken due to the necessity to obtain additional information or documents for the assessment of the application.

The Commission shall inform the applicant in writing of the status of the assessment of the application at least every six months.

Article 9

Recognition and withdrawal of recognition as best practice

1. Where the Commission decides to grant recognition as best practice under Article 8(2) of Regulation (EU) No 511/2014 or to withdraw the recognition of best practice under Article 8(5) of that Regulation, the Commission shall inform of that decision without undue delay the association of users or the other interested parties, as well as the competent authorities of the Member States.
2. The Commission shall state reasons for its decision to grant recognition as best practice or to withdraw the recognition of best practice and it shall publish that decision in the register established under Article 8(6) of Regulation (EU) No 511/2014.

Article 10

Information on subsequent changes to a recognised best practice

1. Where the Commission is informed, pursuant to Article 8(3) of Regulation (EU) No 511/2014, of any changes or updates made to a recognized best practice, the Commission shall send a copy of that information to the competent authorities of all the Member States.
2. The competent authorities may submit comments to the Commission regarding such changes or updates within two months of receiving the information.
3. The Commission shall assess, taking into consideration the comments referred to in paragraph 2 of this Article, whether the changed or updated combination of procedures, tools or mechanisms still enables users to comply with their obligations provided for in Articles 4 and 7 of Regulation (EU) No 511/2014.
4. The competent authorities shall inform the Commission without undue delay of any information resulting from checks carried out pursuant to Article 9 of Regulation (EU) No 511/2014 indicating non-compliance with Articles 4 and 7 of that Regulation, which may indicate possible deficiencies in the best practice.

Article 11

Deficiency in best practice

1. Where the Commission receives substantiated information regarding repeated or significant cases of non-compliance with Articles 4 and 7 of Regulation (EU) No 511/2014 by a user implementing a best practice, the Commission shall request the association of users or the other interested parties to submit observations regarding the alleged non-compliance and whether those cases indicate possible deficiencies in the best practice.

2. Where the association of users or the other interested parties submit observations, they shall do so within three months.
3. The Commission shall examine those observations and any supporting documentation and send copies thereof to the competent authorities of all the Member States.
4. The competent authorities may submit comments to the Commission regarding those observations and supporting documentation within two months of receiving the copy of those documents.
5. Where the Commission examines possible deficiencies in a best practice and cases of non-compliance with the obligations provided for in Articles 4 and 7 of Regulation (EU) No 511/2014, as referred to in Article 8(4) of that Regulation, the association of users or the other interested parties subject to examination shall co-operate with the Commission and assist it in its actions. Where the association of users or the other interested parties subject to examination fails to do so, the Commission may, without further consideration, withdraw recognition of the best practice.
6. The results of the examination carried out by the Commission shall be conclusive and shall include any remedial actions to be taken by the association of users or the other interested parties. The examination may also result in a decision to withdraw recognition of the best practice.

Article 12

Review

The Commission shall review the functioning and effectiveness of this Regulation, taking into account the experience gathered in its implementation and with a view to its potential revision. Such review should consider the impact of this Regulation on micro, small and medium-sized enterprises, public research institutions and specific sectors, as well as relevant developments at the international level, in particular those related to the ABS Clearing House.

Article 13

Entry into force

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

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

Done at Brussels, 13 October 2015.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX I

Information to be provided with a request for inclusion in the register of collections pursuant to Article 3(1)

PART A

Information to be included in the register

Pursuant to Article 3(1) the information to be provided with a request for inclusion in the register of collections is as follows:

1. Information on the holder of the collection (name, type of entity, address, e-mail, telephone number).
2. Information on whether the application concerns a collection or part of a collection.
3. Information on the collection or the relevant part thereof (name; identifier (code/ number), where available; address(es), website, where available; link to the collection's online database of genetic resources, where available).
4. A brief description of the collection or the relevant part thereof.

Where only part of a collection is to be included in the register, details on the relevant part(s) and its(their) distinctive features should be provided.

5. Collection category

The application should provide information on the category to which the collection or part thereof belongs.

Table of categories

		Specificities					
		Entire specimens ⁽¹⁾	Parts				
			Seeds, sexual spores, or embryos	Gametes ♀	Somatic cells	Nucleic acids	Other parts ⁽²⁾
Animal	Vertebrate						
	Invertebrate						
Plants							
Algae							
Protista							
Fungi							
Bacteria							
Archaea							
Viruses							
Other groupings ⁽³⁾							

Notes

⁽¹⁾ When no particular parts of a specimen are concerned, refer to the appropriate cell of 'entire specimens'.

⁽²⁾ 'Other parts' include asexual reproductive parts, vegetative reproduction structures, such as stem, cutting, tuber, rhizomes.

⁽³⁾ 'Other groupings' include slime molds, etc.

PART B

Evidence of the capacity of the collection or of the relevant part thereof to comply with Article 5(3) of Regulation (EU) No 511/2014

Any of the following documentation may be attached (or linked) to the application as evidence of the capacity of the collection or the relevant part thereof to comply with Article 5(3) of Regulation (EU) No 511/2014:

- (a) codes of conduct, guidelines or standards, whether national or international, developed by associations or organisations, and adhered to by the collection, and information relating to the collection's instruments for the application of those codes of conduct, guidelines or standards;
- (b) relevant principles, guidelines, codes of conduct or manuals of procedures, developed and applied within the collection, and any additional instruments for their application;
- (c) certification of the collection under relevant schemes, whether national or international;
- (d) information about participation of the collection in any international collection networks, and about associated applications for inclusion in the register of collections filed by partner collections in other Member States (optional);
- (e) any other relevant documentation.

ANNEX II

Template for a due diligence declaration to be submitted at the stage of research funding pursuant to Article 5(2)

PART A

Information to be transmitted to the ABS Clearing House pursuant to Article 7(3) of Regulation (EU) No 511/2014

If the information provided is confidential within the meaning of Article 7(5) of Regulation (EU) No 511/2014, please provide it nonetheless, tick the respective box and provide the justification for confidentiality at the end of this Annex.

If you marked as confidential essential information (such as about the genetic resources or traditional knowledge associated with genetic resources, access place, form of utilisation), without which the record would not be published on the website of the ABS Clearing House, this information will not be shared with the ABS Clearing House, but it may be passed on directly to the competent authorities of the provider country.

At least one declaration is required per grant received, i.e. different recipients under one grant may choose to submit either individual declarations or a joint declaration, through the project coordinator.

I am making this declaration for the utilisation of:

Please tick the appropriate box or boxes:

☐ Genetic resources

☐ Traditional knowledge associated with genetic resources

1. Subject matter of the research or identification code of the grant:

☐ Confidential

2. Recipient or recipients of funding, including contact details:

Name:

Address:

E-mail:

Telephone:

Website, where available:

3. Information on exercise of due diligence:

- (a) ☐ An internationally recognised certificate of compliance (i) was issued for my (entity's) access or (ii) covers the terms of this access to the genetic resource(s) and traditional knowledge associated with genetic resources.

Where this box is ticked, please indicate the unique identifier of the internationally recognised certificate of compliance:

Please go to point 1 of Part B.

- (b) Where the box in point (a) has not been ticked, please fill in the following information:

(i) Place of access:

☐ Confidential

- (ii) Description of the genetic resources or traditional knowledge associated with genetic resources utilised; or unique identifier(s), where available:

☐ Confidential

- (iii) Identifier of access permit or its equivalent ⁽¹⁾, where available:

☐ Confidential

Please go to point 2 of Part B.

PART B

Information not to be transmitted to the ABS Clearing House

1. I declare that I will keep and transfer to subsequent user(s) a copy of the internationally recognised certificate of compliance as well as information on the content of the mutually agreed terms relevant for subsequent users.

Please go to point 3.

2. I declare that I am in possession of the following information, which I will keep and transfer to subsequent user(s):

(a) date of access;

(b) person or entity having granted prior informed consent, where applicable;

(c) person or entity to whom prior informed consent was granted (where applicable), if not granted directly to me or my entity;

(d) mutually agreed terms, where applicable;

(e) the source from which I or my entity obtained the genetic resource and traditional knowledge associated with genetic resources;

(f) presence or absence of rights and obligations relating to access and benefit-sharing, including rights and obligations regarding subsequent applications and commercialisation.

3. Where the genetic resource(s) was(were) obtained from a registered collection, please provide the registration code of the collection:

4. The research grant is funded by the following sources:

Private ☐

Public ☐

5. Member State(s) in which the research involving utilisation of genetic resources and traditional knowledge associated with genetic resources takes place or has taken place:

Confidentiality

If you have declared that some information is confidential within the meaning of Article 7(5) of Regulation (EU) No 511/2014, please state the reasons for each piece of information for which you have declared that confidentiality applies:

Date:

Place:

Signature ⁽²⁾:

⁽¹⁾ Evidence of the decision to grant prior informed consent or approval for access to genetic resources and traditional knowledge associated with genetic resources.

⁽²⁾ Signature of the recipient of funding or individual responsible within the research institution.

ANNEX III

Template for a due diligence declaration to be submitted at the stage of final development of a product pursuant to Article 6(1)

PART A

Information to be transmitted to the ABS Clearing House pursuant to Article 7(3) of Regulation (EU) No 511/2014

If the information provided is confidential within the meaning of Article 7(5) of Regulation (EU) No 511/2014, please provide it nonetheless, tick the respective box and provide the justification for confidentiality at the end of this Annex.

If you marked as confidential essential information (such as about the genetic resources or traditional knowledge associated with genetic resources, access place, form of utilisation) without which the record would not be published on the website of the ABS Clearing House, this information will not be shared with the Clearing House but it may be passed on directly to the competent authorities of the provider country.

If the utilisation has involved more than one genetic resource or any traditional knowledge associated with genetic resources, please provide relevant information for each genetic resource or any traditional knowledge utilised.

I declare that I have fulfilled the obligations under Article 4 of Regulation (EU) No 511/2014. I am making this declaration for the utilisation of:

Please tick the appropriate box or boxes:

☐ Genetic resources

☐ Traditional knowledge associated with genetic resources

1. Name of the product or description of the result of the utilisation ⁽¹⁾ or description of the outcome of the utilisation ⁽²⁾:

☐ Confidential

2. Contact details of the user:

Name:

Address:

E-mail:

Telephone:

Website, where available:

3. The declaration is made on the occasion of the following event:

Please tick the appropriate box:

☐ (a) market approval or authorisation is sought for a product developed via the utilisation of genetic resources and traditional knowledge associated with genetic resources;

☐ (b) a notification required prior to placing for the first time on the Union market is made for a product developed via the utilisation of genetic resources and traditional knowledge associated with genetic resources;

⁽¹⁾ 'Result of the utilisation of genetic resources and traditional knowledge associated with genetic resources' means products, precursors or predecessors to a product, as well as parts of products to be incorporated into a final product, blueprints or designs, based on which manufacturing and production could be carried out without further utilisation of the genetic resource and traditional knowledge associated with genetic resources.

⁽²⁾ Where the utilisation in the Union has ended and its outcome is sold or transferred in any other way to a natural or legal person outside the Union.

- ☐ (c) placing for the first time on the Union market a product developed via the utilisation of genetic resources and traditional knowledge associated with genetic resources, for which no market approval, authorisation or notification is required;
- ☐ (d) the result of the utilisation is sold or transferred in any other way to a natural or legal person within the Union in order for that person to carry out one of the activities referred to in points (a), (b) and (c);
- ☐ (e) the utilisation has ended in the Union and its outcome is sold or transferred in any other way to a natural or legal person outside the Union.

4. Information on exercise of due diligence:

- (a) ☐ An internationally recognised certificate of compliance (i) was issued for my (entity's) access or (ii) covers the terms of this access to the genetic resource(s) and traditional knowledge associated with genetic resources.

Where this box is ticked, please indicate the unique identifier of the internationally recognised certificate of compliance:

Please go to point 2 of Part B.

- (b) Where the box in point (a) has not been ticked, please fill in the following information:

- (i) Place of access:

☐ Confidential

- (ii) Description of the genetic resource or traditional knowledge associated with genetic resources utilised, or unique identifier(s), where available:

☐ Confidential

- (iii) Date of access:

☐ Confidential

- (iv) Identifier of access permit or its equivalent ⁽¹⁾, where available:

☐ Confidential

- (v) Person or entity who granted prior informed consent:

☐ Confidential

- (vi) Person or entity to whom the prior informed consent was granted:

☐ Confidential

- (vii) Is the utilisation of genetic resources and traditional knowledge associated with genetic resources subject to mutually agreed terms?

Yes ☐

No ☐

☐ Confidential

Please go to point 1 of Part B.

⁽¹⁾ Evidence of the decision to grant prior informed consent or approval for access to genetic resources and traditional knowledge associated with genetic resources.

PART B

Information not to be transmitted to the ABS Clearing House

1. Information on exercise of due diligence:
 - (a) Direct source of the genetic resource and the traditional knowledge associated with genetic resources:
 - (b) Are there any restrictions in the mutually agreed terms limiting the possible utilisation of the genetic resource(s) or the traditional knowledge associated with genetic resources, e.g. allowing for non-commercial utilisation only?
Yes ☐ No ☐ Not applicable ☐
 - (c) Have there been rights and obligations agreed regarding subsequent applications and commercialisation in the mutually agreed terms?
Yes ☐ No ☐ Not applicable ☐
2. If the genetic resource(s) was(were) obtained from a registered collection, please provide the registration code of the collection:
3. If you are implementing a best practice recognised under Article 8 of Regulation (EU) No 511/2014, please provide the registration number:
4. Which category best describes your product (optional)?
☐ (a) cosmetics
☐ (b) medicinal products
☐ (c) food and beverage
☐ (d) biological control
☐ (e) plant breeding
☐ (f) animal breeding
☐ (g) other, please specify:
5. Member State(s) in which the utilisation of genetic resources and traditional knowledge associated with genetic resources has taken place:
6. Member State(s) in which the product is to be placed on the market, following the procedure for approval, authorisation or notification referred to in Article 6(2)(a) and (b) of Commission Regulation (EU) 2015/1866 or placed on the market in accordance with Article 6(2)(c) of that Regulation:

Confidentiality

If you have declared that some information is confidential within the meaning of Article 7(5) of Regulation (EU) No 511/2014, please state the reasons for each piece of information for which you have declared that confidentiality applies:

Date:

Place:

Signature ⁽¹⁾:

⁽¹⁾ Signature of the person legally responsible for the stage of final development of a product.

ANNEX IV

Information to be provided with an application for recognition of best practice pursuant to Article 8(1)

Pursuant to Article 8(1) the information to be provided with the application for recognition of best practice is as follows:

1. Information whether the application is made on behalf of an association of users or other interested parties.
2. Contact details of the association of users or other interested parties (name, address, e-mail, telephone, and website, where available).
3. If the application is made by an association of users, the following should be provided:
 - (a) evidence of being established in accordance with the requirements of the Member State in which the applicant is located;
 - (b) description of the organisation and structure of the association.
4. If the application is made by other interested parties, the reasons for having legitimate interest in the subject matter of Regulation (EU) No 511/2014 should be explained.
5. The information provided should describe how the applicant is involved in developing measures and policies related to genetic resources, or how the applicant accesses, collects, transfers or commercialises genetic resources and traditional knowledge associated with genetic resources.
6. Description of the combination of procedures, tools or mechanisms, developed by the applicant, which, when effectively implemented, enable users to comply with the obligations provided for in Articles 4 and 7 of Regulation (EU) No 511/2014.
7. Description of how the overseeing of the procedures, tools or mechanisms referred to in point 6 will be carried out.
8. Information on Member State(s) in which the applicant is located and in which it operates.
9. Information on Member State(s) where the users implementing the best practice overseen by the association or the other interested party operate.

List of supporting documents related to points 5 and 6:

- (a) list of relevant personnel working for organization applying or any sub-contractors, with description of their duties related to the development and overseeing of best practices;
- (b) declaration of absence of conflict of interest, on the part of applicant and any sub-contractors, in developing and overseeing the combination of procedures, tools or mechanisms ⁽¹⁾;
- (c) where tasks related to development of best practices or overseeing such practices or both are sub-contracted, description of those tasks.

⁽¹⁾ Payment of fees or voluntary contributions by users to an association should not be considered as creating a conflict of interest.

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1867
of 19 October 2015
amending Regulation (EC) No 494/2002 as regards the landing obligation

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of the fishery resources through technical measures for the protection of juveniles of marine organisms ⁽¹⁾, and in particular Article 48 thereof,

Whereas:

- (1) According to Regulation (EU) No 1380/2013 of the European Parliament and of the Council ⁽²⁾, the gradual elimination of discards through the introduction of a landing obligation for catches of species subject to catch limits is one of the objectives of the common fisheries policy.
- (2) According to Article 15(1)(c) of Regulation (EU) No 1380/2013, the landing obligation applies from 1 January 2016 to hake in fisheries defined by that species.
- (3) Certain provisions of Commission Regulation (EC) No 494/2002 ⁽³⁾ conflict with the landing obligation by obliging fishermen to discard hake caught in excess of certain catch composition limits.
- (4) Those provisions of Regulation (EC) No 494/2002 should therefore be amended by requiring that all unintended catches of hake be landed and counted against quotas.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 494/2002 is amended as follows:

- (1) the following Article 1a is inserted:

‘Article 1a

For the purposes of this Regulation, “unintended catches” means incidental catches of marine organisms that, under Article 15 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council ^(*), must be landed and counted against quotas either because they are below the minimum conservation reference size or because they exceed the quantities permitted under the catch composition and by-catch rules.

