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EN

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

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## II

*(Non-legislative acts)*

## REGULATIONS

## COUNCIL REGULATION (EU) 2015/1961

of 26 October 2015

amending Regulation (EU) 2015/104 as regards certain fishing opportunities

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) According to the most recent scientific advice from International Council for the Exploration of the Sea (ICES), herring in ICES division IIIa is within safe biological limits within the meaning of Article 4(18) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council <sup>(1)</sup>. That stock should therefore be identified in Annex I to Council Regulation (EU) 2015/104 <sup>(2)</sup> for the purposes of applying the derogation provided for in Article 15(8) of Regulation (EU) No 1380/2013.
- (2) The most recent scientific advice from ICES also indicates that a limited increase of the 2015 total allowable catch (TAC) for herring in ICES divisions VIIg, VIIh, VIIj and VIIk is possible and is consistent with the objectives of the common fisheries policy, set out in Article 2(2) of Regulation (EU) No 1380/2013.
- (3) The stock of plaice in ICES division VIId was benchmarked in 2015. Now, maximum sustainable yield advice and the most recent scientific advice from ICES indicate a significant increase in the stock. One of the consequences of that increased abundance is that there are significant discards when plaice is caught as by-catch. It is therefore appropriate to increase to the TAC for plaice in ICES divisions VIId and e to a level that would reduce discards without negatively affecting the stock of plaice or other stocks in the same area.
- (4) On 30 June 2015, ICES issued advice concerning sprat in Union waters of ICES division IIa and ICES subarea IV covering the period from July 2015 to June 2016. That advice allows for a total amount of wanted catches of 506 000 tonnes and is mainly due to record high recruitment, new estimations of mortality and updated model inputs.
- (5) The TAC for sprat in Union waters of ICES division IIa and ICES subarea IV for the year 2015 is currently fixed at 227 000 tonnes by Regulation (EU) 2015/104. On the basis of the ICES advice of 30 June 2015, that TAC should be increased to optimise harvesting of that stock.

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

<sup>(2)</sup> Council Regulation (EU) 2015/104 of 19 January 2015 fixing for 2015 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union vessels, in certain non-Union waters, amending Regulation (EU) No 43/2014 and repealing Regulation (EU) No 779/2014 (OJ L 22, 28.1.2015, p. 1).

- (6) Since the ICES advice of 30 June 2015 covers the period from July 2015 to June 2016, only part of the maximum amount of catches advised by ICES should be taken into account to increase the fishing opportunities for the year 2015.
- (7) TAC for Norway pout in ICES division IIIa and Union waters of division IIa and subarea IV currently applies from 1 January to 31 October 2015. As the ICES advice will be issued only in the last quarter of 2015, the application period of the current total allowable catch for Norway pout in that area should be extended until the end of 2015.
- (8) Following a transfer from Norway, Union vessels will be allowed to fish 1 500 tonnes of redfish in Norwegian waters of ICES subareas I and II.
- (9) Regulation (EU) 2015/104 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### Article 1

Regulation (EU) 2015/104 is amended as follows:

(1) Annex IA is amended as follows:

(a) the fishing opportunities table for herring (*Clupea harengus*) in IIIa is replaced by the following:

| <b>Species:</b> Herring <sup>(1)</sup><br><i>Clupea harengus</i> |                       | <b>Zone:</b> IIIa<br>(HER/03A.) |
|------------------------------------------------------------------|-----------------------|---------------------------------|
| Denmark                                                          | 18 034 <sup>(2)</sup> |                                 |
| Germany                                                          | 289 <sup>(2)</sup>    |                                 |
| Sweden                                                           | 18 865 <sup>(2)</sup> |                                 |
| Union                                                            | 37 188 <sup>(2)</sup> |                                 |
| Norway                                                           | 5 816                 |                                 |
| Faroe Islands                                                    | 600 <sup>(3)</sup>    |                                 |
| TAC                                                              | 43 604                |                                 |

Analytical TAC  
Article 3 of Regulation (EC) No 847/96 shall not apply  
Article 4 of Regulation (EC) No 847/96 shall not apply  
Article 7(3) of this Regulation applies

<sup>(1)</sup> Catches of herring taken in fisheries using nets with mesh sizes equal to or larger than 32 mm.

<sup>(2)</sup> Special condition: up to 50 % of this amount may be fished in Union waters of IV (HER/\*04-C.).

<sup>(3)</sup> May only be fished in the Skagerrak (HER/\*03AN.).

- (b) the fishing opportunities table for herring (*Clupea harengus*) in VIIg, VIIh, VIIj and VIIk is replaced by the following:

| <b>'Species:</b> Herring<br><i>Clupea harengus</i> |        | <b>Zone:</b> VIIg <sup>(1)</sup> , VIIh <sup>(1)</sup> , VIIj <sup>(1)</sup> and VIIk <sup>(1)</sup><br>(HER/7G-K.) |
|----------------------------------------------------|--------|---------------------------------------------------------------------------------------------------------------------|
| Germany                                            | 213    |                                                                                                                     |
| France                                             | 1 185  |                                                                                                                     |
| Ireland                                            | 16 591 |                                                                                                                     |
| The Netherlands                                    | 1 185  |                                                                                                                     |
| United Kingdom                                     | 24     |                                                                                                                     |
| Union                                              | 19 198 |                                                                                                                     |
| TAC                                                | 19 198 | Analytical TAC<br>Article 7(3) of this Regulation applies                                                           |

- <sup>(1)</sup> This zone is increased by the area bounded:  
 — to the north by latitude 52° 30' N,  
 — to the south by latitude 52° 00' N,  
 — to the west by the coast of Ireland,  
 — to the east by the coast of the United Kingdom.'

- (c) the fishing opportunities table for plaice (*Pleuronectes platessa*) in VIId and VIle is replaced by the following:

| <b>'Species:</b> Plaice<br><i>Pleuronectes platessa</i> |                      | <b>Zone:</b> VIId and VIle<br>(PLE/7DE.) |
|---------------------------------------------------------|----------------------|------------------------------------------|
| Belgium                                                 | 1 018 <sup>(1)</sup> |                                          |
| France                                                  | 3 395 <sup>(1)</sup> |                                          |
| United Kingdom                                          | 1 810 <sup>(1)</sup> |                                          |
| Union                                                   | 6 223                |                                          |
| TAC                                                     | 6 223                | Analytical TAC                           |

- <sup>(1)</sup> In addition to this quota, a Member State may grant to vessels flying its flag and participating in trials on fully documented fisheries an additional allocation within an overall limit of 1 % of the quota allocated to that Member State, under the conditions set out in Chapter II of Title II of this Regulation.'

- (d) the fishing opportunities table for Sprat (*Sprattus sprattus*) and associated by-catches in Union waters of IIa and IV is replaced by the following:

| <b>*Species:</b> Sprat and associated by-catches<br><i>Sprattus sprattus</i> |                                     | <b>Zone:</b> Union waters of IIa and IV<br>(SPR/2AC4-C)   |
|------------------------------------------------------------------------------|-------------------------------------|-----------------------------------------------------------|
| Belgium                                                                      | 3 929 <sup>(1)</sup>                |                                                           |
| Denmark                                                                      | 310 987 <sup>(1)</sup>              |                                                           |
| Germany                                                                      | 3 929 <sup>(1)</sup>                |                                                           |
| France                                                                       | 3 929 <sup>(1)</sup>                |                                                           |
| The Netherlands                                                              | 3 929 <sup>(1)</sup>                |                                                           |
| Sweden                                                                       | 1 330 <sup>(1)</sup> <sup>(2)</sup> |                                                           |
| United Kingdom                                                               | 12 967 <sup>(1)</sup>               |                                                           |
| Union                                                                        | 341 000                             |                                                           |
| Norway                                                                       | 9 000                               |                                                           |
| TAC                                                                          | 350 000                             | Analytical TAC<br>Article 7(3) of this Regulation applies |

<sup>(1)</sup> Without prejudice to the landing obligation, catches of dab and whiting may be counted against up to 2 % of the quota (OTH/\*2AC4C), provided that not more than 9 % in total of this quota for sprat is accounted for by these catches and by-catches of those species that are accounted for under Article 15(8) of Regulation (EU) No 1380/2013.

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

- (e) footnote 3 in the fishing opportunities table for Norway pout (*Trisopterus esmarki*) and associated by-catches in IIIa; Union waters of IIa and IV shall be deleted.

- (2) in Annex IB, the fishing opportunities table for redfish (*Sebastes* spp.) in Norwegian waters of ICES subareas I and II is replaced by the following table:

| <b>*Species:</b> Redfish<br><i>Sebastes</i> spp. |              | <b>Zone:</b> Norwegian waters of I and II<br>(RED/1N2AB.)                                                                                |
|--------------------------------------------------|--------------|------------------------------------------------------------------------------------------------------------------------------------------|
| Germany                                          | 766          |                                                                                                                                          |
| Spain                                            | 95           |                                                                                                                                          |
| France                                           | 84           |                                                                                                                                          |
| Portugal                                         | 405          |                                                                                                                                          |
| United Kingdom                                   | 150          |                                                                                                                                          |
| Union                                            | 1 500        |                                                                                                                                          |
| TAC                                              | Not relevant | Analytical TAC<br>Article 3 of Regulation (EC) No 847/96<br>shall not apply<br>Article 4 of Regulation (EC) No 847/96<br>shall not apply |

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*Article 2*

This Regulation shall enter into force on the date 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 Luxembourg, 26 October 2015.

*For the Council*  
*The President*  
C. DIESCHBOURG

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**COMMISSION IMPLEMENTING REGULATION (EU) 2015/1962****of 28 October 2015****amending Implementing Regulation (EU) No 404/2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 <sup>(1)</sup>, and in particular Articles 6(5), 8(2), 9(10), 15(9), 21(7), 22(7), 24(8), 33(10), 37(4), 58(9), 60(7), 64(2), 73(9), 74(6), 76(4), 78(2), 92(5), 105(6), 106(4), 111(3), 116(6) and 117(4),

Having regard to Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters, amending Regulations (EEC) No 2847/93 and (EC) No 1627/94 and repealing Regulation (EC) No 3317/94 <sup>(2)</sup>, and in particular Article 13(3) thereof,

Whereas:

- (1) Regulation (EU) No 1380/2013 of the European Parliament and of the Council <sup>(3)</sup> has repealed Council Regulation (EC) No 2371/2002 <sup>(4)</sup>. The relevant references in Commission Implementing Regulation (EU) No 404/2011 <sup>(5)</sup> should therefore be modified accordingly.
- (2) A new tool for data exchanges has been developed by the Commission and should be used for all electronic data exchanges as referred to in Articles 33, 111 and 116 of Regulation (EC) No 1224/2009 (hereafter referred to as 'the Control Regulation') and in Article 13 of Regulation (EC) No 1006/2008.
- (3) The International Maritime Organisation (IMO) Ship Identification Number as set out in the Resolution A.1078 (28) adopted by the IMO on 4 December 2013 and in the provisions of Chapter XI-1, Regulation 3 of the 1974 SOLAS Convention should apply to Union fishing vessels wherever they operate and to third country fishing vessels operating in Union waters. That identification number will allow accurate identification of the vessel, trace and verify their activity over time, irrespective of any change of name, ownership, or flag and will ensure the traceability of fishery products throughout the market chain in particular in the cases in which the vessels may be involved in IUU fishing activities.
- (4) A new format for the transmission of vessel monitoring system (VMS) data has been developed by the Commission and should be used for all electronic data exchanges as referred to in Article 111 and 116 of the Control Regulation. Therefore, Articles 24 and 28 of Implementing Regulation (EU) No 404/2011 should be amended and Annex V to Implementing Regulation (EU) No 404/2011 should be deleted.

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 1.

<sup>(2)</sup> OJ L 286, 29.10.2008, p. 33.

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

<sup>(4)</sup> Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy OJ L 358, 31.12.2002, p. 59).

<sup>(5)</sup> Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (OJ L 112, 30.4.2011, p. 1).

- (5) Article 14(2)(d) of the Control Regulation requires that the fishing logbook contains the date of departure of the vessel from the port. To ensure that all messages related to the same fishing trip can be identified and linked, masters of vessels required to record and send logbook data by electronic means should transmit a departure message to the competent authorities of the flag Member State as the first message before starting any fishing operation and any subsequent transmission. Article 47 of Implementing Regulation (EU) No 404/2011 should therefore be amended.
- (6) The rules for the exchange of data between Member States, and between the Member States and the Commission or the body designated by it, as referred to in Articles 111 and 116 of the Control Regulation and in Article 13 of Regulation (EC) No 1006/2008 need to be modified to take into account new legal requirements, development of new technologies and formats as well as international standards. It is necessary to establish the general principles for the electronic transmission, the procedures for corrections and the standards to be used for exchange of information related to vessel monitoring system, fishing and sales activities, and catch reporting, as well as the procedures for implementing changes to the formats. Therefore, Articles 43, 45, 91 of and Annex XII to Implementing Regulation (EU) No 404/2011 should be adapted and new rules should be established.
- (7) The real time and direct electronic exchange of vessel monitoring system data and of electronic recording and reporting system data as referred to in Article 111(1) of the Control Regulation requires further harmonisation. The flag Member State should ensure automatic and real time transmission to the coastal Member State of electronic recording and reporting system data received from its fishing vessels when they are fishing in the waters of that coastal Member State. Article 44 of Implementing Regulation (EU) No 404/2011 should therefore be amended.
- (8) Regulation (EU) No 1379/2013 of the European Parliament and of the Council <sup>(1)</sup> has amended the Control Regulation introducing rules on the information to be provided to the consumer of fishery and aquaculture products and on the control of fishery and aquaculture products subject to the storage mechanism. Articles 66, 67 and 112 of Implementing Regulation (EU) No 404/2011 should be aligned to those new rules and Article 68 should be deleted.
- (9) Deduction of water or ice should not apply to pelagic species intended for landings for industrial purposes taking into account the specificities of such activities as regards the storage and handling of the fish. Within the framework of the Fisheries Arrangement between the European Union, the Faroe Islands and Norway on the management of fish stocks in the North-East-Atlantic waters for the period 2014-2018, a similar provision for pelagic species intended for landings for industrial purposes has been adopted as well as new measures concerning the weighing and inspection of herring, mackerel, horse mackerel and blue whiting landings. Articles 74, 78, 79, 80, 82, 83, 85, 88, 89 and 107 of Implementing Regulation (EU) No 404/2011 should therefore be aligned to those new rules.
- (10) Regulation (EU) No 508/2014 of the European Parliament and of the Council <sup>(2)</sup> provides measures to support the implementation of a Union control, inspection and enforcement system and to regulate the interruption, suspension and corrections of Union financial measures and has deleted Article 103 of the Control Regulation. Therefore, in Implementing Regulation (EU) No 404/2011, Article 96, Chapter I of Title VIII and Annex XXXI should be deleted.
- (11) Article 33(10) of the Control Regulation and Article 13(3) of Regulation (EC) No 1006/2008 empower the Commission to adopt formats for the transmission of data concerning catches and fishing effort. The rules provided in that field by Commission Regulation (EC) No 500/2001 <sup>(3)</sup> to ensure an effective transmission of the aggregated catch data as required in Article 33(2) and (4) of the Control Regulation and in Article 13(2) of Regulation (EC) No 1006/2008 are now legally and technically outdated. Therefore, international standards for electronic aggregated catch data reporting should be used and Regulation (EC) No 500/2001 should be repealed.

<sup>(1)</sup> Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354, 28.12.2013, p. 1).

<sup>(2)</sup> Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).

<sup>(3)</sup> Commission Regulation (EC) No 500/2001 of 14 March 2001 laying down detailed rules for the application of Council Regulation (EEC) No 2847/93 on the monitoring of catches taken by Community fishing vessels in third country waters and on the high seas (OJ L 73, 15.3.2001, p. 8).

- (12) Regulation (EU) 2015/812 of the European Parliament and of the Council <sup>(1)</sup> has introduced new rules on the separate registration of the undersized catches pursuant to reporting obligations and the assignment of points to a new serious infringement related to the obligation to land undersized catches. Annexes VI, VII, X, XXIII, XXVI, XXVII and XXX to Implementing Regulation (EU) No 404/2011 should be aligned to those new rules.
- (13) By Recommendations GFCM/35/2011/1, GFCM/35/2011/2, GFCM/35/2011/3, GFCM/35/2011/4, GFCM/35/2011/5 and GFCM/36/2012/2, the General Fisheries Commission for the Mediterranean ('GFCM') has adopted specific provisions on the establishment of a GFCM fishing logbook and on the report of catches of red coral, incidental by-catch and release of seabirds, monk seals, sea turtles and cetaceans in the log-book. Annexes VI, VII and X to Implementing Regulation (EU) No 404/2011 should be aligned with those new rules.
- (14) Implementing Regulation (EU) No 404/2011 should therefore be amended accordingly.
- (15) Article 90(1), point (c) and Article 92 paragraph 1 of the Control Regulation as amended by Article 7 paragraphs (14) and (15) of Regulation (EU) 2015/812 shall apply from 1 January 2017. The assignment of points for serious infringements related to those provisions should enter into force at the same time.
- (16) 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*

### **Amendments to Implementing Regulation (EU) No 404/2011**

Implementing Regulation (EU) No 404/2011 is amended as follows:

- (1) throughout the text, the terms 'EU fishing vessel', 'EU fishing vessels' and 'EU waters' are replaced respectively by 'Union fishing vessel', 'Union fishing vessels' and 'Union waters', and any grammatical adjustments needed as a consequence of that replacement shall be made;
- (2) Article 2 is amended as follows:
- (a) point 1 is replaced by the following:
- '(1) "Union fishing vessel" means a fishing vessel flying the flag of a Member State and registered in the Union;'
- (b) point 2 is replaced by the following:
- '(2) "Union waters" means waters defined in point (1) of Article 4(1) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council <sup>(\*)</sup>;
- (\*) 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) in Article 3, paragraph 7 is replaced by the following:
- '7. At any moment the total capacity corresponding to the fishing licences issued by a Member State, in Gross Tonnage (GT) or kilowatt (kW), shall not be higher than the maximum capacity levels for that Member State established in accordance with Article 22(7) of Regulation (EU) No 1380/2013.';

<sup>(1)</sup> Regulation (EU) 2015/812 of the European Parliament and of the Council of 20 May 2015 amending Council Regulations (EC) No 850/98, (EC) No 2187/2005, (EC) No 1967/2006, (EC) No 1098/2007, (EC) No 254/2002, (EC) No 2347/2002 and (EC) No 1224/2009, and Regulations (EU) No 1379/2013 and (EU) No 1380/2013 of the European Parliament and of the Council, as regards the landing obligation, and repealing Council Regulation (EC) No 1434/98 (OJ L 133, 29.5.2015, p. 1).

(4) in Article 6, the following paragraph is added:

‘As from 1 January 2016, the International Maritime Organisation ship identification number scheme, as adopted by Resolution A.1078(28) on 4 December 2013 and as referred to in Chapter XI-1, Regulation 3 of the 1974 SOLAS Convention, shall apply to:

- (a) Union fishing vessels or fishing vessels controlled by Union operators under a chartering arrangement, of 100 tons of Gross Tonnage or 100 tons of Gross Registered Tonnage and above, or 24 metres length overall and above, operating exclusively inside Union waters;
- (b) all Union fishing vessels or fishing vessels controlled by Union operators under a chartering arrangement, of 15 metres length overall and above, operating outside Union waters;
- (c) all third country fishing vessels authorised to carry out fishing activities in Union waters.’;

(5) in Article 24, paragraph 1 is replaced by the following:

‘1. The FMC of each flag Member State shall ensure the automatic transmission to the FMC of a coastal Member State of the data provided in accordance with Article 19 of this Regulation concerning its fishing vessels during the time they are in the waters of the coastal Member State. Such data shall be forwarded to the FMC of the coastal State immediately after the receipt at the FMC of the flag Member State.’;

(6) Article 28 is replaced by the following:

‘Article 28

#### **Access to data by the Commission**

The Commission may request Member States in accordance with Article 111(1)(a) of the Control Regulation to ensure the automatic transmission, to the Commission or to the body designated by it, of the data provided in accordance with Article 19 of this Regulation concerning a specific group of fishing vessels and during a specific time. Such data shall be forwarded to the Commission or to the body designated by it immediately after the receipt at the FMC of the flag Member State.’;

(7) Article 30 is replaced by the following:

‘Article 30

#### **Models for fishing log-books, transhipment declarations and landing declarations in paper format**

1. In Union waters, the fishing logbook, transhipment declaration and landing declaration in paper format shall be completed and submitted by masters of Union fishing vessels in accordance with the model in Annex VI.

2. By way of the derogation from paragraph 1, for Union fishing vessels carrying out daily fishing trips in Mediterranean Sea, the fishing logbook, transhipment declaration and landing declaration in paper format may be completed and submitted by masters of Union fishing vessels in accordance with the model in Annex VII.

3. When Union fishing vessels are carrying out fishing activities in the waters of a third country, in waters regulated by a Regional Fisheries Management Organisation or in waters outside Union waters not regulated by a Regional Fisheries Management Organisation, the fishing logbook, transhipment declaration and landing declaration in paper format shall be completed and submitted by masters of Union fishing vessels in accordance with Article 31 of this Regulation and the models in Annexes VI and VII, unless the third country or the rules of the Regional Fisheries Management Organisation concerned specifically require the use of a different kind of fishing logbook, transhipment declaration or landing declaration. If the third country does not specify a particular fishing logbook, transhipment declaration or landing declaration, but does require data elements different from those required by the Union rules, such data elements shall be recorded.

4. Masters of Union fishing vessels not subject to Article 15 of the Control Regulation may continue to use until 31 December 2017, paper format for fishing logbook, transhipment declaration and landing declaration printed prior to 1 January 2016.’;

(8) in Article 37, the following paragraph is added:

‘The fishing logbook, transhipment declaration and landing declaration in electronic format shall be completed in accordance with the instructions set out in Annex X.’;

(9) Article 43 is replaced by the following:

‘Article 43

#### **Mandatory data in the exchange of information between Member States**

Data elements that must be recorded by masters of Union fishing vessels in the fishing logbook, transhipment declaration, prior notification and landing declaration according to Union rules shall also be mandatory in exchanges between Member States.’;

(10) Article 44 is replaced by the following:

‘Article 44

#### **Access to data**

1. When a fishing vessel, flying the flag of a Member State, conducts fishing operations in the Union waters of a coastal Member State, the flag State shall immediately upon receipt forward the mandatory electronic fishing logbook data of the current fishing trip, starting with the last departure from port, to that coastal Member State.

2. As long as a fishing vessel flying the flag of a Member State is fishing in the Union waters of another coastal Member State, the flag Member State shall immediately upon receipt forward all the mandatory electronic fishing logbook data to that coastal Member State. The flag Member State shall also forward the corrections related to the current fishing trip as referred to in Article 47(2) of this Regulation.

3. When a landing or transhipment operation takes place in a port of another coastal Member State than the flag Member State, the flag Member State shall immediately upon receipt forward all the mandatory electronic landing or transhipment declaration data to that coastal Member State.

4. When a flag Member State is notified that a fishing vessel flying its flag intends to enter into a port of another coastal Member State, the flag Member State shall immediately upon receipt forward the electronic prior notification to that coastal Member State.

