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⁽¹⁾ Text with EEA relevance.

EN

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

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2022/1412

of 19 August 2022

concerning the authorisation of ylang ylang essential oil from *Cananga odorata* (Lam) Hook f. & Thomson as a feed additive for all animal species

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such an authorisation. Article 10(2) of that Regulation provides for the re-evaluation of additives authorised pursuant to Council Directive 70/524/EEC ⁽²⁾.
- (2) Ylang ylang oil was authorised without a time limit in accordance with Directive 70/524/EEC as a feed additive for all animal species. The additive was subsequently entered in the Register of feed additives as an existing product, in accordance with Article 10(1)(b) of Regulation (EC) No 1831/2003.
- (3) In accordance with Article 10(2) of Regulation (EC) No 1831/2003 in conjunction with Article 7 thereof, an application was submitted for the re-evaluation of ylang ylang essential oil from the flowers of *Cananga odorata* (Lam) Hook f. & Thomson for all animal species.
- (4) The applicant requested the additive to be classified in the additive category 'sensory additives' and in the functional group 'flavouring compounds'. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (5) The applicant requested the additive to be authorised also for use in water for drinking. However, Regulation (EC) No 1831/2003 does not allow the authorisation of flavouring compounds for use in water for drinking. Therefore, the use of ylang ylang essential oil from *Cananga odorata* (Lam) Hook f. & Thomson in water for drinking should not be allowed.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs (OJ L 270, 14.12.1970, p. 1).

- (6) The European Food Safety Authority ('the Authority') concluded in its opinion of 27 January 2022 ⁽³⁾ that, under the proposed conditions of use, ylang ylang essential oil from *Cananga odorata* (Lam) Hook f. & Thomson does not have adverse effects on animal health, consumer health or the environment. The Authority also concluded that ylang ylang essential oil from *Cananga odorata* (Lam) Hook f. & Thomson should be considered as an irritant to skin and eyes, and as a dermal and respiratory sensitiser. Therefore, the Commission considers that appropriate protective measures should be taken to prevent adverse effects on human health, in particular as regards the users of the additive.
- (7) The Authority also concluded, that ylang ylang essential oil from *Cananga odorata* (Lam) Hook f. & Thomson is recognised to flavour food and its function in feed would be essentially the same as that in food, therefore, no further demonstration of efficacy is considered necessary. It also verified the report on the methods of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (8) The assessment of ylang ylang essential oil from *Cananga odorata* (Lam) Hook f. & Thomson shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of this substance should be authorised as specified in the Annex to this Regulation.
- (9) Certain conditions should be provided for to allow better control. In particular, a recommended content should be indicated on the label of the additives. Where such content is exceeded, certain information should be indicated on the label of premixtures.
- (10) The fact that ylang ylang essential oil from *Cananga odorata* (Lam) Hook f. & Thomson is not authorised for use as a flavouring in water for drinking, does not preclude its use in compound feed, which is administered via water.
- (11) Since safety reasons do not require the immediate application of the modifications to the conditions of authorisation of the substance concerned, it is appropriate to allow a transitional period for interested parties to prepare themselves to meet the new requirements resulting from the authorisation.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Authorisation

The substance specified in the Annex, belonging to the additive category 'sensory additives' and to the functional group 'flavouring compounds', is authorised as a feed additive in animal nutrition, subject to the conditions laid down in that Annex.

Article 2

Transitional measures

1. The substance specified in the Annex and premixtures containing this substance, which are produced and labelled before 11 March 2023 in accordance with the rules applicable before 11 September 2022 may continue to be placed on the market and used until the existing stocks are exhausted.
2. Compound feed and feed materials containing this substance as specified in the Annex which are produced and labelled before 11 September 2023 in accordance with the rules applicable before 11 September 2022 may continue to be placed on the market and used until the existing stocks are exhausted if they are intended for food-producing animals.

⁽³⁾ EFSA Journal 2022;20(2):7159.

3. Compound feed and feed materials containing this substance as specified in the Annex which are produced and labelled before 11 September 2023 in accordance with the rules applicable before 11 September 2022 may continue to be placed on the market and used until the existing stocks are exhausted if they are intended for non-food-producing animals.

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*.

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

Done at Brussels, 19 August 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

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

Category: Sensory additives**Functional group: Flavouring compounds**

2b103-eo	Ylang ylang essential oil	<i>Additive composition</i> Ylang ylang essential oil obtained from the flowers of <i>Cananga odorata</i> (Lam) Hook f. & Thomson Liquid form Estragole ≤ 0,008 % <i>Characterisation of the active substance</i>	All animal species except cats	-	-	-	1. The additive shall be incorporated into the feed in the form of a premixture. 2. In the directions for use of the additive and premixtures, the storage conditions and stability to heat treatment shall be indicated. 3. Mixture with other additives containing estragole is not permitted. 4. On the label of the additive the following shall be indicated: 'Recommended maximum content of the active substance per kg of complete feedingstuff with a moisture content of 12 %: — chickens for fattening and other minor poultry species for fattening: 1 mg; — laying hens and other minor poultry species for laying and breeding purposes, turkeys for fattening and rabbits: 1,5 mg; — piglets of all <i>Suidae</i> species: 2 mg; — all <i>Suidae</i> for fattening: 2,5 mg;	11 September 2032
		Ylang ylang essential oil obtained by steam distillation from the flowers of <i>Cananga odorata</i> (Lam) Hook f. & Thomson as defined by the Council of Europe ⁽¹⁾ . Germacre-1(10),4(14),5-triene: 9,5–28 % α-Farnesene: 3–21 % Linalool: 2–19 % Benzyl acetate: 0,5–14 % Benzyl benzoate: 4,2–10 % β-Caryophyllene: 4–17 % CAS number: 8006-81-3 Einecs number: 281-092-1 FEMA number: 3199 CoE number: 103	Cats	-	-	1		

		<i>Analytical method</i> ⁽²⁾ For the determination of β-caryophyllene (phytochemical marker) in the feed additive (ylang ylang essential oil): — gas chromatography coupled with flame ionisation detection (GC-FID) (based on ISO 3063)				— sows and dairy ruminants: 3 mg; — ruminants for fattening, and horses: 4,5 mg; — calves (milk replacer), dogs, fish and ornamental fish: 5 mg; — other species except cats: 1 mg.' 5. The functional group, the identification number, the name and the added amount of the active substance shall be indicated on the label of the premixture where the use level on the label of the premixture would result in exceeding the level referred to in point 4. 6. For users of the additive and premixtures, feed business operators shall establish operational procedures and organisational measures to address potential risks by inhalation, dermal contact or eyes contact. Where those risks cannot be eliminated or reduced to a minimum by such procedures and measures, the additive and premixtures shall be used with personal protective equipment, including skin, eye and breathing protection.	
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⁽¹⁾ Natural sources of flavourings – Report No 2 (2007).

⁽²⁾ Details of the analytical methods are available at the following address of the Reference Laboratory: https://joint-research-centre.ec.europa.eu/eurl-fa-eurl-feed-additives/eurl-fa-authorisation/eurl-fa-evaluation-reports_en

COMMISSION IMPLEMENTING REGULATION (EU) 2022/1413**of 19 August 2022****amending Annex I to Implementing Regulation (EU) 2021/605 laying down special control measures for African swine fever****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') ⁽¹⁾, and in particular Article 71(3) thereof,

Whereas:

- (1) African swine fever is an infectious viral disease affecting kept and wild porcine animals and can have a severe impact on the concerned animal population and the profitability of farming causing disturbance to movements of consignments of those animals and products thereof within the Union and exports to third countries.
- (2) Commission Implementing Regulation (EU) 2021/605 ⁽²⁾ was adopted within the framework of Regulation (EU) 2016/429, and it lays down special disease control measures regarding African swine fever to be applied for a limited period of time by the Member States listed in Annex I thereto (the Member States concerned), in restricted zones I, II and III listed in that Annex.
- (3) The areas listed as restricted zones I, II and III in Annex I to Implementing Regulation (EU) 2021/605 are based on the epidemiological situation of African swine fever in the Union. Annex I to Implementing Regulation (EU) 2021/605 was last amended by Commission Implementing Regulation (EU) 2022/1366 ⁽³⁾ following changes in the epidemiological situation as regards that disease in Lithuania, Poland and Slovakia.
- (4) Any amendments to restricted zones I, II and III in Annex I to Implementing Regulation (EU) 2021/605 should be based on the epidemiological situation as regards African swine fever in the areas affected by that disease and the overall epidemiological situation of African swine fever in the Member State concerned, the level of risk for the further spread of that disease, as well as scientifically based principles and criteria for geographically defining zoning due to African swine fever and the Union's guidelines agreed with the Member States at the Standing Committee on Plants, Animals, Food and Feed and publicly available on the Commission's website ⁽⁴⁾. Such amendments should also take account of international standards, such as the Terrestrial Animal Health Code ⁽⁵⁾ of the World Organisation for Animal Health and justifications for zoning provided by the competent authorities of the Member States concerned.
- (5) There have been new outbreaks of African swine fever in wild porcine animals in Germany and Italy and outbreaks in kept porcine animals in Latvia.

⁽¹⁾ OJ L 84, 31.3.2016, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) 2021/605 of 7 April 2021 laying down special control measures for African swine fever (OJ L 129, 15.4.2021, p. 1).

⁽³⁾ Commission Implementing Regulation (EU) 2022/1366 of 4 August 2022 amending Annex I to Implementing Regulation (EU) 2021/605 laying down special control measures for African swine fever (OJ L 205, 5.8.2022, p. 234).

⁽⁴⁾ Working Document SANTE/7112/2015/Rev. 3 'Principles and criteria for geographically defining ASF regionalisation'. https://ec.europa.eu/food/animals/animal-diseases/control-measures/asf_en

⁽⁵⁾ OIE Terrestrial Animal Health Code, 29th Edition, 2021. Volumes I and II ISBN 978-92-95115-40-8; <https://www.woah.org/en/what-we-do/standards/codes-and-manuals/terrestrial-code-online-access/>

- (6) In August 2022, several outbreaks of African swine fever in wild porcine animals were observed in the state of Brandenburg in Germany, in an area currently listed as restricted zone II in Annex I to Implementing Regulation (EU) 2021/605, located in close proximity to an area in proximity to areas currently listed as restricted zone I thereof. Those new outbreaks of African swine fever in wild porcine animals constitute an increased level of risk, which should be reflected in that Annex. Accordingly, this area currently listed as restricted zone I in that Annex, that is in close proximity to the area listed in restricted zone II in Germany affected by those recent outbreaks of African swine fever, should now be listed as restricted zone II in that Annex instead of as restricted zone I thereof and the current boundaries of restricted zone I also need to be redefined to take account of those recent outbreaks.
- (7) Also in August 2022, one outbreak of African swine fever in wild porcine animals was observed in the region of Piemonte in Italy, in an area currently listed as restricted zone II in Annex I to Implementing Regulation (EU) 2021/605, located in close proximity to an area in proximity to areas currently listed as restricted zone I thereof. This new outbreak of African swine fever in a wild porcine animal constitutes an increased level of risk, which should be reflected in that Annex. Accordingly, this area currently listed as restricted zone I in that Annex, that is in close proximity to the area listed in restricted zone II in Italy affected by those recent outbreaks of African swine fever, should now be listed as restricted zone II in that Annex instead of as restricted zone I thereof and the current boundaries of restricted zone I also need to be redefined to take account of those recent outbreaks.
- (8) Finally, in August 2022, two outbreaks of African swine fever in kept porcine animals were observed in the districts of Balvu and Rēzeknes in Latvia in areas currently listed as restricted zones II in Annex I to Implementing Regulation (EU) 2021/605. These new outbreaks of African swine fever in kept porcine animals constitute an increased level of risk, which should be reflected in that Annex. Accordingly, those areas of Latvia currently listed as restricted zones II in that Annex, should now be listed as restricted zones III in that Annex instead of as restricted zones II thereof.
- (9) Following those recent outbreaks of African swine fever in wild porcine animals in Germany and Italy and outbreaks in kept porcine animals in Latvia and taking into account the current epidemiological situation as regards African swine fever in the Union, zoning in those Member States has been reassessed and updated. In addition, the risk management measures in place have also been reassessed and updated. These changes should be reflected in Annex I to Implementing Regulation (EU) 2021/605.
- (10) In order to take account of the recent developments in the epidemiological situation of African swine fever in the Union, and in order to combat the risks associated with the spread of that disease in a proactive manner, new restricted zones of a sufficient size should be demarcated for Germany, Italy and Latvia and duly listed as restricted zones I, II and III in Annex I to Implementing Regulation (EU) 2021/605. As the situation as regards African swine fever is very dynamic in the Union, when demarcating those new restricted zones, account has been taken of the situation in the surrounding areas.
- (11) Given the urgency of the epidemiological situation in the Union as regards the spread of African swine fever, it is important that the amendments to be made to Annex I to Implementing Regulation (EU) 2021/605 by this Implementing Regulation take effect as soon as possible.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Implementing Regulation (EU) 2021/605 is replaced by the text set out in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 19 August 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Annex I to Implementing Regulation (EU) 2021/605 is replaced by the following:

'ANNEX I

RESTRICTED ZONES

PART I

1. Germany

The following restricted zones I in Germany:

Bundesland Brandenburg:

— Landkreis Dahme-Spreewald:

- Gemeinde Alt Zauche-Wußwerk,
- Gemeinde Byhleguhre-Byhlen,
- Gemeinde Märkische Heide, mit den Gemarkungen Alt Schadow, Neu Schadow, Pretschen, Plattkow, Wittmannsdorf, Schuhlen-Wiese, Bückchen, Kuschkow, Gröditsch, Groß Leuthen, Leibchel, Glietz, Groß Leine, Dollgen, Krugau, Dürrenhofe, Biebersdorf und Klein Leine,
- Gemeinde Neu Zauche,
- Gemeinde Schwielochsee mit den Gemarkungen Groß Liebitz, Gühlen, Mochow und Siegadel,
- Gemeinde Spreewaldheide,
- Gemeinde Straupitz,

— Landkreis Märkisch-Oderland:

- Gemeinde Müncheberg mit den Gemarkungen Müncheberg, Eggersdorf bei Müncheberg und Hoppegarten bei Müncheberg,
- Gemeinde Bliesdorf mit den Gemarkungen Kunersdorf - westlich der B167 und Bliesdorf - westlich der B167
- Gemeinde Märkische Höhe mit den Gemarkungen Reichenberg und Batzlow,
- Gemeinde Wriezen mit den Gemarkungen Haselberg, Frankenfelde, Schulzendorf, Lüdersdorf Biesdorf, Rathsdorf - westlich der B 167 und Wriezen - westlich der B167
- Gemeinde Buckow (Märkische Schweiz),
- Gemeinde Strausberg mit den Gemarkungen Hohenstein und Ruhlsdorf,
- Gemeine Garzau-Garzin,
- Gemeinde Waldsiefersdorf,
- Gemeinde Rehfelde mit der Gemarkung Werder,
- Gemeinde Reichenow-Mögelin,
- Gemeinde Prötzel mit den Gemarkungen Harnekop, Sternebeck und Prötzel östlich der B 168 und der L35,
- Gemeinde Oberbarnim,
- Gemeinde Bad Freienwalde mit der Gemarkung Sonnenburg,
- Gemeinde Falkenberg mit den Gemarkungen Dannenberg, Falkenberg westlich der L 35, Gersdorf und Krüge,
- Gemeinde Höhenland mit den Gemarkungen Steinbeck, Wollenberg und Wölsickendorf,

— Landkreis Barnim:

- Gemeinde Joachimsthal östlich der L220 (Eberswalder Straße), östlich der L23 (Töpferstraße und Templiner Straße), östlich der L239 (Glambecker Straße) und Schorfheide (JO) östlich der L238,

- Gemeinde Friedrichswalde mit der Gemarkung Glambeck östlich der L 239,
- Gemeinde Althüttendorf,
- Gemeinde Ziethen mit den Gemarkungen Groß Ziethen und Klein Ziethen westlich der B198,
- Gemeinde Chorin mit den Gemarkungen Golzow, Senftenhütte, Buchholz, Schorfheide (Ch), Chorin westlich der L200 und Sandkrug nördlich der L200,
- Gemeinde Britz,
- Gemeinde Schorfheide mit den Gemarkungen Altenhof, Werbellin, Lichterfelde und Finowfurt,
- Gemeinde (Stadt) Eberswalde mit der Gemarkungen Finow und Spechthausen und der Gemarkung Eberswalde südlich der B167 und westlich der L200,
- Gemeinde Breydin,
- Gemeinde Melchow,
- Gemeinde Sydower Fließ mit der Gemarkung Grüntal nördlich der K6006 (Landstraße nach Tuchen), östlich der Schönholzer Straße und östlich Am Postweg,
- Hohenfinow südlich der B167,
- Landkreis Uckermark:
 - Gemeinde Passow mit den Gemarkungen Briest, Passow und Schönnow,
 - Gemeinde Mark Landin mit den Gemarkungen Landin nördlich der B2, Grünow und Schönermark,
 - Gemeinde Angermünde mit den Gemarkungen Frauenhagen, Mürow, Angermünde nördlich und nordwestlich der B2, Dobberzin nördlich der B2, Kerkow, Welsow, Bruchhagen, Greiffenberg, Günterberg, Biesenbrow, Görlsdorf, Wolletz und Altkünkendorf,
 - Gemeinde Zichow,
 - Gemeinde Casekow mit den Gemarkungen Blumberg, Wartin, Luckow-Petershagen und den Gemarkungen Biesendahlshof und Casekow westlich der L272 und nördlich der L27,
 - Gemeinde Hohenselchow-Groß Pinnow mit der Gemarkung Hohenselchow nördlich der L27,
 - Gemeinde Tantow,
 - Gemeinde Mescherin
 - Gemeinde Gartz (Oder) mit der Gemarkung Geesow sowie den Gemarkungen Gartz und Hohenreinkendorf nördlich der L27 und B2 bis Gartenstraße,
 - Gemeinde Pinnow nördlich und westlich der B2,
 - Gemeinde Nordwestuckermark mit den Gemarkungen Zernikow, Holzendorf, Rittgarten, Falkenhagen, Schapow, Schönermark (NWU), Wilhelmshof, Naugarten, Horst, Gollmitz, Klein-Sperrenwalde und Kröchlendorff,
 - Gemeinde Boitzenburger-Land mit den Gemarkungen Berkholz, Wichmannsdorf, Kuhz und Haßleben,
 - Gemeinde Mittenwalde,
 - Gemeinde Gerswalde mit den Gemarkungen Gerswalde, Buchholz, Pinnow (GE), Kaakstedt und Fergitz
 - Gemeinde Flieth-Steglitz,
 - Gemeinde Angermünde mit den Gemarkungen Wilmersdorf und Schmiedeberg,
 - Gemeinde Oberuckersee mit der Gemarkung Grünheide,
 - Gemeinde Gramzow mit der Gemarkung Gramzow östlich der K7315, Gemarkungen

- Meichow, Neumeichow, Polßen
- Gemeinde Randowtal mit den Gemarkungen Wollin, Schmölln, Schwaneberg, Grenz
- Gemeinde Brüssow mit den Gemarkungen Battin, Grünberg und Trampe,
- Gemeinde Carmzow-Wallmow.
- Gemeinde Grünow mit der Gemarkung Grenz,
- Gemeinde Schenkenberg mit der Gemarkung Kleptow,
- Gemeinde Schönfeld,
- Gemeinde Göritz,
- Gemeinde Prenzlau mit den Gemarkungen Dedelow, Schönwerder und Dauer,
- Gemeinde Uckerland mit der Gemarkung Bandelow südlich der Straße von Bandelow zum Bandlowsee und der Gemarkung Jagow südlich der Straße vom Bandlowsee zur K7341,
- Landkreis Oder-Spree:
 - Gemeinde Storkow (Mark),
 - Gemeinde Spreehagen mit den Gemarkungen Braunsdorf, Markgrafpieske, Lebbin und Spreehagen,
 - Gemeinde Grünheide (Mark) mit den Gemarkungen Kagel, Kienbaum und Hangelsberg,
 - Gemeinde Fürstenwalde westlich der B 168 und nördlich der L 36,
 - Gemeinde Rauen,
 - Gemeinde Wendisch Rietz bis zur östlichen Uferzone des Scharmützelsees und von der südlichen Spitze des Scharmützelsees südlich der B246,
 - Gemeinde Reichenwalde,
 - Gemeinde Bad Saarow mit der Gemarkung Petersdorf und der Gemarkung Bad Saarow-Pieskow westlich der östlichen Uferzone des Scharmützelsees und ab nördlicher Spitze westlich der L35,
 - Gemeinde Tauche mit der Gemarkung Werder,
 - Gemeinde Steinhöfel mit den Gemarkungen Jänickendorf, Schönfelde, Beerfelde, Gölsdorf, Buchholz, Tempelberg und den Gemarkungen Steinhöfel, Hasenfelde und Heinersdorf westlich der L36 und der Gemarkung Neuendorf im Sande nördlich der L36,
- Landkreis Spree-Neiße:
 - Gemeinde Turnow-Preilack mit der Gemarkung Turnow,
 - Gemeinde Drachhausen,
 - Gemeinde Schmogrow-Fehrow,
 - Gemeinde Drehnöw,
 - Gemeinde Teichland mit den Gemarkungen Maust und Neuendorf,
 - Gemeinde Dissen-Striesow,
 - Gemeinde Briesen,
 - Gemeinde Spremberg mit den Gemarkungen, Klein Buckow westlich der B79, Radewiese, Radewiese, Stradow, Straußdorf, Wolkenberg und der Gemarkung Spremberg westlich der Tagebaurandstraße,
 - Gemeinde Drebkau mit den Gemarkungen Jehserig und Kausche,
 - Gemeinde Neuhausen/Spree mit den Gemarkungen Groß Oßnig, Groß Döbbern und Klein Döbbern westlich der B 97,
 - Gemeinde Drebkau mit der Gemarkung Schorbus östlich der L521,

- Gemeinde Kolkwitz mit den Gemarkungen Klein Gaglow und Hähnchen,
 - Gemeinde Welzow mit der Gemarkung Welzow,
 - Kreisfreie Stadt Cottbus außer der Gemarkung Kahren,
 - Landkreis Oberspreewald-Lausitz:
 - Gemeinde Neupetershain,
 - Gemeinde Lauchhammer,
 - Gemeinde Schwarzheide,
 - Gemeinde Schipkau,
 - Gemeinde Senftenberg mit den Gemarkungen Brieske, Niemtsch, Senftenberg, Reppist, Hosena, Großkoschen, Kleinkoschen und Sedlitz,
 - die Gemeinde Schwarzbach mit der Gemarkung Biehlen,
 - Gemeinde Neu-Seeland mit den Gemarkungen Lieske, Bahnsdorf und Lindchen,
 - Gemeinde Großräschen mit den Gemarkungen Dörrwalde und Allmosen,
 - Gemeinde Tettau,
 - Landkreis Elbe-Elster:
 - Gemeinde Großthiemig,
 - Gemeinde Hirschfeld,
 - Gemeinde Gröden,
 - Gemeinde Schraden,
 - Gemeinde Merzdorf,
 - Gemeinde Röderland mit der Gemarkung Wainsdorf, Präsen, Stolzenhain a.d. Röder,
 - Gemeinde Plessa mit der Gemarkung Plessa,
 - Landkreis Prignitz:
 - Gemeinde Groß Pankow mit den Gemarkungen Baek, Tangendorf, Tacken, Hohenvier, Strigleben, Steinberg und Gulow,
 - Gemeinde Perleberg mit der Gemarkung Schönfeld,
 - Gemeinde Karstädt mit den Gemarkungen Postlin, Strehlen, Blüthen, Klockow, Premslin, Glövin, Waterloo, Karstädt, Dargardt, Garlin und die Gemarkungen Groß Warnow, Klein Warnow, Reckenzin, Streesow und Dallmin westlich der Bahnstrecke Berlin/Spandau-Hamburg/Altona,
 - Gemeinde Gülitz-Reetz,
 - Gemeinde Putlitz mit den Gemarkungen Lockstädt, Mansfeld und Laaske,
 - Gemeinde Triglitz,
 - Gemeinde Marienfließ mit der Gemarkung Frehne,
 - Gemeinde Küssernitztal mit den Gemarkungen Buckow, Preddöhl und Grabow,
 - Gemeinde Gerdshagen mit der Gemarkung Gerdshagen,
 - Gemeinde Meyenburg,
 - Gemeinde Pritzwalk mit der Gemarkung Steffenshagen,
- Bundesland Sachsen:
- Landkreis Bautzen
 - Gemeinde Arnsdorf, sofern nicht bereits Teil der Sperrzone II,
 - Gemeinde Cunewalde,

- Gemeinde Demitz-Thumitz, sofern nicht bereits Teil der Sperrzone II,
- Gemeinde Doberschau-Gaußig,
- Gemeinde Göda, sofern nicht bereits Teil der Sperrzone II,
- Gemeinde Großharthau, sofern nicht bereits Teil der Sperrzone II,
- Gemeinde Großpostwitz/O.L.,
- Gemeinde Hochkirch, sofern nicht bereits der Sperrzone II,
- Gemeinde Kubschütz, sofern nicht bereits Teil der Sperrzone II,
- Gemeinde Neukirch/Lausitz,
- Gemeinde Obergurig,
- Gemeinde Schmölln-Putzkau,
- Gemeinde Sohland a. d. Spree,
- Gemeinde Stadt Bautzen, sofern nicht bereits Teil der Sperrzone II,
- Gemeinde Stadt Bischofswerda, sofern nicht bereits Teil der Sperrzone II,
- Gemeinde Stadt Radeberg, sofern nicht bereits Teil der Sperrzone II,
- Gemeinde Stadt Schirgiswalde-Kirschau,
- Gemeinde Stadt Wilthen,
- Gemeinde Steinigtwolmsdorf,
- Stadt Dresden:
 - Stadtgebiet, sofern nicht bereits Teil der Sperrzone II,
- Landkreis Meißen:
 - Gemeinde Diera-Zehren, sofern nicht bereits Teil der Sperrzone II,
 - Gemeinde Glaubitz, sofern nicht bereits Teil der Sperrzone II,
 - Gemeinde Hirschstein,
 - Gemeinde Käbschütztal,
 - Gemeinde Klipphausen, sofern nicht bereits Teil der Sperrzone II,
 - Gemeinde Niederau, sofern nicht bereits Teil der Sperrzone II,
 - Gemeinde Nünchritz, sofern nicht bereits Teil der Sperrzone II,
 - Gemeinde Röderaue, sofern nicht bereits Teil der Sperrzone II,
 - Gemeinde Stadt Gröditz, sofern nicht bereits Teil der Sperrzone II,
 - Gemeinde Stadt Lommatzsch,
 - Gemeinde Stadt Meißen, sofern nicht bereits Teil der Sperrzone II,
 - Gemeinde Stadt Nossen außer Ortsteil Nossen,
 - Gemeinde Stadt Riesa,
 - Gemeinde Stadt Strehla,
 - Gemeinde Stauchitz,
 - Gemeinde Wülknitz, sofern nicht bereits Teil der Sperrzone II,
 - Gemeinde Zeithain,
- Landkreis Mittelsachsen:
 - Gemeinde Reinsberg,

— Landkreis Sächsische Schweiz-Osterzgebirge:

- Gemeinde Bannewitz,
- Gemeinde Dürrröhrsdorf-Dittersbach,
- Gemeinde Kreischa,
- Gemeinde Lohmen,
- Gemeinde Müglitztal,
- Gemeinde Stadt Dohna,
- Gemeinde Stadt Freital,
- Gemeinde Stadt Heidenau,
- Gemeinde Stadt Hohnstein,
- Gemeinde Stadt Neustadt i. Sa.,
- Gemeinde Stadt Pirna,
- Gemeinde Stadt Rabenau mit den Ortsteilen Lübau, Obernaundorf, Oelsa, Rabenau und Spechtritz,
- Gemeinde Stadt Stolpen,
- Gemeinde Stadt Tharandt mit den Ortsteilen Fördergersdorf, Großopitz, Kurort Hartha, Pohrsdorf und Spechtshausen,
- Gemeinde Stadt Wilsdruff, sofern nicht bereits Teil der Sperrzone II,

Bundesland Mecklenburg-Vorpommern:

— Landkreis Vorpommern Greifswald

- Gemeinde Penkun südlich der Autobahn A11,
- Gemeinde Nadrense südlich der Autobahn A11,

— Landkreis Ludwigslust-Parchim:

- Gemeinde Barkhagen mit den Ortsteilen und Ortslagen: Altenlinden, Kolonie Lalchow, Plauerhagen, Zarchlin, Barkow-Ausbau, Barkow,
- Gemeinde Blievenstorf mit dem Ortsteil: Blievenstorf,
- Gemeinde Brenz mit den Ortsteilen und Ortslagen: Neu Brenz, Alt Brenz,
- Gemeinde Domsühl mit den Ortsteilen und Ortslagen: Severin, Bergrade Hof, Bergrade Dorf, Zieslütbe, Alt Dammerow, Schlieven, Domsühl, Domsühl-Ausbau, Neu Schlieven,
- Gemeinde Gallin-Kuppentin mit den Ortsteilen und Ortslagen: Kuppentin, Kuppentin-Ausbau, Daschow, Zahren, Gallin, Penzlin,
- Gemeinde Ganzlin mit den Ortsteilen und Ortslagen: Dresenow, Dresenower Mühle, Twietfort, Ganzlin, Tönchow, Wendisch Priborn, Liebhof, Gnevdsdorf,
- Gemeinde Granzin mit den Ortsteilen und Ortslagen: Lindenbeck, Greven, Beckendorf, Bahlenrade, Granzin,
- Gemeinde Grabow mit den Ortsteilen und Ortslagen: Fresenbrügge, Grabow, Griemoor, Heidehof, Kaltehof, Winkelmoor,
- Gemeinde Groß Laasch mit den Ortsteilen und Ortslagen: Groß Laasch,
- Gemeinde Kremmin mit den Ortsteilen und Ortslagen: Beckentin, Kremmin,
- Gemeinde Kritzow mit den Ortsteilen und Ortslagen: Schlemmin, Kritzow,
- Gemeinde Lewitzrand mit dem Ortsteil und Ortslage: Matzlow-Garwitz (teilweise),

- Gemeinde Lübz mit den Ortsteilen und Ortschaften: Bobzin, Broock, Broock Ausbau, Hof Gischow, Lübz, Lutheran, Lutheran Ausbau, Riederfelde, Ruthen, Wessentin, Wessentin Ausbau,
- Gemeinde Neustadt-Glewe mit den Ortsteilen und Ortschaften: Hohes Feld, Kiez, Klein Laasch, Liebs Siedlung, Neustadt-Glewe, Tuckhude, Wabel,
 - Gemeinde Obere Warnow mit den Ortsteilen und Ortschaften: Grebbin und Wozinkel, Gemarkung Kossebad teilweise, Gemarkung Herzberg mit dem Waldgebiet Bahlenholz bis an die östliche Gemeindegrenze, Gemarkung Woeten unmittelbar östlich und westlich der L16,
 - Gemeinde Parchim mit den Ortsteilen und Ortschaften: Dargelütz, Neuhof, Kiekindemark, Neu Klockow, Möderitz, Malchow, Damm, Parchim, Voigtsdorf, Neu Matzlow,
 - Gemeinde Passow mit den Ortsteilen und Ortschaften: Unterbrüz, Brüz, Welzin, Neu Brüz, Weisin, Charlottenhof, Passow,
 - Gemeinde Plau am See mit den Ortsteilen und Ortschaften: Reppentin, Gaarz, Silbermühle, Appelburg, Seelust, Plau-Am See, Plötzenhöhe, Klebe, Lalchow, Quetzin, Heidekrug,
 - Gemeinde Rom mit den Ortsteilen und Ortschaften: Lancken, Stralendorf, Rom, Darze, Paarsch,
 - Gemeinde Spornitz mit den Ortsteilen und Ortschaften: Dütschow, Primark, Steinbeck, Spornitz,
 - Gemeinde Werder mit den Ortsteilen und Ortschaften: Neu Benthien, Benthien, Tannenhof, Werder.

2. Estonia

The following restricted zones I in Estonia:

- Hiiu maakond.

3. Greece

The following restricted zones I in Greece:

- in the regional unit of Drama:
 - the community departments of Sidironero and Skaloti and the municipal departments of Livadero and Ksiropotamo (in Drama municipality),
 - the municipal department of Paranesti (in Paranesti municipality),
 - the municipal departments of Kokkinogeia, Mikropoli, Panorama, Pyrgoi (in Prosotsani municipality),
 - the municipal departments of Kato Nevrokopi, Chrysokéfalo, Achladea, Vathytopos, Volakas, Granitis, Dasotos, Eksohi, Katafyto, Lefkogeia, Mikrokleisoura, Mikromilea, Ochyro, Pagoneri, Perithorio, Kato Vrontou and Potamoi (in Kato Nevrokopi municipality),
- in the regional unit of Xanthi:
 - the municipal departments of Kimmerion, Stavroupoli, Gerakas, Dafnonas, Komnina, Kariofyto and Neochori (in Xanthi municipality),
 - the community departments of Satres, Thermes, Kotyli, and the municipal departments of Myki, Echinis and Oraio and (in Myki municipality),
 - the community department of Selero and the municipal department of Sounio (in Avdira municipality),
- in the regional unit of Rodopi:
 - the municipal departments of Komotini, Anthochorio, Gratini, Thrylorio, Kalhas, Karydia, Kikidio, Kosmio, Pandrosos, Aigeiros, Kallisti, Meleti, Neo Sidirochori and Mega Doukato (in Komotini municipality),
 - the municipal departments of Ipio, Arriana, Darmeni, Archontika, Fillyra, Ano Drosini, Aratos and the Community Departments Kehros and Organi (in Arriana municipality),

- the municipal departments of Iasmos, Sostis, Asomatoi, Polyanthos and Amvrosia and the community department of Amaxades (in Iasmos municipality),
- the municipal department of Amaranta (in Maroneia Sapon municipality),
- in the regional unit of Evros:
 - the municipal departments of Kyriaki, Mandra, Mavrokklisi, Mikro Dereio, Protokklisi, Roussa, Goniko, Geriko, Sidirochori, Megalo Derio, Sidiro, Giannouli, Agriani and Petrolofos (in Soufli municipality),
 - the municipal departments of Dikaia, Arzos, Elaia, Therapio, Komara, Marasia, Ormenio, Pentalofos, Petrotia, Plati, Ptelea, Kyprinos, Zoni, Fulakio, Spilaio, Nea Vyssa, Kavili, Kastanies, Rizia, Sterna, Ampelakia, Valtos, Megali Doxipara, Neochori and Chandras (in Orestiada municipality),
 - the municipal departments of Asvestades, Ellinochori, Karoti, Koufovouno, Kiani, Mani, Sitochori, Alepochori, Asproneri, Metaxades, Vrysika, Doksa, Elafoxori, Ladi, Paliouri and Poimeniko (in Didymoteicho municipality),
- in the regional unit of Serres:
 - the municipal departments of Kerkini, Livadia, Makrynitsa, Neochori, Platanakia, Petritsi, Akritochori, Vyroneia, Gonimo, Mandraki, Megalochori, Rodopoli, Ano Poroia, Katw Poroia, Sidirokastro, Vamvakophyto, Promahonas, Kamaroto, Strymonochori, Charopo, Kastanousi and Chortero and the community departments of Achladochori, Agkistro and Kapnophyto (in Sintiki municipality),
 - the municipal departments of Serres, Elaionas and Oinoussa and the community departments of Orini and Ano Vrontou (in Serres municipality),
 - the municipal departments of Dasochoriou, Irakleia, Valtero, Karperi, Koimisi, Lithotopos, Limnochori, Podismeno and Chrysochorafa (in Irakleia municipality).

4. Latvia

The following restricted zones I in Latvia:

- Dienvidkurzemes novads, Grobiņas pagasts, Nīcas pagasta daļa uz ziemeļiem no apdzīvotās vietas Bernāti, autoceļš V1232, A11, V1222, Bārtas upes, Otaņķu pagasts, Grobiņas pilsēta,
- Ropažu novads Stopiņu pagasta daļa, kas atrodas uz rietumiem no autoceļš V36, P4 un P5, Acones ielas, Dauguļupes ielas un Dauguļupītes.

