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⁽¹⁾ Text with EEA relevance.

EN

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II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2021/1833

of 14 July 2021

supplementing Directive 2014/65/EU of the European Parliament and of the Council by specifying the criteria for establishing when an activity is to be considered to be ancillary to the main business at group level**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ⁽¹⁾, and in particular Article 2(4) thereof,

Whereas:

- (1) The assessment whether persons are dealing on own account or are providing investment services in commodity derivatives, emission allowances and derivatives thereof in the Union as an activity ancillary to their main business should be performed at a group level. In line with the definition in Article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council ⁽²⁾, a 'group' is considered to comprise the parent undertaking and all its subsidiary undertakings. For the purpose of this regulation, it includes entities located in the Union and in third countries regardless of whether the group is headquartered inside or outside the Union.
- (2) The assessment should be performed in the form of three alternative tests ('ancillary activity tests'), which are based on the trading activity of the persons within the group. The tests should determine whether the persons within the group trade on own account. If those persons provide investment services in commodity derivatives, emission allowances or derivatives thereof in the Union to such a large extent relative to the main business of the group that those activities cannot be considered to be ancillary at group level, those persons should be required to obtain authorisation as an investment firm. In order to take account of the economic reality of the heterogeneous groups that have to undertake the assessment of whether their trading is ancillary to their main business activities, those persons should be allowed to decide which of the three alternative tests to perform in order to determine whether their trading activity is ancillary to the main business of a particular group. If a person's trading activity is ancillary under any of those tests, it should be considered to be ancillary to the main business for the purpose of Article 2(1)(j) of Directive 2014/65/EU.

⁽¹⁾ OJ L 173, 12.6.2014, p. 349.

⁽²⁾ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

- (3) Pursuant to the first alternative test a person's activity should be ancillary to the main business if its net outstanding notional exposure in commodity derivatives or emission allowances or derivatives thereof for cash settlement traded in the Union, excluding commodity derivatives or emission allowances or derivatives thereof traded on a trading venue, is below an annual threshold of EUR 3 billion (the 'De-Minimis Threshold Test').
- (4) The second alternative test compares the size of a person's trading activity against the overall trading activity of the group in the Union (the 'Trading Test'). The size of the trading activity of a person should be determined by deducting the sum of the size of the transactions for the purposes of intra-group liquidity or risk management purposes, objectively measurable reduction of risks directly relating to commercial or treasury financing activity or fulfilling obligations to provide liquidity on a trading venue ('privileged transactions') from the size of the overall trading activity undertaken by the person. Contracts where the person within the group that is a party to any of those contracts is authorised in accordance with Directive 2014/65/EU or Directive 2013/36/EU of the European Parliament and of the Council ⁽³⁾ should be deducted from the trading activity of a person. The overall trading activity of the group in the Union includes privileged transactions and contracts where the person within the group that is a party to any of those contracts is authorised in accordance with Directive 2014/65/EU or Directive 2013/36/EU.
- (5) The size of the trading activity should be determined by the gross notional value of contracts in commodity derivatives, emission allowances and derivatives thereof in the Union on the basis of a rolling average of the preceding three annual periods.
- (6) The size of the trading activity used as the parameter under the Trading test is taken as a proxy for the commercial activity that the person or group engages in as its main business. This proxy should be easy and cost-efficient for persons to apply as it builds on data already required to be collected for compliance purposes, such as for the reporting of transactions, while at the same time establishing a meaningful test.
- (7) This proxy is appropriate because a rational risk-averse entity, such as a producer, processor or consumer of commodities or emission allowances, is deemed to hedge the volume of the commercial activity of its main business with an equivalent volume of commodity derivatives, emission allowances or derivatives thereof. Therefore, the volume of all its trading activity in commodity derivatives, emission allowances or derivatives thereof measured in the gross notional value of the underlying is an appropriate proxy for the size of the main business of the group. Since groups, whose main business activities are not related to commodities or emission allowances, would not use commodity or emission allowances derivatives as a risk-reducing tool, their trading in commodity derivatives, emission allowances or derivatives thereof should not qualify as hedging.
- (8) The use of commodity derivatives as a risk-reducing tool however cannot be considered a perfect proxy for all the commercial activity that the person or group conducts as its main business since it may not take into account other investments in fixed assets unrelated to derivative markets.
- (9) The second test may not adequately measure the main activity of persons who have significant capital investments, relative to their size, for example in the creation of infrastructure, transportation facilities and production facilities. Neither does it recognise investments that cannot be hedged in financial markets. Therefore it is necessary to provide for a third method that uses a capital employed based metric to measure whether that trading activity is ancillary to the main business of the group.
- (10) The third alternative test, the Capital Employed Test, is provided in order to take into account the economic reality of the heterogeneous groups that need to undertake the assessment of whether their trading is ancillary to their main business, including groups that undertake significant capital investments, relative to their size, for example in the creation of infrastructure, transportation facilities and production facilities, as well as investments which cannot be easily hedged in financial markets. As the three alternative tests cater for the different underlying economic realities of various groups, all tests should constitute equally suitable, alternative and independent methods to determine whether the trading activity is ancillary to the main business of a particular group. If a person's trading activity is found to be ancillary under any of those tests, it should be ancillary to the main business for the purpose of Article 2(1)(j) of Directive 2014/65/EU.