5. When, on a fishing trip, a fishing vessel flying the flag of a Member State enters into the Union waters of another coastal Member State or when any of the data referred to in paragraph 3 or 4 related to a specific fishing trip have been transmitted to a coastal Member State, the flag Member State shall allow access to all electronic fishing activity data as referred to in Article 111(1) of the Control Regulation for that fishing trip from departure to the time when the landing was completed and shall transmit data on request of that coastal Member State. The access shall remain allowed at least 36 months after the beginning of the fishing trip.

6. The flag Member State of a fishing vessel inspected by another Member State in accordance with Article 80 of the Control Regulation shall, on request by the inspecting Member State, transmit the electronic fishing activity data as referred to in Article 111(1) of the Control Regulation for the current fishing trip of the vessel from departure to the time of the request.

7. The requests referred to in paragraphs 5 and 6 shall be electronic and shall indicate whether the reply should provide the original data with corrections or only the consolidated data. The reply to the request shall be generated automatically and transmitted without delay by the requested Member State.

8. Member States shall allow access to the vessel monitoring system, fishing logbook, transhipment declaration, prior notification and landing declaration data on request by other Member States carrying out inspection activities at sea in the context of joint deployment plans or other agreed joint inspection activities.

9. Masters of Union fishing vessels shall have secure access to their own electronic fishing logbook information, transshipment declaration data, prior notification data and landing declaration data stored in the database of the flag Member State at any time.;

(11) Article 45 is replaced by the following:

*'Article 45*

#### **Exchange of data between Member States**

Member States shall:

- (a) ensure that data received according to this Chapter are recorded in computer-readable form and safely stored in computerised databases for at least 3 years;
- (b) take all necessary measures to ensure that the data are only used for purposes as provided for in this Regulation; and
- (c) take all necessary technical measures to protect such data against any accidental or illicit destruction, accidental loss, deterioration, distribution or unauthorised consultation.;

(12) in Article 47, the following paragraph 1a is inserted:

*'1a. The master of a Union fishing vessel shall send an electronic departure message to the competent authorities of the flag Member State before leaving port and before starting any other electronic transmission related to the fishing trip.;*

(13) Article 60 is amended as follows:

(a) paragraph 1 is replaced by the following:

*'1. When the prejudice has not been removed wholly or in part by action in accordance with Article 16(8) of Regulation (EU) No 1380/2013, the Commission shall, as soon as possible after receiving the information referred to in Article 59 of this Regulation, take the necessary measures with the aim of remedying the prejudice caused.;*

(b) in paragraph 2, point (b) is replaced by the following:

*'(b) Where applicable, which Member States have exceeded their fishing opportunities (the exceeding Member States) and the amount of the excess of fishing opportunities (as reduced by any exchanges in accordance with Article 16(8) of Regulation (EU) No 1380/2013.;*

(14) Article 66 is replaced by the following:

*'Article 66*

#### **Definition**

For the purpose of this Chapter, the following definition shall apply:

"Fisheries and aquaculture products" means any products which fall under Chapter 3, subheading 1212 21 00 of Chapter 12 and under headings 1604 and 1605 of Chapter 16 of the Combined Nomenclature established by Council Regulation (EEC) No 2658/87 (\*).

(\*) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1) and Commission implementing Regulation (EU) No 1101/2014 of 16 October 2014 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 312, 31.10.2014, p. 1).;

(15) Article 67 is amended as follows:

(a) paragraph 12 is replaced by the following:

‘12. The information listed in Article 58(5) of the Control Regulation shall not apply to fisheries and aquaculture products falling under headings 1604 and 1605 of Chapter 16 of the Combined Nomenclature.’;

(b) paragraph 13 is replaced by the following:

‘13. For the purposes of Article 58(5) of the Control Regulation, the information on the area where the product was caught or farmed shall be:

(a) for catches of stocks or group of stocks subject to a quota and/or a minimum size in Union legislation, the relevant geographical area, as defined in Article 4(30) of the Control Regulation;

(b) for catches of other stocks or group of stocks, fishery products caught in freshwater and aquaculture products, the name of the catch or the production area in accordance with Article 38(1) of Regulation (EU) No 1379/2013 of the European Parliament and of the Council (\*).

(\*) Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354, 28.12.2013, p. 1).’;

(16) Article 68 is deleted;

(17) in Article 74, paragraph 2 is replaced by the following:

‘2. Without prejudice to special rules for pelagic species referred to in Articles 78-89 of this Regulation which are landed in bulk for transfer to the point of first marketing, storage or processing, the deduction of water and ice from the total weight shall not exceed 2 %. In all cases the percentage for deduction of water and ice shall be recorded on the weighing slip with the entry for weight. There shall be no deduction of water or ice for landings for industrial purposes or for non-pelagic species.’;

(18) Article 78 is replaced by the following:

‘Article 78

#### **Scope of weighing procedures for catches of herring, mackerel, horse mackerel and blue whiting**

The rules set out in this Section shall apply to the weighing of catches landed in the Union or by Union fishing vessels in third countries, of herring (*Clupea harengus*), mackerel (*Scomber scombrus*), horse mackerel (*Trachurus* spp.) and blue whiting (*Micromesistius poutassou*) or a combination thereof, taken in:

(a) for herring in ICES zones I, II, IIIa, IV, Vb, VI and VII;

(b) for mackerel in ICES zones IIa, IIIa, IV, Vb, VI, VII, VIII, IX, XII, XIV and Union waters of CECAF;

(c) for horse mackerel in ICES zones IIa, IV, Vb, VI, VII, VIII, IX, X, XII, XIV and Union waters of CECAF;

(d) for blue whiting in ICES zones IIa, IIIa, IV, Vb, VI, VII, VIII, IX, X, XII, XIV and Union waters of CECAF;

when the quantities per landing exceed 10 tonnes.’;

(19) the heading of Article 79 is replaced by the following:

‘Article 79

#### **Ports of weighing catches of herring, mackerel, horse mackerel and blue whiting’**

(20) in Article 80, paragraph 1, point (c) is replaced by the following:

‘(c) the quantities in kilograms live weight of herring, mackerel, horse mackerel and blue whiting retained on board;’;

(21) in Article 82, paragraph 2 is replaced by the following:

‘2. The quantities of herring, mackerel, horse mackerel and blue whiting retained on board, notified prior to landing as referred to in Article 80(1)(c) of this Regulation, shall be equal to the quantities recorded in the fishing logbook after its completion.’;

(22) the heading of Article 83 is replaced by the following:

‘Article 83

**Publicly operated weighing facilities for fresh herring, mackerel, horse mackerel and blue whiting’**

(23) Article 85 is replaced by the following:

‘Article 85

**Weighing of frozen fish**

When landed quantities of frozen herring, mackerel, horse mackerel and blue whiting are weighed, the weight of frozen fish landed in boxes shall be determined per species in accordance with Article 73 of this Regulation.’;

(24) Article 86 is replaced by the following:

‘Article 86

**Keeping of weighing records**

All records of weighing provided for in Article 84(3) and Article 85 of this Regulation and the copies of any transport documents as part of a control plan or a common control programme referred to in Article 79(1) of this Regulation shall be kept for at least 3 years.’;

(25) Article 88 is replaced by the following:

‘Article 88

**Cross-checks**

Until the establishment of a computerised database in accordance with Article 109 of the Control Regulation the competent authorities shall carry out administrative cross- checks on all landings between the following:

- (a) quantities by species of herring, mackerel, horse mackerel and blue whiting indicated in the prior notification of landing, as referred to in Article 80(1)(c) of this Regulation, and the quantities recorded in the fishing logbook;
- (b) quantities by species of herring, mackerel, horse mackerel and blue whiting recorded in the fishing logbook and the quantities recorded in the landing declaration;
- (c) quantities by species of herring, mackerel, horse mackerel and blue whiting recorded in the landing declaration and the quantities recorded in the takeover declaration or the sales note;
- (d) catch area recorded in the vessel’s fishing logbook and the VMS data for the vessel concerned.’;

(26) Article 89 is replaced by the following:

*‘Article 89*

**Monitoring of weighing**

1. The weighing of catches of herring, mackerel, horse mackerel and blue whiting from the vessel shall be monitored by species. In the case of vessels pumping catch ashore the weighing of the entire discharge shall be monitored. In the case of landings of frozen herring, mackerel, horse mackerel and blue whiting, all boxes shall be counted and the methodology for calculating the average net weight of boxes provided for in Annex XVIII shall be monitored.

2. The following data shall be cross-checked in addition to those referred to in Article 88 of this Regulation:

- (a) quantities by species of herring, mackerel, horse mackerel and blue whiting recorded in the records of weighing at public or private facilities and the quantities by species recorded in the takeover declaration or the sales note;
- (b) quantities by species of herring, mackerel, horse mackerel and blue whiting recorded in any transport documents as part of a control plan or a common control programme referred to in Article 79(1) of this Regulation;
- (c) unique identity numbers of tankers entered into the record in accordance with Article 84(2)(b) of this Regulation.

3. It shall be verified that the vessel is empty of all fish subject to the special rules in this section, once the discharge has been completed.

4. All monitoring activities covered by this Article and Article 107 of this Regulation shall be documented. Such documentation shall be kept for at least 3 years.’;

(27) in Title IV, the heading of Chapter III is replaced by the following:

*‘CHAPTER III*

***Sales notes and take-over declarations’***

(28) in Article 90, paragraph 1 is replaced by the following:

‘1. In the sales note and the take-over declaration, the number of individuals as referred to in Articles 64(1)(f) and 66(3)(e) of the Control Regulation shall be indicated if the relevant quota is managed on the basis of individuals.’;

(29) Article 91 is replaced by the following:

*‘Article 91*

**Formats of sales notes and take-over declarations**

1. Member States shall determine the format to be used for the completion and transmission of sales notes and take-over declarations between registered buyers, registered auctions, or other bodies or persons authorised by Member States and the competent authorities as referred to in Articles 63 and 67 of the Control Regulation.

2. Data elements that must be recorded by registered buyers, registered auctions, or other bodies or persons authorised by Member States, in their sales notes or take-over declarations according to Union rules shall also be mandatory in exchanges between Member States.

3. Data as referred to in Article 111(2) of the Control Regulation transmitted for operations in the previous 36 months by the Member State in whose territory the first sale or the take-over took place shall be made available by that Member State on request by the flag Member State or the Member State in whose territory the fisheries products have been landed. The reply to the request shall be generated automatically and transmitted without delay.

4. Member States shall:

- (a) ensure that data received according to this Chapter are recorded in computer-readable form and safely stored in computerised databases for at least 3 years;
- (b) take all necessary measures to ensure that the data are only used for purposes as provided for in this Regulation; and
- (c) take all necessary technical measures to protect such data against any accidental or illicit destruction, accidental loss, deterioration, distribution or unauthorised consultation.

5. In each Member State, the single authority referred to in Article 5(5) of the Control Regulation shall be responsible for transmitting, receiving, managing and processing all data covered by this Chapter.

6. Member States shall exchange contact details of the authorities referred to in paragraph 5 and shall inform the Commission and the body designated by it within 3 months after the entry into force of this Regulation.

7. Any changes in the information referred to in paragraphs 5 and 6 shall be communicated to the Commission, the body designated by it and other Member States before they become effective;

(30) Article 96 is repealed;

(31) Article 107 is replaced by the following:

*'Article 107*

#### **Inspection of certain pelagic landings**

For landings of herring, mackerel, horse mackerel and blue whiting as referred to in Article 78 of this Regulation the competent authorities of a Member State shall ensure that at least 7,5 % of the quantities landed for each species and at least 5 % of the landings are fully inspected.;

(32) Article 112 is replaced by the following:

*'Article 112*

#### **Control of fisheries products subject to storage mechanism**

Officials shall verify that fisheries products subject to the storage mechanism referred to in Article 30 of Regulation (EU) No 1379/2013 fulfil the conditions laid down in that Article 30 and in Article 67 of Regulation (EU) No 508/014 of the European Parliament and of the Council (\*).

(\*) Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).;

(33) in Article 126, paragraph 2 is replaced by the following

'2. When two or more serious infringements by the same natural or legal person holding the licence are detected in the course of one inspection, points in respect of each serious infringement concerned shall be assigned to the holder of the fishing licence in accordance with paragraph 1 up to a maximum of 12 points for all those infringements.;

(34) in Article 131, paragraphs 1 and 2 are replaced by the following:

'1. If the fishing licence is suspended or withdrawn permanently in accordance with Article 129(1) or (2) of this Regulation, the fishing vessel to which the suspended or permanently withdrawn fishing licence relates shall be identified as being without fishing licence in the national register referred to in Article 24(1) of Regulation (EU) No 1380/2013. This fishing vessel shall also be identified in this way in the Union fishing fleet register referred to in Article 24(3) of Regulation (EU) No 1380/2013.

2. The permanent withdrawal of a fishing licence in accordance with Article 129(2) of this Regulation shall not affect the fishing capacity ceilings of the Member State issuing the licence as referred to in Article 22(7) of Regulation (EU) No 1380/2013.;

(35) in Title VIII, Chapter I is deleted;

(36) in Article 139, paragraphs 2 and 3 are replaced by the following:

‘2. The size of the excess of utilisation of fishing opportunities shall be determined with respect to the fishing opportunities available at the end of each given period to the Member State concerned taking into account exchanges of fishing opportunities in accordance with Article 16(8) of Regulation (EU) No 1380/2013, quota transfers in accordance with Article 4(2) of Council Regulation (EC) No 847/96 (\*), reallocation of available fishing opportunities in accordance with Article 37 of the Control Regulation, and deduction of fishing opportunities in accordance with Articles 105, 106 and 107 of the Control Regulation.

3. The exchange of fishing opportunities in accordance with Article 16(8) of Regulation (EU) No 1380/2013 for a given period shall not be allowed after the last day of the first month after the expiration of that period.

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

(37) in Title IX, the following Chapter Ia is inserted:

*‘CHAPTER Ia*

### ***Rules for the exchange of data***

#### *Article 146a*

This Chapter lays down detailed rules for the exchange of data as referred to in Articles 111 and 116 of the Control Regulation as well as for the notification of catch data as referred to in Article 33(2) and (4) of the Control Regulation and in Article 13(2) of Council Regulation (EC) No 1006/2008 (\*).

#### *Article 146b*

### **Definitions**

For the purpose of this Chapter the following definitions shall apply:

- (a) “Transportation layer” means the electronic network for fisheries data exchanges as made available by the Commission to all Member States and the body designated by it to exchange data in a standardised way;
- (b) “Report” means the information recorded by electronic means;
- (c) “Message” means the report in its format for transmission;
- (d) “Request” means an electronic message containing a query for a set of reports.

#### *Article 146c*

### **General principles**

1. All messages shall be exchanged based on the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) P1000 standard. Only data fields, core components, objects and well formatted Extensible Markup Language (XML) messages according to the XML Schema Definition (XSD) based on the UN/CEFACT standardisation libraries shall be used.

2. The report formats shall be based on the UN/CEFACT standards as referred to in Annex XII and shall be made available on the Master Data Register page of the European Commission Fisheries website.

3. The XSD and codes on the Master Data Register page of the European Commission Fisheries website shall be used for all messages.
4. Date and time shall be transmitted in Coordinated Universal Time (UTC).
5. All reports shall have a unique report identifier.
6. A unique human readable fishing trip identifier shall be used to link the fishing log-book data with landing declaration data, transshipment declaration data, sales note data, take-over declaration data and transport document data.
7. Reports related to Union fishing vessels shall include the identification number of the vessel as referred to in Article 10 of Commission Regulation (EC) No 26/2004 (\*\*).
8. Member States shall use the implementation documents available on the European Commission fisheries website to ensure exchange of messages.

#### *Article 146d*

#### **Transmission of messages**

1. All transmissions shall be fully automated and immediate, using the transportation layer.
2. Before transmitting a message, the sender shall perform an automatic check to verify that the message is correct according to the minimum set of validation and verification rules available on the Master Data Register on the European Commission Fisheries website.
3. The receiver shall inform the sender on the reception of the message by transmitting a return message based on UN/CEFACT P1000-1: General Principles. Vessel monitoring system messages and replies to a request shall not receive a return message.
4. When a technical failure occurs on the sender side and the sender can no more exchange messages, the sender shall notify all receivers of the problem. The sender shall immediately take appropriate actions to correct the problem. All messages that have to be delivered to a receiver shall be stored until the problem is solved.
5. When a technical failure occurs on the receiver side and the receiver can no more receive messages, the receiver shall notify the all senders of the problem. The receiver shall immediately take appropriate actions to correct the problem.
6. After repair of a system failure related to a sender, the sender shall transmit unsent messages as soon as possible. A manual follow-up procedure may be applied.
7. After repair of a system failure related to the receiver, missing messages shall be accessible on request. A manual follow-up procedure may be applied.
8. All senders and receivers of messages and the Commission shall establish failover procedures for business continuity.

#### *Article 146e*

#### **Corrections**

Corrections to reports shall be recorded in the same format as the original report, indicating that the report is a correction based on the UN/CEFACT P1000-1: General Principles.

#### *Article 146f*

#### **Exchange of vessel monitoring system data**

1. The format to be used to report vessel monitoring system data between Member States, as well as between Member States and the Commission or the body designated by it, shall be the Vessel Position Domain XML Schema Definition based on the UN/CEFACT P1000-7.

2. Flag Member State systems shall be capable of sending vessel monitoring system messages.
3. Flag Member State systems shall also be capable of replying to requests for vessel monitoring system data for fishing trips that started during the previous 36 months.

#### *Article 146g*

##### **Exchange of fishing activity data**

1. The format to be used to exchange fishing logbook data, prior notification data, transshipment declaration data, and landing declaration data, as referred to in Articles 15, 17, 22 and 24 of the Control Regulation, between Member States, as well as between Member States and the Commission or the body designated by it, shall be the Fishing Activity Domain XML Schema Definition based on the UN/CEFACT P1000-3.
2. Flag Member State systems shall be capable of sending fishing activity messages as well as of replying to requests for fishing activity data for fishing trips that started during the previous 36 months.

#### *Article 146h*

##### **Exchange of sales related data**

1. The format to be used to exchange sales notes data and take-over declarations data, as referred to in Articles 63 and 67 of the Control Regulation, between Member States, as well as between Member States and the Commission or the body designated by it, shall be the Sales Domain XML Schema Definition based on the UN/CEFACT P1000-5.
2. When transport document data as referred to in Article 68 of the Control Regulation are exchanged between Member States, as well as between Member States and the Commission or the body designated by it, the format used shall also be based on the UN/CEFACT P1000-5.
3. Member State systems shall be capable of sending sales notes and take-over declarations messages as well as of replying to requests for sales notes and take-over data for operations taken place in the previous 36 months.

#### *Article 146i*

##### **Transmission of aggregated catch data**

1. Flag Member States shall use the XML Schema Definition based on the UN/CEFACT P1000-12 as format to transmit to the Commission the aggregated catch data referred to in Article 33(2) and (4) of the Control Regulation and in Article 13(2) of Council Regulation (EC) No 1006/2008.
2. The catch report data shall be aggregated per month in which the species were caught.
3. The catch report quantities shall be based on the quantities landed. When a catch report is to be provided in accordance with Article 13(2) of Regulation (EC) No 1006/2008, and before the landing takes place, an estimate catch report shall be provided, with the indication "retained on board". A correction with the exact weight and landing place shall be transmitted before the 15th of the month following the landing.
4. When the Union legislation requires the reporting of stocks or species in multiple catch reports at different aggregation levels, these stocks or species shall only be reported in the most detailed report required.

#### *Article 146j*

##### **Changes to XML formats and implementation documents**

1. Amendments to XML formats and implementation documents to be used for all electronic data exchanges between Member States, and between Member States, the Commission or the body designated by it, including the amendments resulting from Articles 146f, 146g and 146h, shall be decided by the Commission in concert with Member States.

2. The amendments referred to in paragraph 1 shall be clearly identified on the Master Data Register of the European Commission Fisheries website and marked with the date the amendment comes into effect. Such amendments shall not come into effect earlier than 6 months and no later than 18 months after they have been decided. The timing shall be decided by the Commission in concert with Member States.

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

(\*\*) Commission Regulation (EC) No 26/2004 of 30 December 2003 on the Community fishing fleet register (OJ L 5, 9.1.2004, p. 25).;

(38) in Article 164, paragraph 3 is replaced by the following:

‘3. The Commission or the body designated by it may, in the framework of sustainable fisheries partnership agreements or of fisheries partnership agreements concluded between the Union and third countries or in the framework of Regional Fisheries Management Organisations or similar arrangements to which the Union is a Contracting Party or a non-contracting Cooperating Party, communicate relevant information concerning non-compliance with the rules of the Common Fisheries Policy or serious infringements referred to in Article 42(1)(a) of Regulation (EC) No 1005/2008 and in Article 90(1) of the Control Regulation to other parties to those agreements, organisations or arrangements, subject to the consent of the Member State that supplied the information and in accordance with Article 9 of Regulation (EC) No 45/2001 (\*).

(\*) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).;

(39) Annex V is deleted;

(40) Annex VI is replaced by the text in Annex I to this Regulation;

(41) Annex VII is replaced by the text in Annex II to this Regulation;

(42) Annexes VIII and IX are deleted;

(43) Annex X is replaced by the text in Annex III to this Regulation;

(44) Annex XII is replaced by the text in Annex IV to this Regulation;

(45) Annex XXIII is replaced by the text in Annex V to this Regulation;

(46) Annex XXVI is replaced by the text in Annex VI to this Regulation;

(47) Annex XXVII is replaced by the text in Annex VII to this Regulation;

(48) Annex XXX is replaced by the text in Annex VIII to this Regulation;

(49) Annex XXXI is deleted.

## Article 2

### Repeal

Regulation (EC) No 500/2001 is repealed.

*Article 3***Entry into force**

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

However, Article 146d(1) shall apply as from 1 January 2016. In accordance with Article 11 of Regulation (EU) 2015/812, item number 5 of Annex XXX regarding serious infringements for not fulfilling obligations to land undersized fish, shall apply as from 1 January 2017.

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

Done at Brussels, 28 October 2015.