5. Lithuania

The following restricted zones I in Lithuania:

- Kalvarijos savivaldybė,
- Klaipėdos rajono savivaldybė: Agluonėnų, Dovilų, Gargždų, Priekulės, Vėžaičių, Kretingalės ir Dauparų-Kvietinių seniūnijos,
- Marijampolės savivaldybė,
- Palangos miesto savivaldybė,
- Vilkaviškio rajono savivaldybė: Bartninkų, Gižų, Gražiškių, Keturvalakių, Kybartų, Pajevonio, Šeimenos, Vilkaviškio miesto, Virbalio, Vištyčio seniūnijos..

6. Hungary

The following restricted zones I in Hungary:

- Békés megye 950950, 950960, 950970, 951950, 952050, 952750, 952850, 952950, 953050, 953150, 953650, 953660, 953750, 953850, 953960, 954250, 954260, 954350, 954450, 954550, 954650, 954750, 954850, 954860, 954950, 955050, 955150, 955250, 955260, 955270, 955350, 955450, 955510, 955650, 955750, 955760, 955850, 955950, 956050, 956060, 956150 és 956160 kódszámú vadgazdálkodási egységeinek teljes területe,
- Bács-Kiskun megye 600150, 600850, 601550, 601650, 601660, 601750, 601850, 601950, 602050, 603250, 603750 és 603850 kódszámú vadgazdálkodási egységeinek teljes területe,

- Budapest 1 kódszámú, vadgazdálkodási tevékenységre nem alkalmas területe,
- Csongrád-Csanád megye 800150, 800160, 800250, 802220, 802260, 802310 és 802450 kódszámú vadgazdálkodási egységeinek teljes területe,
- Fejér megye 400150, 400250, 400351, 400352, 400450, 400550, 401150, 401250, 401350, 402050, 402350, 402360, 402850, 402950, 403050, 403450, 403550, 403650, 403750, 403950, 403960, 403970, 404650, 404750, 404850, 404950, 404960, 405050, 405750, 405850, 405950,
- 406050, 406150, 406550, 406650 és 406750 kódszámú vadgazdálkodási egységeinek teljes területe,
- Győr-Moson-Sopron megye 100550, 100650, 100950, 101050, 101350, 101450, 101550, 101560 és 102150 kódszámú vadgazdálkodási egységeinek teljes területe,
- Jász-Nagykun-Szolnok megye 750150, 750160, 750260, 750350, 750450, 750460, 754450, 754550, 754560, 754570, 754650, 754750, 754950, 755050, 755150, 755250, 755350 és 755450 kódszámú vadgazdálkodási egységeinek teljes területe,
- Komárom-Esztergom megye 250150, 250250, 250450, 250460, 250550, 250650, 250750, 251050, 251150, 251250, 251350, 251360, 251650, 251750, 251850, 252250, kódszámú vadgazdálkodási egységeinek teljes területe,
- Pest megye 571550, 572150, 572250, 572350, 572550, 572650, 572750, 572850, 572950, 573150, 573250, 573260, 573350, 573360, 573450, 573850, 573950, 573960, 574050, 574150, 574350, 574360, 574550, 574650, 574750, 574850, 574860, 574950, 575050, 575150, 575250, 575350, 575550, 575650, 575750, 575850, 575950, 576050, 576150, 576250, 576350, 576450, 576650, 576750, 576850, 576950, 577050, 577150, 577350, 577450, 577650, 577850, 577950, 578050, 578150, 578250, 578350, 578360, 578450, 578550, 578560, 578650, 578850, 578950, 579050, 579150, 579250, 579350, 579450, 579460, 579550, 579650, 579750, 580250 és 580450 kódszámú vadgazdálkodási egységeinek teljes területe.

7. Poland

The following restricted zones I in Poland:

w województwie kujawsko - pomorskim:

- powiat rypiński,
- powiat brodnicki,
- powiat grudziądzki,
- powiat miejski Grudziądz,
- powiat wąbrzeski,

w województwie warmińsko-mazurskim:

- gminy Wielbark i Rozogi w powiecie szczycieńskim,

w województwie podlaskim:

- gminy Wysokie Mazowieckie z miastem Wysokie Mazowieckie, Czyżew i część gminy Kulesze Kościelne położona na południe od linii wyznaczonej przez linię kolejową w powiecie wysokomazowieckim,
- gminy Miastkowo, Nowogród, Śniadowo i Zbójna w powiecie łomżyńskim,
- gminy Szumowo, Zambrów z miastem Zambrów i część gminy Kołaki Kościelne położona na południe od linii wyznaczonej przez linię kolejową w powiecie zambrowskim,
- gminy Grabowo, Kolno i miasto Kolno, Turośl w powiecie kolneńskim,

w województwie mazowieckim:

- powiat ostrołęcki,
- powiat miejski Ostrołęka,
- gminy Bielsk, Brudzeń Duży, Bulkowo, Drobin, Gąbin, Łąck, Nowy Duninów, Radzanowo, Słupno, Staroźreby i Stara Biała w powiecie płońskim,
- powiat miejski Płock,

- powiat ciechanowski,
 - gminy Baboszewo, Dzierżążnia, Joniec, Nowe Miasto, Płońsk i miasto Płońsk, Raciąż i miasto Raciąż, Sochocin w powiecie płońskim,
 - powiat sierpecki,
 - gmina Biezuń, Lutocin, Siemiatkowo i Żuromin w powiecie żuromińskim,
 - część powiatu ostrowskiego niewymieniona w części II załącznika I,
 - gminy Dzieżgowo, Lipowiec Kościelny, Mława, Radzanów, Strzegowo, Stupsk, Szreńsk, Szydłowo, Wiśniewo w powiecie mławskim,
 - powiat przasnyski,
 - powiat makowski,
 - powiat pułtuski,
 - część powiatu wyszkowskiego niewymieniona w części II załącznika I,
 - część powiatu węgrowskiego niewymieniona w części II załącznika I,
 - część powiatu wołomińskiego niewymieniona w części II załącznika I,
 - gminy Mokobody i Suchożebry w powiecie siedleckim,
 - gminy Dobrze, Jakubów, Kałuszyn, Stanisławów w powiecie mińskim,
 - gminy Bielany i gmina wiejska Sokołów Podlaski w powiecie sokołowskim,
 - powiat gostyniński,
- w województwie podkarpackim:
- powiat jasielski,
 - powiat strzyżowski,
 - część powiatu ropczycko – sędziszowskiego niewymieniona w części II i II załącznika I,
 - gminy Pruchnik, Rokietnica, Roźwienica, w powiecie jarosławskim,
 - gminy Fredropol, Krasiczyn, Krzywczyna, Przemyśl, część gminy Orły położona na zachód od linii wyznaczonej przez drogę nr 77, część gminy Żurawica na zachód od linii wyznaczonej przez drogę nr 77 w powiecie przemyskim,
 - powiat Miejski Przemyśl,
 - gminy Gać, Jawornik Polski, Kańczuga, część gminy Zarzecze położona na południe od linii wyznaczonej przez rzekę Mleczka w powiecie przeworskim,
 - powiat łańcucki,
 - gminy Trzebownisko, Głogów Małopolski, część gminy Świlcza położona na północ od linii wyznaczonej przez drogę nr 94 i część gminy Sokołów Małopolski położona na południe od linii wyznaczonej przez drogę nr 875 w powiecie rzeszowskim,
 - gmina Raniżów w powiecie kolbuszowskim,
 - gminy Brzostek, Jodłowa, Pilzno, miasto Dębica, część gminy Czarna położona na południe od linii wyznaczonej przez drogę nr A4, część gminy Żyraków położona na południe od linii wyznaczonej przez drogę nr A4, część gminy wiejskiej Dębica położona na południe od linii wyznaczonej przez drogę nr A4 w powiecie dębickim,
- w województwie świętokrzyskim:
- gminy Nowy Korczyn, Solec-Zdrój, Wiślica, Stopnica, Tuczępy, Busko Zdrój w powiecie buskim,
 - powiat kazimierski,
 - powiat skarżyski,
 - część powiatu opatowskiego niewymieniona w części II załącznika I,

- część powiatu sandomierskiego niewymieniona w części II załącznika I,
- gminy Bogoria, Osiek, Staszów i część gminy Rytwiany położona na wschód od linii wyznaczonej przez drogę nr 764, część gminy Szydłów położona na wschód od linii wyznaczonej przez drogę nr 756 w powiecie staszowskim,
- gminy Pawłów, Wąchock, część gminy Brody położona na zachód od linii wyznaczonej przez drogę nr 9 oraz na południowy - zachód od linii wyznaczonej przez drogi: nr 0618T biegnącą od północnej granicy gminy do skrzyżowania w miejscowości Lipie, drogę biegnącą od miejscowości Lipie do wschodniej granicy gminy i część gminy Mirzec położona na zachód od linii wyznaczonej przez drogę nr 744 biegnącą od południowej granicy gminy do miejscowości Tychów Stary a następnie przez drogę nr 0566T biegnącą od miejscowości Tychów Stary w kierunku północno - wschodnim do granicy gminy w powiecie starachowickim,
- powiat ostrowiecki,
- gminy Fałków, Ruda Maleniecka, Radoszyce, Smyków, Słupia Konecka, część gminy Końskie położona na zachód od linii kolejowej, część gminy Stąporków położona na południe od linii kolejowej w powiecie koneckim,
- gminy Bodzentyn, Bieliny, Łagów, Morawica, Nowa Słupia, część gminy Raków położona na wschód od linii wyznaczonej przez drogi nr 756 i 764, część gminy Chęciny położona na południe od linii wyznaczonej przez drogę nr 762, część gminy Górno położona na południe od linii wyznaczonej przez drogę biegnącą od wschodniej granicy gminy łączącą miejscowości Leszczyna – Cedzyna oraz na południe od linii wyznaczonej przez ul. Kielecką w miejscowości Cedzyna biegnącą do wschodniej granicy gminy, część gminy Daleszyce położona na północ od linii wyznaczonej przez drogę nr 764 biegnącą od wschodniej granicy gminy do skrzyżowania z drogą łączącą miejscowości Daleszyce – Słopiec – Borków, dalej na północ od linii wyznaczonej przez tę drogę biegnącą od skrzyżowania z drogą nr 764 do przecięcia z linią rzeki Belnianka, następnie na północ od linii wyznaczonej przez rzeki Belnianka i Czarna Nida biegnącej do zachodniej granicy gminy w powiecie kieleckim,
- gminy Działoszyce, Michałów, Pińczów, Złota w powiecie pińczowskim,
- gminy Imielno, Jędrzejów, Nagłowice, Sędziszów, Słupia, Sobków, Wodzisław w powiecie jędrzejowskim,
- gminy Moskorzew, Radków, Secemin, część gminy Włoszczowa położona na zachód od linii wyznaczonej przez drogę nr 742 biegnącą od północnej granicy gminy do miejscowości Konieczno i dalej na zachód od linii wyznaczonej przez drogę łączącą miejscowości Konieczno – Rogienice – Dąbie – Podłazie, część gminy Kluczewsko położona na północ od linii wyznaczonej przez drogę biegnącą od wschodniej granicy gminy i łączącą miejscowości Krogulec – Nowiny - Komorniki do przecięcia z linią rzeki Czarna, następnie na północ od linii wyznaczonej przez rzekę Czarna biegnącą do przecięcia z linią wyznaczoną przez drogę nr 742 i dalej na zachód od linii wyznaczonej przez drogę nr 742 biegnącą od przecięcia z linią rzeki Czarna do południowej granicy gminy w powiecie włoszczowskim,

w województwie łódzkim:

- gminy Łyszkowice, Kocierzew Południowy, Kiernoza, Chąšno, Nieborów, część gminy wiejskiej Łowicz położona na północ od linii wyznaczonej przez drogę nr 92 biegnącej od granicy miasta Łowicz do zachodniej granicy gminy oraz część gminy wiejskiej Łowicz położona na wschód od granicy miasta Łowicz i na północ od granicy gminy Nieborów w powiecie łowickim,
- gminy Cielądz, Rawa Mazowiecka z miastem Rawa Mazowiecka w powiecie rawskim,
- gminy Bolimów, Głuchów, Godzianów, Lipce Reymontowskie, Maków, Nowy Kawęczyn, Skierniewice, Słupia w powiecie skierniewickim,
- powiat miejski Skierniewice,
- gminy Mniszków, Paradyż, Sławno i Żarnów w powiecie opoczyńskim,
- powiat tomaszowski,
- powiat brzeziński,
- powiat łaski,

- powiat miejski Łódź,
 - powiat łódzki wschodni,
 - powiat pabianicki,
 - powiat wieruszowski,
 - gminy Aleksandrów Łódzki, Stryków, miasto Zgierz w powiecie zgierskim,
 - gminy Bełchatów z miastem Bełchatów, Drużbice, Kluki, Rusiec, Szczerców, Zelów w powiecie bełchatowskim,
 - powiat wieluński,
 - powiat sieradzki,
 - powiat zduńskowski,
 - gminy Aleksandrów, Czarnocin, Grabica, Moszczenica, Ręčno, Sulejów, Wola Krzysztoporska, Wolbórz w powiecie piotrkowskim,
 - powiat miejski Piotrków Trybunalski,
 - gminy Masłowice, Przedbórz, Wielgomłyny i Żytno w powiecie radomszczańskim,
- w województwie śląskim:
- gmina Koniecpol w powiecie częstochowskim,
- w województwie pomorskim:
- gminy Ostaszewo, miasto Krynica Morska oraz część gminy Nowy Dwór Gdański położona na południowy - zachód od linii wyznaczonej przez drogę nr 55 biegnącą od południowej granicy gminy do skrzyżowania z drogą nr 7, następnie przez drogę nr 7 i S7 biegnącą do zachodniej granicy gminy w powiecie nowodworskim,
 - gminy Lichnowy, Miłoradz, Malbork z miastem Malbork, część gminy Nowy Staw położona na zachód od linii wyznaczonej przez drogę nr 55 w powiecie malborskim,
 - gminy Mikołajki Pomorskie, Stary Targ i Sztum w powiecie sztumskim,
 - powiat gdański,
 - Miasto Gdańsk,
 - powiat tczewski,
 - powiat kwidzyński,
- w województwie lubuskim:
- gmina Lubiszyn w powiecie gorzowskim,
 - gmina Dobiegniew w powiecie strzelecko – drezdeneckim,
- w województwie dolnośląskim:
- gminy Dziadowa Kłoda, Międzybórz, Syców, Twardogóra, część gminy wiejskiej Oleśnica położona na północ od linii wyznaczonej przez drogę nr S8, część gminy Dobroszyce położona na wschód od linii wyznaczonej przez linię kolejową biegnącą od północnej do południowej granicy gminy w powiecie oleśnickim,
 - gminy Jordanów Śląski, Kobierzyce, Mietków, Sobótka, część gminy Żórawina położona na zachód od linii wyznaczonej przez autostradę A4, część gminy Kąty Wrocławskie położona na południe od linii wyznaczonej przez autostradę A4 w powiecie wrocławskim,
 - część gminy Domaniów położona na południowy zachód od linii wyznaczonej przez autostradę A4 w powiecie oławskim,
 - gmina Wiązów w powiecie strzelińskim,
 - część powiatu średzkiego niewymieniona w części II załącznika I,

- miasto Świeradów - Zdrój w powiecie lubańskim,
- gminy Pielgrzymka, miasto Złotoryja, część gminy wiejskiej Złotoryja położona na zachód od linii wyznaczonej przez drogę biegnącą od północnej granicy gminy w miejscowości Nowa Wieś Złotoryjska do granicy miasta Złotoryja oraz na południe od linii wyznaczonej przez drogę nr 382 biegnącą od granicy miasta Złotoryja do wschodniej granicy gminy w powiecie złotoryjskim,
- gmina Mirsk w powiecie lwóweckim,
- gminy Janowice Wielkie, Mysłakowice, Stara Kamienica w powiecie karkonoskim,
- część powiatu miejskiego Jelenia Góra położona na północ od linii wyznaczonej przez drogę nr 366,
- gminy Bolków, Męcinka, Mściwojów, Paszowice, miasto Jawor w powiecie jaworskim,
- gminy Dobromierz, Jaworzyna Śląska, Marcinowice, Strzegom, Żarów w powiecie świdnickim,
- gminy Dzierżoniów, Pieszyce, miasto Bielawa, miasto Dzierżoniów w powiecie dzierżoniowskim,
- gminy Głuszyca, Mieroszów w powiecie wałbrzyskim,
- gmina Nowa Ruda i miasto Nowa Ruda w powiecie kłodzkim,
- gminy Kamienna Góra, Marciszów i miasto Kamienna Góra w powiecie kamiennogórskim,

w województwie wielkopolskim:

- gminy Koźmin Wielkopolski, Rozdrażew, miasto Sulmierzyce, część gminy Krotoszyn położona na wschód od linii wyznaczonej przez drogi: nr 15 biegnącą od północnej granicy gminy do skrzyżowania z drogą nr 36, nr 36 biegnącą od skrzyżowania z drogą nr 15 do skrzyżowania z drogą nr 444, nr 444 biegnącą od skrzyżowania z drogą nr 36 do południowej granicy gminy w powiecie krotoszyńskim,
- gminy Brodnica, część gminy Dolsk położona na wschód od linii wyznaczonej przez drogę nr 434 biegnącą od północnej granicy gminy do skrzyżowania z drogą nr 437, a następnie na wschód od drogi nr 437 biegnącej od skrzyżowania z drogą nr 434 do południowej granicy gminy, część gminy Śrem położona na wschód od linii wyznaczonej przez drogę nr 310 biegnącą od zachodniej granicy gminy do miejscowości Śrem, następnie na wschód od drogi nr 432 w miejscowości Śrem oraz na wschód od drogi nr 434 biegnącej od skrzyżowania z drogą nr 432 do południowej granicy gminy w powiecie śremskim,
- gminy Borek Wielkopolski, Piaski, Pogorzela, w powiecie gostyńskim,
- gmina Grodzisk Wielkopolski i część gminy Kamieniec położona na wschód od linii wyznaczonej przez drogę nr 308 w powiecie grodziskim,
- gmina Czempiń w powiecie kościańskim,
- gminy Kleszczewo, Kostrzyn, Kórnik, Pobiedziska, Mosina, miasto Puszczykowo, część gminy wiejskiej Murowana Goślina położona na południe od linii kolejowej biegnącej od północnej granicy miasta Murowana Goślina do północno-wschodniej granicy gminy w powiecie poznańskim,
- gmina Kiszkowo i część gminy Klecko położona na zachód od rzeki Mała Węlna w powiecie gnieźnieńskim,
- powiat czarnkowsko-trzcianecki,
- część gminy Wronki położona na północ od linii wyznaczonej przez rzekę Wartę biegnącą od zachodniej granicy gminy do przecięcia z drogą nr 182, a następnie na wschód od linii wyznaczonej przez drogi nr 182 oraz 184 biegnącą od skrzyżowania z drogą nr 182 do południowej granicy gminy w powiecie szamotulskim,
- gmina Budzyń w powiecie chodzieskim,
- gminy Mieścisko, Skoki i Wągrowiec z miastem Wągrowiec w powiecie wągrowieckim,
- powiat pleszewski,

- gmina Zagórów w powiecie ślupeckim,
- gmina Pyzdry w powiecie wrzesińskim,
- gminy Kotlin, Żerków i część gminy Jarocin położona na wschód od linii wyznaczonej przez drogi nr S11 i 15 w powiecie jarocińskim,
- powiat ostrowski,
- powiat miejski Kalisz,
- powiat kaliski,
- powiat turecki,
- gminy Rzgów, Grodziec, Krzymów, Stare Miasto, Rychwał w powiecie konińskim,
- powiat kępiński,
- powiat ostrzeszowski,

w województwie opolskim:

- gminy Domaszowice, Pokój, część gminy Namysłów położona na północ od linii wyznaczonej przez linię kolejową biegnącą od wschodniej do zachodniej granicy gminy w powiecie namysłowskim,
- gminy Wołczyn, Kluczbork, Byczyna w powiecie kluczborskim,
- gminy Praszka, Gorzów Śląski część gminy Rudniki położona na północ od linii wyznaczonej przez drogę nr 42 biegnącą od zachodniej granicy gminy do skrzyżowania z drogą nr 43 i na zachód od linii wyznaczonej przez drogę nr 43 biegnącą od północnej granicy gminy do skrzyżowania z drogą nr 42 w powiecie oleskim,
- gmina Grodków w powiecie brzeskim,
- gminy Komprachcice, Łubniany, Murów, Niemodlin, Tułowice w powiecie opolskim,
- powiat miejski Opole,

w województwie zachodniopomorskim:

- gminy Nowogródek Pomorski, Barlinek, Myślibórz, część gminy Dębno położona na wschód od linii wyznaczonej przez drogę nr 126 biegnącą od zachodniej granicy gminy do skrzyżowania z drogą nr 23 w miejscowości Dębno, następnie na wschód od linii wyznaczonej przez drogę nr 23 do skrzyżowania z ul. Jana Pawła II w miejscowości Cychry, następnie na północ od ul. Jana Pawła II do skrzyżowania z ul. Ogrodową i dalej na północ od linii wyznaczonej przez ul. Ogrodową, której przedłużenie biegnie do wschodniej granicy gminy w powiecie myśliborskim,
- gmina Stare Czarnowo w powiecie gryfińskim,
- gmina Bielice, Kozielice, Pyrzyce w powiecie pyrzyckim,
- gminy Bierzwnik, Krzęcin, Pełczyce w powiecie choszczeńskim,
- część powiatu miejskiego Szczecin położona na zachód od linii wyznaczonej przez rzekę Odra Zachodnia biegnącą od północnej granicy gminy do przecięcia z drogą nr 10, następnie na południe od linii wyznaczonej przez drogę nr 10 biegnącą od przecięcia z linią wyznaczoną przez rzekę Odra Zachodnia do wschodniej granicy gminy,
- gminy Dobra (Szczecińska), Kołbaskowo, Police w powiecie polickim,

w województwie małopolskim:

- powiat brzeski,
- powiat gorlicki,
- powiat proszowicki,
- część powiatu nowosądeckiego niewymieniona w części II załącznika I,
- gminy Czorsztyn, Krościenko nad Dunajcem, Ochotnica Dolna w powiecie nowotarskim,
- powiat miejski Nowy Sącz,

- powiat tarnowski,
- powiat miejski Tarnów,
- część powiatu dąbrowskiego niewymieniona w części III załącznika I.

8. Slovakia

The following restricted zones I in Slovakia:

- in the district of Nové Zámky, Sikenička, Pavlová, Bíňa, Kamenín, Kamenný Most, Malá nad Hronom, Belá, Lubá, Šarkan, Gbelce, Bruty, Mužla, Obid, Štúrovo, Nána, Kamenica nad Hronom, Chľaba, Leľa, Bajtava, Salka, Malé Kosihy,
- in the district of Veľký Krtíš, the municipalities of Ipeľské Predmostie, Veľká nad Ipľom, Hrušov, Kleňany, Sečianky,
- in the district of Levice, the municipalities of Keľ, Čata, Pohronský Ruskov, Hronovce, Želiezovce, Zalaba, Malé Ludince, Šalov, Sikenica, Pastovce, Bielovce, Ipeľský Sokolec, Lontov, Kubáňovo, Szadice, Demandice, Dolné Semerovce, Vyškovce nad Ipľom, Preseľany nad Ipľom, Hrkovce, Tupá, Horné Semerovce, Hokovce, Slatina, Horné Turovce, Veľké Turovce, Šahy, Tešmak, Plášťovce, Ipeľské Uľany, Bátovce, Pečenice, Jabloňovce, Bohunice, Pukanec, Uhľiská,
- in the district of Krupina, the municipalities of Dudince, Terany, Hontianske Moravce, Sudince, Súdovce, Lišov,
- the whole district of Ružomberok,
- in the region of Turčianske Teplice, municipalities of Turček, Horná Štubňa, Čremošné, Háj, Rakša, Mošovce,
- in the district of Martin, municipalities of Blatnica, Folkušová, Necpaly,
- in the district of Dolný Kubín, the municipalities of Kral'ovany, Žaškov, Jasenová, Vyšný Kubín, Oravská Poruba, Leštiny, Osádka, Malatiná, Chlebnice, Krivá,
- in the district of Tvrdošín, the municipalities of Oravský Biely Potok, Habovka, Zuberec,
- in the district of Žarnovica, the municipalities of Rudno nad Hronom, Voznica, Hodruša-Hámre,
- the whole district of Žiar nad Hronom, except municipalities included in zone II.

9. Italy

The following restricted zones I in Italy:

Piedmont Region:

- in the province of Alessandria, the municipalities of Casale Monferrato, Oviglio, Tortona, Viguzzolo, Ponti, Frugarolo, Bergamasco, Castellar Guidobono, Berzano Di Tortona, Castelletto D'erro, Cerreto Grue, Carbonara Scrivia, Casasco, Carentino, Frascaro, Paderna, Montegioco, Spineto Scrivia, Villaromagnano, Pozzolo Formigaro, Momperone, Merana, Monleale, Terzo, Borgoratto Alessandrino, Casal Cermelli, Montemarzino, Bistagno, Castellazzo Bormida, Bosco Marengo, Spigno Monferrato, Castelspina, Denice, Volpigliano, Alice Bel Colle, Gamalero, Volpedo, Pozzol Groppo, Montechiaro D'acqui, Sarezzano,
- in the province of Asti, the municipalities of Olmo Gentile, Nizza Monferrato, Incisa Scapaccino, Roccaverano, Castel Boglione, Mombaruzzo, Maranzana, Castel Rocchero, Rocchetta Palafea, Castelletto Molina, Castelnuovo Belbo, Montabone, Quaranti, Mombaldone, Fontanile, Calamandrana, Bruno, Sessame, Monastero Bormida, Bubbio, Cassinasco, Serole, Loazzolo, Cessole, Lesine, San Giorgio Scarampi,
- in the province of Cuneo, the municipalities of Bergolo, Pezzolo Valle Uzzone, Cortemilia, Levice, Castelletto Uzzone, Perletto,

Liguria Region:

- in the province of Genova, the Municipalities of Rovegno, Rapallo, Portofino, Cicagna, Avegno, Montebello, Santa Margherita Ligure, Favale Di Malvaro, Recco, Camogli, Moconesi, Tribogna, Fascia, Uscio, Gorreto, Fontanigorda, Neirone, Rondanina, Lorsica, Propata;

- in the province of Savona, the municipalities of Cairo Montenotte, Quiliano, Dego, Altare, Piana Crixia, Mioglia, Giusvalla, Albissola Marina, Savona,

Emilia-Romagna Region:

- in the province of Piacenza, the municipalities of Ottone, Zerba,

Lombardia Region:

- in the province of Pavia, the municipalities of Rocca Susella, Montesegale, Menconico, Val Di Nizza, Bagnaria, Santa Margherita Di Staffora, Ponte Nizza, Brallo Di Pregola, Varzi, Godiasco, Cecima,

Lazio Region:

- in the province of Rome,

North: the municipalities of Riano, Castelnuovo di Porto, Capena, Fiano Romano, Morlupo, Sacrofano, Magliano Romano, Formello, Campagnano di Roma, Anguillara;

West: the municipality of Fiumicino;

South: the municipality of Rome between the boundaries of the municipality of Fiumicino (West), the limits of Zone 3 (North), the Tiber river up to the intersection with the Grande Raccordo Anulare GRA Highway, the Grande Raccordo Anulare GRA Highway up to the intersection with A24 Highway, A24 Highway up to the intersection with Viale del Tecnopolo, viale del Tecnopolo up to the intersection with the boundaries of the municipality of Guidonia Montecelio;

East: the municipalities of Guidonia Montecelio, Montelibretti, Palombara Sabina, Monterotondo, Mentana, Sant'Angelo Romano, Fonte Nuova.

PART II

1. Bulgaria

The following restricted zones II in Bulgaria:

- the whole region of Haskovo,
- the whole region of Yambol,
- the whole region of Stara Zagora,
- the whole region of Pernik,
- the whole region of Kyustendil,
- the whole region of Plovdiv, excluding the areas in Part III,
- the whole region of Pazardzhik, excluding the areas in Part III,
- the whole region of Smolyan,
- the whole region of Dobrich,
- the whole region of Sofia city,
- the whole region of Sofia Province,
- the whole region of Blagoevgrad excluding the areas in Part III,
- the whole region of Razgrad,
- the whole region of Kardzhali,
- the whole region of Burgas,
- the whole region of Varna excluding the areas in Part III,
- the whole region of Silistra,
- the whole region of Ruse,
- the whole region of Veliko Tarnovo,
- the whole region of Pleven,
- the whole region of Targovishte,

- the whole region of Shumen,
- the whole region of Sliven,
- the whole region of Vidin,
- the whole region of Gabrovo,
- the whole region of Lovech,
- the whole region of Montana,
- the whole region of Vratza.

2. Germany

The following restricted zones II in Germany:

Bundesland Brandenburg:

- Landkreis Oder-Spree:
 - Gemeinde Grunow-Dammendorf,
 - Gemeinde Mixdorf
 - Gemeinde Schlaubetal,
 - Gemeinde Neuzelle,
 - Gemeinde Neißemünde,
 - Gemeinde Lawitz,
 - Gemeinde Eisenhüttenstadt,
 - Gemeinde Vogelsang,
 - Gemeinde Ziltendorf,
 - Gemeinde Wiesenau,
 - Gemeinde Friedland,
 - Gemeinde Siehdichum,
 - Gemeinde Müllrose,
 - Gemeinde Briesen,
 - Gemeinde Jacobsdorf
 - Gemeinde Groß Lindow,
 - Gemeinde Brieskow-Finkenheerd,
 - Gemeinde Ragow-Merz,
 - Gemeinde Beeskow,
 - Gemeinde Rietz-Neuendorf,
 - Gemeinde Tauche mit den Gemarkungen Stremmen, Ranzig, Trebatsch, Sabrodt, Sawall, Mitweide, Lindenberg, Falkenberg (T), Görsdorf (B), Wulfersdorf, Giesensdorf, Briescht, Kossenblatt und Tauche,
 - Gemeinde Langewahl,
 - Gemeinde Berkenbrück,
 - Gemeinde Steinhöfel mit den Gemarkungen Arensdorf und Demitz und den Gemarkungen Steinhöfel, Hasenfelde und Heinersdorf östlich der L 36 und der Gemarkung Neuendorf im Sande südlich der L 36,
 - Gemeinde Fürstenwalde östlich der B 168 und südlich der L 36,
 - Gemeinde Diensdorf-Radow,

- Gemeinde Wendisch Rietz östlich des Scharmützelsees und nördlich der B 246,
- Gemeinde Bad Saarow mit der Gemarkung Neu Golm und der Gemarkung Bad Saarow-Pieskow östlich des Scharmützelsees und ab nördlicher Spitze östlich der L35,
- Landkreis Dahme-Spreewald:
 - Gemeinde Jamlitz,
 - Gemeinde Lieberose,
 - Gemeinde Schwielochsee mit den Gemarkungen Goyatz, Jessern, Lamsfeld, Ressen, Speichrow und Zaue,
- Landkreis Spree-Neiße:
 - Gemeinde Schenkendöbern,
 - Gemeinde Guben,
 - Gemeinde Jänschwalde,
 - Gemeinde Tauer,
 - Gemeinde Peitz,
 - Gemeinde Turnow-Preilack mit der Gemarkung Preilack,
 - Gemeinde Teichland mit der Gemarkung Bärenbrück,
 - Gemeinde Heinersbrück,
 - Gemeinde Forst,
 - Gemeinde Groß Schacksdorf-Simmersdorf,
 - Gemeinde Neiße-Malxetal,
 - Gemeinde Jämlitz-Klein Düben,
 - Gemeinde Tschernitz,
 - Gemeinde Döbern,
 - Gemeinde Felixsee,
 - Gemeinde Wiesengrund,
 - Gemeinde Spremberg mit den Gemarkungen Groß Luja, Sellessen, Türkendorf, Graustein, Waldesdorf, Hornow, Schönheide, Lieskau, Bühlow, Groß Buckow, Jessen, Pulsberg, Roitz, Terpe und der Gemarkung Spremberg östlich der Tagebaurandstraße und der Gemarkung Klein Buckow östlich der B 97,
 - Gemeinde Welzow mit den Gemarkungen Proschim und Haidemühl,
 - Gemeinde Neuhausen/Spree mit den Gemarkungen Kahsel, Bagenz, Drieschnitz, Gablenz, Laubsdorf, Komptendorf und Sergen und der Gemarkung Roggosen, Haasow, Kathlow, Koppatz, Frauendorf, Neuhausen und den Gemarkungen Groß Döbern, Klein Döbern und Groß Oßnig östlich der B 97,
 - Kreisfreie Stadt Cottbus mit der Gemarkung Kahren,
- Landkreis Märkisch-Oderland:
 - Gemeinde Bleyen-Genschmar,
 - Gemeinde Neuhardenberg
 - Gemeinde Golzow,
 - Gemeinde Küstriner Vorland,
 - Gemeinde Alt Tucheband,
 - Gemeinde Reitwein,
 - Gemeinde Podelzig,
 - Gemeinde Gusow-Platkow,

- Gemeinde Seelow,
- Gemeinde Vierlinden,
- Gemeinde Lindendorf,
- Gemeinde Fichtenhöhe,
- Gemeinde Lietzen,
- Gemeinde Falkenhagen (Mark),
- Gemeinde Zeschdorf,
- Gemeinde Treplin,
- Gemeinde Lebus,
- Gemeinde Müncheberg mit den Gemarkungen Jahnsfelde, Trebnitz, Obersdorf, Münchehofe und Hermersdorf,
- Gemeinde Märkische Höhe mit der Gemarkung Ringenwalde,
- Gemeinde Bliesdorf mit der Gemarkung Metzdorf und Gemeinde Bliesdorf – östlich der B167 bis östlicher Teil, begrenzt aus Richtung Gemarkungsgrenze Neutrebbin südlich der Bahnlinie bis Straße „Sophienhof“ dieser westlich folgend bis „Ruesterchegraben“ weiter entlang Feldweg an den Windrädern Richtung „Herrnhof“, weiter entlang „Letschiner Hauptgraben“ nord-östlich bis Gemarkungsgrenze Alttrebbin und Kunersdorf – östlich der B167,
- Gemeinde Bad Freienwalde mit den Gemarkungen Altglietzen, Altranft, Bad Freienwalde, Bralitz, Hohenwutzen, Schiffmühle, Hohensaaten und Neuenhagen,
- Gemeinde Falkenberg mit der Gemarkung Falkenberg östlich der L35,
- Gemeinde Oderaue,
- Gemeinde Wriezen mit den Gemarkungen Altwriezen, Jäckelsbruch, Neugaul, Beauregard, Eichwerder, Rathsdorf – östlich der B167 und Wriezen – östlich der B167,
- Gemeinde Neulewin,
- Gemeinde Neutrebbin,
- Gemeinde Letschin,
- Gemeinde Zechin,
- Landkreis Barnim:
 - Gemeinde Lunow-Stolzenhagen,
 - Gemeinde Parsteinsee,
 - Gemeinde Oderberg,
 - Gemeinde Liepe,
 - Gemeinde Hohenfinow (nördlich der B167),
 - Gemeinde Niederfinow,
 - Gemeinde (Stadt) Eberswalde mit den Gemarkungen Eberswalde nördlich der B167 und östlich der L200, Sommerfelde und Tornow nördlich der B167,
 - Gemeinde Chorin mit den Gemarkungen Brodowin, Chorin östlich der L200, Serwest, Neuehütte, Sandkrug östlich der L200,
 - Gemeinde Ziethen mit der Gemarkung Klein Ziethen östlich der Serwester Dorfstraße und östlich der B198,
- Landkreis Uckermark:
 - Gemeinde Angermünde mit den Gemarkungen Crussow, Stolpe, Gellmersdorf, Neukünkendorf, Bölkendorf, Herzsprung, Schmargendorf und den Gemarkungen Angermünde südlich und südöstlich der B2 und Dobberzin südlich der B2,