⁽³⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

- (11) The third test uses the estimated capital that a non-financial group would be required to hold against the market risk inherent in its positions arising from trading in commodity derivatives, emission allowances and derivatives thereof in the Union, other than those from privileged transactions, as a proxy for the amount of ancillary activities undertaken by the persons in a group. The framework developed under the auspices of the Basel Committee in Banking Supervision and implemented in the Union through Directive 2013/36/EU is used to apply a proportionate notional capital weighting to positions. Within this framework, the net position in a commodity derivative, an emission allowance or a derivative thereof in the Union should be determined by netting long and short positions in a particular type of commodity derivative contract, emission allowance or derivative contract thereof, such as a future, option, forward or warrants. In determining the net position, netting should take place irrespective of where the contract is traded, the contract's counterparty or its maturity. The gross position in a relevant commodity derivative, emission allowance contract or a derivative contract thereof should, on the other hand, be calculated by adding the net positions of types of contracts that relate to a particular commodity or, emission allowance or derivative thereof. In this context, net positions in a particular type of commodity derivative contract, emission allowance contract or derivative contract thereof should not be netted against each other.
- (12) Under the third test, the amount of the estimated capital of a group should be compared to the actual amount of capital employed of that group that should reflect the size of its main activity. The capital employed should be calculated on the basis of the sum of the total assets of the group minus its current debt. That current debt should comprise debt that is due to be settled within 12 months.
- (13) The rationale of the ancillary activity tests is to check whether persons within a group that are not authorised in accordance with Directive 2014/65/EU should apply for an authorisation due to the relative or absolute size of their activity in commodity derivatives, emission allowances and derivatives thereof in the Union. The ancillary activity tests determine the size of activities in commodity derivatives, emission allowances and derivatives thereof in the Union that persons within a group may carry out without authorisation in accordance with Directive 2014/65/EU due to those activities being ancillary to the group's main business. It is therefore appropriate to calculate the size of the ancillary activity of the group by using criteria that exclude for all three tests the activity carried out by group members that are authorised in accordance with that Directive in order to assess the size of genuine ancillary activity carried out by unauthorised group members.
- (14) In order to allow market participants to plan and operate their business in a reasonable way and to take into account seasonal patterns of activity, the calculation of the alternative tests determining when an activity is considered to be ancillary to the main business should be based on a period of three years. Therefore, entities should perform the assessment whether they breach one of the three thresholds of the three alternative tests on an annual basis by calculating a simple average of three years on a rolling basis. This obligation should be without prejudice to the right of the competent authority to request at any time a person to report the basis on which that person has assessed its activity, for the purposes of Article 2(1)(j), points (i) and (ii), of Directive 2014/65/EU, to be ancillary to its main business.
- (15) Transactions objectively measurable as reducing risks directly relating to commercial activity or treasury financing activity and intra-group transactions should be considered in accordance with the provisions of Regulation (EU) No 648/2012 of the European Parliament and of the Council ⁽⁴⁾. However, in relation to transactions in derivatives which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity, Commission Delegated Regulation (EU) No 149/2013 ⁽⁵⁾ only refers to derivatives not traded on regulated markets while Article 2(4) of Directive 2014/65/EU covers derivatives traded on trading venues. Therefore, when the ancillary activity tests equally cover derivatives traded on regulated markets and derivatives not traded on regulated markets, it is appropriate to take into account derivatives traded on regulated markets in relation to transactions that are deemed to be objectively measurable as reducing risks directly related to commercial or treasury financing activity.

⁽⁴⁾ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

⁽⁵⁾ Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (OJ L 52, 23.2.2013, p. 11).

- (16) In some circumstances, for example when existing market liquidity is insufficient or a corresponding derivative contract is not available, it may not be possible to hedge a commercial risk by using a directly related commodity derivative contract, that is to say a contract with exactly the same underlying and settlement date as the risk being covered. In such case, the person should be permitted to use proxy hedging through a closely correlated instrument to cover its exposure, such as an instrument with a different but very close underlying. Additionally, macro or portfolio hedging is permitted to be used by persons, which enter into commodity derivative contracts to hedge a risk in relation to their overall risks or the overall risks of the group. Those macro, portfolio or proxy hedging commodity derivative contracts should constitute hedging for the purpose of the ancillary activity tests. When a person applying the ancillary activity tests uses portfolio or macro hedging, it may not be able to establish a one-to-one link between a specific transaction in a commodity derivative and a specific risk directly related to the commercial and treasury financing activities entered into to hedge it. The risks directly related to the commercial and treasury financing activities may be of a complex nature, for example several geographic markets, several products, time horizons or entities. The portfolio of commodity derivative contracts entered into to mitigate those risks may derive from complex risk management systems. In such cases the risk management systems should prevent non-hedging transactions from being categorised as hedging and provide for a sufficiently disaggregate view of the hedging portfolio so that speculative components are identified and counted towards the thresholds. Positions should not qualify as reducing risks related to commercial activity solely on the grounds that they form part of a risk-reducing portfolio on an overall basis.
- (17) A risk may evolve over time and, in order to adapt to the evolution of the risk, commodity or emission allowance derivatives initially executed for reducing risk related to commercial activity may have to be offset through the use of additional commodity or emission allowance derivative contracts. As a result, hedging of a risk may be achieved by a combination of commodity or emission allowance derivative contracts, including offsetting commodity derivative contracts that offset those commodity derivative contracts that have become unrelated to the commercial risk. Additionally the evolution of a risk that has been addressed by the entering into of a position in a commodity or emission allowance derivative for the purpose of reducing that risk should not subsequently give rise to the re-evaluation of that position as being not a privileged transaction *ab initio*.
- (18) Commission Delegated Regulation (EU) 2017/592⁽⁶⁾ supplements Directive 2014/65/EU with regard to criteria to establish when an activity is considered to be ancillary to the main business. That Directive has been amended 16 February 2021 by Directive (EU) 2021/338 of the European Parliament and of the Council⁽⁷⁾, setting out new provisions regarding the ancillary activity exemption and the ancillary activity tests, and empowering the Commission to adopt a delegated act specifying the criteria for establishing when an activity is to be considered to be ancillary to the main business at group level. In particular, the Overall Market Test has been removed as the commodity derivatives landscape in the Union has changed to such an extent that the Overall Market Test would render entities no longer eligible to the ancillary activity exemption even with no change to their business conduct. Furthermore, the De-Minimis Threshold Test is introduced and the thresholds for the Trading Test and the Capital Employed Test are changed. Therefore, Delegated Regulation (EU) 2017/592 should be repealed and replaced by this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Asset classes eligible for the ancillary activity test

In order to be considered to be ancillary to the main business of the group, the activities of persons referred to in Article 2(1)(j), points (i) and (ii), of Directive 2014/65/EU shall relate to any of one or more of the following asset classes:

- (a) commodity derivatives which relate to a commodity or an underlying referred to in points (5), (6), (7) and (10) of Section C of Annex I to Directive 2014/65/EU;

⁽⁶⁾ Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business (OJ L 87, 31.3.2017, p. 492).

⁽⁷⁾ Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 14).

- (b) emission allowances referred to in Annex I, Section C 11, to Directive 2014/65/EU or emission allowances derivatives referred to in Annex I, Section C 4 to Directive 2014/65/EU.

Article 2

Ancillary activity tests

1. The activities of persons referred to in Article 1 shall be considered to be ancillary to the main business at group level where they comply with any of the following conditions:
 - (a) the net outstanding notional exposure in commodity derivatives for cash settlement or emission allowances or derivatives thereof for cash settlement traded in the Union calculated in accordance with Article 3, excluding commodity derivatives or emission allowances or derivatives thereof traded on a trading venue, is below an annual threshold of EUR 3 billion (De-Minimis Threshold Test);
 - (b) the size of those activities calculated in accordance with Article 4(1) accounts for 50 % or less of the total size of the other trading activities of the group calculated in accordance with Article 4(2);
 - (c) the estimated capital employed for carrying out those activities calculated in accordance with Article 5, paragraphs 1 and 3, accounts for not more than 50 % of the capital employed at group level for carrying out the main business calculated in accordance with Article 5(4).
2. A group is considered to comprise the parent undertaking and all its subsidiary undertakings. It includes entities located in the Union and in third countries regardless of whether the group is headquartered inside or outside the Union.