*For the Commission*

*The President*

Jean-Claude JUNKER

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## MODEL OF COMBINED UNION FISHING LOGBOOK, LANDING DECLARATION AND TRANSHIPMENT DECLARATION

[illegible]

**MODEL OF COMBINED UNION FISHING LOGBOOK, LANDING DECLARATION AND TRANSHIPMENT DECLARATION**  
**(MEDITERRANEAN SEA — DAILY FISHING TRIPS)**

|                                                                                       |                 |                               |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|---------------------------------------------------------------------------------------|-----------------|-------------------------------|---------------|--------------------------------|------------------------|--------------------|--------------------------------|----------------|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------------------------|--|-----------------------|--|----------------|--|--|--|--|---------|-------------------------------------------------------------------------------|
| No ISO alpha-3 country code + number                                                  |                 | <b>UNION FISHING LOG-BOOK</b> |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  | Year:                  |  | Trip No:              |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 | Name of master(s) (3)         |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 | 1 .....1 1 ..... 1            |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 | Address(es)                   |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 | 1 .....1 1 ..... 1            |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
| Name of vessel(s) (1)(7)                                                              |                 | Radio call sign (1)(7)        |               | External identification (2)(7) |                        | CFR number (1)(7)  |                                | IMO number (7) |                                       | Day (4)(5)(6)(7)(11)                                                                                                                                                                                                                |  | Month (4)(5)(6)(7)(11) |  | Time (4)(5)(6)(7)(11) |  | Port (4)(5)(6) |  |  |  |  |         |                                                                               |
|                                                                                       |                 |                               |               |                                |                        |                    |                                |                |                                       | Departure (4)                                                                                                                                                                                                                       |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 |                               |               |                                |                        |                    |                                |                |                                       | Arrival (5)(6)(7)                                                                                                                                                                                                                   |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 |                               |               |                                |                        |                    |                                |                |                                       | Landing (5)(6)(7)                                                                                                                                                                                                                   |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
| Day, month, year, time (7) 1 ..... 1 1 ..... 1 1 ..... 1 1 ..... 1 Flag (7) 1 ..... 1 |                 |                               |               |                                |                        |                    |                                |                |                                       | <b>Catches by species kept on board, discarded or released at sea and landed or transshipped in kg live-weight equivalent (15)(16)(18)</b>                                                                                          |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
| Place (7) 1 ..... 1 Port and country of destination (7) 1 ..... 1 1 ..... 1           |                 |                               |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
| Gear type (8)                                                                         | Dimensions (10) | Number (10)                   | Mesh size (9) | No of fishing ops (12)         | Gear soaking time (13) | Fishing depth (13) | Position/fishing area (14)(22) |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  | Species | Weight of unit in live weight, or number of individuals, of species concerned |
|                                                                                       |                 |                               |               |                                |                        |                    | Position (Latitude/Longitude)  |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 |                               |               |                                |                        |                    | Stat. rect.                    | GFCM area      | Third country fishing zone/ High seas |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 |                               |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 |                               |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 |                               |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 |                               |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 |                               |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 |                               |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 |                               |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 |                               |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 |                               |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 |                               |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 |                               |               |                                |                        |                    |                                |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
|                                                                                       |                 |                               |               |                                |                        |                    | Presentation of fish (17)      |                |                                       |                                                                                                                                                                                                                                     |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |
| Comments:                                                                             |                 |                               |               |                                |                        |                    |                                |                |                                       | Date:<br>I, the undersigned, hereby certify that all records are complete, true and accurate.<br>Signature master/agent (*) (20):<br>Signature observer (*) (20):<br>Agent's/observer name and address (21)<br>1 ..... 1 1 ..... 1' |  |                        |  |                       |  |                |  |  |  |  |         |                                                                               |

(\*) Delete whichever does not apply

## ANNEX III

## ‘ANNEX X

**INSTRUCTIONS TO MASTERS OF FISHING VESSELS REQUIRED TO COMPLETE AND SUBMIT A FISHING LOGBOOK, A LANDING DECLARATION OR A TRANSHIPMENT DECLARATION**

The following general and minimum information on the vessel or vessels fishing activities shall be recorded in the fishing logbook in accordance with Article 14, 15, 21, 22, 23 and 24 of Control Regulation and Title III, Chapters I, II and III of this Regulation, without prejudice of other specific elements or rules required by Union legislation, national authorities of a Member State or of a third country, or by a Regional Fisheries Management Organisation.

1. INSTRUCTIONS CONCERNING THE FISHING LOGBOOK

The master(s) of all fishing vessel(s) participating to a pair fishing operation shall keep a fishing logbook indicating the quantities caught and kept on board in such a way that there is no double counting of catches.

In paper log book, during the same fishing trip, mandatory data elements shall be recorded in each page.

| <b>Information concerning the fishing vessel(s) and fishing trip dates</b> |                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Paper fishing logbook Reference Number                                     | Name of the data element<br>(M = Mandatory)<br>(O = Optional)<br>(CIF = Compulsory if applicable)                                                         | Description and/or timing to be recorded                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| (1)                                                                        | <b>Name of fishing vessel(s), (M)</b><br><b>International radio call signal(s), (M)</b><br><b>CFR number(s) (M)</b><br><b>GFCM, ICCAT number(s) (CIF)</b> | <p>In case of pair fishing operations, the same information for the second fishing vessel, shall be as well recorded.</p> <p>This information shall be entered in paper logbook below those of the vessel in respect of which the fishing logbook is being kept.</p> <p>The Community Fleet Register (CFR) identification number of the vessel is the unique number assigned to a Union vessel by a Member State when the fishing vessel enters in the Union fleet for the first time <sup>(1)</sup>.</p> <p>GFCM or ICCAT register number shall be entered for fishing vessels carrying out regulated fishing activities outside Union waters (CIF).</p> |
| (2)                                                                        | <b>External identification (M)</b>                                                                                                                        | <p>External registration letters and numbers as displayed on the side hull.</p> <p>In case of pair fishing operations, the same information for the second fishing vessel, shall be as well recorded.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| (3)                                                                        | <b>Name and address of the master (M)</b>                                                                                                                 | <p>Name, first name and detailed address of master (street name, number, city, postal code, Member State or third country) shall be given.</p> <p>In case of pair fishing operations, the same information for the second fishing vessel, shall be as well recorded.</p>                                                                                                                                                                                                                                                                                                                                                                                  |
| (4)                                                                        | <b>Date, time and port of departure (M)</b>                                                                                                               | <p>Shall be recorded in paper logbook before fishing vessel leaves the port. Date shall be recorded in DD-MM-YYYY and time shall be recorded in HH-MM in local time.</p> <p>Electronic departure message shall be sent before fishing vessel leaves the port. Date and time shall be recorded in coordinated universal time (UTC).</p> <p>For electronic logbook, port shall be recorded using codes published in the Master Data Register page of the European Commission Fisheries website.</p>                                                                                                                                                         |

| <b>Information concerning the fishing vessel(s) and fishing trip dates</b> |                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|----------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Paper fishing logbook Reference Number                                     | Name of the data element<br>(M = Mandatory)<br>(O = Optional)<br>(CIF = Compulsory if applicable)                                                                                                              | Description and/or timing to be recorded                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| (5)                                                                        | <b>Date, time and port of return (M)</b>                                                                                                                                                                       | <p>Shall be recorded in paper logbook before fishing vessel enters into the port. Date shall be recorded in DD-MM-YYYY and estimated time shall be recorded in HH-MM in local time</p> <p>Electronic return to port message shall be sent before fishing vessel entering into the port. Date and estimated time shall be recorded in in coordinated universal time (UTC).</p> <p>For electronic logbook, port shall be recorded using codes published in the Master Data Register page of the European Commission Fisheries website.</p>                                                                                                                                                                                                                                                                                                                                                                        |
| (6)                                                                        | <b>Date, time and port of landing if different from (5) (M)</b>                                                                                                                                                | <p>Shall be recorded in logbook before fishing vessel enters into the port of landing. Date shall be recorded in DD-MM-YYYY and estimated time shall be recorded in HH-MM in local time (paper logbook) or in coordinated universal time (UTC) for electronic logbook.</p> <p>For electronic logbook, port shall be recorded using codes published in the Master Data Register page of the European Commission Fisheries website.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| (7)                                                                        | <b>Date, time and place of the transhipment, Name, external identification, international radio call sign, flag, CFR or IMO number and port and country of destination of the receiving fishing vessel (M)</b> | <p>Shall be filled in paper logbook in the case of transhipment before starting the operation.</p> <p>Date shall be recorded in DD-MM-YYYY and time shall be recorded in HH-MM in local time (paper logbook) or in coordinated universal time (UTC) for electronic logbook.</p> <p>For electronic logbook, port shall be recorded using codes published in the Master Data Register page of the European Commission Fisheries website.</p> <p>Third country shall be recorded using ISO-3166 3-alpha country codes.</p> <p>The Community Fleet Register (CFR) number shall be recorded for Union vessels. The International Maritime Organisation (IMO) number shall be recorded for third country vessels.</p> <p>When a geographical position is required, latitude and longitude shall be recorded in degrees and minutes if no use of GPS and in decimal degrees and minutes using GPS (format WGS 84).</p> |

#### Information on the fishing gear

|      |                           |                                                                                                                         |
|------|---------------------------|-------------------------------------------------------------------------------------------------------------------------|
| (8)  | <b>Gear type (M)</b>      | The type of gear shall be indicated using the codes in column 1 of Annex XI.                                            |
| (9)  | <b>Mesh size (M)</b>      | Shall be given in millimetres (mesh stretched).                                                                         |
| (10) | <b>Gear dimension (M)</b> | Gear dimensions such as the size and the number shall be given according to the specifications in column 2 of Annex XI. |

| Information concerning the fishing vessel(s) and fishing trip dates |                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Paper fishing logbook Reference Number                              | Name of the data element<br>(M = Mandatory)<br>(O = Optional)<br>(CIF = Compulsory if applicable)                     | Description and/or timing to be recorded                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| (11)                                                                | <b>Date (M)</b>                                                                                                       | Date for each day at sea shall be recorded in a new line (paper logbook) or report (electronic logbook) and shall correspond to each day at sea.<br><br>Where applicable, date for each fishing operation shall be recorded in a new line.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| (12)                                                                | <b>Number of fishing operations (M)</b>                                                                               | Number of fishing operations shall be given in accordance with the specifications in column 3 of Annex XI.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| (13)                                                                | <b>Fishing time (O)</b><br><b>Gear time set and haul (CIF)</b><br><b>Fishing depth (CIF)</b><br><b>Total time (O)</b> | Total time spent for all activities in connection with fishing operations (searching for fish, the shooting, towing and hauling of active gears, setting, soaking, removing or resetting of passive gears and the removal of any catch from the gear, keep nets, or from a transport cage to fattening and farming cages) shall be given in minutes and equals the number of hours spent at sea minus the time spent in transit to, between and returning from the fishing grounds, dodging, inactive or waiting for repair.<br><br>For gear time set and time haul, time shall be recorded in HH-MM in local time (paper logbook) or in coordinated universal time (UTC) for electronic logbook.<br><br>Fishing depth shall be recorded as average depth and in metres.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| (14)                                                                | <b>Position and fishing geographical area (M)</b>                                                                     | The relevant geographical area of capture shall be represented by <u>the area in which the majority of the catch was taken</u> using the most detailed level when available.<br><br><i>Examples:</i><br><br>In Northeast Atlantic waters (FAO area 27), <u>up to ICES Division and statistical rectangle</u> (e.g. IVa 41E7, VIIIb 20E8). ICES statistical rectangles provide a grid covering the area between 36° N and 85° 30' N and 44° W and 68° 30' E. Latitudinal rows, with intervals of 30', are numbered (two-digits) from 01 to 99. Longitudinal columns, with intervals of 1°, are coded according to an alphanumeric system, beginning with A0 using a different letter for each 10° block, to M8, except I.<br><br>In Mediterranean and Black sea waters (FAO area 37), <u>up to GFCM geographical sub-area and statistical rectangle</u> (e.g. 7 M27B9). The numbers of a rectangle in the GFCM statistical grid is a 5 digits code: (i) Latitude is covered by a composed 3 digits code (one letter and two numbers). Maximum range from M00 (30° N) up to M34 (47° 30' N), (ii) Longitude is covered by a composed code of a letter and a number. The letter range is from A to J and number range per letter is from 0 to 9. Maximum range from A0 (6° W) up to J5 (42° E).<br><br>In Northwest Atlantic waters including NAFO (FAO area 21) and in Eastern Central Atlantic waters including CECAF (FAO area 34), <u>up to FAO division or subdivision</u> (e.g. 21.3.M or 34.3.5).<br><br>For the other FAO areas, <u>up to FAO subarea</u> when available (e.g. FAO 31 for Western Central Atlantic and FAO 51.6 for Western Indian Ocean). |

| Information concerning the fishing vessel(s) and fishing trip dates |                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Paper fishing logbook Reference Number                              | Name of the data element<br>(M = Mandatory)<br>(O = Optional)<br>(CIF = Compulsory if applicable) | Description and/or timing to be recorded                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|                                                                     |                                                                                                   | <p>However, optional entries may be made in respect of all the statistical rectangles in which the fishing vessel has operated during the day (O)</p> <p>In GFCM and ICCAT areas, geographical position (latitude/longitude) shall be as well recorded for each fishing operation or at noon when no fishing has been conducted during this day.</p> <p>When a geographical position is required, latitude and longitude shall be recorded in degrees and minutes if no GPS is used and in decimal degrees and minutes using GPS (format WGS 84).</p> <p>Third country fishing zone, regional fisheries management organisation area and high seas: indicate the fishing zone(s) of non-Member States or the Regional Fisheries Management Organisation area(s) or the waters outside the sovereignty or jurisdiction of any State or not regulated by a Regional Fisheries Management Organisation, using ISO-3166 3-alpha country codes and other codes published in the Master Data Register page of the European Commission Fisheries website e.g. NOR = Norway, NAFO = XNW, NEAFC = XNE and XIN for high seas.</p>                                                                                                                                                                                                                   |
| (15)(16)                                                            | <b>Catches caught and kept on board (M)</b>                                                       | <p><u>FAO 3-alpha species codes shall be used.</u></p> <p>The catch of each species shall be recorded in kilograms live weight equivalent.</p> <p>All quantities of each species caught and kept on board <u>above 50 kg of live-weight equivalent</u> shall be recorded. The 50 kg threshold shall apply as soon as catches of a species exceed 50 kg. These amounts shall include quantities set aside for consumption by the crew of the vessel.</p> <p>Legally size catches shall be recorded using the general code LSC.</p> <p>Below minimum conservation reference size catches shall be recorded <u>separately</u> from the legally sized catches using the general code BMS.</p> <p>Where catches are held in baskets, boxes, bins, cartons, sacks, bags, blocks or other containers, the net weight of the unit used shall be recorded in kilograms live weight, and the precise number of such units used shall be recorded.</p> <p>Alternatively the catch kept on board in such units may be recorded in kilograms live weight (O).</p> <p>In Baltic Sea (only for salmon) and in GFCM area (only for tunas, swordfish and highly migratory sharks) and, if applicable, in other areas, number of fish caught per day shall be also recorded.</p> <p>If the number of columns is insufficient, a new page shall be used.</p> |
| (15)(16)                                                            | <b>Estimates of discards (M)</b>                                                                  | <p><u>FAO 3-alpha species codes shall be used.</u></p> <p>The discard of each species shall be recorded in kilograms live weight equivalent.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

| Information concerning the fishing vessel(s) and fishing trip dates |                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Paper fishing logbook Reference Number                              | Name of the data element<br>(M = Mandatory)<br>(O = Optional)<br>(CIF = Compulsory if applicable) | Description and/or timing to be recorded                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|                                                                     |                                                                                                   | <p><u>Species not subject to the landing obligation:</u></p> <p>Discards of quantities of each species <u>above 50 kg live weight equivalent</u> shall be recorded following the rules set up for the recording of catches using the general code DIS.</p> <p>Discards of species taken for live bait purposes and which are recorded in the fishing logbook, shall also be recorded in the same way.</p> <p><u>Species which benefit from exemptions to the landing obligation <sup>(2)</sup>:</u></p> <p>Discards of quantities of each species shall be <u>fully</u> recorded following the rules set up for the recording of catches using the general code DIS.</p> <p>Discards of quantities of each species to which specifically <i>de minimis</i> exemptions apply shall be <u>fully</u> recorded following the rules set up for the recording of catches <u>separately</u> from the other discards using the general code DIM.</p> |
| (15)(16)                                                            | <b>Catches, incidental by-catches and release of other marine organisms or animals (M)</b>        | <p>In GFCM area, the following information shall be as well recorded <u>separately</u> for each catch or incidental by-catch:</p> <ul style="list-style-type: none"> <li>— Daily catches of red coral including fishing activity by area and depth,</li> <li>— Incidental by-catch and release of seabirds,</li> <li>— Incidental by-catch and release of monk seals,</li> <li>— Incidental by-catch catch and release of sea turtles,</li> <li>— Incidental by-catch and release of cetaceans.</li> </ul> <p>Where applicable, marine animals released to sea shall be recorded using the general code RET.</p> <p>FAO 3-alpha species codes shall be used or when unavailable, codes published in the Master Data Register page of the European Commission Fisheries website.</p>                                                                                                                                                          |

(<sup>1</sup>) As referred to in Article 10 of Commission Regulation (EC) No 26/2004 of 30 December 2003 on the Community fishing fleet register (OJ L 5, 9.1.2004, p. 25).

(<sup>2</sup>) As referred to in Article 15(4) and Article 15(5) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy and as amended by Regulation (EU) 2015/812 of the European Parliament and of the Council of 20 May 2015, in particular:

- species in respect of which fishing is prohibited and which are identified as such in a Union legal act adopted in the area of the common fisheries policy,
- species for which scientific evidence demonstrates high survival rates, taking into account the characteristics of the gear, of the fishing practices and of the ecosystem,
- catches falling under *de minimis* exemptions,
- fish which shows damage caused by predators.

## 2. INSTRUCTIONS CONCERNING THE LANDING/TRANSHIPMENT DECLARATION

When fisheries products have been landed or transhipped, and if they have been weighted using systems approved by the competent authorities of Member States, on either the catch vessel, donor or receiving fishing vessel, then the actual weight of quantities landed or transhipped shall be indicated in kilograms product weight on the landing or transhipment declaration by species showing:

- (a) Presentation of fish (reference No 17 in paper fishing logbook) using the codes in table 1 of Annex I (M);

- (b) Measurement unit for landed or transhipped quantities (reference No 18 in paper fishing logbook); give the weight of the unit in kilograms product weight. This unit may be different from that entered in the fishing logbook (M);
- (c) Total weight by species landed or transhipped (reference No 19 paper in paper fishing logbook); give the weight of quantities actually landed or transhipped for all species (M);

Legally size catches shall be recorded using the general code LSC. Below minimum conservation reference size catches shall be recorded separately from the legally sized catches using the general code BMS. FAO 3-alpha species codes shall be used.

- (d) The weight shall correspond to the product weight of fish as landed, i.e. after any processing on board. Relevant conversion factors shall be applied subsequently by the competent authorities in Member States to calculate the equivalent live weight in accordance with Article 49 of this Regulation;
- (e) Signature of the master (reference No 20 in paper fishing logbook) (M);
- (f) Signature and name and address of the agent and the observer where applicable (reference No 21 in paper fishing logbook);
- (g) Relevant geographical area of capture: FAO area, sub-area and sub-division, ICES division, NAFO, NEAFC sub-area, CECAF area, GFCM sub area or third country fishing zone (reference No 22 in paper fishing logbook). This shall be applied in the same way as for position and geographical area information as referred above (M).

### 3. ADDITIONAL INSTRUCTIONS FOR RECORDING FISHING EFFORT IN THE FISHING LOGBOOK

The following additional information shall be recorded in fishing logbook by masters of Union fishing vessels for the time spent in fisheries subject to fishing effort regimes:

- (a) All information required under this section shall be recorded in the paper fishing logbook between the fishing logbook references No (15) and (16).
- (b) Time shall be recorded as co-ordinated universal time (UTC).
- (c) Latitude and longitude shall be recorded in degrees and minutes if no GPS is used and in decimal degrees and minutes (format WGS 84) if use of GPS.
- (d) Species shall be recorded using the 3-alpha FAO fish species codes.

#### 3.1. Information concerning fishing effort

- (a) *Crossing an effort zone*

Where an authorized fishing vessel crosses an effort zone without carrying out fishing activities in that zone, an additional line shall be completed in the paper fishing logbook or an electronic declaration shall be completed. The following information is to be entered:

- the date,
- the effort zone,
- the dates and times of each entry/exit,
- position of each entry and exit in latitude and longitude,

- catches retained on board by species at the time of entry,
- the word “crossing”.

(b) *Entry into an effort zone*

Where the fishing vessel enters an effort zone in which it is likely to carry out fishing activities, an additional line shall be completed in the paper fishing logbook or an electronic declaration shall be completed. The following information is to be entered:

- the date,
- the word “entry”,
- the effort zone,
- position in latitude and longitude,
- the time of entry,
- catches retained on board by species at the time of entry, and
- the target species.

(c) *Exit from an effort zone*

Where the vessel leaves an effort zone in which it has carried out fishing activities and where the vessel enters another effort zone in which it intends to carry out fishing activities, an additional line shall be completed in the paper fishing logbook or an electronic declaration shall be completed. The following information is to be entered:

- the date,
- the word “entry”,
- position in latitude and longitude,
- the new effort zone,
- the time of exit/entry,
- catches retained on board by species at the time of exit/entry, and
- the target species.

Where the fishing vessel leaves an effort zone in which it has carried out fishing activities and will not carry out further fishing activities in that effort zone, an additional line shall be completed or an electronic declaration shall be completed. The following information is to be entered:

- the date,
- the word “exit”,
- position in latitude and longitude,
- the effort zone,
- the time of departure,

- catches retained on board by species at the time of exit, and
- the target species.

(d) *Trans-zonal fishing activities* <sup>(1)</sup>.

Where the fishing vessel carries out trans-zonal fishing activities, an additional line in the paper logbook or an electronic declaration shall be completed. The following information is to be entered:

- the date,
- the word “trans-zonal”,
- the time of first exit and effort zone,
- position of first entry in latitude and longitude,
- the time of last entry and effort zone,
- position of last exit in latitude and longitude,
- catches retained on board by species at the time of exit/entry, and
- the target species.

(e) *Additional information for fishing vessels using static gears:*

- When the fishing vessel sets or resets static gears, the following information shall be entered:
  - the date,
  - the effort zone,
  - the position in latitude and longitude,
  - the words “setting” or “resetting”,
  - the time.
- When the fishing vessel completes static gear operations:
  - the date,
  - the effort zone,
  - the position in latitude and longitude,
  - the word “finish”,
  - the time.

### 3.2. Information concerning the communication of vessel movements

Where a fishing vessel carrying out fishing activities is required to communicate a fishing effort report to the competent authorities in accordance with Article 28 of the Control Regulation, the following information shall be recorded in addition to that referred to in paragraph 3.1:

- (a) the date and time of the communication;
- (b) the geographical position of the fishing vessel in latitude and longitude;

<sup>(1)</sup> Vessels remaining within an effort zone not exceeding 5 nautical miles either side of the line separating two effort zones must record their first entry and last exit during a period of 24 hours.

- (c) the means of communication and, where applicable, the radio station used; and
  - (d) the destination(s) of the communication.'
-

## ANNEX IV

## ‘ANNEX XII

**STANDARDS FOR ELECTRONIC DATA EXCHANGE**

The format for electronic data exchange is based on the UN/CEFACT standard P1000. Data exchanges related to similar business activities are grouped in domains and specified in Business Requirements Specifications (BRS) documents.

Standards are available for:

P1000 – 1; General principles

P1000 – 3; Fishing Activity domain

P1000 – 5; Sales domain

P1000 – 7; Vessel Position domain

P1000 – 12; Aggregated Catch Data Report domain

The BRS documents and the translation in computer readable form (the XML Schema Definition) are available on the Master Data Register page of the European Commission Fisheries website. Implementation documents to be used for the exchange of data are also available on this website.’

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## ANNEX V

## ‘ANNEX XXIII

**LIST OF INFORMATION REQUIRED FOR COMPLETION OF SURVEILLANCE REPORTS REGARDING  
SIGHTINGS AND DETECTIONS OF FISHING VESSELS****General information**

1. Surveillance report reference
2. Date and time of sighting or detection (UTC)
3. Originating Member State and name of single authority
4. Type and identification of the surveillance craft
5. Position and location of the surveillance craft at the time of sighting or detection

**Details of the fishing vessel**

6. Flag State
7. Name
8. Registration port and external registration number
9. International radio call sign
10. International Maritime Organisation number
11. Community Fleet Register number
12. Description
13. Type
14. Initial position and location at the time of sighting or detection
15. Initial heading and speed at the time of sighting or detection
16. Activity

**Other information**

17. Sighting or detection mean
18. Contact with the vessel
19. Details of communication with the vessel
20. Record of sighting or detection
21. Comments
22. Attachments
23. Reporting official and signature

**Instructions for completing the surveillance reports:**

1. Submit as comprehensive information as possible.
2. Position in latitude and longitude and detailed location (ICES division, GFCM geographical sub-area, NAFO, NEAFC or CECAF sub-area, FAO area, sub-area and division and at land, port).