- Gemeinde Schwedt mit den Gemarkungen Criewen, Zützen, Schwedt, Stendell, Kummerow, Kunow, Vierraden, Blumenhagen, Oderbruchwiesen, Enkelsee, Gatow, Hohenfelde, Schöneberg, Flemsdorf und der Gemarkung Felchow östlich der B2,
 - Gemeinde Pinnow südlich und östlich der B2,
 - Gemeinde Berkholz-Meyenburg,
 - Gemeinde Mark Landin mit der Gemarkung Landin südlich der B2,
 - Gemeinde Casekow mit der Gemarkung Woltersdorf und den Gemarkungen Biesendahlshof und Casekow östlich der L272 und südlich der L27,
 - Gemeinde Hohenselchow-Groß Pinnow mit der Gemarkung Groß Pinnow und der Gemarkung Hohenselchow südlich der L27,
 - Gemeinde Gartz (Oder) mit der Gemarkung Friedrichsthal und den Gemarkungen Gartz und Hohenreinkendorf südlich der L27 und B2 bis Gartenstraße,
 - Gemeinde Passow mit der Gemarkung Jamikow,
 - Kreisfreie Stadt Frankfurt (Oder),
 - Landkreis Prignitz:
 - Gemeinde Karstädt mit den Gemarkungen Neuhof und Kribbe und den Gemarkungen Groß Warnow, Klein Warnow, Reckenzin, Streesow und Dallmin östlich der Bahnstrecke Berlin/Spandau-Hamburg/Altona,
 - Gemeinde Berge,
 - Gemeinde Pirow mit den Gemarkungen Hülsebeck, Pirow, Bresch und Burow,
 - Gemeinde Putlitz mit den Gemarkungen Sagast, Nettelbeck, Porep, Lütkenhof, Putlitz, Weitendorf und Telschow,
 - Gemeinde Marienfließ mit den Gemarkungen Jännersdorf, Stepenitz und Krempendorf,
 - Landkreis Oberspreewald-Lausitz:
 - Gemeinde Senftenberg mit der Gemarkung Peickwitz,
 - Gemeinde Hohenbocka,
 - Gemeinde Grünewald,
 - Gemeinde Hermsdorf,
 - Gemeinde Kroppen,
 - Gemeinde Ortrand,
 - Gemeinde Großkmehlen,
 - Gemeinde Lindenau,
 - Gemeinde Frauendorf,
 - Gemeinde Ruhland,
 - Gemeinde Guteborn
 - Gemeinde Schwarzbach mit der Gemarkung Schwarzbach,
- Bundesland Sachsen:
- Landkreis Bautzen:
 - Gemeinde Arnsdorf nördlich der B6,
 - Gemeinde Burkau,
 - Gemeinde Crostwitz,
 - Gemeinde Demitz-Thumitz nördlich der S111,
 - Gemeinde Elsterheide,

- Gemeinde Frankenthal,
- Gemeinde Göda nördlich der S111,
- Gemeinde Großdubrau,
- Gemeinde Großharthau nördlich der B6,
- Gemeinde Großnaundorf,
- Gemeinde Haselbachtal,
- Gemeinde Hochkirch nördlich der B6,
- Gemeinde Königswartha,
- Gemeinde Kubschütz nördlich der B6,
- Gemeinde Laußnitz,
- Gemeinde Lichtenberg,
- Gemeinde Lohsa,
- Gemeinde Malschwitz,
- Gemeinde Nebelschütz,
- Gemeinde Neukirch,
- Gemeinde Neschwitz,
- Gemeinde Ohorn,
- Gemeinde Oßling,
- Gemeinde Ottendorf-Okrilla,
- Gemeinde Panschwitz-Kuckau,
- Gemeinde Puschwitz,
- Gemeinde Räckelwitz,
- Gemeinde Radibor,
- Gemeinde Ralbitz-Rosenthal,
- Gemeinde Rammenau,
- Gemeinde Schwepnitz,
- Gemeinde Spreetal,
- Gemeinde Stadt Bautzen nördlich der S111 bis Abzweig S 156 und nördlich des Verlaufs S 156 bis Abzweig B6 und nördlich des Verlaufs der B 6 bis zur östlichen Gemeindegrenze,
- Gemeinde Stadt Bernsdorf,
- Gemeinde Stadt Bischofswerda nördlich der B6 nördlich der S111,
- Gemeinde Stadt Elstra,
- Gemeinde Stadt Großröhrsdorf,
- Gemeinde Stadt Hoyerswerda,
- Gemeinde Stadt Kamenz,
- Gemeinde Stadt Königsbrück,
- Gemeinde Stadt Lauta,
- Gemeinde Stadt Pulsnitz,
- Gemeinde Stadt Radeberg nördlich der B6,
- Gemeinde Stadt Weißenberg,

- Gemeinde Stadt Wittichenau,
 - Gemeinde Steina,
 - Gemeinde Wachau,
 - Stadt Dresden:
 - Stadtgebiet nördlich der BAB4 bis zum Verlauf westlich der Elbe, dann nördlich der B6,
 - Landkreis Görlitz,
 - Landkreis Meißen:
 - Gemeinde Diera-Zehren östlich der Elbe,
 - Gemeinde Ebersbach,
 - Gemeinde Glaubitz östlich des Grödel-Elsterwerdaer-Floßkanals,
 - Gemeinde Klipphausen östlich der S177,
 - Gemeinde Lampertswalde,
 - Gemeinde Moritzburg,
 - Gemeinde Niederau östlich der B101,
 - Gemeinde Nünchritz östlich der Elbe und südlich des Grödel-Elsterwerdaer-Floßkanals,
 - Gemeinde Priestewitz,
 - Gemeinde Röderaue östlich des Grödel-Elsterwerdaer-Floßkanals,
 - Gemeinde Schönfeld,
 - Gemeinde Stadt Coswig,
 - Gemeinde Stadt Gröditz östlich des Grödel-Elsterwerdaer-Floßkanals,
 - Gemeinde Stadt Großenhain,
 - Gemeinde Stadt Meißen östlich des Straßenverlaufs der S177 bis zur B6, dann B6 bis zur B101, ab der B101 Elbtalbrücke Richtung Norden östlich der Elbe,
 - Gemeinde Stadt Radebeul,
 - Gemeinde Stadt Radeburg,
 - Gemeinde Thendorf,
 - Gemeinde Weinböhla,
 - Gemeinde Wülknitz östlich des Grödel-Elsterwerdaer-Floßkanals,
 - Landkreis Sächsische Schweiz-Osterzgebirge:
 - Gemeinde Stadt Wilsdruff nördlich der BAB4 zwischen den Abfahren Wilsdruff und Dreieck Dresden-West,
- Bundesland Mecklenburg-Vorpommern:
- Landkreis Ludwigslust-Parchim:
 - Gemeinde Balow mit dem Ortsteil: Balow,
 - Gemeinde Brunow mit den Ortsteilen und Ortslagen: Bauerkuhl, Brunow (bei Ludwigslust), Klüß, Löcknitz (bei Parchim),
 - Gemeinde Dambeck mit dem Ortsteil und der Ortslage: Dambeck (bei Ludwigslust),
 - Gemeinde Ganzlin mit den Ortsteilen und Ortslagen: Barackendorf, Hof Retzow, Klein Damerow, Retzow, Wangelin,

- Gemeinde Gehlsbach mit den Ortsteilen und Ortschaften: Ausbau Darß, Darß, Hof Karbow, Karbow, Karbow-Ausbau, Quaßlin, Quaßlin Hof, Quaßliner Mühle, Vietlütbe, Wahlstorf
- Gemeinde Groß Godems mit den Ortsteilen und Ortschaften: Groß Godems, Klein Godems,
- Gemeinde Karrenzin mit den Ortsteilen und Ortschaften: Herzfeld, Karrenzin, Karrenzin-Ausbau, Neu Herzfeld, Repzin, Wulfsahl,
- Gemeinde Kreien mit den Ortsteilen und Ortschaften: Ausbau Kreien, Hof Kreien, Kolonie Kreien, Kreien, Wilsen,
- Gemeinde Kritzow mit dem Ortsteil und der Ortschaft: Benzin,
- Gemeinde Lübz mit den Ortsteilen und Ortschaften: Burow, Gischow, Meyerberg,
- Gemeinde Möllenbeck mit den Ortsteilen und Ortschaften: Carlshof, Horst, Menzendorf, Möllenbeck,
- Gemeinde Muchow mit dem Ortsteil und Ortschaft: Muchow,
- Gemeinde Parchim mit dem Ortsteil und Ortschaft: Slate,
- Gemeinde Prislich mit den Ortsteilen und Ortschaften: Marienhof, Neese, Prislich, Werle,
- Gemeinde Rom mit dem Ortsteil und Ortschaft: Klein Niendorf,
- Gemeinde Ruhner Berge mit den Ortsteilen und Ortschaften: Dorf Polnitz, Drenkow, Griebow, Jarchow, Leppin, Malow, Malower Mühle, Marnitz, Mentin, Mooster, Poitendorf, Polnitz, Suckow, Tessenow, Zachow,
- Gemeinde Siggelkow mit den Ortsteilen und Ortschaften: Groß Pankow, Klein Pankow, Neuburg, Redlin, Siggelkow,
- Gemeinde Stolpe mit den Ortsteilen und Ortschaften: Barkow, Granzin, Stolpe Ausbau, Stolpe,
- Gemeinde Ziegendorf mit den Ortsteilen und Ortschaften: Drefahl, Meierstorf, Neu Drefahl, Pampin, Platschow, Stresendorf, Ziegendorf,
- Gemeinde Zierzow mit den Ortsteilen und Ortschaften: Kolbow, Zierzow.

3. Estonia

The following restricted zones II in Estonia:

- Eesti Vabariik (välja arvatud Hiiuma maakond).

4. Latvia

The following restricted zones II in Latvia:

- Aizkraukles novads,
- Alūksnes, novada Alsveļu, Annas, Ilzenes, Jaunalūksnes, Jaunlaicenes, Kalncempju, Liepnas, Malienas, Mārupes, Mārkalnes, Pededzes, Veclaicenes, Zeltiņu, Ziemera pagasts, Jaunannas pagasta daļa uz ziemeļrietumiem no Pededzes upes, Alūksnes pilsēta,
- Augšdaugavas novads,
- Ādažu novads,
- Balvu, novada Baltinavas, Bērzpils, Briežuciema, Krišjāņu, Kupravas, Lazdukalna, Lazdulejas, Medņevas, Rugāju, Susāju, Šķilbēnu, Tilžas, Vecilžas, Vecumu, Žīguru, Viļakas pilsēta,
- Bauskas novads,
- Cēsu novads,
- Dienvidkurzemes novada Aizputes, Cīravas, Lažas, Durbes, Dunalkas, Tadaļu, Vecpils, Bārtas, Sakas, Bunkas, Priekules, Gramzdas, Kalētu, Virgas, Dunikas, Vaiņodes, Gaviezes, Rucavas, Vērgales, Medzes pagasts, Nīcas pagasta daļa uz dienvidiem no apdzīvotas vietas Bernāti, autoceļš V1232, A11, V1222, Bārtas upes, Embūtes pagasta daļa uz dienvidiem no autoceļš P116, P106, autoceļš no apdzīvotas vietas Dinsdurbe, Kalvenes pagasta daļa uz

rietumiem no ceļa pie Vārtājas upes līdz autoceļam A9, uz dienvidiem no autoceļa A9, uz rietumiem no autoceļa V1200, Kazdangas pagasta daļa uz rietumiem no ceļa V1200, P115, P117, V1296, Aizputes, Durbes, Pāvilostas, Priekules pilsēta,

- Dobeles novads,
- Gulbenes, novada Beļavas, Daukstu, Druvienas, Galgauskas, Jaungulbenes, Lejasciema, Lizuma, Līgo, Rankas, Stāmerienas, Stradu, Tirzas pagasts, Litenes pagasta daļa uz rietumiem no Pededzes upes, Gulbenes pilsēta,
- Jelgavas novads,
- Jēkabpils novads,
- Krāslavas novads,
- Kuldīgas novada Alsungas, Gudenieku, Kurmāles, Rendas, Kabiles, Vārmes, Pelču, Snēpeles, Turlavas pagasts, Laidu pagasta daļa uz ziemeļiem no autoceļa V1296, V1295, V1272, Raņķu pagasta daļa uz ziemeļiem no autoceļa V1272 līdz robežai ar Ventas upi, Skrundas pagasta daļa uz ziemeļaustrumiem no Skrundas, Cieceres upes un Ventas upes, Ēdoles pagasta daļa uz rietumiem no autoceļa V1269, V1271, V1288, P119, Īvandes pagasta daļa uz dienvidiem no autoceļa P119, Rumbas pagasta daļa uz dienvidiem no autoceļa P120, Kuldīgas pilsēta,
- Ķekavas novads,
- Limbažu novads,
- Līvānu novads,
- Ludzas novads,
- Madonas novads,
- Mārupes novads,
- Ogres novads,
- Olaines novads,
- Preiļu, novada Aglonas, Aizkalnes, Pelēču, Preiļu, Riebiņu, Rožkalnu, Saunas, Sīļukalna, Stabulnieku, Upmalas, Vārkavas pagasts, Galēnu pagasta daļa uz rietumiem no autoceļa V740, V595, Rušonas pagasta daļa uz dienvidiem no autoceļa V742, Preiļu pilsēta,
- Rēzeknes, novada Audriņu, Bērzgales, Čornajas, Dekšāres, Dricānu, Gaigalavas, Griškānu, Ilzeskalna, Kantinieku, Kaunatas, Lendžu, Mākoņkalna, Nagļu, Nautrēnu, Ozolaines, Ozolmuižas, Pušas, Rikavas, Sakstagala, Sokolku, Stoļerovas, Stružānu, Vērēmu, Viļānu pagasts, Lūznavas pagasta daļa uz austrumiem no autoceļa A13 līdz apdzīvotai vietai Vertukšne, uz austrumiem no Vertukšnes ezera, Maltas pagasta daļa uz austrumiem no autoceļa Vertukšne – Rozentova un uz austrumiem no autoceļa P56, P57, V569, Feimaņu pagasta daļa uz dienvidiem no autoceļa V577, V742, Viļānu pilsēta,
- Ropažu novada Garkalnes, Ropažu pagasts, Stopiņu pagasta daļa, kas atrodas uz austrumiem no autoceļa V36, P4 un P5, Acones ielas, Dauguļupes ielas un Dauguļupītes, Vangažu pilsēta,
- Salaspils novads,
- Saldus novads,
- Saulkrastu novads,
- Siguldas novads,
- Smiltenes novads,
- Talsu novads,
- Tukuma novads,
- Valkas novads,
- Valmieras novads,
- Varakļānu novads,

- Ventspils novada Ances, Popes, Puzes, Tārgales, Vārves, Užavas, Usmas, Jūrkalnes pagasts, Ugāles pagasta daļa uz ziemeļiem no autoceļa V1347, uz austrumiem no autoceļa P123, Ziru pagasta daļa uz rietumiem no autoceļa V1269, P108, Piltenes pagasta daļa uz ziemeļiem no autoceļa V1310, V1309, autoceļa līdz Ventas upei, Piltenes pilsēta,
- Daugavpils valstspilsētas pašvaldība,
- Jelgavas valstspilsētas pašvaldība,
- Jūrmalas valstspilsētas pašvaldība,
- Rēzeknes valstspilsētas pašvaldība.

5. Lithuania

The following restricted zones II in Lithuania:

- Alytaus miesto savivaldybė,
- Alytaus rajono savivaldybė,
- Anykščių rajono savivaldybė,
- Akmenės rajono savivaldybė,
- Birštono savivaldybė,
- Biržų miesto savivaldybė,
- Biržų rajono savivaldybė,
- Druskininkų savivaldybė,
- Elektrėnų savivaldybė,
- Ignalinos rajono savivaldybė,
- Jonavos rajono savivaldybė,
- Joniškio rajono savivaldybė,
- Jurbarko rajono savivaldybė: Eržvilko, Juodaičių, Seredžiaus, Smalininkų, Veliuonos ir Viešvilės seniūnijos,
- Kaišiadorių rajono savivaldybė,
- Kauno miesto savivaldybė,
- Kauno rajono savivaldybė,
- Kazlų rūdos savivaldybė: Kazlų Rūdos seniūnija, išskyrus Audiejiškės k., Aukštosios Išdagos k., Bagotosios k., Bartininkų k., Berštupio k., Beržnavienės k., Būdviečio II k., Geruliškės k., Girnupių k., Karklinių k., Kriauniškės k., Kučiškės k., Skindeliškės k., Stainiškės k., Stepkiškės k., Šakmušio k., Šiaudadūšės k., Šliurpkiškės k., Plutiškių seniūnija.
- Kelmės rajono savivaldybė,
- Kėdainių rajono savivaldybė,
- Klaipėdos rajono savivaldybė: Judrėnų, Endriejavo ir Veiviržėnų seniūnijos,
- Kupiškio rajono savivaldybė,
- Kretingos rajono savivaldybė,
- Lazdijų rajono savivaldybė,
- Mažeikių rajono savivaldybė,
- Molėtų rajono savivaldybė: Alantos, Balninkų, Čiulėnų, Inturkės, Joniškio, Luokesos, Mindūnų, Suginčių ir Videniškių seniūnijos,
- Pagėgių savivaldybė,
- Pakruojo rajono savivaldybė,
- Panevėžio rajono savivaldybė,

- Panevėžio miesto savivaldybė,
- Pasvalio rajono savivaldybė,
- Radviliškio rajono savivaldybė,
- Rietavo savivaldybė,
- Prienų rajono savivaldybė,
- Plungės rajono savivaldybė,
- Raseinių rajono savivaldybė,
- Rokiškio rajono savivaldybė,
- Skuodo rajono savivaldybė,
- Šakių rajono savivaldybė; Kriūkų, Kudirkos Naumiesčio, Lekėčių, Lukšių, Plokščių, Slavikų seniūnijos; Sudargo seniūnijos dalis, išskyrus Pervazninkų kaimą; Šakių seniūnijos dalis, išskyrus Juniškių, Bedalių, Zajošių, Kriaučėnų, Liukų, Gotlybiškių, Ritinių kaimus; seniūnija,
- Šalčininkų rajono savivaldybė,
- Šiaulių miesto savivaldybė,
- Šiaulių rajono savivaldybė,
- Šilutės rajono savivaldybė,
- Širvintų rajono savivaldybė: Čiobiškio, Gelvonų, Jauniūnų, Kernavės, Musninkų ir Širvintų seniūnijos,
- Šilalės rajono savivaldybė,
- Švenčionių rajono savivaldybė,
- Tauragės rajono savivaldybė,
- Telšių rajono savivaldybė,
- Trakų rajono savivaldybė,
- Ukmergės rajono savivaldybė: Deltuvos, Lyduokių, Pabaisko, Pivonijos, Siesikų, Šešuolių, Taujėnų, Ukmergės miesto, Veprių, Vidiškių ir Žemaitkiemo seniūnijos,
- Utenos rajono savivaldybė,
- Varėnos rajono savivaldybė,
- Vilniaus miesto savivaldybė,
- Vilniaus rajono savivaldybė: Avižienių, Bezdonių, Buivydžių, Dūkštų, Juodšilių, Kalvelių, Lavoriškių, Maišiagalos, Marijampolio, Medininkų, Mickūnų, Nemenčinės, Nemenčinės miesto, Nemėžio, Pagirių, Riešės, Rudaminos, Rukainių, Sudervės, Sužionių, Šatrininkų ir Zujūnų seniūnijos,
- Visagino savivaldybė,
- Zarasų rajono savivaldybė.

6. Hungary

The following restricted zones II in Hungary:

- Békés megye 950150, 950250, 950350, 950450, 950550, 950650, 950660, 950750, 950850, 950860, 951050, 951150, 951250, 951260, 951350, 951450, 951460, 951550, 951650, 951750, 952150, 952250, 952350, 952450, 952550, 952650, 953250, 953260, 953270, 953350, 953450, 953550, 953560, 953950, 954050, 954060, 954150, 956250, 956350, 956450, 956550, 956650 és 956750 kódszámú vadgazdálkodási egységeinek teljes területe,
- Borsod-Abaúj-Zemplén megye valamennyi vadgazdálkodási egységének teljes területe,
- Fejér megye 403150, 403160, 403250, 403260, 403350, 404250, 404550, 404560, 404570, 405450, 405550, 405650, 406450 és 407050 kódszámú vadgazdálkodási egységeinek teljes területe,

- Hajdú-Bihar megye valamennyi vadgazdálkodási egységének teljes területe,
- Heves megye valamennyi vadgazdálkodási egységének teljes területe,
- Jász-Nagykun-Szolnok megye 750250, 750550, 750650, 750750, 750850, 750970, 750980, 751050, 751150, 751160, 751250, 751260, 751350, 751360, 751450, 751460, 751470, 751550, 751650, 751750, 751850, 751950, 752150, 752250, 752350, 752450, 752460, 752550, 752560, 752650, 752750, 752850, 752950, 753060, 753070, 753150, 753250, 753310, 753450, 753550, 753650, 753660, 753750, 753850, 753950, 753960, 754050, 754150, 754250, 754360, 754370, 754850, 755550, 755650 és 755750 kódszámú vadgazdálkodási egységeinek teljes területe,
- Komárom-Esztergom megye: 250350, 250850, 250950, 251450, 251550, 251950, 252050, 252150, 252350, 252460, 252550, 252650, 252750, 252850, 252860, 252950, 252960, 253050, 253150, 253250, 253350, 253450 és 253550 kódszámú vadgazdálkodási egységeinek teljes területe,
- Nógrád megye valamennyi vadgazdálkodási egységeinek teljes területe,
- Pest megye 570150, 570250, 570350, 570450, 570550, 570650, 570750, 570850, 570950, 571050, 571150, 571250, 571350, 571650, 571750, 571760, 571850, 571950, 572050, 573550, 573650, 574250, 577250, 580050 és 580150 kódszámú vadgazdálkodási egységeinek teljes területe,
- Szabolcs-Szatmár-Bereg megye valamennyi vadgazdálkodási egységének teljes területe.

7. Poland

The following restricted zones II in Poland:

w województwie warmińsko-mazurskim:

- gminy Kalinowo, Stare Juchy, Prostki oraz gmina wiejska Elk w powiecie elckim,
- powiat elbląski,
- powiat miejski Elbląg,
- powiat gołdapski,
- powiat piski,
- powiat bartoszycki,
- powiat olecki,
- powiat giżycki,
- powiat braniewski,
- powiat kętrzyński,
- powiat lidzbarski,
- gminy Dźwierzuty Jedwabno, Pasym, Świętajno, Szczytno i miasto Szczytno w powiecie szczycieńskim,
- powiat mrągowski,
- powiat węgorzewski,
- powiat olsztyński,
- powiat miejski Olsztyn,
- powiat nidzicki,
- gminy Kisielice, Susz, Zalewo w powiecie iławskim,
- część powiatu ostródzkiego niewymieniona w części III załącznika I,
- gmina Iłowo – Osada, część gminy wiejskiej Działdowo położona na południe od linii wyznaczonej przez linię kolejową biegnącą od wchodniej do zachodniej granicy gminy, część gminy Płońska położona na południe od linii wyznaczonej przez linię kolejową biegnącą od wchodniej do zachodniej granicy gminy, część gminy Lidzbark położona na południe od linii wyznaczonej przez drogę nr 544 biegnącą od wschodniej granicy gminy do skrzyżowania z drogą nr 541 oraz na zachód od linii wyznaczonej przez drogę nr 541 biegnącą od północnej granicy gminy do skrzyżowania z drogą nr 544 w powiecie działdowskim,

w województwie podlaskim:

- powiat bielski,
- powiat grajewski,
- powiat moniecki,
- powiat sejneński,
- gminy Łomża, Piątnica, Jedwabne, Przytuły i Wizna w powiecie łomżyńskim,
- powiat miejski Łomża,
- powiat siemiatycki,
- powiat hajnowski,
- gminy Ciechanowiec, Klukowo, Szepietowo, Kobylin-Borzymy, Nowe Piekuty, Sokoły i część gminy Kulesze Kościelne położona na północ od linii wyznaczonej przez linię kolejową w powiecie wysokomazowieckim,
- gmina Rutki i część gminy Kołaki Kościelne położona na północ od linii wyznaczonej przez linię kolejową w powiecie zambrowskim,
- gminy Mały Płock i Stawiski w powiecie kolneńskim,
- powiat białostocki,
- powiat suwalski,
- powiat miejski Suwałki,
- powiat augustowski,
- powiat sokólski,
- powiat miejski Białystok,

w województwie mazowieckim:

- gminy Domanice, Korczew, Kotuń, Mordy, Paprotnia, Przesmyki, Siedlce, Skórzec, Wiśniew, Wodynie, Zbuczyn w powiecie siedleckim,
- powiat miejski Siedlce,
- gminy Cerańów, Jabłonna Lacka, Kosów Lacki, Repki, Sabnie, Sterdyń w powiecie sokołowskim,
- powiat łosicki,
- powiat sochaczewski,
- powiat zwolenński,
- powiat kozienicki,
- powiat lipski,
- powiat radomski,
- powiat miejski Radom,
- powiat szydłowiecki,
- gminy Lubowidz i Kuczbork Osada w powiecie żuromińskim,
- gmina Wieczfnia Kościelna w powiecie mławskim,
- gminy Bodzanów, Słubice, Wyszogród i Mała Wieś w powiecie płockim,
- powiat nowodworski,
- gminy Czerwińsk nad Wisłą, Naruszewo, Załuski w powiecie płońskim,

- gminy: miasto Kobyłka, miasto Marki, miasto Żąbki, miasto Zielonka, część gminy Tłuszcz ograniczona liniami kolejowymi: na północ od linii kolejowej biegnącej od wschodniej granicy gminy do miasta Tłuszcz oraz na wschód od linii kolejowej biegnącej od północnej granicy gminy do miasta Tłuszcz, część gminy Jadów położona na północ od linii kolejowej biegnącej od wschodniej do zachodniej granicy gminy w powiecie wołomińskim,
- powiat garwoliński,
- gminy Boguty – Pianki, Brok, Zaręby Kościelne, Nur, Małkinia Górna, część gminy Wąsewo położona na południe od linii wyznaczonej przez drogę nr 60, część gminy wiejskiej Ostrów Mazowiecka położona na południe od miasta Ostrów Mazowiecka i na południe od linii wyznaczonej przez drogę 60 biegnącą od zachodniej granicy miasta Ostrów Mazowiecka do zachodniej granicy gminy w powiecie ostrowskim,
- część gminy Sadowne położona na północny- zachód od linii wyznaczonej przez linię kolejową, część gminy Łochów położona na północny – zachód od linii wyznaczonej przez linię kolejową w powiecie węgrowskim,
- gminy Brańszczyk, Długosiodło, Rząśnik, Wyszków, część gminy Zabrodzie położona na wschód od linii wyznaczonej przez drogę nr S8 w powiecie wyszkowskim,
- gminy Ceglów, Dębe Wielkie, Halinów, Latowicz, Mińsk Mazowiecki i miasto Mińsk Mazowiecki, Mrozy, Siennica, miasto Sulejówkę w powiecie mińskim,
- powiat otwocki,
- powiat warszawski zachodni,
- powiat legionowski,
- powiat piaseczyński,
- powiat pruszkowski,
- powiat grójecki,
- powiat grodziski,
- powiat zyrardowski,
- powiat białobrzegi,
- powiat przysuski,
- powiat miejski Warszawa,
- w województwie lubelskim:
 - powiat bialski,
 - powiat miejski Biała Podlaska,
 - gminy Batorz, Godziszów, Janów Lubelski, Modliborzyce w powiecie janowskim,
 - powiat puławski,
 - powiat rycki,
 - powiat łukowski,
 - powiat lubelski,
 - powiat miejski Lublin,
 - powiat lubartowski,
 - powiat łęczyński,
 - powiat świdnicki,
 - gminy Aleksandrów, Biszczka, Józefów, Księżpól, Łukowa, Obsza, Potok Górny, Tarnogród w powiecie biłgorajskim,
 - gminy Dołhobyczów, Mircze, Trzeszczany, Uchanie i Werbkowice w powiecie hrubieszowskim,
 - powiat krasnostawski,

- powiat chełmski,
- powiat miejski Chełm,
- powiat tomaszowski,
- część powiatu kraśnickiego niewymieniona w części III załącznika I,
- powiat opolski,
- powiat parczewski,
- powiat włodawski,
- powiat radzyński,
- powiat miejski Zamość,
- gminy Adamów, Grabowiec, Komarów – Osada, Krasnobród, Łabunie, Miączyn, Nielisz, Sitno, Skierbieszów, Stary Zamość, Zamość w powiecie zamojskim,

w województwie podkarpackim:

- część powiatu stalowowolskiego niewymieniona w części III załącznika I,
- gminy Cieszanów, Horyniec - Zdrój, Naroń, Stary Dzików, Oleszyce, Lubaczów z miastem Lubaczów w powiecie lubaczowskim,
- gminy Medyka, Stubno, część gminy Orły położona na wschód od linii wyznaczonej przez drogę nr 77, część gminy Żurawica na wschód od linii wyznaczonej przez drogę nr 77 w powiecie przemyskim,
- gminy Chłopice, Jarosław z miastem Jarosław, Pawłosiów i Wiązownice w powiecie jarosławskim,
- gmina Kamień w powiecie rzeszowskim,
- gminy Cmolas, Dzikowiec, Kolbuszowa, Majdan Królewski i Niwiska powiecie kolbuszowskim,
- powiat leżański,
- powiat niżański,
- powiat tarnobrzewski,
- gminy Adamówka, Sieniawa, Tryńcza, Przeworsk z miastem Przeworsk, Zarzecze w powiecie przeworskim,
- część gminy Sędziszów Małopolski położona na północ od linii wyznaczonej przez drogę nr A4, część gminy Ostrów nie wymieniona w części III załącznika I w powiecie ropczycko – sędziszowskim,

w województwie małopolskim:

- gminy Nawojowa, Piwniczna Zdrój, Rytro, Stary Sącz, część gminy Łącko położona na południe od linii wyznaczonej przez rzekę Dunajec w powiecie nowosądeckim,
- gmina Szczawnica w powiecie nowotarskim,

w województwie pomorskim:

- gminy Dzierżgoń i Stary Dzierżgoń w powiecie sztumskim,
- gmina Stare Pole, część gminy Nowy Staw położona na wschód od linii wyznaczonej przez drogę nr 55 w powiecie malborskim,
- gminy Stegny, Sztutowo i część gminy Nowy Dwór Gdański położona na północny - wschód od linii wyznaczonej przez drogę nr 55 biegnącą od południowej granicy gminy do skrzyżowania z drogą nr 7, następnie przez drogę nr 7 i S7 biegnącą do zachodniej granicy gminy w powiecie nowodworskim,

w województwie świętokrzyskim:

- gmina Tarłów i część gminy Ożarów położona na północ od linii wyznaczonej przez drogę nr 74 biegnącą od miejscowości Honorów do zachodniej granicy gminy w powiecie opatowskim,

- część gminy Brody położona wschód od linii wyznaczonej przez drogę nr 9 i na północny - wschód od linii wyznaczonej przez drogę nr 0618T biegnącą od północnej granicy gminy do skrzyżowania w miejscowości Lipie oraz przez drogę biegnącą od miejscowości Lipie do wschodniej granicy gminy i część gminy Mirzec położona na wschód od linii wyznaczonej przez drogę nr 744 biegnącą od południowej granicy gminy do miejscowości Tychów Stary a następnie przez drogę nr 0566T biegnącą od miejscowości Tychów Stary w kierunku północno - wschodnim do granicy gminy w powiecie starachowickim,
- gmina Gowarczów, część gminy Końskie położona na wschód od linii kolejowej, część gminy Stąporków położona na północ od linii kolejowej w powiecie koneckim,
- gminy Dwikozy i Zawichost w powiecie sandomierskim,

w województwie lubuskim:

- gminy Bogdaniec, Deszczno, Kłodawa, Kostrzyn nad Odrą, Santok, Witnica w powiecie gorzowskim,
- powiat miejski Gorzów Wielkopolski,
- gminy Drezdenko, Strzelce Krajeńskie, Stare Kurowo, Zwierzyn w powiecie strzelecko - drezdeneckim,
- powiat żarski,
- powiat ślubicki,
- gminy Brzeźnica, Iłowa, Gozdnicza, Wymiarki i miasto Żagań w powiecie żagańskim,
- powiat krośnieński,
- powiat zielonogórski
- powiat miejski Zielona Góra,
- powiat nowosolski,
- część powiatu sulęcińskiego niewymieniona w części III załącznika I,
- część powiatu międzyrzeckiego niewymieniona w części III załącznika I,
- część powiatu świebodzińskiego niewymieniona w części III załącznika I,
- powiat wschowski,

w województwie dolnośląskim:

- powiat zgorzelecki,
- gminy Gaworzyce, Grębocice, Polkowice i Radwanice w powiecie polkowickim,
- część powiatu wołowskiego niewymieniona w części III załącznika I,
- gmina Jeżów Sudecki w powiecie karkonoskim,
- gminy Rudna, Ścinawa, miasto Lubin i część gminy Lubin niewymieniona w części III załącznika I w powiecie lubińskim,
- gmina Malczyce, Miękinia, Środa Śląska, część gminy Kostomłoty położona na północ od linii wyznaczonej przez drogę nr A4, część gminy Udanin położona na północ od linii wyznaczonej przez drogę nr A4 w powiecie średzkim,
- gmina Wądroże Wielkie w powiecie jaworskim,
- gminy Kunice, Legnickie Pole, Prochowice, Ruja w powiecie legnickim,
- gminy Wisznia Mała, Trzebnica, Zawonia, część gminy Oborniki Śląskie położona na południe od linii wyznaczonej przez drogę nr 340 w powiecie trzebnickim,
- gminy Leśna, Lubań i miasto Lubań, Olszyna, Platerówka, Siekierczyn w powiecie lubańskim,
- powiat miejski Wrocław,

- gminy Czernica, Długołęka, Siechnice, część gminy Żórawina położona na wschód od linii wyznaczonej przez autostradę A4, część gminy Kąty Wrocławskie położona na północ od linii wyznaczonej przez autostradę A4 w powiecie wrocławskim,
 - gminy Jelcz - Laskowice, Oława z miastem Oława i część gminy Domaniów położona na północny wschód od linii wyznaczonej przez autostradę A4 w powiecie oławskim,
 - gmina Bierutów, miasto Oleśnica, część gminy wiejskiej Oleśnica położona na południe od linii wyznaczonej przez drogę nr S8, część gminy Dobroszyce położona na zachód od linii wyznaczonej przez linię kolejową biegnącą od północnej do południowej granicy gminy w powiecie oleśnickim,
 - gmina Cieszków, Krośnice, część gminy Milicz położona na wschód od linii łączącej miejscowości Poradów – Piotrkosice – Sulimierz – Sułów - Gruszcza w powiecie milickim,
 - część powiatu bolesławieckiego niewymieniona w części III załącznika I,
 - powiat głogowski,
 - gmina Niechlów w powiecie górowskim,
 - gmina Świerzawa, Wojcieszów, część gminy Zagrodno położona na zachód od linii wyznaczonej przez drogę łączącą miejscowości Jadwisin – Modlikowice Zagrodno oraz na zachód od linii wyznaczonej przez drogę nr 382 biegnącą od miejscowości Zagrodno do południowej granicy gminy w powiecie złotoryjskim,
 - gmina Gryfów Śląski, Lubomierz, Lwówek Śląski, Wleń w powiecie lwóweckim,
 - gminy Czarny Bór, Stare Bogaczowice, Walim, miasto Boguszów - Gorce, miasto Jedlina – Zdrój, miasto Szczawno – Zdrój w powiecie wałbrzyskim,
 - powiat miejski Wałbrzych,
 - gmina Świdnica, miasto Świdnica, miasto Świebodzice w powiecie świdnickim,
- w województwie wielkopolskim:
- gminy Siedlec, Wolsztyn, część gminy Przemęt położona na zachód od linii wyznaczonej przez drogę łączącą miejscowości Borek – Kluczewo – Sączkowo – Przemęt – Błotnica – Starkowo – Boszkowo – Letnisko w powiecie wolsztyńskim,
 - gmina Wielichowo, Rakoniewice, Granowo, część gminy Kamieniec położona na zachód od linii wyznaczonej przez drogę nr 308 w powiecie grodziskim,
 - część powiatu międzychodzkiego niewymieniona w części III załącznika I,
 - część powiatu nowotomyskiego niewymieniona w części III załącznika I,
 - powiat obornicki,
 - część gminy Połajewo na południe od drogi łączącej miejscowości Chraplewo, Tarnówko-Boruszyn, Krosin, Jakubowo, Połajewo - ul. Ryczywolska do północno-wschodniej granicy gminy w powiecie czarnkowsko-trzcianeckim,
 - powiat miejski Poznań,
 - gminy Buk, Czerwonak, Dopiewo, Komorniki, Rokietnica, Stęszew, Swarzędz, Suchy Las, Tarnowo Podgórne, część gminy wiejskiej Murowana Goślina położona na północ od linii kolejowej biegnącej od północnej granicy miasta Murowana Goślina do północno-wschodniej granicy gminy w powiecie poznańskim,
 - gminy
 - część powiatu szamotulskiego niewymieniona w części I i III załącznika I,
 - gmina Pępowo w powiecie gostyńskim,
 - gminy Kobylin, Zduny, część gminy Krotoszyn położona na zachód od linii wyznaczonej przez drogi: nr 15 biegnącą od północnej granicy gminy do skrzyżowania z drogą nr 36, nr 36 biegnącą od skrzyżowania z drogą nr 15 do skrzyżowania z drogą nr 444, nr 444 biegnącą od skrzyżowania z drogą nr 36 do południowej granicy gminy w powiecie krotoszyńskim,

— gmina Wijewo w powiecie leszczyńskim,

w województwie łódzkim:

— gminy Białaczów, Drzewica, Opoczno i Poświętne w powiecie opoczyńskim,

— gminy Biała Rawska, Regnów i Sadkowice w powiecie rawskim,

— gmina Kowiesy w powiecie skierniewickim,

w województwie zachodniopomorskim:

— gmina Boleszkowice i część gminy Dębno położona na zachód od linii wyznaczonej przez drogę nr 126 biegnącą od zachodniej granicy gminy do skrzyżowania z drogą nr 23 w miejscowości Dębno, następnie na zachód od linii wyznaczonej przez drogę nr 23 do skrzyżowania z ul. Jana Pawła II w miejscowości Cychry, następnie na południe od ul. Jana Pawła II do skrzyżowania z ul. Ogrodową i dalej na południe od linii wyznaczonej przez ul. Ogrodową, której przedłużenie biegnie do wschodniej granicy gminy w powiecie myśliborskim,

— gminy Cedynia, Gryfino, Mieszkowice, Moryń, część gminy Chojna położona na zachód od linii wyznaczonej przez drogi nr 31 biegnącą od północnej granicy gminy i 124 biegnącą od południowej granicy gminy w powiecie gryfińskim,

w województwie opolskim:

— gminy Brzeg, Lubsza, Lewin Brzeski, Olszanka, Skarbimierz w powiecie brzeskim,

— gminy Dąbrowa, Dobrzeń Wielki, Popielów w powiecie opolskim,

— gminy Świerczów, Wilków, część gminy Namysłów położona na południe od linii wyznaczonej przez linię kolejową biegnącą od wschodniej do zachodniej granicy gminy w powiecie namysłowskim.