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

⁽¹⁾ OJ L 125, 27.4.1998, p. 1.

⁽²⁾ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

⁽³⁾ Commission Regulation (EC) No 494/2002 of 19 March 2002 establishing additional technical measures for the recovery of the stock of hake in ICES sub-areas III, IV, V, VI and VII and ICES divisions VIII a, b, d, e (OJ L 77, 20.3.2002, p. 8).

(2) in Article 2, the following paragraph 3 is added:

‘3. Paragraph 1 shall not apply to unintended catches of hake subject to the landing obligation set out in Article 15 of Regulation (EU) No 1380/2013. Those unintended catches shall be landed and counted against the quotas’.

Article 2

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

It shall apply from 1 January 2016.

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

Done at Brussels, 19 October 2015.

For the Commission

The President

Jean-Claude JUNKER

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1868**of 19 October 2015****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 19 October 2015.

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

Jerzy PLEWA
Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	AL	40,0
	MA	124,3
	MK	46,1
	TR	95,4
	ZZ	76,5
0707 00 05	AL	38,5
	TR	116,7
	ZZ	77,6
0709 93 10	TR	148,5
	ZZ	148,5
0805 50 10	AR	145,5
	CL	149,0
	TR	110,5
	UY	72,3
	ZA	146,4
	ZZ	124,7
	ZZ	124,7
0806 10 10	BR	267,9
	EG	194,4
	MK	95,6
	TR	168,4
	ZZ	181,6
0808 10 80	AR	122,1
	CL	106,6
	MK	23,1
	NZ	159,2
	US	120,3
	ZA	155,1
	ZZ	114,4
0808 30 90	TR	131,8
	XS	96,6
	ZZ	114,2

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

DECISIONS

DECISION (EU) 2015/1869 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 6 October 2015

on the mobilisation of the European Globalisation Adjustment Fund (application from Belgium — EGF/2015/003 BE/Ford Genk)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Regulation (EU) No 1309/2013 of the European Parliament and of the Council of 17 December 2013 on the European Globalisation Adjustment Fund (2014-2020) and repealing Regulation (EC) No 1927/2006 ⁽¹⁾, and in particular Article 15(4) thereof,

Having regard to the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management ⁽²⁾, and in particular point 13 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The European Globalisation Adjustment Fund (EGF) aims to provide support for workers made redundant and self-employed persons whose activity has ceased as a result of major structural changes in world trade patterns due to globalisation, as a result of a continuation of the global financial and economic crisis, or as a result of a new global financial and economic crisis, and to assist them with their reintegration into the labour market.
- (2) The EGF is not to exceed a maximum annual amount of EUR 150 million (2011 prices), as laid down in Article 12 of Council Regulation (EU, Euratom) No 1311/2013 ⁽³⁾.
- (3) On 24 March 2015, Belgium submitted application EGF/2015/003 BE/Ford Genk for a financial contribution from the EGF, following redundancies and cessations of activities (hereafter referred to as 'redundancies') in Ford Genk and 11 suppliers and downstream producers. It was supplemented by additional information in accordance with Article 8(3) of Regulation (EU) No 1309/2013. That application complies with the requirements for determining a financial contribution from the EGF as laid down in Article 13 of Regulation (EU) No 1309/2013.
- (4) The EGF should, therefore, be mobilised in order to provide a financial contribution of EUR 6 268 564 in respect of the application submitted by Belgium.
- (5) In order to minimise the time taken to mobilise the EGF, this Decision should apply from the date of its adoption,

HAVE ADOPTED THIS DECISION:

Article 1

For the general budget of the European Union for the financial year 2015, the European Globalisation Adjustment Fund shall be mobilised to provide the sum of EUR 6 268 564 in commitment and payment appropriations.

⁽¹⁾ OJ L 347, 20.12.2013, p. 855.

⁽²⁾ OJ C 373, 20.12.2013, p. 1.

⁽³⁾ Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

Article 2

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

It shall apply from 6 October 2015.

Done at Strasbourg, 6 October 2015.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

N. SCHMIT

DECISION (EU) 2015/1870 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 6 October 2015****on the mobilisation of the European Globalisation Adjustment Fund (application from Italy — EGF/2015/004 IT/Alitalia)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Regulation (EU) No 1309/2013 of the European Parliament and of the Council of 17 December 2013 on the European Globalisation Adjustment Fund (2014-2020) and repealing Regulation (EC) No 1927/2006 ⁽¹⁾, and in particular Article 15(4) thereof,

Having regard to the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management ⁽²⁾, and in particular point 13 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The European Globalisation Adjustment Fund (EGF) aims to provide support for workers made redundant and self-employed persons whose activity has ceased as a result of major structural changes in world trade patterns due to globalisation, as a result of a continuation of the global financial and economic crisis, or as a result of a new global financial and economic crisis, and to assist them with their reintegration into the labour market.
- (2) The EGF is not to exceed a maximum annual amount of EUR 150 million (2011 prices), as laid down in Article 12 of Council Regulation (EU, Euratom) No 1311/2013 ⁽³⁾.
- (3) On 24 March 2015, Italy submitted an application EGF/2015/004 IT/Alitalia for a financial contribution from the EGF, following redundancies in Gruppo Alitalia ⁽⁴⁾ in Italy. It was supplemented by additional information in accordance with Article 8(3) of Regulation (EU) No 1309/2013. That application complies with the requirements for determining a financial contribution from the EGF as laid down in Article 13 of Regulation (EU) No 1309/2013.
- (4) The EGF should, therefore, be mobilised in order to provide a financial contribution of EUR 1 414 848 in respect of the application submitted by Italy.
- (5) In order to minimise the time taken to mobilise the EGF, this Decision should apply from the date of its adoption,

HAVE ADOPTED THIS DECISION:

Article 1

For the general budget of the European Union for the financial year 2015, the European Globalisation Adjustment Fund shall be mobilised to provide the sum of EUR 1 414 848 in commitment and payment appropriations.

⁽¹⁾ OJ L 347, 20.12.2013, p. 855.

⁽²⁾ OJ C 373, 20.12.2013, p. 1.

⁽³⁾ Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

⁽⁴⁾ Alitalia Compagnia Aerea Italiana S.p.A. and Air One S.p.A. (CAI First S.p.A., CAI Second S.p.A. and Alitalia Loyalty).

Article 2

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

It shall apply from 6 October 2015.

Done at Strasbourg, 6 October 2015.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

N. SCHMIT

DECISION (EU) 2015/1871 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 6 October 2015
on the mobilisation of the European Globalisation Adjustment Fund (application from Germany —
EGF/2015/002 DE/Adam Opel)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Regulation (EU) No 1309/2013 of the European Parliament and of the Council of 17 December 2013 on the European Globalisation Adjustment Fund (2014-2020) and repealing Regulation (EC) No 1927/2006 ⁽¹⁾, and in particular Article 15(4) thereof,

Having regard to the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management ⁽²⁾, and in particular point 13 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The European Globalisation Adjustment Fund (EGF) aims to provide support for workers made redundant and self-employed persons whose activity has ceased as a result of major structural changes in world trade patterns due to globalisation, as a result of a continuation of the global financial and economic crisis, or as a result of a new global financial and economic crisis, and to assist them with their reintegration into the labour market.
- (2) The EGF is not to exceed a maximum annual amount of EUR 150 million (2011 prices), as laid down in Article 12 of Council Regulation (EU, Euratom) No 1311/2013 ⁽³⁾.
- (3) On 26 February 2015, Germany submitted an application EGF/2015/002 DE/Adam Opel for a financial contribution from the EGF, following redundancies in Adam Opel AG and one supplier in Germany. It was supplemented by additional information in accordance with Article 8(3) of Regulation (EU) No 1309/2013. That application complies with the requirements for determining a financial contribution from the EGF as laid down in Article 13 of Regulation (EU) No 1309/2013.
- (4) The EGF should, therefore, be mobilised in order to provide a financial contribution of EUR 6 958 623 in respect of the application submitted by Germany.
- (5) In order to minimise the time taken to mobilise the EGF, this decision should apply from the date of its adoption,

HAVE ADOPTED THIS DECISION:

Article 1

For the general budget of the European Union for the financial year 2015, the European Globalisation Adjustment Fund shall be mobilised to provide the sum of EUR 6 958 623 in commitment and payment appropriations.

⁽¹⁾ OJ L 347, 20.12.2013, p. 855.

⁽²⁾ OJ C 373, 20.12.2013, p. 1.

⁽³⁾ Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

Article 2

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

It shall apply from 6 October 2015.

Done at Strasbourg, 6 October 2015.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

N. SCHMIT

DECISION (EU) 2015/1872 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 6 October 2015
on the mobilisation of the EU Solidarity Fund

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund ⁽¹⁾ and in particular Article 4(3) thereof,

Having regard to the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management ⁽²⁾, and in particular point 11 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The European Union Solidarity Fund (the 'Fund') aims to enable the Union to respond in a rapid, efficient and flexible manner to emergency situations and to show solidarity with the population of regions struck by disasters.
- (2) The Fund is not to exceed a maximum annual amount of EUR 500 million (2011 prices), as laid down in Article 10 of Council Regulation (EU, Euratom) No 1311/2013 ⁽³⁾.
- (3) Bulgaria has submitted an application to mobilise the Fund, concerning severe winter conditions.
- (4) Greece has submitted two applications to mobilise the Fund, concerning floods.
- (5) The Commission has assessed that the applications meet the conditions for awarding aid from the Fund, as laid down in Regulation (EC) No 2012/2002.
- (6) The Fund should therefore be mobilised in order to provide a financial contribution for the full amount of EUR 16 274 765 in respect of the applications submitted by Bulgaria and Greece.
- (7) There is scope for reallocating appropriations in accordance with the second sentence of point 11 of the Interinstitutional Agreement of 2 December 2013. The appropriations for advances for the financial year 2015 have been used, to a very limited extent, for the three applications which are the subject of this Decision and for which the remaining balance to be paid is EUR 14 647 288. Consequently, the full amount for the mobilisation will be financed through the reallocation of the available appropriations for advances in the general budget of the European Union for the financial year 2015, and no additional appropriations are needed.
- (8) In order to minimise the time taken to mobilise the Fund, this decision should apply from the date of its adoption,

HAVE ADOPTED THIS DECISION:

Article 1

For the general budget of the European Union for the financial year 2015, the European Union Solidarity Fund shall be mobilised to provide the sum of EUR 16 274 765 in commitment and payment appropriations.

⁽¹⁾ Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund (OJ L 311, 14.11.2002, p. 3).

⁽²⁾ OJ C 373, 20.12.2013, p. 1.

⁽³⁾ Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

The full amount of this mobilisation shall be financed using the appropriations mobilised by Decision (EU) 2015/422 of the European Parliament and of the Council ⁽¹⁾ for the payment of advances in the Union budget for the financial year 2015, available on budget line 13 06 01. The amount available on that budget line for advances shall be reduced accordingly.

Article 2

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

It shall apply from 6 October 2015.

Done at Strasbourg, 6 October 2015.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

N. SCHMIT

⁽¹⁾ Decision (EU) 2015/422 of the European Parliament and of the Council of 17 December 2014 on the mobilisation of the European Union Solidarity Fund (OJ L 68, 13.3.2015, p. 47).

COUNCIL IMPLEMENTING DECISION (EU) 2015/1873**of 8 October 2015****on subjecting 4-methyl-5-(4-methylphenyl)-4,5-dihydrooxazol-2-amine (4,4'-DMAR) and 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine (MT-45) to control measures**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances ⁽¹⁾, and in particular Article 8(3) thereof,

Having regard to the proposal of the European Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) A Risk Assessment Report on the new psychoactive substance 4-methyl-5-(4-methylphenyl)-4,5-dihydrooxazol-2-amine (4,4'-DMAR) was drawn up in accordance with Article 6 of Decision 2005/387/JHA by a special session of the extended Scientific Committee of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), and was subsequently submitted to the Commission and to the Council on 19 September 2014.
- (2) 4,4'-DMAR is a synthetic substituted oxazoline derivative. It is a derivative of aminorex and 4-methylaminorex (4-MAR), two synthetic stimulants controlled under the 1971 United Nations Convention on Psychotropic Substances.
- (3) 4,4'-DMAR has been available on the drugs market in the Union since at least December 2012 and was notified to the Early Warning System in December 2012. Nine Member States have reported detections as a result of seizures of the substance, mainly in the form of white or coloured powders and tablets, as well as biological and collected samples.
- (4) 4,4'-DMAR emerged on the new psychoactive substances market as a 'research chemical' sold by internet retailers, and it is now available on the street market. 4,4'-DMAR is being sold and consumed as a substance on its own, but it has also been mis-sold on the illicit market as ecstasy and amphetamines.
- (5) There have been 31 deaths associated with 4,4'-DMAR registered in three Member States, between June 2013 and June 2014. In most cases, 4,4'-DMAR was either the cause of death or, together with other substances, is likely to have contributed to death. One Member State has reported a case of non-fatal intoxication.
- (6) There are no studies on the toxicity of 4,4'-DMAR.
- (7) There is no prevalence data on the use of 4,4'-DMAR. However, the information available suggests that it has not been widely used. Information obtained from cases involving death also suggests that users unknowingly consumed 4,4'-DMAR when seeking other stimulants.
- (8) There is limited involvement of organised crime in the manufacture, distribution, trafficking and supply of 4,4'-DMAR within the Union. The chemical precursors and the synthetic routes used to manufacture 4,4'-DMAR are unknown.
- (9) 4,4'-DMAR is not listed for control under the 1961 United Nations Single Convention on Narcotic Drugs or under the 1971 United Nations Convention on Psychotropic Substances. It is not currently under assessment, and has not been under assessment, by the United Nations' system, and no such assessment is planned.
- (10) 4,4'-DMAR has no established or acknowledged human or veterinary medical use in the Union. Apart from its use in analytical reference materials, and in scientific research investigating its chemistry, pharmacology and toxicology, there is no indication that it is being used for other purposes.

⁽¹⁾ OJ L 127, 20.5.2005, p. 32.

- (11) The Risk Assessment Report reveals that there is limited scientific evidence available on 4,4'-DMAR and points out that further research would be needed to determine the health and social risks that it poses. However, the evidence and information currently available provides sufficient ground for subjecting 4,4'-DMAR to control measures across the Union. As a result of the risks to health that the consumption of 4,4'-DMAR poses, as documented by its detection in several fatalities, of the fact that users may unknowingly consume it, and of the lack of medical value of this substance, 4,4'-DMAR should be subjected to control measures.
- (12) Given that three Member States control 4,4'-DMAR under national legislation complying with the obligations of the 1971 United Nations Convention on Psychotropic Substances and five Member States use other legislative measures to control it, subjecting this substance to control measures across the Union would help avoid the emergence of obstacles in cross-border law enforcement and judicial cooperation, and would protect against the risks that its availability and use can pose.
- (13) A Risk Assessment Report on the new psychoactive substance 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine (MT-45) was drawn up in accordance with Article 6(2), (3) and (4) of Decision 2005/387/JHA by a special session of the extended Scientific Committee of the EMCDDA, and was subsequently submitted to the Commission and to the Council on 6 October 2014.
- (14) MT-45 is an *N,N'*-disubstituted piperazine, having a cyclohexane ring attached to one of the nitrogen atoms of the piperazine ring and a 1,2-diphenylethyl moiety attached to the other nitrogen atom. MT-45 is one of a series of 1-(1,2-diphenylethyl)piperazine analgesics invented in the early 1970s.
- (15) MT-45 has been present on the drugs market in the Union since October 2013, where it is sold as a 'research chemical', mostly on the internet. The EMCDDA has identified 12 sites of internet suppliers and retailers that have offered MT-45 for sale, including some apparently based in the Union.
- (16) A total of 28 fatalities occurring between November 2013 and July 2014 have been reported by one Member State. In most cases, the presence of MT-45 in biological samples was analytically confirmed. Some 18 non-fatal intoxications have also been reported by the same Member State, the clinical features of which were similar to opioid intoxication, responding in some cases to the opioid receptor antagonist naloxone.
- (17) There are several studies in animals indicating that the acute toxicity of MT-45 is several-fold higher than that of morphine.
- (18) Currently available information suggests that MT-45 has not been widely used. The substance appears to be mostly used in the home environment either by users willing to try a new substance or by opioid dependent users with no access to heroin or any other opioid. Users may combine MT-45 with other psychoactive substances. There is no information on the social risks that may be related to MT-45.
- (19) There is no evidence of involvement of organised crime in the manufacture, distribution, trafficking and supply of MT-45 in the Union. The chemical precursors and the synthetic routes used to manufacture the MT-45 detected in Member States are unknown.
- (20) MT-45 is not listed for control under the 1961 United Nations Single Convention on Narcotic Drugs or under the 1971 United Nations Convention on Psychotropic Substances. It is not currently under assessment, and has not been under assessment, by the United Nations' system, and no such assessment is planned.
- (21) MT-45 has no established or acknowledged human or veterinary medical use in the Union. Apart from its use in analytical reference materials, and in scientific research investigating its chemistry, pharmacology and toxicology, there is no indication that it is being used for other purposes.
- (22) The Risk Assessment Report reveals that there is limited scientific evidence available on MT-45 and points out that further research would be needed to determine the health and social risks that it poses. However, the evidence and information currently available provides sufficient grounds for subjecting MT-45 to control measures across the Union. As a result of the health risks that it poses, as documented by its detection in several fatalities, and of the lack of medical value of this substance, MT-45 should be subjected to control measures.