Article 3

De-Minimis Threshold Test

1. The net outstanding notional exposure referred to in Article 2, paragraph 1, point (a), shall be calculated by averaging the aggregated month-end net outstanding notional values for the previous 12 months resulting from all contracts in commodity derivatives for cash settlement or emission allowances or derivatives thereof for cash settlement entered into in the Union by a person within a group.

The net outstanding notional values referred to in the first subparagraph shall be calculated on the basis of all contracts in commodity derivatives for cash settlement or emission allowances or derivatives thereof for cash settlement that are not traded on a trading venue to which any person located in the Union is a party during the relevant annual accounting period referred to in Article 6(2).

The contracts in commodity derivatives or emission allowances derivatives for cash settlement referred to in the first and second subparagraph shall include all derivative contracts relating to commodities or emission allowances which must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event.

2. The aggregation referred to in the first paragraph shall not include positions from contracts resulting from transactions referred to in Article 2(4), fourth subparagraph, points (a), (b) and (c), of Directive 2014/65/EU or from contracts where the person within the group that is a party to any of them is authorised in accordance with Directive 2014/65/EU or Directive 2013/36/EU.
3. The net outstanding notional values referred to in paragraph 1 shall be determined pursuant to the netting methodology of Article 5(2).
4. The values resulting from the aggregation referred to in this Article shall be denominated in euro.

*Article 4***Trading Test**

1. The size of the activities referred to in Article 2, paragraph 1, point (b), undertaken in the Union by a person within a group shall be calculated by aggregating the gross notional value of all contracts in commodity derivatives or emission allowances or derivatives thereof to which that person is a party.

The aggregation referred to in the first subparagraph shall not include contracts resulting from transactions referred to in Article 2(4), fourth subparagraph, points (a), (b) and (c), of Directive 2014/65/EU or contracts where the person within the group that is a party to any of them is authorised in accordance with Directive 2014/65/EU or Directive 2013/36/EU.

2. The total size of the other trading activities of the group referred to in Article 2, paragraph 1, point (b), shall be calculated by aggregating the gross notional value of all contracts in commodity derivatives, emission allowances and derivatives thereof to which persons within that group are a party.

The aggregation referred to in the first subparagraph shall include contracts resulting from transactions referred to in Article 2(4), fourth subparagraph, points (a), (b) and (c), of Directive 2014/65/EU or contracts where the person within the group that is a party to any of them is authorised in accordance with Directive 2014/65/EU or Directive 2013/36/EU.

3. The overall market trading activities referred to in paragraphs 1 and 2 shall be calculated by aggregating the gross notional value of all contracts that are not traded on a trading venue to which any person located in the Union is a party and of any other contracts that is traded on a trading venue located in the Union during the relevant annual accounting period referred to in Article 6(2).

4. The aggregate values referred to in this Article shall be denominated in euro.

*Article 5***Capital Employed Test**

1. The estimated capital employed for carrying out the activities referred to in Article 2, paragraph 1, point (c), shall be the sum of the following:

- (a) 15 % of each net position, long or short, multiplied by the price for the commodity derivative, emission allowance or derivatives thereof;
- (b) 3 % of the gross position, long plus short, multiplied by the price for the commodity derivative, emission allowance or derivatives thereof.

The positions referred to in the first subparagraph shall be calculated on the basis of all contracts that are not traded on a trading venue to which any person located in the Union is a party and of any other contracts that is traded on a trading venue located in the Union during the relevant annual accounting period referred to in Article 6(2).

2. For the purposes of paragraph 1, first subparagraph, point (a), the net position in a commodity derivative, an emission allowance or a derivative thereof in the Union shall be determined by netting long and short positions:

- (a) in each type of commodity derivative contract with a particular commodity as underlying in order to calculate the net position per type of contract with that commodity as underlying;
- (b) in an emission allowance contract in order to calculate the net position in that emission allowances contract; or
- (c) in each type of emission allowance derivative contract in order to calculate the net position per type of emission allowance derivative contract.

For the purposes of paragraph 1, first subparagraph, point (a), net positions in different types of contracts with the same commodity as underlying or different types of derivative contracts with the same emission allowance as underlying can be netted against each other.

3. For the purposes of paragraph 1, first subparagraph, point (b), the gross position in a commodity derivative, an emission allowance or a derivative contract thereof, shall be determined by computing the sum of the absolute values of the net positions per type of contract with a particular commodity as the underlying, per emission allowance contract or per type of contract with a particular emission allowance as the underlying.

For the purposes of paragraph 1, first subparagraph, point (b), net positions in different types of derivative contracts with the same commodity as underlying or different types of derivative contracts with the same emission allowance as underlying cannot be netted against each other.

The calculation of the estimated capital shall not include positions resulting from transactions referred to in Article 2(4), fourth subparagraph, points (a), (b) and (c), of Directive 2014/65/EU or contracts where the person within the group that is a party to any of them is authorised in accordance with Directive 2014/65/EU or Directive 2013/36/EU.

4. The capital employed for carrying out the main business of a group shall be the sum of the total assets of the group minus its short-term debt as recorded in its consolidated financial statements of the group at the end of the relevant annual calculation period. For the purposes of this paragraph, short-term debt means debt with a maturity of less than 12 months.

5. The values resulting from the calculations referred to in this Article shall be denominated in euro.

Article 6

Procedure for calculation

1. The calculation of the De-Minimis Threshold Test referred to in Article 3 shall be determined by reference to three annual calculation periods that precede the date of calculation, where the simple average of the resulting annual values shall be compared with the threshold referred to in Article 2, paragraph 1, point (a). The calculation of the size of the trading activities and capital employed referred to in Articles 4 and 5 shall be based on a simple average of the daily trading activities or estimated capital allocated to such trading activities, during three annual calculation periods that precede the date of calculation. The calculations shall be carried out annually in the first quarter of the calendar year that follows an annual calculation period, where the simple average of the resulting annual values shall be compared with the respective thresholds referred to in Article 2, paragraph 1, points (b) and (c).

2. For the purpose of paragraph 1, an annual calculation period means a period which starts on 1 January of a given year and ends on 31 December of that year.

3. For the purpose of paragraph 1, the calculation of the size of trading activities or estimated capital allocated to trading activities taking place in 2022 shall take into account the three preceding annual calculation periods, starting on 1 January 2019, 1 January 2020 and 1 January 2021, and the calculation taking place in 2023 shall take into account the three preceding annual calculation periods, starting on 1 January 2020, 1 January 2021 and 1 January 2022.

4. By derogation from paragraph 3, the reference period for the calculation of daily trading activities or estimated capital allocated to such trading activities shall comprise only the most recent annual calculation period where both the following conditions are met:

- (a) daily trading activities or estimated capital allocated to such trading activities declines by more than 10 %, when comparing the earliest of the three preceding annual calculation periods with the most recent annual calculation period; and
- (b) daily trading activities or estimated capital allocated to such trading activities in the most recent of the three annual calculation periods is lower than in the two preceding calculation periods.