8. Slovakia

The following restricted zones II in Slovakia:

— the whole district of Gelnica except municipalities included in zone III,

— the whole district of Poprad

— the whole district of Spišská Nová Ves,

— the whole district of Levoča,

— the whole district of Kežmarok

— in the whole district of Michalovce except municipalities included in zone III,

— the whole district of Košice-okolie,

— the whole district of Rožnava,

— the whole city of Košice,

— in the district of Sobrance: Remetské Hámre, Vyšná Rybnica, Hľivišťa, Ruská Bystrá, Podhorod', Choňkovce, Ruský Hrabovec, Inovce, Beňatina, Koňuš,

— the whole district of Vranov nad Topľou,

— the whole district of Humenné except municipalities included in zone III,

— the whole district of Snina,

— the whole district of Prešov except municipalities included in zone III,

— the whole district of Sabinov except municipalities included in zone III,

— the whole district of Svidník, except municipalities included in zone III,

— the whole district of Stropkov, except municipalities included in zone III,

— the whole district of Bardejov,

— the whole district of Stará Ľubovňa,

- the whole district of Revúca,
- the whole district of Rimavská Sobota except municipalities included in zone III,
- in the district of Veľký Krtíš, the whole municipalities not included in part I,
- the whole district of Lučenec,
- the whole district of Poltár,
- the whole district of Zvolen, except municipalities included in zone III,
- the whole district of Detva,
- the whole district of Krupina, except municipalities included in zone I,
- the whole district of Banská Stiavnica,
- in the district of Žiar nad Hronom the municipalities of Hronsá Dúbrava, Trnavá Hora,
- the whole district of Banská Bystrica, except municipalities included in zone III,
- the whole district of Brezno,
- the whole district of Liptovský Mikuláš.

9. Italy

The following restricted zones II in Italy:

Piedmont Region:

- in the Province of Alessandria, the municipalities of Cavatore, Castelnuovo Bormida, Cabella Ligure, Carrega Ligure, Francavilla Bisio, Carpeneto, Costa Vescovato, Grogna, Orsara Bormida, Pasturana, Melazzo, Mornese, Ovada, Predosa, Lerma, Fraconalto, Rivalta Bormida, Fresonara, Malvicino, Ponzzone, San Cristoforo, Sezzadio, Rocca Grimalda, Garbagna, Tassarolo, Mongiardino Ligure, Morsasco, Montaldo Bormida, Prasco, Montaldeo, Belforte Monferrato, Albera Ligure, Bosio, Cantalupo Ligure, Castelletto D'orba, Cartosio, Acqui Terme, Arquata Scrivia, Parodi Ligure, Ricaldone, Gavi, Cremolino, Brignano-Frascata, Novi Ligure, Molare, Cassinelle, Morbello, Avolasca, Carezzano, Basaluzzo, Dernice, Trisobbio, Strevi, Sant'Agata Fossili, Pareto, Visone, Voltaggio, Tagliolo Monferrato, Casaleggio Boiro, Capriata D'orba, Castellania, Carrosio, Cassine, Vignole Borbera, Serravalle Scrivia, Silvano D'orba, Villalvernia, Roccaforte Ligure, Rocchetta Ligure, Sardigliano, Stazzano, Borghetto Di Borbera, Grondona, Cassano Spinola, Montacuto, Gremiasco, San Sebastiano Curone, Fabbrica Curone, Spigno Monferrato, Montechiaro d'Acqui, Castelletto d'Erro, Ponti, Denice,
- in the province of Asti, the municipality of Mombaldone,

Liguria Region:

- in the province of Genova, the municipalities of Bogliasco, Arenzano, Ceranesi, Ronco Scrivia, Mele, Isola Del Cantone, Lumardo, Genova, Masone, Serra Riccò, Campo Ligure, Mignanego, Busalla, Bargagli, Savignone, Torriglia, Rossiglione, Sant'Olcese, Valbrevenna, Sori, Tiglieto, Campomorone, Cogoleto, Pieve Ligure, Davagna, Casella, Montoggio, Crocefieschi, Vobbia;
- in the province of Savona, the municipalities of Albisola Superiore, Celle Ligure, Stella, Pontinvrea, Varazze, Urbe, Sassello,

PART III

1. Bulgaria

The following restricted zones III in Bulgaria:

- in Blagoevgrad region:
 - the whole municipality of Sandanski
 - the whole municipality of Strumyani
 - the whole municipality of Petrich,
- the Pazardzhik region:
 - the whole municipality of Pazardzhik,
 - the whole municipality of Panagyurishte,

- the whole municipality of Lesichevo,
- the whole municipality of Septemvri,
- the whole municipality of Strelcha,
- in Plovdiv region
 - the whole municipality of Hisar,
 - the whole municipality of Suedinenie,
 - the whole municipality of Maritsa
 - the whole municipality of Rodopi,
 - the whole municipality of Plovdiv,
- in Varna region:
 - the whole municipality of Byala,
 - the whole municipality of Dolni Chiflik.

2. Germany

The following restricted zones III in Germany:

Bundesland Brandenburg:

- Landkreis Uckermark:
 - Gemeinde Schenkenberg mit den Gemarkungen Wittenhof, Schenkenberg, Baumgarten und Ludwigsburg,
 - Gemeinde Randowtal mit den Gemarkungen Eickstedt und Ziemkendorf,
 - Gemeinde Grünow,
 - Gemeinde Uckerfelde,
 - Gemeinde Gramzow westlich der K7315,
 - Gemeinde Oberuckersee mit den Gemarkungen Melzow, Warnitz, Blankenburg, Seehausen, Potzlow
 - Gemeinde Nordwestuckermark mit den Gemarkungen Zollchow, Röpersdorf, Louisenthal, Sternhagen, Schmachtenhagen, Lindenhagen, Beenz (NWU), Groß-Sperrenwalde und Thiesort-Mühle,
 - Gemeinde Prenzlau mit den Gemarkungen Blindow, Ellingen, Klinkow, Basedow, Güstow, Seelübbe und die Gemarkung Prenzlau.

3. Italy

The following restricted zones III in Italy:

- Sardinia Region: the whole territory
- Lazio Region: the Area of the Municipality of Rome within the administrative boundaries of the Local Health Unit "ASL RM1".

4. Latvia

The following restricted zones III in Latvia:

- Dienvidkurzemes novada Embūtes pagasta daļa uz ziemeļiem autoceļā P116, P106, autoceļā no apdzīvotas vietas Dinsdurbe, Kalvenes pagasta daļa uz austrumiem no ceļa pie Vārtājas upes līdz autoceļam A9, uz ziemeļiem no autoceļā A9, uz austrumiem no autoceļā V1200, Kazdangas pagasta daļa uz austrumiem no ceļa V1200, P115, P117, V1296,
- Kuldīgas novada Rudbāržu, Nīkrāces, Padures pagasts, Laidu pagasta daļa uz dienvidiem no autoceļā V1296, V1295, V1272, Raņķu pagasta daļa uz dienvidiem no autoceļā V1272 līdz robežai ar Ventas upi, Skrundas pagasts (izņemot pagasta daļu uz ziemeļaustrumiem no Skrundas, Cieceres upes un Ventas upes), Skrundas pilsēta, Ēdoles pagasta daļa uz austrumiem no autoceļā V1269, V1271, V1288, P119, Īvandes pagasta daļa uz ziemeļiem no autoceļā P119, Rumbas pagasta daļa uz ziemeļiem no autoceļā P120,

- Ventspils novada Zlēku pagasts, Ugāles pagasta daļa uz dienvidiem no autoceļa V1347, uz rietumiem no autoceļa P123, Ziru pagasta daļa uz austrumiem no autoceļa V1269, P108, Piltenes pagasta daļa uz dienvidiem no autoceļa V1310, V1309, autoceļa līdz Ventas upei,
- Alūksnes novada Jaunannas pagasta daļa uz dienvidaustrumiem no Pededzes upes,
- Balvu novada Kubulu, Viksnas, Bērzkālnes, Balvu pagasts, Balvu pilsēta,
- Gulbenes novada Litenes pagasta daļa uz austrumiem no Pededzes upes,
- Preiļu novada Silajāņu pagasts, Galēnu pagasta daļa uz austrumiem no autoceļa V740, V595, Rušonas pagasta daļa uz ziemeļiem no autoceļa V742,
- Rēzeknes novada Silmalas pagasts, Lūznavas pagasta daļa uz rietumiem no autoceļa A13 līdz apdzīvotai vietai Vertukšne, uz rietumiem no Vertukšnes ezera, Maltas pagasta daļa uz rietumiem no autoceļa Vertukšne – Rozentova un uz rietumiem no autoceļa P56, P57, V569, Feimaņu pagasta daļa uz ziemeļiem no autoceļa V577, V742.

5. Lithuania

The following restricted zones III in Lithuania:

- Jurbarko rajono savivaldybė: Jurbarko miesto seniūnija, Girdžių, Jurbarkų Raudonės, Skirsnemunės ir Šimkaičių seniūnijos,
- Molėtų rajono savivaldybė: Dubingių ir Giedraičių seniūnijos,
- Šakių rajono savivaldybė: Kidulių ir Gelgaudiškio seniūnijos; Šakių seniūnija: Juniškių, Bedalių, Zajošių, Kriaučėnų, Liukų, Gotlybiškių, Ritinių kaimai; Sudargo seniūnija: Pervazninkų kaimas, Barzdų, Griškabūdžio, Žvirgždaičių, Sintautų seniūnijos.
- Kazlų rūdų savivaldybė: Antanavos, Jankų seniūnijos ir Kazlų Rūdų seniūnija: Audiejiskės k., Aukštosios Išdagos k., Bagotosios k., Bartininkų k., Berštupio k., Beržnavienės k., Būdviečio II k., Geruliškės k., Girnupių k., Karklinių k., Kriauniškės k., Kučiškės k., Skindeliškės k., Stainiškės k., Stepiškės k., Šakmušio k., Šiaudadūšės k., Šliurpkiškės k.,
- Vilkaviškio rajono savivaldybė: Pilviškių, Klausučių seniūnijos.
- Širvintų rajono savivaldybė: Alionių ir Zibalų seniūnijos,
- Ukmergės rajono savivaldybė: Želvos seniūnija,
- Vilniaus rajono savivaldybė: Paberžės seniūnija.

6. Poland

The following restricted zones III in Poland:

w województwie zachodniopomorskim:

- gminy Banie, Trzcińsko – Zdrój, Widuchowa, część gminy Chojna położona na wschód linii wyznaczonej przez drogi nr 31 biegnącą od północnej granicy gminy i 124 biegnącą od południowej granicy gminy w powiecie gryfińskim,

w województwie warmińsko-mazurskim:

- część powiatu działdowskiego niewymieniona w części II załącznika I,
- część powiatu iławskiego niewymieniona w części II załącznika I,
- powiat nowomiejski,
- gminy Dąbrówno, Grunwald i Ostróda z miastem Ostróda w powiecie ostródzkim,

w województwie lubelskim:

- gminy Radecznica, Sułów, Szczepieszyn, Zwierzyniec w powiecie zamojskim,
- gminy Biłgoraj z miastem Biłgoraj, Goraj, Frampol, Teresopol i Turobin w powiecie biłgorajskim,
- gminy Horodło, Hrubieszów z miastem Hrubieszów w powiecie hrubieszowskim,
- gminy Dzwola, Chrzanów i Potok Wielki w powiecie janowskim,

— gminy Gościeradów i Trzydnik Duży w powiecie kraśnickim,

w województwie podkarpackim:

— powiat mielecki,

— gminy Radomyśl nad Sanem i Zaklików w powiecie stalowowolskim,

— część gminy Ostrów położona na północ od linii wyznaczonej przez drogę nr A4 biegnącą od zachodniej granicy gminy do skrzyżowania z drogą nr 986, a następnie na zachód od linii wyznaczonej przez drogę nr 986 biegnącą od tego skrzyżowania do miejscowości Osieka i dalej na zachód od linii wyznaczonej przez drogę łączącą miejscowości Osieka- Blizna w powiecie ropczycko – sędziszowskim,

— część gminy Czarna położona na północ wyznaczonej przez drogę nr A4, część gminy Żyraków położona na północ od linii wyznaczonej przez drogę nr A4, część gminy wiejskiej Dębica położona na północ od linii wyznaczonej przez drogę nr A4 w powiecie dębickim

— gmina Wielkie Oczy w powiecie lubaczowskim,

— gminy Laszki, Radymno z miastem Radymno, w powiecie jarosławskim,

w województwie lubuskim:

— gminy Małomice, Niegosławice, Szprotawa, Żagań w powiecie żagańskim,

— gmina Sulęcín w powiecie sulęcińskim,

— gminy Bledzew, Międzyrzecz, Pszczew, Trzciel w powiecie międzyrzeckim,

— część gminy Lubrza położona na północ od linii wyznaczonej przez drogę nr 92, część gminy Łągów położona na północ od linii wyznaczonej przez drogę nr 92, część gminy Świebodzin położona na północ od linii wyznaczonej przez drogę nr 92 w powiecie świebodzińskim,

w województwie wielkopolskim:

— gminy Krzemieniewo, Lipno, Osieczna, Rydzyna, Świąciechowa, Włoszakowice w powiecie leszczyńskim,

— powiat miejski Leszno,

— gminy Kościan i miasto Kościan, Krzywiń, Śmigiel w powiecie kościańskim,

— część gminy Dolsk położona na zachód od linii wyznaczonej przez drogę nr 434 biegnącą od północnej granicy gminy do skrzyżowania z drogą nr 437, a następnie na zachód od drogi nr 437 biegnącej od skrzyżowania z drogą nr 434 do południowej granicy gminy, część gminy Śrem położona na zachód od linii wyznaczonej przez drogę nr 310 biegnącą od zachodniej granicy gminy do miejscowości Śrem, następnie na zachód od drogi nr 432 w miejscowości Śrem oraz na zachód od drogi nr 434 biegnącej od skrzyżowania z drogą nr 432 do południowej granicy gminy w powiecie śremskim,

— gminy Gostyń, Krobia i Poniec w powiecie gostyńskim,

— część gminy Przemęt położona na wschód od linii wyznaczonej przez drogę łączącą miejscowości Borek – Kluczewo – Sączkowo – Przemęt – Błotnica – Starkowo – Boszkowo – Letnisko w powiecie wolsztyńskim,

— powiat rawicki,

— gminy Kuślin, Lwówek, Miedzichowo, Nowy Tomyśl w powiecie nowotomyskim,

— gminy Chrzypsko Wielkie, Kwilcz w powiecie międzychodzkim,

— ,

— gmina Pniewy, część gminy Duszniki położona na północ od linii wyznaczonej przez autostradę A2 oraz na zachód od linii wyznaczonej przez drogę biegnącą od wschodniej granicy gminy, łączącą miejscowości Ceradz Kościelny – Grzebienisko – Wierzeja – Wilkowo, biegnącą do skrzyżowania z autostradą A2, część gminy Kaźmierz położona na zachód od linii wyznaczonej przez rzekę Sarna, część gminy Ostroróg położona na południe od linii wyznaczonej przez drogę nr 184 biegnącą od południowej granicy gminy do skrzyżowania z drogą nr 116 oraz na południe od

linii wyznaczonej przez drogę nr 116 biegnącą od skrzyżowania z drogą nr 184 do zachodniej granicy gminy, część gminy Szamotuły położona na zachód od linii wyznaczonej przez rzekę Sarna biegnącą od południowej granicy gminy do przecięcia z drogą nr 184 oraz na zachód od linii wyznaczonej przez drogę nr 184 biegnącą od przecięcia z rzeką Sarna do północnej granicy gminy w powiecie szamotulskim,

w województwie dolnośląskim:

- część powiatu górowskiego niewymieniona w części II załącznika I,
- część gminy Lubin położona na południe od linii wyznaczonej przez drogę nr 335 biegnącą od zachodniej granicy gminy do granicy miasta Lubin oraz na zachód od linii wyznaczonej przez drogę nr 333 biegnącą od granicy miasta Lubin do południowej granicy gminy w powiecie lubińskim
- gminy Prusice, Żmigród, część gminy Oborniki Śląskie położona na północ od linii wyznaczonej przez drogę nr 340 w powiecie trzebnickim,
- część gminy Zagrodno położona na wschód od linii wyznaczonej przez drogę łączącą miejscowości Jadwisin – Modlikowice - Zagrodno oraz na wschód od linii wyznaczonej przez drogę nr 382 biegnącą od miejscowości Zagrodno do południowej granicy gminy, część gminy wiejskiej Złotoryja położona na wschód od linii wyznaczonej przez drogę biegnącą od północnej granicy gminy w miejscowości Nowa Wieś Złotoryjska do granicy miasta Złotoryja oraz na północ od linii wyznaczonej przez drogę nr 382 biegnącą od granicy miasta Złotoryja do wschodniej granicy gminy w powiecie złotoryjskim
- gminy Gromadka i Osiecznica w powiecie bolesławieckim,
- gminy Chocianów i Przemków w powiecie polkowickim,
- gminy Chojnów i miasto Chojnów, Krotoszyce, Miłkowice w powiecie legnickim,
- powiat miejski Legnica,
- część gminy Wołów położona na wschód od linii wyznaczonej przez linię kolejową biegnącą od północnej do południowej granicy gminy, część gminy Wińsko położona na południe od linii wyznaczonej przez drogę nr 36 biegnącą od północnej do zachodniej granicy gminy, część gminy Brzeg Dolny położona na wschód od linii wyznaczonej przez linię kolejową od północnej do południowej granicy gminy w powiecie wołowskim,
- część gminy Milicz położona na zachód od linii wyznaczonej przez drogę łączącą miejscowości Poradów – Piotrkosice - Sulimierz-Sulów - Gruszcza w powiecie milickim,

w województwie świętokrzyskim:

- gminy Gnojno, Pacanów w powiecie buskim,
- gminy Łubnice, Oleśnica, Połaniec, część gminy Rytwiany położona na zachód od linii wyznaczonej przez drogę nr 764, część gminy Szydłów położona na zachód od linii wyznaczonej przez drogę nr 756 w powiecie staszowskim,
- gminy Chmielnik, Masłów, Miedziana Góra, Mniów, Łopuszno, Piekoszów, Pierzchnica, Sitkówka-Nowiny, Strawczyn, Zagnańsk, część gminy Raków położona na zachód od linii wyznaczonej przez drogi nr 756 i 764, część gminy Chęciny położona na północ od linii wyznaczonej przez drogę nr 762, część gminy Górnio położona na północ od linii wyznaczonej przez drogę biegnącą od wschodniej granicy gminy łączącą miejscowości Leszczyna – Cedzyna oraz na północ od linii wyznaczonej przez ul. Kielecką w miejscowości Cedzyna biegnącą do wschodniej granicy gminy, część gminy Daleszyce położona na południe od linii wyznaczonej przez drogę nr 764 biegnącą od wschodniej granicy gminy do skrzyżowania z drogą łączącą miejscowości Daleszyce – Słopiec – Borków, dalej na południe od linii wyznaczonej przez tę drogę biegnącą od skrzyżowania z drogą nr 764 do przecięcia z linią rzeki Belnianka, następnie na południe od linii wyznaczonej przez rzeki Belnianka i Czarna Nida biegnącej do zachodniej granicy gminy w powiecie kieleckim,
- powiat miejski Kielce,

- gminy Krasocin, część gminy Włoszczowa położona na wschód od linii wyznaczonej przez drogę nr 742 biegnącą od północnej granicy gminy do miejscowości Konieczno i dalej na wschód od linii wyznaczonej przez drogę łączącą miejscowości Konieczno – Rogienice – Dąbie – Podłazie, część gminy Kluczewsko położona na południe od linii wyznaczonej przez drogę biegnącą od wschodniej granicy gminy i łączącą miejscowości Krogulec – Nowiny - Komorniki do przecięcia z linią rzeki Czarna, następnie na południe od linii wyznaczonej przez rzekę Czarna biegnącą do przecięcia z linią wyznaczoną przez drogę nr 742 i dalej na wschód od linii wyznaczonej przez drogę nr 742 biegnącą od przecięcia z linią rzeki Czarna do południowej granicy gminy w powiecie włoszczowskim,
 - gmina Kije w powiecie pińczowskim,
 - gminy Małogoszcz, Oksa w powiecie jędrzejowskim,
- w województwie małopolskim:
- gminy Dąbrowa Tarnowska, Radgoszcz, Szczucin w powiecie dąbrowskim.

7. Romania

The following restricted zones III in Romania:

- Zona oraşului Bucureşti,
- Judeţul Constanţa,
- Judeţul Satu Mare,
- Judeţul Tulcea,
- Judeţul Bacău,
- Judeţul Bihor,
- Judeţul Bistriţa Năsăud,
- Judeţul Brăila,
- Judeţul Buzău,
- Judeţul Călăraşi,
- Judeţul Dâmboviţa,
- Judeţul Galaţi,
- Judeţul Giurgiu,
- Judeţul Ialomiţa,
- Judeţul Ilfov,
- Judeţul Prahova,
- Judeţul Sălaj,
- Judeţul Suceava
- Judeţul Vaslui,
- Judeţul Vrancea,
- Judeţul Teleorman,
- Judeţul Mehedinţi,
- Judeţul Gorj,
- Judeţul Argeş,
- Judeţul Olt,
- Judeţul Dolj,
- Judeţul Arad,
- Judeţul Timiş,
- Judeţul Covasna,
- Judeţul Braşov,
- Judeţul Botoşani,

- Județul Vâlcea,
- Județul Iași,
- Județul Hunedoara,
- Județul Alba,
- Județul Sibiu,
- Județul Caraș-Severin,
- Județul Neamț,
- Județul Harghita,
- Județul Mureș,
- Județul Cluj,
- Județul Maramureș.

8. Slovakia

The following restricted zones III in Slovakia:

- The whole district of Trebišov,
- The whole district of Vranov and Topľou,
- In the district of Humenné: Lieskovec, Myslina, Humenné, Jasenov, Brekov, Závadka, Topoľovka, Hudcovce, Ptičie, Chlmec, Porúbka, Brestov, Gruzovce, Ohradzany, Slovenská Volová, Karná, Lackovce, Kochanovce, Hažín nad Cirochou, Závada, Nižná Sitnica, Vyšná Sitnica, Rohožník, Prituľany, Ruská Poruba, Ruská Kajňa,
- In the district of Michalovce: Strážske, Staré, Oreské, Zbudza, Voľa, Nacina Ves, Pusté Čemerné, Lesné, Rakovec nad Ondavou, Petříkovce, Oborín, Veľké Raškovce, Beša, Petrovce nad Laborcom, Trnava pri Laborci, Vinné, Kaluža, Klokočov, Kusín, Jovsa, Poruba pod Vihorlatom, Hojné, Lúčky, Závadka, Hažín, Zalužice, Michalovce, Krásnovce, Šamudovce, Vrbnica, Žbince, Lastomír, Zemplínska Široká, Čechov, Jastrabie pri Michalovciach, Iňačovce, Senné, Palín, Sliepkovce, Hatalov, Budkovce, Stretava, Stretávka, Pavlovce nad Uhom, Vysoká nad Uhom, Bajany,
- In the district of Rimavská Sobota: Jesenské, Gortva, Hodejov, Hodejovec, Širkovce, Šimonovce, Drňa, Hostice, Gemerské Dechtáre, Jestice, Dubovec, Rimavské Janovce, Rimavská Sobota, Belín, Pavlovce, Sutor, Bottovo, Dúžava, Mojín, Konrádovce, Čierny Potok, Blhovce, Gemerček, Hajnáčka,
- In the district of Gelnica: Hrišovce, Jaklovce, Kluknava, Margecany, Richnava,
- In the district Of Sabinov: Daletice,
- In the district of Prešov: Hrabkov, Krížovany, Žipov, Kvačany, Ondrašovce, Chminianske Jakubovany, Klenov, Bajerov, Bertotovce, Brežany, Bzenov, Fričovce, Hendrichovce, Hermanovce, Chmiňany, Chminianska Nová Ves, Janov, Jarovnice, Kojatice, Lažany, Mikušovce, Ovčie, Rokycany, Sedlice, Suchá Dolina, Svinia, Šindliar, Široké, Štefanovce, Vítaz, Župčany,
- the whole district of Medzilaborce,
- In the district of Stropkov: Havaj, Malá Poľana, Bystrá, Mikové, Varechovce, Vladiča, Staškovce, Makovce, Veľkrop, Solník, Korunková, Bukovce, Krišľovce, Jakušovce, Kolbovce,
- In the district of Svidník: Pstruša,
- In the district of Zvolen: Očová, Zvolen, Sliač, Veľká Lúka, Lukavica, Sielnica, Železná Breznica, Trnie, Turová, Kováčová, Budča, Hronská Breznica, Ostrá Lúka, Bacúrov, Breziny, Podzámčok, Michalková, Zvolenská Slatina, Lieskovec,
- In the district of Banská Bystrica: Sebedín-Bečov, Čerín, Dúbravica, Oravce, Môlča, Horná Mičiná, Dolná Mičiná, Vlkánová, Hronsek, Badín, Horné Pršany, Malachov, Banská Bystrica,
- The whole district of Sobrance except municipalities included in zone II.'

DECISIONS

COMMISSION DECISION (EU) 2022/1414

of 4 December 2020

ON AID SCHEME SA.21259 (2018/C) (ex 2018/NN) implemented by Portugal for Zona Franca da Madeira (ZFM) – Regime III

(notified under document C(2020) 8550)

(Only the Portuguese 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 Article 108(2) of the Treaty on the Functioning of the European Union ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) By letter dated 12 March 2015, the Commission asked information from Portugal, in the context of the 2015 monitoring exercise ('2015 monitoring') ⁽²⁾, in view of examining whether the Zona Franca da Madeira scheme ('ZFM scheme' or 'Regime III'), approved by the Commission as compatible regional aid, respected the applicable rules and, in particular, the Commission Decision of 27 June 2007 ⁽³⁾ ('2007 Commission Decision'), applicable from 1 January 2007 until 31 December 2013, and the Commission Decision of 2 July 2013 ⁽⁴⁾ ('2013 Commission Decision'), applicable from 1 January 2013 until 31 December 2013. In a first step, the Commission asked for information on the legal framework of the scheme ⁽⁵⁾, and at a second step examined its implementation by choosing a sample of 26 beneficiaries that benefited from the ZFM scheme in the years 2012 and 2013.

⁽¹⁾ OJ C 101, 15.3.2019, p. 7.

⁽²⁾ Under Article 108(1) TFEU, 'the Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States'. See also Article 21(1) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9). To that end, the Commission examines regularly, based on a sample of schemes, whether Member States correctly apply the State aid rules both in terms of compliance of national legislation and in terms of the individual aid awards, the latter based on a sample of beneficiaries. The 2015 monitoring covered the years 2012 and 2013.

⁽³⁾ Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty Cases where the Commission raises no objections (OJ C 240, 12.10.2007, p. 1).

⁽⁴⁾ Authorisation for State aid pursuant to Articles 107 and 108 of the TFEU Cases where the Commission raises no objections (OJ C 220, 1.8.2013, p. 1).

⁽⁵⁾ Article 36 of the Tax Incentives Statute (*Estatuto dos Benefícios Fiscais*, 'EBF') approved by Decree Law No 215/89 of 1 July 1989, as republished by Decree Law No 108/2008 of 26 June, and amended by Law No 83/2013 of 9 December. See also Decree Law No 165/86 of 26 June, as amended by Article 2 of Law No 55/2013 of 8 August, and Order No 46/2010 of 18 August of the Regional Secretariat for Finances (*Secretaria Regional do Plano e das Finanças*).

- (2) Portugal submitted information on 4 May 2015. The Commission services requested additional information on 5 June, to which Portugal replied on 6 July. On 1 October 2015, the Commission sent another request for information to which Portugal replied on 29 October. On 29 February 2016, the Commission services requested additional information to which Portugal replied on 1, 8 and 12 April 2016. Following the Commission services' requests for supplementary information on 29 March and 11 August 2017, Portugal submitted information on 2 May and 11 September 2017, respectively. Following a conference call it had with the Portuguese authorities on 26 October 2017, the Commission sent to Portugal another request for information on 27 October, to which Portugal replied on 21 and 22 November 2017. Following a meeting between the Commission and the Portuguese authorities on 4 December 2017, Portugal requested an extension of the deadline to submit the missing information until the end of December 2017. On 7 December 2017, the Commission services sent to the Portugal the questions on which replies were still expected. Portugal submitted information on 2 February 2018. Following the request of Portugal, another meeting between the Commission and the Portuguese authorities took place on 27 March 2018.
- (3) By letter dated 6 July 2018, the Commission informed Portugal that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (TFUE) in respect of the ZFM scheme ('the Opening Decision') ⁽⁶⁾.
- (4) By letter dated 30 July 2018, the Portuguese authorities noted that the complete text of the Opening Decision constituted, in their view, confidential information and requested the Commission to abstain from publishing that Commission Decision and only publish a succinct summary of it, the text of which they proposed.
- (5) By letter dated 11 September 2018, Portugal provided a list of all companies registered in the ZFM for the period of 2007 to 2014 and the list of the 25 largest aid beneficiaries in the years 2007 to 2011 and 2014, as requested in points 1 and 2 of paragraph 64 of the Opening Decision. Portugal further requested an extension of the deadline to submit the missing information until the end of September 2018. Portugal's comments on the opening procedure pursuant to Article 108(2) TFEU and on the information requested in points 3 to 7 of paragraph 64 of the Opening Decision were submitted on 26 September 2018.
- (6) By letter dated 11 February 2019 ⁽⁷⁾, following extensive discussions with Portugal on issues of confidentiality relating to the Opening Decision and without an agreement on them, the Commission informed Portugal that it had decided to reject the confidentiality request presented by the Portuguese authorities and to publish the decision as adopted on 6 July 2018. Portugal abstained from introducing an action against the decision in the Union Courts and agreed with its publication by letter dated 5 March 2019.
- (7) On 15 March 2019, the Opening Decision was published in the *Official Journal of the European Union* ⁽⁸⁾. The Commission invited interested parties to submit their comments on the aid scheme.
- (8) Following the request of Portugal, another meeting between the Commission and the Portuguese authorities took place on 10 April 2019. In the course of the meeting, Portugal was reminded to provide the missing information requested in paragraph 64 of the Opening Decision. Following that meeting, by letter dated 24 April 2019 Portugal provided data regarding tax controls conducted by national tax authorities on ZFM beneficiaries. In addition, Portugal provided, for the same period, data on divergences detected in ZFM companies' tax returns and additional elements on corrections on the tax due by ZFM taxpayers.
- (9) The Commission received comments from interested parties. By letters dated 23 May and 12 June 2019, the Commission forwarded them to Portugal, which was given the opportunity to react. Portugal's comments were received by letter dated 26 June 2019.

⁽⁶⁾ State Aid — Portugal — State Aid SA.21259 (2018/C) (ex 2018/NN) — Zona Franca da Madeira (ZFM) — Regime III — Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union (OJ C 101, 15.3.2019, p. 7)

⁽⁷⁾ C(2019) 1066 final (not subject to publication in the Official Journal).

⁽⁸⁾ State Aid — Portugal, State Aid SA.21259 (2018/C) (ex 2018/NN) — Zona Franca da Madeira (ZFM) — Regime III — Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union — Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union (OJ C 101, 15.3.2019, p. 7).

2. DETAILED DESCRIPTION OF THE AID SCHEME

2.1. The ZFM scheme under the 2007 Commission Decision

- (10) Following the notification submitted by Portugal, the Commission approved in 2007 the ZFM scheme ⁽⁹⁾ for the period from 1 January 2007 until 31 December 2013, on the basis of the Guidelines on national regional aid for 2007-2013 ⁽¹⁰⁾ (Regional Aid Guidelines, '2007 RAG'). The companies registered and authorised under the scheme before 31 December 2013 ⁽¹¹⁾ could benefit from a corporate tax reduction or other tax exemptions, as described in recital 12 of this Decision, until 31 December 2020.
- (11) The Commission approved the ZFM scheme as compatible operating aid aiming at the promotion of regional development and diversification of the economic structure of Madeira. As the Autonomous Region of Madeira ('ARM') is an outermost region defined by Article 299(2) of the Treaty establishing the European Economic Community ('EC Treaty') (now Article 349 TFEU), it is eligible for regional operating aid under Article 87(3)(a) of the EC Treaty (now Article 107(3)(a) TFEU). Regional operating aid is intended to offset, for undertakings pursuing their economic activity in that region, the additional costs arising from the outermost regions structural handicaps ⁽¹²⁾.
- (12) The ZFM scheme, as approved by the Commission in 2007, authorised aid in the form of reduced corporate income tax ⁽¹³⁾ on profits resulting from activities effectively and materially performed in Madeira ⁽¹⁴⁾, exemption from municipal and local taxes, as well as exemption from transfer tax payable on immovable property for setting up of a business in the ZFM ⁽¹⁵⁾, up to maximum aid amounts based on maximum taxable base ceilings placed upon the beneficiaries' annual taxable base. These ceilings were set out based on the number of jobs the beneficiary would hold each fiscal year, as follows:

Number of jobs created/maintained/year	Maximum taxable base ceilings in EUR	Maximum aid amount in EUR
1-2	2 000 000	420 000
3-5	2 600 000	546 000
6-30	16 000 000	3 360 000
31-50	26 000 000	5 460 000
51-100	40 000 000	8 400 000
> 100	150 000 000	31 500 000

⁽⁹⁾ The ZFM scheme comprises the International Business Centre of Madeira (IBCM), the International Shipping Register (MAR) and the Industrial Free Trade Zone (IFTZ). It was first approved in 1987 (Regime I) by Commission Decision of 27 May 1987 in case N 204/86 (SG(87) D/6736); it was then prolonged in 1992 by Commission Decision of 27 January 1992 in case E 13/91 (SG(92) D/1118) and in 1995 by Commission Decision of 3 February 1995 in case E 19/94 (SG(95) D/1287). Its successor scheme (Regime II) was approved by Commission Decision of 11 December 2002 in case N222/A/2002 (OJ C 65, 19.3.2003, p. 23). In 2007, a third successor scheme (Regime III) was approved by Commission Decision of 27 June 2007 in case N 421/2006 (OJ C 240, 12.10.2007, p. 1), which was amended in 2013 (amendment of Regime III) by Commission Decision of 2 July 2013 in case SA.34160 (2011/N) (OJ C 220, 1.8.2013, p. 1). In 2013, its duration was prolonged until 30 June 2014 by Commission Decision of 26 November 2013 in case SA. 37668 (2013/N) (OJ C 37, 7.2.2014, p. 10) and in 2014 (prolongation of Regime III until the end of 2014) by Commission Decision of 8 May 2014 in case SA. 38586 (2014/N) (OJ C 210, 4.7.2014, p. 27).