- (23) Given that one Member State controls MT-45 under national legislation complying with the obligations under the 1961 United Nations Single Convention on Narcotic Drugs and under the 1971 United Nations Convention on Psychotropic Substances and seven Member States use other legislative measures to control it, subjecting this substance to control measures across the Union would help avoid the emergence of obstacles in cross-border law enforcement and judicial cooperation, and would protect against the risks that its availability and use can pose.
- (24) Decision 2005/387/JHA confers upon the Council implementing powers with a view to giving a quick and expertise-based response at Union level to the emergence of new psychoactive substances detected and reported by the Member States, by subjecting those substances to control measures across the Union. As the conditions and procedure for triggering the exercise of such implementing powers have been met, an implementing decision should be adopted in order to put 4,4'-DMAR and MT-45 under control across the Union.
- (25) Denmark is bound by Decision 2005/387/JHA and is therefore taking part in the adoption and application of this Decision which implements Decision 2005/387/JHA.
- (26) Ireland is bound by Decision 2005/387/JHA and is therefore taking part in the adoption and application of this Decision which implements Decision 2005/387/JHA.
- (27) The United Kingdom is not bound by Decision 2005/387/JHA and is therefore not taking part in the adoption of this Decision which implements Decision 2005/387/JHA and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The following new psychoactive substances shall be subjected to control measures across the Union:

- (a) 4-methyl-5-(4-methylphenyl)-4,5-dihydrooxazol-2-amine (4,4'-DMAR);
- (b) 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine (MT-45).

Article 2

By 21 October 2016, Member States shall take the necessary measures, in accordance with their national law, to subject the new psychoactive substances referred to in Article 1 to control measures and criminal penalties, as provided for under their legislation complying with their obligations under the 1961 United Nations Single Convention on Narcotic Drugs and/or under the 1971 United Nations Convention on Psychotropic Substances.

Article 3

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

This Decision shall apply in accordance with the Treaties.

Done at Luxembourg, 8 October 2015.

For the Council
The President
J. ASSELBORN

COUNCIL IMPLEMENTING DECISION (EU) 2015/1874**of 8 October 2015****on subjecting 4-methylamphetamine to control measures**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances ⁽¹⁾, and in particular Article 8(3) thereof,

Having regard to the proposal of the European Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) A Risk Assessment Report on 4-methylamphetamine was drawn up in accordance with Article 6 of Decision 2005/387/JHA by a special session of the extended Scientific Committee of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), and was subsequently received by the Commission on 29 November 2012.
- (2) 4-methylamphetamine is a synthetic ring-methylated derivative of amphetamine which has predominantly been seized in powder and paste form in samples containing amphetamine and caffeine, but which has also appeared in tablet and liquid form. It has emerged on the illicit amphetamine market where it is sold and used as the controlled drug, amphetamine. There has been one report of the substance being detected in a commercial product sold on the internet. The main chemical precursor for the synthesis of 4-methylamphetamine is 4-methylbenzyl methyl ketone (4-methyl-BMK), which appears to be commercially available on the internet and is not controlled under the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
- (3) The specific physical effects of 4-methylamphetamine have been rarely reported by users, since users are typically unaware that they have taken the substance. However, the few reports that are available suggest that it has stimulant-type effects. Limited data available relating to humans suggest that the adverse effects of 4-methylamphetamine include hyperthermia, hypertension, anorexia, nausea, perspiration, gastric distress, coughing, vomiting, headache, palpitations, insomnia, paranoia, anxiety and depression. Current data is not sufficient to determine the relative dependence-producing potential of the substance.
- (4) According to the limited data sources available, the acute toxicity of 4-methylamphetamine is similar to that of other stimulants. Certain evidence suggests that a combination of 4-methylamphetamine with other substances, including amphetamine and caffeine, may result in a higher risk of overall enhanced toxicity.
- (5) There have been a total of 21 fatalities registered in four Member States where 4-methylamphetamine alone, or in combination with one or more substances, especially amphetamine, has been detected in post-mortem samples. While it is not possible to determine with certainty from the information available the role of 4-methylamphetamine in those fatalities, in some cases the substance was the predominant drug detected, with levels comparable to those found in certain cases of death caused by the consumption of amphetamine.
- (6) 4-methylamphetamine has been detected in 15 Member States, while one Member State has reported the manufacture of the substance on its territory. Prevalence specific to 4-methylamphetamine is difficult to estimate. There is no information on specific demand for the substance from user groups and it is not commercially marketed through internet shops.
- (7) The information available suggests that 4-methylamphetamine is produced and distributed by the same organised crime groups that are involved in the manufacture and trafficking of amphetamine.

⁽¹⁾ OJ L 127, 20.5.2005, p. 32.

- (8) 4-methylamphetamine has no known, established or acknowledged medical value or use in the Union and there is no marketing authorisation for the substance in the Union. Apart from its use as an analytical reference standard and in scientific research, there is no indication that it may be used for any other legitimate purpose.
- (9) 4-methylamphetamine is not currently under assessment and has not been under assessment by the United Nations' system. Eight Member States control the substance under drug control legislation by virtue of their obligations under the 1971 United Nations Convention on Psychotropic Substances. Two other Member States apply the generic definition of phenethylamine in their national legislation to the substance, while one Member State controls it under its medicines legislation.
- (10) The Risk Assessment Report reveals that there is limited scientific evidence available on the characteristics and risks of 4-methylamphetamine and points out that further studies are required on the overall health and social risks associated with the substance. However, the evidence available provides sufficient grounds for subjecting 4-methylamphetamine to control measures across the Union. As a result of the health risks it poses, as documented by its detection in several reported fatalities, especially when used in combination with other substances, of its strong resemblance in terms of appearance and effects with amphetamine, of the fact that users may unknowingly consume the substance, and of its limited medical value or use, 4-methylamphetamine should be subjected to control measures across the Union.
- (11) Given that 10 Member States already control 4-methylamphetamine, subjecting it to control measures across the Union may help avoid problems in cross-border law enforcement and judicial cooperation.
- (12) Union-wide control measures may also help prevent 4-methylamphetamine developing as an alternative to amphetamine in the illicit drug markets.
- (13) Decision 2005/387/JHA confers upon the Council implementing powers with a view to giving a quick and expertise-based response at Union level to the emergence of new psychoactive substances detected and reported by the Member States, by subjecting those substances to control measures across the Union. As the conditions and procedure for triggering the exercise of such implementing powers have been met, an implementing decision should be adopted in order to put 4-methylamphetamine under control across the Union.
- (14) This Decision replaces Council Decision 2013/129/EU ⁽¹⁾ which was annulled by the Court of Justice of the European Union ('the Court') by its judgment of 16 April 2015 in Case C-317/13 ⁽²⁾. In that judgment, the Court maintained the effects of Decision 2013/129/EU until the entry into force of new acts intended to replace it. Therefore, as of the day of entry into force of this Decision, Decision 2013/129/EU ceases to produce effects.
- (15) In order to ensure the continuity of control measures across the Union with regard to 4-methylamphetamine, this Decision should be without prejudice to the obligations of the Member States relating to the time limit for subjecting that new psychoactive substance to control measures and criminal penalties in their national laws, as set out in Article 2 of Decision 2013/129/EU.
- (16) Denmark is bound by Decision 2005/387/JHA and is therefore taking part in the adoption and application of this Decision which implements Decision 2005/387/JHA.
- (17) Ireland is bound by Decision 2005/387/JHA and is therefore taking part in the adoption and application of this Decision which implements Decision 2005/387/JHA.
- (18) The United Kingdom is not bound by Decision 2005/387/JHA and is therefore not taking part in the adoption of this Decision which implements Decision 2005/387/JHA and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The new psychoactive substance 4-methylamphetamine shall be subjected to control measures across the Union.

⁽¹⁾ Council Decision 2013/129/EU of 7 March 2013 on subjecting 4-methylamphetamine to control measures (OJ L 72, 15.3.2013, p. 11).

⁽²⁾ Judgment of the Court of Justice of 16 April 2015, *Parliament v Council*, C-317/13, ECLI:EU:C:2015:223.

Article 2

Decision 2013/129/EU ceases to produce effects from the date of entry into force of this Decision, without prejudice to the obligations of the Member States relating to the time limit for subjecting 4-methylamphetamine to control measures and criminal penalties in their national laws, as set out in Article 2 of Decision 2013/129/EU.

Article 3

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

This Decision shall apply in accordance with the Treaties.

Done at Luxembourg, 8 October 2015.

For the Council

The President

J. ASSELBORN

COUNCIL IMPLEMENTING DECISION (EU) 2015/1875**of 8 October 2015**

on subjecting 4-iodo-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (25I-NBOMe), 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]benzamide (AH-7921), 3,4-methylenedioxypropylvalerone (MDPV) and 2-(3-methoxyphenyl)-2-(ethylamino)cyclohexanone (methoxetamine) to control measures

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances ⁽¹⁾, and in particular Article 8(3) thereof,

Having regard to the proposal of the European Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) Risk Assessment Reports on the new psychoactive substances 4-iodo-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (25I-NBOMe), 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]benzamide (AH-7921), 3,4-methylenedioxypropylvalerone (MDPV) and 2-(3-methoxyphenyl)-2-(ethylamino)cyclohexanone (methoxetamine) were drawn up in accordance with Decision 2005/387/JHA by a special session of the extended Scientific Committee of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), and were subsequently submitted to the Commission and to the Council on 23 April 2014.
- (2) 25I-NBOMe, AH-7921, MDPV and methoxetamine had not been under assessment at the United Nations' level by the time the risk assessment was requested at Union level, but they were evaluated in June 2014 by the Expert Committee on Drug Dependence of the World Health Organization.
- (3) 25I-NBOMe, AH-7921, MDPV and methoxetamine have no established or acknowledged human or veterinary medical use. Apart from their use in analytical reference materials, in scientific research investigating their chemistry, pharmacology and toxicology as a result of their emergence on the drug market and, in the case of 25I-NBOMe, also in the field of neurochemistry, there is no indication that they are being used for other purposes.
- (4) 25I-NBOMe is a potent synthetic derivative of 2,5-dimethoxy-4-iodophenethylamine (2C-I), a classical serotonergic hallucinogen, which was subject to risk assessment and to control measures and criminal sanctions at Union level from 2003 by virtue of Council Decision 2003/847/JHA ⁽²⁾.
- (5) The specific physical effects of 25I-NBOMe are difficult to determine because there are no published studies assessing its acute and chronic toxicity, its psychological and behavioural effects, and dependence potential, and because of the limited information and data available. Clinical observations of individuals who have used this substance suggest that it has hallucinogenic effects and has the potential for inducing severe agitation, confusion, intense auditory and visual hallucinations, aggression, violent accidents and self-induced trauma.
- (6) There have been four deaths associated with 25I-NBOMe registered in three Member States. Severe toxicity associated with its use has been reported in four Member States, which notified 32 non-fatal intoxications. If this new psychoactive substance were to become more widely available and used, the implications for individual and public health could be significant. There is no information available on the social risks associated with 25I-NBOMe.

⁽¹⁾ OJ L 127, 20.5.2005, p. 32.

⁽²⁾ Council Decision 2003/847/JHA of 27 November 2003 concerning control measures and criminal sanctions in respect of the new synthetic drugs 2C-I, 2C-T-2, 2C-T-7 and TMA-2 (OJ L 321, 6.12.2003, p. 64).

- (7) Twenty-two Member States and Norway have reported to the EMCDDA and to the European Police Office (Europol) that they reported detection of 25I-NBOMe. No prevalence data is available on the use of 25I-NBOMe, but the limited information that exists suggests that it may be consumed in a wide range of settings, such as at home, in bars, in nightclubs and at music festivals.
- (8) 25I-NBOMe is openly marketed and sold on the internet as a 'research chemical' and information obtained from seizures, collected samples, user websites and internet retailers suggests that it is being sold as a drug in its own right and also marketed as a 'legal' replacement for LSD. The EMCDDA identified more than 15 internet retailers selling this substance, who may be based within the Union and China.
- (9) The Risk Assessment Report reveals that there is limited scientific evidence available on 25I-NBOMe and points out that further research would be needed to determine the health and social risks that it poses. However, the available evidence and information provides sufficient ground for subjecting 25I-NBOMe to control measures across the Union. As a result of the health risks that it poses, as documented by its detection in several reported fatalities, of the fact that users may unknowingly consume it and of the lack of medical value or use of the substance, 25I-NBOMe should be subjected to control measures across the Union.
- (10) Given that six Member States control 25I-NBOMe under national legislation complying with the obligations of the 1971 United Nations Convention on Psychotropic Substances, and that seven Member States use other legislative measures to control it, subjecting this substance to control measures across the Union would help avoid the emergence of obstacles in cross-border law enforcement and judicial cooperation, and would help protect against the risks that its availability and use can pose.
- (11) AH-7921 is a structurally atypical synthetic opioid analgesic commonly known by internet suppliers, user websites and media as 'doxylam'. It can be easily confused with 'doxylamine', an antihistaminic medicine with sedative-hypnotic properties, which could lead to unintentional overdoses.
- (12) The specific physical effects of AH-7921 are difficult to determine because there are no published studies assessing its acute and chronic toxicity, its psychological, behavioural effects, and dependence potential, as well as the limited information and data available. Based on user reports, the effects of AH-7921 appear to resemble those of classical opioids with the feeling of mild euphoria, itchiness and relaxation. Nausea appears to be a typical adverse effect. In addition to self-experimentation with AH-7921, as well as 'recreational use', some of the users report self-medicating with this new drug to relieve pain, others to alleviate withdrawal symptoms due to the cessation of the use of other opioids. This may indicate a potential of AH-7921 to spread among the injecting opioid population.
- (13) There is no prevalence data on the use of AH-7921, but the information available suggests that it is not widely used, and that when it is used, that use is in the home environment.
- (14) 15 fatalities were recorded in three Member States between December 2012 and September 2013 where AH-7921, alone or in combination with other substances, was detected in post-mortem samples. While it is not possible to determine with certainty the role of AH-7921 in all of those fatalities, in some cases it has been specifically noted in the cause of death. One Member State reported six non-fatal intoxications associated with AH-7921. If this new psychoactive substance were to become more widely available and used, the implications for individual and public health could be significant. There is no information available on the social risks associated with AH-7921.
- (15) The Risk Assessment Report reveals that there is limited scientific evidence available on AH-7921 and points out that further research would be needed to determine the health and social risks that it poses. However, the available evidence and information provides sufficient ground for subjecting AH-7921 to control measures across the Union. As a result of the health risks that it poses, as documented by its detection in several reported fatalities, of the fact that users may unknowingly consume it, and of the lack of medical value or use of the substance, AH-7921 should be subjected to control measures across the Union.
- (16) Given that one Member State controls AH-7921 under national legislation complying with the obligations of the 1971 United Nations Convention on Psychotropic Substances, and that five Member States use other legislative measures to control it, subjecting this substance to control measures across the Union would help avoid the emergence of obstacles in cross-border law enforcement and judicial cooperation, and would help protect against the risks that its availability and use can pose.