*Article 7***Transactions qualifying as reducing risks**

1. For the purposes of Article 2(4), fourth subparagraph, point (b), of Directive 2014/65/EU, a transaction in derivatives shall be considered objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity where one or more of the following criteria is met:

- (a) the transaction reduces the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the person or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells, or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business;
- (b) the transaction covers the risks arising from the potential indirect impact on the value of assets, services, inputs, products, commodities or liabilities referred to in point (a), resulting from fluctuation of interest rates, inflation rates, foreign exchange rates or credit risk;
- (c) the transaction qualifies as a hedging contract pursuant to International Financial Reporting Standards adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and Council ⁽⁸⁾.

2. For the purposes of paragraph 1, a qualifying risk-reducing transaction taken on its own or in combination with other derivatives is one for which a non-financial entity

- (a) describes the following in its internal policies:
 - (i) the types of commodity derivative, emission allowance or derivative thereof contracts included in the portfolios used to reduce risks directly relating to commercial activity or treasury financing activity and their eligibility criteria;
 - (ii) the link between the portfolio and the risks that the portfolio is mitigating;
 - (iii) the measures adopted to ensure that the transactions concerning those contracts serve no other purpose than covering risks directly related to the commercial activity or the treasury financing activity of the non-financial entity, and that any transaction serving a different purpose can be clearly identified;
- (b) is able to provide a sufficiently disaggregate view of the portfolios in terms of class of commodity derivative, emission allowance or derivative thereof, underlying commodity, time horizon and any other relevant factors.

*Article 8***Repeal**

Delegated Regulation (EU) 2017/592 is repealed.

References to Delegated Regulation (EU) 2017/592 shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex to this Regulation.

*Article 9***Entry into force and application**

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

⁽⁸⁾ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

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

Done at Brussels, 14 July 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Correlation table

This Regulation	Delegated Regulation (EU) 2017/592
Article 1	Article 2(1)
Article 2	Article 1
Article 3	Article 2(2), (3) and (4) Article 3(3) and (4)
Article 4	Article 2(2), (3) and (4) Article 3(1), point (a), Article 3(2), points (a) and (b), Article 3(3) and (4)
Article 5	Article 3(1), point (b), Article 3(5) to (10)
Article 6	Article 4
Article 7	Article 5
Article 8	—
Article 9	Article 6

DECISIONS

COUNCIL DECISION (EU) 2021/1834

of 6 October 2021

appointing six members and four alternate members, proposed by the Italian Republic, of the Committee of the Regions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to Council Decision (EU) 2019/852 of 21 May 2019 determining the composition of the Committee of the Regions ⁽¹⁾,

Having regard to the proposals of the Italian Government,

Whereas:

- (1) Pursuant to Article 300(3) of the Treaty, the Committee of the Regions is to consist of representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly,
- (2) On 20 January 2020, the Council adopted Decision (EU) 2020/102 ⁽²⁾, appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2020 to 25 January 2025. On 19 May 2020, the Council adopted Decision (EU) 2020/682 ⁽³⁾, appointing an alternate member, proposed by the Italian Republic, of the Committee of the Regions. On 7 December 2020, the Council adopted Decision (EU) 2020/2076 ⁽⁴⁾ appointing two alternate members, proposed by the Italian Republic, of the Committee of the Regions,
- (3) Six members' seats on the Committee of the Regions have become vacant following the resignation of Massimiliano FEDRIGA, Mr Christian SOLINAS and Mr Donato TOMA and the end of the national mandate on the basis of which Ms Manuela BORA, Mr Enrico ROSSI and Ms Alessandra SARTORE were proposed for appointment,
- (4) Four alternate members' seats on the Committee of the Regions have become vacant following the resignation of Mr Vincenzo DE LUCA, Mr Domenico GIANNETTA and Mr Arno KOMPATSCHER and the end of the national mandate on the basis of which Mr Pierluigi MARQUIS was proposed for appointment,
- (5) The Italian Government has proposed the following representatives of regional bodies who hold a regional authority electoral mandate as members of the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2025: Mr Guido CASTELLI, *Assessore della Regione Marche* (Regional Minister of the Marche Region), Mr Michele EMILIANO, *Presidente della Regione Puglia* (President of the Puglia Region) and Mr Eugenio GIANI, *Presidente della Regione Toscana* (President of the Toscana Region),

⁽¹⁾ OJ L 139, 27.5.2019, p. 13.

⁽²⁾ Council Decision (EU) 2020/102 of 20 January 2020 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2020 to 25 January 2025 (OJ L 20, 24.1.2020, p. 2).

⁽³⁾ Council Decision (EU) 2020/682 of 19 May 2020 appointing an alternate member, proposed by the Italian Republic, of the Committee of the Regions (OJ L 161, 25.5.2020, p. 9).

⁽⁴⁾ Council Decision (EU) 2020/2076 of 7 December 2020 appointing two alternate members, proposed by the Italian Republic, of the Committee of the Regions (OJ L 424, 15.12.2020, p. 55).

- (6) The Italian Government has proposed Mr Nicola CAPUTO, representative of a regional body who is politically accountable to an elected assembly, *Assessore della Regione Campania* (Regional Minister of the Campania Region) as an alternate member of the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2025,
- (7) The Italian Government has proposed Mr Luciano Emilio CAVERI, representative of a regional body who holds a regional authority electoral mandate, *Assessore e Consigliere della Regione autonoma Valle d'Aosta* (Regional Minister and Councillor of the Autonomous Region of Valle d'Aosta) as an alternate member of the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2025,
- (8) The Italian Government has proposed Mr Arno KOMPATSCHER, representative of a regional body who holds a regional authority electoral mandate, *Consigliere della Provincia autonoma di Bolzano – Presidente della Regione Trentino Alto-Adige e della Provincia autonoma di Bolzano* (Councillor of the Autonomous Province of Bolzano – President of the Trentino Alto-Adige Region and of the Autonomous Province of Bolzano), as a member of the Committee of the Regions until 31 October 2023.
- (9) The Italian Government has proposed Mr Christian SOLINAS, representative of a regional body who holds a regional authority electoral mandate, *Presidente della Regione Sardegna* (President of the Sardegna Region), as an alternate member of the Committee of the Regions until 28 February 2024,
- (10) The Italian Government has proposed Ms Donatella TESEI, representative of a regional body who holds a regional authority electoral mandate, *Presidente della Regione Umbria* (President of the Umbria Region), as a member of the Committee of the Regions until 31 October 2024,
- (11) The Italian Government has proposed Mr Donato TOMA, representative of a regional body who holds a regional authority electoral mandate, *Presidente della Regione Molise* (President of the Molise Region), as an alternate member of the Committee of the Regions until 30 April 2023,
- (12) The Italian Government has proposed Mr Nicola ZINGARETTI, representative of a regional body who holds a regional authority electoral mandate, *Presidente della Regione Lazio* (President of Lazio Region), as a member of the Committee of the Regions until 31 March 2023,