3. Flag State, vessel name, registration port, external registration number, international radio call sign and IMO number: to be obtained from what is seen or detected of, or regarding, the vessel or from radio contact with the vessel (the source of the information must be reported).
4. Description of the vessel (if observed visually): distinguishing markings as applicable: state whether the name and port of registration of the vessel was visible or not. Record hull and superstructure colours, number of masts, and position of bridge and funnel length, etc.
5. Type of vessel and gears as sighted: e.g. long liner, trawler, tug, factory ship, carrier ship (FAO international standard statistical classification of fishery vessels).
6. Activity of the sighted or detected vessel as applicable: report for each activity if the vessel was fishing, setting fishing gear, hauling, transshipping, transferring, towing, transiting, anchoring or any other activities (to be detailed) including date, time, position, heading and speed of the vessel for each activity.
7. Sighting or detection mean as applicable: detail of how sighting or detection was made such as visual, VMS, radar, radio traffic or other (to be detailed)
8. Contact with vessel: state if a contact was made (YES/NO) and the communication means (radio or other, to be detailed).
9. Details of communication: summarise any communication with the vessel with indication of the name, nationality, position given by the person(s) contacted on board of the sighted/detected vessel.
10. Record of sighting or detection: indicate if the sighting or detection was made by photograph, video, audio or written report.
11. Comments: report any other comments.
12. Attachments: if available, attach photograph or sketch of the vessel (draw the profile of the vessel, indicating any distinguishing structures, profile, masts and markings that could be used for identification).

Detailed instructions to be used for completing the reports are available on the Master Data Register page of the European Commission Fisheries website.

#### **Rules for the electronic exchange of surveillance reports:**

For the electronic exchange of surveillance reports, the XML Schema Definition is available on the Master Data Register page of the European Commission Fisheries website. Implementation documents to be used for the exchange are also available on this website.'

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## ANNEX VI

## ‘ANNEX XXVI

**FORMAT OF CONTROL OBSERVER REPORT**

## OBSERVER DETAILS

|                                     |  |
|-------------------------------------|--|
| Name                                |  |
| Designated by (competent authority) |  |
| Deployed by (employing authority)   |  |
| Start date                          |  |
| End date                            |  |

## FISHING VESSEL DETAILS

|                                 |  |
|---------------------------------|--|
| Type                            |  |
| Flag state                      |  |
| Name                            |  |
| Community fleet register number |  |
| External identifier             |  |
| IRCS                            |  |
| IMO Number                      |  |
| Engine propulsion power         |  |
| Length overall                  |  |

## GEAR TYPES CARRIED

|    |  |
|----|--|
| 1. |  |
| 2. |  |
| 3. |  |

## GEAR OBSERVED USED DURING TRIP

|    |  |
|----|--|
| 1. |  |
| 2. |  |
| 3. |  |

## DETAILS OF FISHING OPERATIONS

|                                                        |  |
|--------------------------------------------------------|--|
| Fishing operation reference number (if applicable)     |  |
| Date                                                   |  |
| Gear type used                                         |  |
| Dimensions                                             |  |
| Mesh size                                              |  |
| Attachments fitted                                     |  |
| Time of start of operation<br>Finish time of operation |  |
| Position of start of operation                         |  |
| Depth at start                                         |  |
| Depth at end of operation                              |  |
| Position at end of operation                           |  |

| CATCHES                                                             |                                               | Species | Retained | Discarded |
|---------------------------------------------------------------------|-----------------------------------------------|---------|----------|-----------|
| Estimated quantities of each species in kg live weight equivalent   | Minimum conservation reference size           |         |          |           |
|                                                                     | Below the minimum conservation reference size |         |          |           |
| Estimated quantities of target species in kg live weight equivalent | Minimum conservation reference size           |         |          |           |
|                                                                     | Below the minimum conservation reference size |         |          |           |
| Estimated quantities of target species in kg live weight equivalent | Minimum conservation reference size           |         |          |           |
|                                                                     | Below the minimum conservation reference size |         |          |           |
| Estimated total kg live weight equivalent of catch                  | Minimum conservation reference size           |         |          |           |
|                                                                     | Below the minimum conservation reference size |         |          |           |

OBSERVATIONS OF NON-COMPLIANCE

END OF THE FISHING TRIP SUMMARY

OBSERVER SIGNATURE

DATE

## ANNEX VII

## ‘ANNEX XXVII

**INSPECTION REPORTS**

## MINIMUM INFORMATION REQUIRED FOR COMPLETION OF INSPECTION REPORTS

**Instructions for completing the inspection reports:**

Submit as comprehensive information as possible. Information shall be entered as applicable and available. Detailed instructions to be used for completing the reports are available on the Master Data Register page of the European Commission Fisheries website.

**Rules for the electronic exchange of inspection reports:**

For the electronic exchange of inspection reports, the inspection XML Schema Definition is available on the Master Data Register page of the European Commission Fisheries website. Implementation documents to be used for the exchange are also available on this website.

## MODULE 1: INSPECTION OF A FISHING VESSEL AT SEA

1. **Inspection report reference** (\*)
2. **Member State and inspection authority** (\*)
3. Inspection vessel (flag, name and external registration number) (\*)
4. International radio call sign (\*)
5. Date of the inspection (start) (\*)
6. Time of the inspection (start) (\*)
7. Date of the inspection (finish) (\*)
8. Time of the inspection (finish) (\*)
9. Position of the inspection vessel (latitude, longitude) (\*)
10. Location of the inspection vessel (detailed fishing area) (\*)
11. Inspector in charge (\*)
12. Nationality
13. Inspector 2 (\*)
14. Nationality
15. **Target fishing vessel details (name, external registration number, flag)** (\*)
16. Position and location of the vessel vessel if different from the inspection vessel (latitude, longitude, detailed fishing area) (\*)
17. Type of the vessel (\*)
18. Certificate of registry ID (\*)
19. International radio call sign (\*)

20. International Maritime Organisation number (\*)
21. Community Fleet Register number (\*)
22. Owner details (name, nationality and address) (\*)
23. Charterer details (name, nationality and address) (\*)
24. Agent details (name, nationality and address) (\*)
25. Master details (name, nationality and address) (\*)
26. Radio call pre boarding
27. Fishing log-book completed before inspection
28. Boarding ladder (\*)
29. Identification for inspectors
30. **Infringements or observations** (\*)
31. **Inspections of documents and authorisations** (\*)
32. Certificate of registry ID (\*)
33. Engine propulsion power check
34. Fishing licence details (\*)
35. Fishing authorisation details (\*)
36. VMS operational (\*)
37. Remote electronic monitoring operational (\*)
38. Number(s) of paper fishing log sheet(s) (\*)
39. E-fishing logbook reference (\*)
40. Prior notification reference (\*)
41. Purpose of notification (\*)
42. Fish room certificate
43. Stowage plan
44. Ullage tables for refrigerated sea water tanks
45. Certification for on board weighing systems
46. Membership of a producer organisation
47. Last port of call details (port, state and date) (\*)
48. **Infringements or observations** (\*)
49. **Catch inspection** (\*)
50. Catch on board details (species, quantities in live weight equivalent including for undersized fish, catch area) (\*)

51. Margin of tolerance per species (\*)
52. Separate registration of undersized fish (\*)
53. Separate stowage for demersal stocks under multi-annual plans (\*)
54. Separate stowage for undersized fish (\*)
55. Weighing check, box/container count, ullage tables or sampling
56. Registration of discard details (species, quantities) (\*)
57. **Infringements or observations** (\*)
58. **Gear inspection** (\*)
59. Gear details (type) (\*)
60. Net attachment(s) or device(s) details (type) (\*)
61. Mesh size or dimension details (\*)
62. Twine details (type, thickness) (\*)
63. Gear marking
64. **Infringements or observations** (\*)
65. **Inspectors' comments** (\*)
66. **Master's comments** (\*)
67. **Action(s) taken** (\*)
68. **Inspectors' signature** (\*)
69. **Master's signature** (\*)

(\*) Compulsory information to be collected and recorded in the database in accordance with Article 118 of this Regulation

#### MODULE 2: INSPECTION OF FISHING VESSEL(S) ON TRANSHIPMENT

1. **Inspection report reference** (\*)
2. **Member State and inspection authority** (\*)
3. Inspection vessel (flag, name and external registration number) (\*)
4. International radio call sign (\*)
5. Date of the inspection (start) (\*)
6. Time of the inspection (start) (\*)
7. Date of the inspection (finish) (\*)
8. Time of the inspection (finish) (\*)
9. Position of the inspection vessel (latitude, longitude) (\*)
10. Location of the inspection vessel (detailed fishing area) (\*)

11. Location of the port (\*\*)
12. Designated port (\*)
13. Inspector in charge (\*)
14. Nationality
15. Inspector 2 (\*)
16. Nationality
17. **Donor fishing vessel details (name, external registration number, flag) (\*)**
18. Position and location of the vessel (latitude, longitude, detailed fishing area) (\*)
19. Type of the vessel (\*)
20. Certificate of registry ID (\*)
21. International radio call sign (\*)
22. International Maritime Organisation number (\*)
23. Community Fleet Register number (\*)
24. Owner details (name, nationality and address) (\*)
25. Charterer details (name, nationality and address) (\*)
26. Agent details (name, nationality and address) (\*)
27. Master details (name, nationality and address) (\*)
28. VMS check pre-boarding
29. Fishing log-book completed before transshipment (\*)
30. **Infringements or observations (\*)**
31. **Inspections of documents and authorisations (\*)**
32. Certificate of registry ID (\*)
33. Fishing licence details (\*)
34. Fishing authorisation details (\*)
35. Transshipment authorisation details (\*)
36. VMS operational
37. Number(s) of paper fishing log sheet(s) (\*)
38. E-fishing logbook reference (\*)
39. Prior notification reference (\*)
40. Purpose of prior notification (including IUU regime) (\*)

41. Last port of call details (port, state and date) (\*\*)
42. **Infringements or observations** (\*)
43. **Catch inspection** (\*)
44. Catch on board details (before transshipment) (species, quantities in product weight including for undersized fish, presentation, catch area) (\*)
45. Margin of tolerance per species (\*)
46. Catch transhipped details (species, quantities in product weight including for undersized fish, presentation, catch area) (\*)
47. **Infringements or observations** (\*)
48. **Receiving fishing vessel details (name, external registration number, flag)** (\*)
49. Position and location of the vessel (latitude, longitude, detailed fishing area) (\*)
50. Type of the vessel (\*)
51. Certificate of registry ID (\*)
52. International radio call sign (\*)
53. International Maritime Organisation number (\*)
54. Community Fleet Register number (\*)
55. Owner details (name, nationality and address) (\*)
56. Charterer details (name, nationality and address) (\*)
57. Agent details (name, nationality and address) (\*)
58. Master details (name, nationality and address) (\*)
59. VMS check pre-boarding
60. Fishing log-book completed before transshipment (\*)
61. **Infringements or observations** (\*)
62. **Inspections of documents and authorisations** (\*)
63. Certificate of registry ID (\*)
64. Fishing licence details (\*)
65. VMS operational
66. Number(s) of paper fishing log sheet(s) (\*)
67. E-fishing logbook reference (\*)
68. Prior notification reference (\*)
69. Purpose of prior notification (\*)

70. Last port of call details (port, state and date) (\*\*)
71. **Infringements or observations** (\*)
72. **Catch inspection** (\*)
73. Catch on board details (before transshipment) (species, quantities in product weight including for undersized fish, presentation, catch area) (\*)
74. Catch received details (species, quantities in product weight including for undersized fish, presentation, catch area) (\*)
75. **Infringements or observations** (\*)
76. **Inspectors' comments** (\*)
77. **Master(s)' comments** (\*)
78. **Action(s) taken** (\*)
79. **Inspectors' signature** (\*)
80. **Master(s)' signature** (\*)

(\*) Compulsory information to be collected and recorded in the database in accordance with Article 118 of this Regulation

(\*\*) Additional for port state control inspection

#### MODULE 3: INSPECTION OF A FISHING VESSEL IN PORT OR ON LANDING AND BEFORE FIRST SALE

1. **Inspection report reference** (\*)
2. **Member State and inspection authority** (\*) (\*\*)
3. Date of the inspection (start of inspection) (\*) (\*\*)
4. Time of the inspection (start of inspection) (\*) (\*\*)
5. Date of the inspection (finish of inspection) (\*) (\*\*)
6. Time of the inspection (finish of inspection) (\*) (\*\*)
7. Location of the port (\*) (\*\*)
8. Designated port (\*) (\*\*)
9. Inspector in charge (\*)
10. Nationality
11. Inspector 2 (\*)
12. Nationality
13. **Target fishing vessel details (name, external registration number, flag)** (\*) (\*\*)
14. Type of the vessel (\*) (\*\*)
15. Certificate of registry ID (\*) (\*\*)
16. International radio call sign (\*) (\*\*)

17. International Maritime Organisation number (\*) (\*\*)
18. Community Fleet Register number (\*)
19. Owner details (name, nationality and address) (\*) (\*\*)
20. Beneficial owner details (name, nationality and address) (\*) (\*\*)
21. Charterer details (name, nationality and address) (\*)
22. Agent details (name, nationality and address) (\*)
23. Master details (name, nationality and address) (\*)
24. VMS check pre-arrival to land (\*) (\*\*)
25. Fishing log-book completed before arrival
26. Identification for inspectors
27. **Infringements or observations** (\*) (\*\*)
28. **Inspections of documents and authorisations** (\*) (\*\*)
29. Certificate of registry ID (\*)
30. Fishing licence details (\*) (\*\*)
31. Fishing authorisation details (\*) (\*\*)
32. Port access and landing authorisation details (\*) (\*\*)
33. Number(s) of paper fishing log sheet(s) (\*)
34. E-fishing logbook reference (\*)
35. Prior notification reference (\*) (\*\*)
36. Purpose of prior notification (including IUU regime) (\*) (\*\*)
37. Fish room certificate
38. Stowage plan
39. Ullage tables for refrigerated sea water tanks
40. Certification for on board weighing systems
41. Membership of a producer organisation
42. Last port of call details (date, state and port) (\*) (\*\*)
43. **Infringements or observations** (\*) (\*\*)
44. **Catch inspection** (\*) (\*\*)
45. Catch on board details (species, quantities in product weight including for undersized fish, presentation, catch area) (\*) (\*\*)
46. Margin of tolerance per species (\*)

47. Separate registration of undersized fish (\*)
48. Catch offloaded details (species, quantities in product weight including for undersized fish, presentation, catch area) (\*) (\*\*)
49. Minimum conservation reference size checked (\*)
50. Labelling
51. Weighing check, box/container count or sampling check on discharge
52. Hold check after discharge
53. Catch weighing on landing
54. **Infringements or observations** (\*) (\*\*)
55. **Transshipment details for catches received from other fishing vessel(s)** (\*) (\*\*)
56. Donor fishing vessel(s) details (name, external registration number, international radio call sign, International Maritime Organisation number, Community Fleet Register number, flag) (\*) (\*\*)
57. Transshipment declaration details (\*) (\*\*)
58. Catch transhipped details (species, quantities in product weight including for undersized fish, presentation, catch area) (\*) (\*\*)
59. Other catch documentation (catch certificates) (\*) (\*\*)
60. **Infringements or observations** (\*) (\*\*)
61. **Gear inspection** (\*) (\*\*)
62. Gear details (type) (\*) (\*\*)
63. Net attachment(s) or device(s) details (type) (\*) (\*\*)
64. Mesh size or dimension details (\*) (\*\*)
65. Twine details (type, thickness) (\*) (\*\*)
66. Gear marking
67. **Infringements or observations** (\*) (\*\*)
68. **Status of the fishing vessel in RFMO area(s) where the fishing or related-fishing activities have been taken place (including in any IUU fishing vessel list)** (\*) (\*\*)
69. **Inspectors' comments** (\*)
70. **Master's comment** (\*) (\*\*)
71. **Action(s) taken** (\*)
72. **Inspectors' signature** (\*) (\*\*)
73. **Master's signature** (\*) (\*\*)

(\*) Compulsory information to be collected and recorded in the database in accordance with Article 118 of this Regulation

(\*\*) Additional for port state control inspection

## MODULE 4: MARKET/ PREMISES INSPECTION

1. **Inspection report reference (\*)**
2. **Member State and inspection authority (\*)**
3. Date of the inspection (start of inspection) (\*)
4. Time of the inspection (start of inspection) (\*)
5. Date of the inspection (finish of inspection) (\*)
6. Time of the inspection (finish of inspection) (\*)
7. Location of the port (\*)
8. Inspector in charge (\*)
9. Nationality
10. Inspector 2 (\*)
11. Nationality
12. Identification for inspectors
13. **Market or premises inspection details (name and address) (\*)**
14. Owner details (name, nationality and address) (\*)
15. Owner representative details (name, nationality and address) (\*)
16. **Inspected fisheries products details (species, quantities in product weight including for undersized fish, presentation, catch area, originating vessel(s) identification) (\*)**
17. Registered buyer, auction centre or other bodies or persons responsible for the first marketing of fisheries products details (name, nationality and address) (\*)
18. Minimum conservation reference size checked (\*)
19. Labelling for traceability (\*)
20. Common marketing standards (\*)
21. Size categories
22. Freshness categories
23. Fisheries products subject to storage mechanism inspected
24. Fisheries products weighed before sale
25. Weighing systems calibrated and sealed
26. **Infringements or observations (\*)**
27. **Inspection of documents related to inspected fisheries products (\*)**
28. Landing declaration details
29. Take-over declaration details

30. Transport document details
31. Supplier invoices and sales notes details
32. IUU catch certificate details
33. Importer details (name, nationality and address)
34. **Infringements or observations** (\*)
35. **Inspectors' comments** (\*)
36. **Operator's comments** (\*)
37. **Action(s) taken** (\*)
38. **Inspectors' signature** (\*)
39. **Operator's signature** (\*)

(\*) Compulsory information to be collected and recorded in the database in accordance with Article 118 of this Regulation

#### MODULE 5: INSPECTION OF TRANSPORT VEHICLE

1. **Inspection report reference** (\*)
2. **Member State and inspection authority** (\*)
3. Date of the inspection (start) (\*)
4. Time of the inspection (start) (\*)
5. Date of the inspection (finish) (\*)
6. Time of the inspection (finish) (\*)
7. Location of inspection (address) (\*)
8. Inspector in charge (\*)
9. Nationality
10. Inspector 2 (\*)
11. Nationality
12. Identification for inspectors
13. **Target vehicle details** (type and nationality) (\*)
14. Tractor identification (registration plate number) (\*)
15. Trailer identification (registration plate number) (\*)
16. Owner details (name, nationality and address) (\*)
17. Driver details (name, nationality and address) (\*)
18. **Inspection of documents related to fisheries products** (\*)
19. **Fisheries products weighed before transport (species, quantities in product weight including for undersized fish, presentation, catch area, originating vessel(s) identification)** (\*)

20. Destination of the vehicle (\*)
21. Transport document details
22. Electronic transmission of the transport document to the flag Member State
23. Fishing logbook of the originating vessel attached to the transport document
24. Electronic transmission of the fishing logbook of the originating vessel to the flag Member State
25. Other catch document attached to transport document (catch certificate)
26. Transport document received before arrival by the landing or marketing Member State
27. Landing declaration details
28. Take-over declaration details
29. Take-over cross check with landing declaration
30. Sales note or invoices details
31. Labelling for traceability
32. Sample weighing of box/containers
33. Weighing systems calibrated and sealed
34. Weighing record
35. Vehicle or container sealed
36. Seal details noted on the transport document
37. Inspection authority who affixed the seals (\*)
38. Status of seals (\*)
39. **Infringements or observations** (\*)
40. **Fisheries products transported before weighing (species, quantities in product weight including for undersized fish, presentation, catch area, originating vessel(s) identification) (\*)**
41. Destination of the vehicle (\*)
42. Transport document details
43. Electronic transmission of the transport document to the flag Member State
44. Fishing logbook of the originating vessel attached to the transport document
45. Electronic transmission of the fishing logbook of the originating vessel to the flag Member State
46. Transport document received before arrival by the landing or marketing Member State
47. Landing declaration details
48. Weighing of fisheries products observed on arrival at destination by Member State competent authorities

- 
49. Registered buyer, auction centre or other bodies or persons responsible for the first marketing of fisheries products details (name, nationality and address) (\*)
  50. Vehicle or container sealed
  51. Seal details noted on the transport document
  52. Inspection authority who affixed the seals (\*)
  53. Status of seals (\*)
  54. **Infringements or observations** (\*)
  55. **Inspectors' comments** (\*)
  56. **Transporter's comments** (\*)
  57. **Action(s) taken** (\*)
  58. **Inspectors' signature** (\*)
  59. **Transporter's signature** (\*)

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(\*) Compulsory information to be collected and recorded in the database in accordance with Article 118 of this Regulation

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## ANNEX VIII

## ‘ANNEX XXX

## POINTS TO BE ASSIGNED FOR SERIOUS INFRINGEMENTS

| No | Serious infringement                                                                                                                                                                                                                                                                                                                                                                      | Points |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 1  | <b>Not fulfilling of obligations to record and report catch or catch related data, including data to be transmitted by satellite vessel monitoring system</b><br>(Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(b) of Regulation (EC) No 1005/2008)                                                            | 3      |
| 2  | <b>Use of prohibited or non-compliant gear according to Union legislation</b><br>(Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(e) of Regulation (EC) No 1005/2008)                                                                                                                                            | 4      |
| 3  | <b>Falsification or concealing of markings, identity or registration</b><br>(Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(f) of Regulation (EC) No 1005/2008)                                                                                                                                                 | 5      |
| 4  | <b>Concealing, tampering or disposal of evidence relating to an investigation</b><br>(Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(g) of Regulation (EC) No 1005/2008)                                                                                                                                        | 5      |
| 5  | <b>Taking on board, transshipping or landing of undersized fish in contravention of the legislation in force or not fulfilling of obligations to land undersized fish</b><br>(Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(i) of Regulation (EC) No 1005/2008)                                                | 5      |
| 6  | <b>Carrying out of fishing activities in the area of a regional fisheries management organisation in a manner inconsistent with or in contravention of the conservation and management measures of that organisation</b><br>(Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(k) of Regulation (EC) No 1005/2008) | 5      |
| 7  | <b>Fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State</b><br>(Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(a) of Regulation (EC) No 1005/2008 )                                                                                                  | 7      |
| 8  | <b>Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth</b><br>(Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(c) of Regulation (EC) No 1005/2008)                                                                                               | 6      |
| 9  | <b>Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited</b><br>(Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(d) of Regulation (EC) No 1005/2008)                                                                                                                  | 7      |

| No | Serious infringement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Points |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 10 | <b>Obstruction of work of officials in the exercise of their duties in inspecting for compliance with the applicable conservation and management measures or the work of observers in the exercise of their duties of observing compliance with the applicable Union rules</b><br>(Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(h) of Regulation (EC) No 1005/2008)                                                         | 7      |
| 11 | <b>Transshipping to or participating in joint fishing operations with, support or re-supply of fishing vessels identified as having engaged in IUU fishing under Regulation (EC) No 1005/2008, in particular those included in the Union IUU vessel list or in the IUU vessel list of a regional fisheries management organisation</b><br>(Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(j) of Regulation (EC) No 1005/2008) | 7      |
| 12 | <b>Use of a fishing vessel with not nationality and that is therefore a stateless vessel in accordance with international law</b><br>(Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(l) of Regulation (EC) No 1005/2008)                                                                                                                                                                                                      | 7'     |

**COMMISSION IMPLEMENTING REGULATION (EU) 2015/1963****of 30 October 2015****imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of acesulfame potassium originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup>, and in particular Article 9(4) thereof,

Whereas:

**1. PROCEDURE****1.1. Provisional measures**

- (1) On 22 May 2015, by Commission Implementing Regulation (EU) 2015/787 ('the provisional Regulation'), <sup>(2)</sup> the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports of acesulfame potassium originating in the People's Republic of China ('the country concerned' or 'the PRC') as well as acesulfame potassium originating in the People's Republic of China contained in certain preparations and/or mixtures.
- (2) The investigation was initiated on 4 September 2014 following a complaint lodged on 22 July 2014 by Celanese Sales Germany GmbH ('the complainant'). The complainant was formerly named Nutrinova Nutrition Specialties & Food Ingredients GmbH until its change in name on 1 August 2015. The complainant is the sole Union producer of acesulfame potassium (or 'Ace-K'), thus representing 100 % of the total Union production of Ace-K.
- (3) As set out in recital 16 of the provisional Regulation the investigation of dumping and injury covered the period from 1 July 2013 to 30 June 2014 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2011 to the end of the investigation period ('the period considered').