- (17) MDPV is a ring-substituted synthetic derivative of cathinone chemically related to pyrovalerone, which are both subject to control under the 1971 United Nations Convention on Psychotropic Substances.
- (18) Information on the chronic and acute toxicity associated with MDPV, as well as on psychological and behavioural effects, and on dependence potential, is not collected uniformly across the Union. Information from published studies, confirmed by clinical cases, suggests that the psychopharmacological profile observed for MDPV is similar to that for cocaine and methamphetamine, albeit more potent and longer lasting. Furthermore, MDPV was found to be ten times more potent in its ability to induce locomotor activation, tachycardia and hypertension.
- (19) Users' websites indicate that its acute toxicity can provoke adverse effects on humans, similar to those associated with other stimulants. These include paranoid psychosis, tachycardia, hypertension, diaphoresis, breathing problems, severe agitation, auditory and visual hallucinations, profound anxiety, hyperthermia, violent outbursts and multiple organ dysfunctions.
- (20) 108 fatalities were registered in eight Member States and Norway between September 2009 and August 2013, where MDPV has been detected in post-mortem biological samples or implicated in the cause of death. A total of 525 non-fatal intoxications associated with MDPV have been reported by eight Member States. If this new psychoactive substance were to become more widely available and used, the implications for individual and public health could be significant.
- (21) The detection of MDPV has also been reported in biological samples related to fatal and non-fatal road traffic accidents, or driving under the influence of drugs, in four Member States since 2009.
- (22) MDPV has been present on the Union drug market since November 2008, and 27 Member States, Norway and Turkey have reported multi-kilogram seizures of the substance. MDPV is being sold as a substance in its own right, but it has also been detected in combination with other substances. It is widely available from internet suppliers and retailers, 'head shops' and street-level dealers. There are some indications that suggest a degree of organisation in the tableting and distribution of this substance in the Union.
- (23) The Risk Assessment Report reveals that further research would be needed to determine the health and social risks posed by MDPV. However, the available evidence and information provides sufficient ground for subjecting MDPV to control measures across the Union. As a result of the health risks that it poses, as documented by its detection in several reported fatalities, of the fact that users may unknowingly consume it, and of the lack of medical value or use of the substance, MDPV should be subjected to control measures across the Union.
- (24) Given that 21 Member States control MDPV under national legislation complying with the obligations of the 1971 United Nations Convention on Psychotropic Substances, and that four Member States use other legislative measures to control it, subjecting this substance to control measures across the Union would help avoid the emergence of obstacles in cross-border law enforcement and judicial cooperation, and would protect against the risks that its availability and use can pose.
- (25) Methoxetamine is an arylcyclohexylamine substance which is chemically similar to ketamine and the internationally-controlled substance phencyclidine (PCP). Like ketamine and PCP, it has dissociative properties.
- (26) There are no studies assessing the chronic and acute toxicity associated with methoxetamine, as well as its psychological and behavioural effects and dependence potential. Self-reported experiences from user websites suggest adverse effects similar to ketamine intoxication. These include nausea and severe vomiting, difficulty in breathing, seizures, disorientation, anxiety, catatonia, aggression, hallucination, paranoia and psychosis. In addition, acute methoxetamine intoxications may include stimulant effects (agitation, tachycardia and hypertension) and cerebral features, which are not expectable with acute ketamine intoxication.
- (27) Twenty deaths associated with methoxetamine have been reported by six Member States that detected the substance in post-mortem samples. Used alone or in combination with other substances, methoxetamine was detected in 20 non-fatal intoxications reported by five Member States. If this new psychoactive substance were to become more widely available and used, the implications for individual and public health could be significant.

- (28) Twenty-three Member States, Turkey and Norway have reported that they reported detection of methoxetamine, since November 2010. Information suggests that it is sold and used as a substance in its own right, and that it is also sold as a 'legal' replacement for ketamine by internet retailers, 'head shops' and street-level drug dealers.
- (29) Multi-kilogram quantities in powder form have been seized within the Union, but there is no information on the possible involvement of organised crime. The manufacture of methoxetamine does not require sophisticated equipment.
- (30) Prevalence data are limited to non-representative studies in two Member States. Those studies suggest that the prevalence of the use of methoxetamine is lower than that of ketamine. The available information suggests that it may be consumed in a wide range of settings, including at home, in bars, in nightclubs and at music festivals.
- (31) The Risk Assessment Report reveals that further research would be needed to determine the health and social risks posed by methoxetamine. However, the available evidence and information provides sufficient grounds for subjecting methoxetamine to control measures across the Union. As a result of the health risks that it poses, as documented by its detection in several reported fatalities, of the fact that users may unknowingly consume it, and of the lack of medical value or use, methoxetamine should be subjected to control measures across the Union.
- (32) Given that nine Member States control methoxetamine under national legislation complying with the obligations of the 1971 United Nations Convention on Psychotropic Substances and nine Member States use other legislative measures to control it, subjecting this substance to control measures across the Union would help avoid the emergence of obstacles in cross-border law enforcement and judicial cooperation, and would protect against the risks that its availability and use can pose.
- (33) Decision 2005/387/JHA confers upon the Council implementing powers with a view to giving a quick and expertise-based response at Union level to the emergence of new psychoactive substances detected and reported by the Member States, by subjecting those substances to control measures across the Union. As the conditions and procedure for triggering the exercise of such implementing powers have been met, an implementing decision should be adopted in order to put 25I-NBOMe, AH-7921, MDPV and methoxetamine under control across the Union.
- (34) In its judgment of 16 April 2015 in Joined Cases C-317/13 and C-679/13 ⁽¹⁾, the Court of Justice of the European Union held that prior to adopting an implementing decision on the basis of Article 8(3) of Decision 2005/387/JHA, the Council should consult the European Parliament. Council Implementing Decision 2014/688/EU ⁽²⁾ was adopted without such prior consultation and consequently is vitiated by a procedural defect. Decision 2014/688/EU should, therefore, be replaced by this Decision.
- (35) In order to ensure the continuity of control measures across the Union, as well as of the compliance with the obligations of the Member States under the 1971 United Nations Convention on Psychotropic Substances and under the 1961 United Nations Single Convention on Narcotic Drugs with regard to 4-iodo-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (25I-NBOMe), 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]benzamide (AH-7921), 3,4-methylenedioxypyrovalerone (MDPV) and 2-(3-methoxyphenyl)-2-(ethylamino)cyclohexanone (methoxetamine), this Decision should be without prejudice to the obligations of the Member States relating to the time limit for subjecting those new psychoactive substances to control measures and criminal penalties in their national laws, as set out in Article 2 of Decision 2014/688/EU.
- (36) Denmark is bound by Decision 2005/387/JHA and is therefore taking part in the adoption and application of this Decision which implements Decision 2005/387/JHA.
- (37) Ireland is bound by Decision 2005/387/JHA and is therefore taking part in the adoption and application of this Decision which implements Decision 2005/387/JHA.

⁽¹⁾ Judgment of the Court of Justice of 16 April 2015, Parliament v Council, Joined Cases C-317/13 and C-679/13, ECLI:EU:C:2015:223.

⁽²⁾ Council Implementing Decision 2014/688/EU of 25 September 2014 on subjecting 4-iodo-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (25I-NBOMe), 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]benzamide (AH-7921), 3,4-methylenedioxypyrovalerone (MDPV) and 2-(3-methoxyphenyl)-2-(ethylamino)cyclohexanone (methoxetamine) to control measures (OJ L 287, 1.10.2014, p. 22).

- (38) The United Kingdom is not bound by Decision 2005/387/JHA and is therefore not taking part in the adoption of this Decision which implements Decision 2005/387/JHA and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The following new psychoactive substances shall be subjected to control measures across the Union:

- (a) 4-iodo-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (25I-NBOMe);
- (b) 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]benzamide (AH-7921);
- (c) 3,4-methylenedioxypyrovalerone (MDPV);
- (d) 2-(3-methoxyphenyl)-2-(ethylamino)cyclohexanone (methoxetamine).

Article 2

Decision 2014/688/EU is replaced, without prejudice to the obligations of the Member States relating to the time limit for subjecting 4-iodo-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (25I-NBOMe), 3,4-dichloro-N-[[1-(dimethylamino)cyclohexyl]methyl]benzamide (AH-7921), 3,4-methylenedioxypyrovalerone (MDPV) and 2-(3-methoxyphenyl)-2-(ethylamino)cyclohexanone (methoxetamine) to control measures and criminal penalties in their national laws, as set out in Article 2 of Decision 2014/688/EU.

Article 3

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

This Decision shall apply in accordance with the Treaties.

Done at Luxembourg, 8 October 2015.

For the Council
The President
J. ASSELBORN

COUNCIL IMPLEMENTING DECISION (EU) 2015/1876
of 8 October 2015
on subjecting 5-(2-aminopropyl)indole to control measures

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances ⁽¹⁾, and in particular Article 8(3) thereof,

Having regard to the proposal of the European Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) A Risk Assessment Report on the new psychoactive substance 5-(2-aminopropyl)indole was drawn up in accordance with Article 6 of Decision 2005/387/JHA by the extended Scientific Committee of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) during a special session, and was subsequently submitted to the Commission and to the Council on 16 April 2013.
- (2) The substance 5-(2-aminopropyl)indole is a synthetic derivative of indole substituted at the phenyl side of the indole ring system. It appears to be a stimulant substance that may also have hallucinogenic effects. 5-(2-aminopropyl)indole has been found mostly in powder form but also in tablet and capsule form. It is commercially available on the internet and from 'head shops', marketed as a 'research chemical'. It has also been detected in samples of a product sold as a 'legal high' called 'Benzo Fury', and in tablets resembling ecstasy.
- (3) The existing information and data suggest that the acute toxicity of 5-(2-aminopropyl)indole can provoke adverse effects in humans, such as tachycardia and hyperthermia, and may also cause mydriasis, agitation and tremor. 5-(2-aminopropyl)indole may interact with other substances, including medical products and stimulants that act on the monoaminergic system. The specific physical effects of 5-(2-aminopropyl)indole in humans are difficult to determine because there are no published studies assessing its acute and chronic toxicity, its psychological and behavioural effects, or dependence potential, and because of the limited information and data available.
- (4) There have been a total of 24 fatalities registered in four Member States from April to August 2012, in relation to which 5-(2-aminopropyl)indole alone, or in combination with other substances, was detected in post-mortem samples. While it is not possible to determine with certainty the role of 5-(2-aminopropyl)indole in all of the fatalities, in some cases it has been specifically noted in the cause of death. If this new psychoactive substance were to become more widely available and used, the implications for individual and public health could be significant. There is no information available on the social risks posed by 5-(2-aminopropyl)indole.
- (5) Nine European countries have reported to the EMCDDA and to the European Police Office (Europol) that they reported detection of 5-(2-aminopropyl)indole. No prevalence data is available on the use of 5-(2-aminopropyl)indole, but the limited information that exists suggests that it may be consumed in similar environments as other stimulants, such as in the home, in bars and nightclubs or at music festivals.
- (6) There is no information that suggests that 5-(2-aminopropyl)indole is manufactured in the Union, and there is no evidence suggesting the involvement of organised crime in the manufacture, distribution or supply of this new psychoactive substance.
- (7) The substance 5-(2-aminopropyl)indole has no known, established or acknowledged medical value or use, and there is no marketing authorisation covering this new psychoactive substance in the Union. Apart from its use as an analytical reference standard and in scientific research, there is no indication that it is being used for other purposes.

⁽¹⁾ OJ L 127, 20.5.2005, p. 32.

- (8) The substance 5-(2-aminopropyl)indole has not been, nor is it currently, under assessment by the United Nations' system, as defined in Decision 2005/387/JHA. Two Member States control this new psychoactive substance under their national legislation by virtue of their obligations under the 1971 United Nations Convention on Psychotropic Substances. Five European countries apply national legislation on new psychoactive substances, dangerous goods or medicines to control 5-(2-aminopropyl)indole.
- (9) The Risk Assessment Report reveals that there is limited scientific evidence available on 5-(2-aminopropyl)indole and points out that further research would be needed to determine the health and social risks that it poses. However, the available evidence and information provides sufficient ground for subjecting 5-(2-aminopropyl)indole to control measures across the Union. As a result of the health risks that it poses, as documented by its detection in several reported fatalities, of the fact that users may unknowingly consume it, and of the lack of medical value or use, 5-(2-aminopropyl)indole should be subjected to control measures across the Union.
- (10) Given that six Member States already control 5-(2-aminopropyl)indole by means of different types of legislative provisions, subjecting this substance to control measures across the Union would help avoid the emergence of obstacles in cross-border law enforcement and judicial cooperation, and protect users from the risks that its consumption can pose.
- (11) Decision 2005/387/JHA confers upon the Council implementing powers with a view to giving a quick and expertise-based response at Union level to the emergence of new psychoactive substances detected and reported by the Member States, by subjecting those substances to control measures across the Union. As the conditions and procedure for triggering the exercise of such implementing powers have been met, an implementing decision should be adopted in order to put 5-(2-aminopropyl)indole under control across the Union.
- (12) This Decision replaces Council Implementing Decision 2013/496/EU ⁽¹⁾ which was annulled by the Court of Justice of the European Union ('the Court') by its judgment of 16 April 2015 in Case C-679/13 ⁽²⁾. In that judgment, the Court maintained the effects of Decision 2013/496/EU until the entry into force of new acts intended to replace it. Therefore, as of the day of entry into force of this Decision, Decision 2013/496/EU ceases to produce effects.
- (13) In order to ensure the continuity of control measures across the Union with regard to 5-(2-aminopropyl)indole, this Decision should be without prejudice to the obligations of the Member States relating to the time limit for subjecting that new psychoactive substance to control measures and criminal penalties in their national laws, as set out in Article 2 of Decision 2013/496/EU.
- (14) Denmark is bound by Decision 2005/387/JHA and is therefore taking part in the adoption and application of this Decision which implements Decision 2005/387/JHA.
- (15) Ireland is bound by Decision 2005/387/JHA and is therefore taking part in the adoption and application of this Decision which implements Decision 2005/387/JHA.
- (16) The United Kingdom is not bound by Decision 2005/387/JHA and is therefore not taking part in the adoption of this Decision which implements Decision 2005/387/JHA and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The new psychoactive substance 5-(2-aminopropyl)indole shall be subjected to control measures across the Union.

Article 2

Decision 2013/496/EU ceases to produce effects from the date of entry into force of this Decision, without prejudice to the obligations of the Member States relating to the time limit for subjecting 5-(2-aminopropyl)indole to control measures and criminal penalties in their national laws, as set out in Article 2 of Decision 2013/496/EU.

⁽¹⁾ Council Implementing Decision (2013/496/EU) of 7 October 2013 on subjecting 5-(2-aminopropyl)indole to control measures (OJ L 272, 12.10.2013, p. 44).

⁽²⁾ Judgment of the Court of Justice of 16 April 2015, *Parliament v Council*, C-679/13, ECLI:EU:C:2015:223.

Article 3

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

This Decision shall apply in accordance with the Treaties.

Done at Luxembourg, 8 October 2015.

For the Council
The President
J. ASSELBORN

COMMISSION DECISION (EU) 2015/1877**of 20 April 2015****on tariffs charged by S.C. Hidroelectrica SA of Romania to S.C. Termoelectrica SA and S.C. Electrocentrale Deva SA — SA.33475 (12/C)***(notified under document number C(2015) 2648)***(Only the English text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

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

Having regard to the decision by which the Commission initiated the procedure laid down in Article 108(2) of the Treaty, in respect of the aid SA.33475 (12/C, ex 12/NN) ⁽¹⁾,

Having called on third parties to submit their comments pursuant to the provisions cited above, and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) On 2 August 2011, the Commission received a complaint from the investment fund S.C. Fondul Proprietatea SA ('the complainant') in relation to the purchase of electricity by S.C. Hidroelectrica SA ('Hidroelectrica') from electricity suppliers at prices allegedly set above market level.
- (2) On 25 April 2012, the Commission informed Romania that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty in respect of the contracts whereby Termoelectrica SA ('Termoelectrica') and S.C. Electrocentrale Deva SA ('Electrocentrale Deva') supplied electricity wholesale to Hidroelectrica, hereafter referred as the 'Opening Decision'.
- (3) The Opening Decision was published in the *Official Journal of the European Union* ⁽²⁾. The Commission called on the Romanian authorities and interested parties to submit their comments.
- (4) On 23 July 2012 the Romanian Authorities provided the Commission with their preliminary comments on the Opening Decision.
- (5) The Commission received only preliminary comments from Termoelectrica, dated 11 June 2012 and from Electrocentrale Deva, dated 12 June 2012, which the Romanian Authorities forwarded to the Commission on 26 July 2012. The Romanian Authorities forwarded again the same preliminary comments to the Commission on 2 August 2012.
- (6) On 12 February 2013, the Commission informed the Romanian Authorities that it had not received any comments from interested parties.
- (7) On 24 March 2013, the Romanian Authorities reiterated their preliminary position in relation to this case.
- (8) The Commission requested further information from the Romanian Authorities by letters dated 29 July and 11 September 2013, 3 March, 6 August and 25 September 2014 and 19 January 2015. The Romanian Authorities provided further information on 11 September 2013, 24 March, 14 May, 3 September, 22 September, 10 October and 21 October 2014 and on 20 February 2015.

⁽¹⁾ Commission Decision C (2012) 2552 final of 25 April 2012 concerning the case SA.33475, p. 46

⁽²⁾ OJ C 395, 20.12.2012, p. 46.

- (9) On 16 April 2015, Romania waived its rights under Article 342 of the Treaty in conjunction with Article 3 of Regulation No 1 ⁽³⁾ to have the decision adopted in Romanian and agreed that the decision be adopted in English.

2. DESCRIPTION OF THE AID MEASURES

- (10) This section describes the contracting parties (i.e.: Hidroelectrica, Termoelectrica, and Electrocentrale Deva), other electricity generators, contracts for the purchase of electricity in the context of the Romanian electricity market and various developments and interlinks between the alleged beneficiaries.

2.1. The contracting parties

2.1.1. Hidroelectrica

- (11) Hidroelectrica was established in 2000. Hidroelectrica is governed by ordinary company law. Its share capital is held by the Romanian State through the Ministry of Economy and Trade (80,06 %) and the complainant (19,94 %). The Romanian State is represented in the Shareholder Meeting's Board of Hidroelectrica. According to Hidroelectrica's Articles of Incorporation, the General Director runs and represents the company's day-to-day business and independently takes decisions on matters other than those reserved for the Shareholders' Meeting Board and the Board of Directors. In practice Hidroelectrica's Directors cumulated functions with government posts ⁽⁴⁾.
- (12) Hidroelectrica is Romania's main electricity generator with an annual production capacity of around 17,5 TWh in a normal hydrological year. Hidroelectrica produces electricity through dams and run-of-the-river generation plants. However, this production is subject to wide variations depending on hydrological conditions: in 2009, Hidroelectrica's output was 16,4 TWh, in 2010, it was 21,3 TWh and in 2011, it was 14,7 TWh. In 2013, Hidroelectrica's market share was 28,24 %, ahead of Complexul Energetic Oltenia, a thermo-coal based electricity producer, with 20,83 % market share and Nuclearelectrica with 20,65 % market share, both state-owned companies.
- (13) Hidroelectrica was placed under insolvency proceedings on 26 June 2012 ⁽⁵⁾ and exited them on 26 June 2013 ⁽⁶⁾. On 25 February 2014, Hidroelectrica was again placed under insolvency proceedings.