⁽¹⁰⁾ OJ C 54, 4.3.2006, p. 13.

⁽¹¹⁾ Following the two prolongations approved by the Commissions Decisions referred to in footnote 9, this expiry date was extended to 31 December 2014.

⁽¹²⁾ Remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products.

⁽¹³⁾ 3 % from 2007 to 2009, 4 % from 2010 to 2012, and 5 % from 2013 to 2020.

⁽¹⁴⁾ Paragraph 14 of the 2007 Commission Decision.

⁽¹⁵⁾ Paragraph 17 of the 2007 Commission Decision. See also Article 36(1) and (10) and Article 33(4) to (8) and (11) of the EBF.

- (13) Under certain conditions ⁽¹⁶⁾, companies registered in the Industrial Free Trade Zone of the ZFM scheme could benefit from a further 50 % corporate income tax cut.
- (14) The access to the ZFM scheme was restricted to activities in a list included in the 2007 Commission Decision, based on the statistical nomenclature of economic activities in the European Community, NACE Rev. 1.1 ⁽¹⁷⁾: agriculture and animal production (Section A, codes 01.4 and 02.02), fisheries aquaculture and related services (Section B, code 05), manufacturing industry (Section D), production and distribution of electricity, gas and water (Section E, code 40), wholesale trade (Section G, codes 50 and 51), transport and communication (Section I, codes 60-64), activities relating to immovable property, leasing and services to companies (Section K, codes 70-74), higher education and/or adult education (Section M, codes 80.3 and 80.4), other collective services activities (Section O, codes 90, 92 and 93.01) ⁽¹⁸⁾. Should there be any changes to the list, given that classification systems of this type are liable to develop further, the Portuguese authorities agreed to duly notify them to the Commission ⁽¹⁹⁾.
- (15) All activities involving financial intermediation, insurance and auxiliary financial and insurance-related activities (Section J, NACE codes 65-67), as well as all intra-group service activities (coordination, treasury and distribution centres) which could be carried out under Section K, code 74 (services provided mainly to companies) were excluded from the application of the scheme ⁽²⁰⁾. The 2007 Commission Decision also included the commitment of the Portuguese authorities to provide to the Commission the names of the companies that had been refused for registration in the ZFM scheme and the reasons for those refusals ⁽²¹⁾.

2.2. The ZFM scheme under the 2013 Commission Decision

- (16) Following notification from Portugal, the Commission authorised in 2013 a 36,7 % increase of the maximum base ceilings on which the corporate income tax reduction would apply. Thus, as from the year 2013 the maximum taxable base ceilings and maximum aid amounts were as follows:

Number of jobs created/maintained/year	Maximum taxable base ceilings in EUR (2013-2014)	Maximum aid amount in EUR (2013-2014)
1-2	2 730 000	546 000
3-5	3 550 000	710 000
6-30	21 870 000	4 374 000
31-50	35 540 000	7 108 000
51-100	54 680 000	10 936 000
> 100	205 500 500	41 100 000

- (17) Under the notification that led to the 2013 Commission Decision, the Portuguese authorities indicated that all the other conditions of the scheme as approved in 2007 remained the same ⁽²²⁾.

⁽¹⁶⁾ At least two of the following: (a) modernisation of the regional economic fabric through technological innovations relating to products, manufacturing or business methods; (b) diversification of the regional economy, particularly through the introduction of new activities with high added value; (c) employment of highly qualified human resources; (d) improvement of environmental conditions; and (e) creation of at least 15 new jobs to be kept for a minimum of five years (paragraph 16 of the 2007 Commission Decision and Article 36(5) of the EBF).

⁽¹⁷⁾ Commission Regulation (EC) No 29/2002 of 19 December 2001 amending Council Regulation (EEC) No 3037/90 on the statistical classification of economic activities in the European Community (OJ L 6, 10.1.2002, p. 3).

⁽¹⁸⁾ Paragraph 25 of the 2007 Commission Decision.

⁽¹⁹⁾ Paragraph 29 of the 2007 Commission Decision.

⁽²⁰⁾ Paragraph 26 of the 2007 Commission Decision.

⁽²¹⁾ Paragraph 32 of the 2007 Commission Decision.

⁽²²⁾ Paragraph 12 of the 2013 Commission Decision.

2.3. The ZFM scheme put in place by Portugal and the views taken by Portugal in the 2015 monitoring

- (18) The Regime III was monitored for the years 2012 and 2013 under the 2015 monitoring ⁽²³⁾. The information provided by Portugal during the monitoring and the subsequent *ex officio* investigation ('2016 investigation') had the following results:

2.3.1. Origin of the profits benefiting from the income tax reduction

- (19) As referred to in the 2007 and 2013 Commission Decisions, the tax reduction allowed under the ZFM scheme applies only to '*profits resulting from activities effectively and materially performed in Madeira*' ⁽²⁴⁾. In the course of the 2015 monitoring, the Commission asked for clarification on the implementation of this condition. It appeared during the 2015 monitoring and the 2016 investigation that some companies registered in the ZFM scheme and included in the sample benefited from the reduced corporate income tax on profits resulting from activities not 'effectively and materially performed in Madeira'.
- (20) This situation was confirmed by Portugal, which in this respect, indicated that, as far as corporate income tax was concerned, taxable persons with their head office or place of effective management in Madeira would be taxed there on all of their earnings, irrespective of whether their activity generated earnings, used inputs and/or incurred costs in a different location to that of their head office or place of effective management, as long as the said earnings, inputs and costs were received, allocated and borne by the undertaking and linked to its activity. Those earnings would all be obtained inside or outside Portuguese territory, and provided that they were generated by activities that were authorised within the ZFM and carried out by entities with their head office or place of effective management in Madeira, those earnings would be declared and taken into account for the calculation of the tax base and the amount to which the relevant tax rate would be applied ⁽²⁵⁾.
- (21) To ensure that earnings were declared correctly for tax purposes, Portugal explained that the ZFM scheme required separate accounting between earnings considered as generated in Portuguese territory, which were subject to the normal income tax, and earnings considered as generated outside Portuguese territory, which were subject to the reduced corporate income tax rate of the ZFM scheme. The former consist in earnings the ZFM beneficiaries gain from transactions with residents in Portuguese territory, or in its geographical area, which includes the ARM, but excludes the Madeira Free Trade Zone itself. The latter consist in earnings the ZFM beneficiaries obtain from their transactions with entities not resident in the national territory as well as those generated in the ZFM itself ⁽²⁶⁾.
- (22) Portugal argued that in view of the NACE codes authorised within the scope of the ZFM scheme, and the predominantly international nature and scope of the activities carried out in the ZFM, the condition that activities were carried out effectively and materially in Madeira did not mean, nor could it mean, that the activities must be restricted, geographically speaking, to Madeira territory and earnings obtained solely in that geographical area ⁽²⁷⁾. Thus, according to Portugal, the Commission's 'restrictive interpretation' failed to reflect the current situation, was not consistent with the purpose of schemes for outermost regions, which was to attract investment from inside and outside the single market, and was also inconsistent with the Union's fundamental freedom of establishment and free movement of goods, people, services and capital. The lack of competitiveness of Regime III as compared to other jurisdictions competing with Madeira was one of the reasons why the Commission approved the increase of the ceilings of the scheme in 2013: that showed that attracting international and not only regional undertakings was and is very important for the development of the outermost regions.

⁽²³⁾ Footnote 2 above.

⁽²⁴⁾ Footnote 14 above.

⁽²⁵⁾ Letter from Portugal of 11 September 2017 (2017/085166), pp. 20-23.

⁽²⁶⁾ Letter from Portugal of 11 September 2017, p. 22.

⁽²⁷⁾ Letters from Portugal of 31 March 2016 (2016/031779), p. 6, and of 11 September 2017, p. 18.

- (23) Moreover, Portugal stated that the activity could be considered as being effectively and materially carried out in the ARM, if it was actually performed there and if the company had a proper office, adequate staff and resources and an actual, effective decision-making centre there. Portugal also argued that this did not mean that all of the company's human resources needed necessarily to carry out all of their tasks there or that its activity must be solely restricted to the geographical area of Madeira. Finally, Portugal stated that activities 'effectively and materially carried out in Madeira' as defined in paragraph 14 of the 2007 Commission Decision could not be understood to refer only to activities taking place within the territory of the ARM ⁽²⁸⁾.
- (24) Furthermore, Portugal indicated that the annual tax declarations, based on which the tax due and the tax reduction were determined, were established on the beneficiaries' self-assessment. These statements are presumed by the tax authorities to be true and accurate and are subsequently validated at central level by the Tax and Customs Authority. In case of doubts, this presumption ceases, allowing the tax authorities to request additional information to assess whether the revenues liable for the reduced rate actually involve transactions with non-residents ⁽²⁹⁾.
- (25) Finally, Portugal stated that controls had been carried out by means of tax inspections in case of doubt as to whether the activity was genuine and actually taking place and that international cooperation was in place with other tax authorities and information was exchanged in that respect ⁽³⁰⁾.

2.3.2. *Job creation/maintenance in the region*

- (26) The ZFM scheme as authorised by the Commission set out the number of jobs created and maintained in the region by the beneficiaries as one of its fundamental compatibility criteria, linking the maximum allowable aid to the number of jobs as a contribution to regional development.
- (27) It appeared in the 2015 monitoring and subsequent 2016 investigation that some companies registered in the ZFM scheme, having benefited from the reduced corporate income tax, could not prove the effective creation/maintenance of jobs in the region, an objective calculation of the number of jobs or the fact that the declared employees performed their activity in Madeira.
- (28) In its implementation of the ZFM scheme, Portugal informed that it considered as validly created jobs any type of working relationship provided by the national Labour Code ⁽³¹⁾, according to which the employment relationship may be established in any of the forms provided by the law ⁽³²⁾. On this basis, it has accepted as valid jobs for the purposes of the application of the ZFM scheme any employment of whichever legal nature irrespective of the number of hours, days, months of active labour per year. As board members and part-time work is allowed by national law, the posts of part-time employees (of whatever type) and board members that were reported as being occupied in more than one beneficiary companies, were taken into account as valid jobs for the purpose of calculating the maximum tax advantage for each beneficiary company that declared them.

⁽²⁸⁾ Letters from Portugal of 31 March 2016, p. 6, and of 11 September 2017, p. 23.

⁽²⁹⁾ Letter from Portugal of 21 November 2017 (2017/110431), p. 7.

⁽³⁰⁾ Letters from Portugal of 2 May 2017 (2017/042449), p. 11; of 11 September 2017, p. 25, and of 21 November 2017, pp. 28-29.

⁽³¹⁾ Law No 7/2009 of 12 February 2009.

⁽³²⁾ Including deployment/posting (Articles 7 and 8), contract with several employers (Article 101), fix term contract and teleworking (Article 139), contract of indefinite duration (Article 147), part time work (Article 150), intermittent work (Article 157), secondment (Article 161), temporary work (Article 172), loaning (Article 288), occasional assignments (Article 289), etc. See letter from Portugal of 2 May 2017, p. 7.

- (29) Thus, for the purposes of the calculation of the tax benefit of ZFM beneficiaries, Portugal neither considered, nor checked, the full time equivalents ('FTEs') ⁽³³⁾, but only the number of jobs declared by the beneficiaries in their annual tax declarations (Form 22, 'Modelo 22' ⁽³⁴⁾), and in certain cases, in the declarations submitted by the beneficiary companies relevant to withholding tax on their employees' income (Form 10, 'Modelo 10', form 30, 'Modelo 30', or the monthly salary statement, *declaração mensal de remunerações*, 'DMR' ⁽³⁵⁾): these latter declarations may allow cross-checking with the information on declared jobs in 'Modelo 22' ⁽³⁶⁾. All these declarations are presumed to be true within the meaning of Article 75 of the General Tax Law (*Lei Geral Tributária*). Should the entities not comply with their declaration obligations, either by failing to submit them or by submitting incorrect information, the penalties set out in the General Law of tax offences (*Regime Geral das Infrações Tributárias*) apply ⁽³⁷⁾.
- (30) As from 2013, the 'DMR' included monthly statements ⁽³⁸⁾, and Portugal indicated that it only took into account the number of jobs declared in December of each year, regardless of whether the relevant employees worked or not in the company for the full year. When requested to provide calculations of the number of jobs as FTEs according to the 2007 RAG definition, Portugal argued that this definition of employment did not apply to regional operating aid but only to investment aid schemes approved under the 2007 RAG, as it was not included specifically in the operating aid section of the 2007 RAG but in the investment aid section. It also argued that the definition of staff headcount included in Article 5 of Annex I to Commission Regulation (EC) No 800/2008 ⁽³⁹⁾ (General Block Exemption Regulation, '2008 GBER') only related to the definition of small and medium-sized enterprises (SMEs) within the scope of the 2008 GBER and did not apply to Regime III, as it was subject to an *ad hoc* decision. Portugal also argued that the main purpose of the approved ZFM scheme was not the creation of jobs or the compensation of wage costs, but rather the promotion of the economic, social and territorial cohesion in an outermost region through the modernisation and diversification of its economy ⁽⁴⁰⁾.
- (31) In the context of the 2016 investigation, the Commission's services requested Portugal to provide the social security number of all employees employed by the ZFM beneficiaries in the years 2012 and 2013 in order to check possible job double counting. Although Portugal provided the data in question, it indicated that they were not relevant for the purposes of the application of the ZFM scheme because it was a tax scheme and checks were carried out by means of tax returns ⁽⁴¹⁾.
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- ⁽³³⁾ Based on the definition set out in paragraph 58 and footnote 52 of the 2007 RAG. (i.e. '*the number of employees means the number of annual labour units (ALU), namely the number of persons employed full time (FTE) in one year, part-time and seasonal work being ALU fractions.*' The concept of ALU is also referred to in Article 5 of Annex I to Commission Regulation (EC) No 800/2008 (and Commission Regulation (EU) No 651/2014) as 'annual work-units (AWU)'. See footnotes 39 and 56 below.
- ⁽³⁴⁾ Pursuant to Articles 117 and 127 of the Corporate Income Tax Code ('CIRC'), 'Modelo 22' (Annex D, field 6 – '*Entities licensed in the ZFM*') is annually submitted by companies to indicate the number of jobs created/maintained in order to determine the compliance with the eligibility requirements set out in Article 36 of the EBF. According to the Portuguese authorities, it only enables the quantification of the jobs generating withholding tax that are created and maintained during the period (Decision No 16566-A/2012 of the Cabinet of the Minister of Finances). See letter from Portugal of 21 November 2017, pp. 3-4.
- ⁽³⁵⁾ 'Modelo 10' is submitted by companies to declare annual taxable, exempt and non-taxable income earned by taxable persons (company's employees) subject to income tax at source, which are Portuguese residents for tax purposes. 'Modelo 30' is the same type of tax declaration but for income of taxable persons (company's employees) that are not resident in Portugal. According to the Portuguese authorities, this tax declaration only contains information on the country of residence of the taxpayer, which may not coincide with the country in which they carry out their activities as employees under the direction of the company for which they work. The 'DMR' which came into effect from the 2013 fiscal year (Ministerial Implementing Order No 6/2013 of 10 January 2013) has the same function but only for income deriving from dependent work and on a monthly basis. It also include information on the withholding tax, the obligatory contributions to social security schemes and legal subsystems for health and for trade unions (see letter from Portugal of 21 November 2017, pp. 2-3). All these declarations are considered by the Portuguese tax authorities as 'ancillary obligations', as they do not give rise to tax assessment.
- ⁽³⁶⁾ Letters from Portugal of 29 October 2015 (2015/107167), of 2 May 2017, pp. 8-9, and of 11 September 2017, p. 25.
- ⁽³⁷⁾ Letter from Portugal of 21 November 2017, p. 2.
- ⁽³⁸⁾ Footnote 35 above.
- ⁽³⁹⁾ 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 (OJ L 214, 9.8.2008, p. 3).
- ⁽⁴⁰⁾ Letters from Portugal of 11 September 2017, pp. 15-16, and of 21 November 2017, pp. 5-6.
- ⁽⁴¹⁾ Letters from Portugal of 2 May 2017, p. 7, of 11 September 2017, pp. 14 and 17, and of 21 November 2017, p. 1.

- (32) In addition, Portugal indicated that the beneficiary companies did not have to provide to the Tax Administration any evidence on the employment relationship they had with the employees declared, as the tax assessment was made on the basis of the tax declarations ('Modelos') mentioned in recital 29 of this Decision ⁽⁴²⁾. Such information may only be requested by the Tax Administration in case it has information that leads to suspicion of errors, omissions, inaccuracies, etc. ⁽⁴³⁾ Article 16 of the Portuguese Labour Code envisages the protection of the privacy of personal life, which does not allow automatically access to personal data comprised in an employment relationship without consent of the data subject ⁽⁴⁴⁾. Moreover, in accordance with Article 59(2) and Article 75(1) of the Lei Geral Tributária, the taxpayers are deemed to act in good faith. Thus, the declarations they submit, as well as the data and assessments of their accounts or bookkeeping, are presumed to be true and conducted in good faith ⁽⁴⁵⁾.
- (33) Moreover, Portugal submitted information demonstrating that for some of the ZFM aid beneficiaries included in the sample of the 2015 monitoring and subsequent 2016 investigation part of the jobs for which tax benefits had been granted were located outside Madeira (some even outside the Union). Portugal indicated that for the purposes of the application of the ZFM scheme, its practice was to take into account jobs created inside or outside of the Madeira region, as long as the jobs were created by the company registered within the ZFM, it was not necessary that they were located in the region. As the companies and the employees are free, in accordance with Portuguese labour law, to define contractually the place where the employee will provide its services, for the purposes of the application of the ZFM scheme, the workplace can be located anywhere, even outside Madeira and Portugal. Portugal further considered that 'employees' data provided in the concerned tax declarations had no relation with their nationality (i. e. nationality is irrelevant for tax purposes) ⁽⁴⁶⁾. Moreover, according to Portugal, the employees of ZFM beneficiary companies working on a permanent basis outside Portugal are objectively paid employees of the beneficiary company and contribute through their work to the generation of revenue for the beneficiary company and, thus, their jobs must be counted as 'jobs created and maintained' for the purposes of the application of the ZFM scheme ⁽⁴⁷⁾.
- (34) On the controls conducted by the Portuguese authorities as regards the number of jobs created and maintained by the ZFM beneficiaries, Portugal indicated that in case of discrepancies between the information on the different declarations, it was the 'Modelo 10' and 'Modelo 30', as well as the 'DMR' (as of 1 January 2013) that took precedence over 'Modelo 22' ⁽⁴⁸⁾. Following the Commission services' information request on several discrepancies that had been detected in the 2015 monitoring, Portugal stated that 'Modelo 22' enabled quantification only for the posts generating withholding tax that were created and maintained during the relevant period. This could result in discrepancies with the other 'Modelos', in particular in the case of employees' income below a certain threshold that did not generate withholding tax. Moreover, Portugal informed that the tax authorities asked the relevant companies to correct the number of jobs declared in their annual tax declarations, without the actual proof of the existence of the jobs ever being put into question.
- (35) Portugal also indicated that in the course of application of Regime III, even in case the beneficiaries omitted to declare the number of jobs created in the region, the annual tax declarations were considered as validly submitted and, consequently, the assessment of the tax due and of the amount of the tax reduction was not affected.

⁽⁴²⁾ Letters from Portugal of 6 July 2015 (2015/065783), p. 8, of 31 March 2016, p. 19, and of 11 September 2017, p. 17.

⁽⁴³⁾ Letters from Portugal of 29 October 2015, p. 11, of 11 September 2017, p. 25, and of 21 November 2017, p. 7. Whenever deemed necessary, the national Tax Authority asks companies to submit their employees' contract of employment. Should the contract of employment not be available (in many cases the labour relationship is constituted without being formalized in writing – indefinite and full-time contracts – for which the principle of freedom of form applies under Portuguese law (Article 219 of the Civil Code)), the taxable person may be required to demonstrate the existence of employment relationship by other means. In particular, see letters from Portugal of 31 March and 2 May 2017, pp. 5 and 9, respectively.

⁽⁴⁴⁾ Letter from Portugal of 11 September 2017, pp. 16-17.

⁽⁴⁵⁾ Letter from Portugal of 21 November 2017, pp. 7-8.

⁽⁴⁶⁾ Letter from Portugal of 21 November 2017, p. 4.

⁽⁴⁷⁾ Letter from Portugal of 31 March 2016, pp. 5-6.

⁽⁴⁸⁾ Letters from Portugal of 2 May 2017, p. 9, and of 21 November 2017, p. 2.

- (36) Finally, Portugal argued that, for a specific type of holding companies – the ‘Sociedades Gestoras de Participações Sociais’ (‘SGPS’) –, the ZFM scheme did not require the creation of jobs in order for these companies to benefit from the corporate tax reduction. According to Portugal, the waiver of the job creation requirement for SGPS was included in the draft Decree-Law ⁽⁴⁹⁾ attached to the notification. In their view, the 2007 Commission Decision’s approval of the scheme therefore implicitly approved it along with the other provisions of the same law.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (37) In its Opening Decision, the Commission took the preliminary view that the ZFM scheme constituted State aid for the purposes of Article 107(1) TFEU and expressed serious doubts as to the compatibility of the scheme, as implemented by Portugal, with the internal market.
- (38) As regards the existence of aid, the Commission concluded on a preliminary basis that the ZFM scheme implemented by Portugal in favour of the ZFM companies constituted State aid ⁽⁵⁰⁾. It is decided by the State and is imputable to it ⁽⁵¹⁾. The aid is selective because it confers an advantage to the companies established in the ZFM insofar as it allows the ZFM companies to get a tax reduction of corporate income tax normally due, which cannot be justified by the logic of the tax system ⁽⁵²⁾. To the extent that companies registered in the ZFM carried out activities that were open to international competition, the Commission preliminarily concluded that the ZFM scheme distorted or threatened to distort competition, as it was liable to improve the competitive position of the ZFM scheme beneficiaries compared to other companies with which they competed ⁽⁵³⁾.
- (39) As regards the lawfulness of the ZFM scheme, the Commission decided to initiate a formal investigation procedure on two issues ⁽⁵⁴⁾:
- (i) the geographical origin of the profits, and
 - (ii) the unverified job creation/maintenance in the region.
- (40) In accordance with the 2007 and 2013 Commission Decisions, the ZFM scheme was approved on the condition that the income tax reduction allowed would be applied to profits resulting from activities effectively and materially performed in the region. This fundamental condition is strictly linked to the aim of regional operating aid for outermost regions (i.e. the compensation of the additional costs companies incur in these regions due to the structural handicaps of the regions) and it also explains why the 2007 Commission Decision’s approval was based on the study on the additional costs companies incur in the outermost region of Madeira ⁽⁵⁵⁾.
- (41) The Commission preliminarily concluded that if the companies did not conduct their activities in Madeira, they did not incur any additional costs due to their activity in an outermost region. Therefore, they could not be considered as valid beneficiaries of the approved ZFM scheme and they were not entitled to regional operating aid.
- (42) The Commission also noted that Portugal did not provide any evidence on possible controls the relevant tax authorities had conducted as regards the origin of the revenues declared and subject to the income tax reduction. In addition, as illustrated by the case of each sample beneficiary of the scheme, Portugal did not submit information on the place of effective activity, but only limited itself to submitting the address of the head office of the beneficiaries in Madeira. Since Portugal recognised that it was mainly the income deriving from activities outside Portugal that was

⁽⁴⁹⁾ Article 36(8) of the draft Decree-Law amending Decree Law No 163/2003 of 24 July 2003, Decree-Law No 215/1989 of 1 July 1989, and Decree-Law No 500/80 of 20 October 1980. See letter from Portugal of 28 June 2006 (1900/80392).

⁽⁵⁰⁾ Paragraph 54 of the Opening Decision.

⁽⁵¹⁾ Paragraph 51 of the Opening Decision.

⁽⁵²⁾ Paragraph 52 of the Opening Decision.

⁽⁵³⁾ Paragraph 53 of the Opening Decision.

⁽⁵⁴⁾ Paragraph 63 of the Opening Decision.

⁽⁵⁵⁾ ‘Towards a Diversification Strategy for Madeira Autonomous Region – Recommendations to overcome the problem of ultra-peripherality, final report’, ECORYS-NEI (Netherlands Economic Institute), Rotterdam, 2004.

subject to tax reductions, there was already a strong indication that the relevant compatibility condition on the origin of the profits benefiting from the income tax reduction had not been complied with. Moreover, the reported work of employees outside Madeira or even the Union, or the inexistence of employees due to the higher number of duplications, as illustrated in the 2015 monitoring, provided also a strong indication that the tax benefits granted to ZFM beneficiaries might not relate to profits generated in the region.

- (43) With respect to the compatibility criterion relevant to job creation/maintenance in the Madeira region, the Commission preliminarily considered that Portugal had applied the ZFM scheme, for its whole duration, in a manner that was contrary to the objective of the approved scheme, as well as to the compatibility criteria laid down in the 2007 and 2013 Commission Decisions. The unverified job creation/maintenance was illustrated by the results of the 2015 monitoring, which indicated that: (i) employees having worked for part of the fiscal year were taken into account as fully occupied employees, (ii) employees and board members were counted simultaneously as valid employees in more than one ZFM company, and (iii) employees working outside Madeira and even outside the Union were taken into account for the calculation of job creation giving access to the income tax deduction provided for by the scheme, all elements confirmed by Portugal as common practice in the 2016 investigation.
- (44) Furthermore, the Commission noted that the notion of 'job' and the method to calculate the jobs created and maintained in the region did not comply with the definitions, conditions and principles set out in the 2007 RAG.
- (45) On a preliminary basis, the Commission also concluded that activities performed by employees outside the region could not be considered to be materially and effectively performed in Madeira, even though the revenues generated might be allocated to companies located in the ZFM.
- (46) The Commission took also the preliminary view that the tax controls implemented by the Portuguese tax authorities provided a strong indication that in practice Portugal did not ensure a proper control of the compliance with the fundamental compatibility criteria set out in the 2007 and 2013 Commission Decisions. Indeed, Portugal did not provide any proof that it had conducted controls outside the scope of the Commission services' monitoring; the nature of those controls seemed in any case entirely tax-related and not related to the criteria above; and [30 %-40 %] (*) of all employees declared as employees of ZFM beneficiaries for the years 2012 and 2013, were counted as working in more than one ZFM beneficiary company for the purposes of establishing the tax reduction for the beneficiaries.
- (47) Finally, the Commission expressed its doubts as to the lack of maintenance of the jobs created based on the 2015 monitoring results, which showed a very important fluctuation of the employees that were occupied each month by the ZFM scheme beneficiaries.
- (48) Furthermore, the Commission examined whether individual awards under the ZFM scheme could be deemed compatible, if they were block-exempted by Commission Regulation (EU) No 651/2014 (General Block Exemption Regulation, '2014 GBER') ⁽⁵⁶⁾, which might apply retroactively to individual aid granted before the respective provisions of the 2014 GBER entered into force, provided the relevant conditions were complied with ⁽⁵⁷⁾.
- (49) The Autonomous Region of Madeira ('ARM') is an outermost region designated by Article 349 TFEU. In accordance with Article 15(4) of the 2014 GBER, it is eligible for regional operating aid under the derogation provided for by Article 107(3)(a) TFEU, provided that: (i) the beneficiaries have their effective activity in the outermost region, and (ii) the annual aid amount does not exceed a maximum percentage of gross value added annually created, or annual labour costs incurred, or annual turnover realised, by the beneficiary in the region.

(*) Confidential information

⁽⁵⁶⁾ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

⁽⁵⁷⁾ Article 58 of the 2014 GBER.

- (50) The ZFM scheme consists in tax benefits as described in recital 12 of this Decision, which have the effect of reducing the expenses that companies would have to bear as part of their business activities. It constitutes therefore operating aid in favour of the companies that may benefit from it in ZFM. However, based on the information provided by Portugal during the monitoring, the Commission took the preliminary view that the beneficiaries of the scheme implemented by Portugal did not necessarily have their activity in Madeira. Moreover, on a preliminary basis the Commission concluded that the aid amounts involved were not necessarily related to gross value added, labour costs or turnover generated in Madeira ⁽⁵⁸⁾.
- (51) In conclusion, the Commission expressed the preliminary view that the ZFM scheme, as implemented by Portugal, would not comply with the 2007 and 2013 Commission Decisions and, in any event, with the 2007 RAG, since the two issues referred to in recital 39 of this Decision reflected the fundamental conditions for the approval of regional operating aid under the 2007 RAG. The Commission also raised doubts that the individual aids granted under the scheme could be considered compatible based on the 2014 GBER on operating aid in the outermost regions ⁽⁵⁹⁾. Finally, the Commission expressed doubts that the ZFM scheme, as implemented by Portugal, could be considered compatible directly on the basis of Article 107(3)(a) TFEU, as the Portuguese authorities seemed to have applied it in a manner that did not compensate the structural handicaps companies might effectively incur in their activity in Madeira ⁽⁶⁰⁾.

4. INFORMATION SUBMITTED AFTER THE OPENING DECISION AND COMMENTS FROM PORTUGAL

4.1. Additional information submitted by Portugal in the course of the in-depth investigation

- (52) With the Opening Decision, the Commission asked Portugal to produce detailed information on the implementation of the ZFM scheme throughout its duration (2007 to 2014) ⁽⁶¹⁾. In particular, Portugal was required to provide:
- a list of all the companies registered in the ZFM for the period of 2007 to 2014, indicating the amounts of aid received each year;
 - a list of all employees employed by companies registered in the ZFM (2007 to 2014);
 - a list of the largest 25 ZFM aid recipients under Regime III in the years 2007 to 2011 and 2014 (indicating aid amounts received each year and number of employees taken into account for the grant of the tax reduction and providing relevant documentary evidence);
 - proof of the origin of the income for all sample ZFM beneficiaries selected in the course of the monitoring for years 2012 and 2013, as well as for the largest 25 ZFM aid recipients for the years 2007 to 2011 and 2014 (including relevant documentary evidence);
 - proof of the effective place of activity for all sample ZFM beneficiaries for the period 2007 to 2014 (including relevant documentary evidence);
 - a calculation of the number of employees of all sample ZFM beneficiaries (years 2007 to 2014) in full time equivalents based on the definition set out in paragraph 58 and footnote 52 of the 2007 RAG (including relevant documentary evidence);

⁽⁵⁸⁾ Paragraph 60 of the Opening Decision.

⁽⁵⁹⁾ Paragraph 61 of the Opening Decision.

⁽⁶⁰⁾ Paragraph 62 of the Opening Decision.

⁽⁶¹⁾ Paragraph 64, points 1 to 7, of the Opening Decision. Thus, beyond the two years that had been subject to the 2015 monitoring (i.e. 2012 and 2013). In addition, it should be noted that most of the information requested in paragraph 64 of the Opening Decision had already been included in repetitive and unsuccessful requests for information addressed to Portugal in the course of the 2016 investigation; in particular, on (i) proof of the origin of the income taken into account for the calculation of the taxable base for all sample ZFM beneficiaries, (ii) proof of the place of effective activity for all sample ZFM beneficiaries, (iii) calculation of the number of employees (including management positions) for all sample ZFM beneficiaries in full time equivalents and (iv) proof of control of the activities of the sample ZFM beneficiaries for the period 2012 and 2013, see Commission's letters of 29 February 2016 (D/020793), 29 March 2017 (D/030362), 11 August 2017 (D/069475) and 2 October 2017 (D/099275).

— argumentation not provided before as regards the compatibility conditions of the ZFM scheme implemented by Portugal on the basis of the 2014 GBER or Article 107(3)(a) TFEU.

- (53) The Commission further informed Portugal that, in the absence of that information, it would have to adopt a decision based on the information in its possession ⁽⁶²⁾.
- (54) By letters dated 11 and 26 September 2018 ⁽⁶³⁾ and 24 April 2019, respectively, Portugal provided additional information on the implementation of the ZFM scheme and submitted its comments on the Opening Decision.
- (55) On 11 September 2018, Portugal submitted data on all companies registered in the ZFM for the entire duration of the scheme (from 2007 until 2014). It also provided the amounts of aid received each year per beneficiary until 2014. Portugal further provided a list of the largest 25 ZFM aid beneficiaries in the years 2007 to 2011 and 2014 ⁽⁶⁴⁾, including the indication of aid amounts received. In addition, by letter of 26 September 2018 for the years 2007 to 2014, Portugal provided a list of employees employed by all companies registered in the ZFM ⁽⁶⁵⁾. However, that information does not allow complete verification of the problematic issues detected in the monitoring: (i) board members and workers holding such functions simultaneously in many ZFM companies, (ii) incidences of double counting of jobs, and (iii) part-time jobs taken into account for job creation/maintenance and full tax benefits given to ZFM companies.
- (56) Portugal did not provide information on the number of employees taken into account for the grant of the tax reduction for the years 2008, 2009 and 2010 ⁽⁶⁶⁾, and it provided incomplete information for the years 2011 and 2014 ⁽⁶⁷⁾. Moreover, for each year the information submitted on the number of employees is presented on unclear terms: (i) different sources, and (ii) different periods of declaration without straightforward relation between the number of jobs created/maintained and the amount of aid received in each period.
- (57) Furthermore, Portugal did not provide the following information, data and supportive documentary evidence ⁽⁶⁸⁾ needed for assessment of the compatibility of the aid:
- proof of the documentation used to verify the number of employees; for the years up to 2010, Portugal specified that there was no obligation for the companies to declare the number of employees in their tax declarations;
 - proof of the origin of the income of sample beneficiaries selected in the course of the preliminary investigation ⁽⁶⁹⁾ and of the largest 25 ZFM scheme beneficiaries of the years 2007 to 2009 ⁽⁷⁰⁾;
 - proof of the effective place of activity of the employees of the ZFM scheme beneficiaries;
 - calculation of the number of employees of all sample ZFM scheme beneficiaries selected in the course of the monitoring for the years 2012 and 2013, as well as for the largest 25 aid beneficiaries in the years 2007 to 2011 and 2014, in FTEs on the basis of the definition set out in paragraph 58 and footnote 52 of the 2007 RAG.

⁽⁶²⁾ Paragraph 64, second paragraph, of the Opening Decision.

⁽⁶³⁾ Letters of 11 September 2018 (2018/144207) and of 26 September 2018 (2018/153989).

⁽⁶⁴⁾ Information for the years 2012 and 2013 was provided under the 2015 monitoring.

⁽⁶⁵⁾ Information based on data supplied by Social Security and the Tax Authority on 6 August 2018.

⁽⁶⁶⁾ 'Modelo 22' from 2007 to 2010 did not request that information from taxpayers.

⁽⁶⁷⁾ For the year 2011, there is information for 25 out of 62 aid recipients. For 2014, there is information for 25 out of 526 aid recipients.

⁽⁶⁸⁾ Information asked under paragraph 64, points 3 to 6, of the Opening Decision.

⁽⁶⁹⁾ As regards paragraph 64, point 3 of the Opening Decision, Portugal explains that such information has been requested to ZFM beneficiaries by the national tax authorities. However, such 'information is not yet available'. See letter from Portugal of 26 September 2018, paragraph 127, p. 30.

⁽⁷⁰⁾ Portugal did not provide the largest 25 ZFM aid beneficiaries for the years 2007 to 2009 because the aid recipients were less than 25 each year: 2007:0; 2008:9 and 2009:20.