HAS ADOPTED THIS DECISION:

Article 1

The following representatives of regional or local bodies who hold an electoral mandate or who are politically accountable to an elected assembly are hereby appointed to the Committee of the Regions:

(a) as members:

- Mr Guido CASTELLI, *Assessore della Regione Marche* (Regional Minister of the Marche Region), for the remainder of the current term of office, which runs until 25 January 2025,
- Mr Michele EMILIANO, *Presidente della Regione Puglia* (President of Puglia Region), for the remainder of the current term of office, which runs until 25 January 2025,
- Mr Eugenio GIANI, *Presidente della Regione Toscana* (President of the Toscana Region), for the remainder of the current term of office, which runs until 25 January 2025,

- Mr Arno KOMPATSCHER, *Consigliere della Provincia autonoma di Bolzano – Presidente della Regione Trentino Alto-Adige e della Provincia autonoma di Bolzano* (Councilor of the Autonomous Province of Bolzano – President of the Trentino Alto-Adige Region and of the Autonomous Province of Bolzano) (change of mandate), until 31 October 2023,
- Ms Donatella TESEI, *Presidente della Regione Umbria* (President of the Umbria Region), until 31 October 2024,
- Mr Nicola ZINGARETTI, *Presidente della Regione Lazio* (President of Lazio Region), until 31 March 2023,

and

(b) as alternate members:

- Mr Nicola CAPUTO, *Assessore della Regione Campania* (Regional Minister of the Campania Region), for the remainder of the current term of office, which runs until 25 January 2025,
- Mr Luciano Emilio CAVERI, *Assessore e Consigliere della Regione autonoma Valle d'Aosta* (Regional Minister and Councilor of the Autonomous Region of Valle d'Aosta), for the remainder of the current term of office, which runs until 25 January 2025,
- Mr Christian SOLINAS, *Presidente della Regione Sardegna* (President of the Sardegna Region), until 28 February 2024 (change of mandate),
- Mr Donato TOMA, *Presidente della Regione Molise* (President of the Molise Region) until 30 April 2023 (change of mandate).

Article 2

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

Done at Luxembourg, 6 October 2021.

For the Council
The President
A. VIZJAK

COUNCIL DECISION (EU) 2021/1835**of 6 October 2021****appointing two alternate members, proposed by the Kingdom of Spain, of the Committee of the Regions**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to Council Decision (EU) 2019/852 of 21 May 2019 determining the composition of the Committee of the Regions ⁽¹⁾,

Having regard to the proposals from the Spanish Government,

Whereas:

- (1) Pursuant to Article 300(3) of the Treaty, the Committee of the Regions is to consist of representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly,
- (2) On 10 December 2019, the Council adopted Decision (EU) 2019/2157 ⁽²⁾, appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2020 to 25 January 2025,
- (3) Two alternate members' seats on the Committee of the Regions have become vacant following the end of the national mandate on the basis of which Mr Ignacio Jesús AGUADO CRESPO was proposed for appointment and the resignation of Mr Mikel IRUJO AMEZAGA,
- (4) The Spanish Government has proposed the following representatives of regional bodies who are politically accountable to an elected assembly as alternate members of the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2025: Mr José Francisco HERRERA ANTONAYA, *Director-General de Cooperación con el Estado y la Unión Europea, Comunidad de Madrid* (Director-General for Cooperation with the State and the European Union, Community of Madrid) and Mr Sergio PÉREZ GARCÍA, *Director-General de Acción Exterior, Gobierno de Navarra* (Director-General for Foreign Affairs Government of Navarra),

HAS ADOPTED THIS DECISION:

Article 1

The following representatives of regional bodies who are politically accountable to an elected assembly are hereby appointed as alternate members of the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2025:

- Mr José Francisco HERRERA ANTONAYA, *Director-General de Cooperación con el Estado y la Unión Europea, Comunidad de Madrid* (Director-General for Cooperation with the State and the European Union, Community of Madrid);
- Mr Sergio PÉREZ GARCÍA, *Director-General de Acción Exterior, Gobierno de Navarra* (Director-General for Foreign Affairs, Government of Navarra).

⁽¹⁾ OJ L 139, 27.5.2019, p. 13.

⁽²⁾ Council Decision (EU) 2019/2157 of 10 December 2019 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2020 to 25 January 2025 (OJ L 327, 17.12.2019, p. 78).

Article 2

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

Done at Luxembourg, 6 October 2021.

For the Council

The President

A. VIZJAK

COUNCIL DECISION (EU) 2021/1836**of 15 October 2021**

establishing the position to be adopted on behalf of the European Union in the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community as regards the adoption of a decision to amend the Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 50(2) thereof,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement') was concluded by the Union by Council Decision (EU) 2020/135 ⁽¹⁾, and entered into force on 1 February 2020.
- (2) Article 164(5)(d) of the Withdrawal Agreement empowers the Joint Committee to adopt decisions amending that Agreement, provided that such amendments are necessary to correct errors, to address omissions or other deficiencies, or to address situations unforeseen when the Agreement was signed, and provided that such decisions do not amend the essential elements of that Agreement. Pursuant to Article 166(2) of the Withdrawal Agreement, the decisions adopted by the Joint Committee are binding on the Union and the United Kingdom, and the Union and the United Kingdom must implement those decisions, which shall have the same legal effect as the Withdrawal Agreement.
- (3) By oversight, one decision and one recommendation of the Administrative Commission for the Coordination of Social Security Systems have not been listed in Part I of Annex I to the Withdrawal Agreement. Four other decisions and one recommendation were adopted before the end of the transition period. Those decisions and recommendations should therefore be added to that annex.
- (4) The Joint Committee should adopt a decision pursuant to Article 164(5)(d) of the Withdrawal Agreement to address those omissions and deficiencies.
- (5) It is therefore appropriate to establish the position to be taken on the Union's behalf in the Joint Committee,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union in the Joint Committee established by Article 164(1) of the Withdrawal Agreement, on a decision to be taken in accordance with Article 164(5)(d) thereof shall be based on the draft decision of the Joint Committee attached to this Decision.

Article 2

The Decision of the Joint Committee shall be published in the *Official Journal of the European Union*.

⁽¹⁾ OJ L 29, 31.1.2020, p. 1.

Article 3

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

Done at Luxembourg, 15 October 2021.