2.1.2. The beneficiaries

- (14) The suppliers with which Hidroelectrica entered into the contracts under investigation are Termoelectrica and Electrocentrale Deva, two coal-based electricity producers, fully state-owned, directly or indirectly, with an annual production capacity at the date of signature of the contracts of 1,7 TW and 1,3 TW respectively and market shares of 3 % and 5 % in 2009 ⁽⁷⁾ and of 1,9 % and 4,1 % in 2011 ⁽⁸⁾. Termoelectrica and Electrocentrale Deva sold electricity produced from costly uncompetitive indigenous coal ⁽⁹⁾.

⁽³⁾ Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58).

⁽⁴⁾ All members of Hidroelectrica's Board of Directors except the General Director of Hidroelectrica and the representative of Fondul Proprietatea (2010), cumulated other functions in various Ministries and were appointed through Orders issued by the Ministry of Economy and Trade, as follows: (i) in 2005-2006: the personal adviser in the Cabinet of Minister of Economy and Trade; the director of cabinet of the Minister for Small and Medium Enterprises; the pe For Electrocentrale Deva: Addendum No 1 dated rsonal adviser in the cabinet of the Minister in the Ministry of Public Finance and the personal adviser in the General Secretariat of the Government were members of Hidroelectrica's Board of Directors; (ii) in 2007-2008 — situation unknown; (iii) in 2009: the State Secretary in the Ministry of Economy and Trade was also the President of Hidroelectrica's Board of Directors (2009), while another State Secretary in the Ministry of Public Finance and two general directors in the Ministry of Economy and Trade were also members of Hidroelectrica's Board of Directors; (iv) in 2010: three personal advisers of the Ministry of Economy and Trade, a State Secretary in the Ministry of Finance and a General Director in the Ministry of Economy and Trade were members of Hidroelectrica's Board of Directors.

⁽⁵⁾ Decision of Tribunal of Bucharest No 22456/3/2012 dated 26 June 2012.

⁽⁶⁾ Decision of Tribunal of Bucharest No 6482 dated 26 June 2013.

⁽⁷⁾ Energy Regulator, *Annual Report 2009*, p. 15.

⁽⁸⁾ Energy Regulator, *Annual Report 2011*, p. 15.

⁽⁹⁾ For instance, coal mines supplying Termoelectrica, such as the Paroseni mine, were included in the plan for aid to the definitive closure of uncompetitive coal mines in Romania which the Commission cleared by Decision of 22 February 2012 in case SA 33 033 — National Hard Coal Company.

- (15) Electrocentrale Deva was a division of Termoelectrica until the end of December 2001 when it was incorporated as a separate company, along with other state-owned divisions (CE Craiova, Electrocentrale Bucuresti, CE Rovinari, etc.). The sole shareholder of Electrocentrale Deva was Termoelectrica until 27 March 2012.

2.2. Other market information

- (16) Electricity generation in Romania is dominated by state-controlled companies, which together hold a market share of approximately 90 % ⁽¹⁰⁾. Total net electricity generation in Romania amounted to 60,38 TWh in 2011. The generation mix consists mainly of hydro (approximately 28 % of total generation), nuclear (approximately 18 %) and fossil-fuel-based (approximately 51 %) power plants ⁽¹¹⁾.
- (17) The Romanian market is interconnected with, notably, Bulgaria, with 400 MW net transfer capacity in 2009-2010 and Hungary, with 500-800 MW net transfer capacity in 2009-2010. The net capacity of interconnection with these Member States was not fully used in that period, due to congestion. During the period 2009-2011, the flux of imports and exports of electricity into and from Romania were as follows: (i) in 2009, imports of electricity amounted to 676 GWh, while exports amounted to 3 154 GWh (approximately 4,8 % of the all the electricity produced in Romania); (ii) in 2010, imports of electricity amounted to 943 GWh, while exports amounted to 3 854 GWh (approximately 3,4 % of the all the electricity produced in Romania); (iii) in 2011, imports of electricity amounted to 1 036 GWh, while exports amounted to 2 942 GWh (approximately 2,8 % of all the electricity produced in Romania).

2.3. The contracts

- (18) The contract with Termoelectrica was concluded on 30 July 2008 ⁽¹²⁾, while the contract with Electrocentrale Deva was concluded on 9 June 2009 (collectively referred to in this Decision as 'the Contracts'), for a duration of 10 years. The Contracts were terminated by Hidroelectrica's judicial administrator Euro-Insol during Hidroelectrica's insolvency procedure, at the end of August 2012 ⁽¹³⁾.
- (19) By notes to the Romanian Ministry of Economy and Trade, Termoelectrica and Electrocentrale Deva requested approval from that Ministry for the signature of the Contracts, as set out in recitals 20 to 22:
- (20) On 15 July 2008 by note number 7323, Termoelectrica stated the following: '(...) Termoelectrica SA has analysed several methods of solving this urgent problem and the only variant with any prospect of rapid success and that does not require EU approval is the following: Signature of a long-term (10 year) contract between Termoelectrica SA and Hidroelectrica SA for the purchase of the electricity produced by generation unit no 4 of CET Paroşeni. The contract price will be the price for CET Paroşeni established by ANRE on the regulated market, based on the justified costs of Termoelectrica SA; and Signature with Compania Naţională a Huilei Petroşani of a long-term (approx. 10 year) contract to acquire coal. For Termoelectrica SA (SE Paroşeni) and even for the Compania Naţională a Huilei ⁽¹⁴⁾, this (...) would ensure the long-term future of the two companies located in the Jiu Valley.'
- (21) On 27 May 2009, by note number 10855 Electrocentrale Deva, requested the following: '(...) In order to prevent the company from going bankrupt and to create the conditions necessary for the financing and implementation of the investments needed to continue running, we ask that you give your approval for the negotiation and conclusion of a 10-year contract between Electrocentrale Deva and Hidroelectrica Bucureşti for the sale to Hidroelectrica of a quantity of electricity corresponding to an average power of 150 MW in addition to the quantity delivered on the regulated market and at a price approved by ANRE that will cover the justified production costs.'
- (22) The two Notes were approved by representatives of the Romanian Ministry of Economy and Trade, at the level of Minister and/or State Secretary. The Contracts state that they were concluded on the basis of those notes.

⁽¹⁰⁾ Energy Regulator, *Annual Report 2010*, p. 12

⁽¹¹⁾ Energy Regulator, *Annual Report 2011*, p. 22.

⁽¹²⁾ Deliveries started in 2009.

⁽¹³⁾ The contract with Termoelectrica was terminated on 29 August 2012, while the contract with Electrocentrale Deva was terminated on 30 August 2012.

⁽¹⁴⁾ On 1 August 2013, Societatea Naţională a Huilei, which resulted from the spin-off from Compania Nationala a Huilei allegedly competitive mines, was also incorporated into Complexul Energetic Hunedoara.

- (23) In the contract with Termoelectrica, neither Hidroelectrica nor Termoelectrica had the possibility to terminate the contract. In the contract with Electrocentrale Deva, both Hidroelectrica and Electrocentrale Deva had the possibility to terminate the contract in the following circumstances: (i) loss by the other party of its quality of producer, within five working days from the date when this quality was lost; (ii) refusal of either of the parties to conclude a new contract or to amend the existing contract, in the event of a change in the economic and technical circumstances existing at the date of its conclusion; (iii) in other cases stipulated by any applicable laws or regulations ⁽¹⁵⁾.
- (24) The contract with Termoelectrica had the following particulars: (i) the contractual price would be established annually by the Romanian Energy Regulatory Authority ('ANRE') based on the costs of production justified by Termoelectrica; (ii) Hidroelectrica would buy all the electricity produced by Paroseni Plant each month ⁽¹⁶⁾. From the date of its signature and until its termination by the judicial administrator, the contract was modified eight times (seven addendums consisted of price adjustments) ⁽¹⁷⁾.
- (25) The contract with Electrocentrale Deva had the following particulars: (i) the contractual price would be established by ANRE based on the costs of production justified by Electrocentrale Deva; (ii) if ANRE no longer regulated electricity prices, the price was to be negotiated by the parties and was not to be lower than the contractual price in the previous year; (iii) the contractual parties would not charge any penalty or any other charge in the event if the seller failed to supply the contractual quantity of electricity or the buyer failed to pay the contractual price ⁽¹⁸⁾. From the date of its signature and until its termination by the judicial administrator, the contract was modified five times ⁽¹⁹⁾ (all changes consisted of price adjustments).
- (26) Despite clear provisions in both Contracts, according to which the contractual price was to be established by ANRE, as a rule, in practice the price adjustments were made upon prior approval of the Ministry of Economy and Trade, with three exceptions ⁽²⁰⁾.
- (27) For instance, through note (date illegible), Hidroelectrica sought approval from the Ministry of the Economy and Trade for the adjustment of the prices for the period 1 August 2009 — 31 December 2009, due to 'increases of the production costs'. In the same note, it is clearly mentioned that the 'purpose of the conclusion and the performance of the two contracts is to sell in the competitive market an amount of hard coal based electricity mixed with hydropower, and also to provide the two thermal power producers with a contract accepted by the financial institutions as a mortgage, in order to obtain long-term loans necessary to make the investments required to maintain the electricity generation licences'.
- (28) Similarly, through another note, Hidroelectrica sought approval from the Ministry of the Economy and Trade in order to maintain the 2009 price 230 RON/MWh for the period from 1 January 2010 until 31 March 2010 in order 'to obtain the revenue required to continue the on-going restructuring of the producer of hard coal for electricity generation and the producer of thermal power (...)'.
- (29) Moreover, after conclusion of the Contracts, through note number 6547 of 2011, Hidroelectrica sought approval from the Minister of the Economy and Trade to adjust the prices for year 2011 in order to allow Termoelectrica and Electrocentrale Deva: 'to obtain long-term loans necessary to make the investments required to maintain electricity generation licences and also to obtain the revenues needed for the restructuring of the producer Compania Nationala a Huilei'.

⁽¹⁵⁾ Article 25 of the Contract with Electrocentrale Deva

⁽¹⁶⁾ Group 4 CET Paroseni — the estimative contractual quantity for the entire contractual duration is of 940 GWh per year).

⁽¹⁷⁾ Addendum 1 from 22 March 2009 sets the price at 225 RON/MWh for year 2009; Addendum 2 unknown date sets the price at 225 RON/MWh for year 2009 and stipulates that the price from 2010 onwards for the entire contractual duration shall be established by ANRE; Addendum 3 from 7 August 2009 sets the price at 230 RON/MWh for 2009; Addendum 4 from 19 February 2010 sets the price at 230 RON/MWh for the period 1 January-31 March 2010; Addendum 5 from 30 March 2010 sets the price at 230 RON/MWh for the period 1 April-31 December 2010; Addendum 6 from 31 December 2010 sets the same price as in Addendum No 5 (at 230 RON/MWh until 31 January 2011); Addendum 7 from 1 February 2011 sets the price at 235 RON/MWh for the period 1 February-31 December 2011; Addendum No 8 from 22 September 2011 replaces the initial Supplier Termoelectrica in the original contract by SC de Producere a Energiei Electrice si Termice Electrocentrale Paroseni SA.

⁽¹⁸⁾ See Article 14 of the contract with Electrocentrale Deva.

⁽¹⁹⁾ Initial contractual price is 220,56 RON/MWh. Addendum 1 from 1 August 2009 sets the price at 234 RON/MWh for year 2009; Addendum 2 from 2 January 2010 sets the price at 225,7 RON/MWh for the period 1 January-30 June 2010.; Addendum 3 from 11 February 2010 sets the price at 234 RON/MWh for the period 1 January-31 March 2010; Addendum 4 from 1 April 2010 sets the price at 234 RON/MWh for the period 1 April-31 December 2010; Addendum 5 from 1 February 2011 sets the price at 234 RON/MWh for the period 1 February-31 December 2011.

⁽²⁰⁾ For Termoelectrica: Addendum No 1, dated 20 March 2009, stipulated the price for 2009 based on ANRE Decision; Addendum No 2 dated 1 June 2009 sets the price for 2009 and specifies that from 2010 onwards the contractual price shall be set by ANRE for Paroseni Plant.

For Electrocentrale Deva: Through Addendum No 2, dated 7 January 2009, the price was adjusted based on ANRE Decision.

- (30) All those notes also clearly state that Hidroelectrica was seeking approval from the Ministry of Economy and Trade 'to authorise the executive management of the three electricity producers to sign the addendums concerning the new prices'.
- (31) In addition, all addendums to the Contracts relating to price adjustments refer to internal notes issued by Hidroelectrica and approved either by the Minister of the Economy and Trade or by the State Secretary in the Ministry of Economy and Trade with the three exceptions mentioned in recital 26, based on which such price adjustments were approved ⁽²¹⁾.
- (32) The quantities of electricity purchased and average prices paid under the Contracts between 2009 and 2011 are as follows ⁽²²⁾:

	2009	2010	2011
Electrocentrale DEVA			
Quantity (GWH)	499,8	308,6	146,4
Purchase price (RON/MWh)	230,2	234,0	234,0
	2009	2010	2011
Termoelectrica			
Quantity (GWH)	900,7	804,6	648,9
Purchase price (RON/MWh)	227,4	230,0	234,4

2.4. The Romanian electricity market

- (33) Electricity trading in Romania mainly takes place on two markets: (i) the Regulated Electricity Market on which electricity is traded based on regulated tariffs and conditions; and (ii) the Competitive Electricity Market on which electricity is traded freely, including through two main types of contracts: relatively standard bilateral contracts traded on the centralised market and freely negotiated bilateral contracts, the so-called market for directly negotiated contracts.

2.4.1. The Regulated Electricity Market

- (34) The transactions on the Regulated Electricity Market are implemented through sale-purchase framework agreements concluded between the electricity generators/producers active on the regulated market, including Hidroelectrica, and the 'suppliers of last resort', which ensure distribution of electricity to the end-user. The eligible customers buy electricity at regulated tariffs. On the regulated market, ANRE sets the prices and volumes to be delivered by the electricity generators/producers ex ante every year. By 2009-2010, when the contracts under examination started to be implemented, 56-61 % of electricity consumed in Romania was traded on the regulated market.

⁽²¹⁾ For Termoelectrica: Addendum No 3 dated 1 August 2009 refers to the Note No II/11096/31.7.2009 approved by the State Secretary in the Ministry of Economy and Trade sets the price for the year 2009; Addendum No 4 dated 11 February 2010 refers to the Note No II/11672/11.2.2010 approved by the Minister of Economy and Trade, sets the price for the period 1 January-31 March 2010; Addendum No 5 dated 1 April 2010 refers to the Note No II/11877/29.3.2010 approved by the Minister of Economy and Trade, sets the price for the period 1 April-31 December 2010; Addendum No 6 dated 1 January 2011 refers to the same Note No II/11877/29.3.2010 approved by the Minister of Economy and Trade and maintains the price for the period 1 January-31 December 2011; Addendum No 7 dated 1 February 2011 refers to the Note No 6547/21.1.2011 approved by the Minister of Economy and Trade and sets the price for the period 1 February-31 December 2011.

For Electrocentrale Deva: Addendum No 1 dated 1 August 2009 refers to the Note No II/11096/31.7.2009 approved by the State Secretary in the Ministry of Economy and Trade sets the price for the year 2009; Addendum No 3 dated 11 February 2010 refers to the Note No II/11674/11.2.2010 approved by the Minister of Economy and Trade sets the price for the period 1 January-31 March 2010; Addendum No 4 dated 1 April 2010 refers to the Note No II/11878/29.3.2010 approved by the Minister of Economy and Trade sets the price for the period 1 April-31 December 2010; Addendum No 5 dated 1 February 2011 refers to the Note No 6547/21.1.2011 approved by the Minister of Economy and Trade and sets the price for the period 1 February-31 December 2011.

⁽²²⁾ According to Romania's submission of information dated 11 September 2013 and 20 February 2015, electricity deliveries ceased at the end of 2011 under the Contracts. Thus, no deliveries were made in 2012.