**1.2. Subsequent procedure**

- (4) Subsequent to the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('the provisional disclosure'), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted an opportunity to be heard.
- (5) The complainant requested a hearing with the Hearing Officer in trade proceedings ('Hearing Officer'). The hearing took place on 8 July 2015. The complainant contested several aspects of the provisional determinations, in particular with regard to the adaptations made respectively in the dumping and injury margin calculations.
- (6) The Commission considered the oral and written comments submitted by the interested parties and, where appropriate, modified the provisional findings accordingly.

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> Commission Implementing Regulation (EU) 2015/787 of 19 May 2015 imposing a provisional anti-dumping duty on imports of acesulfame potassium originating in the People's Republic of China as well as acesulfame potassium originating in the People's Republic of China contained in certain preparations and/or mixtures (OJ L 125, 21.5.2015, p. 15).

- (7) The Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of Ace-K originating in the PRC and definitively collect the amounts secured by way of provisional duty ('the definitive disclosure'). All parties were granted a period within which they could make comments on the definitive disclosure. Upon request of the complainant, another hearing with the Hearing Officer was held on 22 September 2015.
- (8) The comments submitted by the interested parties were considered and taken into account where appropriate.

### 1.3. Sampling

- (9) In the absence of comments concerning the abandoning of sampling in view of the limited number of unrelated importers and exporting producers in the PRC that came forward, the provisional findings in recitals 7 to 11 of the provisional Regulation are confirmed.

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

- (10) The product concerned, as defined in recital 17 of the provisional Regulation, was acesulfame potassium (potassium salt of 6-methyl-1,2,3-oxathiazin-4(3H)-one 2,2-dioxide; CAS RN 55589-62-3) originating in the People's Republic of China as well as acesulfame potassium originating in the People's Republic of China contained in certain preparations and/or mixtures, currently falling within CN codes ex 2106 90 92, ex 2106 90 98, ex 2934 99 90 (TARIC code 2934 99 90 21), ex 3824 90 92, ex 3824 90 93 and ex 3824 90 96.
- (11) As explained in recital 18 of the provisional Regulation, Ace-K is used as a synthetic sweetener in a wide range of applications, for example in food, beverage, and pharmaceutical products.
- (12) After imposition of provisional measures, the customs authorities of various Member States and of Switzerland expressed concerns on the implementation difficulties caused by the provisional inclusion of Ace-K in preparations and/or mixtures in the definition of the product concerned. The investigation showed that such preparations and/or mixtures containing Ace-K were in fact not imported during the investigation period. The Commission concluded that due to the lack of imports, preparations and mixtures should not be included in the definition of the product scope. This clarification has no bearing on the findings of dumping, injury, causation and Union interest. While the Commission identified during the investigation certain activities related to the development of one mixture by the Union producer, the impact of those were excluded from the analysis already at the provisional stage due to their exceptional nature. Therefore, the clarification concerns only Ace-K in preparations and/or mixtures and does not materially affect the scope of the proceeding or the provisional findings on dumping and injury.
- (13) In view of considerable implementation difficulties reported by the customs authorities, possible enforcement risks linked to the transformation of pure forms of Ace-K into preparations and/or mixtures did not justify the inclusion thereof. The inclusion of preparations and mixtures is therefore not appropriate.
- (14) The definition of the product concerned should therefore be clarified as referring only to acesulfame potassium (potassium salt of 6-methyl-1,2,3-oxathiazin-4(3H)-one 2,2-dioxide; CAS RN 55589-62-3) originating in the People's Republic of China ('the product under investigation') currently falling within CN code ex 2934 99 90 (TARIC code 2934 99 90 21) ('the product concerned'). Acesulfame potassium is also commonly referred to as Acesulfame K or Ace-K. Should provisional anti-dumping duties on such preparations and/or mixtures have been imposed, they should be released.
- (15) The Commission did not receive any comments in this regard. The conclusions reached in recital 19 of the provisional Regulation are therefore confirmed.

### 3. DUMPING

#### 3.1. Normal value

- (16) None of the Chinese Ace-K producers claimed market economy treatment and therefore their domestic sales prices or cost of production could not be used for establishing normal value. During the investigation period, Ace-K was produced only in the PRC and the Union. The normal value could not therefore be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including the Union.
- (17) Consequently, pursuant to Article 2(7)(a) of the basic Regulation, normal value had to be determined on 'any other reasonable basis'.
- (18) To that effect, the Commission used as starting point for establishing the normal value the price actually paid or payable in the Union for the like product, i.e. the Union sales price of the Union industry, and it then adapted that price to remove the effect of three elements that existed only for the Union industry and that reflected particular patterns of price formation as well as activities related to a very specific and different product developed by the complainant.
- (19) Indeed, the investigation had established in the price setting of the product concerned in the present case particular patterns relating to quantities and types of customers, quality differences as well as exceptional costs related to a new, very specific and different product developed only by the complainant. The Commission introduced therefore relevant adaptations to reflect those particular patterns and make the determination of the normal value on a reasonable basis.
- (20) The complainant contested those adaptations to its prices for the purpose of establishing the normal value, claiming they are improper under the terms of Article 2(10) of the basic Regulation.
- (21) The above comments require a clarification of the Commission's approach as compared to the one described in the provisional Regulation. Indeed, in reference to recitals 26 and 27 of the provisional Regulation, it should be made clear that the three adaptations described below in recitals 23 to 38 have been made as part of the determination of the normal value on 'any other reasonable basis' under Article 2(7)(a) of the basic Regulation. Thus, the question was not to perform an adjustment to a normal value for comparing with an export price, but rather to arrive at a normal value on a reasonable basis in the absence of an appropriate market economy third country which could be used as analogue country. Indeed, the Union industry prices were used only as a starting point in the process of establishing a reasonable normal value and the adaptations were necessary to arrive at such a reasonable normal value.
- (22) The claim that there is no legal basis for these adaptations is therefore dismissed.

##### 3.1.1. *Adaptation for level of trade*

- (23) After provisional disclosure, the complainant, although agreeing that an adaptation was warranted because the export sales from China were made mainly to traders in the Union while the sales of the Union producer were mainly made to end users, questioned the magnitude of the adaptation made to arrive at a normal value at traders' level. Due to the limited presence of sales to distributors in the Union industry sales listing, those data could not be used for establishing an appropriate adaptation rate for these differences in level of trade and the adaptation rate was therefore provisionally calculated on the basis of the price difference between Chinese sales to traders and end users. The complainant contested that this was an appropriate basis and commented that the level of trade adaptation should have been determined by the gross margin realised by three large Union distributors in the food ingredients industry, each of which distributed Ace-K.
- (24) The Commission accepted that, in this case, it is more appropriate to calculate the adaptation rate on the basis of gross margins obtained by relevant distributors. However, the methodology as proposed by the complainant presented flaws as only one of the distributors mentioned by the complainant cooperated and the data concerned all products traded by these importers, most of which are not product concerned. Therefore, the Commission

adapted the proposed methodology in order to include data which was verified during the investigation and which concerned Ace-K only. To this end, the Commission determined the gross margin realised by all cooperating importers. This margin concerns the distribution of Ace-K only. This revised methodology resulted in a revised level of trade adaptation rate as compared to the one used at the provisional stage. That revised rate was applied and is reflected in the dumping margin in the table under recital 53 below.

- (25) One Chinese exporting producer commented on the fact that the provisional rate for the adaptation for differences in level of trade was not disclosed to them. The rate is not anymore of relevance as it has been replaced as explained in recital 24 above. In any event, as the provisional adaptation had been based on data from two Chinese cooperating exporting producers with sales to both traders and users, the exact amount concerns confidential business data and cannot be disclosed.

### 3.1.2. *Adaptation for quality difference and the market perception thereof*

- (26) Regarding the quality adaptation, the complainant first argued that there was no quality difference between the Chinese product and the like product produced by the Union producer and that therefore no adaptation was warranted. The complainant further questioned the representativeness of the evidence based on which the Commission reflected the quality differences and the perception thereof in the market in the establishment of the normal value.
- (27) In this respect, it should be underlined that there were various submissions which indicated quality differences and/or market perceptions of quality differences between the Chinese product and the like product in the Union. In fact, information submitted by the complainant at complaint stage and on its own website clearly indicated that a quality difference existed. Some submissions, mostly limited of nature, include test reports and written submissions received from interested parties. Therefore, the representativeness of the evidence based on which it was concluded that indeed there was a real and/or perceived difference of quality between the imported product and Ace-K produced by the Union producer is deemed to be sufficient.
- (28) Furthermore, the product specifications collected during the verification visits of the Union industry, Chinese producers and importers confirmed this quality difference as they revealed significant differences in terms of purity standards between the product sold by the complainant and the product sold by the exporting producers. An adaptation is therefore warranted.
- (29) Moreover, as concerns the amount of the adaptation, this is based on the sole quantification of the quality difference in the limited file, provided in a submission by the Union industry itself. The Commission also found that the cost of testing and improving the quality standards of Ace-K sold by one Chinese producer, as verified on-the-spot at the premises of a cooperating importer, is approximately of the same amount as the adaptation made by the Commission, which confirmed that the amount of the adaptation is reasonable.
- (30) One Chinese exporting producer claimed that the quality of its Ace-K is not only lower compared to that of the Union producer but also compared to those of its two Chinese competitors. It claimed that the quality adaptation made for its product should therefore be higher. Evidence supporting this concerned test reports comparing its product with that of one other Chinese cooperating exporting producer and a statement issued by an importer in the Union. This importer stated to have purchased the product concerned from this particular Chinese producer at a lower price as its product is allegedly of lower quality compared to that of its Chinese competitor.
- (31) This claim was not accepted, as the test reports submitted were dated prior to the investigation period. The quality of the product concerned from the Chinese exporting producer may well have improved since. Furthermore, though the claim of inferior quality was made vis-à-vis both of the other two cooperating Chinese producers, the test reports compared the products of the Chinese producer making the above claim with only one other Chinese cooperating producer. As for the statement issued by the importer, this also only concerned the product of the Chinese producer making the above claim and one other Chinese cooperating producer. In addition, no verifiable evidence supporting the statement (such as invoices indicating lower quality and/or purchase prices) was provided.
- (32) Based on the above, the Commission considers the quality adaptation made to be justified and at the appropriate level. The adaptation to the Union prices to reflect the quality differences is therefore confirmed.

3.1.3. *R & D and marketing adaptation related to activities for a very specific and different product developed by the complainant*

- (33) Following provisional disclosure, the complainant commented that the Commission did not provide any explanation as to why costs relating to its newly developed product had been deducted from the normal value and argued that no adaptation was warranted.
- (34) In this respect, it needs first to be noted that the costs made in relation to the newly developed product have been deducted consistently throughout the dumping and the injury analysis, as these costs are related to a very specific and different product developed by the complainant (see recitals 12 to 14). They are of an exceptional nature and unique to the Union industry. Second, as the new product was still in the process of being fully launched, only very limited quantities of sales had taken place in the investigation period, of which the sales prices were in any event not representative. No such costs had been incurred by any of the Chinese exporting producers, which are considered to be generic producers of the product concerned. Therefore, in order to determine the normal value under Article 2(7) of the basic Regulation on a reasonable basis, the Commission considered it reasonable to make an adaptation by excluding the costs related to the new product from the normal value computation.
- (35) The complainant also contested the adaptation as such on the basis that costs were deducted from prices, stating that there would be no legal basis for doing so under Article 2(10) of the basic Regulation and that by doing so the Commission would 'mix apples with oranges'. However, as explained in recital 21 above, the normal value has been established on the basis of Article 2(7) of the basic Regulation and this adaptation was found to be warranted under the terms of this Article to determine a normal value on a reasonable basis. In addition, it was clear that the price setting of the Union industry was affected by these (R & D and mainly marketing) costs related to a new a very specific and different product. Indeed, the investigation showed that those costs were allocated to the Ace-K activity and it is therefore logical that the company concerned, in its price setting, takes account of them in order to recover these costs. In fact it was confirmed by the Union Industry in its questionnaire response that cost of production is a factor considered in price formation process.
- (36) The complainant also challenged the magnitude of the adaptation, which it considered too high. It submitted that a lower amount per kg was justified by alleged differences in development and marketing costs for the Union market as compared to other markets. In this respect, it should first be underlined that this distinction in costs per market was not made by the complainant during the investigation despite the fact that it had been requested to give a breakdown of these development and marketing costs. Secondly, these figures could not be verified during the on spot verification. This contrasts with the adaptation as calculated by the Commission, as it was based on verified data from the complainant. The Commission therefore considers that the complainant has not brought evidence demonstrating that the level of the adaptation would be unreasonable. In any event, it was not considered prudent to reassess one element of SG&A costs in this manner and not others. In view of the above, this claim cannot be accepted.
- (37) One Chinese exporting producer asked the Commission to disclose the exact amount of the adaptation made for activities related to a very specific and different product developed by the complainant. However, this could not be disclosed, as this is confidential by nature.
- (38) The amount of the three adaptations made by the Commission to determine the normal value on a reasonable basis represents between 25 % and 45 % of the Union sale price of the Union industry.

3.1.4. *Claims for other adaptations*

- (39) As explained above, in its determination of the normal value on a reasonable basis, the Commission used as its starting point the actual average Union sales price, duly verified.
- (40) Following disclosure of provisional findings, the Union industry contested the use of actual sales prices as a starting point. In particular, it argued that 'a reasonable profit margin' should have been added to those actual prices. In the complainant's view, the profit margin realised in 2009 (ranging between 15 % and 25 %) would have been 'a reasonable profit margin', as the complainant had no dominant position with its market share having dropped to below 50 % in that year. Allegedly, dumping and injury had not yet occurred in 2009.

- (41) In recital 66 of the provisional Regulation it was already explained that the sales of the Union producer to independent customers were profitable. The exact profitability of these sales thus calculated is confidential towards parties other than the Union producer and profitability had therefore been presented in indexes in Table 10 of the provisional Regulation, but it was above 5 %, which in the synthetic sweeteners industry is reasonable. The exact figure has been disclosed to the complainant. Furthermore, normal value was established on the basis of Article 2(7) of the basic Regulation. Union industry prices were used as a starting point and were adapted for elements related to Union industry specific factors of price formation and activities related to a very specific and different product developed by the complainant. This method was considered reasonable in view of the specific facts of this case and information available on file. Therefore, there was no need to replace the actual profit by a target profit to determine the normal value on a reasonable basis and recalculate normal value as was claimed by the complainant. The claim is thus rejected.
- (42) Finally, the complainant identified a computational error concerning the Union sales listing which was the basis for the normal value. This error was corrected and the correction is reflected in the table under recital 53 below.

### 3.1.5. *Comments after final disclosure*

- (43) In its reply to the definitive disclosure the complainant contested that the Commission had calculated the amount of the deduction for differences in level of trade on the basis of the full Union industry ex-works price, as that price included the exceptional R & D and marketing costs for a very specific and different product developed by the complainant. It considered that it should have been applied to the adapted ex-works price of the Union industry after the deduction of those exceptional costs.
- (44) However, the level of trade adaptation rate, as explained in recital 24 above, is the weighted average gross margin realised by the cooperating importers on the distribution of Ace-K. It therefore should be applied to the actual sales price as it is an adaptation to address objective differences in sales prices as they are identified in the market. The level of trade adaptation is closely related to prices as observed on the market. This claim was therefore rejected.
- (45) After disclosure, the complainant also reiterated that the level of trade adaptation should have been determined by the gross margin realised by three large Union distributors in the food ingredients industry, each of which distributed Ace-K. It questioned the revised methodology employed by the Commission as the distributors' margin on which it was based would include services that distributors for the Union industry would not have to provide, resulting in a too high margin.
- (46) However, although certain additional services were identified during the investigation, the gross margin established for the distributors was net of such additional activities and thus purely relating to the trading activity. Therefore, the rate established for taking account of differences in level of trade relates to the difference in level of trade only and it is confirmed that the rate thus obtained is more appropriate than the rate according to the methodology proposed by the complainant, as already explained in recital 24 above. The complainant's claim relating to this issue was therefore dismissed.
- (47) In its comments to the final disclosure, the complainant also requested a further disclosure of several items relating to the exceptional R & D and marketing costs incurred for a very specific and different product developed by the complainant and to its own profit margins. However, since these items had been either already disclosed or directly provided by the complainant itself in its questionnaire reply, during the verification visit and in various submissions, the complainant was duly informed that it already had all the required information in its possession and that no additional disclosure was deemed necessary.
- (48) During the hearing with the Hearing Officer in trade proceedings following the final disclosure the complainant presented as a new claim that the level of trade adaptation should be expressed as a fixed-per-kilogram amount. The Commission noted that this comment is formally time barred because it was submitted after the deadline for comments on the final disclosure. In any event, the Commission considered that the use of a percentage for such an adaptation is not unreasonable.

### 3.1.6. Conclusion on normal value

- (49) In the absence of any further comments regarding the determination of normal value, recitals 22 and 23 of the provisional Regulation are confirmed.

### 3.2. Export price

- (50) In the absence of any comments regarding export price, recital (24) of the provisional Regulation is confirmed.

### 3.3. Comparison

- (51) The comments received on the adaptations to the normal value which in reality concerned the establishment of the normal value as such have been addressed in recitals 20 to 48. The Commission received no further comments. The conclusions reached in recitals 25 to 26 in the provisional Regulation are thus confirmed.

### 3.4. Dumping margins

- (52) In the absence of any comments, the methodology used for calculating the dumping margins, as set out in recitals 28 to 32 of the provisional Regulation, is confirmed.
- (53) Taking into account the correction of the computational error, as described in recital 42, and the revised methodology for establishing the level of trade adaptation rate, as described in recital 24, the definitive dumping margins, expressed as a percentage of the CIF (cost, insurance, freight) Union frontier price, duty unpaid, are as follows:

| Company                                  | Dumping margin |
|------------------------------------------|----------------|
| Anhui Jinhe Industrial Co., Ltd          | 135,6 %        |
| Suzhou Hope Technology Co., Ltd          | 119,9 %        |
| Anhui Vitasweet Food Ingredient Co., Ltd | 64,0 %         |
| All other companies                      | 135,6 %        |

## 4. INJURY

### 4.1. Union industry and Union production

- (54) In the absence of comments on Union industry and Union production, recital 34 of the provisional Regulation is confirmed.

### 4.2. Union consumption

- (55) In the absence of comments on Union consumption, recitals 35 to 37 of the provisional Regulation are confirmed.

### 4.3. Imports from the country concerned

- (56) As already mentioned in recital 42 above, a computational error in the Union sales listing was corrected. That correction also affected the undercutting margins which changed accordingly. The undercutting margins were equally affected by the revised level of trade adaptation rate, which is duly explained in recital 24 above. The revised weighted average undercutting margins ranged from 32 % to 54 %.

- (57) Following disclosure, the Union industry claimed that, because of the adaptation made to the Union industry price as mentioned in recital 44 of the provisional Regulation, the undercutting margins found by the Commission were understating the actual price undercutting. However, these adaptations are appropriate as they have been made in order to bring the Union industry prices at a level which allows for a fair comparison with the prices of Chinese imports.
- (58) In the absence of any further comments concerning the imports from the country concerned, and with the exception of the revised undercutting margins as mentioned in recital 56 above, the conclusions set out in recitals 38 to 44 of the provisional Regulation are confirmed.

#### **4.4. Economic situation of the Union industry**

- (59) The Union industry contested the exclusion of certain R & D and marketing costs for the determination of the economic situation of the Union industry. However, in the absence of any evidence to the contrary, the Commission maintains that these costs were incurred for a very specific and different product developed by the complainant and of an exceptional nature and that they should therefore be disregarded for the purpose of assessing the economic situation of the Union industry.
- (60) In the absence of any other comments concerning the development of the injury indicators, the conclusions set out in recitals 45 to 73 of the provisional Regulation are confirmed.

#### **4.5. Comments after final disclosure**

- (61) After final disclosure, the complainant submitted comments on certain adaptations to the Union industry's ex-works price used for the injury calculation. These comments which also applied to the calculation of normal value are addressed in recitals 43 to 48 above. The Commission applied symmetry in establishing a benchmark for the injury elimination calculation.

#### **4.6. Conclusion on injury**

- (62) On the basis of the above, the conclusions set out in recitals 74 to 82 of the provisional Regulation that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation are confirmed.

### **5. CAUSATION**

- (63) The Commission received no comments on the provisional findings concerning the causal link between dumping and injury. It is consequently confirmed that the dumped imports from the PRC caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation and that there are no other factors which are as such as to break the causal link between the dumped imports from the PRC and the injury suffered by the Union industry. Therefore, the conclusions as set out in recitals 97 to 99 of the provisional Regulation are confirmed.

### **6. UNION INTEREST**

#### **6.1. Interest of the Union industry**

- (64) The complainant contested recital 102 of the provisional Regulation as it considers that it means that the duties grant only partial relief to the Union industry, which contravenes the basic Regulation.
- (65) It should be emphasised that the duty imposed is resulting from the application of the provisions of the basic Regulation. The expression 'partially relieved' refers only to the price pressure exerted by the dumped imports, as it is expected that following imposition of measures import prices will increase. It does not refer to a partial recovery from injury.

- (66) No further comments or information were received regarding the interest of the Union industry. Therefore the provisional findings in recitals 101 to 103 of the provisional Regulation, as interpreted above, are hereby confirmed.

#### **6.2. Interest of unrelated importers**

- (67) In the absence of any comments regarding the interest of unrelated importers and traders, recitals 104 to 110 of the provisional Regulation are confirmed.

#### **6.3. Interest of users**

- (68) In the absence of any comments regarding the interest of users, recitals 111 to 117 of the provisional Regulation are confirmed.

#### **6.4. Conclusion on Union interest**

- (69) In the absence of any other comments concerning the Union interest, the conclusions reached in recitals 118 and 119 of the provisional Regulation are confirmed.