For the Council
The President
J. CIGLER KRALJ

DRAFT

DECISION No [...] /2021 OF THE JOINT COMMITTEE ESTABLISHED BY THE AGREEMENT ON THE WITHDRAWAL OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FROM THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY**of ...****amending the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community**

THE JOINT COMMITTEE,

Having regard to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ⁽¹⁾ ('the Withdrawal Agreement'), and in particular Article 164(5)(d) thereof,

Whereas:

- (1) Article 164(5) point (d) of the Withdrawal Agreement enables the Joint Committee established under Article 164(1) thereof ('the Joint Committee') to adopt decisions amending that Agreement, provided that such amendments are necessary to correct errors, to address omissions or other deficiencies, or to address situations unforeseen when the Agreement was signed, and provided that such decisions do not amend the essential elements of that Agreement. Pursuant to Article 166(2) of the Withdrawal Agreement, the decisions adopted by the Joint Committee are binding on the Union and the United Kingdom. The Union and the United Kingdom must implement such decisions, which shall have the same legal effect as the Withdrawal Agreement.
- (2) In the interests of legal certainty, Part I of Annex I to the Withdrawal Agreement should be amended by adding five decisions and two recommendations of the Administrative Commission for the Coordination of Social Security Systems which were not previously listed therein, and by removing and replacing two decisions,

HAS ADOPTED THIS DECISION:

Article 1

The Withdrawal Agreement shall be amended as follows:

- (1) In Part I of Annex I to the Withdrawal Agreement, Recommendation No A1 of the Administrative Commission for the Coordination of Social Security Systems concerning the issuance of the attestation referred to in Article 19(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council ⁽²⁾ is added under 'Applicable legislation (A series)';
- (2) In Part I of Annex I to the Withdrawal Agreement, Decision No. E6 of the Administrative Commission for the Coordination of Social Security Systems concerning the determination of when an electronic message is considered legally delivered in the Electronic Exchange of Social Security Information (EESSI) system ⁽³⁾ is added under 'Electronic Data Exchange (E series)';
- (3) In Part I of Annex I to the Withdrawal Agreement, Decision No. H9 of the Administrative Commission for the Coordination of Social Security Systems regarding the postponement of deadlines mentioned in Articles 67 and 70 of Regulation (EC) No 987/2009 of the European Parliament and of the Council as well as in Decision No S9 due to the COVID-19 Pandemic ⁽⁴⁾, is added under 'Horizontal issues (H series)';

⁽¹⁾ OJ EU L 29, 31.1.2020, p. 7.

⁽²⁾ OJ EU C 183, 29.5.2018, p. 5.

⁽³⁾ OJ EU C 355, 4.10.2018, p. 5.

⁽⁴⁾ OJ EU C 259, 7.8.2020, p. 9.

- (4) In Part I of Annex I to the Withdrawal Agreement, Decision No. H10 of the Administrative Commission for the Coordination of Social Security Systems concerning the methods of operation and the composition of the Technical Commission for Data Processing of the Administrative Commission for the Coordination of Social Security Systems ⁽⁵⁾ shall be added under 'Horizontal issues (H series)';
- (5) In Part I of Annex I to the Withdrawal Agreement, Decision No. H11 of the Administrative Commission for the Coordination of Social Security Systems regarding the postponement of deadlines mentioned in Articles 67 and 70 of Regulation (EC) No 987/2009 as well as in Decision No S9 due to the COVID-19 Pandemic ⁽⁶⁾ shall be added under 'Horizontal issues (H series)';
- (6) In Part I of Annex I to the Withdrawal Agreement, Recommendation No. H2 of the Administrative Commission for the Coordination of Social Security Systems concerning the inclusion of authentication features to Portable Documents issued by the institution of a Member State and showing the position of a person for the purpose of the application of Regulations (EC) No 883/2004 and (EC) No 987/2009 of the European Parliament and of the Council ⁽⁷⁾ shall be added under 'Horizontal issues (H series)';
- (7) In Part I of Annex I to the Withdrawal Agreement, Decision S11 of the Administrative Commission for the Coordination of Social Security Systems concerning refund procedures for the implementation of Articles 35 and 41 of Regulation (EC) No 883/2004 ⁽⁸⁾ shall be added under 'Sickness (S series)';
- (8) In Part I of Annex I to the Withdrawal Agreement, the following acts shall be removed and replaced:
- (a) Decision No. H8 of the Administrative Commission for the Coordination of Social Security Systems concerning the methods of operation and the composition of the Technical Commission for data processing of the Administrative Commission for the Coordination of Social Security Systems ⁽⁹⁾, which is replaced by Decision No. H10 of the Administrative Commission for the Coordination of Social Security Systems concerning the methods of operation and the composition of the Technical Commission for Data Processing of the Administrative Commission for the Coordination of Social Security Systems ⁽¹⁰⁾;
- (b) Decision No. S9 of the Administrative Commission for the Coordination of Social Security Systems concerning refund procedures for the implementation of Articles 35 and 41 of Regulation (EC) No 883/2004 ⁽¹¹⁾, which is replaced by Decision No. S11 of the Administrative Commission for the Coordination of Social Security Systems concerning refund procedures for the implementation of Articles 35 and 41 of Regulation (EC) No 883/2004 ⁽¹²⁾.

Article 2

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

Done at ...,

*For the Joint Committee
The Co-chairs*

⁽⁵⁾ OJ EU C 89, 16.3.2021, p. 6.

⁽⁶⁾ OJ EU C 170, 6.5.2021, p. 4.

⁽⁷⁾ OJ EU C 147, 29.4.2019, p. 6.

⁽⁸⁾ OJ EU C 236, 18.6.2021, p. 4.

⁽⁹⁾ OJ EU C 263, 20.7.2016, p. 3.

⁽¹⁰⁾ OJ EU C 89, 16.3.2021, p. 6.

⁽¹¹⁾ OJ EU C 279, 27.9.2013, p. 8.

⁽¹²⁾ OJ EU C 236, 18.6.2021, p. 4.

COUNCIL DECISION (EU) 2021/1837**of 15 October 2021**

on the position to be taken on behalf of the European Union within the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community as regards the amendment of the decision establishing a list of 25 persons who are willing and able to serve as members of an arbitration panel under the Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 50(2) thereof,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the 'Withdrawal Agreement') was concluded by means of Council Decision (EU) 2020/135 ⁽¹⁾ and entered into force on 1 February 2020.
- (2) Pursuant to Article 171(1) of the Withdrawal Agreement, the Joint Committee established by the end of the transition period set under the Withdrawal Agreement, a list of 25 persons who are willing and able to serve as members of an arbitration panel. The Joint Committee is to ensure that the list complies with the requirements at any moment in time.
- (3) Pursuant to Article 171(2) of the Withdrawal Agreement, the list is not to comprise persons who are members, officials or other servants of the Union institutions, of the government of a Member State, or of the government of the United Kingdom.
- (4) One of the persons on the list that have been proposed by the Union has been appointed an Advocate-General of the Court of Justice and therefore no longer fulfils the requirements for being an arbitrator under the Withdrawal Agreement.
- (5) It is therefore necessary to replace that person by a candidate from the reserve list of candidates who are willing and able to serve as Union members of an arbitration panel under the Withdrawal Agreement, as contained in Annex II to Council Decision (EU) 2020/2232 ⁽²⁾.
- (6) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee,

⁽¹⁾ Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 1).