- (58) In the meeting with the Commission services on 10 April 2019 referred to in recital 8 of this Decision, Portugal was recalled the procedural steps of the ongoing formal investigation procedure and reminded of the commitment of mutual cooperation from September 2017, which had not brought fruitful results so far. Furthermore, Portugal was invited to provide the missing information in accordance with paragraph 64 of the Opening Decision, which would allow the Commission services to have a full set of facts/information on the ZFM scheme.
- (59) By letter of 24 April 2019 ⁽⁷¹⁾, to address the Commission's preliminary view on the inappropriateness of the tax controls ⁽⁷²⁾, Portugal submitted data regarding tax controls carried out between 2015 and 2018 on ZFM beneficiaries ⁽⁷³⁾ by means of tax inspections. In the period concerned, [300-600] tax inspections have been initiated and [300-600] tax inspections have been completed. Tax corrections reported amount to approximately EUR [100-250] million. Portugal further reported divergences regarding [100-300] ZFM beneficiaries' tax returns. However, as regards the closed tax inspections for the ZFM scheme (Regime III), the information provided did not allow to establish the link between the tax controls and corrections reported and the two issues on which the formal investigation procedure was initiated.
- (60) In addition, Portugal recognised that the criteria for job creation/maintenance should be further clarified, aiming at eliminating any doubts concerning its interpretation, by preventing abuse of the aid in question and by introducing further guarantees that the job accounting would contribute to Madeira social and economic development ⁽⁷⁴⁾. In this regard, Portugal submitted a draft Order (*projeto de despacho da Vice-Presidência do Governo Regional da Madeira*) clarifying the concept of 'job creation' in line with the definitions in the 2007 RAG ⁽⁷⁵⁾.
- (61) In this context, Portugal recognised that the introduction of legislative changes in the ZFM scheme were necessary to avoid potential abuse. Furthermore, Portugal put forward a set of legislative, regulatory and inspective measures to the ZFM scheme for which it asked the Commission's agreement by means of a recommendation proposing appropriate measures to the Member State concerned pursuant to Article 22(a) and (b) of Council Regulation (EU) 2015/1589 ⁽⁷⁶⁾. Alternatively, Portugal envisaged that such legal amendments should be approved by Commission decision ('conditional decision'), as provided for in Article 9(4) of Regulation (EU) 2015/1589 ⁽⁷⁷⁾.
- (62) In this regard, further to the clarification of the concept of 'job creation' indicated in recital 60 of this Decision, Portugal proposed amendments to the legal basis of the ZFM scheme ⁽⁷⁸⁾: (i) the exclusion of the SGPS ⁽⁷⁹⁾; (ii) the consignment of the ZFM corporate income tax revenue to health and education policy objectives; (iii) the creation of a specific anti-abuse clause for the ZFM scheme in accordance with Council Directive (EU) 2016/1164 ⁽⁸⁰⁾ on tax avoidance practices that directly affect the functioning of the internal market as regards hybrid mismatches with third countries; and (iv) the definition of criteria to identify large tax payers in the ZFM whose taxation situation requires permanent monitoring by the Free Zone Office (*Gabinete da Zona Franca*) ⁽⁸¹⁾ as a complement to taxation inspection activities to be conducted on an annual basis.

⁽⁷¹⁾ Letter from Portugal of 24 April 2019 (2019/055874).

⁽⁷²⁾ Paragraphs 36, 44 and 45 of the Opening Decision.

⁽⁷³⁾ The reporting also covers Regime IV, the successor ZFM scheme (2015-2020) which is being implemented by Portugal since 1 January 2015 under the 2014 GBER.

⁽⁷⁴⁾ Letter from Portugal of 24 April 2019, p. 4.

⁽⁷⁵⁾ The draft Order aims to ensure that: (i) part-time work is accounted for only in proportion to the number of hours worked ('full-time equivalent'), (ii) the link between the worker and the Madeira region is ensured, and (iii) the creation and maintenance of jobs by means of temporary work is not considered within the definition. Differently from the first version of the draft Order submitted on 6 April 2018, the current version applies also to Regime III (the '2018 draft Order' applied only to Regime IV).

⁽⁷⁶⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

⁽⁷⁷⁾ Letter from Portugal of 24 April 2019, p. 3.

⁽⁷⁸⁾ Article 36 of the EBF covers matters falling within the field of reserved legislative competence of the national Parliament (i.e. taxes and tax advantages). See Article 165(1)(i) of the Portuguese Constitution. Portugal recognised that proposed amendments aiming to introduce a 'new scheme' for the ZFM require further legal acts approved by the national parliament and cannot be implemented merely by administrative measures. See letter from Portugal of 24 April 2019, p. 4.

⁽⁷⁹⁾ Recital 36 of this Decision.

⁽⁸⁰⁾ Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1).

⁽⁸¹⁾ Regulatory Decree No 14/2015/M of 19 August 2015. In accordance with Article 8(1), the mission of the office is to monitor and coordinate the activities performed in the ZFM.

4.2. Comments from Portugal

- (63) The comments submitted by Portugal in the letter of 26 September 2018 are summarised in the following recitals.
- (64) Portugal argues that a negative decision on the ZFM scheme would have dramatic and irreparable effects on the economic sustainability of Madeira ⁽⁸²⁾. The Commission should therefore take into account the outermost region status of Madeira, which is recognised in Article 349 TFEU.
- (65) Portugal further argues that the Commission should consider in its assessment the economic impact of the ZFM scheme in the development of the region ⁽⁸³⁾, particularly by considering its economic effect on the national, European and international trade ⁽⁸⁴⁾.
- (66) Finally, Portugal considers that the ongoing in-depth investigation would discriminate Madeira against other jurisdictions, which apply preferential income tax rates and escape State aid rules ⁽⁸⁵⁾.

Existence of aid

- (67) Portugal considers that the ZFM scheme does not involve State resources (i.e. an increase in expenditure or even a reduction in revenue for the public budget). The scheme does not correspond to 'real tax expenditure' but simply to a virtual tax expenditure or even accounting fiction ('theoretical tax revenue losses') ⁽⁸⁶⁾. Portugal further explains that companies are only established in the ZFM, and invest there, following the existence of the tax relief. Otherwise, without the tax benefit, they would not have established in the ZFM or paid the usual taxes applicable in continental Portugal or in Madeira ⁽⁸⁷⁾.
- (68) Portugal argues that the ZFM scheme forms part of the general economy of the Portuguese tax scheme ⁽⁸⁸⁾. Portugal further considers that, according to Commission's practice ⁽⁸⁹⁾, a low tax rate applied in an entire Member State or autonomous region should be seen as a general measure and, therefore, it does not confer an advantage to the companies established in the ZFM ⁽⁹⁰⁾.

⁽⁸²⁾ In 2016, the ZFM enabled collection of nearly EUR [100-200] million in corporation tax (almost [15-25] % of the total taxes collected in that year in the region). It would imply the relocation of more than [1 000-2 000] companies registered in the ZFM to other regions or countries and strong increase of unemployment in the region (in 2014, there were [4 000-6 000] direct, indirect and induced jobs in the ZFM, which amounted to [1-10] % of the total employment in Madeira). See letters from Portugal of 2 May 2017, p. 6, and of 26 September 2018 (Annex I), p. 62.

⁽⁸³⁾ In the period 2012-2015, on average, the activity of the ZFM, according to the information provided by the Regional Statistics Directorate of Madeira ('Direção Regional de Estatística da Madeira'), represented around [1-10] % of Gross Value Added (GVA) and [0,5-10] % of the employment of the AMR. The activities linked to trade, transport and storage and to accommodation and catering have contributed most to the total GVA of the companies established in the ZFM (about [70-80] %). The manufacturing activities, linked to industry, contributed most to the total employment generated in the region ([30-40] %). In 2014, the ZFM amounted to [1-10] % of the value added generated in the region, i.e. approximately EUR [200-400] million, 'Tax and economic analysis report – Madeira Free Trade Zone', Ernest & Young, September 2018, pp. 60-62 (Annex I to the letter from Portugal of 26 September 2018).

⁽⁸⁴⁾ In 2014, ZFM companies ensured 79 % of the exports (EUR [50-200] million). In 2016, compared to 2014, the exports to the European community raised from [20 000-30 000] to [30 000-40 000] thousands of euros. The food and agricultural sectors represented the main volume of exports, followed by the machinery and textiles sectors, which had undeniable positive effects on the development of the European economy. See 'Tax and economic analysis report', Ernest & Young, 24 September 2018, p. 68.

⁽⁸⁵⁾ Malta, Luxembourg, Netherlands and Cyprus. See letter from Portugal of 26 September 2018, pp. 14-16.

⁽⁸⁶⁾ The General State Budgets of 1999 to 2004 state: 'This exemption ... represents tax not levied on income which, in the absence of this benefit, would not exist' (2002 General State Budget), or 'the removal of the current scheme ... would certainly not lead to this tax revenue being obtained' (2004 General State Budget).

⁽⁸⁷⁾ Letter from Portugal of 26 September 2018, paragraph 50, p. 18.

⁽⁸⁸⁾ Letter from Portugal of 26 September 2018, paragraph 29, p. 13, and letter from Portugal of 11 September 2017, p. 30.

⁽⁸⁹⁾ Commission Decision (EU) 2019/1252 of 19 September 2018 on tax rulings SA.38945 (2015/C) (ex 2015/NN) (ex 2014/CP) granted by Luxembourg in favour of McDonald's Europe (OJ L 195, 23.7.2019, p. 20).

⁽⁹⁰⁾ 'Tax and economic analysis report', Ernest & Young, 24 September 2018, p. 67.

- (69) Portugal also considers that the ZFM scheme is not selective because the measure is not '*favouring certain undertakings or the production of certain goods*' within the meaning of Article 107(1) TFEU. Portugal argues that, pursuant to Article 36(6) of the Tax Incentives Statute (*Estatuto dos Benefícios Fiscais*, 'EBF'), all companies engaged in commercial, industrial, maritime or other service activities (if not explicitly excluded from the scheme, as it is the case of insurance and financial activities), are likely to be established in the ZFM. Therefore, the tax benefits enjoyed by the ZFM beneficiaries do not comply with the condition of selectivity, which is essential for the existence of State aid. Finally, it cannot be even concluded that selectivity '*de facto*' exists, since the relevant tax benefits are not limited to certain categories or sectors with common characteristics.
- (70) Portugal concludes that the ZFM scheme has to be considered as a general measure rather than a State aid measure ⁽⁹¹⁾. The measure under examination does not entail a selective advantage for the companies registered in the ZFM and it can be justified by the logic of the tax system. Finally, Portugal considers that the Commission bears the burden of proof to determine whether the ZFM scheme involves aid within the meaning of Article 107(1) TFEU.
- (71) Furthermore, Portugal argues that if the ZFM scheme should entail 'aid', it has to be qualified as 'existing aid'. The ZFM scheme predates the accession of Portugal to the EEC ⁽⁹²⁾ and the scheme has not undergone any substantial changes outside the negotiation framework on existing aid. Thus, the ZFM scheme should not be subject to the prior approval of the Commission under Article 108(3) TFEU. Conversely, the Commission should initiate the appropriate measures procedure instead ⁽⁹³⁾, which could involve changing the content of the aid scheme, the introduction of requirements or its clarification. Alternatively, Portugal proposes that the Commission adopt a positive decision subject to conditions ('conditional decision') ⁽⁹⁴⁾.

Origin of the profits benefiting from the income tax reduction

- (72) Portugal recognises that the 2007 and 2013 Commission Decisions provide that the aid in the form of reduced corporate income tax reduction apply to '*profits resulting from activities effectively and materially performed in Madeira*' ⁽⁹⁵⁾. However, Portugal rejects the Commission's conclusion that, if the companies do not conduct their activities in Madeira, they do not incur any additional costs due to their activity in an outermost region and, consequently, are not entitled to regional operating aid ⁽⁹⁶⁾.
- (73) Portugal recalls that the quantified additional costs incurred by companies in the outermost region of Madeira ⁽⁹⁷⁾ were adjusted to the economic dimension of the ZFM, which was recognised by the 2007 Commission Decision ⁽⁹⁸⁾. Moreover, the current implementation of the ZFM scheme is entirely coherent with that resulting from the 2007 and 2013 Commission Decisions, which concluded that 'the measure allows to compensate the additional costs of companies located in the referred outermost region' ⁽⁹⁹⁾. Portugal further argues that the ZFM tax benefits are substantially less than the 'additional costs' and the condition that activities should be 'effectively and materially performed in Madeira' is reflected in the ZFM licensing obligation and compliance with other legal requirements, which make the companies registered in the ZFM scheme (Regime III) legitimate beneficiaries of the scheme and entitled to regional operating aid ⁽¹⁰⁰⁾.

⁽⁹¹⁾ Letter from Portugal of 26 September 2018, paragraph 28, p. 13, and 'Tax and economic analysis report', Ernest & Young, September 2018, pp. 66-68.

⁽⁹²⁾ Paragraph 10 of the 2007 Commission Decision.

⁽⁹³⁾ Article 22(a) and (b) of Regulation (EU) 2015/1589. See recital 61 of this Decision.

⁽⁹⁴⁾ Article 9(4) and Article 20 of Regulation (EU) 2015/1589. See letter from Portugal of 24 April 2019, p. 3. See also recital 61 of this Decision.

⁽⁹⁵⁾ Letter from Portugal of 26 September 2018, paragraph 88, p. 20.

⁽⁹⁶⁾ Paragraph 30 of the Opening Decision.

⁽⁹⁷⁾ Footnote 55 above. The minimum additional costs arising from Madeira's remoteness stand at 26 % of Gross Value Added (GVA) of the private sector or 16,7 % of Madeira's Gross Domestic Product (GDP), totaling around EUR 400 million in 1998. See paragraphs 46 and 48 of the 2007 Commission Decision.

⁽⁹⁸⁾ Paragraph 51 of the 2007 Commission Decision.

⁽⁹⁹⁾ Letter from Portugal of 26 September 2018, paragraph 124.

⁽¹⁰⁰⁾ Letter from Portugal of 26 September 2018, paragraph 125.

- (74) Portugal reiterates that to '*conduct their activities in Madeira*' should merely mean that the activity is performed in Madeira if it is undertaken there with a registered office, management and decision-making centre without requirement for full permanent human capital there. Portugal considers that by requiring the effective implementation in Madeira of activities, which are by definition international, the Commission denies the link of such international activities with the region, recognised by the 2007 and 2013 Commission Decisions ⁽¹⁰¹⁾.
- (75) Portugal, moreover, reiterates its view that requiring that activities are carried out effectively and materially in Madeira, neither mean, nor could mean, that the activities must be restricted, geographically speaking, to Madeira territory and earnings obtained solely in that geographical area. Thus, the Commission's 'restrictive interpretation' is not consistent with settled Union case-law on 'main centre of interests' ⁽¹⁰²⁾, Commission decision practice and Union case-law on 'spillover effect' ⁽¹⁰³⁾, and the Union's fundamental freedom of establishment and free movement of goods, people, services and capital.
- (76) Portugal further concludes that imputability occurs by reference to the place of the company head office or the location of its effective management. This is fully consistent with the 2007 Commission Decision, which provides that '*the scheme applies without distinction to companies' resident and non-resident in Portugal*' ⁽¹⁰⁴⁾. The 2013 Commission Decision also recognises that the activities of the ZFM licensed companies are essentially international in nature, since '*the activities carried out by those companies are open to international competition*' ⁽¹⁰⁵⁾. Thus, the reinterpretation of paragraph 14 of the 2007 Commission Decision that the relevant activities could only be fully implemented within the strict geographical limits of Madeira contradicts the ZFM scheme itself and the 2007 RAG as a key instrument to attract investment originating in and outside the internal market. It also contradicts the aim of Article 349 TFEU, which allows the adoption of specific (tax) measures to attract investment and thus induce the modernisation and diversification of the economy.
- (77) Furthermore, Portugal complies with its commitments under the OECD's Action Plan on Base Erosion and Profit Shifting ⁽¹⁰⁶⁾ ('BEPS Action Plan') that it signed in 2016. The BEPS Action Plan includes the concept of 'substantial activity', which limits the application of preferential schemes to earnings which have a causal connection to costs borne by the company to develop the underlying asset.
- (78) Portugal considers that the Commission in its examination of the lawfulness of the ZFM scheme should consider the criterion on 'substantial activity' as defined in the OECD rules and, in particular, the 'General guiding principles concerning evaluation of measures under BEPS Action Plan' ⁽¹⁰⁷⁾. Portugal considers that the Commission should include in its assessment the existing Union legal instruments on fight against tax evasion and fraud, in particular, the rules on abuse of genuine arrangements established by Directive (EU) 2016/1164. Also, the rules on mandatory automatic exchange of information in the field of taxation in relation to the reportable cross-border arrangements introduced by Council Directive 2011/16/EU ⁽¹⁰⁸⁾.

⁽¹⁰¹⁾ Paragraphs 11, 25, 72 and 73 of the 2007 Commission Decision, and paragraphs 24, 26 and 28 of the 2013 Commission Decision.

⁽¹⁰²⁾ Judgment of the Court of Justice of 2 May 2006, *Eurofood IFSC*, C-341/04, ECLI:EU:C:2006:281, paragraphs 34-36, and judgment of the Court of Justice of 22 December 2010, *Weald Leasing*, C-103/09, ECLI:EU:C:2010:804, paragraph 44.

⁽¹⁰³⁾ Activities outside a given region can benefit significantly the region concerned. According to Portugal, the Commission has acknowledged this principle in a 2007 decision relating to the French overseas departments, Commission Decision C (2007) 5115 final of 27 October 2007 on SA case N522/2006 France – Loi de programme pour l'outre-mer – Aide fiscale, sections 2.8.3 and 2.8.8., pp. 24 and 25. See also judgment of the Court of Justice of 19 December 2012, *GAMP*, C-579/11, ECLI:EU:C:2012:833, paragraphs 30 to 39.

⁽¹⁰⁴⁾ Paragraph 22, footnote 9 of the 2007 Commission Decision.

⁽¹⁰⁵⁾ Paragraph 22 of the 2013 Commission Decision.

⁽¹⁰⁶⁾ Action 5 'Counter Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance', and Action 6 'Prevent Treaty Abuse' (<http://www.oecd.org/tax/beps/action-plan-on-base-erosion-and-profit-shifting-9789264202719-en.htm>).

⁽¹⁰⁷⁾ Action 5 of BEPS Report and Guidelines from the Forum on Harmful Tax Competition of the OECD, with respect to the substantial activity requirement in the context of non-IP regimes (<https://www.oecd.org/tax/beps/beps-actions/action5/>).

⁽¹⁰⁸⁾ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

- (79) Portugal explains that tax avoidance rules introduced by Directive (EU) 2016/1164 seek to apply to non-genuine arrangements (i.e. situations where companies established in low-tax areas and not carrying out there any type of economic activity are taxed at a rate lower or even at a zero rate tax). In accordance with this Directive, it should be pointed out that, for the purposes of assessing the lawfulness of the companies established in the ZFM, the Commission should rely on general anti-abuse clauses at the assessment phase of State aid granting. Portugal considers that it is unacceptable to conclude that the tax advantage granted to companies licensed in the ZFM, which constitutes a 'tax relief', means necessarily that such companies are in a non-genuine arrangement ⁽¹⁰⁹⁾.
- (80) Finally, Portugal describes the tax control system in place regarding the companies registered in the ZFM ⁽¹¹⁰⁾. Furthermore, Portugal describes the verification of the separate accounting requirement as regards the ZFM earnings ⁽¹¹¹⁾, and on this basis contests the view of the Commission in the Opening Decision that there could be doubts on the effectiveness of the controls conducted by the tax authorities ⁽¹¹²⁾.

Job creation/maintenance in the region

- (81) Portugal explains that the introduction of the limitations relating to the minimum number of jobs is intrinsic to a similar logic of an anti-abuse measure: the goal was to avoid companies, which do not have substantial economic activity, from taking undue advantage in Madeira. However, this does not impose or legitimise a reading of job requirements outside the context of applicable Union and national law.
- (82) Further to Union legislation on harmonisation ⁽¹¹³⁾, Portugal argues that Union law does not adopt a uniform concept of 'labour contract' or of 'labour relationship' or of 'worker' ⁽¹¹⁴⁾ or, consequently of 'job'. The relevant 'job' concept is set out in the Portuguese labour law ⁽¹¹⁵⁾, which does not contradict applicable Union law.
- (83) Portugal has always considered that the requirement for entities licensed to operate in the ZFM to create or maintain jobs is only complied with as long as a labour contract is established with a company established in the ZFM ⁽¹¹⁶⁾. The forms of contracting labour which form part of the Union and national rules cannot be ignored, in particular temporary employment as well as the (fundamental) freedom of movement for workers.
- (84) Portugal further argues that the spirit of Union legislation ⁽¹¹⁷⁾ and Union case-law ⁽¹¹⁸⁾ is to accept and protect the various types of employment relationship (whether they are temporary or permanent) and the mobility of workers in the Member States by considering that phenomenon (mobility), including as a positive element for the development of the economy of the Member States. Similarly, the Union broadly recognises the freedom of companies to provide services from other Member States, to temporarily post their employees in those Member

⁽¹⁰⁹⁾ 'Tax and economic analysis report', Ernest & Young, 24 September 2018, p. 66.

⁽¹¹⁰⁾ Letter from Portugal of 26 September 2018, paragraphs 282 to 318.

⁽¹¹¹⁾ Letter from Portugal of 26 September 2018, paragraphs 296 to 298.

⁽¹¹²⁾ Paragraph 34 of the Opening Decision.

⁽¹¹³⁾ Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ L 225, 12.8.1998, p. 16), Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82 22.3.2001, p. 16), or Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provisions of services (OJ L 18, 21.1.1997, p. 1).

⁽¹¹⁴⁾ Opinion of Advocate-General Poiras Maduro delivered on 27 January 2005, *Celtec*, C-478/03, ECLI:EU:C:2005:66.

⁽¹¹⁵⁾ Law No 7/2009 of 12 February 2009, as amended by Law No 14/2018 of 19 March 2018.

⁽¹¹⁶⁾ Letter from Portugal of 26 September of 2018, paragraph 222.

⁽¹¹⁷⁾ Directive 2008/104/EC of the European Parliament and the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9); Regulation (EU) No 492/2011 of the European Parliament and the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ L 141, 27.5.2011, p. 1), and Directive 2014/54/EU of the European Parliament and the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ L 128, 30.4.2014, p. 8).

⁽¹¹⁸⁾ Opinion of Advocate-General Ruiz-Jarabo Colomer delivered on 10 July 2003, *Collins*, C-138/02, ECLI:EU:C:2003:409.

States, which again reflects the mobile nature of current employment relationships, without this implying a lack of verification of the substantive economic activity of the companies. Therefore, Portugal does not accept that the legality of the ZFM scheme is directly dependent on the creation of a certain number of jobs, nor on the basis of a retrograde concept of 'job', which is exclusively based on the notion of space (physical place) in which the employees carry out their tasks, and on a permanent basis ⁽¹¹⁹⁾.

- (85) Portugal refers to the negotiations with the Commission in the context of the 2002 Commission's approval decisions of Regime II ⁽¹²⁰⁾, following which Portugal accepted to include the maximum taxable ceilings related to the number of jobs; however, this did not mean that this condition was a *sine qua non* condition and Portugal never implemented the scheme considering that it was ⁽¹²¹⁾.
- (86) Finally, Portugal considers that the ZFM is not an employment aid scheme but an aid scheme for the diversification and modernisation of Madeira. The aim of the ZFM scheme is primarily to contribute to regional Gross Domestic Product ('GDP'). The contribution of the scheme to the GDP of Madeira demonstrates the strong link between the economic activities performed by the ZFM companies and the region.

Definition of number of jobs created

- (87) Portugal reiterates that the concepts of 'job creation' and 'annual labour units'(ALU) set out in paragraph 58 and footnote 52 of the 2007 RAG do not apply to the ZFM scheme. The definitions apply only to 'regional investment aid' (section four of the 2007 RAG) and not to operating aid (section five of the 2007 RAG). Moreover, Portugal underlines that there is no precedent in the application of the ALU concept to regional aid in an outermost region, conversely to what the Commission stated in the Opening Decision ⁽¹²²⁾. According to the Portuguese authorities, due to the exceptional character of the outermost regions, a different definition of job creation should be accepted. Portugal recalls, in a more global manner, that the 2007 RAG as well as the conditions of the 2007 and 2013 Commission Decisions are non-binding. In any case, as far as the concept of job creation in the 2007 RAG is concerned, Portugal never committed to apply such concept. The calculation of jobs created and maintained in the region should therefore not be subject to the conditions provided for in the 2007 RAG or to the staff headcount determined under Article 5 of the Commission Recommendation concerning the definition of micro, small and medium-sized enterprises ⁽¹²³⁾.

Jobs located outside Madeira region

- (88) Portugal further reiterates that the ZFM beneficiaries' activity should not necessarily take place in the region as the scheme aims at attracting foreign investment and developing international services. A restrictive interpretation limiting activity to Madeira territory removes the incentive for businesses internationalisation, reversing the logic of the regional development that must be promoted. Portugal concludes that jobs exclusively limited to Madeira or collecting tax revenue were not the primary concerns of the ZFM scheme.

⁽¹¹⁹⁾ 'Tax and economic analysis report', Ernest & Young, September 2018, p. 54.

⁽¹²⁰⁾ Commission Decision C(2002) 4811 of 11 December 2002, State aid N 222/A/02 – Portugal – Aid scheme relating to Zona Franca da Madeira for the period 2003 to 2006 (OJ C 65, 19.3.2003, p. 23) and Commission Decision C(2003) 92 of 4 April 2003 (State aid N222/B/2002 – Portugal – Regime de auxílios da Zona Franca da Madeira para o período 2003-2006). See also Commission letter D/52122 of 25 February 2002 and the Portuguese letter of reply of 3 June 2002 (1580).

⁽¹²¹⁾ The commitment has to be interpreted against the position Portugal stated at the 'negotiation process' of the aid scheme. Portugal argued that the ZFM scheme should be considered over the proportionality to the additional costs companies incur in the outermost region of Madeira ('restricting the idea of proportionality to the simple quantifiable additional costs is to devalue the importance of Article 349 of the TFEU (ex-Article 299(2) of the EC Treaty)'). See letter from Portugal of 26 September 2018, pp. 22-24.

⁽¹²²⁾ Paragraph 41 of the Opening Decision.

⁽¹²³⁾ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (C(2003) 1422)(OJ L 124, 20.5.2003, p. 36).

Controls of the job creation/maintenance

- (89) Portugal reiterates that the control of ZFM job creation/maintenance is sufficiently made through the annual tax declarations 'Modelos 10, 30 and DMR (monthly statement declaration)' and the declaration on jobs created/maintained as indicated in 'Modelo 22', Annex D, field 6 (only mandatory for ZFM scheme recipients) ⁽¹²⁴⁾. These declarations, in accordance with the Portuguese Labour law, will allow checking the existing jobs at the beginning and at the end of the financial year.
- (90) Portugal considers that the Portuguese tax system incorporates multiple instruments enabling effective control of the ZFM scheme. The companies established in the ZFM are subject to inspection by the Tax and Customs Authority ('AT'), Regional Government, the Inspectorate-General of Finance and all other tax departments, including the Directorate of Fraud and Special Action Investigation, the Directorate of Tax Inspection and the Large Tax Payers Unit. Moreover, administrative offences or even criminal proceedings are instigated whenever illegal activity is detected. The supervision, inspection and control of the legality of activities carried out in the ZFM has been a priority in the national tax inspection plans.
- (91) Finally, Portugal considers the Commission's preliminary views that the different tax declarations cannot be used as a basis for an accurate calculation of the number of jobs held by each ZFM beneficiary and cannot be either used as a valid alternative of the definition of jobs within the meaning of the 2007 RAG ⁽¹²⁵⁾, constitutes a breach of the respect due to the State functions as provided for in Article 4(2) of the Treaty on European Union.

Contribution to regional development

- (92) Portugal underlines the contribution of the ZFM scheme to the regional development of the outermost region of Madeira and provides to that end a study ⁽¹²⁶⁾ showing the weight of the ZFM in the internationalisation and diversification of the Madeira economy. Portugal further argues that the applied measure complies with the 2007 and 2013 Commission Decisions and applicable State aid rules. Portugal further concludes that the Commission should assess, in a consistent manner, the ZFM scheme against Union policies on the outermost regions with regard to economic, social and territorial cohesion.

Retroactive application of the 2014 GBER

- (93) Portugal reiterates that the 2014 GBER may not apply retroactively to individual aid awards under the ZFM scheme for the purposes of declaring their compatibility, if that General Block Exemption Regulation exempted them. Portugal further considers that a flexible interpretation of the 2014 GBER would not require that the ZFM beneficiaries have their economic activities exclusively in the outermost region of Madeira. Portugal concludes that the implementation of the ZFM scheme has to be based on the 2007 RAG, which was in force at that time.

Recovery and breach of legitimate expectations and legal certainty

- (94) Portugal argues that the ZFM scheme was approved by the Commission several times in the past. Therefore, the national tax authorities could not be now called to recover the aid.
- (95) Portugal further considers that all tax benefits were awarded in full respect of the ZFM scheme. Consequently, a different interpretation would not comply with the requirements of clarity, accuracy or predictability of effects in settled Union case-law ⁽¹²⁷⁾. Portugal and aid recipients assumed that they could trust that the implemented ZFM scheme was covered legitimately by the 2007 and 2013 Commission Decisions. Portugal concludes that companies, which have received aid under Regime III, acquired the right to legal certainty and security and to legitimate expectations not to be subject to any recovery decision.

⁽¹²⁴⁾ Recital 29 of this Decision.

⁽¹²⁵⁾ Paragraph 42 of the Opening Decision.

⁽¹²⁶⁾ Footnote 55 above.

⁽¹²⁷⁾ Judgment of the Court of Justice of 15 February 1996, *Duff and Others*, C-63/93, ECLI:EU:C:1996:51, paragraph 20, and opinion of Advocate General Cosmas of 8 June 1995, ECLI:EU:C:1995:170; judgment of the Court of Justice of 7 June 2007, *Britannia Alloys & Chemicals v Commission*, C-76/06 P, ECLI:EU:C:2007:326, paragraph 79; and judgment of the Court of Justice of 18 November 2008, *Förster*, C-158/07, ECLI:EU:C:2008:630, paragraph 67.

5. OBSERVATIONS FROM THIRD INTERESTED PARTIES AND COMMENTS FROM PORTUGAL

5.1. Observations from third interest parties

- (96) The Commission received observations from 102 interested parties (citizens, companies or associations of companies). ZFM companies and their employees submitted the majority of the observations (94 out of 102). These interested parties stressed their concerns about the termination or reduction of the ZFM operation, which would result in massive job losses and negative impact on the regional economy. In addition, they argued that the nature of the activities developed by the ZFM companies should not be restricted to the Madeira territory, not only because its market size was rather small, but mainly because the internationalisation of the economy of an outermost region was one of the aims of the ZFM from its inception. Furthermore, they concluded that the Commission's view on *'the place where the economic activities were carried out'* was a restrictive interpretation of the ZFM operative conditions in a context of an open and global economy.
- (97) The Commission also received comments from seven sectoral company associations ⁽¹²⁸⁾ and by the company managing the ZFM itself ⁽¹²⁹⁾. They unanimously criticised what they consider as the Commission's restrictive interpretation of the link of the aid amount to the creation and maintenance of real jobs in Madeira and the application of the income tax exemption to income deriving from *'activities effectively and materially performed in Madeira'*.
- (98) The arguments put forward by interested parties in order to support their views on the existence of aid, origin of the profits and job creation are summarised in the following recitals.
- (99) Only one interested party, the Commercial and Industrial Association of Funchal (Associação Comercial e Industrial do Funchal, 'ACIF') ⁽¹³⁰⁾, argues that the corporate income tax reduction does not constitute aid. It considers that the tax reduction merely represents the differential of uncollected taxes on income that, in absence of that tax reduction, would not exist at all. The ZFM scheme involves purely a theoretical and artificial tax expense, which is budgeted and calculated annually for accounting purposes only, as it does not correspond to an actual tax expense or to a decrease in collected revenue. The elimination of the ZFM tax benefits would not give rise to the collection of said tax differential. ACIF further considers that, if Madeira has to be compared to other European countries that have competitive tax systems, which do not face the same permanent constraints and do not limit the tax benefits to the jobs created, it should be concluded that there is no economic advantage linked to Madeira's ZFM scheme. In this regard, it is highly unlikely that the ZFM scheme will distort competition and affect trade between Member States.
- (100) The interested parties argue that the location of activities and jobs which are international by nature in the region of Madeira is wrongly limiting the support in favour of the Madeira outermost region to the mere compensation of additional costs incurred by companies in Madeira due to its natural handicaps as enshrined in Article 349 TFEU.
- (101) The interested parties consider that the Commission's interpretation ignores the fact that all companies established in ZFM can benefit from the scheme only if they have a permanent establishment in Madeira, taking into account the model of the OECD Convention for the avoidance of double taxation ⁽¹³¹⁾, and have their combined domicile and effective place of business in the region.

⁽¹²⁸⁾ Associação Comercial e Industrial do Funchal ('ACIF'), Câmara do Comércio e Indústria dos Açores ('CCIA'), Confederação de Comércio e Serviços de Portugal ('CCP'), Confederação da Indústria Portuguesa ('CIP'), Confederação de Turismos de Portugal ('CTP'), European International Ship Owners Association of Portugal ('EISAP') and 'EURODOM' (representative association of the French outermost regions).

⁽¹²⁹⁾ Sociedade de Desenvolvimento da Madeira S.A. ('SDM'). The SDM is, since 1984, the responsible company, on behalf of the Regional Government of Madeira ('concession contract'), for the management, administration and promotion of the ZFM (also called 'International Business Centre of Madeira, 'IBC').

⁽¹³⁰⁾ ACIF is a business association representing 800 associated companies from all sectors of activity (63 % in trading and services, 23 % in industry, and 14 % in tourism).

⁽¹³¹⁾ OECD Model Tax Convention on Income and Capital: condensed version 2017 (https://www.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-condensed-version_20745419)

- (102) Moreover, the interested parties claim that a large number of activities currently carried out by ZFM companies on top of immaterial activities have to be carried out in a different place from their headquarters. A limitation of such a possibility would constitute a discretionary and negative treatment of Madeira, which is incomprehensible and unreasonable, especially in the case of incentives that are not effective tax expenditure – but rather virtual or apparent expenditure – nor even a loss of tax revenues for the Madeira region.
- (103) Only a limited number of interested parties claim that the Commission is prohibiting the internationalization of Madeira's economy by encouraging instead an economic isolationism of the region, which will constitute a violation of the principles of a market economy and the integration of less favoured regions into it.
- (104) The interested parties further consider abusive the submission of the ZFM scheme to the definitions, conditions and principles set out in the 2007 RAG in terms of definition and calculation of jobs, since the aid scheme was approved as regional operating aid and not as investment aid. Consequently, it is not appropriate to apply, not even analogically, the criteria and concepts defined in paragraph 58 and footnote 52 of the 2007 RAG to the assessment of regional operating State aid, including the aid authorised for the ZFM scheme. Finally, the interested parties claim that the concept of 'job' has to be considered under the definitions and conditions set out in the Portuguese Labour code.
- (105) The interested parties further note that, under the GBER provisions, the concept of 'creation of employment' is exclusively provided for by Article 14, which governs regional investment aid, and by Article 17, which governs investment aid for SMEs. In both cases, for delimiting their eligible costs, the *'estimated wage costs arising from the creation of employment, as a result of an initial investment, is calculated over a period of two years'*. The interested parties conclude that 'the aid granted to the ZFM companies does not relate to wage costs, does not fall within any initial investment and it is not limited to a period of 2 years'.
- (106) Only a limited number of interested parties argue that the concept of 'number of annual work-year units (AWU)' is set out only in Article 5 of Annex I to the 2014 GBER (as it was the case under the 2008 GBER). In addition, they argue that the concept is intended to 'protect' SMEs by preventing all their employees from being considered 'effective' and counted as 'full employee', in particular to avoid that the maximum number of workers acceptable for the purpose of maintaining the SME status be exceeded ⁽¹³²⁾.
- (107) Furthermore, the interested parties argue that the 'AWUs requirement' to the management posts of the companies benefiting from the scheme is devoid of any logical and legal sense. In accordance with the applicable national rules governing members of management corporate bodies ⁽¹³³⁾, the performance of such tasks/duties in more than one company is legal. Therefore, the Commission's interpretation 'prohibiting' the performance of such tasks/duties in more than one company not only subverts the national legal framework, but ignores the functional content of the duties/positions in question and the characteristics of the persons who fill such positions.
- (108) The interested parties claim that management posts and tasks involved do not require full and exclusive permanence and availability, as such office duties are usually filled by highly qualified and skilled persons, who often undertake other professional and business activities. There are endless cases of administrators/directors and/or managers-entrepreneurs linked to several companies, contributing with their expertise and professional skills to the development of such companies. The interested parties further conclude that, conversely to the Commission's view, there is no rule nor limitation regarding the possible cumulation of positions/duties in more than one company established in the ZFM. Thus, the holders of company's management boards are considered to be 'effective employees' provided that the rules in the national legislation with that purpose are complied with.

⁽¹³²⁾ See letter from ACIF of 12 April 2019, Annex I on the defense of the ZFM and their companies, p. 26.

⁽¹³³⁾ The performance of such duties may not be remunerated. The remuneration is freely fixed by the company and does not necessarily correlate with the number of hours actually worked or with the remuneration earned by other employees. There is no performance on an exclusive basis, unless it is imposed by the company and accepted by the management board holder. These duties are, as a rule, performed on exemption from working hours, and subject to a no minimum or maximum limits of the working period.