### **7. DEFINITIVE ANTI-DUMPING MEASURES**

#### **7.1. Injury elimination level (injury margin)**

- (70) The complainant claimed that, as the injury elimination level had not been set by adding a target profit, the provisional duties would not be sufficiently high to eliminate the full injury suffered by the Union industry as required by Article 7(2) of the basic Regulation. In particular, the complainant contested the Commission's expectation that the provisional level of the measures would allow the Union industry to recover its costs and realise a reasonable profit.
- (71) In this regard, and as mentioned in recital 41, the Union industry achieved, after deduction of costs of an exceptional nature linked the development of a very specific and different product, a reasonable profit during the investigation period despite the negative trends observed during the period considered. Therefore, the Commission reiterates that there is no basis to add a target profit to the profit already realised. It is expected on this basis that the duties, based on undercutting, would eliminate the injury suffered and prevent a further deterioration of the situation of the Union industry.
- (72) In order to reinforce its argument, the complainant compared the present investigation with the anti-dumping investigation on imports of *dicyandiamide* originating in the PRC <sup>(1)</sup>. The Union industry claimed that the approach adopted in that investigation is not appropriate in the present case and should therefore not be applied.
- (73) In the *dicyandiamide* investigation, three significant aspects were taken into account to justify the approach adopted: (i) the measures should not compensate for factors which could not be attributed to the dumped imports; (ii) the dumping margin was calculated using an adapted normal value based on Union industry data; and (iii) there were only two sources of *dicyandiamide* in the world. As regards the third factor, the Commission found that there was a risk that, if duties were too high, the Union industry could monopolise the Union market.
- (74) Therefore, it is clear that the situation which existed in the *Dicyandiamide* investigation is very similar to the current investigation. In the current investigation the dumping margin is again calculated using normal value based on Union industry data with certain adaptations required objectively. In addition, there equally are very few sources of world supply and there is also a risk of a monopoly should the measures not be calculated in a fair and balanced manner.

<sup>(1)</sup> Council Regulation (EC) No 1331/2007 of 13 November 2007 imposing a definitive anti-dumping duty on imports of *dicyandiamide* originating in the People's Republic of China (OJ L 296, 15.11.2007, p. 1).

- (75) Hence, the Commission considers that in the present investigation a similar approach is justified.
- (76) In the absence of any further comments on the injury elimination level, recitals 121 to 124 of the provisional Regulation are confirmed.
- (77) As described in recital 42, a computational error concerning the Union sales listing, which also affected the injury calculations, had to be corrected. Furthermore, as explained in recital 24, a revised basis for calculating the level of trade adaptation was considered to be warranted. The corrections resulted in revised definitive injury margins which are as follows:

| Company                                  | Injury margin |
|------------------------------------------|---------------|
| Anhui Jinhe Industrial Co., Ltd          | 126,0 %       |
| Suzhou Hope Technology Co., Ltd          | 108,6 %       |
| Anhui Vitasweet Food Ingredient Co., Ltd | 49,7 %        |
| All other companies                      | 126,0 %       |

## 7.2. Definitive measures

- (78) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed on the imports of the product concerned at the level of the injury margins, in accordance with the lesser duty rule. In this case the duty rates have been revised following provisional disclosure, as a computational error affecting both the dumping and the injury margins was corrected and the adaptation for the level of trade was revised.
- (79) On the basis of the above, the rate at which such duties will be imposed are set as follows:

| Company                                  | Dumping margin (%) | Injury margin (%) | Definitive anti-dumping duty (%) |
|------------------------------------------|--------------------|-------------------|----------------------------------|
| Anhui Jinhe Industrial Co., Ltd          | 135,6              | 126,0             | 126,0                            |
| Suzhou Hope Technology Co., Ltd          | 119,9              | 108,6             | 108,6                            |
| Anhui Vitasweet Food Ingredient Co., Ltd | 64,0               | 49,7              | 49,7                             |
| All other companies                      | 135,6              | 126,0             | 126,0                            |

- (80) The duty remains a fixed amount in Euro per kg net as explained in recital 127 of the provisional Regulation to ensure a consistent implementation of the measures by customs authorities, even though there is no more reference to the Ace-K contained in preparations and/or mixtures.
- (81) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imported product concerned produced by any other company not specifically mentioned with its name in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.

- (82) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission <sup>(1)</sup>. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.
- (83) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States subject to the requirements set out in Article 1(3). Imports not accompanied by that invoice will be subject to the anti-dumping duty applicable to 'all other companies'.
- (84) In case the evolution of imports of preparations and/or mixtures containing Ace-K into the Union so requires, the need for swift appropriate action will be assessed, including the initiation of an investigation under Article 13 of the basic Regulation.
- (85) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies will apply not only to the non-cooperating exporting producers in this investigation, but also to the producers which did not have exports to the Union during the investigation period.

### 7.3. Undertakings

- (86) Two Chinese exporting producers offered price undertakings in accordance with Article 8(1) of the basic Regulation. One of them submitted a revised undertaking offer following a hearing with the Commission.
- (87) The Commission assessed the offers and identified a number of product specific risks. One of the risks relates to possible misclassification of the product concerned. During the investigation, it was observed that food grades (subject to a 6,5 % customs duty) were misclassified as pharmaceutical grades (subject to a 0 % customs duty). One of the Chinese exporting producers claimed to have not engaged in such practices. Even though this may be so, the risk, as identified, remains. The same Chinese exporting producer offered to present all customs clearance documents to the Commission, should the undertaking be accepted. To monitor the payment of customs duties for each of the transactions would however be disproportionately burdensome.
- (88) Another product specific risk stems from the possibility to modify the product concerned and change it into preparations and/or mixtures combined with other elements, such as water and/or other sweeteners. This type of product is not subject to measures. One of the Chinese exporting producers committed to not export Ace-K in any other form but in its pure form. Such a scenario would also require monitoring in a way that would be very burdensome, if not impracticable.
- (89) The Commission identified additional risks. In addition to the product concerned, both exporting producers produce and sell other products (i.e. a variety of food additives) to the Union, mainly to traders. During the investigation period, one of the exporting producers sold the product concerned and other products to the same traders. Such a practice increases the risk of cross-compensation and would require monitoring of the entire export sales of the exporting producers. One Chinese exporting producer stated to be willing to cease its sales to users in the Union and to cease its sales of other products (i.e. products other than the product concerned) to traders in the Union who are also purchasing Ace-K from this Chinese exporting producer. Furthermore, the same Chinese exporting producer stated to be willing to limit its exports of Ace-K to a exhaustive list of traders based in the Union and to cease sales of Ace-K to the Union via traders located in third countries. This however would equally require substantial monitoring to the extent considered impracticable by the Commission.
- (90) Finally, as none of the companies requested MET, the Commission could not fully assess the reliability of the accounts which, inter alia, is crucial for establishing a relationship of trust on which undertakings are based.

<sup>(1)</sup> European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium

- (91) On the basis of the above, the Commission concluded that both undertaking offers could not be accepted.

#### 7.4. Definitive collection of the provisional duties

- (92) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected, except those levied on Ace-K originating in the People's Republic of China contained in certain preparations and/or mixtures, if any.
- (93) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EC) No 1225/2009,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is imposed on imports of acesulfame potassium (potassium salt of 6-methyl-1,2,3-oxathiazin-4(3H)-one 2,2-dioxide; CAS RN 55589-62-3) originating in the People's Republic of China currently falling within CN code ex 2934 99 90 (TARIC code 2934 99 90 21).

2. The rates of the definitive anti-dumping duty applicable to the product described in paragraph 1 and produced by the companies listed in the table below shall be as follows:

| Company                                  | Definitive duty — euro per kg net | TARIC additional code |
|------------------------------------------|-----------------------------------|-----------------------|
| Anhui Jinhe Industrial Co., Ltd          | 4,58                              | C046                  |
| Suzhou Hope Technology Co., Ltd          | 4,47                              | C047                  |
| Anhui Vitasweet Food Ingredient Co., Ltd | 2,64                              | C048                  |
| All other companies                      | 4,58                              | C999                  |

3. The application of the individual anti-dumping duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice on which it must appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of acesulfame potassium sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty applicable to 'All other companies' shall apply.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

#### Article 2

The amounts secured by way of the provisional anti-dumping duties pursuant to Implementing Regulation (EU) 2015/787 shall be definitively collected, except those levied on Ace-K originating in the People's Republic of China contained in certain preparations and/or mixtures.

#### Article 3

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

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

Done at Brussels, 30 October 2015.

*For the Commission*

*The President*

Jean-Claude JUNKER

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**COMMISSION IMPLEMENTING REGULATION (EU) 2015/1964****of 30 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 <sup>(1)</sup>,

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

Whereas:

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

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

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

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

Done at Brussels, 30 October 2015.

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

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

<sup>(2)</sup> OJ L 157, 15.6.2011, p. 1.

## ANNEX

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

| (EUR/100 kg) |                                   |                       |
|--------------|-----------------------------------|-----------------------|
| CN code      | Third country code <sup>(1)</sup> | Standard import value |
| 0702 00 00   | AL                                | 45,6                  |
|              | MA                                | 74,9                  |
|              | MK                                | 44,1                  |
|              | TR                                | 97,5                  |
|              | ZZ                                | 65,5                  |
| 0707 00 05   | AL                                | 57,9                  |
|              | TR                                | 112,1                 |
|              | ZZ                                | 85,0                  |
| 0709 93 10   | MA                                | 137,2                 |
|              | TR                                | 150,7                 |
|              | ZZ                                | 144,0                 |
| 0805 50 10   | AR                                | 130,2                 |
|              | TR                                | 112,1                 |
|              | UY                                | 68,0                  |
|              | ZZ                                | 103,4                 |
| 0806 10 10   | BR                                | 263,0                 |
|              | EG                                | 219,7                 |
|              | LB                                | 234,5                 |
|              | MK                                | 68,5                  |
|              | TR                                | 178,7                 |
|              | ZZ                                | 192,9                 |
|              | ZZ                                | 192,9                 |
| 0808 10 80   | AR                                | 137,9                 |
|              | CL                                | 85,3                  |
|              | MK                                | 23,1                  |
|              | NZ                                | 155,1                 |
|              | ZA                                | 147,0                 |
|              | ZZ                                | 109,7                 |
| 0808 30 90   | TR                                | 137,4                 |
|              | ZZ                                | 137,4                 |

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

# DECISIONS

## POLITICAL AND SECURITY COMMITTEE DECISION (CFSP) 2015/1965

of 27 October 2015

### on the acceptance of Switzerland's Contribution for the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine) (EUAM Ukraine/4/2015)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular the third paragraph of Article 38 thereof,

Having regard to Council Decision 2014/486/CFSP of 22 July 2014 on the European Union Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine) <sup>(1)</sup>,

Whereas:

- (1) Pursuant to Article 10(3) of Decision 2014/486/CFSP, the Council authorised the Political and Security Committee ('PSC') to take relevant decisions on the acceptance of the proposed contributions to EUAM Ukraine by third States.
- (2) The Civilian Operations Commander recommended that the PSC accept the proposed contribution from Switzerland to EUAM Ukraine and consider the contribution as significant.
- (3) Switzerland should be exempted from financial contributions to the operational budget of EUAM Ukraine,

HAS ADOPTED THIS DECISION:

#### *Article 1*

#### **Third States' contributions**

1. The contribution from Switzerland to EUAM Ukraine is accepted and is considered to be significant.
2. Switzerland is exempted from financial contributions to the operational budget of EUAM Ukraine.

#### *Article 2*

#### **Entry into force**

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

Done at Brussels, 27 October 2015.

*For the Political and Security Committee*  
*The Chairperson*  
W. STEVENS

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<sup>(1)</sup> OJ L 217, 23.7.2014, p. 42.

**COMMISSION DECISION (EU) 2015/1966****of 9 July 2014****on the State aid SA. 34118 (2012/C ex 2011/N) which Germany is planning to implement in favour of Porsche Leipzig GmbH and Dr Ing. H.c.F. Porsche Aktiengesellschaft***(notified under document C(2014) 4075)***(Only the German 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 called on interested parties to submit their comments pursuant to those provisions <sup>(1)</sup> and having regard to their comments,

Whereas:

**1. PROCEDURE**

- (1) By electronic notification registered on 20 December 2011 at the Commission (SANI 6554), the German authorities notified regional aid under the Guidelines on national regional aid for 2007-2013 <sup>(2)</sup> (hereinafter 'RAG') to Porsche Leipzig GmbH and to Dr Ing. H.c.F. Porsche Aktiengesellschaft for an investment project in Leipzig, in the region of Saxony, Germany.
- (2) By letter dated 11 July 2012, the Commission informed Germany of its decision of the same date to initiate the procedure laid down in Article 108(2) TFEU (hereinafter 'the opening decision') in respect of the regional aid to be implemented in favour of the investment project by Porsche Leipzig GmbH and by Dr Ing. H.c.F. Porsche Aktiengesellschaft, in view of carrying out an in depth assessment on the basis of the Communication from the Commission on the criteria for an in-depth assessment of regional aid to large investment projects <sup>(3)</sup> (hereinafter 'IDAC').
- (3) The Commission decision to initiate the formal investigation procedure was published in the *Official Journal of the European Union* on 30 October 2012 <sup>(4)</sup>. Third parties were invited to submit their comments.
- (4) Germany submitted comments and the necessary information for the in-depth assessment by letter dated 31 October 2012 (2012/116806).
- (5) By letter dated 17 December 2012 (2012/135107), and by e-mail dated 4 February 2012, the Commission requested further information, which was provided by Germany by letters dated 25 January 2013 (2013/008324) and 7 February 2013 (2013/013186).
- (6) No comments were received from other interested parties.

**2. DETAILED DESCRIPTION OF THE STATE AID****2.1. OBJECTIVE OF THE MEASURE**

- (7) The German authorities intend to promote regional development by providing regional aid in the form of a direct grant and an investment premium to Porsche Leipzig GmbH and to Dr Ing. H.c.F. Porsche

<sup>(1)</sup> OJ C 333, 30.10.2012, p. 17.

<sup>(2)</sup> OJ C 54, 4.3.2006, p. 13.

<sup>(3)</sup> OJ C 223, 16.9.2009, p. 3.

<sup>(4)</sup> See footnote 1.

Aktiengesellschaft for the production of a new car model. The investment will take place in Leipzig, Saxony, which is an assisted area pursuant to Article 107(3)(c) TFEU with a standard regional aid ceiling for large enterprises of 20 % gross grant equivalent (GGE) for the period between 1 January 2011 and 30 June 2014 <sup>(5)</sup>.

## 2.2. THE BENEFICIARY

- (8) The recipients of the aid will be Porsche Leipzig GmbH (hereafter 'Porsche Leipzig') and Dr Ing. H.c.F. Porsche Aktiengesellschaft (hereafter 'Porsche AG'). Porsche Leipzig is a subsidiary of Porsche AG, which itself is — since 1 August 2012 — a fully integrated subsidiary of Volkswagen Aktiengesellschaft, and thus belongs to the Volkswagen Group (hereinafter 'VW Group').
- (9) The VW Group manufactures cars ranging from small cars to luxury and commercial vehicles. In 2013, the VW Group operated a total of 106 factories in 19 European countries and eight additional countries in America, Asia and Africa and counted 572 800 employees. In the same year, the VW Group delivered 9,7 million cars to customers in 153 countries, corresponding to a 12,8 % share of the passenger car market in the world <sup>(6)</sup>, and its revenue totalled EUR 197 billion.
- (10) In 2013, Porsche AG employed 19 456 people worldwide and delivered 162 145 new vehicles to customers globally. Its revenue reached EUR 14,3 billion in 2013.

## 2.3. THE INVESTMENT PROJECT

- (11) The investment project started in April 2011. Completion was planned for May 2014.
- (12) The investment project aims at an extension of the existing Leipzig production plant in order to manufacture a new passenger car model 'Porsche Macan'. This model is a sport utility vehicle/cross-over type passenger car, which belongs to the POLK B segment (midsize/medium class passenger cars), and to the IHS Global Insight segment SUV D (Standard Sport Utility Vehicle) <sup>(7)</sup>.
- (13) The project involves investments in buildings, machinery, equipment and intangible assets, and includes the construction and equipment of a car body and a paint shop, both dedicated to the production of the new model. Since the operations of the existing plant in Leipzig had been limited so far to the assembly of cars, the investment constitutes an upgrading of the site to a fully developed car manufacturing plant.
- (14) The production capacity created by the project amounts to [40 000-100 000] (\*) vehicles per year. Technically a maximum capacity of [40 000-100 000] vehicles would be possible. Calculated on the basis of 235 working days this corresponds to [...] vehicles per day. Full capacity is envisaged to be reached in the first half of 2014.
- (15) The total eligible investment costs of the project are EUR 550,08 million in nominal value. In present value <sup>(8)</sup> this amount is EUR 521,56 million. The table below provides a breakdown of the total eligible costs of the project by year and category, as notified:

**Eligible investment costs (nominal in EUR million)**

| Mio. EUR (rounded) | 2011  | 2012  | 2013  | 2014  | Total |
|--------------------|-------|-------|-------|-------|-------|
| Building           | [...] | [...] | [...] | [...] | [...] |
| External Equipment | [...] | [...] | [...] | [...] | [...] |

<sup>(5)</sup> Leipzig is a so-called 'Statistical effect region'; see Germany's regional aid map in Commission decision of 8 November 2006 on State aid case N 459/06 — National State aid map for Germany 2007-2013 (OJ C 295, 5.12.2006, p. 6). Leipzig is eligible for regional aid under the derogation of Article 107(3)(c) with a maximum aid intensity of 20 % for the period between 1 January 2011 and 30 June 2014.

<sup>(6)</sup> The German authorities confirmed that the submitted market data include all vehicles manufactured or sold by the VW Group, while the market share data relates only to passenger cars.

<sup>(7)</sup> POLK and IHS Global Insight are major market research companies analysing the car market.

<sup>(\*)</sup> Business secret.

<sup>(8)</sup> The present values in this decision are calculated on the basis of a base rate of 2,05 %, applicable on the date of the notification (December 2011), increased by 100 basis points in accordance with the Commission Communication on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

| Mio. EUR (rounded)  | 2011  | 2012  | 2013  | 2014  | Total  |
|---------------------|-------|-------|-------|-------|--------|
| Machinery/Equipment | [...] | [...] | [...] | [...] | [...]  |
| Intangible assets   | [...] | [...] | [...] | [...] | [...]  |
| Total               | [...] | [...] | [...] | [...] | 550,08 |

- (16) The German authorities confirm that only new assets will be eligible, and that intangible assets are obtained from third parties at market price.

#### 2.4. FINANCING OF THE INVESTMENT

- (17) The German authorities confirm that the beneficiary's own contribution, free of any public support, exceeds 25 per cent of the eligible costs.

#### 2.5. LEGAL BASIS

- (18) The national legal basis for the financial support is the following:
- (a) an investment premium on the basis of the 'Investitionszulagengesetz 2010' <sup>(9)</sup>;
  - (b) a direct grant pursuant to the 'Koordinierungsrahmen der Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftsstruktur (GA) 2009' <sup>(10)</sup>.

#### 2.6. THE AID MEASURE

- (19) The beneficiary applied for the direct grant on 24 March 2011. On 29 March 2011 the development bank 'Sächsische Aufbaubank' (hereinafter 'SAB') confirmed that the beneficiary will be in principle entitled to obtain a direct grant as incentive for the realisation of the investment. The investment premium is granted — in the present case, subject to Commission approval — under a fiscal measure that establishes a legal right to aid in accordance with objective criteria and without further exercise of discretion by the Member State. Therefore, the beneficiary did not need to apply for the investment premium before start of works.
- (20) Germany intends to grant aid of EUR 43,67 million in present value. Since the planned total eligible expenditure in present value for the project is EUR 521,56 million (EUR 550 million in nominal value), the proposed aid intensity is 8,37 % GGE (Gross Grant Equivalent).
- (21) Germany confirmed that the aid for the project would not be combined with aid received for the same eligible costs from other local, regional, national or Union sources; and that neither the approved maximum aid amount in present value nor the approved aid intensity would be exceeded if the amount of eligible expenditure deviated from the estimate given in the notification.
- (22) Both the direct grant and the investment premium are granted under the condition that the beneficiary will maintain the investment in the assisted region for a minimum period of 5 years after the completion of the investment project.

#### 2.7. GENERAL PROVISIONS

- (23) The German authorities undertook to submit to the Commission:
- within 2 months of granting the aid, a copy of the relevant acts concerning this aid measure,
  - on a 5-yearly basis, starting from the approval of the aid by the Commission, an intermediary report (including information on the aid amounts being paid, on the execution of the aid contract and on any other investment projects started at the same establishment/plant),
  - within 6 months after payment of the last tranche of the aid, based on the notified payment schedule, a detailed final report.

<sup>(9)</sup> The summary information sheet for the block exempted scheme 'Investitionszulagengesetz 2010' was published under X 167/08 (OJ C 280, 20.11.2009, p. 5).

<sup>(10)</sup> The summary information sheet for the block exempted scheme 'Koordinierungsrahmen der Gemeinschaftsaufgabe — Verbesserung der regionalen Wirtschaftsstruktur' was published under XR 31/07 (OJ C 102, 5.5.2007, p. 11).

### 3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (24) In the opening decision, the Commission noted that the aid project respects the standard compatibility criteria laid down in the RAG, and that the proposed aid amount and intensity do not exceed the maximum allowable. Nonetheless, in conformity with the provisions of paragraph 68 of RAG, it was unable to confirm the compatibility of the aid with the internal market within the preliminary examination.
- (25) Paragraph 68 of RAG requires that the Commission opens the formal investigation and proceeds to an in-depth assessment of the incentive effect, the proportionality, as well as the positive and negative effects of the aid, where the beneficiary's market share in the relevant product and geographic market exceeds 25 % before or after the investment (hereinafter also 'paragraph 68(a)-test') or where the capacity created by the investment exceeds 5 % of a market that is in relative or absolute decline (hereinafter also 'paragraph 68(b)-test').
- (26) The Commission could not exclude in the preliminary examination that the market share threshold and the threshold relating to the capacity increase by the investment in an underperforming market were not exceeded in the relevant markets.
- (27) More specifically, the Commission raised doubts about Germany's proposal for the definition of the relevant product market, i.e. to take into consideration either the overall passenger car market without any segmentation, or if a segmentation is deemed necessary, only the B segment according to the classification of POLK. In line with an earlier decision <sup>(11)</sup>, the Commission considered that for sport utility vehicles the IHS Global Insight classification would be more appropriate. The Commission was not in a position to confirm without doubts that either the overall passenger car markets, solely the POLK B segment or solely the IHS Global Insight SUV-D category can be considered as relevant product market by the investment. Therefore, the Commission left the precise definition of the relevant product market open and considered plausible alternative market definitions, consisting of the overall passenger car market, the POLK B segment B and the IHS Global Insight SUV-D segment.
- (28) The Commission was also unable to take a definite view on the definition of the geographic market. It could not conclude whether the geographic market is as wide as the European Economic Area (hereinafter 'EEA'), or, as suggested by Germany, that it consists of the global, or at least the combined EEA and North American market.
- (29) The analysis under paragraph 68(a) of the RAG (market share test) came to the result that the applicable 25 % market share threshold is exceeded on the POLK B segment on the EEA geographic market <sup>(12)</sup>.
- (30) The analysis under paragraph 68(b), applied to the EEA market, showed that for the IHS Global Insight SUV-D segment, the capacity increase created by the project, which amounts to [...] %, exceeds substantially the applicable threshold of 5 %, whilst the market itself was underperforming in the relevant reference period. In 2005-2010, the average annual growth rate (CAGR) of the apparent consumption of the product concerned in the EEA was - 0,9 %, compared to the average annual growth of the GDP in the EEA, which was 1,62 % <sup>(13)</sup>.
- (31) As the Commission could not establish that the thresholds laid down in paragraph 68(a) and (b) of the RAG were not exceeded, it decided to open the formal investigation procedure. It stated in particular that if the comments received in reply to the opening of the formal investigation would not allow the Commission to conclude without any doubt that the relevant thresholds are not exceeded, it would carry out an in-depth assessment of the investment project on the basis of the IDAC. Germany and interested third parties were invited to submit their comments.