⁽²⁾ Council Decision (EU) 2020/2232 of 22 December 2020 on the position to be taken on behalf of the European Union within the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community as regards the adoption of a decision establishing a list of 25 persons who are willing and able to serve as members of an arbitration panel under the Agreement and on a reserve list of persons who are willing and able to serve as Union members of an arbitration panel under the Agreement (OJ L 437, 28.12.2020, p. 182).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union within the Joint Committee established by Article 164(1) of the Withdrawal Agreement as regards the amendment of the decision establishing the list of 25 persons who are willing and able to serve as members of an arbitration panel under the Withdrawal Agreement is attached to this Decision.

Article 2

The Decision of the Joint Committee shall be published in the *Official Journal of the European Union*.

Article 3

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

Done at Luxembourg, 15 October 2021.

For the Council
The President
J. CIGLER KRALJ

DRAFT**DECISION No [...] /2021 OF THE JOINT COMMITTEE ESTABLISHED BY THE AGREEMENT ON THE WITHDRAWAL OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FROM THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY****of ...****amending Decision No 7/2020 establishing a list of 25 persons who are willing and able to serve as members of an arbitration panel under the Agreement**

THE JOINT COMMITTEE,

Having regard to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ⁽¹⁾, and in particular Article 171(1) and (2) thereof,

Whereas:

- (1) Pursuant to Article 171(1) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement'), the Joint Committee established, by the end of the transition period set under that Agreement, a list of 25 persons who are willing and able to serve as ordinary members of an arbitration panel. The Joint Committee is to ensure that the list complies with the requirements at any moment in time.
- (2) Pursuant to Article 171(2) of the Withdrawal Agreement, the list is not to comprise persons who are members, officials or other servants of the Union institutions, of the government of a Member State, or of the government of the United Kingdom.
- (3) One of the persons on the list proposed by the Union has been appointed as a member of a Union institution and therefore no longer fulfils the requirements for being an arbitrator under the Withdrawal Agreement.
- (4) It is therefore necessary to replace that person on the list of persons set out in Annex I to Decision No 7/2020 of the Joint Committee ⁽²⁾,

HAS ADOPTED THIS DECISION:

Article 1

The list of 25 persons willing and able to serve as arbitrators under the Withdrawal Agreement as set out in Annex I to Decision No 7/2020 of the Joint Committee is amended as follows:

Ms Tamara ČAPETA is replaced by Mr Ezio PERILLO.

⁽¹⁾ OJ L 29, 31.1.2020, p. 7.

⁽²⁾ OJ L 443, 30.12.2020, p. 22.

Article 2

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

Done at ...,

For the Joint Committee
The Co-chairs

COUNCIL DECISION (CFSP) 2021/1838**of 18 October 2021****amending Decision (CFSP) 2017/824 concerning the Staff Regulations of the European Union Satellite Centre**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Decision 2014/401/CFSP of 26 June 2014 on the European Union Satellite Centre and repealing Joint Action 2001/555/CFSP on the establishment of a European Union Satellite Centre ⁽¹⁾, and in particular Article 8(5) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy, in his capacity as chair of the Board of the European Union Satellite Centre,

Whereas:

- (1) The European Union Satellite Centre (SATCEN) is an agency of the Union, affiliated to the Coordinated Organisations. In light of recent case law of the Court of Justice of the European Union, the Staff Regulations of the European Union Satellite Centre as adopted by the Council on 15 May 2017 by Decision (CFSP) 2017/824 ⁽²⁾ (the 'SATCEN Staff Regulations') should be aligned with the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽³⁾, as well as with the Staff Regulations of the European Defence Agency ⁽⁴⁾. In particular, the SATCEN Staff Regulations should provide for the jurisdiction of the Court of Justice of the European Union to rule on disputes between the SATCEN and its staff members in the same way as in disputes between any servant of the Union and his or her employer.
- (2) The Board of the SATCEN, on a proposal from the Director of the SATCEN, has drawn up amendments to the SATCEN Staff Regulations for adoption by the Council,

HAS ADOPTED THIS DECISION:

Article 1

Decision (CFSP) 2017/824 is hereby amended as follows:

- (1) in Chapter VIII, the title is replaced by the following:

'Appeals';

- (2) Article 28 is replaced by the following:

'Article 28

Appeals

1. Any person to whom these Staff Regulations apply may request the Director to take a decision relating to him in matters covered by these Staff Regulations. The Director shall notify the person concerned of his reasoned decision within four months from the date on which the request was made. If, at the end of that period, no reply to the request has been received, this shall be deemed to constitute an implied decision rejecting it, against which a complaint may be lodged in accordance with the following paragraphs.

⁽¹⁾ OJ L 188, 27.6.2014, p. 73.

⁽²⁾ Council Decision (CFSP) 2017/824 of 15 May 2017 concerning the Staff Regulations of the European Union Satellite Centre (OJ L 123, 16.5.2017, p. 7).

⁽³⁾ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

⁽⁴⁾ Council Decision (EU) 2016/1351 of 4 August 2016 concerning the Staff Regulations of the European Defence Agency, and repealing Decision 2004/676/EC (OJ L 219, 12.8.2016, p. 1).

2. Any person to whom these Staff Regulations apply may submit to the Director a complaint against an act adversely affecting him, either where the Director has taken a decision or where he has failed to adopt a measure prescribed by these Staff Regulations. The complaint must be lodged within three months. That period shall start to run:

- (a) on the date of publication of the act if it is a measure of a general nature;
- (b) on the date of the notification of the decision to the person concerned, but in no case later than the date on which the latter received such notification, if the measure affects a specified person; if, however, an act affecting a specified person is such as to affect adversely another person, the period shall start to run in respect of that other person on the date on which he receives notification thereof but in no case later than the date of publication;
- (c) on the date of expiry of the period prescribed for reply where the complaint concerns an implied decision rejecting a request as provided for in paragraph 1.

3. The Director shall notify the person concerned of his reasoned decision within four months from the date on which the complaint was lodged. If, at the end of that period, no reply to the complaint has been received, this shall be deemed to constitute an implied decision rejecting it, against which an appeal may be lodged under paragraph 5.

In the event of a negative reply, the staff member may request mediation. Such mediation is not mandatory.

4. The Director shall appoint a mediator for a renewable period of three years.

The mediator shall be a qualified, independent legal expert. He shall be provided by the Director and the staff member concerned with all documents he considers necessary for an examination of the case.