- (109) Only a limited number of interested parties claim a positive discrimination in favour of Madeira based on its outermost region status as recognised by Article 349 TFEU and stress the importance of the ZFM in Madeira's economy ⁽¹³⁴⁾ (including the quantification of the impact on the region, if most or all the business currently operating there cease trading ⁽¹³⁵⁾).
- (110) Finally, a limited number of interested parties claim that any recovery would be in violation of general principles of Union law. To this end, they argue that the Commission, by concluding that the scheme implemented by Portugal constitutes unlawful aid, would breach the principles of legal certainty ⁽¹³⁶⁾ and legitimate expectations as settled in Union case-law ⁽¹³⁷⁾.

5.2. Comments from Portugal

- (111) The Commission forwarded the comments received from interested parties to Portugal on 23 May and 12 June 2018. Portugal's response to those comments can be summarised as follows ⁽¹³⁸⁾.
- (112) Portugal stresses that all comments received from interested parties unequivocally state the compatibility of the ZFM scheme as implemented by Portugal with the internal market. These comments also underline the importance of the ZFM for the regional development, the territory cohesion, the employment of the Madeira region as well as its contribution to reduce the consequences of the outermost status of Madeira. They thus consider as unproven the risks and situations that led to the Commission's preliminary conclusions.
- (113) Portugal further notes that the number and meaning of the comments received show the absence of an appreciable effect of the scheme on trade between Member States or on competition.
- (114) Furthermore, Portugal considers the general positive comments received, the absence of comments from jurisdictions that compete with the ZFM scheme, and the absence of comments from companies that do not benefit from the scheme as strong indicators that the scheme has been properly implemented.
- (115) Portugal urges the Commission to take into account the legal nature of the ARM as an outermost region under the terms and for the purposes of Article 349 TFEU and the Act of Accession of Portugal to the European Economic Community (EEC), considering the positive discrimination resulting from the approved scheme as justified.

⁽¹³⁴⁾ On 31 December 2017, with regard to employment, there were [5 000-10 000] people employed in the ZFM ([1 000-3 000] in International Services; [100-1 000] in the industrial zone, and [4 000-6 000] in the International Shipping Register). In 2018, according to data directly collected through a survey conducted by ACIF, there were [1 000-3 000] employees in international services part of the ZFM. On 31 December 2018, [1 000-3 000] companies were established in the ZFM. According to data compiled by the Madeira Tax Authority, the ZFM generated in 2018 a direct tax revenue to the Autonomous Region of Madeira of EUR [50 000-200 000] thousand, corresponding to [10-20] % of the overall tax revenue collected in the region. According to data from the Bank of Portugal of 2013, the ZFM was responsible of [10-20] % of direct investment in Portugal. See ACIF defense of the ZFM and companies settled therein, pp. 29-35 (Annex I attached to the letter from ACIF of 12 April 2019).

⁽¹³⁵⁾ Admitting that all the companies currently installed in the ZFM would cease their activity in the region (scenario 1), it is estimated that there will be a fall in GVA between [1-10] % and [10-20] %, as a percentage of the GVA in 2015, and a fall of employment between [1 000-4 000] and [5 000-7 000] jobs. If any of the current activity is maintained, but in which companies responsible for [80-90] % of the GVA currently generated in the ZFM cease their activity (scenario 2), the effects foreseen also correspond to a crisis, with a fall of [1-10] % to [1-10] % and a loss of jobs between [1 000-3 000] and [4 000-6 000]. See letter from ACIF of 12 April 2018, pp. 36-37, and attached study commissioned by ACIF to the Centre for Applied Studies of the Portuguese Catholic University in Lisbon: CONFRARIA, João, 'Impacto do Centro Internacional de Negócios da Madeira na economia da Região', Universidade Católica de Lisboa – Centro de Estudos Aplicados, 4 April 2019, p. 1-25.

⁽¹³⁶⁾ Judgment of the Court of Justice of 5 July 2012, *SIAT*, C-318/10, ECLI:EU:C:2012:415; judgment of the Court of Justice of 3 October 2013, *Itelcar*, C-282/12, ECLI:EU:C:2013:629; and judgment of the Court of Justice of 11 June 2015, *Berlington Hungary and Others*, C-98/14, ECLI:EU:C:2015:386.

⁽¹³⁷⁾ Judgment of the Court of Justice of 24 November 2005, *Germany v Commission*, C-506/03, ECLI:EU:C:2005:715, paragraph 58; and judgment of the General Court of 3 December 2014, *Castelnou Energía v Commission*, T-57/11, ECLI:EU:T:2014:1021, paragraph 189.

⁽¹³⁸⁾ Letter from Portugal of 26 June 2019 (2019/082914).

- (116) Portugal further considers the ZFM of the utmost importance both for the State and to the modernization, diversification and development of the Madeira region, as it represents a decisive contribution to the economic and financial systems and has a relevant impact for the national economy and finances. Such modernization and development would not have been possible without the existence of the jobs created and effectively developed in the region together with material investments.
- (117) Portugal stresses that the diversity of activities carried out in the ZFM, the number of direct and indirect jobs created, the investments (domestic and foreign) carried out, the consumption generated, the strong contribution of the taxes collected to the regional budget as well as the internationalization of the regional economy are crucial for Madeira's economic and social sustainability. This also results from the economic studies annexed to the comments submitted by ACIF.
- (118) Portugal, moreover, expresses its view that the comments from interested parties confirm that the Portuguese authorities exercised its supervisory powers regarding the scheme's eligibility conditions. To a certain extent the submitted comments show that the control exercised by the Portuguese authorities towards the ZFM scheme beneficiaries has been more demanding than the requirements of the 2007 and 2013 Commission Decisions.
- (119) Finally, Portugal argues that Article 36 of the EBF requires job creation without expressly mentioning that such jobs must be created in the region. Portugal further argues that job creation was not conceived as a way to verify how each company specifically contributed to the region's development; instead it was merely considered as a criterion of substantial economic activity, in light of the recommendations of the OECD and of the Code of Conduct Group (Business Taxation) ⁽¹³⁹⁾, with the purpose of excluding 'letterbox' companies ⁽¹⁴⁰⁾.

6. ASSESSMENT OF THE AID

6.1. Existence of aid within the meaning of Article 107(1) TFEU

- (120) Article 107(1) TFEU defines State aid as 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.
- (121) Accordingly, for a support measure to be considered aid within the meaning of Article 107(1) TFEU it must meet the following conditions cumulatively: (i) it must be financed by the State or through State resources and it must be imputable to the State; (ii) it must confer a selective advantage on its recipients by favouring certain undertakings or the production of certain goods; (iii) it must distort or threaten to distort competition; and (iv) it must have the potential to affect trade between Member States.
- (122) In the following recitals the Commission will assess whether the ZFM scheme implemented by Portugal in favour of the ZFM beneficiaries satisfies the criteria mentioned in recital 121 and consequently constitutes State aid.

6.1.1. State resources and imputability

- (123) Portugal considers that the ZFM scheme does not involve State resources because it does not correspond to 'real tax expenditure' but simply to a virtual tax expenditure ('theoretical tax revenue losses') and, therefore, it is not a State aid measure ⁽¹⁴¹⁾.

⁽¹³⁹⁾ On 1 December 1997, the Council and the representatives of the governments of the Member States, meeting within the Council, adopted a resolution on a Code of Conduct for business taxation, with the objective to curb harmful tax competition. The Code of Conduct Group (Business Taxation) was set up within the framework of the Council by the ECOFIN Council on 9 March 1998 to assess tax measures that may fall within the scope of the Code of Conduct (OJ C 99, 1.4.1998, p. 1). See <https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group/>.

⁽¹⁴⁰⁾ Letter from Portugal of 26 June 2019, p. 3.

⁽¹⁴¹⁾ Recital 67 of this Decision.

- (124) One interested party, ACIF, raises similar arguments and considers that the scheme does not constitute aid ⁽¹⁴²⁾.
- (125) The Commission notes that the Portuguese Constitution recognises Madeira as an 'Autonomous Region' with its own political and administrative status ('*Estatuto Político-Administrativo da Região Autónoma da Madeira*' ⁽¹⁴³⁾, 'Estatuto') and self-governing institutions. The Commission further notes that, pursuant to Article 5(1) of its Estatuto, the Autonomous Region of Madeira (ARM) enjoys, inter alia, financial, economic and fiscal autonomy. The Commission also notes that the Estatuto ensures the existence of a specific 'regional tax system', which also expressly includes the ZFM ⁽¹⁴⁴⁾. Taxes and levies collected by the regional authorities are revenues of the ARM ⁽¹⁴⁵⁾ and tax revenues are, inter alia, those resulting from income and gains of legal persons and stamp duty ⁽¹⁴⁶⁾. The ARM has its own fiscal competence and the power to adapt national fiscal provisions to particular regional features ⁽¹⁴⁷⁾. Furthermore, the regional parliament has the power to reduce the rate of the corporate income tax established on an annual basis by the national parliament for the Portuguese territory ⁽¹⁴⁸⁾. Finally, the Commission notes that Article 36 of the EBF governs the ZFM legal framework ⁽¹⁴⁹⁾.
- (126) As described in recitals 12 and 13 of this Decision, the ZFM scheme concerns a corporate income tax reduction and other tax exemptions normally payable to the Portuguese State ⁽¹⁵⁰⁾. In particular, it allows a reduced corporate income tax compared to the tax normally payable on corporate income under the Corporate Income Tax Code – Income and Gains of Collective Persons (*Código do Imposto sobre o Rendimento das Pessoas Coletivas*, 'CIRC') ⁽¹⁵¹⁾, including, under certain conditions, a further 50 % corporate income tax cut.
- (127) A loss of tax revenue for the State is equivalent to consumption of State resources in the form of tax expenditure. By allowing a tax reduction from the CIRC in compliance with the ZFM scheme approved by Article 36 of the EBF, Portugal foregoes revenue that it would have obtained if it had not enacted this fiscal provision. The corporate income tax reduction, is granted through State resources. This measure has been put into effect in the form of a State regulation (the Tax Incentives Statute, *Estatuto dos Benefícios Fiscais* 'EBF' that is a parliamentary act) that is a legal act attributable to the Portuguese State. Since this tax benefit is granted by the Portuguese authorities, it is imputable to the State.
- (128) The concept of 'aid' encompasses not only positive benefits, but also measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, without being subsidies in the strict meaning of the word, are similar in character and have the same effect ⁽¹⁵²⁾.
- (129) The Commission therefore concludes that the corporate income tax reduction (including the additional 50 % corporate income tax cut for companies carrying out industrial activities in the ZFM industrial zone) is granted from State resources and imputable to the State ⁽¹⁵³⁾.

⁽¹⁴²⁾ Recital 99 of this Decision.

⁽¹⁴³⁾ Law No 13/91 of 5 June 1991, as amended by Law No 130/99 of 21 August 1999 and Law 12/2000 of 21 June 2000.

⁽¹⁴⁴⁾ Article 107(4) and Article 146 of the Estatuto.

⁽¹⁴⁵⁾ Article 108(b) of the Estatuto.

⁽¹⁴⁶⁾ Article 112(1)(b) and (e) of the Estatuto. See also Article 26 of Law No 2/2013 of 2 September 2013 (Law of the Finances of the Autonomous Regions, *Lei das Finanças das Regiões Autónomas*, 'LFRA').

⁽¹⁴⁷⁾ Article 55 and 56 of the LFRA.

⁽¹⁴⁸⁾ Article 59(2) of the LFRA.

⁽¹⁴⁹⁾ Article 146(4) of the Estatuto and Article 59(6) of the LFRA.

⁽¹⁵⁰⁾ Article 5, Article 26 and Article 59(2), (3), (4) and (6) of the LFRA. For the period of 2007 to 2013, see Law No 1/2007, of 19 February, as amended by Law No 1/2010 of 29 March 2010, by Law No 2/2010 of 16 June and by Law No 64/2012 of 20 December 2012.

⁽¹⁵¹⁾ 3 % from 2007 to 2009, 4 % from 2010 to 2012, 5 % from 2013 to 2020, instead of 29 % in 2007, 20 % from 2008 to 2011, 25 % from 2012 to 2013, 23 % in 2014 and 21 % from 2015 to 2020.

⁽¹⁵²⁾ Judgment of the Court of Justice of 8 November 2001, *Adria-Wien Pipeline and Wietersdorfer & Peggauer Zementwerke*, C-143/99, ECLI:EU:C:2001:598, paragraph 38; judgment of the Court of Justice of 15 March 1994, *Banco Exterior de España*, C-387/92, ECLI:EU:C:1994:100, paragraph 13; and judgment of the Court of Justice of 1 December 1998, *Ecotrade*, C-200/97, ECLI:EU:C:1998:579, paragraph 34.

⁽¹⁵³⁾ Judgment of the Court of Justice of 16 May 2002, *France v Commission*, C-482/99, ECLI:EU:C:2002:294, paragraph 24; judgment of the General Court of 5 April 2006, *Deutsche Bahn v Commission*, T-351/02, ECLI:EU:T:2006:104, paragraph 103.

6.1.2. Selective advantage

- (130) Portugal considers that the ZFM scheme is not selective because the measure is not '*favouring certain undertakings or the production of certain goods*' within the meaning of Article 107(1) TFEU. Portugal considers that all companies engaged in commercial, industrial, maritime or other service activities are likely to be established in the ZFM. It argues that the ZFM scheme forms part of the general economy of the Portuguese tax scheme and that the measure does not entail a selective advantage for the companies registered in the ZFM. Therefore, it does not constitute State aid. The ZFM scheme should be rather qualified as a general measure ⁽¹⁵⁴⁾.
- (131) According to settled Union case-law, in order to determine whether a State measure constitutes State aid, it is necessary to establish whether the recipient undertakings receive an economic advantage that they would not have obtained under normal market conditions, i.e. in the absence of State intervention. A measure by which the public authorities grant certain undertakings a tax exemption which places the recipients in a more favourable position than other taxpayers amounts to State aid within the meaning of Article 107(1) TFEU ⁽¹⁵⁵⁾. Likewise, a measure allowing certain undertakings a reduction of tax normally due can amount to State aid.
- (132) The ZFM scheme is a regional aid scheme, which, as approved by the 2007 Commission Decision, authorised aid in the form of reduced corporate income tax on profits resulting from activities effectively and materially performed in Madeira and other tax exemptions as described in recital 12 of this Decision.
- (133) In accordance with recital 127 of this Decision, the ZFM scheme is governed by Article 36 of the EBF ⁽¹⁵⁶⁾.
- (134) Undertakings in Madeira region were subject to several corporate (normal) income taxation rates across the period of 2007 to 2014 under successive regional budgetary laws ⁽¹⁵⁷⁾. Companies registered in the ZFM benefit from a corporate income tax reduction on profits ⁽¹⁵⁸⁾ or from other tax exemptions until 31 December 2020. The ZFM scheme enables the beneficiaries to save on their expenses. This derogation is put in place with the specific objective of benefiting and promoting activities carried out by the companies registered in the ZFM, putting these companies in a more favourable position than other companies located elsewhere in the country or in the ARM.
- (135) Therefore, the measure under examination confers an advantage solely to the companies established in the ZFM. Given its geographical scope of application, the measure under examination is selective, as it is only available to the companies registered in the limited ZFM.
- (136) In view of the above, the Commission concludes that, by alleviating a fiscal charge that they should normally pay, the ZFM scheme confers a selective advantage to the companies registered in the ZFM within the meaning of Article 107(1) TFEU.

⁽¹⁵⁴⁾ See recitals 68 and 69 of this Decision.

⁽¹⁵⁵⁾ Judgment of the Court of Justice of 10 January 2006, *Cassa di Risparmio di Firenze and Others*, C-222/04, ECLI:EU:C:2006:8, paragraph 132.

⁽¹⁵⁶⁾ Footnote 5 above.

⁽¹⁵⁷⁾ 29 % in 2007 (Article 12 of Decreto Legislativo Regional No 3/2007/M of 9 January 2007); 20 % from 2008 until 2011 (Article 15 of Decreto Legislativo Regional No 2/2008/M of 16 January 2008, Article 14 of Decreto Legislativo Regional No 45/2008/M of 31 December 2008, Article 13 of Decreto Legislativo Regional No 34/2009/M of 31 December 2009, and Article 14 of Decreto Legislativo Regional No 2/2011/M of 10 January 2008); 25 % from 2012 until 2013 (Article 2 of Decreto Legislativo Regional No 20/2011/M of 26 December 2011, and Article 16 of Decreto Legislativo Regional No 42/2012/M of 31 December 2012); 23 % in 2014 (Article 18 of Decreto Legislativo Regional No 31-A/2013/M of 31 December 2013).

⁽¹⁵⁸⁾ Footnote 15 above.

6.1.3. Distortion of competition and effect on trade

- (137) Portugal did not directly argue that the measure did not distort or threaten to distort competition and did not affect trade between Member States ⁽¹⁵⁹⁾. Conversely, ACIF, one of the interested parties, argued that it was highly unlikely that the ZFM scheme would distort competition and affect trade between Member States ⁽¹⁶⁰⁾.
- (138) A measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes ⁽¹⁶¹⁾. The distortion of competition within the meaning of Article 107(1) TFEU is thus assumed as soon as the State grants a financial advantage to an undertaking in liberalised sectors where there is, or could be, competition ⁽¹⁶²⁾. Where financial aid by a State strengthens the position of an undertaking as compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by the aid ⁽¹⁶³⁾.
- (139) To the extent that the companies registered in the ZFM carry out activities that are open to international competition, the measure at stake improves their competitive position and threatens to distort competition and thus may affect trade between Member States.

6.1.4. Existing aid classification and appropriate measures

- (140) Portugal argues that the ZFM scheme should be treated as existing aid, if it should entail 'aid'. Portugal further argues that the ZFM was set up in 1980 ⁽¹⁶⁴⁾, which predates the accession of Portugal to the EEC in 1986, and it has not undergone any substantial changes outside the negotiation framework on existing aid. It should be therefore classified as an 'existing aid' scheme within the meaning of Article 1(b)(i) of Regulation (EU) 2015/1589 ⁽¹⁶⁵⁾.
- (141) In view of the above, Portugal considers that the Commission should propose appropriate measures to ensure the continued compatibility of the ZFM scheme with the internal market, which could involve changing the content of the aid scheme, the introduction of requirements or the clarification of existing requirements ⁽¹⁶⁶⁾.
- (142) Article 1(b)(i) of Regulation (EU) 2015/1589 defines 'existing aid' as 'all aid which existed prior to the entry into force of the TFEU in the respective Member States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the TFEU in the respective Member States'.
- (143) Article 26 and section 10 of Annex I to the Act of Accession of Portugal ⁽¹⁶⁷⁾ provide adaptations to acts adopted by the institutions, which include under the customs legislation section the 'Zona Franca da Madeira'. The Act of Accession of Portugal does not provide that the ZFM should be regarded as existing aid within the meaning of Article 88(1) of the EC Treaty (now Article 108(1) TFEU).

⁽¹⁵⁹⁾ Recital 113 of this Decision.

⁽¹⁶⁰⁾ Recital 99 *in fine* of this Decision.

⁽¹⁶¹⁾ Judgment of the Court of Justice of 17 September 1980, *Philip Morris*, C-730/79, ECLI:EU:C:1980:209, paragraph 11; and judgment of the Court of First Instance of 15 June 2000, *Alzetta and Others v Commission*, joined cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to 607/97, T-1/98, T-3/98 to T-6/98 and T-23/98, ECLI:EU:T:2000:151, paragraph 80.

⁽¹⁶²⁾ Judgment of the Court of First Instance of 15 June 2000, *Alzetta and Others v Commission*, joined cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to 607/97, T-1/98, T-3/98 to T-6/98 and T-23/98, ECLI:EU:T:2000:151, paragraphs 141 to 147.

⁽¹⁶³⁾ Judgment of the Court of First Instance of 4 April 2001, *Regione autonoma Friulia-Venezia Giulia v Commission*, T-288/97, ECLI:EU:T:2001:115, paragraph 41.

⁽¹⁶⁴⁾ Decree Law No 500/80 of 20 October 1980 and Regional Regulatory Decree No 53/82 of 23 August 1982. See also Decree Law No 502/85 of 30 December 1985 and Decree Law No 165/86 of 26 June 1986.

⁽¹⁶⁵⁾ Letter from Portugal of 26 September 2018, paragraph 67.

⁽¹⁶⁶⁾ Letter from Portugal of 26 September 2018, paragraph 85.

⁽¹⁶⁷⁾ Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ L 302, 15.11.1985, p. 23).

- (144) Furthermore, the first notification of the ZFM scheme (Regime I) under State aid rules was in 1986, which the Commission approved by Decision of 25 May 1987. Since 1987, the ZFM scheme had several prolongations and successor schemes approved by Commission Decisions in 2002 and 2007, respectively ⁽¹⁶⁸⁾. Furthermore, the ZFM scheme was subject to substantial changes across the successive regimes I, II and III. Regime I did not require the creation/maintenance of jobs. This requirement was introduced under Regime II (linked to maximum taxable base ceilings placed upon the beneficiaries' annual taxable base) and kept in Regime III. The Regime II excluded all activities involving financial intermediation, insurance and auxiliary financial and insurance-related activities as well as intra-group services activities (coordination, treasury and distribution centres) ⁽¹⁶⁹⁾. It also introduced a progressive reduction of aid in the system by increasing the applicable tax rates (1 % in 2003 and 2004, 2 % in 2005 and 2006, and 3 % as from 2007). Finally, it introduced the additional benefit of a 50 % corporate income tax cut for companies located in the ZFM industrial free trade zone. Under Regime III, in particular further to the 2013 Commission Decision, a 36,7 % increase of the maximum taxable base ceilings on which the corporate income tax reduction could apply was approved.
- (145) In view of the above, the measure in this case does not constitute existing aid falling within the meaning of Article 1(b)(i) of Regulation (EU) 2015/1589. Article 22 of that Regulation, on the basis of which Portugal requires the Commission to limit itself to the adoption of 'appropriate measures', is therefore not applicable.

6.1.5. *De minimis aid*

- (146) In cases where individual beneficiaries of the ZFM scheme received an advantage not exceeding the thresholds specified in Commission Regulation (EC) No 1998/2006 ⁽¹⁷⁰⁾, that advantage will not be considered State aid and thus does not fall within the prohibition of Article 87(1) of the EC Treaty (now Article 107(1) TFEU), provided all the other conditions laid down by that regulation are fulfilled. In the same vein, beneficiaries of the ZFM scheme who received an advantage not exceeding the thresholds specified in Commission Regulation (EU) No 1407/2013 ⁽¹⁷¹⁾ (which applies retroactively to the present case by virtue of Article 7(1) thereof) have not received State aid falling within Article 107(1) TFEU, provided all the other conditions laid down by that regulation are fulfilled.
- (147) On the basis of the quantitative data provided by Portugal, it would appear that in many cases the amount of aid received by the beneficiaries of the ZFM is below the *de minimis* threshold of EUR 200 000.

Conclusion on the existence of aid

- (148) In view of the above, the Commission considers that the measure implemented by Portugal in favour of ZFM companies constitutes State aid within the meaning of Article 107(1) TFEU.
- (149) Incidentally, it should be added that Portugal did not challenge the finding of the existence of aid reached by the Commission in its 2007 Decision ⁽¹⁷²⁾.

⁽¹⁶⁸⁾ See footnote 9 above.

⁽¹⁶⁹⁾ See preamble to Decree Law 163/2003 of 24 July 2003.

⁽¹⁷⁰⁾ Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 379, 28.12.2006, p. 5). This Regulation applied from 1 January 2007 until 31 December 2013 (see Article 6).

⁽¹⁷¹⁾ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1).

⁽¹⁷²⁾ In the context of the notification of the ZFM scheme submitted to the Commission in 2006, Portugal refers to the ZFM scheme as a 'regional operating aid scheme'. See letter from Portugal of 28 June 2006 (1900/80932); in particular sub-sections 2.1 and 10 of the general notification form, sub-section 1.2 of the supplementary information sheet, preamble to the notified draft law, explanatory memorandum and preamble to Decree-Law No 163/2003 of 24 July 2003. See also letters from Portugal of 29 October 2015, p. 22, of 31 March 2016, p. 4, and of 21 November 2017, pp. 5-6.

6.2. Compatibility of the aid

6.2.1. Compliance of the ZFM scheme with the 2007 and 2013 Commission Decisions

- (150) Portugal considers that the ZFM scheme as implemented by the Portuguese authorities is consistent with the commitments Portugal has made at the time of the notification and consistent with the 2007 and 2013 Commission Decisions.

Origin of the profits benefiting from the income tax reduction

- (151) The ZFM scheme was assessed on the basis of the 2007 RAG as regional operating aid and approved by the 2007 and 2013 Commission Decisions. The ZFM scheme authorised aid in the form of reduced corporate income tax on profits resulting from activities effectively and materially performed in Madeira and of exemption from other taxes, up to maximum aid amounts, calculated on maximum taxable base ceilings based on the number of jobs held each fiscal year by the beneficiaries.
- (152) In the course of the notification process that led to the 2007 Commission Decision, Portugal did not contest that the fiscal reductions provided for in the scheme would be restricted to activities carried out in Madeira, as recalled in paragraph 32 of the Opening Decision ⁽¹⁷³⁾.
- (153) The 2007 RAG allow regional operating aid only in exceptional cases ⁽¹⁷⁴⁾: 'such aid may be granted in regions eligible under the derogation in Article 87(3)(a) of the EC Treaty (now Article 107(3)(a) TFEU), provided that: (i) it is justified in terms of its contribution to regional development and its nature, and (ii) its level is proportional to the handicaps it seeks to alleviate' ⁽¹⁷⁵⁾.
- (154) There is no question that Madeira is an outermost region for the purposes of Article 349 TFEU and is therefore eligible under Article 107(3)(a) TFEU.
- (155) However, the contribution of an operating aid scheme to the regional development of a region has to be assessed in relation and in proportion to the handicaps of this region, which in the case of outermost regions are structural and permanent handicaps recognized by the TFEU, such as remoteness, insularity, small size, difficult topography and climate, economic dependence on few products, as enshrined in Article 349 TFEU.
- (156) As recalled in paragraph 30 of the Opening Decision, the 'raison d'être' of regional operating aid for outermost regions is to compensate the additional costs companies incur in these regions due to these handicaps.
- (157) In the assessment of the ZFM scheme, the additional costs were identified and quantified based on a study submitted by the Portuguese authorities. In the 2007 Commission Decision, the assessment of the proportionality of the measure was made on the basis of these quantified additional costs, at the aggregated level of the ZFM, and at the level of each beneficiary registered in the ZFM ⁽¹⁷⁶⁾.
- (158) On the origin of the profits benefiting from the income tax reduction, Portugal argues that it has to be assessed with regard to the contribution of the scheme to the regional development of the ARM and should not be geographically restricted to the region as this would limit the support scheme to a mere compensation of the additional costs incurred by companies located in the ZFM ⁽¹⁷⁷⁾. Portugal further argues that the scheme as implemented is consistent with international tax standards and that the companies in the ZFM carry there a substantial activity within the meaning of the OECD's BEPS Action Plan and are subject to tax legal requirements and subject to many controls ⁽¹⁷⁸⁾. This position is generally supported by the interested parties ⁽¹⁷⁹⁾.

⁽¹⁷³⁾ Letter from Portugal of 19 December 2006.

⁽¹⁷⁴⁾ 2007 RAG, paragraph 6.

⁽¹⁷⁵⁾ 2007 RAG, paragraph 76.

⁽¹⁷⁶⁾ Paragraphs 53 and 59 of the 2007 Commission Decision.

⁽¹⁷⁷⁾ Recital 74 of this Decision.

⁽¹⁷⁸⁾ Recital 77 of this Decision.

⁽¹⁷⁹⁾ Recitals 100 and 101 of this Decision.

- (159) Contrary to what Portugal says ⁽¹⁸⁰⁾, companies registered in the ZFM only incur such additional costs if they effectively and materially conduct their activities in Madeira, which implies that their profits are resulting from operations directly burdened with such additional costs. Other type of profits, not burdened by these costs because realised as a result of activities carried out outside the region, cannot be taken into account in the taxable base benefiting from the tax measure.
- (160) The Commission notes that Portugal clearly stated throughout the 2015 monitoring and confirmed in the course of the formal investigation that beneficiaries did not necessarily have to conduct their activity in the region and that even activities carried out outside the region benefited from aid under the scheme (see recitals 20 and 21 of this Decision).
- (161) The Commission considers that the so-called 'geographical restriction' of the origin of the profits denounced by Portugal is a mere translation in the 2007 and 2013 Commission Decisions of the basic principles stated in the 2007 RAG and that the implementation of the ZFM scheme on the origin of the profits is not in line with the provisions on operating aid in those Guidelines.
- (162) In its Opening Decision, the Commission did not raise any doubts on the consistency of the scheme with international tax standards and tax legal requirements. For State aid control purposes, the effectiveness and materiality of the activity carried out by the beneficiaries has to be assessed in relation to the 2007 RAG principles on operating aid recalled in recitals 156 and 157 of this Decision, and not with regard to OECD tax agreements, which pursue their own tax objectives.
- (163) Similarly, the Commission points out that the legal requirement of separate accounting for income generated in the ZFM for tax purposes, described in recital (21) of this Decision is not, as such, sufficient to address the Commission's doubts as to the adequate taxable base for the ZFM scheme, since the generation of income in the ZFM subject to this requirement is not defined in relation to the 2007 RAG principles on operating aid.
- (164) On the contrary, such separation of accounts merely shows that the lower tax rate was applied to earnings resulting from transactions between, on one side, the aid beneficiaries and, on the other, entities resident in the ZFM as well as entities resident outside the Portuguese national territory. However, such separation of accounts does not allow any conclusion as to whether those transactions resulted from activities effectively and materially performed, by the aid beneficiaries, inside or outside Madeira.
- (165) Finally, the Commission notes that the in-depth tax controls conducted as regards the taxable base and the origin of profit were carried out in the light of the approach of the Portuguese authorities recalled in recital 158 of this Decision and did not take into account the link between eligible profits and additional costs incurred in the ZFM, as implied by the 2007 RAG and the following 2007 and 2013 Commission Decisions.
- (166) The Commission considers, therefore, that the arguments put forward by Portugal with regard to consistency with taxation rules, legal requirements and tax related controls are not relevant for the assessment of the implementation of the ZFM scheme with regard to the 2007 RAG and the 2007 and 2013 Commission Decisions.
- (167) In view of the above, the Commission considers that its doubts as to the origin of the profits benefiting from the tax reduction in the ZFM are not removed, and concludes that the implementation of the ZFM scheme with regard to this criterion is in breach of the 2007 and 2013 Commission Decisions.

Job creation/maintenance in the region

- (168) As recalled in recital 151 of this Decision, the maximum aid amounts that beneficiaries registered in the ZFM can benefit from under the approved regional operating aid scheme are calculated on maximum taxable base ceilings based on the jobs held each fiscal year by the beneficiaries.

⁽¹⁸⁰⁾ Recitals 73 and 74 of this Decision.

- (169) The Commission points out that the requirement of job creation/maintenance was a condition to access the scheme and was embedded in the method of calculation of the aid amount in the ZFM scheme as notified by Portugal ⁽¹⁸¹⁾, and approved by the 2007 and 2013 Commission Decisions.
- (170) Moreover, in the 2007 Commission Decision, the generation of jobs in the ZFM scheme was assessed as contributing to regional development ⁽¹⁸²⁾.
- (171) The Commission further notes that job creation/maintenance was an intrinsic part of the approved regional ZFM scheme. Consequently, the number of jobs is a parameter of the aid amount and a measurement of the contribution of the scheme to regional development and, for both purposes, it should be based on an objective proven method used in State aid decision practice.
- (172) Portugal rejects the restrictive definition of jobs in FTEs or ALUs used by the Commission for the purpose of calculating of the aid amounts. Conversely, Portugal argues that its 'job definition' is consistent with national and international labour rules, that the beneficiaries were subject to numerous controls, the results of which have been shared with the Commission, and that the implementation of the scheme is therefore in compliance with the 2007 and 2013 Commission Decisions.
- (173) Contrary to what Portugal argues ⁽¹⁸³⁾ the Commission considers that the application of the method set out in paragraph 58 of the 2007 RAG, and especially the related footnote 52 to calculate the number of jobs created/maintained, i.e. *'the number of employees means the number of annual labour units (ALU), namely the number of person employed full time in one year, part-time and seasonal work being ALU fractions'*, is appropriate, even if this definition is included only in the section of the 2007 RAG relating to regional investment aid. This method is also referred to in Article 5 of the Commission Recommendation concerning the definition of micro, small and medium-sized enterprises ⁽¹⁸⁴⁾, which is of general application of Union legislation and in particular of Union State aid rules, as those Recommendations were consistently included as Annex I to the 2008 GBER, as well as to the 2014 GBER.
- (174) Contrary to Portugal's argument, such a definition of jobs in FTEs and ALUs is the best way to include without discrimination all types of labour relationships and contracts, permanent or temporary employment, employees and board members under multiple labour contracts with different companies, teleworkers, the time effectively spent by employee for the company in the ZFM being computed in an objective and verifiable manner. The Commission remains neutral with regard to the nature of the labour relationship under national law, as long as the computing of the jobs for State aid purposes is done in an objective manner.
- (175) In any event, the Commission further notes that, irrespective of the definition in footnote 52 of the 2007 RAG, Portugal has not applied any definition of jobs that would effectively count the number of jobs created and maintained in Madeira. As mentioned in recital (28) of this Decision, Portugal has accepted as valid jobs under the ZFM scheme any employment of whichever legal nature irrespective of the number of hours, days, and months of active labour per year, declared by the beneficiaries in their annual tax declarations. It did so without checking the reality of the time spent by the jobholder for each beneficiary and translating it in FTEs.
- (176) In view of the outcomes of the 2015 monitoring and information provided by Portugal during the formal investigation, the Commission considers that the Portuguese authorities, on the basis of the declarations made by the beneficiaries, were not in a position to check the reality nor the permanence of the jobs declared as requested by the 2007 and 2013 Commission Decisions, precisely because of the absence of a common objective computing methodology applicable to all cases of labour relationships.

⁽¹⁸¹⁾ Letter from Portugal of 28 June 2006 (notification of Regime III).

⁽¹⁸²⁾ Paragraph 64 of the 2007 Commission Decision.

⁽¹⁸³⁾ Recital 87 of this Decision.

⁽¹⁸⁴⁾ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises C(2003) 1422 (OJ L 124, 20.5.2003, p. 36).

- (177) Finally, the Commission points out that Portugal did not confirm that all jobs recorded for the application of the ZFM scheme were held by employees contributing to activities effectively and materially performed in Madeira. The Portuguese authorities indicated that in some cases the omission to declare a number of employees in the annual declarations did not affect the assessment of the tax due and tax benefit; in some other cases, during the 2015 monitoring, there was evidence of jobs outside the ZFM, Madeira and even outside the Union. Furthermore, the Commission notes that Portugal did not provide information on the place of effective activity of the employees of all ZFM beneficiaries, despite several requests from the Commission ⁽¹⁸⁵⁾.
- (178) The Commission recognizes that Portugal has provided documentation showing that many controls have been conducted on the beneficiaries of the ZFM scheme. Conversely to Portugal's argument, the Commission never questioned the effectiveness of the tax controls performed by the Portuguese authorities *per se*, but only their effectiveness with regard to an accurate calculation of the number of jobs held by each ZFM beneficiary and an assessment of the link between the jobs created and the activities effectively and materially performed in Madeira. The documentation shared with the Commission confirms the reality of the controls for tax purposes. The data gathered are, however, not relevant from a State aid perspective, since the controls did not verify the two problems that are at stake in the present case: the accurate calculation of the number of jobs held by each ZFM beneficiary and the link between the jobs created and the activities effectively and materially performed in Madeira by such beneficiary.
- (179) In view of the above, the Commission considers that its doubts with regard to the creation/maintenance of jobs criterion in the ZFM have not been removed, and concludes that the implementation of the ZFM scheme with regard to this criterion is in breach of the 2007 and 2013 Commission Decisions.

Conclusion

- (180) The Commission therefore concludes that the ZFM scheme as implemented by Portugal is in breach of the 2007 and 2013 Commission Decisions, which have authorised Regime III, and is therefore unlawful.