2.4.2. *The Competitive Electricity Market*

- (35) Since 2005, the Competitive Electricity Market in Romania has been divided into five specific markets: (i) the centralised markets administrated by OPCOM; (ii) the market for directly negotiated contracts; (iii) the ancillary services market; (iv) the balancing market; and (v) the export market.
- (36) The centralised markets are administrated by OPCOM. OPCOM was set up in 2001 pursuant to Government Decision No 627/2000, as a joint stock company and 100 % owned subsidiary of Transelectrica, the transmission system operator. By virtue of the licence granted by ANRE, OPCOM was designated as platform for trading of electricity in Romania at wholesale level. OPCOM is the only power exchange in Romania, providing a venue for trade of electricity and having a facilitator role.
- (37) There are five types of market segments on OPCOM: (i) the day-ahead market; (ii) intra-day market ⁽²³⁾, (iii) centralised bilateral markets that is to say, centralised market for bilateral contracts through public auction 'OPCOM-PCCB' and centralised market for bilateral contracts through continuous negotiation — CMBC-CN; (iv) the centralised market for green certificates; and (v) the trading platform for greenhouse gases emissions certificates. Transactions on OPCOM started only in 2005 and only on the day-ahead and OPCOM-PCCB market segments.
- (38) The Contracts were concluded on the market for directly negotiated contracts in Romania, which is the market segment relevant for the assessment in this case.

2.4.3. *OPCOM-PCCB*

- (39) On the OPCOM-PCCB market segment, OPCOM organises public auctions for the sale and purchase of electricity. Sale/purchase offers by each producer/supplier/consumer are submitted to the market operator. Each offer must specify the following: (i) either the minimum price at which the party will sell electricity or the maximum price at which it will buy electricity; and (ii) the framework agreement under which the party making the offer is planning to supply/purchase electricity. Sale and purchase offers specify supply conditions including the amount of electricity, duration (minimum one month and up to one year), as well as envisaged framework agreement. The price follows the principle of the best responding offer price. By 2009 and 2010, when the Contracts started to be implemented, sales on the OPCOM-PCCB market amounted to less than 7 % of electricity produced in Romania.
- (40) After publication of the Opening Decision, the Commission adopted a Decision pursuant to Article 102 of the Treaty finding that the power exchange managed by OPCOM constitutes a relevant service market, on which OPCOM is a dominant player, separate from the directly negotiated contracts market ⁽²⁴⁾.

2.4.4. *The market for directly negotiated contracts*

- (41) The market for directly negotiated contracts is a free market which is not regulated by ANRE. Contracting parties negotiate quantities, prices and other contractual clauses bilaterally. This provides the parties with a high degree of flexibility in negotiating the terms and conditions of the sale contracts. The terms and conditions of contracts are confidential.

2.4.5. *Short description of the directly negotiated contracts contemporaneous with the Contracts*

- (42) By letter dated 21 February 2014, the Commission requested the Romanian Authorities to provide it with information about bi-laterally negotiated contracts concluded on the Romanian market, other than the Contracts, with comparable durations and quantities of electricity supply. The Commission's request covered all Romanian electricity suppliers, whether State or privately owned. On 14 May 2014, the Romanian Authorities provided the requested key elements of all contracts signed by electricity buyers with an annual electricity consumption of more than 150 GWh for each of the years from 2009 to 2011 ⁽²⁵⁾.

⁽²³⁾ Administrated by OPCOM only as of July 2011.

⁽²⁴⁾ Commission Decision of 5 March 2014, in application of Article 102 of the Treaty imposing fines pursuant to Article 7 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1) in case AT.39 984 'Romanian Power Exchange/OPCOM'.

⁽²⁵⁾ The dataset included the following information: the identity of the seller and the buyer, the type of contract, date of entry into force, date of expiration, as well as the quantity, profile of supply and the weighted average price for each year from 2009 to 2011.

- (43) The Romanian Authorities underlined that all the contracts concluded on the retail market under competitive conditions by non-household consumers in the relevant period of time were subject to the ad-hoc data collection requested by the Commission. In particular, 75 sets of annual data from contracts in force for one or more years during the period 2009-2011 of relevance for this case were submitted by the Romanian Authorities. The Commission understands that the Romanian Authorities submitted the relevant data regarding all the contracts fulfilling the criteria required by the Commission (comparable durations and quantities) for the relevant period 2009-2011. The Contracts accounted for approximately 17 % of the total volume of electricity subject to directly negotiated contracts concluded during the period 2009-2011 and provided by Romania.
- (44) The data submitted by the Romanian Authorities reveals the level of the highest prices paid on the free market for retail sales of electricity during the period 2009-2011, as follows: for 2009: 266,5 RON/MWh; for 2010: 229,96 RON/MWh and for 2011: 232,33 RON/MWh. However, each of those contracts taken on its own amounted to lower quantities than each of the Contracts.
- (45) An examination of the information regarding the contracts entered into by suppliers other than Termoelectrica and Electrocentrale Deva shows that, in 2009, when the Contracts started to be implemented, no other supplier concluded a supply contract which was sufficiently similar to these two Contracts as regards to quantities (approximately 900 GWh and 500 GWh, each) and duration (10 years). A totally meaningful comparison with the Contracts is only possible for other contracts for the same quantities, duration and/or date of entry into force. Since no such fully comparable contracts existed, an econometric analysis accounting for contract differences is required, the rationale and results of which are portrayed in recitals 77-80 and the Annex.

2.4.6. *Hidroelectrică contracts for sale of electricity*

- (46) During the period 2009-2011, Hidroelectrică was also selling around 60 % of its electricity to other private buyers through long term wholesale and retail contracts, which are under investigation by the Commission ⁽²⁶⁾. The selling prices of Hidroelectrică in those contracts were more than 40 % lower than the wholesale purchase prices paid by Hidroelectrică to Termoelectrică and Electrocentrale Deva on average. By way of illustration, the highest selling price for electricity under such contracts was 159,8 RON/MWh in 2009 and 168 RON/MWh in 2010.
- (47) Hidroelectrică also concluded sale of electricity contracts with other parties ⁽²⁷⁾, for lower quantities. The highest selling price for electricity under such retail contracts for the relevant period was 185 RON/MWh in 2009, 190 RON/MWh in 2010 and 160 RON/MWh in 2011, that is, around 13 % lower on average than the wholesale purchase prices paid by Hidroelectrică to Termoelectrică and Electrocentrale Deva.

2.5. **Developments after 2011 and interlinks between Termoelectrică, Electrocentrale Deva, Electrocentrale Paroseni and CEH**

- (48) Termoelectrică's Paroseni Plant, which actually supplied the quantity of electricity purchased under the Contract with Termoelectrică, became a separate entity and was incorporated with the Romanian Trade Registry under the name Electrocentrale Paroseni, on 11 July 2011 ⁽²⁸⁾. On 22 September 2011, Electrocentrale Paroseni took over all the rights and obligations of Termoelectrică under its Contract with Hidroelectrică. Electrocentrale Paroseni supplied electricity to Hidroelectrică in September and October 2011, although the quantities were negligible.
- (49) At the date of ceasing of supply under the Contracts, Termoelectrică was still the sole shareholder of both Electrocentrale Deva and Electrocentrale Paroseni.
- (50) Through Emergency Ordinance No 84/2011 ⁽²⁹⁾, a debt to equity swap was implemented between Termoelectrică and the State. Thus, Termoelectrică transferred its shares in different companies (Electrocentrale Deva, Electrocentrale Paroseni and Electrocentrale București) to the State, in payment of its debts to the State. This transfer of the shares was made based on the basis of evaluation reports, made by an independent evaluator.

⁽²⁶⁾ Commission Decisions of 25 April 2012 C(2012) 2516 final concerning the case SA.33623 (OJ C 189, 29.6.2012, p. 3), C(2012) 2517 final concerning the case SA.33624 (OJ C 268, 5.9.2012, p. 21), C(2012) 2542 final concerning the case SA.33451 (OJ C 395, 20.12.2012, p. 5) and C(2012) 2556 final concerning the case SA.33581 (OJ C 395, 20.12.2012, p. 34).

⁽²⁷⁾ Romania's submission of information dated 3 September 2014.

⁽²⁸⁾ Romania's submission of information dated 20 February 2015.

⁽²⁹⁾ Published in the Official Gazette No 700 from 4 October 2011.

- (56) The Commission reached the preliminary conclusion that the electricity tariffs under examination were selective in nature, since they applied only to certain undertakings.
- (57) Furthermore, the Commission reached the preliminary conclusion that the preferential electricity tariffs could involve a transfer of State resources which would be imputable to the State since Hidroelectrica was controlled by the Romanian State (in 80,06 % of its share capital was owned by Romania). In addition, the Commission referred to the Ministerial Order No 445/2009, through which the representatives of the Ministry of Economy, Trade and Business Environment, members of the Administration Boards of the state-owned electricity companies, were obliged to ensure that as of 31 March 2010 electricity destined for the wholesale market should be traded exclusively on OPCOM.
- (58) Consequently, the representatives of the Ministry of Economy and Trade had control, or at least influence, over state-owned companies' contracting practice, including Hidroelectrica's contracting practice. This could have an effect on intra-Union trade, within the meaning of Article 107(1) of the Treaty.
- (59) The Commission preliminary conclusion was that if the Contracts entailed State aid then they would have been considered as aid granted in breach of the notification and stand-still obligations established in Article 108(3) of the Treaty.
- (60) In light of the above, the Commission reached the preliminary conclusion that the preferential electricity tariffs could potentially involve State aid and invited Romania to provide sufficient information to alleviate its doubts.

4. COMMENTS FROM ROMANIA

- (61) The Romanian Authorities abstained from providing any observations on whether or not the Contracts entailed State aid. On 24 March 2013, Romania provided observations on third parties' comments regarding other cases involving Hidroelectrica, which were also covered by the Commission's investigation ⁽³¹⁾. The Romanian Authorities again abstained from providing any views.
- (62) Within the formal investigation procedure, the Romanian Authorities were requested to explain the economic rationale of concluding the Contracts. Romania did not provide any justification in this respect. Romania only argued that the Contracts allowed Hidroelectrica to better quantify a maximum value of the costs incurred when purchasing electricity, providing it protection against the volatility of the prices on the spot market.
- (63) Moreover, the Romanian Authorities also clarified that the Contracts were not agreements of assistance as defined in Hidroelectrica's Judicial Administrator Report regarding the causes of Hidroelectrica's insolvency ⁽³²⁾. According to that report, agreements of assistance are those contracts concluded by Hidroelectrica in order to cover discontinuities in its production. The purpose of that type of contract is to prevent the payment of any damages triggered by non-respect of a contractual commitment to supply.
- (64) The Romanian Authorities clarified ⁽³³⁾ why in practice, with the exception of the three instances mentioned in recital 28, ANRE did not establish the contractual prices as provided under the Contracts. It was explained that the Contracts were not concluded on the regulated market and therefore the price was not adjusted by ANRE. The Romanian Authorities also explained that: (i) initially ANRE provided the Ministry of Economy and Trade with a minimum and maximum threshold based on which the prices were established; (ii) such thresholds were established on the basis of clear technical parameters specific to thermo-electricity producers; (iii) ANRE subsequently stopped this practice and the Ministry of Economy and Trade took it over, on the basis of similar principles to those used by ANRE.
- (65) As regards the Contract with Termoelectrica, the Romanian Authorities confirmed that Hidroelectrica was the sole electricity consumer for Termoelectrica's Paroseni Plant. In addition, it was clarified that Hidroelectrica did not purchase the entire electricity quantity as initially estimated under the Contract, but instead it only purchased the quantity needed in order to cover any fluctuations in production, due to the unpredictable evolution of hydro conditions.

⁽³¹⁾ See footnote 27.

⁽³²⁾ Available in Romanian only at <http://www.euroinsol.eu/uploads/Raport%2059%20Hidro%20v11.pdf> — p. 213.

⁽³³⁾ Romania's submission of information dated 11 September 2013.

- (66) As regards the Contract with Electrocentrale Deva, the Romanian Authorities clarified that during the relevant period 2009-2011, Electrocentrale Deva also sold electricity to clients other than Hidroelectrica. It was thus shown that in the years 2010 and 2011, Electrocentrale Deva sold large quantities of electricity (comparable or even higher quantities) to customers other than Hidroelectrica for comparable prices ⁽³⁴⁾.

5. COMMENTS FROM THIRD PARTIES

- (67) In their preliminary observations on the Opening Decision, both Termoelectrica and Electrocentrale Deva claimed that neither the initial contractual prices nor their subsequent changes conferred any advantage on them, arguing that such prices were established by ANRE and calculated on the basis of their production costs.
- (68) In addition, Romania argued that the subsequent changes in the contractual prices were determined by the increase in the price of oil ⁽³⁵⁾ or coal ⁽³⁶⁾. Electrocentrale Deva also claimed that the price of electricity was approximately 70 % influenced by the price of coal.

6. ASSESSMENT

- (69) In this decision, the Commission assesses whether Termoelectrica and Electrocentrale Deva received State aid within the meaning of Article 107(1) of the Treaty, see recital 101, and if so, whether such aid might be compatible with the internal market, see recitals 102 to 105.

6.1. Existence of State aid

- (70) Article 107(1) of the Treaty provides that 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 and affects trade among Member States, is incompatible with the internal market.
- (71) The conditions laid down in Article 107(1) of the Treaty are cumulative and thus for a measure to be qualified as State aid all the conditions must be fulfilled simultaneously.

6.1.1. Assessment of the economic advantage

- (72) For the purpose of Article 107(1) of the Treaty, in order to determine whether an economic advantage not otherwise available at market conditions was granted to Termoelectrica and Electrocentrale Deva as a result of the conclusion and implementation of the Contracts, it is necessary to determine what prices at market conditions were in Romania in the period between 2009 and 2011, for similar transactions.
- (73) In that respect, contrary to the preliminary view held in the Opening Decision, the investigation has shown that the terms and durations of electricity supply contracts concluded in OPCOM-PCCB are not sufficiently similar to those of the Contracts, notably as to duration and bespoke, bi-laterally negotiated conditions (recitals 18, 23-25, 39 and 40). In well-functioning electricity markets with adequate liquidity and forward instruments allowing predictability of prices for future deliveries, spot prices are a good indication or proxy of market prices, capable of being used as benchmarks to assess price levels in specific contracts. However, in this case, given the still relatively high proportion of demand being served at regulated tariffs in Romania in 2009, the limited liquidity of OPCOM trading platforms in the period 2009-2011, and the fact that the power exchanges managed by OPCOM were designated as a relevant antitrust market subject to abuse of dominant position (recitals 34-40), it is appropriate to rely on suitable benchmarks other than prices in OPCOM PCCB for assessing the possible presence of an economic advantage over market prices.

⁽³⁴⁾ See Annex 1 to Romania's submission of information dated 11 September 2013.

⁽³⁵⁾ For the Contract with Termoelectrica.

⁽³⁶⁾ For the Contract with Electrocentrale Deva.

- (74) However, in that respect, the similarity of prices with those paid by buyers other than Hidroelectrica or the cost-based justification put forward by Romania and the beneficiaries (recitals 66-68), are not valid indication that the contract conditions and prices at issue were in line with market conditions.
- (75) As a matter of fact, the prices paid by Hidroelectrica to Electrocentrale Deva between 2009 and 2011 were similar to prices paid by other electricity distribution companies, State and privately owned, which were purchasing electricity from Electrocentrale Deva. However, those purchases were taking place between Electrocentrale Deva and electricity distribution companies, which were selling electricity to households and small businesses on the retail market at regulated prices and conditions (recital 34). Hidroelectrica was buying electricity on the wholesale market for retail resale on the competitive market to industrial consumers and/or traders, on which prices and quantities were not regulated and buyers could refrain from buying from expensive sellers, like Termoelectrica and Electrocentrale Deva and chose the cheapest supplier, independent of its production costs. Therefore, even if prices were similar and assuming that sales of Termoelectrica and Electrocentrale Deva on the regulated market allowed for cost-recovery, the prices paid by the electricity distribution companies to Termoelectrica and Electrocentrale Deva are not comparable with and cannot constitute a valid benchmark for the prices paid by Hidroelectrica on the competitive free market.
- (76) Likewise, the cost justification adduced by Termoelectrica and Electrocentrale Deva and the Romanian authorities only explains why the prices at which Termoelectrica and Electrocentrale Deva were capable of selling without loss were high. This justification does not establish that these prices were in line with market prices determined under competitive conditions such as those under which Hidroelectrica should have concluded and implemented the Contracts, if these Contracts were to be deemed to entail no State aid.
- (77) For the purposes of establishing whether the contractual prices were in line with market conditions in Romania, it is appropriate to compare them with the price conditions prevailing for other bi-laterally negotiated contracts contemporaneous with the Contracts on the free market. The Commission used the Dataset provided by the Romanian authorities, considering it the best available source of evidence to reflect the market conditions in Romania (recitals 42-45). As indicated in recital 45, no long-term contract concluded or in force in 2009 replicates the characteristics of the Contracts. Therefore, the Commission carried out an econometric analysis in order to estimate a price benchmark based on electricity contracts contemporaneous with the Contracts throughout the relevant period. A detailed technical description of the econometric analysis and its results is provided in the Annex.
- (78) In the absence of a definite reference to establish the 'market conditions', in order to check whether the Contracts had prices above market level, a benchmark of market prices was estimated as a proxy, under conservative assumptions, namely, by accounting for important deviations upwards from the estimated market price. Based on this conservative approach, the Commission performed a comparison of the prices of the Contracts against the benchmark market price, yearly, between 2009 and 2011. The comparison was made yearly because the selling prices under the Contracts were increased every year.
- (79) The analysis shows that, based on the benchmark prices and under conservative assumptions, the prices charged by Termoelectrica to Hydroelectric were above market prices. If due account is taken of the fact that the comparison of transactions at wholesale level for the Contracts is carried out with contracts at the retail level, by adding a 5 % retail margin charged on average by traders on the Romanian market, the difference with market prices is: 18,8 RON/MWh in 2010 and 19,8 RON/MWh in 2011 for Termoelectrica and 17,5 RON/MWh in 2010 and 13,9 RON/MWh in 2011.
- (80) The econometric analysis therefore provides a first indication that the Contracts provided Termoelectrica and Electrocentrale Deva with an economic advantage over market conditions. However, the mere fact that prices under the Contracts were assessed to be above benchmark prices of similar contracts is not sufficient to establish that these contracts would not have been entered into and maintained in force by a market operator acting in lieu of Hidroelectrica. Objective reasons may still mean that high price levels alone cannot be deemed to afford an economic advantage above market conditions to electricity sellers. It is therefore necessary that additional evidence of prices above market conditions corroborates the robustness of the results of the econometric analysis.