He shall submit his conclusions within two months of the date on which he has been apprised of the case.

Those conclusions shall not be binding on either the Director or the staff member.

The costs of mediation shall be borne by the SATCEN if the conclusions are refused by the Director; 50 % of the costs shall be borne by the staff member if it is he who refuses to accept the findings.

5. The Court of Justice of the European Union (the "Court of Justice") shall have jurisdiction in any dispute between the SATCEN and any person to whom these Staff Regulations apply regarding the legality of an act affecting such person adversely within the meaning of paragraph 2.

In disputes of a financial character, the Court of Justice shall have unlimited jurisdiction.

Staff members may file an appeal before the Court of Justice, subject to the following:

- (a) an appeal to the Court of Justice shall lie only if:
 - (i) the Director has previously had a complaint submitted to him pursuant to paragraph 2 within the period prescribed therein, and
 - (ii) the complaint has been rejected by express decision or by implied decision;
- (b) an appeal under point (a) shall be filed within three months. That period shall begin:
 - (i) on the date of notification of the decision taken in response to the complaint, or
 - (ii) where the appeal is against an implied decision rejecting a complaint submitted pursuant to paragraph 2, on the date of expiry of the period prescribed for reply; however, where a complaint is rejected by express decision after being rejected by implied decision but before the period for lodging an appeal has expired, the period for lodging the appeal shall start to run afresh;

- (c) by way of derogation from point (b), the person concerned may, after submitting a complaint to the Director pursuant to paragraph 2, immediately file an appeal with the Court of Justice, provided that such appeal is accompanied by an application either for a stay of execution of the contested act or for the adoption of interim measures. The proceedings in the principal action before the Court of Justice shall then be suspended until such time as an express or implied decision rejecting the complaint is taken.’;

(3) Annex X is deleted.

Article 2

This Decision shall take effect on 1 November 2021. It shall be published in the *Official Journal of the European Union*.

Done at Luxembourg, 18 October 2021.

For the Council

The President

J. BORRELL FONTELLES

COMMISSION IMPLEMENTING DECISION (EU) 2021/1839
of 15 October 2021
postponing the expiry date of approval of creosote for use in biocidal products of product-type 8

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ⁽¹⁾, and in particular Article 14(5) thereof,

After consulting the Standing Committee on Biocidal Products,

Whereas:

- (1) The active substance creosote was included into Annex I to Directive 98/8/EC of the European Parliament and of the Council ⁽²⁾ for use in biocidal products for product-type 8, and pursuant to Article 86 of Regulation (EU) No 528/2012 is therefore considered approved under that Regulation subject to the specifications and conditions set out in Annex I to that Directive.
- (2) On 27 October 2016, an application was submitted in accordance with Article 13(1) of Regulation (EU) No 528/2012 for the renewal of the approval of creosote for use in biocidal products for product-type 8.
- (3) On 16 September 2019, the former evaluating competent authority of the United Kingdom submitted a recommendation on the renewal to the European Chemicals Agency ('the Agency'). The competent authority of Poland has taken over the role of evaluating competent authority regarding the application on 30 January 2020.
- (4) Given that by July 2020 the opinion of the Agency on the renewal of the approval of the active substance was not yet available, the expiry date of approval of creosote has been postponed to 31 October 2021 by Commission Implementing Decision (EU) 2020/1038 ⁽³⁾ in order to allow for sufficient time for the completion of the examination of the application.
- (5) In accordance with Article 14(3) of Regulation (EU) No 528/2012, the Agency adopted its opinion ⁽⁴⁾ on 4 December 2020, having regard to the conclusions of the evaluating competent authority.
- (6) Creosote is classified as carcinogen category 1B in accordance with Regulation (EC) No 1272/2008 of the European Parliament and of the Council ⁽⁵⁾ and meets the criteria for being a persistent, bioaccumulative and toxic substance and a very persistent and very bioaccumulative substance according to Annex XIII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council ⁽⁶⁾, it meets the exclusion criteria set out in Article 5(1), points (a) and (e) of Regulation (EU) No 528/2012. While the examination to decide whether at least one of

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ L 123, 24.4.1998, p. 1).

⁽³⁾ Commission Implementing Decision (EU) 2020/1038 of 15 July 2020 postponing the expiry date of approval of creosote for use in biocidal products of product-type 8 (OJ L 227, 16.7.2020, p. 74).

⁽⁴⁾ Biocidal Products Committee (BPC) opinion on the application for renewal of the approval of the active substance: creosote, Product type: 8, ECHA/BPC/274/2020, adopted on 4 December 2020.

⁽⁵⁾ Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1).

⁽⁶⁾ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

the conditions of Article 5(2), first subparagraph, of Regulation (EU) No 528/2012 is fulfilled, and whether the approval of creosote may therefore be renewed, has already started, it will not be possible to complete this examination before the current expiry of approval.

- (7) Furthermore, creosote, its compounds and wood treated with them are subject to restrictions laid down in Annex XVII to Regulation (EC) No 1907/2006. Following Commission Implementing Decision (EU) 2019/961 ⁽⁷⁾, France is to submit to the Agency a dossier in accordance with Annex XV to Regulation (EC) No 1907/2006, initiating a Union restrictions procedure in accordance with Articles 69 to 73 of that Regulation. Further examination needs to take place in order to ensure consistency between the assessment of the renewal of the approval of creosote as an active substance under Regulation (EU) No 528/2012 and the Union restriction procedure under Regulation (EC) No 1907/2006, and to provide for an effective control of creosote and wood treated with it.
- (8) Consequently, for reasons beyond the control of the applicant, the approval of creosote for use in biocidal products of product-type 8 is likely to expire before a decision has been taken on its renewal. It is therefore appropriate to further postpone the expiry date of approval of creosote for a period of time sufficient to enable the examination of the application.
- (9) Considering the period necessary to decide if at least one of the conditions of Article 5(2), first subparagraph, of Regulation (EU) No 528/2012 is fulfilled and whether the approval of creosote may therefore be renewed, it is appropriate to postpone the expiry date of approval of creosote to 31 October 2022.
- (10) Except for the expiry date of the approval, creosote remains approved subject to the specifications and conditions set out in Annex I to Directive 98/8/EC,

HAS ADOPTED THIS DECISION:

Article 1

The expiry date of approval of creosote for use in biocidal products of product-type 8 is postponed to 31 October 2022.

Article 2

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

Done at Brussels, 15 October 2021.

For the Commission
The President
Ursula VON DER LEYEN

⁽⁷⁾ Commission Implementing Decision (EU) 2019/961 of 7 June 2019 authorising a provisional measure taken by the French Republic in accordance with Article 129 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) to restrict the use and the placing on the market of certain wood treated with creosote and other creosote-related substances (OJ L 154, 12.6.2019, p. 44).

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