6.2.2. Compatibility of the ZFM scheme with the 2007 RAG

- (181) Portugal argues that they never accepted the Commission's interpretation of the conditions of its 2007 and 2013 Decisions with regard to the origin of the profits and the job creation. Portugal further considers that these requirements are non-binding, as those Decisions have been adopted based on the 2007 RAG, which Portugal also considers as non-binding ⁽¹⁸⁶⁾.
- (182) Portugal further argues that the definition of job creation referred to in the 2007 Commission Decision with regards to FTEs and ALUs is not referred to in the section of the 2007 RAG on operating aid, which the Commission does not deny ⁽¹⁸⁷⁾. Therefore, in the view of the Portuguese authorities, the ZFM scheme should be assessed solely on the basis of paragraphs 76 to 83 of the 2007 RAG.
- (183) The Commission points out that Portugal has accepted the 2007 RAG and the subsequent appropriate measures ⁽¹⁸⁸⁾ in a letter of 10 May 2006, implying that the rules laid down in the 2007 RAG had to be complied with by any regional aid scheme ⁽¹⁸⁹⁾.

⁽¹⁸⁵⁾ Recitals 52 and 57 of this Decision.

⁽¹⁸⁶⁾ Letter of Portugal of 26 September 2019, paragraphs 106, 107, and 272.

⁽¹⁸⁷⁾ Paragraph 41 of the Opening Decision.

⁽¹⁸⁸⁾ Appropriate measures were proposed by the Commission to amend or abolish previous existing regional aid schemes in view of the new adopted rules, as is always the case after the adoption of new guidelines.

⁽¹⁸⁹⁾ State Aid: Guidelines on national regional aid for 2007-2013: Acceptance by 24 Member States of the Commission's proposal of the appropriate measures pursuant to Article 88(1) of the EC Treaty (2006/C 153/04) (OJ C 153, 1.7.2006, p. 1).

- (184) Paragraphs 76 and 80 of the 2007 RAG authorized operating aid in outermost regions provided that: (i) it was intended to offset, for companies, the additional costs arising, in the pursuit of economic activity, from the factors identified in Article 299(2) [currently Article 349] TFEU, (ii) it was justified in terms of contribution to regional development, and (iii) it was proportionate to the handicaps it sought to alleviate.
- (185) Therefore, to the extent that the ZFM scheme benefited companies that did not have their activities effectively and materially performed in the region and did not bear therefore the additional costs mentioned in the 2007 RAG, the implementation of the scheme was not in line with the requirements referred to in recital 184 of this Decision.
- (186) Moreover, in the absence of an assessment of the job creation/maintenance condition with regard to the concept of job creation as set out in the investment aid section of the 2007 RAG or the Commission State aid case practice, the ZFM scheme as implemented by Portugal would in any event not comply with the conditions laid down in the 2007 RAG on operating aid because of the disconnection between the origin of the profits and the effective additional costs.

Conclusion

- (187) In view of the above, the Commission considers that the ZFM scheme as implemented by Portugal is in breach of the provisions of the 2007 RAG and therefore constitutes unlawful aid that cannot be considered compatible with the internal market.

6.2.3. Compatibility of the aid scheme directly on the basis of Article 107(3)(a) TFEU

- (188) Portugal argues that the Commission should assess the impact of the ZFM scheme 'in a manner consistent with EU policies on the outermost regions with regard to economic, social and territorial cohesion' and take into account that it is 'the most efficient economic policy instrument for driving cohesion, economic growth and the economic sustainability of Madeira' ⁽¹⁹⁰⁾.
- (189) Pursuant to Article 107(3)(a) TFEU, aid to promote the economic development of the regions referred to in Article 349 TFEU, in view of their structural, economic and social situation, may be considered to be compatible with the internal market.
- (190) In the 2007 RAG, the Commission set out the conditions under which regional aid may be considered to be compatible with the internal market and established the criteria for identifying the areas that fulfil the conditions of Article 107(3)(a) TFEU. According to the case-law, ⁽¹⁹¹⁾ in adopting rules of conduct and announcing by publishing them that they will henceforth apply to the cases to which they relate, the Commission imposes a limit on the exercise of its discretion and, in principle, cannot depart from those rules without being found to be in breach of general principles of law, such as equal treatment or the protection of legitimate expectations. Therefore, the Commission is bound to assess the present case under the applicable guidelines, i.e. the 2007 RAG, except if the Portuguese authorities were to demonstrate that exceptional circumstances, different from those envisaged in the 2007 RAG, required the Commission to assess the ZFM scheme directly under the Treaty. Nevertheless, in the present case, the Portuguese authorities did not even invoke, let alone demonstrate, such exceptional circumstances. Even if the compatibility assessment of the ZFM scheme as implemented by Portugal should therefore be carried out under the 2007 RAG, the Commission will nevertheless assess, for the sake of completeness, in the following recitals if the ZFM scheme as implemented by Portugal could be considered compatible directly on the basis of the TFEU.

Contribution to an objective of common interest

- (191) Portugal argues that the ZFM scheme contributes to the economic development of the ARM recognized as an outermost region by the TFEU. The Portuguese authorities have provided elements on the impact of the scheme at a macroeconomic level.

⁽¹⁹⁰⁾ Letter from Portugal of 26 September 2018, paragraph 209.

⁽¹⁹¹⁾ Judgment of the Court of Justice of 8 March 2016, *Greece v Commission*, C-431/14 P, ECLI:EU:T:2016:145, paragraphs 69 and 70.

- (192) In particular, the Portuguese authorities insist on the important contribution of the ZFM scheme to the budgetary consolidation of the ARM. According to Madeira Regional Tax authority, the contribution by ZFM companies to Madeira's regional budget was around [10-20] % on average on the period 2012-2018 ⁽¹⁹²⁾.
- (193) In light of the above, the Commission considers that, contrary to its preliminary view stated in paragraph 33 of the Opening Decision, the ZFM scheme could contribute to the regional development of Madeira, an outermost region, and therefore to an objective of common interest.

Appropriateness and proportionality

- (194) Operating aid is intended to release an undertaking from costs, which it would normally have to bear in its day to day management or normal activities ⁽¹⁹³⁾.
- (195) Therefore, such type of aid may exceptionally be granted in the outermost regions eligible under the derogation in Article 87(3)(a) of the EC Treaty [now 107 (3)(a) TFEU], in so far as it is intended to offset the additional costs arising in the pursuit of economic activity from the factors identified in Article 299(2) of the EC Treaty [now Article 349 TFEU] ⁽¹⁹⁴⁾.
- (196) The Commission notes that the companies that benefited from the scheme as implemented were released from normal tax charges though certain companies had conducted activities for which they did not incur additional costs due to the structural handicaps of the region as was assessed in sections 6.2.1 and 6.2.2 of this Decision.
- (197) In this context, as it was not implemented in a way as to address the structural difficulties companies may effectively incur in their activity in Madeira, the ZFM scheme cannot be considered as appropriate, nor proportional with regard to the principles/conditions of regional operating aid aiming at the promotion of the economic development of the outermost regions (Article 349 TFEU) in view of their structural, economic and social situation.

Conclusion

- (198) In view of all the above, the Commission considers that the ZFM scheme as implemented by Portugal is in breach of Article 107(3)(a) TFEU and therefore constitutes unlawful aid that cannot be considered compatible with the internal market.

6.2.4. Compatibility of the aid with the 2014 GBER

- (199) Portugal considers that the 2014 GBER does not apply retroactively to individual aid awards under the ZFM scheme for the purposes of declaring their compatibility ⁽¹⁹⁵⁾. Portugal further considers that a flexible interpretation of the 2014 GBER would not require that the ZFM beneficiaries have their economic activities in Madeira. The individual aid awards have to be examined under the regional operating aid conditions provided for by 2007 RAG and are also covered by the 2007 and 2013 Commission Decisions.
- (200) As the scheme has been implemented by Portugal in breach of the 2007 and 2013 Commission Decisions and cannot be considered compatible with the internal market under the 2007 RAG, the Commission has to examine whether individual awards under that scheme could, nevertheless, be deemed compatible ⁽¹⁹⁶⁾ under the 2014 GBER, which may apply retroactively to individual aid, provided the relevant conditions are complied with ⁽¹⁹⁷⁾.

⁽¹⁹²⁾ 'Centro Internacional de Negócios da Madeira', Sociedade de Desenvolvimento da Madeira, Statistics, December 2018.

⁽¹⁹³⁾ Judgment of the Court of First Instance of 9 September 2009, *Diputación Foral de Álava and Others, v Commission*, T-30/01 to T-32/01 and T-86/02 to T-88/02, ECLI:EU:C:2009:314, paragraph 226.

⁽¹⁹⁴⁾ 2007 RAG, paragraph 80.

⁽¹⁹⁵⁾ Article 58(1) of the 2014 GBER.

⁽¹⁹⁶⁾ The Commission does not consider it necessary to conduct an analysis of the aid character of the scheme, given that Portugal never argued that the ZFM scheme did not constitute an aid scheme within the meaning of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1, no longer in force).

⁽¹⁹⁷⁾ Article 58(1) of the 2014 GBER.

- (201) In accordance with Article 15(4) of the 2014 GBER, '[i]n outermost regions, the operating aid schemes shall compensate for the additional operating costs incurred in those regions as a direct result of one or several of the permanent handicaps referred to in Article 349 of the Treaty, where the beneficiaries have their economic activity in an outermost region provided that the annual aid amount per beneficiary under all operating aid schemes implemented under this Regulation does not exceed one of the following percentages: (a) 35 % of the gross value added annually created by the beneficiary in the outermost region concerned; (b) 40 % of the annual labour costs incurred by the beneficiary in the outermost region concerned; (c) 30 % of the annual turnover of the beneficiary realised in the outermost region concerned'. As mentioned in this article, the rationale for this exceptional authorisation of operating aid for a company is to compensate for the additional costs that derive from having its activity in the outermost region.
- (202) The Autonomous Region of Madeira is an outermost region designated by Article 349 TFEU. Therefore, based on Article 15(4) of the 2014 GBER it is eligible for regional aid under the derogation provided for in Article 107(3)(a) TFEU, provided that: (i) the beneficiaries have their activity in the outermost region, and (ii) the annual aid amount of aid does not exceed a maximum percentage of annual gross value added, or annual labour costs or annual turnover of the beneficiary incurred/realised in the region.
- (203) The Commission points out that the measure implemented consists of tax benefits, which have the effect of reducing the expenses that companies would have to bear as part of their business activities. Therefore, it constitutes operating aid in favour of the companies that may benefit from it in the ZFM.
- (204) Based on the information provided by Portugal in the course of the 2015 monitoring, the beneficiaries of the ZFM scheme implemented by Portugal do not necessarily have their effective activity in Madeira. Moreover, the aid amounts involved are not necessarily related to gross value added, labour costs or turnover generated in Madeira.

Conclusion

- (205) In view of the above, the Commission considers that the individual aid awards under the ZFM scheme as implemented by Portugal are in breach of the provisions of the 2014 GBER.

Conclusion

- (206) In view of all the above, the Commission concludes that the ZFM scheme as implemented by Portugal constitutes unlawful aid that is not compatible with the internal market within the meaning of Article 107(3)(a) TFEU.
- (207) The adoption of a conditional decision within the meaning of Article 9(4) of Regulation (EU) 2015/1589, as suggested by Portugal ⁽¹⁹⁸⁾, is therefore not an appropriate mean to address the issues raised in section 6.2 of this Decision.

7. RECOVERY, LEGAL CERTAINTY AND LEGITIMATE EXPECTATIONS

7.1. Recovery

- (208) In accordance with the Treaty on the Functioning of the European Union and the established case-law of the Union Courts, the Commission is competent to decide whether the Member State concerned should alter or abolish aid when it has found that it is incompatible with the internal market ⁽¹⁹⁹⁾. The Union Courts have also consistently held that the obligation on a Member State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation ⁽²⁰⁰⁾.

⁽¹⁹⁸⁾ Recital 71 of this Decision.

⁽¹⁹⁹⁾ Judgment of the Court of Justice of 12 July 1973, *Commission v Germany*, C-70/72, ECLI:EU:C:1973:87, paragraph 13.

⁽²⁰⁰⁾ Judgment of the Court of Justice of 21 March 1990, *Belgium v Commission*, C-142/87, ECLI:EU:C:1990:125, paragraph 66.

- (209) In this context, the Union Courts have established that this objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage, which it had enjoyed over its competitors on the internal market, and the situation prior to the payment of the aid is restored ⁽²⁰¹⁾.
- (210) In line with the case-law, Article 16(1) of Regulation (EU) 2015/1589 provides that '[w]here negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary'.
- (211) Thus, given that the measure in question was implemented in breach of Article 108(3) TFEU, and is to be considered as unlawful and incompatible aid, it should be recovered in order to re-establish the situation that existed on the internal market prior to their granting. Recovery should cover the time from the date when the aid was put at the disposal of the beneficiary until effective recovery. The amount to be recovered should bear interest until effective recovery.

Identification of the beneficiaries from which to recover the aid

- (212) The unlawful and incompatible aid must be recovered from the undertakings that actually benefited from it. However, where the Commission is not in a position to identify, in the decision itself, all the undertakings that have received unlawful and incompatible aid, this will have to be done at the start of the implementation of the recovery process by the Member State concerned, which will have to look at the individual situation of each undertaking concerned.
- (213) In this particular case, the potential beneficiaries of the unlawful and incompatible State aid are those natural and legal persons registered in the ZFM from 1 January 2007 until 31 December 2014. From this initial group of beneficiaries, the Portuguese authorities should exclude from recovery those natural and legal persons for which proof can be provided that: (i) they complied with the conditions necessary to benefit from the ZFM scheme as approved in the 2007 and 2013 Commission Decisions, which means that their earnings were linked to an activity effectively and materially performed in Madeira and jobs effectively created/maintained in the region; or (ii) the total advantage received per beneficiary under the scheme does not exceed the thresholds laid down in Regulation (EU) No 1998/2006 ⁽²⁰²⁾ or Regulation No 1407/2013 ⁽²⁰³⁾, so long as these advantages also comply with the other conditions laid down in those regulations; or (iii) the individual aid received by a given beneficiary fulfils the conditions laid down by a regulation adopted pursuant to Article 1 of Council Regulation (EU) 2015/1588 ⁽²⁰⁴⁾, such as the 2014 GBER.
- (214) The remaining natural or legal persons who benefited from the ZFM scheme are the beneficiaries of the unlawfully implemented State aid from which the Portuguese authorities are required to recover the aid advantage received.

Quantification of the aid

- (215) The Commission is not legally required to fix the exact amount to be recovered, especially where it lacks the necessary data to do so. Instead, it is sufficient for the Commission's decision to include information enabling the Member State to determine the recoverable amount without excessive difficulty.
- (216) The Commission considers that the following methodology should be used by Portugal to determine the amount of incompatible aid to be recovered from each beneficiary:
- (a) determine, per year, the number of jobs, in ALU, created and held in the region per beneficiary;

⁽²⁰¹⁾ Judgment of the Court of Justice of 17 June 1999, *Belgium v Commission*, C-75/97, ECLI:EU:C:1999:311, paragraphs 64 and 65.

⁽²⁰²⁾ Footnote 170 above.

⁽²⁰³⁾ Footnote 171 above.

⁽²⁰⁴⁾ Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (OJ L 248, 24.9.2015, p. 1).

- (b) determine, per year, the taxable base in relation to earnings linked to activity effectively and materially performed in Madeira;
 - (c) apply the ZFM tax rate to this taxable base taking into account the number of jobs created identified in point (a), on the basis of the tables of calculation presented in recitals 12 and 16 of this Decision;
 - (d) the amount of aid will be equal to the effective amount received per beneficiary per year less the amount effectively linked to the activity in Madeira calculated as in point (c).
- (217) In all cases where recovery is required, that recovery shall be put into effect from the time when the advantage accrued to the beneficiaries, that is, from the date of the legal act granting the beneficiaries the right to benefit from such scheme, without prejudice of the limitation period for the recovery of aid provided for by Article 17(1) of Regulation (EU) 2015/1589.
- (218) The sums to be recovered should bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery. The interest should be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ⁽²⁰⁵⁾.
- (219) During the formal investigation procedure, Portugal had difficulty in providing reliable information to identify beneficiaries and to assess whether and how much aid they received under the scheme. It cannot be ruled out that when establishing the final list of beneficiaries and corresponding aid amounts to be recovered, as provided by the method outlined in recital 216 of this Decision, Portugal may need again additional time. In line with the Commission Notice on the recovery of unlawful and incompatible State aid ⁽²⁰⁶⁾ with respect to the timing for the recovery from individual beneficiaries of the unlawful and incompatible State aid amounts, the Portuguese authorities should have four months to submit a final list of beneficiaries together with the implementation plan of the recovery process, and eight months to actually implement the recovery.

7.2. Legal certainty and legitimate expectations

- (220) Portugal considers that companies, which have received aid under the ZFM scheme, acquired the right to legal certainty and to legitimate expectations to not be subject to any recovery decision ⁽²⁰⁷⁾.
- (221) A limited number of third interested parties raised a similar argument ⁽²⁰⁸⁾.
- (222) It is settled case-law that the principle of the protection of legitimate expectations is a general principle of EU law. That principle has been progressively accepted into the Union legal order by case-law, which has described it as a 'superior rule of law' for the protection of individuals ⁽²⁰⁹⁾, as 'one of the fundamental principles of the Community' ⁽²¹⁰⁾ and as a 'general principle' ⁽²¹¹⁾. It is considered the corollary of the principle of legal certainty, which requires that Union legislation must be certain and its application foreseeable by persons subject to it, in that

⁽²⁰⁵⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1). See, in particular, the amendment of Article 9 and Article 11(3) by Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 82, 25.3.2008, p. 1).

⁽²⁰⁶⁾ Commission Notice on the recovery of unlawful and incompatible State aid (2019/C 247/01) (OJ C 247, 23.7.2019, p. 1), paragraphs 68 and 72.

⁽²⁰⁷⁾ Recitals 94 and 95 of this Decision.

⁽²⁰⁸⁾ Recital 110 of this Decision.

⁽²⁰⁹⁾ Judgment of the Court of 14 May 1975, *CNTA v Commission*, 74/74, ECLI:EU:C:1975:59, paragraph 44.

⁽²¹⁰⁾ Judgment of the Court of Justice of 7 June 2005, *VEMW and Others*, C-17/03, ECLI:EU:C:2005:362, paragraph 73.

⁽²¹¹⁾ Judgment of the Court of Justice of 4 October 2001, *Italy v Commission*, C-403/99, ECLI:EU:C:2001:507, paragraph 35.

it seeks, where rules are altered, to ensure the protection of situations legitimately entered into by one or more natural or legal persons in particular ⁽²¹²⁾. As described in recitals 12 to 17 of this Decision, the requirements laid down in the 2007 and the 2013 Commission Decisions for the ZFM scheme to be considered compatible with the internal market were clear, and implementation of those requirements was clearly foreseeable. Consequently, a recovery decision in the present case fully respects the principle of legal certainty.

- (223) According to settled Union case-law, the right to rely on the principle of legitimate expectations presupposes that precise, unconditional and consistent assurances originating from authorised and reliable sources have been given to the person concerned by an EU institution ⁽²¹³⁾. However, a person may not plead breach of that principle unless he has been given precise assurances by the administration ⁽²¹⁴⁾.
- (224) Consequently, there can be no legitimate expectations that an aid is lawful unless it has been granted in compliance with the procedure laid down in Article 108 TFEU, since a diligent businessman should normally be able to determine whether that procedure has been followed ⁽²¹⁵⁾.
- (225) As is apparent from this Decision, the Commission does not challenge the existence and compatibility of the aid scheme that it had approved in its 2007 and 2013 Decisions. This Decision relates to the implementation of the ZFM scheme in so far as it did not comply with the terms of those decisions (i.e. in so far as it allowed in some cases companies registered in the ZFM to benefit from aid in the form of a reduced rate of taxation to profits resulting from activities not effectively and materially performed in Madeira, and calculated on the basis of unverifiable number of jobs created or maintained in the ZFM). The fact that the Commission approved the ZFM scheme by its 2007 and 2013 Decisions does not lead to the conclusion that precise, unconditional and consistent assurances would have been given by the Commission that Regime III would be treated as compatible aid including in situations where the terms of the approval would not be complied with.
- (226) The Commission further recalls that it had requested the introduction of an express provision in the draft law notified by Portugal on 28 June 2006 establishing that the tax reductions would be restricted to profits resulting from activities carried out in Madeira ⁽²¹⁶⁾. Portugal declined to do so since it considered that such provision was not necessary as this fact derived from the ZFM legal basis ⁽²¹⁷⁾.
- (227) In view of the above, Portugal and the ZFM scheme beneficiaries cannot validly claim that the finding that the ZFM scheme, as implemented by Portugal, constitutes aid incompatible with the internal market would breach the principles of either legitimate expectations or legal certainty, which would preclude the recovery of that incompatible aid.

⁽²¹²⁾ See, to that effect, judgment of the Court of Justice of 18 May 2000, *Rombi and Arkopharma*, C-107/97, ECLI:EU:C:2000:253, paragraph 66 and the case-law cited therein, and the Opinion of Advocate General Léger delivered on 9 February 2006, *Belgium and Forum 187 v Commission*, joined cases C-182/03 and C-217/03, ECLI:EU:C:2006:89, paragraph 367.

⁽²¹³⁾ Judgment of the Court of Justice of 21 July 2011, *Alcoa Trasformazioni v Commission*, C-194/09 P, ECLI:EU:C:2011:497, paragraph 71 and the case-law cited therein; judgment of the General Court of 30 June 2005, *Branco v Commission*, T-347/03, ECLI:EU:T:2005:265, paragraph 102 and the case-law cited therein; judgment of the General Court of 23 February 2006, *Cementbouw Handel & Industrie v Commission*, T-282/02, ECLI:EU:T:2006:64, paragraph 77; judgment of the General Court of 30 June 2009, *CPEM v Commission*, T-444/07, ECLI:EU:T:2009:227, paragraph 126.

⁽²¹⁴⁾ Judgment of the Court of First Instance of 14 February 2006, *TEA-CEGOS and Others v Commission*, joined cases T-376/05 and T-383/05, ECLI:EU:T:2006:47, paragraph 88 and the case-law cited therein. See also by analogy judgment of the Court of First Instance of 30 November 2009, *France and France Télécom v Commission*, joined cases T-427/04 and T-17/05, ECLI:EU:T:2009:474, paragraph 261.

⁽²¹⁵⁾ Judgment of the Court of Justice of 20 March 1997, *Land Rheinland-Pfalz v Alcan Deutschland*, C-24/95, ECLI:EU:C:1997:163, paragraph 25 and the case-law cited therein.

⁽²¹⁶⁾ Letter of 9 November 2006 (D/54422).

⁽²¹⁷⁾ Letter of reply from Portugal of 19 December 2006.

8. CONCLUSION

(228) The Commission concludes that Portugal has unlawfully implemented the ZFM scheme in breach of Article 108(3) TFEU and that aid granted to individual beneficiaries under this scheme is incompatible with the internal market,

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme 'Zona Franca da Madeira (ZFM) – Regime III', to the extent that it was implemented by Portugal in breach of Commission Decision C(2007)3037 final and of Commission Decision C(2013)4043 final, was unlawfully put into effect by Portugal in breach of Article 108(3) of the Treaty on the Functioning of the European Union and is incompatible with the internal market.

Article 2

Individual aid granted under the scheme referred to in Article 1 does not constitute aid if, at the time it is granted, it fulfils the conditions laid down by a regulation adopted pursuant to Article 2 of Regulation (EU) 2015/1588 which is applicable at the time the aid is granted.

Article 3

Individual aid granted under the scheme referred to in Article 1 which, at the time it is granted, fulfils the conditions laid down by the Decisions referred to in Article 1 or laid down by a regulation adopted pursuant to Article 1 of Regulation (EU) 2015/1588 is compatible with the internal market up to maximum aid intensities applicable to that type of aid.

Article 4

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

Article 5

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

Article 6

1. Within four months following notification of this Decision, Portugal shall submit the following information:
 - (a) the list of beneficiaries that have received aid under the aid scheme referred to in Article 1 and the total amount of aid received by each of those beneficiaries under the scheme;

- (b) the total amount (principal and recovery interests) to be recovered from each beneficiary;
- (c) a detailed description of the measures planned in order to comply with this Decision.

2. Portugal shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid granted under the scheme referred to in Article 1 has been completed. It shall immediately submit, upon request by the Commission, information on the measures already taken and planned to be taken in order to comply with this Decision.

Portugal shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiaries.

Article 7

This Decision is addressed to the Portuguese Republic.

The Commission may publish the identity of the beneficiaries of incompatible aid and the amounts of aid and recovery interest recovered in application of this Decision, without prejudice to Article 30 of Regulation (EU) 2015/1589.

Done at Brussels, 4 December 2020.

For the Commission
Margrethe VESTAGER
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2022/1415**of 18 August 2022****on the partial approval, pursuant to Article 19 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council, of modified traffic distribution rules for the airports Milan Malpensa, Milan Linate and Orio al Serio (Bergamo)***(notified under document C(2022) 5783)***(only the Italian text is authentic)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community ⁽¹⁾, and in particular Article 19(3) thereof,

After consulting the committee established by Article 25(1) of Regulation (EC) No 1008/2008,

Whereas:

1. PROCEDURE

- (1) On 22 February 2022, the Italian authorities informed the Commission, pursuant to Article 19(3) of Regulation (EC) No 1008/2008, of a new draft decree on modified traffic distribution rules for the airports Milan Malpensa, Milan Linate and Orio al Serio (Bergamo) (the 'draft Giovannini decree').

2. BACKGROUND AND DESCRIPTION OF THE MEASURE**2.1. The draft Giovannini decree**

- (2) Article 1 of the draft Giovannini decree modifies Article 4 of the decree of 3 March 2000 on traffic distribution rules for the airports Milan Malpensa, Milan Linate and Orio al Serio (Bergamo), as amended, in the following way:

'Paragraph 1:

Air carriers may operate point-to-point scheduled routes, using narrow-body aircraft, between Milan Linate airport and other airports in the European Union, or airports belonging to a State which has entered into a vertical-type agreement with the European Union regulating its air services and which are also located within a radius of 1 500 km – measured according to the great circle route method – from Milan Linate airport, within the limits of the defined operating capacity of Milan Linate airport. Only the following air carriers may operate such routes:

- (a) carriers defined as Community air carriers under Article 2(10) and (11) of Regulation (EC) No 1008/2008, of the European Parliament and of the Council of 24 September 2008 and meeting the requirements laid down by the competent aviation authorities, in accordance with that Regulation;
- (b) carriers designated by a country to operate air services based on a vertical-type agreement entered into by that country with the European Union, provided that the route concerns an airport within a radius of 1 500 km – measured according to the great circle route method – from Milan Linate airport.'

⁽¹⁾ OJ L 293, 31.10.2008, p. 3.

- (3) Article 1 of the draft Giovannini decree also modifies Article 4 of the decree of 3 March 2000 on traffic distribution rules for the airports Milan Malpensa, Milan Linate and Orio al Serio (Bergamo), as amended, in the following way:

‘Paragraph 2:

To guarantee compliance with the provisions of paragraph 1, the distribution and sale of tickets and the carriage of passengers on point-to-point routes flying from or to Milan Linate airport shall be permitted only in respect of airports located within the geographical boundaries defined by paragraph 1.’.

- (4) The recitals of the draft Giovannini decree state that the amendment of existing rules on traffic distribution between Milan airports is needed to ensure that Milan Linate airport remains a ‘city airport’ serving short-haul destinations, and to fully exploit the development of Milan Malpensa as a hub airport. Furthermore, Milan Linate airport should also be connected to airports outside the Union, provided that they are within a radius of 1 500 km, and the Union has concluded a horizontal or comprehensive air transport agreement with the third country the airport is located in.
- (5) In the explanations accompanying the notification the Italian authorities indicated that the application of Article 1 of the draft Giovannini decree as referred to in recital 2 would enable continued operations of routes between Milan Linate and countries such as the United Kingdom, the European Common Aviation Area Member States or Morocco, within the defined capacity limits of the airport, namely 18 hourly movements.
- (6) Pursuant to Article 1 of the draft Giovannini decree as referred to in recital 2, the radius of 1 500 km around Milan Linate airport is to be measured in accordance with the great circle route method. The Italian authorities in their notification explained that that distance is used in Union legislation as a threshold to categorise flights of different distances (e.g. Regulation (EC) No 261/2004 of the European Parliament and of the Council ⁽²⁾).
- (7) As to Article 1 of the draft Giovannini decree as referred to in recital 3, the Italian authorities explained that this provision is intended to ensure enforcement of the draft Article 4 paragraph 1, and it reflects the approach of the current traffic distribution rules. The current rules task the national Civil Aviation Authority with monitoring air traffic at Milan Linate and Milan Malpensa airports and reporting to the Ministry of Infrastructure and Transport, in order to assess whether those rules are complied with and any additional action is necessary.

2.2. Consultation conducted by the Italian authorities

- (8) On 6 September 2021 the Italian Civil Aviation Authority (ENAC), in accordance with Article 19(2) of Regulation (EC) No 1008/2008, invited interested parties to a consultation to be held on 8 September 2021, at Milan Linate airport.
- (9) According to the information submitted by the Italian authorities, the consultation was attended by the Airport Users Committees of Linate and Malpensa airports composed of air carriers, ground handling companies, the airport managing body and the slot coordinator.
- (10) According to the consultation report, the majority of parties were in favour of the proposed amendment.

⁽²⁾ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L 46, 17.2.2004, p. 1).

3. CONSULTATION CONDUCTED BY THE COMMISSION

- (11) On 25 March 2022, the Commission published in the *Official Journal of the European Union* ⁽³⁾ a summary of the proposed amendments to the traffic distribution rules, as notified by the Italian authorities, and gave interested parties 20 days to submit comments.
- (12) The Commission received comments from five interested parties, most of which wished to remain anonymous.
- (13) All interested parties supported Article 1 of the draft Giovannini decree as referred to in recital 2, although one party asked that the radius is extended beyond the 1 500 km to include more destinations.
- (14) Three interested parties expressly supported Article 1 of the draft Giovannini decree as referred to in recital 3, arguing that it would enhance compliance with the draft Article 4, paragraph 1, and maintain Linate airport as a true point-to-point airport. One interested party expressed concerns about Article 1 of the draft Giovannini decree as referred to in recital 3 arguing that the prohibition of ticket sales to destinations outside the scope of the draft Article 4, paragraph 1, is disproportionate. That party also had serious concerns as to how the provision would be implemented and doubted that the provision would be appropriate to deal with capacity problems.

4. ASSESSMENT

- (15) At the outset, the Commission observes that the three airports to which the notified traffic distribution rule applies, Milan Linate, Milan Malpensa and Orio al Serio (Bergamo), satisfy the four conditions set out in Article 19(2), first subparagraph, of Regulation (EC) No 1008/2008. The airports serve the conurbation of Milan, which satisfies the first condition. The infrastructure and public transport links between the three airports and between them and the city of Milan are such as to comply with the second and third conditions. In addition, the airports provide the necessary services to air carriers in a manner that satisfies the fourth condition.
- (16) Furthermore, the Commission notes that previous Commission decisions approved the adoption of traffic distribution rules which had the objective of establishing Milan Malpensa airport as an international hub and Milan Linate as a point-to-point airport to limit the flow of traffic at that airport.
- (17) More specifically, the Bersani and Bersani 2 Decrees of 5 January 2001, approved by Commission Decision 2001/163/EC ⁽⁴⁾, imposed, at Milan Linate airport, limitations on the number of daily return services to Union airports identified on the basis of passenger traffic volume. The Bersani Decree and Bersani 2 Decree also restricted Milan Linate airport to single aisle aircraft for point-to-point scheduled connections within the Union only. This had the effect of pushing remaining traffic to Malpensa airport.
- (18) The Del Rio Decree of 18 November 2016, approved by Commission Implementing Decision (EU) 2016/2019 ⁽⁵⁾, had the objective of optimising the use of Milan Linate airport and improving its connectivity with all other European cities, while fully exploiting the development potential of the Malpensa hub in its specific role as an intercontinental gate. The Del Rio Decree therefore removed the limitations on frequencies based on passenger traffic volumes that could be operated to and from Linate, but it maintained that only destinations within the Union could be served using narrow-body aircraft.

⁽³⁾ Notification by Italy of the application of Article 19(2) of Regulation (EC) No 1008/2008 concerning traffic distribution rules between the airports of Milan Malpensa and Milan Linate (OJ C 134, 25.3.2022, p. 28).

⁽⁴⁾ Commission Decision 2001/163/EC of 21 December 2000 on a procedure relating to the application of Council Regulation (EEC) No 2408/92 (Case TREN/AMA/12/00 – Italian traffic distribution rules for the airport system of Milan) (OJ L 58, 28.2.2001, p. 29).

⁽⁵⁾ Commission Implementing Decision (EU) 2016/2019 of 16 November 2016 on the approval pursuant to Article 19 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of modified traffic distribution rules for the airports Milan Malpensa, Milan Linate and Orio al Serio (Bergamo) (OJ L 312, 18.11.2016, p. 73).

- (19) Based on the foregoing, the Commission does not question Italy's policy regarding Milan Malpensa and Linate airports.
- (20) As regards Article 1 of the draft Giovannini decree as referred to in recital 2, the Commission notes that it removes certain limitations imposed on air services at Linate airport. New third country destinations may be served to and from Linate airport which fall within a 1 500 km radius of the airport and are in a country with which the Union has concluded a horizontal or comprehensive air transport agreement.
- (21) Based on the approach taken in Implementing Decision (EU) 2016/2019, insofar as Article 1 of the draft Giovannini decree as referred to in recital 2 removes limitations on the access to and from Linate airport in order to allow air carriers greater efficiency and choice in setting their schedules according to passenger demand, the question of proportionality does not arise.
- (22) In any case, the application of Article 1 of the draft Giovannini decree as referred to in recital 2 would result in new destinations being added to Linate airport in a transparent way and based on objective criteria which do not lead to discrimination between Union air carriers or Union destinations.
- (23) As regards Article 1 of the draft Giovannini decree as referred to in recital 3, the Commission finds that problems arise with regard to proportionality and transparency, contrary to Article 19(2) of Regulation (EC) No 1008/2008.
- (24) The provision prohibits the distribution and sale of tickets between Milan Linate airport and any destination outside the scope of the draft Giovannini decree as referred to in recital 2, and any connecting travel itinerary (as opposed to a direct point-to-point route). As clarified by the Italian authorities during meetings with the Commission services on 4 April 2022, and 30 June 2022, as a follow up to written questions sent by the Commission services on 1 April 2022, this not only prevents air carriers from offering travel itineraries with Milan Linate airport as the transfer point, but also travel itineraries to or from Linate airport that subsequently connect at other airports outside Milan. In effect, the provision regulates the flow of passenger transfer at airports outside Milan.
- (25) The Commission considers that restricting connecting flights and transfer of passengers at Linate airport is proportionate to achieve the objective of maintaining it as a point-to-point airport and furthering the development of Malpensa airport as an international hub. However, regulating the flow of transfer passengers at airports outside Milan, exceeds the legitimate scope of traffic distribution rules for airports serving a given city or conurbation, in this case Milan.
- (26) Furthermore, the proposed amendment goes beyond what is necessary to achieve Italy's airport policy objectives and unduly interferes with air carriers' business freedom and freedom to provide services at airports outside Milan.
- (27) Moreover, Article 1 of the draft Giovannini decree as referred to in recital 3 raises transparency issues, as it is not clear how the rules will be enforced by the Italian authorities. The provision in question does not clarify whether only air carriers' schedules will be monitored, or whether travel agents and ticket distributors would also be held liable for displaying certain itineraries connecting outside Linate airport. Neither is it clear whether that provision would aim to capture self-connecting passengers over whose travel itineraries neither air carriers nor travel agents or other ticket distributors have control.

5. CONCLUSION

- (28) In conclusion, the Commission considers that Article 1 of the draft Giovannini decree as referred to in recital 2, amending the existing traffic distribution rules for the airports Milan Malpensa, Milan Linate and Orio al Serio (Bergamo), is compatible with Article 19(2) of Regulation (EC) No 1008/2008.
- (29) Regarding Article 1 of the draft Giovannini decree as referred to in recital 3, the Commission considers it not to be compatible with Article 19(2) of Regulation (EC) No 1008/2008,

HAS ADOPTED THIS DECISION:

Article 1

The measures provided for in Article 1 of the draft Giovannini decree on modified traffic distribution rules for the airports Milan Malpensa, Milan Linate and Orio al Serio (Bergamo) submitted to the Commission on 22 February 2022 and as referred to in recital 2, are approved.

Approval of the measures provided for in Article 1 of that draft decree as referred to in recital 3 is denied.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 18 August 2022.

For the Commission
Adina VĂLEAN
Member of the Commission

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