- (81) In that respect, it is appropriate to establish whether Hidroelectrica behaved in a way comparable to that of a private economy operator in a similar situation ('the market economy operator test'/'MEOP') ⁽³⁷⁾. The Commission assessed therefore whether a private operator placed in a similar situation would have behaved in the same way as Hidroelectrica when entering into and maintaining the Contracts. In this context, the following circumstances described below in recitals 82-85 and concerning the conclusion and implementation of the Contracts are relevant.
- (82) First, at the date of conclusion of the Contracts other cheaper sources of electricity were available to Hidroelectrica on the market; for example: in 2008-2009, Nuclearelectrica offered electricity for 153 RON/MWh compared to 227 RON/MWh for Termoelectrica and 230 RON/MWh for Electrocentrale Deva ⁽³⁸⁾.
- (83) Second, Hidroelectrica could only sell the electricity purchased from Termoelectrica and Electrocentrale Deva to third parties at a loss. As shown in recitals 46 and 47, Hidroelectrica's retail selling prices on the free market were significantly lower than these wholesale purchase prices and the highest price at which Hidroelectrica resold electricity on the directly negotiated contracts market was 190 RON/MWh, in 2010, compared to a purchase price of 230 RON/MWh for Termoelectrica and 234 RON/MWh for Electrocentrale Deva. It follows that, based on those prices, every single MWh purchased from Termoelectrica and Electrocentrale Deva was resold by Hidroelectrica at loss.
- (84) In that respect, the investigation did not provide any explanation why Hidroelectrica agreed to purchase the entire output of Termoelectrica's Paroseni power plant (recital 24). A commitment to buy whatever output a power plant produces on 10-year long-term basis is a strong indication that Hidroelectrica did not need the contracts to honour its own supply contract obligations. This is furthermore confirmed by Romania (recital 63). On the contrary, the need to support the expensive and uncompetitive operation of the two companies and the coal mines which supplied them was put forward by the company managers of Termoelectrica (recital 20) and Electrocentrale Deva (recital 21) to the responsible Minister as the reason why Hidroelectrica should enter into the Contracts.
- (85) However, when entering into commercial transactions, if public undertakings take into account considerations of support to ailing companies or sectors for social or economic policy reasons which are extraneous to their commercial interests and enter into such transactions under conditions which a normal market operator would not accept, the conditions accepted, as to purchase prices by Hidroelectrica in this case, might entail an undue economic advantage for the other party or parties, thus fulfilling one of the conditions of application of Article 107(1) of the Treaty.
- (86) It follows that by entering into and maintaining the Contracts, Hidroelectrica did not behave as a market economy operator. Accordingly, this test also corroborates qualitatively the result of the econometric analysis indicating that the Contracts granted to Termoelectrica and Electrocentrale Deva an economic advantage not otherwise available under market conditions.
- (87) The data provided by the Romanian authorities did not cover long term contracts with exactly the same conditions as regards the quantity and duration as the Contracts. In the absence of a definite reference to establish the 'market conditions', the Commission therefore compared, on a yearly basis, the contract prices paid by Hidroelectrica with the highest prices applied in Romania between 2009 and 2011 in long-term retail contracts provided by Romania (see recitals 42 to 45).
- (88) This comparison relies on the conservative assumption that Termoelectrica and Electrocentrale Deva could have replaced their Contracts with Hidroelectrica by several contracts with other buyers on the market offering the highest prices and is very conservative: instead of taking as a market price the average, median or mode in comparable transactions, the market price is taken to be the most expensive price found in several, not fully comparable transactions. Given the lack of homogeneity of the transactions, and the existence of potential factors or anomalies that may contribute to explain the price level agreed in the highest-price transactions taken as a reference, this approach is favourable to the beneficiary, as it may potentially underestimate the advantage

⁽³⁷⁾ See, e.g., Case C-305/89 *Italy v Commission* ('Alfa Romeo') [1991] ECR I-1603, paragraphs 18 and 19; Case T-16/96 *Cityflyer Express v Commission* [1998] ECR II-757, paragraph 51; Joined Cases T-129/95, T-2/96 and T-97/96 *Neue Maxhütte Stahlwerke and Lech-Stahlwerke v Commission* [1999] ECR II-17, paragraph 104; Joined Cases T-268/08 and T-281/08 *Land Burgenland and Austria v Commission* [2012] ECR II-0000, paragraph 48.

⁽³⁸⁾ The report issued by Hidroelectrica's judicial administrator — <http://www.euroinsol.eu/uploads/Raport%2059%20Hidro%20v11.pdf> — available only in Romanian — p. 212.

received. The weighted average prices for the quantities of electricity effectively supplied to Hidroelectrica by Electrocentrale Deva and Termoelectrica between 2009 and 2011 (recital 32) were as follows:

	(in RON/MWh)		
	2009	2010	2011
A) Price Electrocentrale Deva	230,2	234,0	234,0
B) W.A. Market price	241,9	224,2	229,6
Difference A – B	< 0	9,8	4,4

	(in RON/MWh)		
	2009	2010	2011
A) Price Termoelectrica	227,4	230,0	234,4
B) W.A. Market price	229,0	213,4	220,1
Difference A – B	< 0	16,6	14,3

- (89) Compared under these conservative assumptions, the average prices paid by Hidroelectrica to Termoelectrica and Electrocentrale Deva still turn out to be above those highest prices in 2010 and 2011, thus corroborating the findings of the econometric analysis. The prices charged by Termoelectrica to Hidroelectrica were 16,6 RON/MWh above the highest prices in 2010 and 14,3 RON/MWh in 2011, whilst the prices charged by Electrocentrale Deva to Hidroelectrica were 9,8 RON/MWh above the highest prices in 2010 and 4,4 RON/MWh in 2011.
- (90) In view of the above, it can be concluded that the Contracts favoured Termoelectrica and Electrocentrale Deva by affording them an economic advantage not available under market conditions.
- (91) Therefore, the Commission concludes that Hidroelectrica did not act as a market economy operator would have done in the circumstances and conferred an undue economic advantage on Termoelectrica and Electrocentrale Deva.

6.1.2. State resources and imputability

- (92) In order to be considered aid in the sense of Article 107(1) of the Treaty, a measure must be granted directly or indirectly from State resources and it must be imputable to the State.
- (93) As shown in recital 11, Hidroelectrica is directly controlled by the Romanian State. It follows those resources foregone by Hidroelectrica amount to State resources foregone by Romania. The Romanian State also appoints Directors to its Board. Moreover, those Directors simultaneously exercised political responsibilities in the Ministry which controls the State's holding in Hidroelectrica.
- (94) According to settled case law, the ability of the State to control the entities involved in granting the measures does not justify automatically the presumption that the entities' actions are imputable to the State. The Court of Justice of the European Union has explained the notion of imputability to the State of decisions involving the funds of public undertakings in *Stardust Marine* judgement. The resources of a public undertaking are to be considered State resources and actions concerning them are considered to be imputable to the State if the State is capable, by exercising its dominant influence over such an undertaking, to direct the use of its resources ⁽³⁹⁾.

⁽³⁹⁾ Case C-482/99 *French Republic v Commission (Stardust Marine)* [2002] ECR I-4397.

- (95) The Court of Justice provided indicators for establishing imputability to the State which are: integration of the public undertaking into the structures of the public administration; the nature of its activities; the legal status of the undertaking; the intensity of the supervision exercised by the public authorities over the management of the undertaking or any other indicator showing an involvement by the public authorities in the adoption of a measure or the unlikelihood of their not being involved. Regard must also be had in this case to the compass of the Contracts, their content or the conditions which they contain.
- (96) It is therefore necessary to examine whether the Romanian Authorities must be regarded as having been involved, in one way or another, in concluding and maintaining the Contracts in force and in modifying the contract prices.
- (97) In this regard, the Ministry of Economy and Trade, was actively involved in the decision making process concerning the conclusion of the Contracts and the subsequent contractual price readjustments. In particular, Termoelectrica and Electrocentrale Deva received the approval of the Ministry of Economy and Trade to sign the Contracts with Hidroelectrica which *de facto* implies that it is the Romanian State which ultimately exercised the decisive influence over the latter (recitals 19-22). This is further confirmed by the fact that Hidroelectrica directly sought the approval of the Romanian Ministry of Economy and Trade for the price readjustments (recitals 26-31).
- (98) This direct evidence is corroborated by the loss-making nature of Hidroelectrica's purchases and the lack of economic rationale of committing to buy the entire output of Paroseni's power plant (recitals 84-85). The Contracts appear to be motivated by the delicate financial situation of the two other state-owned generators and social considerations about coal production (recitals 20-21). Ultimately, the three state-owned electricity generators, as well as the state-owned coal mines, were owned by and under the responsibility of the State from which Termoelectrica and Electrocentrale Deva sought a means to finance their current operations.
- (99) The above confirms the preliminary view expressed by the Commission in the Opening Decision that the Contracts and their execution were not rational and independent commercial decisions of Hidroelectrica but resulted from the exercise of dominant influence by the Romanian State.
- (100) Therefore, the Commission concludes that there is direct evidence showing that the conclusion of the Contracts and their implementation are imputable to the Romanian State. Furthermore, considering that the conclusion and the implementation of the Contracts involve a loss of resources of Hidroelectrica, which is a public undertaking, the Commission concludes that those measures are granted through States resources.

6.1.3. *Selectivity*

- (101) To be considered State aid, a measure must be specific or selective in that it favours only certain undertakings or the production of certain goods.
- (102) The Contracts were concluded with two specific suppliers, Termoelectrica and Electrocentrale Deva, individually granting them undue economic advantages. No other supplier of electricity to Hidroelectrica benefitted from similar conditions to those ones provided for in the Contracts. The economic advantages stemming from the excessively high contract prices are, therefore, selective.

6.1.4. *Distortion of competition and effect on trade*

- (103) When aid granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid. In particular, a distortion of competition within the meaning of Article 107(1) of the Treaty is assumed as soon as the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition ⁽⁴⁰⁾.
- (104) Termoelectrica and Electrocentrale Deva operate in a market for the sale of electricity which is open to competition (recitals 35-38). Any economic benefit provided to such undertakings might provide them with an advantage over other competitors not receiving such prices under market conditions. In the case at hand, the support was intended to favour the production of electricity based on coal, which could distort competition between producers of electricity. Furthermore, the Romanian market is now (and was at the time of the facts) interconnected with and exports electricity to other Member States (recital 17).

⁽⁴⁰⁾ Alzetta, paragraphs 141 to 147; Altmark Trans.

- (105) In the light of the above, the Commission concludes that the Contracts might distort competition and might have an effect on trade between Member States within the meaning of Article 107(1) of the Treaty.

6.1.5. *Conclusion on the existence of State aid*

- (106) On account of the arguments described above in recitals 72-105, the Commission concludes that both Contracts involve provision of State aid to Termoelectrica and Electrocentrale Deva within the meaning of Article 107(1) of the Treaty. Romania did not respect the stand-still obligation under Article 108(3) of the Treaty. The State aid is therefore unlawful.

6.2. **Compatibility of the aid**

- (107) Since the measure implemented by Romania for Termoelectrica and Electrocentrale Deva constitutes State aid within the meaning of Article 107(1) of the Treaty, its compatibility must be assessed in the light of the exceptions laid down in paragraphs 2 and 3 of that Article.
- (108) In this case, the aid provided the beneficiaries with current operating revenues, not specifically earmarked for any particular investment that would have been capable of improving production or distribution of electricity. The compatibility with the internal market of operating aid of this kind pursuant to Article 107(2) or (3) of the Treaty has to be restrictively assessed, under strict conditions. The recurrent and long-lasting operating aid involved during two years does not appear to be necessary, nor contribute to any clear objective of common interest of the Union. The proportionality of the aid is not established either. Furthermore and in any event, according to settled case-law of the Court of Justice, it is up to the Member State to invoke possible grounds of compatibility and to demonstrate that the conditions for such compatibility are met ⁽⁴¹⁾.
- (109) The Romanian authorities did not invoke any possible grounds on which the State aid could be considered compatible with the internal market of the State aid and the Commission has not identified any possible grounds for compatibility.
- (110) In the light of the above, the Commission considers the State aid channelled through the Contracts to be incompatible with the internal market.

6.3. **Recovery**

- (111) According to the Treaty and the Court's established case-law, the Commission is competent to decide that the Member State concerned must abolish or alter aid when it has found that it is incompatible with the internal market. ⁽⁴²⁾ The Court has also consistently held that the obligation on a Member State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation. ⁽⁴³⁾ In this context, the Court has established that this objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored ⁽⁴⁴⁾.
- (112) In line with the case-law, Article 14(1) of Council Regulation (EC) No 659/1999 ⁽⁴⁵⁾ stated that '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 beneficiary [...]'.
- (113) Thus, given that the State aid in question was not notified to the Commission, in violation of Article 108 of the Treaty and is, therefore, to be considered as unlawful and given that the aid is also incompatible with the internal market, the aid must be recovered in order to re-establish the situation that existed on the market prior to its granting. Recovery should cover the time from when the advantage accrued to the beneficiaries, that is to say when the aid was put at the disposal of the beneficiaries, until ceasing of deliveries end of 2011 ⁽⁴⁶⁾, and the sums to be recovered should bear interest until effective recovery.

⁽⁴¹⁾ Case C-364/90, *Italy v Commission*, [1993] ECR I-2097, paragraph 20.

⁽⁴²⁾ See Case C-70/72 *Commission v Germany* [1973] ECR 813, paragraph 13.

⁽⁴³⁾ See Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* [1994] ECR I-4103, paragraph 75.

⁽⁴⁴⁾ See Case C-75/97 *Belgium v Commission* [1999] ECR I-030671 paragraphs 64 and 65.

⁽⁴⁵⁾ 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).

⁽⁴⁶⁾ The electricity deliveries stopped before termination of the Contracts by Hidroelectrica's judicial administrator end of August 2012.

- (114) The recovery amount would be the difference between the annual average of the price at which Hidroelectrica purchased electricity from Termoelectrica and Electrocentrale Deva as set out in recital 32 and the highest prices applied on the market each year for the total quantities supplied by them. This difference is set out in recital 89. Based on price differences applicable on 1 January 2010 and 1 January 2011 throughout the annual period, for purposes of simplification, the resulting amounts to recover are RON 3 656 675 for Electrocentrale Deva and RON 22 619 821 for Termoelectrica. Alternatively, the Romanian authorities may estimate the amounts based on intra-year (e.g. monthly, bi-monthly) actual prices charged to Hidroelectrica
- (115) Interest shall be added to these amounts, whichever of the two methods to calculate them is used, based on the schedule of actual monthly deliveries of electricity to Hidroelectrica between 2009 and 2011, taking into account the difference with market prices referred to in recital 89.
- (116) It is furthermore appropriate to examine, in light of the facts of this case, whether the recovery obligation should be extended to or carried out from one or more legal entities other than Termoelectrica and Electrocentrale Deva, by virtue of legal succession or economic continuity with a different undertaking than Termoelectrica and Electrocentrale Deva with which there would be economic continuity, in case they would be unable to meet the recovery obligations. In that respect, the case-law from the EU Courts has identified several criteria which the Commission may take into account, combined or in isolation, in order to determine the economic continuity between two different undertakings ⁽⁴⁷⁾.