### 4. COMMENTS FROM INTERESTED PARTIES

- (32) No comments were submitted by interested third parties.

<sup>(11)</sup> Cf. Commission Decision C(2011)6479 final of 20 September 2011 (N 559/10 — United Kingdom — LIP — Jaguar Cars) (OJ C 22, 27.1.2012, p. 2).

<sup>(12)</sup> In the years between 2010 and 2015, i.e. in the year before and after completion of the investment, the market share of the VW Group in the POLK B segment in the combined EEA and North American market, as well as in the IHS Global Insight SUV-D segment in both the EEA and the combined EEA and North American market remains below 25 %.

<sup>(13)</sup> For the POLK B segment, the capacity increase remains below the 5 % threshold.

## 5. COMMENTS FROM GERMANY

### 5.1. THE RELEVANT PRODUCT MARKET

- (33) Germany maintained its position that the POLK B segment represents an appropriate definition of the relevant product market, but did not submit any additional arguments.

### 5.2. THE RELEVANT GEOGRAPHIC MARKET

- (34) Germany remains of the view that the global market, or at least the combined EEA and North American market, should be considered as the relevant geographic market. Germany argues that this opinion is additionally supported by the fact that the world market is served from a single production site.

### 5.3. IN-DEPTH ASSESSMENT OF THE AID MEASURE

- (35) Germany provided the following information in order to allow the Commission to carry out an in-depth assessment.

#### 5.3.1. Positive effects of the aid

- (36) Germany considers that the investment contributes to the regional development of Leipzig and Saxony for the following reasons.

- The investment project will secure 833 jobs and 29 trainee posts and will create 1 040 new jobs and 30 new trainee positions.
- In addition, a large number of indirect jobs will be created by the suppliers and service providers in the region. The employment multiplier is 2,5 <sup>(14)</sup>, which means that about 2 700 additional indirect jobs are expected to be created. A large number of these jobs are expected to be created at the aid beneficiary's establishment or in its immediate vicinity. About 750 jobs are expected to be created between 2012 and 2015 in the areas of supplies, technology transport and packaging alone.
- The aid beneficiary is actively involved in various network and cluster initiatives that promote the development of the automotive industry in the region (e.g. the Automotive Cluster East Germany).
- The beneficiary is highly active in the area of basic and further training of its employees. In addition to hiring highly qualified staff, the beneficiary supports regular (in-house and external) training for its own employees.

#### 5.3.2. Appropriateness of the aid

- (37) Germany notes that the Commission accepted already in the Dell Poland decision <sup>(15)</sup> that State aid, among other measures, is an appropriate means to promote the regional development of regions where the GDP per capita and the wage levels are lower than the national average, and the unemployment rate is higher than the national average. The GDP per capita in Saxony was 73 % of the German average in 2011. The unemployment rate was almost 50 % higher than the German average in 2011, and the inhabitants of the region had an average disposable income which amounted to 82 % of the German average in the period of 2007-2009 <sup>(16)</sup>.
- (38) Therefore, Germany considers that the notified aid is an appropriate instrument for achieving its cohesion objectives.

<sup>(14)</sup> Germany based the assumption of the 2,5 multiplier on empirical data published in comparable studies, e.g. Meißner (2009): 'Automobilproduktion in der Prozess- oder Wertschöpfungskette' presentation on 28 October 2009 in Brandenburg; Kleinhenz, Hebllich, Gold (2006): Das BMW Werk Regensburg — Wirtschaftliche und soziale Vernetzung in der Region; University of South Carolina (2002): The Economic Impact of BMW on South Carolina; Woodward, Guimaraes (2008): BMW in South Carolina: The Economic Impact of a Leading Sustainable Enterprise; Gesellschaft für Wirtschaftliche Strukturforshung mbH (2011): Gute Wachstumsperspektiven trotz zukünftiger Herausforderungen; Gehrke, Krawczyk et al. (2009): Die Bedeutung der Automobilindustrie für die deutsche Volkswirtschaft im europäischen Kontext.

<sup>(15)</sup> C46/2008, decision of 23 September 2009 (OJ L 29, 2.2.2010, p. 8), Paragraph 171.

<sup>(16)</sup> Source: Statistical Office of the Free State of Saxony (Statistisches Landesamt des Freistaates Sachsen) July 2012, German Federal Statistical Office (Statistical Yearbook 2012) — GDP/capita; Federal Employment Agency (Bundesagentur für Arbeit) — unemployment per inhabitant as a percentage; Statistical Yearbook for Saxony 2011 — disposable income per inhabitant.

### 5.3.3. Incentive effect/Counter-factual scenario

- (39) Germany offers information to prove that the aid falls under Scenario 2 of the IDAC, as it provides an incentive to the beneficiary to carry out the full investment in the Leipzig plant rather than locating it partly in [location 1 in Germany] and partly in Leipzig (body construction and paintwork in an existing plant in [location 1 in Germany], and assembly in the Leipzig plant). In particular, Germany provided relevant, genuine and contemporary company documents which explain Porsche AG's multistage decision-making process concerning the location of the investment. The decision-making process is described below.

#### *The beneficiary's decision-making process*

- (40) The decision to invest in the Macan project and on its location was taken in March 2011. In the preparatory and decision-making period, despite the fact that Porsche Automobile Holding SE and Volkswagen AG had already agreed on the creation of an integrated automotive group in 2009, the relevant organs of Porsche AG took all company-relevant decisions completely autonomously, without involvement of the boards and committees of the VW Group.
- (41) In accordance with the applicable rules of procedure of the executive board of Porsche AG, decisions (including location decisions) to launch new products (models) had to be first submitted to the products committee of the executive board of Porsche AG (Vorstandsausschuss Produkte, hereinafter 'VAP'), and to be approved by the supervisory board of Porsche AG (Aufsichtsrat, hereinafter 'AR').
- (42) The investment and location decision on Macan was taken in a multi-stage decision-making process. At each stage, comparative calculations for different production scenarios at various locations in Germany were prepared and considered.
- (43) The decision-making process — as described below — started in [2010] and was completed on 15 March 2011 with the AR decision in favour of the Leipzig location, taken under the condition that State aid would be available for the investment in that location.
- (44) In the early stages of the decision-making process only the Options 1 to 4 described below were considered; Option 5 <sup>(17)</sup> was introduced slightly later and presented to the VAP on [2010].

| Option                                     | Description of the option                                                                                                   |
|--------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| 1. [location 2 in Germany]                 | Production and delivery of the entire vehicle from [location 2 in Germany]                                                  |
| 2. [location 2 in Germany]/Porsche Leipzig | Body construction/paint in [location 2 in Germany], then transport of the painted body to Leipzig for assembly and delivery |
| 3. [location 1 in Germany]/Porsche Leipzig | Body construction/paint in [location 1 in Germany], then transport of the painted body to Leipzig for assembly and delivery |
| 4. [location 3 in Germany]                 | Production and delivery of the entire vehicle from [location 3 in Germany]                                                  |
| 5. Porsche Leipzig                         | Production and delivery of the entire vehicle from Leipzig.                                                                 |

- (45) Germany explained, on the basis of company documents, that during the course of the planning and decision-making phase several calculations of the production costs attributable to the location were carried out in order to achieve the same level of accuracy for each Option. Therefore, the baseline — i.e. the preferred option at a given time — was changing during the decision making process <sup>(18)</sup>.
- (46) Since Porsche Leipzig had less time than the other locations to perform calculations of the same scope, and, as its operations had been limited to assembly, it lacked experience in detailed cost planning for structural investments, such as buildings and infrastructure in the areas of paint shop and body construction. The VAP meeting of [2010], which accepted Option 5 as baseline, requested the submission of a more detailed plan by Porsche Leipzig.

<sup>(17)</sup> Option 5 had initially not been considered, as it was assumed to be uneconomical. At the initiative of the executive board of Porsche Leipzig, Porsche Leipzig was able to disprove this assumption based on a preliminary calculation of the production costs attributable to the location.

<sup>(18)</sup> The VAP chose as baseline Option 1 on [2010], Option 3 on [2010], and Option 5 on [2010].

- (47) During this further detailed planning phase, it became clear that the initially assumed cost advantage of Option 5 over Option 3 was steadily diminishing, and finally disappeared, when additional investment costs were identified resulting into a clear cost disadvantage compared to Option 3. Still the cost estimates of Option 3 and 5 were significantly lower than those of the other options.
- (48) The management of Porsche Leipzig started to investigate the possibility of utilising State aid to bridge the cost disadvantage, and contacted the Saxon Ministry for Economy, Labour and Transportation (hereinafter 'SMWA').
- (49) In its letter of 25 February 2011, Porsche Leipzig asked the SMWA to examine the possibility of granting aid for the planned investment. This letter underlined that, so far, no decision on the location had been taken and that State aid was sought in order to compensate the disadvantages of the Leipzig location. The general outline and scope of the investment project were presented to SMWA in a meeting on 28 February 2011.
- (50) The VAP, in its meeting on [2011], prescribed Porsche Leipzig to identify additional savings in order for Option 5 to remain competitive with Option 3.
- (51) By letter of 9 March 2011, the SMWA assured Porsche Leipzig that it would support the investment project for the full production of Macan in Leipzig, if it were to meet the conditions in force for the award of regional aid.
- (52) As a result of detailed calculations, the below comparison of production costs attributable to the location before the potential State aid was presented to the AR on 15 March 2011:

| Options                                    | Production costs attributable to the location in EUR million without aid as of 15 March 2011 |
|--------------------------------------------|----------------------------------------------------------------------------------------------|
| 3. [location 1 in Germany]/Porsche Leipzig | [...]                                                                                        |
| 5. Porsche Leipzig                         | [...]                                                                                        |

- (53) Thus, in absence of aid, Option 5 showed a disadvantage of EUR 65 million compared to Option 3.
- (54) As under Option 5 the entire investment costs are incurred in Leipzig, the total infrastructure and product investment costs of EUR 550 million could be considered as eligible for regional aid. Therefore, if the investment complied with the conditions in force for the award of regional aid, the potential aid amount could be EUR 47,5 million. Therefore the net (after aid) production costs for Option 5 would decrease from EUR [...] million to EUR [...] million.
- (55) Under Option 3, a small part of the total investment costs (for assembly) would be incurred in Leipzig, and could be eligible for regional aid in the amount of approximately EUR 10,02 million. The [location 1 in Germany] is not situated in an assisted region; therefore it is not eligible for regional aid. The net (after aid) production costs for Option 3 decrease from EUR [...] million to EUR [...] million.
- (56) As summarised in the table below, when aid is taken into consideration, the disadvantage of Option 5 compared to Option 3 drops from EUR 65 million to EUR 27,52 million (situation in March 2011).

|                                                                           | Option 3          | Option 5          |
|---------------------------------------------------------------------------|-------------------|-------------------|
| Production costs without State aid                                        | EUR [...] million | EUR [...] million |
| Disadvantage of Option 5 compared to Option 3 without the aid             |                   | EUR 65 million    |
| State aid                                                                 | EUR 10,02 million | EUR 47,5 million  |
| Production costs taking into account the aid                              | EUR [...] million | EUR [...] million |
| Disadvantage of Option 5 compared to Option 3 taking into account the aid |                   | EUR 27,52 million |

- (57) Germany explained that, in addition to the quantified cost disadvantage of EUR 27,52 million, some qualitative criteria were considered which were in favour of Option 5.
- First, empirical data from the automotive industry show that complete production at one site compared to a situation where body production and paint take place at one location, and assembly takes place in another, minimises certain risks, e.g. risks due to transportation.
  - Second, the full production in one location allows a dynamic process design, which can ensure an optimised production process.
  - Third, potential deficiencies or errors can be identified and eliminated quicker if the full production takes place in one location. Experience shows that error rates in general can be reduced if the employees working in different stages of the production process can cooperate at the same location.
  - Fourth, the brand image is also a decisive factor. The site [in location 1 in Germany] produces mainly [...] vehicles, whereas the Macan is to be positioned as a premium vehicle.
- (58) Based on these calculations and considerations, the CFO of Porsche AG announced at the AR meeting on 15 March 2011 his company's intention to apply for regional State aid for the expansion of the Leipzig production plant. As is documented in the minutes of the AR meeting of 15 March 2011, he submitted that the final decision on the location of the Macan investment should therefore depend on the availability of aid.
- (59) In reaction to this statement, the AR approved Option 5 (full production in Leipzig) under the condition that State aid would be available.
- (60) After the conditional decision of the AR on 15 March 2011, Porsche Leipzig applied formally for discretionary regional aid from funds of the 'Joint Scheme for Improving Regional Economic Structures' (GRW). The aid application was submitted to the SAB on 24 March 2011. For the investment allowance a legal entitlement exists, which is in the present case subject to Commission approval. No *ex ante* application is required, but the expected amount of the investment allowance has to be indicated in the application for discretionary aid in order to ensure respect of the aid ceiling.
- (61) On 29 March 2011, SAB confirmed that the investment project meets the conditions of eligibility for subsidies.
- (62) The investment project started in April 2011.
- (63) The table below summarises the details of the multi-stage decision making process:

| Date   |                                                                                                                                                                                                                                   |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| [2010] | VAP meeting: <ul style="list-style-type: none"> <li>— Only Options 1 to 4 are presented</li> <li>— VAP approves a decision to further elaborate Options 1 to 4</li> <li>— Option 1 is chosen as baseline</li> </ul>               |
| [2010] | VAP meeting: <ul style="list-style-type: none"> <li>— Options 1 to 5 are presented</li> <li>— Option 3 is chosen as baseline</li> </ul>                                                                                           |
| [2010] | AR meeting: <ul style="list-style-type: none"> <li>— AR decides to implement the Macan project</li> <li>— Location decision is still open, AR requests the VAP to propose the location</li> <li>— AR welcomes Option 5</li> </ul> |

| Date                   |                                                                                                                                                                                                                                  |
|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| [2010]                 | VAP meeting:<br>— Still all five production location options are open<br>— VAP requests further elaboration of the planning of Option 5<br>— Option 5 is chosen as baseline                                                      |
| [2011]                 | VAP meeting:<br>— VAP confirms the decision proposal that will be presented to AR at the next AR meeting, which will decide on the production location<br>— The approval of the AR is still required                             |
| 25 February 2011       | Letter of Porsche Leipzig to the SMWA:<br>— requesting SMWA to examine the possibility of granting aid for the planned investment                                                                                                |
| [before 15 March 2011] | VAP meeting:<br>— VAP confirms the cost estimates for Option 5<br>— VAP requests further savings                                                                                                                                 |
| 9 March 2011           | SMWA letter confirming preparedness to support project:<br>— SMWA confirms that it supports the investment project for the full production of Macan in Leipzig if it meets the conditions in force for the award of regional aid |
| 15 March 2011          | AR meeting:<br>— Approves the full production of Macan in Leipzig under the condition of availability of State aid                                                                                                               |
| 24 March 2011          | Formal application of Porsche Leipzig for the discretionary part of the aid                                                                                                                                                      |
| 29 March 2011          | Letter of SAB:<br>— confirms that the investment project meets the conditions of eligibility for subsidies                                                                                                                       |
| April 2011             | Start of works on the investment project                                                                                                                                                                                         |

#### 5.3.4. Proportionality of the aid

- (64) Under Scenario 2 of paragraph 22 of the IDAC, an aid measure is 'considered to be proportionate if it equals the difference between the net costs of the beneficiary company to invest in the assisted region and the net costs to invest in the alternative region(s)'. Germany points out that the calculations used for the incentive effect can also be used as a basis for assessing the proportionality of the aid.
- (65) Option 5 has a cost disadvantage of EUR 65 million compared to Option 3.
- (66) Despite the maximum permissible aid of EUR 47,5 million (in nominal value), there is still a cost disadvantage of EUR 27,52 million for Option 5.
- (67) Germany therefore argues that, as the aid does not fully compensate the location disadvantage of Leipzig, there is no overcompensation. The aid is consequently proportionate.

- (68) Germany points out that in its decision on location, Porsche AG takes not only financial considerations into account, but also non quantifiable qualitative criteria.

#### 5.3.5. Negative effects of the aid on competition and trade

- (69) Germany emphasises that the regional aid serves solely to compensate the disadvantage of the location in Leipzig, i.e. to compensate for the additional costs of full production at the Leipzig site compared to the production scenario for bodies and paintwork at the plant in [location 1 in Germany] with delivery of painted bodies to Leipzig for assembly. As the aid is proportionate, the aid has no effect on competition. The investment in the Macan project, and its resulting effects on competition and trade, would have happened in any event.
- (70) Therefore, Germany considers that the aid is in line with paragraph 40 of the IDAC and has no negative effects on competition and trade.

### 6. ASSESSMENT OF THE AID MEASURE AND COMPATIBILITY

#### 6.1. EXISTENCE OF AID

- (71) The financial support will be given by the German authorities in the form of a direct grant and an investment premium. The support is thus given by a Member State and through State resources within the meaning of Article 107(1) TFEU.
- (72) As the aid is granted to subsidiaries of a single group of companies, the VW Group, the measure is selective.
- (73) The envisaged financial support will relieve the beneficiaries from costs which they would normally have had to bear themselves. Therefore, they benefit from an economic advantage over their competitors.
- (74) The envisaged financial support will be given for an investment in the car sector; as cars are traded between Member States, this support is likely to affect trade between Member States.
- (75) As the measure favours the production of VW Group, competition is distorted or is threatened to be distorted.
- (76) Consequently, the Commission considers that the measure constitutes State aid within the meaning of Article 107(1) of the TFEU.

#### 6.2. LEGALITY OF THE AID MEASURE

- (77) By notifying the planned aid measure before putting it into effect, the German authorities respected their obligation under Article 108(3) of the TFEU and the individual notification requirement expressed in Article 7(e) of Commission Regulation (EC) No 1628/2006 <sup>(19)</sup>, and in Article 6(2) of Commission Regulation (EC) No 800/2008 <sup>(20)</sup>.

#### 6.3. LEGAL BASIS FOR THE ASSESSMENT

- (78) The objective of the aid is to promote regional development. As the German authorities undertook to award the aid before 1 July 2014 (subject to Commission approval, if not yet available), the basis for assessing the compatibility of the aid with the internal market are the RAG, as prolonged by paragraph 186 of the Guidelines on regional State Aid for 2014-2020 <sup>(21)</sup> until 30 June 2014. The provisions of section 4.3 of the RAG, relating to large investment projects are particularly relevant for the purposes of this assessment. If the Commission

<sup>(19)</sup> Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (OJ L 302, 1.11.2006, p. 29).

<sup>(20)</sup> Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (OJ L 214, 9.8.2008, p. 3).

<sup>(21)</sup> OJ C 209, 23.7.2013, p. 1.

should not be able to establish without doubts in the formal investigation that the thresholds laid down in paragraph 68(a) ('market share test') and paragraph 68(b) ('capacity increase/market performance tests') of the RAG are not exceeded, it is required to proceed to an in-depth assessment to be conducted on the basis of the criteria laid down in the IDAC.

(79) The Commission needs to conduct its assessment in three steps:

- first, it has to confirm that the measure is compatible with the general provisions of the RAG,
- second, it has to verify whether or not it can exclude without doubt that the 'market share test' and 'capacity increase/market performance tests' under paragraph 68(a) and (b) of the RAG (the 'paragraph 68(a) and (b) tests') do not require an in-depth assessment,
- third, depending on the outcome of the assessment in the second step, it may have to conduct an in-depth assessment.

#### 6.4. COMPATIBILITY OF THE MEASURE WITH STANDARD COMPATIBILITY CRITERIA OF THE RAG

(80) The Commission established already in recital 36 of the opening decision that the aid meets the general compatibility criteria for the RAG. The formal investigation did not reveal any elements that would put into question this assessment. The Commission notes in particular the following.

- There is no indication that Porsche Leipzig, Porsche AG or the VW Group in particular would be in financial difficulty, as the conditions laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(22)</sup> are not fulfilled. Therefore, the group to which the aid beneficiary belongs is eligible for regional aid.
- The aid is granted in application of block-exempted schemes which respect the standard compatibility criteria of the RAG.
- In particular, the project leads to a diversification of the output of an existing establishment, allowing it to manufacture a new passenger car model, the Porsche Macan; it is therefore an initial investment within the meaning of paragraph 34 of the RAG.
- The costs eligible for investment aid are defined in line with the RAG.
- The beneficiary also has the obligation to maintain the investment in the region for a minimum of 5 years after completion of the project.
- The beneficiary provides a financial contribution of at least 25 % of the eligible costs in a form which is free of any public support.
- The planned total eligible expenditure for the project is EUR 521 559 981,66 in present value (discounted to the date of notification). There is no indication that, in the past, the beneficiary has received regional investment aid for any earlier investment projects which may have started within the 3-year period before the start of works on the present investment. Therefore, the present investment does not constitute a single investment project, within the meaning of paragraph 60 of the RAG, with any such earlier investment projects.
- According to the scaling down mechanism laid down in paragraph 67 of the RAG, the eligible expenditure incurred leads to a maximum allowable aid intensity of 8,37 % GGE (Gross Grant Equivalent) for the project.
- Since the intensity of the proposed aid (EUR 43 666 078,75 in present value) does not exceed the maximum allowed aid intensity, and the notified aid is not to be combined with further regional investment aid, the proposed aid intensity for the project complies with the RAG.

(81) In view of these considerations, the Commission considers that the standard compatibility criteria of the RAG are met.

<sup>(22)</sup> OJ C 244, 1.10.2004, p. 2.