6.3.1. *Termoelectrica — economic continuity with CEH*

- (117) As described in recital 52, Termoelectrica is a company in liquidation. According to well-established case-law, the fact that a company is insolvent and cannot pay back the aid is not a reason to exempt it from recovery. In such cases, the restoration of the previous situation and the elimination of the distortion of competition may, in principle, be achieved by registration of the liability relating to the repayment of the aid in the schedule of liabilities ⁽⁴⁸⁾. Where the State authorities are unable to recover the full amount of aid, the registration of the liability can meet the recovery obligation only if the insolvency proceedings result the definitive cessation of the undertaking's activities ⁽⁴⁹⁾. However, where the undertaking which received the unlawful aid is insolvent and a company has been created to continue some of the activities of the insolvent undertaking, the pursuit of those activities may, where the aid concerned is not recovered in its entirety, prolong the distortion of competition brought about by the competitive advantage which that company enjoyed on the market as compared with its competitors. Accordingly, such a newly created company may, if it retains that advantage, be required to repay the aid in question ⁽⁵⁰⁾. This would for instance be the case if, before the liquidation of the beneficiary of the aid, the assets having benefited from the aid are transferred, as a going concern, to a daughter company created to continue the activity of the beneficiary (economic succession). Moreover, if the beneficiary undertaking is merged with another undertaking, transferring all its rights and obligation to the merged entity, the obligation to repay the aid is also transferred to the latter (legal succession).
- (118) In the present case, in the absence of recovery of the full amount of aid, which benefitted the activities of Termoelectrica, it is necessary to examine whether there would be economic continuity and/or legal continuity between Termoelectrica and other companies.
- (119) In respect of economic continuity, as set out in recitals (48 and 51), in September 2011 Termoelectrica created a subsidiary, Electrocentrale Paroseni, to which it transferred (within the same state-owned group) the power plant which actually delivered the purchased quantity of electricity under the Contract with Termoelectrica (recitals 48-65), including all the rights and obligations of Termoelectrica stemming from that Contract, and continued selling electricity to Hidroelectrica under this Contract until October 2011 (when it was merged in CEH). Therefore, Electrocentrale Paroseni took over and continued the activities benefiting of the aid from its mother company Termoelectrica. It should therefore be considered as the economic successor of Termoelectrica.

⁽⁴⁷⁾ T-123/09 *Ryanair v Commission*, EU:T2012:164, points 155-156, T-415/05, T-416/05 and T-423/05, *Hellenic Republic, Olimpiakes Aerogrammes AE and Olimpiaki Aeroporia AE v Commission*, EU:T:2010:386, point 135 and C-287/12 P, *Ryanair Ltd v Commission*, EU:C2013:395, points 101 to 107.

⁽⁴⁸⁾ Case 277/00 *SMI* [2004] ECR I-4355, paragraph 85; Case 52/84 *Commission v Belgium* [1986] ECR 89, para. 14; Case C-142/87 *Tubemeuse* [1990] ECR I-959, paragraphs 60-62.

⁽⁴⁹⁾ Case C-610/10 *Commission v Spain* ('Magesa') (ECLI:EU:C:2012:781), paragraph 104 and the case-law cited.

⁽⁵⁰⁾ Case C-610/10 *Commission v Spain* ('Magesa') paragraph 106.

- (120) In November 2012, Electrocentrale Paroseni was then merged with Electrocentrale Deva and Electrocentrale Paroseni in the newly created company CEH. Through that merger, CEH took over all the rights and obligations of Electrocentrale Paroseni, which disappeared as a distinct legal entity. It follows that there is legal continuity between Electrocentrale Paroseni, which took over the activities benefitting from the aid, and CEH, within which it was merged on 1 November 2012 and which took over all its rights and obligations.
- (121) The obligation of recovery of the aid granted to Termoelectrica should therefore be extended to CEH.

6.3.2. *Electrocentrale Deva — economic continuity with CEH*

- (122) As described in recital 51, Electrocentrale Deva, which fully benefitted from the aid as an independent legal entity, though controlled by Termoelectrica, does not exist as an independent entity anymore. However, there is legal continuity between Electrocentrale Deva as legal entity which benefitted of the aid and CEH, within which it was merged on 1 November 2012 and which took over all its rights and obligations.
- (123) Furthermore, several elements show the existence of economic continuity between Electrocentrale Deva and CEH, for example: (i) further to the merger between Electrocentrale Deva and Electrocentrale Paroseni, the newly created company CEH took over starting both companies from August 2012, along with their operational assets and employees; (ii) the newly created company CEH had electricity generation as its main economic activity in 2012, as did Electrocentrale Deva; (iii) both companies are fully state-owned companies: as shown under recital 50 at the date when the deliveries of electricity under the Contracts ceased, Termoelectrica, a fully state-owned enterprise, owned in turn 100 % of Electrocentrale Deva and Electrocentrale Paroseni; (iv) the newly created company CEH is also 100 % owned by the state.
- (124) In light of the above, the legal and economic continuity between, on the one hand, Electrocentrale Deva, Termoelectrica, via Electrocentrale Paroseni and, on the other hand, CEH is established. In that respect, the debt to equity swap based on an independent valuation of the transfer of shares, which preceded the merger of Electrocentrale Deva and Electrocentrale Paroseni within CEH (recital 50), does not interrupt the continuity between the three undertakings concerned. A share deal does not influence the identity of the beneficiary(ies) of the aid, nor the benefits retained from it and transferred irrespective of the identity of the shareholder which, furthermore, in this case happened to be ultimately the Romanian State before 2011 and after the merger with CEH. It follows that the recovery obligations vis-à-vis Electrocentrale Deva and Termoelectrica should be extended to CEH.

6.3.3. *Conclusion on the recovery*

- (125) The amount of aid (without interest) to be recovered should be, in principle, RON 3 656 675 for Electrocentrale Deva and RON 22 619 821 for Termoelectrica. In light of the legal and economic continuity established between Electrocentrale Deva, Termoelectrica and CEH, the obligation to recover from both beneficiaries should be extended to CEH.

7. CONCLUSION

- (126) The Contracts concluded by Hidroelectrica with Termoelectrica and Electrocentrale Deva contained in years 2010 and 2011 preferential electricity tariffs in favour of latter undertakings. They constituted State aid within the meaning of Article 107(1) of the Treaty. Romania unlawfully implemented that aid, in breach of Article 108(3) of the Treaty. The aid is incompatible with the internal market.

HAS ADOPTED THIS DECISION:

Article 1

The State aid amounting, in principle, to RON 3 656 675 for Electrocentrale Deva and RON 22 619 821 for Termoelectrica in the form of preferential electricity tariffs in favour of those undertakings, unlawfully granted by Romania in breach of Article 108(3) of the Treaty, is incompatible with the internal market.

Article 2

Romania shall recover the incompatible aid referred to in Article 1 from the beneficiaries. The obligation to recover the aid is extended to CE Hunedoara.

The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery.

The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ⁽⁵¹⁾.

Article 3

Recovery of the aid referred to in Article 1 shall be immediate and effective.

Romania shall ensure that this Decision is implemented within four months following the date of its notification.

Article 4

Within two months following notification of this Decision, Romania shall submit the following information:

- the total amount (principal and recovery interests) to be recovered from each beneficiary,
- a detailed description of the measures already taken and planned to comply with this Decision, including the proof that it registered the recovery order at an appropriate ranking in the liquidation process of Termoelectrica,
- if it is impossible for by Termoelectrica to fulfil the recovery order, the order made against Termoelectrica to dissolve the company and proof that Termoelectrica definitively exits the market,
- documents demonstrating that the beneficiaries have been ordered to repay the aid.

Romania 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 beneficiary.

Article 5

This Decision is addressed to Romania.

Done at Brussels, 20 April 2015.

For the Commission
Margrethe VESTAGER
Member of the Commission

⁽⁵¹⁾ 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, with further amendments.

ANNEX

ASSESSMENT OF THE ECONOMIC ADVANTAGE — ECONOMETRIC ANALYSIS

Rationale and description of the econometric analysis

The econometric analysis undertaken by the Commission aims at creating benchmark prices for the contracts under investigation, which would result from a regression analysis carried out on contracts in the dataset, which are not under investigation, by using features of these contracts. In a first step, the regression analysis allows constructing a benchmark price as a function of the contract characteristics of the dataset ('in-sample predictions'). In a second step, the results of the regression analysis are used to predict a benchmark price for the contracts investigated taking into account their contract characteristics ('out-of-sample predictions'). In the regression analysis, the variation in prices among the contracts in the dataset is explained using the following characteristics: quantity purchased and year dummies ⁽¹⁾.

The econometric analysis relies on the principle that there are a number of drivers of prices, such as quantities. It would be misleading to compare the prices across different contracts without considering these drivers. The rationale of this quantitative exercise is, therefore that, once some external factors are taken into account, the prices across different contracts become more comparable. In the absence of normalisation, only perfectly identical contracts could be meaningfully compared.

This empirical exercise does not aim at estimating a causal relationship between prices and some external factors. For example, estimating a causal relationship between some factors and the prices would require dealing with the risk of endogeneity, that is, the risk that a causal variable (e.g. the quantities) is itself influenced by the explained variable (e.g. the price), due to omitted variables or simultaneity bias. The purpose of the quantitative exercise is to 'normalise' the prices across different contracts to make them more comparable to each other. This normalisation is necessary in the absence of perfectly identical contracts and supply characteristics.

The regression analysis captures the main features of the bilateral contracts at stake:

- including the quantity variable in the regression captures that prices are in general lower when quantities purchased are higher ⁽²⁾,
- including year dummies captures the time dimension and the possible change in market conditions between different years.

As regards the first step of the empirical analysis, the results of the regression analysis on the dataset contracts are reported in Table 1 below.

As regards the second step of the empirical analysis, the Commission has identified a benchmark for every year and then tested the position of the contracts relative to this benchmark in order to conclude whether the prices charged by Hidroelectrica were lower or higher than the modelled benchmark price. The following steps describe in detail the methodology used to determine the benchmark:

Firstly, for each contract under investigation, it is calculated if and how far the actual price every year departs from its corresponding benchmark price computed using the regression and the contract characteristics;

Secondly, the most-upward-diverging contract ('MUD') is identified ⁽³⁾; this is the dataset contract with the observed price which departs the most above its own corresponding benchmark price (in absolute terms). The choice of MUD which provides a range of variation above the central estimate of benchmark price, whilst being conservative, is justified; firstly, the econometric model does not explain 100 % of the observed price in the dataset and the price benchmark single estimate is provided within an interval of confidence and a margin of error above or below the estimate; secondly, price deviations from a single possible price exist on the real market; the MUD, which stems from market-based contracts (see recitals 42 to 45) brings quantified information about the possible extent of such deviations and provides a market-based range around the calculated benchmark price;

⁽¹⁾ The variables contract duration and buyer off-take profile defined in the dataset are not included since they are not statistically significant.

⁽²⁾ A preliminary treatment of the data discarded three annual data on contracts corresponding to the intra-group sales of ALRO from 2009 to 2011, as they are likely to reflect different market conditions than those prevailing in bilateral contract negotiations between a supplier and an independent buyer, which is the focus in this case.

⁽³⁾ The regression is made on 137 observations of individual contract data in the period 2009-2011.

Thirdly, the price difference from the MUD contract is used to separate observed prices above benchmark price from contracts below benchmark price:

- if a contract has an observed price above its corresponding benchmark price and if the price difference of this contract is higher than the MUD price difference ⁽¹⁾, then this contract is considered *prima facie* not market conform,
- otherwise the contract should be deemed to be market conform;

The table below presents detailed results from the regression analysis on the dataset. The regression explains 36 % of the variations in the data. The coefficient estimates presented in the table below are used in a second stage to predict the 'benchmark' price for the contracts under investigation (out-of-sample predictions), assuming they would also be retail contracts, like contracts in the dataset.

Results of the econometric analysis

Table 1

Regression analysis

Source	SS	df	MS	Number of obs = 137		
Model	4218,7868	5	8436,95736	F(5,131)	= 14,73	
Residual	75057,7748	131	572,960113	Prob > F	= 0,0000	
Total	117242,562	136	862,077659	R-squared	= 0,3598	
				Adj R-squared	= 0,3354	
				Root MSE	= 23,937	

Average price RON ~ h	Coef.	Std. Err.	t	P > t	[95 % Conf. Interval]	
Annual quantity GWh	– ,0114518	,0078662	– 1,46	0,148	– ,027013	,0041094
year						
2008	26,39286	6,212094	4,25	0,000	14,10385	38,68186
2009	44,00499	6,668892	6,60	0,000	30,81234	57,19765
2010	32,16928	6,525077	4,93	0,000	19,26112	45,07744
2011	49,21547	6,458884	7,62	0,000	36,43826	61,99268
_cons	153,9978	5,159037	29,85	0,000	143,792	164,2036

The following tables present the results of the empirical analysis which uses the regression analysis detailed in Table 1 when, for each year, the MUD is selected on the basis of the difference in price levels (in RON/MWh) between each contract's estimated price and its corresponding observed price. Tables 2 and 3 below present the differences between Hidroelectrica's contractual purchase prices per each of the years (i.e.: 2009-2011) vis-à-vis the simulated price benchmark for the two companies under investigation.

In 2009, the MUD contract, that is the contract in the dataset with the highest difference between the observed price and its corresponding estimated price, has a price difference estimated at 69,73 RON/MWh. None of the two contracts between Hidroelectrica and Termoelectrica and Electrocentrale Deva has an observed price above their estimated price with a price difference larger than 69,73 RON/MWh (see Table 2).

⁽¹⁾ The initial MUD for year 2011 corresponds to intra-group sales of OMV Petrom. Since such intra-group sales, like Alro's (see footnote 2) are likely to reflect different market conditions than those prevailing in bilateral contract negotiations between a supplier and an independent buyer, which is the focus in this case, the following MUD is used instead.

In 2010, the MUD contract has a price difference estimated at 45,36 RON/MWh. Both contracts between Hidroelectrica and Termoelectrica and Electrocentrale Deva have an observed price above their estimated price with a price difference larger than 45,36 RON/MWh, that is a difference of 53,05 RON/MWh for the contract with Termoelectrica and 51,37 RON/MWh for the contract with Electrocentrale Deva (see Table 2).

In 2011, the MUD contract has a price difference estimated at 30,12 RON/MWh. The two contracts between Hidroelectrica and Termoelectrica and respectively between Hidroelectrica and Electrocentrale Deva have an observed price above their estimated price with a price difference larger than 30,12 RON/MWh, that is a difference of 38,62 RON/MWh for the contract with Termoelectrica and 32,64 RON/MWh for the contract with Electrocentrale Deva (see Table 2).

Table 2

Analysis of contracts in the relevant period 2009-2011

	(RON/MWh)		
TERMOELECTRICA	2009	2010	2011
Observed price (OP)	227,40	230,00	234,40
Predicted price (PP)	187,69	176,95	195,78
Difference (OP-PP)	39,71	53,05	38,62
MUD	69,73	45,36	30,12
Difference Observed price – Predicted price + MUD	< MUD	7,69	8,50
ELECTROCENTRALE DEVA	2009	2010	2011
Observed price (OP)	230,20	234,00	234,00
Predicted price (PP)	192,28	182,63	201,54
Difference (OP-PP)	37,92	51,37	32,46
MUD	69,73	45,36	30,12
Difference Observed price – Predicted price + MUD	< MUD	6,01	2,34

The results above show that the prices paid by Hidroelectrica to both Termoelectrica and Electrocentrale Deva in 2010 and 2011 are above a reasonable benchmark determined by the dataset contracts. However, this comparison is made between retail contracts (all contracts in the dataset) and wholesale contracts between Hidroelectrica and Electrocentrale Deva and Termoelectrica. In other words, the simulated benchmark prices include retailing costs which the two contracts did not incur and, therefore, the simulated benchmark prices are higher than corresponding wholesale prices. In order to capture this difference, it is therefore indispensable to deduce a retail margin of 5 % from the absolute value of the MUD ⁽¹⁾. The results are shown in the table below and further confirm prices above a market benchmark in 2010 and 2011 for the two suppliers:

Table 3

Analysis of contracts by applying a 5 % retail margin reduction for the relevant period 2009-2011

	(RON/ MWh)		
TERMOELECTRICA	2009	2010	2011
Observed price (OP)	227,40	230,00	234,40
Predicted price (PP)	187,69	176,95	195,78

⁽¹⁾ Based on median value of trader's margin in Romania, KPMG Report for Energy Holdings, May 2014, Appendix 3 p. 53,

	(RON/ MWh)		
TERMOELECTRICA	2009	2010	2011
Difference (OP-PP)	39,71	53,05	38,62
MUD	69,73	45,36	30,12
Difference Observed price – ((Predicted price + MUD) – 5 %)	< MUD	18,81	19,80
ELECTROCENTRALE DEVA	2009	2010	2011
Observed price (OP)	230,20	234,00	234,00
Predicted price (PP)	192,28	182,63	201,54
Difference (OP-PP)	37,92	51,37	32,46
MUD	69,73	45,36	30,12
Difference Observed price – ((Predicted price + MUD) – 5 %)	< MUD	17,41	13,92

In conclusion, the econometric analysis indicates contract prices for Termoelectrica and Electrocentrale Deva above market prices. However, given the wide interval of uncertainty which is not captured by the model, the conclusion of the econometric analysis needs to be complemented with additional economic information on market-conformity of Hidroelectrica's behaviour and/or other contract data.

CORRIGENDA**Corrigendum to Council Implementing Regulation (EU) No 961/2014 of 8 September 2014 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine**

(Official Journal of the European Union L 271 of 12 September 2014)

On page 9, Annex, entry No 4 concerning Gennadiy Nikolaiovych TSYPKALOV, column headed 'Identifying information':

for: 'Born on 6.21.1973',

read: 'Born on 21.6.1973'.

Corrigendum to Council Decision 2014/658/CFSP of 8 September 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

(Official Journal of the European Union L 271 of 12 September 2014)

On page 49, Annex, entry No 4 concerning Gennadiy Nikolaiovych TSYPKALOV, column headed 'Identifying information':

for: 'Born on 6.21.1973',

read: 'Born on 21.6.1973'.