## 6.5. APPLICATION OF THE TESTS LAID DOWN IN THE PROVISIONS OF PARAGRAPH 68 OF THE RAG

- (82) The Commission stated in paragraph 78 of the opening decision that if ‘the comments received in reply to the opening of the formal investigation do not allow the Commission to conclude without any doubt that the thresholds laid down in the paragraph 68(a) and (b) tests are not exceeded, the Commission will carry out an in-depth assessment of the investment project on the basis of the Commission Communication on the Criteria for an In-depth Assessment of Regional Aid to Large Investment Projects’. The Commission has to assess whether the comments received allow this conclusion.
- (83) In its comments, Germany maintained its position already reflected in the opening decision, without adding any comments or information not yet presented in the preliminary examination phase. In particular, Germany maintained its view that the relevant product market should be defined as the POLK B segment (and not as the IHS Global Insight classification SUV-D), and that the geographic market should be defined as including at least the combined EEA and Northern American market (and not only the EEA market). The position on the geographic market is in particular supported by the argumentation that the world market is served from a single production site.
- (84) As to the **product market**, the Commission considers the following: the decision to carry out an in-depth assessment does not prejudice the outcome of the resulting in-depth compatibility assessment. However, before approving aid, the Commission has to be satisfied that the positive contribution resulting from the aid measure will compensate in any event its negative effects on trade and competition. Therefore, for the purpose of deciding on whether an in-depth assessment on the compatibility of an aid measure is to be carried out or not, the product market definition should be as narrow as possible, taking account of the specific characteristics of the car to be manufactured.
- (85) In the opening decision the Commission considered that — as far as sport utility vehicles are concerned — due to their different nature in comparison to ‘normal’ passenger cars as regards price, size and engine performance, etc., the IHS Global Insight classification would be more appropriate than the classification offered by Polk and should therefore be applied to the project at hand. For the same reasons, in a recent other case concerning sport utility vehicles, the Commission referred to the relevant IHS Global Insight classification and not to the broader POLK B segment <sup>(23)</sup>.
- (86) The Commission maintains its view that, for the definition of the product market of sports utility vehicles, the IHS Global Insight classification is more relevant than the segmentation offered by POLK. Germany did not submit any additional arguments which would contradict this view. The argument that VW Group operates all its long-term strategic planning and analyses on the conceptual base of POLK is irrelevant in this context. In addition, the Commission did not receive any information from third parties during the formal investigation that would allow a better understanding of the segmentation of the market regarding the type of passenger car in question. The Commission therefore maintains its approach to leave open the exact definition of the relevant product market and to apply an approach of plausible alternative market definitions, defining individual car segments (including the narrowest segmentation for which data are available) in addition to combined segments as plausible relevant product markets <sup>(24)</sup>, and does not discard the SUV-D segment according to ISH Global Insight as a plausible alternative market segment.
- (87) As to the **geographic market** the Commission maintains its initial assessment that the relevant market is the EEA or a larger market; therefore the Commission cannot exclude that the geographic market is limited to the EEA market.
- (88) In the opening decision (paragraph 58), the Commission referred to two at that time pending formal investigations <sup>(25)</sup> in which it examined, for certain segments of the car market, whether the relevant geographic market is wider than the EEA. According to the conclusions of the in-depth assessment undertaken by the Commission services, it could not be excluded that the relevant geographic market for the products and reference periods concerned was not larger than the EEA market. Since the two Member States concerned by those opening decisions chose to withdraw their notifications of regional aid before the adoption of final decisions by the Commission, the conclusions of the in-depth assessments carried out in those cases could not be confirmed in formal decisions.

<sup>(23)</sup> See footnote 11.

<sup>(24)</sup> State aid decisions SA.30340 Fiat Powertrain Technologies: Decision of 9 February 2011, (C(2011)612) (OJ C 151, 21.5.2011, p. 5); SA. 32169 Volkswagen Sachsen: Decision of 13 July 2011 (C(2011)4935) (OJ C 361, 10.12.2011, p. 17).

<sup>(25)</sup> SA.27913 — C 31/2009 — HUN — LIP — Aid to Audi Hungaria Motor Kft: Decision of 28 October 2009 (C(2009)8131) (OJ C 64, 16.3.2010, p. 15); Extension decision of 6 July 2010 (C(2010)4474) (OJ C 243, 10.9.2010, p. 4); Decision of 13 July 2011 (C(2011)4935) in SA.32169 — C/2011 — DE — LIP — Aid to Volkswagen Sachsen, (OJ C 361, 10.12.2011, p. 17).

- (89) The Commission considers that the arguments brought forward by Germany in the preliminary examination, and maintained without further elements or information being submitted in the context of the formal investigation, are insufficient to diffuse the concern that the geographic market could be limited to the EEA market. In particular, the Commission considers the following:
- (90) The fact that large car producers are internationally active and in global competition is not sufficient proof that the individual markets are integrated and constitute a single worldwide market (or a combined EEA and Northern American market). The same applies to the argument that the 10 largest OEMs have manufacturing sites and distribution systems all over the world. In fact, the Commission considers that exchange rate instability could be named as one factor that has led OEMs to build production plants closer to regional demand; and the same may hold for policies of effective protection (high tariffs on imports of final producers, low tariffs on intermediate products, giving an incentive for local production/assembly). A third argument for the existence of globalised production structures, despite not integrated markets, is the fact that certain states allow imports only if joint ventures for local production are created in parallel. The global presence of major players as manufacturers is therefore not by itself an indication of the existence of a global (or wider than the EEA) market. Similarly, the existence of distribution systems that extend across the world does not constitute proof that the market is global (or wider than the EEA) from a competition perspective. The fact that Porsche AG intends to serve the world market from only one site is also not sufficient to support an assessment that the geographic market is wider than the EEA. In fact, the SUV-D market is relatively small compared to other market segments, and economies of scale might favour here a 'one site' approach. As the model is to be sold under the Porsche name, and the high quality of luxury cars produced by Porsche AG is so far, in view of their clients, linked to manufacturing in Germany, a second production site outside Germany could be harmful for a successful marketing strategy. Germany justified itself (see recital 57 above) the choice of Leipzig over [location 1 in Germany], amongst others, with brand name aspects.
- (91) Also the argument that a high level of trade flows, e.g. the fact that more than 20 % of the EEA production are exported to the North American market, is insufficient to prove the existence of a global (or here wider than the EEA) market. The Commission considers that, whereas trade flows can give insight into the degree of integration of different geographic areas by looking at the importance of imports and exports relative to local production and consumption levels, the existence of trade flows itself is not a sufficient proof to consider that an integrated geographic market exists. In fact, there may well be shipments between the EEA and other regions, but that does not mean that markets are integrated in the sense that market conditions (e.g. prices) in one market influence market conditions in the other. This holds in particular where the observed shipments relate primarily to shipments by the manufacturers themselves, as opposed to shipments by independent importers and exporters engaging in price arbitrage. Pricing may well be entirely market specific (e.g. high in one market, low in another), and not aligned to the conditions of an alleged integrated market. Trade flow analysis does not address the principal question in market definition, namely whether imports or exports could defeat a price increase in the local market. The Commission notes that Germany did not submit further empirical material that would prove the existence of correlated price movements, or the reactivity of net imports to changes in relative prices. Empirical material submitted in the quoted earlier cases is irrelevant for the present case, as it refers to different market segments (A-segment according to Polk) and different reference periods.
- (92) The Commission notes that Porsche AG has plans to export a substantive part of its Macan production to China. This intention, as such, does not prove the existence of an integrated market.
- (93) The Commission acknowledges that the importance of trade barriers is diminishing over time. Nonetheless, the Commission is convinced that one of the main factors for overseas production, and relocation decisions, of EU car manufacturers are market access barriers in the target markets. High tariff barriers still seriously hamper access for EU exporters, notably in Asia. Non-tariff barriers, including burdensome and discriminatory certification requirements, additional testing requirements excise taxes etc., have a strong impact on EU vehicle exports to the South-East Asian, Chinese, and South American markets. The Commission admits that the United States is by far the most important destination for the EU overall car exports. However, the EU and the US have strongly divergent approaches to regulation and market surveillance. Such regulatory divergence is probably even today the most significant access barrier for EU automotive exports to the US.

- (94) The Commission has further taken due note of the arguments put forward in relation to the decreasing transport costs. The Commission is not fully convinced in this respect. The future developments with regard to decreasing transport costs cannot be clearly confirmed in the current economic situation where fuel costs are increasing. Therefore, the mentioned future decrease in costs cannot be taken into consideration.
- (95) In light of the above, and as the Commission did not receive any additional information during the formal investigation enabling it to conclude that the relevant geographical market is wider than the EEA, it maintains its assessment that the relevant geographic market — whatever the product market definition chosen — is either the EEA or larger. Again, the Commission emphasises that it is required to verify that the positive contribution resulting from the aid measure will compensate in any event its negative effects on trade and competition. Therefore, for the purpose of deciding on whether an in-depth assessment on the compatibility of an aid measure is to be carried out or not, the geographic market definition should be as narrow as possible, taking account of the specific characteristics of the car to be manufactured.

#### **6.5.1. Conclusion on the market share test (paragraph 68(a) of the RAG)**

- (96) The Commission has carried out the test laid down in point 68(a) of the RAG in all plausible product and geographic markets to verify whether the beneficiary's market share exceeds 25 % before and after the investment.
- (97) In view of the fact that a single relevant product and geographic market could not be established, the results of all plausible markets had to be taken into account. The market share of the VW Group in the POLK B segment in the EEA accounts for more than [ $> 25$ ] % in all years between 2010 and 2015. The Commission therefore concludes that the threshold laid down in paragraph 68(a) is exceeded. However, for the SUV-D product market, the market share is not exceeded for none of the possible plausible geographic markets (EEA, EEA+ Northern America, global).

#### **6.5.2. Conclusion on the production capacity in an underperforming market test (paragraph 68(b) of the RAG)**

- (98) Having regard to the fact that it could not be established whether the overall passenger car market without any segmentation, solely the POLK segment category B or solely the IHS Global Insight SUV-D segment can be considered as the relevant product market, the Commission had to verify whether the capacity created by the project exceeds 5 % of all plausible markets, measured using the apparent consumption data of the product concerned in the EEA.
- (99) This test carried out for the IHS Global Insight SUV-D segment revealed that the capacity increase exceeds by far the 5 % threshold if applied to the EEA market. The opening decision established already in paragraph 72 that the relevant market was underperforming and even in decline over the last 5 years preceding the investment.
- (100) The Commission therefore concludes that the threshold of 5 % capacity increase in an underperforming market laid down in paragraph 68(b) of the RAG is exceeded in so far as the IHS Global Insight SUV-D segment of that market is concerned.

#### **6.5.3. Conclusion**

- (101) In light of the above, the Commission decides that it cannot exclude that the relevant thresholds of the 68(a) and (b) tests are exceeded. The Commission therefore decides to conduct a detailed verification, following the opening of the procedure provided for in Article 108(2) TFEU, that the aid is necessary to provide an incentive effect for the investment and that the benefits of the aid measure outweigh the resulting distortion of competition and effects on trade between Member States.

### **6.6. IN-DEPTH ASSESSMENT OF THE AID MEASURE**

- (102) The in-depth assessment is conducted on the basis of the IDAC.

### 6.6.1. Positive effects of the aid

#### 6.6.1.1. Objective of the aid

- (103) The German authorities explained the investment's positive regional effects. The following positive effects of the investment have been identified.
- Impact on regional employment: the investment will create 1 040 new jobs and 30 trainee positions in addition to the existing 833 jobs and 29 training positions. Furthermore, the creation of at least 2 700 indirect jobs can be expected. It is expected that at least 744 indirect jobs will be created in the vicinity of the establishment in question.
  - Attracting suppliers and service providers of the automotive and of other sectors to the region: the Commission considers that the investment of Porsche AG has an important role in creating and further developing the automotive industry in Saxony, thus attracting suppliers and service providers to this region.
  - Active involvement of the beneficiary in various network and cluster initiatives: in order to promote the development of the automotive industry in the Leipzig region, and in the whole of East Germany, the beneficiary actively participates in cluster and network initiatives, such as the cross-state Automotive Cluster Eastern Germany initiative.
  - Training: it is planned to further develop employees' skills in the form of internal and external training.
- (104) The Commission considers that the German authorities have provided adequate information to demonstrate that the project will contribute to the economic development of the Leipzig region.

#### 6.6.1.2. Appropriateness of the aid instrument

- (105) Paragraphs 17 and 18 of the IDAC underline that State aid in the form of initial investment aid is only one of the means to overcome market failures and to promote economic development in disadvantaged regions. Aid constitutes an appropriate instrument if it provides specific advantages compared with other policy measures. According to paragraph 18 of the IDAC, only 'measures for which the Member State considered other policy options, and for which the advantages of using a selective instrument such as State aid for a specific company are established, are considered to constitute an appropriate instrument.'
- (106) Germany based its explanation for appropriateness of the aid instrument on the economic situation of the situation in the Saxony region and provided evidence to prove that the region is disadvantaged in comparison with the average of other regions in Germany. The German authorities point out that in the year of starting the works, i.e. in 2011, Saxony's GDP per capita was 75 % of the German average and the unemployment rate was 50 % higher than the German average. For the years between 2007 and 2009 the average disposable income in Saxony was approximately 82 % of the German average. Germany argues that, in this kind of economic situation, a direct subsidy has already been acknowledged by the Commission's case practice as an appropriate means to address the economic shortcomings.
- (107) In view of the socioeconomic situation of the Leipzig region, as confirmed by its status as a region eligible for regional aid in accordance with Article 107(3)(c) TFEU with an aid intensity ceiling of 20 %, and in line with earlier case practice (e.g. in the Dell Poland decision <sup>(26)</sup>), the Commission accepts that the granting of State aid is an appropriate instrument to achieve the regional development objective in the region concerned.

#### 6.6.1.3. Incentive effect/Counterfactual scenario

- (108) As there are many valid reasons for a company to locate its investment in a certain region, even without any aid being granted, the IDAC requires the Commission to verify in detail that the aid is necessary to provide an incentive effect for the investment. The objective of this detailed assessment is to determine whether the aid actually contributes to changing the behaviour of the beneficiary, so that it undertakes (additional) investment in the assisted region concerned. Paragraph 22 of the IDAC states that the incentive effect can be proven in two possible scenarios: in the absence of aid, no investment would take place at all since without the aid, the investment would not be profitable for the company at any location (scenario 1); in the absence of aid, the investment would take place in another location in the EU (scenario 2).

<sup>(26)</sup> See footnote 15.

- (109) The IDAC requires the Member State to demonstrate to the Commission the existence of the incentive effect of the aid and provide clear evidence that the aid effectively had an impact on the investment choice or the location choice. In this context, the Member State is also required to give a comprehensive description of the counterfactual scenario in which no aid would be granted to the beneficiary. The scenarios have to be deemed realistic by the Commission.
- (110) The German authorities state that the aid to Porsche Leipzig and Porsche AG falls under scenario 2, and presented a counterfactual scenario, reflecting the concrete investment and location planning for the Macan project which considered, in addition to Leipzig, several alternative locations, all situated in Germany.
- (111) The IDAC places the burden of proof regarding the existence of an incentive effect on the Member State. Paragraph 25 of the IDAC indicates that the Member State could give proof of the incentive effect of the aid by providing company documents that show that a comparison has been made between the costs and benefits of locating in the assisted region selected for the investment with an alternative location. The Member State is invited to rely on financial reports, internal business plans and documents that elaborate on various investment scenarios.
- (112) Germany provided comprehensive contemporary and genuine evidence documenting Porsche AG's multi-stage decision-making process concerning the location of the investment.
- (113) This documentation shows that five options for the production location were considered. All the locations considered, except Leipzig, are situated in non-assisted regions in Germany.
- (114) In the planning process, several calculations and cost estimates with increasing level of detail and precision were carried out, based on which the most viable option — the baseline — changed three times <sup>(27)</sup>. The documents provided allow the Commission to conclude that when the estimates for production costs attributable to the location arrived to the same accuracy levels (revenue levels are assumed to be identical for all options), Option 3 (Body construction and paint in [location 1 in Germany], delivery of the painted body to Leipzig for assembly) and Option 5 (Body construction, paint and assembly in Leipzig) emerged as the most competitive locations.
- (115) For this reason the documents show that, in the last phase of the decision-making process, the comparison took place only between Option 3 and Option 5.
- (116) As described in recital 53 of this decision, the final estimates for production costs attributable to the location resulted in a cost disadvantage of EUR 65 million for Option 5 (Leipzig) compared to Option 3 ([location 1 in Germany]/Leipzig). In order to reduce the cost disadvantage of Option 5, and in view of the forthcoming formal decision of the AR on the localisation of the investment project, Porsche Leipzig started exploring with the Saxon authorities the availability of State aid to attract the investment project to Leipzig.
- (117) In its letter of 25 February 2011, Porsche Leipzig asked the SMWA to examine the possibility of granting aid for the planned investment. Following a meeting between Porsche Leipzig and the Saxon authorities where Porsche Leipzig explained the investment project and the decisional situation, the Saxon authorities undertook by letter of 9 March 2011 to support the investment project for the full production of Macan in Leipzig if the investment were to respect the conditions in force for the award of regional aid.
- (118) As described in recital 56 of this decision the cost disadvantage of Option 5 to Option 3 decreased to EUR 27,52 million after taking the maximum permissible aid into account. However, some qualitative criteria were also taken into account in favour of Option 5.
- (119) On 15 March 2011, the AR decided to locate the full investment in Leipzig (Option 5). As documented by the minutes of the AR meeting, this decision was made explicitly subject to the availability of State aid.
- (120) Following the conditional decision of the AR, Porsche Leipzig applied formally for regional aid on 24 March 2011. The authority responsible for administering the scheme confirmed on 29 March 2011 in writing that, subject to detailed verification, the project in principle met the conditions of eligibility. Following this formal confirmation, works on the project were started in April 2011.

<sup>(27)</sup> See footnote 17.

- (121) In view of the above, the Commission notes, in accordance with paragraph 20 of the IDAC, that the formal incentive effect requirements laid down in paragraph 38 of the RAG were met; the beneficiary submitted an application for aid and the authority responsible for administering the scheme subsequently confirmed in writing that, subject to detailed verification, the project in principle met the conditions of eligibility laid down by the scheme, before works on the project started. In addition, the German authorities provided clear evidence that the aid effectively had an impact on the investment's location choice; since Porsche AG's decision to locate the full production of Macan in Leipzig was taken only after confirmation that the investment project would be eligible for State aid and supported by public authorities, since the AR approved the location subject to the availability of State aid. Therefore, the Commission considers, in accordance with paragraphs 23 and 25 of the IDAC that the counterfactual scenario presented by Germany is realistic and supported by genuine and contemporary evidence. The aid therefore has a real (substantive) incentive effect. By reducing the viability gap in favour of Leipzig, the aid contributed to changing the location decision of the beneficiary company. Without the aid, the investment would not have taken place in Leipzig.

#### 6.6.1.4. *Proportionality of the aid*

- (122) For the aid to be proportional, the amount and intensity of the aid must be limited to the minimum needed for the investment to take place in the assisted region.
- (123) In general, regional aid is considered to be proportional to the seriousness of the problems affecting the assisted regions if it respects the applicable regional aid ceiling, including the automatic, progressive scaling-down of the regional aid ceiling for large investment projects (which is already part of the applicable regional aid map). The applied aid intensity in this case is not higher than the regional aid ceilings corrected by the scaling-down mechanism, as was already established in recital 80.
- (124) In addition to the general principle of proportionality contained in the RAG, the IDAC requires a more detailed assessment to be carried out. Under scenario 2 of the IDAC, the aid is considered proportionate if it equals the difference between the net costs for the beneficiary to invest in the assisted region and the net costs to invest in the alternative location.
- (125) The documentation submitted by Germany proves that the aid was limited to the amount necessary, because it does not exceed the difference in costs between Option 3 and Option 5. The final calculation shows that even with the aid, Option 5 is EUR 27,5 million more expensive (EUR 65 million without the aid) in nominal value than Option 3. The German authorities explained that the remaining cost disadvantage was considered as acceptable due to certain, non-quantifiable criteria, such as strategic (second full manufacturing car plant under Porsche name), quality (avoidance of transport risks between [location 1 in Germany] and Leipzig) and image ([...]) factors that also favoured the location of the investment in Leipzig.
- (126) As the aid is limited to the amount necessary to compensate for the net additional costs of locating the investment project in Leipzig, as compared to the alternative location, the Commission considers that the proportionality of the aid is demonstrated.

#### 6.6.2. **Negative effects of the aid on competition and trade**

- (127) Paragraph 40 of the IDAC states that 'if the counterfactual analysis suggests that without the aid the investment would have gone ahead in any case, albeit possibly in another location (scenario 2), and if the aid is proportional, possible indications of distortions such as a high market share and an increase in capacity in an underperforming market would in principle be the same regardless of the aid.'
- (128) As the aid measure supports a scenario 2 investment decision and the aid is limited to the minimum, no negative effects on trade and competition could be identified. The investment would have been carried out in another location, resulting in the same level of distortion of competition in any event. Therefore, the Commission considers that the aid has no negative effects on competition.

- (129) In accordance with paragraph 53 of the IDAC, if, without aid, the investment would have been located in a poorer region (more regional handicaps — higher maximum regional aid intensity) or to a region that is considered to have the same regional handicaps as the target region (same maximum regional aid intensity), this would constitute a negative element in the overall balancing test that is unlikely to be compensated by any positive elements, because it runs counter the very rationale of regional aid.
- (130) As there is no indication that the investment would have been located in another assisted region with a higher or similar aid intensity ceiling (there is no indication that any location outside Germany was considered), the Commission considers that the aid has no anti-cohesion effect that would run counter the very rationale of regional aid.

#### 6.7. BALANCING

- (131) Having established that the aid provides an incentive for carrying out the investment in the region concerned and is proportionate, it is necessary to balance the positive effects of the aid with its negative effects.
- (132) The assessment confirmed that the aid measure has an incentive effect attracting an investment which offers an important contribution to the regional development of a disadvantaged region which is eligible for regional aid pursuant to Article 107(3)(c) TFEU, without depriving from the investment any region with the same or a higher aid intensity ceiling (no anti-cohesion effect). The Commission considers that attracting an investment to a poorer region is more beneficial for cohesion within the Union than if the same investment had been located in a more developed region. As stated in paragraph 53 of the IDAC, the Commission considers that 'the positive effects of regional aid which merely compensate for the difference in net costs relative to a more developed alternative investment location, will normally be considered, under the balancing test, to outweigh any negative effects in the alternative location for new investment'.
- (133) In view of the above, the Commission finds that, given that the aid is proportional to the difference in net costs for carrying out the investment in the selected location, as compared to a more developed alternative location, the positive effects of the aid, in terms of its objective and appropriateness, as demonstrated above, outweigh the negative effects in the alternative location.
- (134) In accordance with paragraph 68 of the RAG, and in light of the in-depth assessment conducted on the basis of the IDAC, the Commission concludes that the aid is necessary to provide an incentive effect for the investment and that the benefits of the aid measure outweigh the resulting distortion of competition and effect on trade between Member States.

#### 7. CONCLUSION

- (135) The Commission concludes that the proposed regional investment aid in favour of Porsche Leipzig GmbH and Dr Ing. H.c.F. Porsche Aktiengesellschaft — awarded before 1 July 2014 under the condition that it is subject to Commission approval — fulfils all the conditions laid down in the RAG and in the IDAC and can therefore be considered compatible with the internal market in accordance with Article 107(3)(c) TFEU,

HAS ADOPTED THIS DECISION:

#### *Article 1*

1. The State aid which Germany is planning to implement in favour of Porsche Leipzig GmbH and Dr Ing. H.c.F. Porsche Aktiengesellschaft amounting to EUR 43 666 078,75 in present value (discounted to the date of notification) and representing a maximum aid intensity of 8,37 % in gross grant equivalent, is compatible with the internal market in accordance with Article 107(3)(c) TFEU.

2. The implementation of the aid referred to in Article 1(1) is accordingly authorised, provided that it is awarded before 1 July 2014.

*Article 2*

The German authorities shall submit to the Commission:

- within 2 months of granting the aid, a copy of the relevant acts concerning this aid measure;
- on a 5-yearly basis, starting from the approval of the aid by the Commission, an intermediary report (including information on the aid amounts being paid, on the execution of the aid contract and on any other investment projects started at the same establishment/plant);
- within 6 months after payment of the last tranche of the aid, based on the notified payment schedule, a detailed final report.

*Article 3*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 9 July 2014.

*For the Commission*  
Joaquín ALMUNIA  
Vice-President

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